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*Counsel for the Official Committee of Unsecured Creditors*

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

*In re:*

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

Case No. 23-40523 WJL  
Chapter 11

**DECLARATION OF BRENT  
WEISENBERG IN SUPPORT OF THE  
OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS' STATEMENT IN SUPPORT  
OF THE DEBTOR'S MOTION TO DISMISS  
CHAPTER 11 CASE PURSUANT TO  
11 U.S.C. § 1112(b)**



1 I, Brent Weisenberg, pursuant to section 1746 of title 28 of the United States Code, hereby  
2 declare under penalty of perjury that the following is true and correct to the best of my knowledge,  
3 information, and belief:

4 1. I am a partner at the law firm of Lowenstein Sandler LLP, counsel to the Official  
5 Committee of Unsecured Creditors (the "Committee") in connection with the above-referenced  
6 chapter 11 case.

7 2. This Declaration is submitted in support of *The Official Committee of Unsecured*  
8 *Creditors' Statement in Support of the Debtor's Motion to Dismiss Chapter 11 Case Pursuant to 11*  
9 *U.S.C. §1112(b)* (the "Statement"), filed concurrently herewith.<sup>1</sup>

10 3. Attached as Exhibit A is a true and correct copy of the Committee's counsel's letter to  
11 the Debtor's counsel, dated April 18, 2025.

12 4. Attached as Exhibit B is a true and correct copy of the transcript from the hearing held  
13 by this Court on December 18, 2024 [Dkt. No. 1568].

14 5. Attached as Exhibit C is a true and correct copy of the transcript from the hearing held  
15 by this Court on January 8, 2025 [Dkt. No. 1630].

16 I declare under the penalty of perjury, that the foregoing is true and correct. Executed on this  
17 fourth day of September 19, 2025.

18  
19 By: Brent Weisenberg  
20 Brent Weisenberg  
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28 <sup>1</sup> Capitalized terms used but not otherwise herein defined shall have the meanings ascribed to such terms in the Statement.

**EXHIBIT A**

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April 18, 2025

**VIA EMAIL ONLY**

**Foley & Lardner LLP**

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Matthew D. Lee, Esq.

Mark C. Moore, Esq.

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*Counsel for the Roman Catholic Bishop of  
Oakland*

**Re: In re The Roman Catholic Bishop of Oakland, Case No. 23-40523 (WJL),  
United States Bankruptcy Court for the Northern District of California**

Ann Marie:

We received your April 10, 2025 letter setting forth your client's concerns with the fees incurred by the Committee's professionals. We appreciate you calling us before sending the letter and look forward to meeting with you to explore solutions to the issues you raised. Before our call, we wanted to share our perspective on the incurred, and increasing, fees in this case.

We have, and have had, a strong working relationship with you and your colleagues. We hope that continues. Our collective ability to find creative solutions to disputes which would typically find themselves before the Court has undoubtedly reduced fees. Unfortunately, we now find ourselves in a contested plan confirmation where the stakes are high for all sides. Especially for survivors of sexual abuse, who believe your client has unilaterally decided what to pay its victims and, in turn, once again failed to take responsibility for its actions. While your client has described the Committee's response to the plan of reorganization as "scorched earth," a "barrage," and impliedly, misguided, the facts establish otherwise.

***First***, as you know, the reasonableness of fees is not viewed in hindsight. Whether fees are reasonable is measured at the time the services were rendered. Recognizing the proper legal standard through which the reasonableness of fees is viewed should not be considered our agreement to your characterizations of what has taken place to date. Indeed, intellectual honesty requires both sides to concede that many of the Court's rulings have not been binary. Rather, the Court has granted relief to both sides, or in certain instances, denied the Committee's requested relief *for now*.



**Second,** your client's declaration of victory on certain of the Committee's motions and other requested relief ignores the reason the Committee was compelled to seek relief and the concessions made by the Debtor (and the Oakland Parochial Fund ("OPF")) in response to the relief sought.

***The Church/ OPF Complaint.*** In April 2024, while in mediation, the Committee asked the Debtor to stipulate that its Churches did not own property separate and apart from the Debtor and that OPF did not hold title to the assets transferred to it by the Debtor. But your client refused to do so, despite multiple requests. Given your client's refusals, the Committee had no choice but to commence a declaratory judgment action to determine, among other things, the Churches' rights, if any, to own property and OPF's status as an independent entity (the "Church/ OPF Complaint"). To lie the fees and expenses incurred in connection with the Church/ OPF Complaint at the Committee's feet is thus mistaken.

While your client may characterize the dismissal of the Church/ OPF Complaint, *without prejudice*, as a "win" for the Debtor, that conclusion ignores the fact that the Debtor conceded that all Church property, except for restricted Church funds, is property of the estate and OPF conceded that it owns no assets. Establishing these facts was one of the very purposes for the Committee filing and prosecuting the Church/ OPF Complaint.

While the Committee's motion for standing to assert certain claims against the Debtor and OPF was denied without prejudice, your letter neglects to recognize that the claims the Committee was seeking to assert were merely complementary and alternative theories for relief to those set forth in the Church/ OPF Complaint. Given that the Committee extracted many of the concessions it had set out for by filing that complaint, the relief sought in the standing motion was moot.

Your letter spends a great deal of time on the extensive efforts Lowenstein took to reach an accord on these issues. Rather than place blame or cast aspersions by alleging what language was and was not accepted, we will ascribe our inability to come to a resolution to the litigation process and the distrust our clients have for one another. We have two very different recollections of our negotiations and we deem it best to move forward without attempting to ascribe culpability.

***The Lift Stay Motion.*** The Committee has not "lost" all three motions it filed. The Committee's motion to lift the automatic stay was denied, *for now*, and the Court was clear that the Committee's request may be renewed if circumstances change. It is thus premature to conclude that this matter is fully and finally resolved. Moreover, the Court granted the Committee's request that it hold that the automatic stay did not extend to non-debtors. Thus, it is also incorrect to conclude the Debtor has "won" this motion.

***The OPF Claim Objections.*** The \$35 million claim scheduled by the Debtor for OPF has, unfortunately, played a meaningful role in increasing the cost of this chapter 11 case. The assertion, and proposed allowance, of the OPF claim has led to two claim objections and several objections to the Debtor's disclosure statements by the Committee. A quick recitation of the facts is necessary to remind your client why the OPF claim garnered such attention.

The Debtor, through its former Chief Financial Officer, filed its Schedules of Assets and Liabilities, *under penalty of perjury*, stating that OPF held an allowed general unsecured claim arising out of a \$35 million loan OPF made to the Debtor. Prior versions of the Debtor's Plan of Reorganization provided for the Debtor to pay the OPF claim in full. In responding to the Committee's first objection to the OPF claim, the current chief financial officer of the Debtor filed a declaration with the Court, *under penalty of perjury*, attesting to the fact that the funds "loaned" to the Debtor by OPF were actually Debtor funds and did not belong to OPF. Then, in response to the Committee's second objection to the OPF claim, OPF withdrew its claim through a stipulation with the Debtor. As mentioned above, success is not a barometer for determining the reasonableness of fees. But, even if it were, saving the Debtor and its estate \$35 million is an unequivocal win.

***Administrative Costs Going Forward.*** The Committee shares in the Debtor's desire to limit administrative fees. But we hope you appreciate that it is the Debtor that has chosen to seek to have its Plan confirmed over the Committee's objection. A result never achieved in any of the prior 20 diocesan bankruptcy cases to date.

As you well know, our clients have a vehement disagreement over whether the Plan is fair and equitable. The Committee has concluded, in good faith, after months of investigation and mediation, that it is not. The Committee is entitled to protect and enforce Survivors' rights in the plan confirmation fight we now find ourselves in by vigorously opposing what it perceives as unfair and inequitable treatment. To do so, its professionals must work long hours, sometimes late nights, sometimes weekends, to get the job done. We know that your team has had to do the same.

We know and respect your record of keeping clients' disagreements focused on the substantive issues and not using fee objections, or holdbacks, to put pressure on your opponent. We too practice that way. And so, we look forward to working with you to explore ways in which to limit administrative fees without the need for satellite litigation.

To that end, we urge your client to discontinue mediation with its insurers, while excluding the Committee, in the hopes that a monetary settlement can be reached with them. Similar efforts by diocesan debtors to settle with insurers over a committee's objection have been unsuccessful and only resulted in substantial additional administrative expenses being incurred. For example, in the *Diocese of Camden* bankruptcy case, the *Camden* debtor sought approval of a settlement with its insurers over the committee's objection but subsequently ceased seeking approval of the settlement in the face of fierce opposition by the committee. The *Camden* debtor ultimately reached a settlement with the committee and is now being sued by its insurers for breaching the settlement agreement with the insurers. The *Rochester* diocese case is another example of the increased administrative costs and delay which will befall this case if the Debtor seeks to reach agreement with its insurers without the Committee's support.

In lieu of proceeding down the current path, we urge you to reconsider our request to have our financial advisors meet so that we can better understand where our differences may be. Lowenstein understands why your client is hesitant to authorize this meeting. But we firmly

believe that the meeting will help cure misunderstandings and more acutely clarify where our disputes lie so that we can try to solve for them.

Sincerely,

/s/ Jeffrey D. Prol  
Jeffrey D. Prol

/s/Brent Weisenberg  
Brent Weisenberg

**EXHIBIT B**

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1 UNITED STATES BANKRUPTCY COURT  
 2 NORTHERN DISTRICT OF CALIFORNIA

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4 In Re: ) Case No. 23-40523  
 5 THE ROMAN CATHOLIC BISHOP OF ) Chapter 11  
 6 OAKLAND ) Oakland, California  
 7 Debtor. ) Wednesday, December 18, 2024  
 11:36 AM

1. DEBTOR'S MOTION FOR ORDER  
 (I) APPROVING DISCLOSURE  
 STATEMENT; AND (II)  
 ESTABLISHING PROCEDURES FOR  
 PLAN SOLICITATION FILED BY  
 THE ROMAN CATHOLIC BISHOP OF  
 OAKLAND (DOC. 1453)

4. MOTION FOR ENTRY OF AN  
 ORDER APPOINTING A LEGAL  
 REPRESENTATIVE FOR UNKNOWN  
 ABUSE CLAIMANTS FILED BY THE  
 ROMAN CATHOLIC BISHOP OF  
 OAKLAND (DOC. 1503)

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

17 APPEARANCES:  
 18 For the Debtor:

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17 Company:

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20 For Westport Insurance  
21 Corporation:

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5 For Office of the United  
6 States Trustee:

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9 Also Present:

HON. MICHAEL HOGAN  
Mediator

17 Court Recorder:

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United States Bankruptcy Court  
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Oakland, CA 94612

20 Transcriber:

MICHAEL DRAKE  
eScribers, LLC  
7227 N. 16th Street  
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23 Proceedings recorded by electronic sound recording;  
24 transcript provided by transcription service  
25

**The Roman Catholic Bishop Of Oakland**

4

1 OAKLAND, CALIFORNIA WEDNESDAY, DECEMBER 18, 2024 11:36 A.M.

2 --000--

3 THE CLERK: Calling line item number 10 for the Roman  
4 Catholic Bishop of Oakland, Case Number 23-40523.

5 THE COURT: Okay. Let's start with appearances in the  
6 courtroom, please.

7 MS. UETZ: From the table is okay, Your Honor, or --

8 THE COURT: For now.

9 MS. UETZ: Thanks. Ann Marie Uetz of Foley & Lardner  
10 on behalf of the debtor.

11 THE COURT: Okay.

12 MS. UETZ: I have with me Bishop Barber, as well as  
13 Attila Bartos, our chief financial officer, with me in Court as  
14 well.

15 THE COURT: Very good. Okay. Thank you so much.  
16 Okay. And you're presenting the argument?

17 MS. UETZ: I'm presenting the argument, Your Honor.  
18 I'm going to request that I share parts of it with my partners,  
19 but I'll address that with the Court when I can.

20 THE COURT: Well, do you want to -- should they state  
21 their appearances now?

22 MS. UETZ: Oh, they -- I would like them to, yes.

23 THE COURT: Okay. Are they on the Zoom or are they  
24 here?

25 MS. UETZ: They're here.



**The Roman Catholic Bishop Of Oakland**

5

1 THE COURT: Okay.

2 MS. UETZ: Thank you.

3 THE COURT: They can go ahead and do that.

4 MR. MOORE: Your Honor, Mark Moore and Matt Lee from  
5 Foley & Lardner on behalf of the Roman Catholic Bishop of  
6 Oakland.

7 THE COURT: Okay.

8 MS. UETZ: Also with us is Shane Moses.

9 THE COURT: I see Mr. Lee lurking in the shadows  
10 there. Okay.

11 MR. LEE: Thank you, Your Honor.

12

13 THE COURT: All right. Hi, Mr. Moses. Nice to see  
14 you.

15 Okay. Other side of the room?

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

18 THE COURT: Okay.

19 MS. ALBERT: I will let Mr. Lowenstein introduce  
20 himself.

21 THE COURT: Mr. Lowenstein? Now that is a field  
22 promotion, right? Mr. Lowenstein. That's rare.

23 MR. WEISENBERG: Your Honor, I'll --

24 UNIDENTIFIED SPEAKER: If Mr. Lowenstein wasn't here  
25 today --

1 MS. ALBERT: I just caught that.

2 THE COURT: I've always wanted to be Mr. Jerry Falk  
3 (phonetic), but it never happened that way. So too bad. Okay.

4 MR. WEISENBERG: Having been a name partner, I'm now  
5 going to retire.

6 THE COURT: Yeah.

7 MR. WEISENBERG: And I'll leave Mr. Prol to argue.

8 Your Honor, Brent Weisenberg of Lowenstein Sandler on  
9 behalf of the committee. Your Honor, we also would ask your  
10 indulgence to allow myself and Mr. Prol, as well as Mr. Burns  
11 and Mr. Bair in the event insurance issues come up.

12 THE COURT: Sure. Thank you.

13 MR. WEISENBERG:

14 THE COURT: Sure, sure, sure. Okay.

15 MR. PROL: Good morning, Your Honor. Jeff Prol of  
16 Lowenstein Sandler also for the committee.

17 THE COURT: Okay.

18 MR. BAIR: Good morning, Your Honor. Jesse Bair,  
19 Burns Bair, special insurance counsel for the committee.

20 THE COURT: Okay.

21 MR. BURNS: Good morning, Your Honor. I'm Tim Burns.

22 THE COURT: Okay. Anybody else in the gallery who  
23 expects to make a presentation today?

24 MS. UETZ: Excuse me, Your Honor. I would note that  
25 we have Matthew Kemner here as well. Who is counsel to the

1 bishop. We don't expect he'll make a --

2 THE COURT: Not. Not for Foley & Lardner.

3 MS. UETZ: Want to highlight him. Correct.

4 MR. KEMNER: Good morning, Your Honor. Matthew  
5 Kemner.

6 THE COURT: Okay.

7 MR. PLEVIN: Good morning, Your Honor. I don't know  
8 if I'll be saying anything, but Mark Levi, on behalf of  
9 Continental Insurance Company.

10 THE COURT: Okay, great. Nice to see you.

11 MR. PLEVIN: Thank you.

12 THE COURT: Thank you.

13 MR. JACOBS: Good morning, Your Honor. Nice to see  
14 you again. Todd Jacobs on behalf of Westport Insurance  
15 Corporation. And I'm here with my partner, Harris Ginsberg.

16 THE COURT: Okay. Good morning.

17 MR. JACOBS: And Blaise Curet.

18 THE COURT: Okay. Very good.

19 MR. JACOBS: I don't know if we'll have anything to  
20 say today or not.

21 THE COURT: Okay.

22 MR. JACOBS: We'll see.

23 THE COURT: Okay.

24 MR. JACOBS: Oh, you bet. Okay.

25 MR. SCHIAVONI: Judge, Tanc Schiavoni for Pacific.

1 And I have my partner, Steve Warren.

2 THE COURT: Right.

3 MR. SCHIAVONI: I don't think I'm going to say  
4 anything. But the one thing I would like to say is just to  
5 express our appreciation to the mediator judge who worked so  
6 hard on this.

7 THE COURT: Okay. Thank you very much. Okay. All  
8 right. Anybody else in the courtroom? Okay.

9 How about on the Zoom?

10 MS. LUU: Good morning, Your Honor. Betty Luu on  
11 behalf of the certain London market insurers.

12 THE COURT: Okay.

13 MR. BLUMBERG: Good morning, Your Honor. Jason  
14 Blumberg for the United States Trustee.

15 THE COURT: Okay. All right.

16 Well, Ms. Uetz, it's your motion. If there's  
17 something that you want to begin by way of an opening  
18 statement, I'm happy to hear it. I have some thoughts. And  
19 I'm happy to go second. So if there's anything you want to  
20 lead off with, feel free.

21 MS. UETZ: Your Honor, if it please the Court, my  
22 comments may be informed by yours. And so I'm happy to go  
23 second.

24 THE COURT: Okay. All right. Okay.

25 MS. UETZ: It's your show. Thank you.

1 THE COURT: Well, no, it's all of our show.

2 MS. UETZ: Well, it's all of us.

3 THE COURT: Okay.

4 MS. UETZ: But we take direction from you.

5 THE COURT: Thank you.

6 MS. UETZ: Thank you so much.

7 THE COURT: Let me make the following comments. And  
8 this -- when we had the discussion, the sort of scheduling  
9 discussion a few weeks ago in light of the committee's request  
10 that I consider matters that they believe to be quite  
11 important, and I'm sure they believe to be not just important  
12 in the progress of the case but also related to disclosure  
13 statement issues, I did separate them out. And I did indicate  
14 that I wanted to begin with this as a disclosure statement  
15 hearing.

16 Having said that, everybody in this room has been  
17 through enough disclosure statement hearings to know that in a  
18 process as complicated and dynamic and iterative as the  
19 bankruptcy confirmation process, there are a lot of different  
20 ways to, shall we say, handle a disclosure statement here.  
21 There are a lot of things that can come up in connection with  
22 this beginning of this process. And for me, it is the  
23 beginning. You've all been at this a long time. You know what  
24 your negotiations have been like. You know what accommodations  
25 have been made and haven't been able to be made yet. And you

1 probably have an idea of where you think this ends up in a  
2 month or two or three. But this is the beginning of the  
3 process for me.

4 So let me give you the following thoughts. Well, let  
5 me let me begin with a point that I want to get out there not  
6 because I'm cynical, but because I think these cases are a  
7 little different. To the extent that a disclosure statement is  
8 a document prepared by the proponent of a plan that is to aid  
9 people voting on the plan in making an intelligent decision  
10 about this, without meaning to be too cynical, these cases may  
11 play out a little bit differently in the sense that we could --  
12 my guess is, on some level, we could have a vote tomorrow. And  
13 the people who are here know how they're going to vote.

14 So part of this reality is, this is not as much about  
15 convincing people who are unsure what to do as it is in some  
16 ways about making sure that everybody who cares about this has  
17 a chance to contextualize this process in a way that they think  
18 is important so that the information is out there, whether it  
19 necessarily changes their mind or not. I think that there is a  
20 perfectly valid purpose to a disclosure statement that is  
21 supplemental to am I going to convince somebody to vote one way  
22 or the other. I think we are making a record in all kinds of  
23 ways with this, beginning with the disclosure statement. And I  
24 think that's important.

25 So even though one could say, do you really need to

1 add that because the committee has formed a conclusion about  
2 the plan that isn't favorable, and if we voted on it, I know  
3 how they vote? Okay, you could say that. I still think that  
4 it's important enough to begin this process and continue this  
5 process in as comprehensive a way as we can so that, to the  
6 extent it's necessary to the process that all voices are heard,  
7 all voices are heard. So I hope that's sensible as a beginning  
8 of a contextualization.

9 So if we treated this -- if indulging that notion, we,  
10 for lack of a better word, treated this as a disclosure  
11 statement hearing, it seems to me there's typically three  
12 buckets that you put things in. The first bucket is somebody  
13 says you really need more information about X or Y or Z or the  
14 description isn't clear or we need to clarify something, or  
15 sometimes and it may be very relevant here, there is a very  
16 important constituency here that has a very different view of  
17 something and that should be -- that view should be exposed as  
18 well as the proponents view. So there's a bucket of issues  
19 that fall into that. And there are a few of those today.

20 There are sometimes matters that are so clearly not  
21 going to work that you don't want people going to the trouble  
22 of soliciting acceptances or rejections based on something that  
23 you flat out know or the judge believes is not going to be an  
24 appropriate approach or one that's going to be consistent with  
25 1129(a)(1) et seq., as interpreted by the case law.

1           And then there's the third piece. And the third piece  
2 is things that people feel very passionately about and are  
3 convinced they're going to win an argument about factually and  
4 legally at confirmation. But you don't look at it as today  
5 it's a showstopper. If they're right, yeah, it is. But  
6 between the robustness of that third category, which is not  
7 quite you could never get there but there could be some serious  
8 problems here, between that and the notion that this is a  
9 dynamic situation and that a lot of things could happen here,  
10 including there could be further conversations, including that  
11 I may -- I'm not trying to give anybody a heart attack, I may  
12 well grant a motion for relief from stay in two weeks to start  
13 testing some of the things that are being discussed here, I may  
14 well require there to be considerably more disclosure about  
15 some of the transactions that predated the bankruptcy, which  
16 may lead to further discovery issues, may lead to further  
17 litigation issues.

18           And I would certainly want to take account of how I  
19 fold in is another question. I certainly want to take account  
20 of the committee's idea that they simply have a very different  
21 idea about this case and what the principles are that should be  
22 guiding what the assets are available and what the claims are  
23 to be paid.

24           All of that, I think, is part of a dynamic that even  
25 if I don't say I'm going to stop the presses right now because



1 of those disagreements, I think they have to be in the front of  
2 our minds the whole time.

3 So that's my sense of this. Now, where we -- my  
4 recollection is that the exclusivity re solicitation is through  
5 January 8th. All right.

6 Look, it's not -- let me throw another idea out there.  
7 If it turns out that we don't approve a disclosure statement  
8 today, and I think probably we're looking at some amendments  
9 and some clarifications and we're coming back at some point is  
10 my sense, but we'll see, if we don't there's a big difference  
11 to me between extending out somewhat the solicitation deadline  
12 so that we get to an agreement about what this thing ought to  
13 look like for solicitation purposes and when we have a  
14 confirmation hearing. Those things don't have to be linked up  
15 by twenty-eight or thirty-five days. There's a lot of play in  
16 the joints there as far as I'm concerned. Once we get to -- if  
17 we get to a angle of repose on what the disclosure statement  
18 ought to look like, we can time a lot of other things according  
19 to what the parties need to do and what they think I need to be  
20 mindful of and the possibility of further discussion and all  
21 the other things you're already knowing I'm not saying, okay?

22 So that's where I begin this process. Is that  
23 helpful? Okay. Doesn't surprise you?

24 MS. UETZ: No.

25 THE COURT: Other than I may not approve it today.

1 MS. UETZ: Not surprised by that.

2 THE COURT: Well, no, you're entitled to say I'm  
3 shocked by that, Judge. Okay. All right.

4 How would you folks like to proceed? I mean, I don't  
5 want to interfere in the way you want to present the motion.  
6 But in my mind, we can start with any one of those three  
7 buckets, or you can organize it differently in your own mind.  
8 If you need a few minutes, given what I've said, to think, we  
9 can take five minutes. Up to you.

10 MS. UETZ: Your Honor, if it pleases the Court, I have  
11 about six minutes of an opening statement that I would like to  
12 make --

13 THE COURT: Sure, sure.

14 MS. UETZ: -- that touches on some of what you said.

15 THE COURT: Yeah, I'm not surprised.

16 MS. UETZ: And then I will land with your last  
17 question.

18 THE COURT: Okay. All right.

19 MS. UETZ: Is that okay?

20 THE COURT: Are you ready now?

21 MS. UETZ: I am.

22 THE COURT: Okay. Come on up.

23 MS. UETZ: Thank you.

24 THE COURT: Um-hum. If I were timing you.

25 MS. UETZ: Well, Mr. Lee kept interrupting me when I

1 was practicing, so it was between six and seven minutes. All  
2 right.

3 THE COURT: All right. We'll allow you to go over  
4 budget by ten percent. Okay.

5 MS. UETZ: Thank you, Your Honor.

6 THE COURT: All right. No problem.

7 MS. UETZ: Thank you very much.

8 And good morning. It's still morning.

9 THE COURT: Yeah. It's still morning.

10 MS. UETZ: May it please the Court?

11 THE COURT: Yeah.

12 MS. UETZ: Just a quick note. We are here today on  
13 actually two motions that are scheduled. It's the motion to  
14 approve the disclosure statement as well as the debtor's motion  
15 to appoint a legal representative --

16 THE COURT: Right, right, right, right.

17 MS. UETZ: -- for unknown abuse claimants.

18 THE COURT: Right.

19 MS. UETZ: It goes without saying, but I will say it,  
20 Your Honor, today represents a critically important milestone  
21 for the parties and stakeholders in this Chapter 11 case.

22 Since filing this case some nineteen months ago, the  
23 debtor has been consistent in pursuit of its stated goal. And  
24 I've stated this goal repeatedly: One, to provide a fair and  
25 equitable compensation for survivors of sexual abuse; and two,

1 to reorganize the debtor to enable it to continue its mission  
2 to do its charitable work and serve the needs of the faithful,  
3 including parishioners and including the poor, within the  
4 Diocese of Oakland and the counties which it serves, Alameda  
5 and Contra Costa primarily.

6           These two prongs are the focal point of the plan that  
7 the debtor filed with this Court. The committee complains that  
8 Bishop Barber did not propose the plan in good faith. We  
9 believe this is belied not just by his actions throughout this  
10 Chapter 11 case, some of which you have seen firsthand, some of  
11 which will be described to the Court during this process. It  
12 is also belied by Bishop Barber's actions before we filed  
13 Chapter 11, through his leadership and work to prevent future  
14 abuse of minors and to help ensure child protection,  
15 reconciliation and healing for sexual abuse survivors. Bishop  
16 Barber is attempting to do here what the diocese can do in  
17 accordance with the Bankruptcy Code to achieve the two goals  
18 that we have repeatedly described.

19           We believe the disclosure statement adequately  
20 describes a plan which establishes a survivor's trust funded by  
21 the debtor and non-debtor contributing entities. Of course,  
22 the debtor believes the plan is fair and equitable and that the  
23 payment to the survivors trust is significant, meaningful, and  
24 fair, and compares favorably to already confirmed plans and  
25 other diocese cases.

1           Your Honor, I've previously expressed to this Court, I  
2 think I do it nearly every time I'm here, that it is our strong  
3 preference to reach a global settlement in this case. And that  
4 remains the debtor's preference. But we are where we are.

5           The debtor worked tirelessly with the committee and  
6 the insurers toward a global settlement during mediation  
7 sessions throughout 2024. Bishop Barber has been committed to  
8 the debtor's goals in this Chapter 11 and to that process to  
9 try to reach a global resolution. Unlike some of the members  
10 of the committee and some employees of the insurers, Bishop  
11 Barber attended mediation sessions in person. He wasn't  
12 required to by the mediators. He was there trying to reach  
13 agreement, trying to get consensus for a plan.

14           Bishop Barber has been transparent throughout this  
15 case. He approved the production of information and documents  
16 requested by the committee. And you've repeatedly heard about  
17 that. What the committee now complains about, and as just one  
18 example, the transfer of assets to the Oakland Parochial Fund  
19 prior to the filing, which funded the administrative costs of  
20 this Chapter 11, the burn of about 1.2 to 1.3 million dollars  
21 per month to pay professionals and other costs for this Chapter  
22 11, that was fully disclosed since day 1. That's just one  
23 example, Your Honor.

24           THE COURT: Well, it wasn't described in the  
25 disclosure statement. Now maybe you thought, well, it's been

1 discussed elsewhere. But the rationale for it wasn't  
2 described.

3 MS. UETZ: And --

4 THE COURT: That's a point that we may pause on later,  
5 okay?

6 MS. UETZ: To Your Honor --

7 THE COURT: And by the way, none of this suggests I  
8 think there's something nefarious here. The disclosure is  
9 always sort of in the eye of the disclosure, right?

10 MS. UETZ: Sure.

11 THE COURT: Okay.

12 MS. UETZ: And to your point earlier -- and look,  
13 we're under no illusion.

14 THE COURT: Yeah.

15 MS. UETZ: Based on your comments and based on our  
16 experience, there will be changes to the disclosure  
17 statement --

18 THE COURT: I bet there will.

19 MS. UETZ: -- before it goes out.

20 THE COURT: I bet there will.

21 MS. UETZ: Right?

22 THE COURT: Yep.

23 MS. UETZ: Better than my Lions bet last weekend, one  
24 of which I made by mistake and the second one which --

25 THE COURT: Well, did you have the over or the under?

1 MS. UETZ: I mistakenly pushed under, Your Honor. It  
2 was a disaster.

3 THE COURT: It was a bad bet. Yeah, it was a bad bet.

4 MS. UETZ: Your Honor, Bishop Barbour agreed to the --  
5 again, consistent with trying to move toward resolution, and  
6 then I'll move on, he agreed to the committee's request for the  
7 two survivor conferences which have been conducted. He didn't  
8 have to do that. We embraced it. We cooperated with it. And  
9 he was here. And he expressed his sincere and unequivocal  
10 sorrow and regret to the survivors.

11 Again, unfortunately, we are where we are with the  
12 committee for a variety of reasons. But nonetheless, we are in  
13 Chapter 11. And Bishop Barber has been able to propose a plan  
14 which pays abuse survivors in line with other dioceses, Chapter  
15 11 cases. And it provides with the agreement of the insurers,  
16 which was reached in mediation the day before we filed,  
17 November 7th, for the complete assignment of insurance rights  
18 for the benefit of the survivors of sexual abuse through a  
19 transfer to the trust of the rights and obligations of the  
20 debtor to its insurance policies and providing a direct right  
21 of action to the claimholder to each survivor to decide for him  
22 or herself. It is the survivor's choice under this plan, not  
23 the committee's, not the trustee of the survivors trust, not  
24 anyone's choice but the individual survivor, so that under the  
25 plan, if a survivor wants to have his or her day in court, they

1 can. We've heard that repeatedly through this case. They  
2 don't have to, but they can.

3 THE COURT: I have to say, it's not as if any part of  
4 the disclosure statement was tossed off lightly. But the  
5 provisions about the litigation option and about the continuing  
6 rights of the nonsettling insurers, I thought without  
7 indicating approval or not, because that's not important right  
8 now, they were very, very, very clearly thought through with  
9 enormous detail. And I get that. And everybody will comment  
10 on that. But it was -- that was a particular place where it  
11 was clear people were spending a lot of time thinking that  
12 through, because I think, among other things, there have been  
13 cases where when those issues have not been so carefully  
14 thought through and things come up post-confirmation, it's  
15 never a good result. So just an observation. Nothing more  
16 than that.

17 MS. UETZ: Your Honor, we've heard loud and clear  
18 throughout this case that the rights of the survivors are very  
19 important. And we felt it very important in this provision to  
20 give that choice to the survivors. And I will say we thank  
21 Judge Newsome and Mr. Gallagher who were extraordinary in  
22 bringing some of the parties together on those points.

23 THE COURT: Well, I know the committee probably has a  
24 different idea. And we'll certainly hear that too. So that's  
25 fine. Okay.



1 MS. UETZ: Your Honor, the plan does not -- this is  
2 what it does not do. Plan does not pay sexual abuse survivors  
3 the amounts the committee claims might be awarded by state  
4 court juries in California or elsewhere, nor do we purport to  
5 do so. We are a debtor in a Chapter 11 case administered  
6 pursuant to the Federal Bankruptcy Code. And in accordance  
7 with the requirements of the Federal Bankruptcy Code, the  
8 debtor's plan in this Chapter 11 case, we believe, provides  
9 fair and equitable compensation for survivors of sexual abuse  
10 and reorganizes the Roman Catholic Bishop of Oakland to enable  
11 it to continue to serve the needs of the faithful and to  
12 continue its mission within the community.

13 Much of the committee's objection to the disclosure  
14 statement is premised on really three things. We think whether  
15 the plan is fair and equitable, whether it was proposed in good  
16 faith, whether the debtor can satisfy the best interest test.  
17 And we'll get to the committee's other objections.

18 But in short, Your Honor, I think even the committee  
19 would agree with me that their objection is that the debtor is  
20 not giving enough.

21 Your Honor, added to that is that despite the  
22 committee's repeated statements to this Court from the earliest  
23 days in this case that it wanted for its constituents an  
24 assignment of the debtor's insurance rights, it now objects to  
25 that when we've given the choice to the survivors themselves.

1           Your Honor, there will be a day when this Court  
2 decides whether the debtor has given enough and whether the  
3 insurance assignment, which has been which has been confirmed  
4 in other cases, is appropriate here. Of course, that day will  
5 come.

6           But first we need to get the disclosure statement  
7 approved. We need creditors to vote on the plan. And  
8 ultimately, as the judge in this case, you will decide whether  
9 the debtor has met the requirements for confirmation.

10           The committee's objection filed with this Court, we  
11 believe, can really be distilled into two buckets. One is  
12 specific objections to specific statements, kind of like one of  
13 your buckets, Your Honor, about statements that are either  
14 included or not included in the disclosure statement. And  
15 we've addressed those in our reply in a chart we attached as an  
16 appendix and incorporated into the reply.

17           The committee also, I put this in the second bucket,  
18 makes broad objections to the plan, arguing essentially it's  
19 patently unconfirmable.

20           Additionally, and this touches on some of what Your  
21 Honor mentioned in your remarks, through its objection, the  
22 committee -- Your Honor didn't say this. That might have been  
23 a poor choice of an intro, but it relates I think. The  
24 committee toward the end of its objection I think in the final  
25 section seeks to delay the schedule for confirmation of the

1 plan. And of course, that doesn't need to be decided today.  
2 But I would just note that it appears that the schedule that  
3 the committee is suggesting in light of the lift stay and six  
4 state court cases going to trial in state court is two-plus  
5 years.

6 Of course, this isn't a disclosure statement  
7 objection. It may or may not be a plan objection. We do  
8 believe that it's a pretty transparent attempt by the committee  
9 to leverage the debtor and the insurers into a better plan,  
10 into a better deal. And I get that.

11 The issue, and I've been plain about this more so  
12 recently, is one of time we don't have the money to pay the  
13 burn to stay in Chapter 11. We've shared the cash forecast  
14 with the parties. And we are running out of money. And that  
15 will be something that's addressed before this Court in fairly  
16 short order as well in more detail. So when we get to talking  
17 about the schedule and what lies ahead, if the plan is to run  
18 out the clock on the debtor's ability to pay the Chapter 11  
19 administrative expenses associated with this case, that may  
20 happen.

21 Finally, Your Honor, not to be overlooked, the United  
22 States Trustee has filed its objection to the disclosure  
23 statement. We believe that many of those objections are really  
24 plan objections and not disclosure statement objections. And  
25 we don't think that the UST's objection rise to the patently

1 unconfirmable level, nor do we think the committee's do.

2           There are some technical objections which the United  
3 States Trustee has made which, I believe, can be worked  
4 through, so to speak. And I don't think that they would be an  
5 ultimate bar to approval of the disclosure statement.

6           And of course, the UST, as expected and projected,  
7 objects to the opt-out third-party releases, arguing they are  
8 non-consensual and they violate the Supreme Court's decision in  
9 Purdue. We believe the law supports the debtor's position on  
10 that issue in a way that will support approval of the  
11 disclosure statement as we work through that argument with the  
12 Court.

13           In terms of how to proceed, Your Honor, in light of  
14 what you've described and our own thoughts one idea -- and we  
15 could put this over if the Court prefers, but one idea is to  
16 just get through the motion to appoint the future claims rep  
17 because he's on the Zoom, and it probably won't take long. I  
18 don't believe there have been any objections to that motion, if  
19 my memory is accurate And then address the committee's  
20 specific objections regarding what the disclosure statement  
21 does and does not state, the chart if you will, then proceed to  
22 the committee's broader objections, and then to the United  
23 States Trustee's objections because some of those we believe  
24 will have been addressed through our discussion about the  
25 committee.

1           And finally, Your Honor, as I mentioned earlier, if it  
2     please the Court, I will need the help of my partners in these  
3     arguments. So I have Mr. Lee, Mr. Moore, and Mr. Moses here.  
4     I also have my insurance partner or partners, I'm not sure,  
5     available by Zoom.

6           And Your Honor, with that, we truly thank the parties,  
7     all of the parties, and the Court for your and for their  
8     consideration.

9           THE COURT: Okay. Thank you.

10          Would it make sense to have the committee make a  
11     similar opening statement? Do you want to do that for theme  
12     purposes? Mr. Weisenberg, it's up to you.

13          MR. WEISENBERG: Sure. Your Honor. typically I --

14          THE COURT: if you want to defer it and have us take  
15     up the --

16          MR. WEISENBERG: Your Honor, Brent Weisenberg on  
17     behalf of the committee.

18          I think it will be helpful. Typically, I enjoy when  
19     Your Honor asks questions and we can think through problems  
20     collectively. But I do believe that, given some of the  
21     comments that were made, a retort is required. I will not go  
22     point by point.

23          THE COURT: Sure. Okay.

24          MR. WEISENBERG: I will do my best to stick with why  
25     we're here today.

1 THE COURT: Okay. And if it's okay, I don't want  
2 to -- because I think there should be some immediacy between  
3 the two statements. If at that point we want to take up the  
4 probably unopposed motion with the rep, that's fine, okay?  
5 Does that work for folks? Okay. But I don't want to delay  
6 you. Go ahead.

7 MR. WEISENBERG: Thank you, Your Honor.

8 Let me start in reverse order, such that I believe we  
9 should use the initial part of today's hearing to determine  
10 whether the plan is confirmable. We've set forth in great  
11 detail that we believe the plan is dead on arrival. Whether  
12 that be because of the definition of release or exculpation or  
13 the admitted failure not to follow the hypothetical liquidation  
14 test, any one of those three reasons makes the plan, within its  
15 four corners today, unconfirmable. And so there's no reason to  
16 go through what is or is not missing in the disclosure  
17 statement, what may be misleading. We'd prefer to focus on the  
18 plan.

19 And Your Honor, that kind of ties in to our case  
20 vision. And that has been used against us in many ways, as if  
21 it's nefarious, that we have an idea about how this case should  
22 unfold. Your Honor, we want this case to unfold logically and  
23 linearly. What do I mean by that? We have fundamental  
24 disputes with the debtor about what is and is not assets of the  
25 estate. We have fundamental disputes about the value of

1 claims. We do not believe this case can move forward,  
2 decisions can be made until those issues are resolved.

3 It ties into the entire problem with the disclosure  
4 statement. Like Your Honor has already observed, there is no  
5 discussion in the disclosure statement about 106-million-dollar  
6 transfer on the eve of bankruptcy. Until Your Honor has an  
7 opportunity to decide that, we don't know if those funds are  
8 property of the estate and potentially available to pay  
9 creditors or they're not.

10 The same issue lies with respect to the relationship  
11 between the non-debtor entities and the debtor. We're talking  
12 about hundreds of millions of dollars that essentially divide  
13 us regarding what's available to pay creditors. And so we're  
14 continually tagged with the notion that we're running out the  
15 clock, we're trying to drive expenses. Nothing could be  
16 further from the truth, Your Honor. In every one of our  
17 pleadings -- not every one, but we'll say half, we make mention  
18 of the fact that every day, survivors' memory fades and  
19 survivors pass away. We want resolution immediately, but we  
20 want a fair and equitable resolution for all survivors.

21 And Your Honor, fair and equitable doesn't mean what  
22 the debtor tells us what it means. And that's what this plan  
23 is. The debtor has said we filed this case to treat survivors  
24 fairly and equitably, and we've decided that this plan is fair  
25 and equitable. They say that at the same time by saying that

1 two fundamental protections that the Bankruptcy Code provides,  
2 the absolute priority rule and the hypothetical liquidation  
3 test, are inapplicable to this case. So think about that. The  
4 two fundamental protections that prevent a debtor from  
5 unilaterally deciding what it could pay creditors in this case  
6 would be removed. The ramifications of allowing that, Your  
7 Honor, would essentially allow a debtor to determine what it  
8 thinks is fair and deprive creditors of those vital  
9 protections.

10 And so, Your Honor, we think it's important that we go  
11 through this case, again, logically and linearly. Let's talk  
12 about what is and is not asset to the estate. And through the  
13 lift stay, let's find out what these cases are really worth.  
14 The insurers and the debtor and the committee have vehement  
15 disagreement about that.

16 Well, how do we solve for that? Why don't we allow an  
17 actual jury to determine what these cases may be worth or may  
18 not be? And so if that's going to be tagged with the notion  
19 that we're running out the clock, then so be it, Your Honor.  
20 But we would submit that it's a better path forward than if we  
21 stay on this course and in three, four, or five months from  
22 now, you find the plan is not confirmable for any number of  
23 reasons, what have we achieved? We haven't figured out what  
24 are assets to the estate. We haven't figured out the valuation  
25 of claims. And so we're starting from scratch. That seems to



1 make little sense.

2 We would submit that our way, our proposed way,  
3 actually drives this case to resolution, because once Your  
4 Honor makes a decision about these fulcrum issues, the parties  
5 are going to know what the playing field is. And they'll be  
6 able to mediate within those confines. But standing here  
7 today, we have diametrically opposed views.

8 THE COURT: Can I make an observation?

9 MR. WEISENBERG: Of course.

10 THE COURT: This is probably very simplistic, but it  
11 strikes me that there's two pieces to what you just said. One  
12 piece is a complicated legal question of whether entities that  
13 are separately incorporated really should be deemed to be -- I  
14 mean, I don't want to say liable for these claims, but there  
15 should be a world in which we think of them as essentially  
16 owning assets that are available to pay or should be made to be  
17 available to pay claims. Okay? That's the lawsuit, right?  
18 That's the adversary proceeding?

19 MR. WEISENBERG: Correct, Your Honor.

20 THE COURT: Okay. That's complicated. And we'll talk  
21 about how that might play out.

22 The other piece of this where I'm kind of searching  
23 for how to articulate it best, to the extent that the diocese  
24 says we are the diocese, within the diocese, there are churches  
25 there are different sorts of entities for purposes other than

1 whether our assets are theirs -- I don't think there's not an  
2 explicit disagreement that a church asset is a diocese asset.  
3 But within that, we're making a decision how much of that is  
4 available. And I think part of that -- I mean, that goes to  
5 the question of, well, if you couldn't liquidate us because  
6 we're a nonprofit and you couldn't replace the bishop for First  
7 Amendment reasons, does that mean we have no obligation to make  
8 these assets available?

9           What I'm searching for is a world in which the debtor  
10 tells us why that's the case. What is the rationale for why  
11 this is available? And that is, what is the limit? And  
12 there's a lot of ways they could express that. And just to get  
13 this on the table, I'm not seeing that in the disclosure  
14 statement yet. And maybe the debtor can tell me if they think  
15 that's totally inappropriate. But it seems to me at a minimum,  
16 some articulation of why on a principled basis X is available  
17 and Y isn't is something that I think we need to know because  
18 you're not going to agree -- we need to know why we disagree  
19 about that. So, I mean, that's just an observation. We'll get  
20 into that when we get into the particular objections, okay?  
21 Does that distinction make sense?

22           MR. WEISENBERG: Your Honor nailed it for two reasons.  
23 Number 1, if the debtor's argument is correct, today they can  
24 take every last dollar of cash, buy a piece of property,  
25 improve it with a church and say, under the First Amendment,

1 you cannot compel us to sell a church, ergo we don't need to  
2 make any payment to creditors, or taken a step further, they  
3 can say every last dollar within the diocese is in furtherance  
4 of our religious purposes and therefore we don't need to pay  
5 anything, because if you could -- if you try to compel me to  
6 pay one cent, you're violating my First Amendment, right?

7 THE COURT: But my --

8 MR. WEISENBERG: That can't be the answer.

9 THE COURT: No. But my point, I think you agree with  
10 me, is that what we need is that articulated. What is the  
11 basis for that? And then we can agree with it or disagree with  
12 it. The debtor can say not another penny because X, Y, and Z,  
13 or the debtor can say, well, this asset is different from that  
14 asset, and here's why.

15 But the point of a disclosure statement ought to be,  
16 among other things, to give the debtor, the proponent, the  
17 ability to articulate why they're doing what they're doing,  
18 what you're going to get, and why that's fair and legally  
19 supportable. And I think there's -- my sense is there's a  
20 void there right now. I have a sense -- I may guess what the  
21 debtor is thinking, but I think that's a point where some  
22 articulation would be helpful.

23 And I mean -- and I'm at the moment indifferent to the  
24 answer. I mean, whatever they say, you're probably going to  
25 take a different position. That's fine. But I think for

1 today's purposes, what we need is to have them tell us more  
2 clearly what that means. Does that make sense?

3 MR. WEISENBERG: Your Honor, it does. Suffice it to  
4 say that our position is a debtor does not get to pick and  
5 choose what is and is not part of its estate and available to  
6 pay creditors and survivors. We think, again --

7 THE COURT: Well --

8 MR. WEISENBERG: -- the fundamental protection of the  
9 Bankruptcy Code was this hypothetical liquidation test. Let's  
10 think about from a --

11 THE COURT: Can I --

12 MS. UETZ: -- drafter's perspective.

13 THE COURT: Can I agree with you real fast? Because  
14 it is hypothetical, that's the point, because it is  
15 hypothetical.

16 Having said that, they have a point that they cannot  
17 be liquidated, and we're not going to replace the bishop. But  
18 I don't have to confirm a plan either, right? I mean, that's  
19 the stark reality here. So I mean, somewhere in there, there  
20 has to be some articulation of what their theory is, and you  
21 have to be able to say we disagree with it because. Fair?

22 MR. WEISENBERG: Your Honor will not be the first  
23 person to be asked this question. The court in Boy Scouts was  
24 asked this question.

25 THE COURT: Yeah.

1 MR. WEISENBERG: The court in Camden was asked this  
2 question.

3 THE COURT: I'm glad I'm in good company.

4 MR. WEISENBERG: And in our papers, we put forth at  
5 least six or seven cases in which going through the 1129  
6 factors, every one of those courts made a decision about  
7 whether the plan was confirmable based upon whether the plan  
8 proponent fulfilled this test. So, Your Honor, suffice it to  
9 say, I think we see it very closely to the way you see it.

10 THE COURT: But having said that, it may also be true  
11 that I think that the purpose of today and whatever continued  
12 hearings we have is to get the debtor to articulate that, not  
13 to decide whether it's enough or not, right? Whether it's  
14 enough or not is a -- in my view now, subject to your brilliant  
15 arguments, whether it's enough or not is a confirmation issue.

16 MR. WEISENBERG: Your Honor, it's the first time I've  
17 ever been accused of a brilliant argument. But with that  
18 aside --

19 THE COURT: You got to get out more.

20 MR. WEISENBERG: Your Honor, we will submit that the  
21 hypothetical liquidation test as proposed by the debtor makes  
22 the plan patently confirmable.

23 THE COURT: Okay. All right. Okay.

24 MR. WEISENBERG: Okay.

25 THE COURT: Okay.

1 MR. WEISENBERG: Just a few more points, Your Honor.

2 THE COURT: No, no. I'm not trying to rush you. I'm  
3 just trying to make sure that you understand where I'm coming  
4 from, okay?

5 MR. WEISENBERG: I'm going to get a little out of my  
6 depth by addressing the insurance assignment. And I know that  
7 I have great counsel behind me if I get it wrong.

8 THE COURT: Okay. Okay.

9 MR. WEISENBERG: But the bottom line is this, Your  
10 Honor. The debtor stands up and says the committee has always  
11 wanted this. That may or not -- may or not be true. However,  
12 I'll tell you what we don't want. We don't want an assignment  
13 that increases the rights of the insurers and decreases the  
14 rights of the survivors, okay?

15 The fact that all the insurers are here today, Your  
16 Honor, that should tell you everything you need to know about  
17 this plan and how it's viewed between the debtor and the  
18 insurers and the committee, okay? If past is prologue, the  
19 insurers typically do not stand in favor of an assignment that  
20 is not insurance-neutral, okay? In this case, we'd submit it  
21 actually impairs the rights of survivors in the state courts.  
22 And so whether or not we want an assignment, I can tell you  
23 this. We don't want one that hurts survivors' rights.

24 THE COURT: I know we'll get into this. Is that  
25 because of the sort of, for lack of a better word, the credits

1 and the offsets that are available or the limitations on the  
2 recovery, or what's the --

3 MR. WEISENBERG: Your Honor, I'm going to --

4 THE COURT: Just thematically, what's the font of  
5 that?

6 MR. WEISENBERG: I want to answer your question, but  
7 then I also would like my colleagues to answer.

8 THE COURT: Yeah.

9 MR. WEISENBERG: We do make an argument, and again,  
10 this is a patently unconfirmable argument, that the plan as  
11 drafted allows the insurers an offset for any amount that a  
12 survivor may have received from the debtor. However, the plan  
13 provides the debtor is paying survivors for the uninsured  
14 exposure that they may have for any claim. And so

15 THE COURT: So those are apples and oranges.

16 MR. WEISENBERG: Exactly. Under California law, that  
17 simply -- the insurers are not entitled to an offset.

18 THE COURT: Okay. I got it. I got it. I got it.  
19 Okay. I don't need more now unless you guys are dying to tell  
20 me, okay? All right. Okay.

21 MR. WEISENBERG: Let me end in this way, Your Honor.  
22 Maybe this is the good news. We share the debtor's desire to  
23 consensually resolve this case. We earnestly do. And  
24 everything we've done so far has been towards that goal.

25 THE COURT: Yep.

1 MR. WEISENBERG: It's unfortunate that sometimes the  
2 debtor doesn't see it that way. For example, we truly believe  
3 that the survivor status conferences were vital to bringing  
4 survivors under the tent. And hopefully they will support a  
5 consensual plan. Okay? So that's the good news. We want to  
6 continue to work there. But given our vehement disagreements  
7 about fundamental problems, we just submit there's a better,  
8 more economic way.

9 THE COURT: Okay. I appreciate it.

10 MR. WEISENBERG: Thank you, Your Honor.

11 THE COURT: Thank you very much.

12 Can I make a suggestion? Just so we don't keep  
13 anybody who could otherwise be off doing something more fun, do  
14 you want to take up appointment issue?

15 MS. UETZ: We'd like to take up the appointment issue  
16 and then suggest we break, Your Honor.

17 THE COURT: I'm thinking the same thing. And before  
18 we break, I want to give you an idea of where I'd like to start  
19 when we come back, okay?

20 MS. UETZ: That would be helpful.

21 THE COURT: Great.

22 MS. UETZ: Yes, Your Honor.

23 THE COURT: Okay. Okay. Come on up, Ms. Lee.

24 MR. LEE: Thank you, Your Honor.

25 Good afternoon, Judge Hogan.



1           We're here today on the debtor's motion to appoint --  
2   in addition to all the disclosure statement talk we're going to  
3   have, we're here on the motion to appoint Judge Michael Hogan  
4   as the unknown abuse claims representative in this case. The  
5   motion was filed on December 9th as docket number 1503,  
6   supported by declarations at dockets 1504 and 1505. Your Honor  
7   agreed to hear it on short notice.

8           THE COURT: Yep.

9           MR. LEE: Sorry, short notice, with the consent of the  
10   committee and the U.S. Trustee. Objections were due on  
11   December 13th. None have been filed.

12           This motion acknowledges, as has been done in many  
13   other dioceses in Chapter 11 bankruptcies, that there may be  
14   individuals who have abuse-related claims against this  
15   particular debtor whose claims have not legally accrued under  
16   California law or, for whatever reason, have not had notice of  
17   these proceedings. This would be related to abuse that  
18   occurred or is alleged to have occurred before the effective  
19   date of the plan and in which case is appropriately dealt with  
20   in these proceedings.

21           Recognizing that holders of current known abuse claims  
22   may have slightly different interests than holders of claims  
23   who either don't know they have a claim under California law or  
24   don't have -- haven't had a chance to assert that claim in this  
25   bankruptcy, the debtor proposes to appoint Judge Hogan as a

1 representative for those unknown abuse claimants in this  
2 Chapter 11 case. Judge Hogan is very experienced in this role.  
3 He served in over a dozen diocesan bankruptcies.

4 THE COURT: In the same role.

5 MR. LEE: In the same role. Yes, Your Honor.

6 THE COURT: Okay.

7 MR. LEE: He's a former federal judge. He currently  
8 has a mediation practice that's active. He has proposed to  
9 charge 850 dollars an hour to the estate, with a cap of 100,000  
10 total dollars, all in.

11 THE COURT: Even post Post-effective date?

12 MR. LEE: I believe that's correct.

13 THE COURT: Okay.

14 MR. LEE: He has no conflicts that would prevent his  
15 disinterestedness under Section 101 -- sorry, Section 101.14 of  
16 the Bankruptcy code.

17 THE COURT: Okay.

18 MR. LEE: And after all, this is -- at bottom, it's at  
19 327(a) representation. He would be representing not the  
20 debtor, but he would be representing a constituency of the  
21 estate. And therefore I think it's appropriate to proceed  
22 under 327(a).

23 THE COURT: I'm guessing he's probably dealt with a  
24 lot of the same parties, but that's not -- I mean, that's not  
25 even a connection you would tell me, right, within the

1 disclosure requirements?

2 MR. LEE: I believe he's dealt with the same -- he's  
3 been involved in cases with --

4 THE COURT: It would make sense that he had. Yeah.  
5 Okay.

6 MR. LEE: Yes. Yes, Your Honor.

7 THE COURT: Okay.

8 MR. LEE: His tasks are outlined specifically in the  
9 motion.

10 THE COURT: Yeah.

11 MR. LEE: I can go through them if you like. But I do  
12 know that he's able and willing to do all of this immediately  
13 upon entry of the order we've proposed to Your Honor.

14 THE COURT: Okay.

15 MR. LEE: If you have questions for me or for Judge  
16 Hogan, I would invite you to ask them.

17 THE COURT: Yeah, This may be one of those questions  
18 that can't be answered, but just given that he's -- Judge  
19 Hogan, given that you've done this a number of times before,  
20 empirically, when do these issues arise? I mean, are there  
21 people that you would be identifying now or be aware of now Who  
22 would be your constituents or your flock, or is that something  
23 that's going to develop over time, It's not a now issue?

24 MR. HOGAN: Develops over time. We don't know who  
25 those people are yet.

1 THE COURT: Yeah. Okay. All right. And Judge Hogan,  
2 obviously, you've read the application. And you're familiar  
3 with the presentation. Anything you want to add at this point?

4 MR. HOGAN: Well, the only other thing I would like to  
5 do is apologize for my dress today.

6 THE COURT: I've been known to let people know that  
7 without a tie, I'm not hearing them the same way. But go  
8 ahead. That's all right.

9 MR. HOGAN: My finest rodeo vest.

10 THE COURT: Okay. I appreciate that. I appreciate  
11 that. All right. Thank you.

12 MR. HOGAN: I'll dress in big boys after close-out.

13 THE COURT: All right. Thank you very much. Well,  
14 listen, you may be perfectly well attired for most of what  
15 you're going to be doing, which won't be talking to me. Lucky  
16 you. Okay? Yeah. All right. All right.

17 Does anybody want to be heard on the application with  
18 respect to Judge Hogan's appointment? I think the  
19 understanding was the given it was shortened time, if someone  
20 had a comment, I wouldn't stop them from the lectern, okay?

21 MR. PROL: Good afternoon, Your Honor. Jeff Prol,  
22 Lowenstein Sandler, for the committee.

23 THE COURT: Good afternoon.

24 MR. PROL: Judge, the committee has no objection to  
25 the application for the retention of Judge Hogan. Judge Hogan

1 and unknown claim representatives have been instrumental in  
2 other cases in driving consensus. And we're hopeful that that  
3 by him coming and being involved, that that will be a result  
4 here.

5 We do, however, object to the proposed use of Judge  
6 Hogan in the plan as it presently stands. And I could address  
7 that now, or I can address that later.

8 THE COURT: I read your papers. Does that cover it?

9 MR. PROL: Yes, Your Honor.

10 THE COURT: I got it. Thank you.

11 MR. PROL: Okay. Great.

12 THE COURT: Thank you very much.

13 MR. PROL: Thank you, Your Honor.

14 THE COURT: Okay. You're welcome.

15 Okay. Anybody else want to be heard? Okay. Then the  
16 debtor is proposing the appointment of a Judge Hogan as the  
17 unknown abuse survivors representative, correct? Okay.  
18 Hearing no objection and hearing from Judge Hogan -- thank you  
19 very much for participating today -- and hearing from the  
20 debtor's representative and counsel, that's approved. Okay?  
21 Thank you very much.

22 MR. HOGAN: Thank you for your time.

23 THE COURT: All right. Yeah. Okay. I hope to see  
24 you again. Okay. Thank you.

25 We'll take a break. But when we come back, you may

1 not agree with me, but one thing I do want to address fairly  
2 early on is the release opt-in, opt-out question, because I  
3 think that's a big part of how we're going to solicit or not  
4 hear. So I think that's a big deal. And I have some -- I have  
5 some thoughts about that, okay? And I will give you those  
6 thoughts. We can have a conversation. I will leave -- I will,  
7 I suspect, leave open something for somebody to inform me  
8 slightly better on. But you're going to -- you're going to get  
9 where I'm coming from, I promise you, okay?

10 After that, I have probably -- I've probably condensed  
11 and hopefully not dumbed down categories where I think some  
12 expectation, amendment, amplification is probably a good idea.  
13 And that would include the possibility for the committee, if  
14 appropriate, to just say we have a different view. Here's  
15 appendix A, this is our view. And we'll talk about those,  
16 okay? That's how I would like to start the afternoon session.  
17 And that's subject to anybody having a better idea. And I mean  
18 that sincerely. If anybody thinks there's something we need to  
19 do first, that's fine. But that's how I'd get going if it's  
20 okay, all right?

21 How long do you folks want?

22 MS. UETZ: Thirty minutes.

23 THE COURT: That's all. Seriously? Does anybody want  
24 longer than that?

25 MS. UETZ: Well, that's all I want. But if other

1 people want more --

2 THE COURT: Okay. No. I mean, I will leave it --  
3 I'll leave it to you guys.

4 UNIDENTIFIED SPEAKER: Judge, I think we'll defer to  
5 you. Your staff is obviously here, and you folks need lunch as  
6 well. And whatever you typically do --

7 THE COURT: How about 1:15?

8 UNIDENTIFIED SPEAKER: -- that would be fine with us.

9 THE COURT: How is 1:15, okay?

10 MS. UETZ: Thank you, Your Honor.

11 THE COURT: 1:15. All right. Thank you very much.  
12 Thank you.

13 (Recess from 12:27 p.m., until 1:16 p.m.)

14 THE COURT: Okay. Please be seated.

15 So one housekeeping note. I don't want to predict  
16 that we will go this long, but I think 5 was going to be a hard  
17 stop for us, okay? So if we can -- not that that's something  
18 to shoot for, but it is a limit.

19 I also will note, echoing I think everybody's comments  
20 about the relentless goodwill that has prevailed in this case,  
21 that this case is the furthest advanced of the diocese cases in  
22 ND Cal

23 I'll tell you a secret. Montali complains all the  
24 time that nobody argues about anything in his case. He doesn't  
25 know what to do with himself. It's a very quiet case

1     apparently, in his view at least. And Santa Rosa, I think, is  
2     mediating but not yet to a plan. And you probably -- many of  
3     you probably know this better than I do. And my case,  
4     Franciscan Friars, is not close to a plan, I don't think.

5             So somebody has their hand up. It looks like -- is it  
6     Mr. Manz (phonetic)?

7             MR. MANZ: It is, Your Honor. Good afternoon.

8             THE COURT: Good afternoon. Something you want to  
9     tell me?

10            MR. MANZ: Just to make a note of an appearance, Your  
11     Honor.

12            THE COURT: Sure.

13            MR. MANZ: I had an issue making an appearance at the  
14     outset. I represent RCC and RCWC.

15            THE COURT: Okay.

16            MR. MANZ: Thank you.

17            THE COURT: Thank you so much. Okay.

18            MR. MANZ: Thank you to your chambers as well.

19            THE COURT: You bet. Okay.

20            If there's anything that you guys need to tell me from  
21     a housekeeping or order progression standpoint, now is the  
22     time. Otherwise, we'll segue to one issue that I think we  
23     should just deal with and largely dispose of, which is the  
24     opt-in release, opt-out release question, okay?

25            So I'm prepared to -- I think the committee may have



1 something to say about this. I wouldn't say it was their prime  
2 focus, but they may well have some comments. But certainly the  
3 principal objection came from the U.S. Trustee. So I would let  
4 them kick us off on this.

5 MR. BLUMBERG: Thank you, Your Honor. Jason Blumberg  
6 for the United States trustee.

7 Our objection -- our primary objection in our papers  
8 is that the third-party release and the channeling injunction  
9 is not consensual because of the opt-out procedure. And under  
10 the opt out-procedure, as I understand it, creditors would be  
11 deemed to consent if they don't respond to the solicitation  
12 package for whatever reason. Creditors would also be deemed to  
13 consent if they fail to execute an opt-out form even if they  
14 reject the plan. So from our perspective, what the debtor is  
15 proposing is that silence or inaction will be deemed consent to  
16 a third party release in this case.

17 Now the debtor's reply brief, excuse me, acknowledges  
18 that there is a case to support every view on this issue. I  
19 can't disagree with that. But what I did not see in the  
20 debtors papers was any Ninth Circuit authority permitting  
21 opt-out releases.

22 It's the United States Trustee's position that the  
23 Bankruptcy Code does not deal with third-party releases,  
24 consensual or otherwise, or how parties actually consent to a  
25 release. Thus, as we set forth in our objection, it's our

1 position that whether a release is consensual or not should  
2 look to state contract law. And under that law, which is well  
3 developed, except in exceptional circumstances, an offeree has  
4 no duty to respond to an offer -- excuse me, respond to an  
5 offer.

6 So the first bucket of creditors or releases that we  
7 would have take issue with are those who don't vote and don't  
8 return --

9 THE COURT: Can I put a thought in there before we get  
10 to the particulars?

11 MR. BLUMBERG: Of course, Your Honor.

12 THE COURT: I mean, some people have also commented  
13 that the contract scenario is arguably different because  
14 there's a difference between acceptance and consent. So if you  
15 want to at some point address that, I'd be grateful.

16 MR. BLUMBERG: Sure. Your Honor, as I mentioned,  
17 there's a case to support every view. The cases that we relied  
18 upon, the Smallhold case, the Sun Energy case, and the case out  
19 of the Northern District of New York, the Tonawanda Coke case,  
20 they defaulted to contract principles. We think that's the  
21 appropriate result because there is nothing in the Bankruptcy  
22 Code that deals with this issue.

23 And in essence, a plan is a contract between the  
24 debtor and between the creditors that resolves the debts  
25 between those two parties. This is a separate piece of the

1 plan. This is essentially a contract between the non-debtor  
2 and the creditors. So it could exist outside of the plan  
3 entirely.

4 THE COURT: Well, okay. But it's the debtor that's  
5 the proponent and is going to get the benefit of getting a  
6 confirmed plan if this plays out the way they like.

7 I don't know that -- also, I hear you on some courts  
8 adopting the contract theory. I don't know that that's how I  
9 would have characterized Goldblatt's opinion. I think it's a  
10 little different. But you can convince me why I'm wrong about  
11 that one.

12 MR. BLUMBERG: Well, I respect Your Honor's take on  
13 the Smallhold case. But I would just note that Judge  
14 Goldblatt, I think, did at least refer to the contract  
15 principles in determining that --

16 THE COURT: Okay.

17 MR. BLUMBERG: -- silence can't be consent --

18 THE COURT: Right.

19 MR. BLUMBERG: -- with creditors who don't participate  
20 in the plan.

21 THE COURT: Well, yeah. I mean, the place where I  
22 think he really balked was this notion that if you don't  
23 respond at all, you're agreeing to whatever I say. I mean,  
24 you're going to -- unless you give me this form back, you're  
25 going to pay for my college education I think it was this hypo,

1 right?

2 MR. BLUMBERG: That's correct, Your Honor.

3 THE COURT: Right. Which I think speaks to a lot  
4 here. He would -- if I read him correctly, he would be in  
5 accord with this form that the debtor is suggesting but for the  
6 notion that if you don't respond at all, you are deemed to  
7 consent, right? I think he drew the line there.

8 MR. BLUMBERG: Agreed, Your Honor. He would --

9 THE COURT: Okay, Your Honor.

10 MR. BLUMBERG: Agreed, Your Honor.

11 THE COURT: Okay. So if you want to -- if you want  
12 to -- I don't mean to derail you. If you want to tell me why  
13 the contract theory in all its robustness is the right one, I'm  
14 all ears. I don't think -- that's not the way I read about  
15 Goldblatt was doing it. I usually find him pretty persuasive  
16 on issues like this. So go ahead.

17 MR. BLUMBERG: Well, Your Honor, I would just note  
18 that there are other cases that we cited --

19 THE COURT: Yeah.

20 MR. BLUMBERG: -- the contract theory --

21 THE COURT: I agree. You're right. There are. Okay.

22 MR. BLUMBERG: And just taking the buckets of  
23 creditors who would be deemed to consent, I think the easier  
24 case are those who just don't participate in the process at  
25 all. And set forth in our objection, there's no duty for a

1 creditor to vote on a plan. Moreover, we cited a BAP case  
2 called Long M. Arabians (sic), which is 103 B.R. 211. It's an  
3 old BAP decision, but there the BAP held that a creditor's  
4 silence or failure to vote is not the equivalent of the  
5 acceptance of a plan. And so if a creditor's failure to vote  
6 or decision not to vote is not acceptance of a plan, it can't  
7 be acceptance of a release in that plan.

8 THE COURT: Okay. Anything else?

9 MR. BLUMBERG: Well, just the more difficult bucket  
10 are the folks that do vote --

11 THE COURT: Yeah.

12 MR. BLUMBERG: -- that do vote.

13 THE COURT: Okay. How do you -- did you address  
14 whether it's appropriate to have the release be part of the  
15 ballot or whether a separate document is better or worse?

16 MR. BLUMBERG: We did, Your Honor. We did in the  
17 context of creditors who vote to reject the plan but don't  
18 execute the opt-out. In our view, there's case law that  
19 suggests -- I think it was the Chassix case that suggests if  
20 you have someone who rejects the plan, imposing the additional  
21 requirement of an opt-out is nothing more than a trap for the  
22 unwary or inattentive creditor. In our view, that issue is  
23 magnified here because the ballot is a separate document.

24 THE COURT: Okay.

25 MR. BLUMBERG: Easy to overlook in that circumstance.

1 THE COURT: Okay. I appreciate it. Thank you. Okay.  
2 Why don't I -- why don't I let the committee -- I don't think  
3 this is their principal objection, but they may have some  
4 thoughts. And they may be anticipating some of the things  
5 you're going to say about why this is -- given the number of  
6 counsel involved for the victims, they may have a thought about  
7 whether they agree with you that this is not so God awful a  
8 scenario, for lack of a better word, okay?

9 Okay. Mr. Weisenberg or Mr. Prol, you want to give me  
10 your thoughts?

11 MR. WEISENBERG: Brent Weisenberg on behalf of the  
12 committee.

13 Generally speaking, Your Honor, we have not weighed in  
14 on this issue with a caveat -- well, two caveats. Number 1, in  
15 the context of this plan, which is nonconsensual, we don't  
16 believe that the form that the debtor has chosen is  
17 appropriate. That is not to say in a fully consensual plan  
18 under different facts, the answer might be different.

19 THE COURT: Okay.

20 MR. WEISENBERG: Number 2, Your Honor --

21 THE COURT: Can I -- Okay. You finish, and I'll ask  
22 you a question.

23 MR. WEISENBERG: Number 2, Your Honor, you always  
24 chart your own path. And that's been very beneficial. But I  
25 do want to let you know what happened in Syracuse.

1 THE COURT: Okay.

2 MR. WEISENBERG: In Syracuse --

3 THE COURT: Is that Judge Kinsella's case?

4 MR. WEISENBERG: Yes.

5 THE COURT: Yeah.

6 MR. WEISENBERG: And in that case --

7 THE COURT: We've spoken.

8 MR. WEISENBERG: Okay. And so we would submit that  
9 that's the better course of action for the same reasons we've  
10 been telling you, which is if we get five months down the road  
11 and ultimately you issue your decision which makes the debtor's  
12 plan unconfirmable, we won't have made any progress. And so  
13 isn't it better to know now what the rules of the game are, and  
14 then we can engage with creditors in that fashion?

15 THE COURT: Okay. I was wondering if you were going  
16 to pick up on her rule 23 points.

17 MR. WEISENBERG: I was not, Your Honor.

18 THE COURT: Okay.

19 MR. WEISENBERG: I wasn't going to get into that  
20 depth. I was just talking procedurally.

21 THE COURT: Okay. Okay. As in we should cross this  
22 bridge now?

23 MR. WEISENBERG: Exactly.

24 THE COURT: I agree with you. Okay. Thank you very  
25 much.

1           Okay. Mr. Moses, come on up and --

2           MR. MOSES: Can I ask one quick point of  
3 clarification, was that we should cross this bridge now or we  
4 should not cross this bridge now?

5           THE COURT: We should.

6           MR. MOSES: Yes. Okay.

7           THE COURT: I think it's an important issue. I think  
8 it's discrete enough that it can be dealt with now. I think  
9 that the options are also limited enough that we can deal with  
10 it now, although I'm thinking to hold something -- potentially  
11 hold something open for you to further convince me on one  
12 point. I haven't made up my mind about that.

13           But I think that if we're talking about going out to  
14 solicitation sometime around January, if we are lucky enough to  
15 be doing that, I don't want to solicit in a form that someone  
16 is going to tell me later we never should have done. So that's  
17 my thinking, okay?

18           MR. MOSES: Certainly, Your Honor. And I think to  
19 start with that point, this really breaks down into sort of two  
20 kind of distinct issues. One is -- and especially when you  
21 look at it in terms of what the solicitation look like, one of  
22 those issues is can opt-out -- can an opt-out be deemed  
23 consensual, or is opt-in the -- as the U.S. Trustee argues the  
24 only possible means of consent?

25           And then the second question is if the Court agrees



1 with, know what at least one bankruptcy court, the Robertshaw  
2 court said was the overwhelming majority of cases that at least  
3 in some circumstances as to some creditors opt-out as  
4 appropriate, what is the extent of that? In other words, does  
5 it apply to creditors who vote against the plan and don't opt  
6 out? And does it apply to creditors who do not respond?

7 THE COURT: To what extent am I limited in Robertshaw  
8 by Lopez's opening comment that the Supreme Court didn't change  
9 a darn thing about how we look at this in the Fifth Circuit?  
10 And I have an interpretation of that history in the Fifth  
11 Circuit. And therefore, I come to the following conclusion.

12 MR. MOSES: Well, I think there is some relevance  
13 there in that -- and we discussed this a little bit in our  
14 papers, that the Supreme Court was very clear that this was not  
15 intended, that its decision in Purdue was not intended to call  
16 into question or to address the question of what is deemed  
17 consent. And the argument that the U.S. Trustee is making here  
18 that consent specifically requires an opt-in, an affirmative  
19 opt-in, would mean -- the effect of that is that now Purdue  
20 would result in the erasing of all of that precedent on all of  
21 those prior decisions. I think Robertshaw says hundreds of  
22 plans have been confirmed in the Fifth Circuit on this basis.

23 THE COURT: I don't know that he took that seriously  
24 when he said it. But anyway --

25 MR. MOSES: I don't know. I doubt he counted.

1 THE COURT: Yeah.

2 MR. MOSES: But I think it's fair to say a substantial  
3 amount of --

4 THE COURT: Well, no. I mean, whether you got --

5 MR. MOSES: Yeah.

6 THE COURT: -- a hundred plans or not, it is something  
7 to say this is inconsistent with the result of hundreds of  
8 cases. That is enough to pause, right?

9 MR. MOSES: Right.

10 THE COURT: Okay.

11 MR. MOSES: And I think what both Robertshaw and to  
12 some extent, the LaVie Care Centers case --

13 THE COURT: Yeah.

14 MR. MOSES: -- both suggest is that if we take this  
15 argument that opt-out is -- opt-in is required to its  
16 conclusion, then the result is Purdue does something that the  
17 Supreme Court in Purdue specifically said it wasn't doing,  
18 which was to upset current law on what is consensual and what's  
19 not consensual.

20 THE COURT: Or if you're putting this on a spectrum,  
21 to weigh in on what you might think of as the most onerous end  
22 of the spectrum, right?

23 MR. MOSES: Correct.

24 THE COURT: If they're saying we're not commenting on  
25 this, it wouldn't follow that, oh, and you have to do the most

1 difficult thing in order to get to consent, right?

2 MR. MOSES: Right, exactly.

3 THE COURT: Okay.

4 MR. MOSES: Exactly.

5 THE COURT: Yeah.

6 MR. MOSES: I do -- to sort of with regard to that  
7 spectrum, the decision that we really do have to resolve, not  
8 if the hearings continue today, but at this stage, is what does  
9 the form look like that we send out. Is it appropriate to send  
10 out an opt-out form? The question that Your Honor could decide  
11 at this stage, but does not have to, is whether or not the  
12 release would apply to creditors. So if it's balloted,  
13 solicited as an opt-out plan, whether or not the release would  
14 apply to creditors who simply don't respond, right? In the  
15 Smallhold decision, that was decided actually post-  
16 confirmation. We point to a couple of other cases where that  
17 was decided at least at the confirmation stage because it  
18 doesn't affect the solicitation. It just affects the nature of  
19 the release.

20 THE COURT: Well --

21 MR. MOSES: I'm sorry, the nature of the form.

22 THE COURT: Okay. I might argue with that --

23 MR. MOSES: Yeah.

24 THE COURT: -- in a minute, but okay.

25 MR. MOSES: Okay. I would like to -- and I think

1 that's -- Smallhold recognizes I think in addressing that issue  
2 that there's a little bit of a distinction between the  
3 procedure and the substance --

4 THE COURT: Oh, yeah.

5 MR. MOSES: -- of the release, right?

6 THE COURT: Oh, yeah. Oh, yeah. Yeah.

7 MR. MOSES: And so the procedural question is  
8 essential to solicitation. The substance in some ways may not  
9 be. That that's my only point. But I'm happy to address it  
10 all.

11 THE COURT: Okay.

12 MR. MOSES: Before we get to -- there's sort of a  
13 fundamental issue of what the correct legal framework is. Is  
14 the correct legal framework contract? Is it something else?  
15 But a number of the cases also address that there is a  
16 contextual question. And this is what I think Your Honor  
17 mentioned earlier. The contextual question in a specific case  
18 of what might be appropriately deemed consent in that case.

19 And in particular, one of the -- the Tonawanda Coke  
20 case that the U.S. Trustee references -- no, I think it was  
21 actually the Chassix case, they raise this issue of there is a  
22 high likelihood of inadvertence. Is there a trap for the  
23 unwary here? And the circumstances of this case are very  
24 distinct there in that, as we point out, approximately ninety-  
25 nine of these claimants are represented by counsel. Their

1 claims were filed by counsel. There were four claims, one of  
2 which was untimely, that were not filed by counsel.

3 So these notices are going to their counsel. There is  
4 almost no chance of inadvertence or a trap for the unwary or,  
5 frankly, of someone not responding because they simply don't  
6 understand the question because they have counsel to address  
7 that for them.

8 And although, as Your Honor mentioned, the Spokane  
9 case, it addresses the Rule 23 question. It also specifically  
10 makes that point as well, that one of the bases for an opt-out  
11 being appropriate is the fact that in that case, it was ninety-  
12 four of the creditors were represented by counsel. So I think  
13 it's just important to contextualize this.

14 THE COURT: Yeah. No, no, no.

15 MR. MOSES: And I think the LaVie Care Centers case  
16 makes that point as well.

17 THE COURT: Okay.

18 MR. MOSES: That the context is important in deciding  
19 whether or not there was consent.

20 THE COURT: Okay. And just as I remember it, what  
21 Judge Goldblatt said was, look, I can see this as a principle.  
22 I don't know that it's really relevant here or not based on  
23 what I have in front of me. And Judge Kinsella, I thought, was  
24 a little more convinced that it was a vibrant concept in her  
25 case. Is that fair?

1 MR. MOSES: I think that's fair.

2 THE COURT: Okay.

3 MR. MOSES: Yeah.

4 THE COURT: And is there another case that you think  
5 advances that theory beyond that, or is there another case that  
6 is more robust than its acceptance of Rule 23?

7 MR. MOSES: I don't --

8 THE COURT: I don't think so. Okay.

9 MR. MOSES: I don't think so, no.

10 THE COURT: And what are we -- what are we -- if  
11 that's something I should be worried about, is there a -- is  
12 there a order of proof that I need to be thinking of along  
13 those lines? Or what do I -- what do I do? I'm thinking about  
14 that.

15 MR. MOSES: Well, I don't think I'm really arguing the  
16 Rule 23 point as a basis.

17 THE COURT: Well let me -- can I interrupt --

18 MR. MOSES: Sure.

19 THE COURT: -- and tell you that my very strong  
20 inclination is to agree with Judge Goldblatt and I think you.  
21 But at the point that one has engaged on this and has  
22 participated enough to deal with a ballot, I think that is -- I  
23 will agree with Judge Goldblatt that the failure to check an  
24 opt-out at that point is hard to describe as anything other  
25 than you didn't want to do it, although you might -- there

1 might be some inadvertence there. But I think his argument  
2 that that's very different from the if you don't respond,  
3 you're paying for my college tuition. And it is consensual  
4 enough that one has participated enough to engage with the  
5 ballot, that -- I think I'm with you that I would agree that  
6 somebody returning a ballot, not checking the opt-out under the  
7 arguments advanced in Smallhold I would think is going to be  
8 sufficient.

9 Where I'm going to disagree with you, subject to  
10 whether we need to have some sort of evidentiary basis for  
11 this, is what I'll call the Rule 23 principle, that it just is  
12 not -- if what we're guarding here is purely inadvertence, I'm  
13 not sure that's right. But if we are, that there should be  
14 some argument based on -- I'm not sure what yet, but you can  
15 help me with that, when we get to that point in our next  
16 hearing on this, if you want to expand and engage with the  
17 committee whether -- basically because of the high level of  
18 representation here, I shouldn't be as worried about ballots  
19 simply not returned. I'm willing to keep that crack open, but  
20 I'm not -- I'm dubious about the notion.

21 MR. MOSES: Okay.

22 THE COURT: Okay?

23 MR. MOSES: And I think there is a little bit of a  
24 distinction, Your Honor, that in the Spokane decision, the  
25 court focused in the Rule 23 argument on the notion of the

1 creditors' committee as the equivalent of a class  
2 representative.

3 THE COURT: Yeah.

4 MR. MOSES: But I think --

5 THE COURT: Well, and they can respond to that and say  
6 we are or we aren't.

7 MR. MOSES: Right.

8 THE COURT: I haven't heard from them yet, so we'll  
9 see.

10 MR. MOSES: But there is a slightly distinct that the  
11 court in Spokane also addressed the question of simply these  
12 creditors are represented by their state court counsel who can  
13 identify this issue, make sure they don't miss it, explain --

14 THE COURT: Well, so you --

15 MR. MOSES: -- to them what it means.

16 THE COURT: You've kind of hit on this, but I don't  
17 know that we're -- if I should be looking at this in terms of  
18 making findings and so on. I don't think I'm in a position to  
19 do that if it presents that way, okay?

20 MR. MOSES: Okay.

21 THE COURT: Sensible?

22 MR. MOSES: Right.

23 THE COURT: I agree with you it doesn't have to be an  
24 opt-in. I'm going to agree with that.

25 MR. MOSES: Okay.



1 THE COURT: Okay?

2 MR. MOSES: I think the point I would want to identify  
3 with regard to Smallhold and where I think the LaVie Care  
4 Centers does, I agree with the point that is made there with  
5 regard to -- and with regard to Smallhold is Judge Goldblatt  
6 seemed, I think, to have the sticking point of what is the  
7 limiting principle of this.

8 THE COURT: Yeah.

9 MR. MOSES: And that's where the college tuition comes  
10 in. And the LaVie Care Centers directly addresses that and  
11 says there are limiting principles that can apply to that,  
12 right? There is -- for one thing, that is an agreement, the  
13 example of the college tuition, this sort of -- the extreme  
14 example is an agreement to an affirmative act to contribute  
15 money to this college fund. What we're talking about is  
16 effectively a waiver of a right, a waiver of the right to  
17 pursue this claim, which in many cases can be accomplished  
18 through inaction, can result from inaction.

19 And the other point is that there is always backstops  
20 of fair and equitable and good faith for any plan. I don't  
21 think there's any bankruptcy court in the country that would  
22 say -- require people to contribute to the CEO's college  
23 tuitions --

24 THE COURT: Well, I -- in good faith.

25 MR. MOSES: Right?

1 THE COURT: I agree. No. I think what Goldblatt was  
2 trying to recognize was it's contractual in the sense that you  
3 have to -- there has to be some manifestation of something that  
4 you call assent. But we all know that when we're dealing with  
5 courts, rights are highlighted, notice is given, and you've got  
6 to do something.

7 MR. MOSES: Yeah.

8 THE COURT: So there's got to be a balance between  
9 those concepts. But that's where I think he was trying to get  
10 to in my view.

11 MR. MOSES: Right, right.

12 THE COURT: Okay.

13 MR. MOSES: And I guess I do want to make -- sort of  
14 identify -- there's a question. The U.S. Trustee raised this  
15 issue of whether or not it needs to be a separate -- should be  
16 a separate form or whether or not it should be part of the  
17 ballot that, to the extent the Court is approving, the opt-out  
18 concept does need to be addressed.

19 THE COURT: Yeah.

20 MR. MOSES: We proposed it as a separate form because,  
21 frankly, we thought that was more conspicuous to have a  
22 separate form that says do you or do you not consent to this?

23 THE COURT: Yeah.

24 MR. MOSES: And it's called out in the ballot. If the  
25 Court disagrees with that and thinks it's more appropriate to

1 put it in the --

2 THE COURT: I do.

3 MR. MOSES: Okay.

4 THE COURT: I mean, I think one could conspicuously  
5 highlight the title, ballot and form of release, as in don't  
6 forget that. There are ways to handle that. But I think one  
7 document is -- I mean, by the logic of where Goldblatt ended  
8 up, I think one form is better than two.

9 MR. MOSES: Okay.

10 THE COURT: Okay?

11 MR. MOSES: And so I guess I understand -- do I  
12 understand where the Court is on this, that --

13 THE COURT: Opt-in is not required.

14 MR. MOSES: Okay.

15 THE COURT: Opt-out is okay. Where I -- returning a  
16 ballot without indicating the opt-out, at the moment at least,  
17 I'm agreeing with Goldblatt that that's enough engagement to  
18 count. And that where I'm differing from you at the moment is  
19 no action whatsoever equals opt-out. I'm not with you there.  
20 Okay?

21 But if you -- I mean, if you think that something Rule  
22 23ish and some sort of proof about that or argument about that  
23 is appropriate, I think it's really only been kind of  
24 preliminarily raised here. If you think that that's ripe for  
25 discussion, more ripe for discussion when we come back to talk

1 about the disclosure statement, I'm not opposed to that, okay?

2 MR. MOSES: Understood, Your Honor.

3 THE COURT: Because I think the committee really needs  
4 to be heard about that if we're going to -- if we're going to  
5 sharpen that question. I'm not going to decide that. I'm  
6 leaning against no responses as a yes, but, well we can explore  
7 that further, okay?

8 MR. MOSES: Okay.

9 THE COURT: All right.

10 MR. MOSES: Understood. Now --

11 THE COURT: Thank you.

12 MR. MOSES: I guess my question, there are a number of  
13 other objections in the U.S. Trustee --

14 THE COURT: Yeah. I mean, if you want --

15 MR. MOSES: It might make more sense to sort of tackle  
16 the other larger issues and come back to that, but I'm  
17 flexible.

18 THE COURT: Well, my inclination on the derivative fee  
19 question is that that's -- we can argue about that at  
20 confirmation. That's not going to be ripe until you got a plan  
21 to confirm and monies to pay. And it seems as if there are  
22 decent arguments on both sides of that. I don't think that  
23 should long detain us right now. I'd certainly hear the U.S.  
24 Trustee. And I expect you both -- you can raise it further  
25 then. You can amplify your arguments then. We can get to that

1 then. I don't think it's something we have to decide now.  
2 It's not a showstopper for disclosure statement purposes in my  
3 mind.

4 MR. MOSES: I agree, Your Honor. I think it's  
5 completely appropriate to address that at confirmation.

6 THE COURT: Yeah.

7 MR. MOSES: We might come to some narrowing --

8 THE COURT: That's fine.

9 MR. MOSES: -- or agreement. You never know.

10 THE COURT: That's fine. That's fine. Was there  
11 another issue?

12 MR. MOSES: Okay. There were a couple of other.  
13 Well, those that was the other patently unconfirmed argument.

14 THE COURT: I remember it, yeah.

15 MR. MOSES: There were a couple of other small --  
16 well, not necessarily small, but a couple of other disclosure  
17 issues. There were the question of whether we disclosed  
18 sufficient information regarding the churches and the basis for  
19 the discharge of the churches. That I think might tie --

20 THE COURT: We're going to get -- we're going to get  
21 there.

22 MR. MOSES: Whether we provided adequate information  
23 regarding the survivors trust --

24 THE COURT: That we're going to get to.

25 MR. MOSES: -- that I think we might get to. Then

1 there was whether we provided adequate disclosure of who the  
2 recipients of the release are.

3 THE COURT: We're going to get there too.

4 MR. MOSES: So we're going to get there.

5 THE COURT: We're going to get to those.

6 MR. MOSES: And then finally, there was an objection  
7 that we didn't identify the obligation for post-confirmation  
8 reporting in the planner disclosure statement. I don't think  
9 that really needs, frankly, Your Honor, to be in the disclosure  
10 statement. We acknowledged that we'd be happy to put that in  
11 the plan --

12 THE COURT: Yeah.

13 MR. MOSES: -- the next time the plan is revised.

14 THE COURT: That's what I expected you'd say.

15 MR. MOSES: Okay.

16 THE COURT: Okay. Thank you.

17 MR. MOSES: Thank you, Your Honor.

18 THE COURT: All right. Appreciate it.

19 Okay. Mr. Blumberg, anything else? I think I'm with  
20 you on a major point there, and you're hearing me. And we  
21 can -- we'll take -- if we need to take up the no response  
22 issue again, we can, but I'm with you on that one, okay?

23 MR. BLUMBERG: I appreciate, Your Honor. And I would  
24 just note very quickly on the Rule 23 issue that obviously Rule  
25 23 doesn't -- applies in adversary proceedings but doesn't --

1 THE COURT: Yeah. I agree. I agree.

2 MR. BLUMBERG: And in the (indiscernible) case, the  
3 committee was a plan proponent. So I don't think we're even at  
4 the stage --

5 THE COURT: Okay.

6 MR. BLUMBERG: -- actually where that could work.

7 THE COURT: Okay, okay. Fair enough. Okay. All  
8 right.

9 I thought the next step would be some version of going  
10 down matters where I think we're talking about amplification  
11 amendment, putting things in the disclosure statement that  
12 aren't there right now, or giving the committee a chance to  
13 draft their own version of what they believe on some of these  
14 points. If anybody wants to proceed differently, tell me.

15 MS. UETZ: Not proceed differently, Your Honor. I'd  
16 just like to make one comment to the Court if I may.

17 THE COURT: Um-hum.

18 MS. UETZ: Thanks, Your Honor. Ann Marie Uetz on  
19 behalf of the debtor.

20 The debtor -- well, we're going to -- we're going to  
21 receive Your Honor's direction. But I just want to make clear,  
22 debtor supports and is fine with the committee attaching its  
23 appendix A as you suggested. And we'll be talking --

24 THE COURT: Well, that's just one idea.

25 MS. UETZ: That's just one. But I just want to say

1 we're fine with that.

2 THE COURT: Yeah.

3 MS. UETZ: I would also just comment that as to at  
4 least some of the things that you mentioned this morning and  
5 some of what we anticipate in terms of amendment, we have  
6 already prepared some version of that. And we will, following  
7 this hearing, share it with the committee and other  
8 stakeholders here and try to bring some consensus around those  
9 issues. So I just -- we're prepared to make those amendments.  
10 Some of them are already drafted, ready to go. And I just  
11 wanted to offer that to the Court.

12 THE COURT: Okay. Well, would it be most efficient to  
13 start with those?

14 MS. UETZ: I mean, the two that really come to mind,  
15 they're kind of easy ones I think, is litigation that's been  
16 filed since we filed the disclosure statement. We've got that  
17 ready to go.

18 Another one that occurred to me during the break was  
19 the subject of OPS. And you said that the transaction that was  
20 completed pre-petition wasn't disclosed. And we have that. So  
21 those are the two that really come to mind. And I just wanted  
22 to kind of convey the spirit to the Court and to the others in  
23 the courtroom.

24 THE COURT: Okay. Thank you very much.

25 MS. UETZ: You're welcome.



1 THE COURT: Should we just proceed with the objections  
2 by Mr. Weisenberg and your responses?

3 MS. UETZ: Well, I was -- if there are other areas of  
4 amplification that the Court was willing to direct on, we would  
5 love to hear that --

6 THE COURT: Yeah.

7 MS. UETZ: -- because I think that will help with the  
8 argument back and forth and --

9 THE COURT: Yeah.

10 MS. UETZ: That's always helpful.

11 THE COURT: Yeah. Okay.

12 MS. UETZ: Thank you.

13 THE COURT: Can I give you -- can I give you some  
14 thoughts? Is that okay?

15 MR. WEISENBERG: Sure.

16 THE COURT: Okay. Some of these are -- I'm going to  
17 try not to overstate them, okay? To the extent we are writing  
18 to an audience of abuse survivors, I realize we're writing to  
19 their lawyers too, but I very much appreciated the initial  
20 description of the plan in what was I think intended to be  
21 relatively easy-to-understand language.

22 I do think that there was a little bit of a mix-up in  
23 the beginning between and among the exculpation release and  
24 channeling injunction concepts. And I think you can tell that  
25 when you look at the language of who's getting what, I think

1 it's a little jumbled. It might be helpful to just tell people  
2 who don't otherwise know what this stuff means that in some  
3 circumstances, parties may make contributions that are beyond  
4 the debtor's resources. And those parties may want to be  
5 released, okay? And that's the thesis. That's the basis for  
6 this, is those parties have done something that is helpful,  
7 increases the distribution allegedly. I mean, maybe there are  
8 fights about whether it's material or not. And that on that  
9 basis, it's not inappropriate to ask parties to consent to a  
10 release.

11 Because the Ninth Circuit has made such a big deal  
12 about the difference between releases and exculpations, I think  
13 a quick statement about why an exculpation is appropriate is a  
14 good idea, not just the language of the exculpation, but just  
15 participating in this process may -- in good faith may entitle  
16 one to ask for an exculpation so that one's good-faith actions  
17 taken in connection with the creation proposal, blah blah blah,  
18 of a plan and the reorganization process. Those actions may be  
19 protected. So the following types of entities may ask for  
20 that.

21 Because I think we do get into some -- I don't think  
22 this was intentional, but when we start talking about  
23 affiliates and entities of that type, we do start giving some  
24 purchase, I think, to the committee's concept that this is way  
25 broader than it ought to be, okay? And then we have to be very

1 careful about that. But I think step 1 is just explaining in a  
2 paragraph why there's a basis for a release, why there's a  
3 basis for exculpation, who's entitled to that maybe, and what  
4 you're going to be asked to do about, you, creditor, are going  
5 to be asked to do about that, okay?

6 I think the channeling injunction is -- I don't know  
7 that you can describe it any clearer than it is. The idea is  
8 that once this becomes effective, the request is that all  
9 requests for relief go strictly to that source and no other,  
10 okay?

11 MS. UETZ: And, Your Honor, if I may.

12 THE COURT: Yeah, um-hum.

13 MS. UETZ: You were highlighting at the beginning of  
14 your statement the -- I'll call it the introductory executive  
15 summary.

16 THE COURT: Yeah, yeah.

17 MS. UETZ: We also have an FAQ.

18 THE COURT: Yes.

19 MS. UETZ: And I just mentioned that because it could  
20 go in both. It could go in one or the other.

21 THE COURT: I think it should go in both.

22 MS. UETZ: Okay. Thank you.

23 THE COURT: Okay? I think it should go on both. So  
24 that's -- again, I'm going to hear -- the committee will have  
25 more to say about this than I am. But these are my 10,000-foot

1 areas where I think we could do a little good here, okay? I do  
2 think -- again, I think the scope of the relief with respect to  
3 the release and the exculpation can be described a little more  
4 precisely than it is.

5 Now I'm going to get into a big subject here, which is  
6 the survivor trust documents. I'm going to hear from both of  
7 you, but I think it's going to help enormously if those can be  
8 ready by the time we're soliciting, okay? Do you want to  
9 address it now.

10 MS. UETZ: We have a draft that we can share with  
11 everybody to work toward that, Your Honor.

12 THE COURT: Okay. Well, no. If that was -- if you  
13 were to tell me that's completely --

14 MS. UETZ: Just (indiscernible) --

15 THE COURT: -- unrealistic, I'm happy to hear it.

16 MS. UETZ: -- to everybody else.

17 THE COURT: Okay. Okay. All right. This is going to  
18 sort of cover a couple of different concepts, but the debtor,  
19 to their credit, set forth, for lack of a better word,  
20 benchmarks in terms of what they think the overall claim  
21 aggregate is going to be.

22 I think there's two concepts there. One is from the  
23 committee's standpoint, those were your choices. They would  
24 make different ones. I would leave open the possibility either  
25 that the committee -- that that's appendix A, that the

1 committee says, well, wait a minute, if you really want to look  
2 more comprehensively at where cases have turned out or what the  
3 realistic, estimable values are, we think the following cases  
4 are more helpful than the ones the debtor has suggested. And  
5 they can also go on to say, and by the way, we're asking the  
6 Court to grant relief from stay so we can get a more particular  
7 handle on this so people know that that's a distinct  
8 possibility.

9 Now, we may have to be updated. Depending on what I  
10 do on the 8th, we may update that further. But I think the I  
11 think the committee ought to be heard in that sense that they  
12 just do not agree with the frame the debtor has put on this,  
13 and their frame would be very different, and they can say what  
14 it is.

15 Similarly, I think that, although I think there was an  
16 admirable effort to make the valuation process clear, I don't  
17 know if you can say anything more about what you think the  
18 basis for the evaluators, both the initial one and then the  
19 neutral -- if you have any idea about on what they're going to  
20 be basing that, I think you could say so.

21 MR. MOORE: So, Your Honor, Mark Moore, on behalf of  
22 our RCBO.

23 This is one of the things that's actually governed  
24 almost exclusively by the survivor trust documents, which may  
25 solve that problem.

1 THE COURT: Well, at least it'll tell me what you  
2 think.

3 MR. MOORE: Right, because part of the survivor trust  
4 documents is going to be the trust distribution protocol.

5 THE COURT: Okay.

6 MR. MOORE: And that will set out the exact --

7 THE COURT: Okay, okay.

8 MR. MOORE: -- here's the scoring metrics.

9 THE COURT: Yeah.

10 MR. MOORE: Here's the possible things taken into  
11 consideration.

12 THE COURT: Yeah. I mean, I don't want to get ahead  
13 of myself here. You may believe that plans have been confirmed  
14 or disclosure statements have been approved without that. As I  
15 look at this from the perspective of an abuse survivor, I just  
16 think it's going to be enormously helpful to have that  
17 information.

18 MR. MOORE: As Ms. Uetz said, this is something we've  
19 been working on. We are prepared in the next day, week,  
20 however long, to be able to share that with the committee.

21 THE COURT: Okay. Okay.

22 MR. MOORE: Part of the reason that we did not  
23 previously is that typically the survivors trustee has a pretty  
24 significant amount of --

25 THE COURT: Sure, sure.

1 MR. MOORE: -- input into that.

2 THE COURT: Sure.

3 MR. MOORE: As does the claims reviewer, which is a  
4 different --

5 THE COURT: Is there somebody identified yet?

6 MR. MOORE: We have not.

7 THE COURT: Okay.

8 MR. MOORE: That's typically something that's done in  
9 connection with the committee.

10 THE COURT: Okay.

11 MR. MOORE: Obviously, we haven't reached that step.

12 THE COURT: Yeah, I would hope so. Okay.

13 MR. MOORE: And so we can put those documents together  
14 with the understanding that it establishes a framework pursuant  
15 to the plan and disclosure statement but may be subject to a  
16 little bit of change.

17 THE COURT: Okay. All right. And again, this is not  
18 meant to steal the committee's thunder on these. These are my  
19 large-scale concerns, okay?

20 MS. UETZ: Your Honor, can I just ask a question about  
21 the one before this?

22 THE COURT: Yes.

23 MS. UETZ: Just to clarify what you said or what I  
24 heard.

25 THE COURT: Sure.

1 MS. UETZ: For the benchmarks in the other cases the  
2 debtor has described in the disclosure statement, are you  
3 saying that the committee's sort of counter to that can go in  
4 in appendix A?

5 THE COURT: That was my thinking. I mean, we don't  
6 have --

7 MS. UETZ: Okay. That's what I thought --

8 THE COURT: We don't have to do it --

9 MS. UETZ: -- I heard you say.

10 THE COURT: -- that way.

11 MS. UETZ: I just wasn't certain.

12 THE COURT: But I'm assuming they have a different  
13 universe.

14 MR. WEISENBERG: Your Honor, we're going to have a lot  
15 to say about those charts.

16 THE COURT: Okay.

17 MS. UETZ: Okay. Thank you.

18 THE COURT: Okay. Appreciate it.

19 The most contentious disclosure statement I ever dealt  
20 with as a lawyer was PG&E 1. And there were 75 objections.  
21 And we got to the point where -- I'm not trying to be funny  
22 here. Judge Montali just said, for God's sake, put it in. If  
23 that's what they want, put it in, and we'll figure it out  
24 later.

25 So I'm not trying to make light of this, but there is



1 a point at which, if we're going to go down this road and we're  
2 going to take this seriously as a disclosure statement, where  
3 we know there is just a fundamental disagreement, there is  
4 nothing wrong with indicating what the basis of that  
5 disagreement is and what the other reality is, okay? And  
6 maybe -- well, we'll see where we end up. But I think that's a  
7 concept we can readily employ.

8 MS. UETZ: Your Honor. It reminds me of some of the  
9 CMC statements that we filed with this Court and the district  
10 court where we each have our own --

11 THE COURT: Yeah.

12 MS. UETZ: -- the debtor beliefs --

13 THE COURT: Well, and --

14 MS. UETZ: -- the insurers' beliefs --

15 THE COURT: And to that -- yeah. I mean, to that  
16 point, I think obviously updates on litigation -- and to the  
17 extent that the insurance litigation -- insurance coverage  
18 litigation, the description is not up to date in the disclosure  
19 statement, it should be up to date.

20 MS. UETZ: Of course.

21 THE COURT: Okay. There is also a motion by the  
22 committee, I think, to play a more prominent role there, right?

23 MS. UETZ: That's the understatement of the day, Your  
24 Honor.

25 THE COURT: Okay. S

1 MS. UETZ: Forgive me but --

2 THE COURT: All right. Well --

3 MS. UETZ: I couldn't resist.

4 THE COURT: I'll forgive myself for understanding that  
5 one. Okay. Thank you.

6 Did you want -- did you want to say something? I'm  
7 sorry.

8 MR. WEISENBERG: Your Honor, I -- no. I was going to  
9 say yes to your question.

10 THE COURT: Yeah.

11 MR. WEISENBERG: And we'll wait to address all the --

12 THE COURT: I appreciate it. Okay. Thank you.

13 I think to the extent that there are particular assets  
14 that the committee would identify as, for lack of a better  
15 word, pursuable, I think either they can identify those and/or  
16 the debtor can say we have chosen not to pursue A, B, C, or D  
17 because. And there may be perfectly good reasons why in the  
18 debtor's mind, okay?

19 To a similar end, there is a reservation of rights for  
20 a potential avoiding powers causes of action. I think to the  
21 extent you are aware of any of those with any particularity,  
22 they ought to be described. If you're not aware of them with  
23 particularity, you can say so. Maybe the committee is. And  
24 that could be another point of disagreement.

25 We talked about this before, but the general concept

1 of what's going to be available from the debtor's side,  
2 including the churches and other, for lack of a better word,  
3 entities within the diocese frame, I think that some  
4 explanation of what the debtor's principle is that's guiding  
5 what's being contributed and what's contributable and what  
6 isn't, not -- and again, not that we're all going to agree on  
7 the numbers at this point. We're certainly not. But I think a  
8 better understanding of where the debtor is coming from and  
9 what's the principle guiding that I think is going to be very  
10 helpful, okay?

11 I know there's a disclosure of the transfer of the  
12 cathedral property, but you might want to include some  
13 explanation about why. I mean, there's -- it's a fairly  
14 significant amount of debt. Maybe in the diocese's mind it's  
15 completely awash and no harm, no foul. But if you wanted to  
16 describe that, my sense is the committee is going to take a  
17 different view of that. And we might as well -- might as well  
18 sharpen that up a little bit.

19 I want to let -- I had some confusion myself about  
20 some of the logistics, particularly the litigation option. I  
21 think really the committee is probably more all over that than  
22 I am. I think my concerns are probably relatively -- they're  
23 not as precise, so I'll let them address those. Although I  
24 will agree that I got a little lost in the weeds there too in  
25 terms of what someone's going to end up with and what's

1 offsetting against what. But I'll let Mr. Weisenberg and  
2 others present that and try to -- I'll try to clarify it in my  
3 own head. But it struck me that needed a little bit of help in  
4 terms of the explanation.

5 MS. UETZ: May I make a comment, your Honor?

6 THE COURT: Yeah, of course.

7 MS. UETZ: In terms of the objection concerning  
8 specifically the offset --

9 THE COURT: Yeah.

10 MS. UETZ: -- we've talked with at least some of the  
11 insurers during the break. And we expect to be able to resolve  
12 that hopefully to the satisfaction of the --

13 THE COURT: That's a language issue or something else?

14 MS. UETZ: Probably by withdrawing that offending  
15 offset provision.

16 THE COURT: Okay.

17 MS. UETZ: So I just want to preview that. And we're  
18 going to be having hopefully some discussion about that.

19 THE COURT: Okay.

20 MS. UETZ: Almost, like, put a pin in it. But --

21 THE COURT: That's okay.

22 MS. UETZ: It'll hopefully not be of the pin for very  
23 long.

24 THE COURT: Okay. So those are in a very big picture  
25 my thoughts about where I know we're going to need a little

1 help here, okay? And that's not to take any of the thunder out  
2 of Mr. Weisberg's presentation. But that's just -- as somebody  
3 who has not lived with this as much as you guys have, this case  
4 and this document, those are my thoughts.

5 So do you want to come on up and kick us off here?

6 MR. WEISENBERG: Thank you, Your Honor. Brent  
7 Weisberg on behalf of the committee.

8 Your Honor, we would suggest to proceed differently.

9 THE COURT: Okay.

10 MR. WEISENBERG: And it's consistent with the mantra  
11 that we've said many times today, which is there are gating  
12 issues that this Court needs to decide.

13 THE COURT: Okay.

14 MR. WEISENBERG: And if ultimately you agree with us,  
15 then there is no sense moving forward.

16 The easiest two examples, although easily solvable  
17 admittedly, is the definition of a release and exculpated  
18 party. It was not hyperbole, Your Honor, when we said if you  
19 read the release --

20 THE COURT: Right, as that --

21 MR. WEISENBERG: -- as written --

22 THE COURT: Yeah.

23 MR. WEISENBERG: -- the San Francisco Archdiocese will  
24 be released and the Holy See will be released. I suspect that  
25 is not what the debtor intended, and so they need to fix that,

1     okay?

2                 With exculpation, it's a little more challenging.  
3     Your Honor. There is a Ninth Circuit decision which provides  
4     that parties who are integral in the plan promulgation process  
5     are entitled to an exculpation. Yet the debtor lists four or  
6     five entities, their brothers, sisters and aunts, all of whom  
7     are entitled to an exculpation. That is inconsistent with  
8     Ninth Circuit law. And so as drafted, the plan cannot be  
9     confirmed.

10                THE COURT: Okay. Now because these things can be a  
11     moving target and fixable, is your request that I address that  
12     in terms of what I believe my answer would be or something  
13     else?

14                MR. WEISENBERG: Your Honor, again, we want to be  
15     constructive.

16                THE COURT: Well, I appreciate that.

17                MR. WEISENBERG: And so --

18                THE COURT: That's why I'm asking in the same spirit.

19                MR. WEISENBERG: Yeah. And if Your Honor agrees with  
20     us and says I would like the debtor do this, that, and the  
21     other thing, of course, we'd like to see them do that now.

22                THE COURT: Okay.

23                MR. WEISENBERG: I think the trickier piece, Your  
24     Honor, and I think you and I may have been talking over one  
25     another, is when we're talking about the liquidation analysis.

1 I think there's two issues there. There's not just a  
2 disclosure issue, which is the debtor believes it does not need  
3 to contribute these assets because. The other issue, the more  
4 fundamental issue, is we don't believe the debtor has a right  
5 to make that decision.

6 Like we said before, this is a fundamental protection,  
7 in fact, one of the only protections that a group of creditors  
8 who doesn't agree to a plan has. And under the debtor's  
9 worldview, they can pick and choose how that analysis is done.  
10 And that just can't be the intent of the drafters. The intent  
11 of the drafters provided two vital protections to make sure  
12 that creditors who did not consent to a plan were nonetheless  
13 protected. The absolute priority rule, which we understand  
14 also, the debtor argues we're a nonprofit, that does not govern  
15 us, and the hypothetical liquidation test.

16 And so if the debtor is permitted to say you can never  
17 compel us to sell our churches because that would be a First  
18 Amendment violation, it obviously greatly skews what are the  
19 assets of the estate. In turn, it greatly skews what's fair  
20 and equitable. And so we need Your Honor to give us guidance  
21 today or before the disclosure statement could ever be approved  
22 about whether that liquidation analysis is accurate, because if  
23 it's not, creditors are going to pick up the disclosure  
24 statement and say wow, I'm doing better than if this were  
25 liquidated. We don't believe that's the case. We believe that

1 Your Honor needs to determine what is and is not assets of the  
2 estate.

3 THE COURT: Can I ask you a question? I think I know  
4 what the answer is, but you're going to help me out. Could I  
5 find both that the debtor could not be forced to sell all the  
6 churches and the plan isn't fair and equitable?

7 MR. WEISENBERG: Yes.

8 THE COURT: Okay. I mean, that's where I'm kind of  
9 headed here, okay? Because look, it's a hypothetical test.  
10 And there's a point at which -- can we make them sell this  
11 church? Maybe not. Should we be in a Chapter 11 and  
12 confirming a plan? Maybe not. Makes sense?

13 MR. WEISENBERG: It does, Your Honor. But I think the  
14 quibble I would have with your analysis is if we move forward  
15 in that paradigm, it makes it easier for you to find that the  
16 plan is fair and equitable because we're not using an accurate  
17 liquidation test. What we're arguing is on its face, this plan  
18 fails that test.

19 If we go your route, there's a lot more subjectivity  
20 as to whether the plan is fair and equitable because they may  
21 satisfy that test on its face because you've determined, okay,  
22 I'll agree with you guys, for the time being, you can never be  
23 compelled to sell your churches. The churches --  
24 conservatively, the real property 400 to 700 million dollars,  
25 Your Honor. Okay? This is a billion-dollar real estate



1 enterprise.

2 Again, getting back to the intent of the drafters of  
3 the code, it cannot be the intent that an entity rich in real  
4 estate, arguably poor in cash, can get away with paying pennies  
5 on the dollar and saying -- folding their arms and saying you  
6 can't compel me to sell my real estate. And, Your Honor, no  
7 one's saying that you have to. All you have to do is say I  
8 cannot confirm this plan. You're not -- no one is asking you  
9 to compel them to sell churches.

10 And again, like Your Honor just said, it is a  
11 hypothetical test. The Boy Scouts court recognized that.

12 THE COURT: And would I be wrong in your mind to say  
13 if there's a limiting principle here, the debtor needs to tell  
14 us what it is, and we can -- I can agree with it or not?

15 MR. WEISENBERG: I would love to hear, Your Honor,  
16 what the validity is. And I'd also like to --

17 THE COURT: Well, I would too. That's why --

18 MR. WEISENBERG: I would like --

19 THE COURT: That's what I'm asking for.

20 MR. WEISENBERG: Yeah. But I'd also like the ability  
21 to challenge their assertions.

22 THE COURT: Of course.

23 MR. WEISENBERG: We know -- listen, we know what the  
24 assertion is going to be.

25 THE COURT: Yeah.

1 MR. WEISENBERG: The assertion is going to be you  
2 violate my First Amendment right by compelling me to sell  
3 churches.

4 THE COURT: Yeah. But my --

5 MR. WEISENBERG: It is a hypothetical test.

6 THE COURT: Okay.

7 MR. WEISENBERG: It can never happen.

8 THE COURT: Okay. But my point is, for disclosure  
9 statement purposes, is it enough for them to articulate  
10 whatever that basis is and then we argue about that at  
11 confirmation?

12 MR. WEISENBERG: I don't think so, Your Honor.

13 THE COURT: Okay.

14 MR. WEISENBERG: Again, I think you are skewing a  
15 creditors' view of the fairness of the plan even with  
16 descriptions that say the debtor asserts this, the committee  
17 asserts this. I think that's very different from providing an  
18 accurate liquidation analysis, which a creditor is entitled to,  
19 where they can look at the plan, look what they're receiving,  
20 and compare it to a Chapter 7.

21 THE COURT: Okay. Let me give you another version of  
22 it, see if this makes any more sense. They could file -- they  
23 could put together liquidation analysis says look, but for our  
24 arguments re the First Amendment and we can't be liquidated,  
25 the value of the real estate minus any existing debt is X. The

1 debtor's position is they'll never be -- they will never be  
2 compelled to do that, but just so if you want a number, here's  
3 a number. But there will be a disagreement at confirmation  
4 about what's fair and equitable and what is required of an  
5 entity in this scenario.

6 MR. WEISENBERG: I'm not sure that solves our problem,  
7 Your Honor, for the reasons we've been explaining, which is if  
8 ultimately we are correct at plan confirmation, what have we  
9 achieved? We --

10 THE COURT: Well, we know we're not going to confirm a  
11 plan.

12 MR. WEISENBERG: Right.

13 THE COURT: I think, right?

14 MR. WEISENBERG: Well, that's correct.

15 THE COURT: Okay.

16 MR. WEISENBERG: But we haven't addressed other gating  
17 issues, right, which is through the plan, Your Honor, the  
18 debtor essentially seeks to gloss over the most meaningful  
19 issues of this case, what are its assets, what are its  
20 liabilities, okay? We have complaints on file and a motion on  
21 file to get those answers. If we go the plan route and you do  
22 not hold that it's confirmable for any number of reasons, but  
23 right now for our dialog it's because the plan does not comport  
24 with the Chapter 7 liquidation, we don't have any answers to  
25 those questions.

1           And so isn't it better now in the same way you want to  
2 address the third-party release issue to know the rules of the  
3 game so that when a creditor picks it up, they have an accurate  
4 analysis? That's what we're afraid of, is you could punt any  
5 issue down the road, but is it actually economical?

6           THE COURT: Well, to me -- I'm not trying to -- I'm  
7 not trying to argue with you. But there's a difference in  
8 punting and if there is a scenario in which some debtors cannot  
9 be compelled ultimately to do the thing that is the test. You  
10 could say the test is this, this is the number. Just so you  
11 know, if this were any other kind of case, it's 700 million  
12 dollars. The debtor contends that it will never be in that  
13 position. And it offers as a principled answer to that  
14 question that the following is available and the following  
15 isn't available. I mean, to me, that's not punting the  
16 question. That's articulating what the difference is in the  
17 opinions between your side and their side.

18           MR. WEISENBERG: I was about to say, with all due  
19 respect, but I think we know in --

20           THE COURT: In my humble opinion. I know. I know.

21           MR. WEISENBERG: We know that as off limits.

22           THE COURT: No, it's never off limits. I get to say  
23 in my humble opinion.

24           MR. WEISENBERG: With all sincerity --

25           THE COURT: Yeah. That's --

1 MR. WEISENBERG: -- I still find that solution  
2 problematic because Your Honor can decide this as a matter of  
3 law. I don't think it's fact-based, okay? It's an  
4 interpretation of the Bankruptcy Code and the test. And so  
5 again, I would agree with you if there are factual issues that  
6 needed to be determined.

7 THE COURT: Okay. Then let me ask you this. Should I  
8 determine now that there's no First Amendment issue here and no  
9 liquidating a nonprofit? Should I determine that right now?

10 MR. WEISENBERG: I think you would need briefing, Your  
11 Honor. It's a very, very important point. As you can tell, we  
12 are making a lot of it because it's one of the fundamental  
13 protections. So humbly we'd suggest that we both be allowed to  
14 brief the issue.

15 THE COURT: Okay. Do you want to pause for a minute?  
16 Because this is a biggie. Okay. And let me hear from  
17 whoever -- one or more of the worthy counsel.

18 MS. UETZ: Your Honor, I think it's going to be Mr.  
19 Moore and Mr. Lee --

20 THE COURT: Okay.

21 MS. UETZ: -- if it is okay with the Court.

22 THE COURT: I don't mind. Mr. Weisenberg, are you  
23 okay with that?

24 MR. WEISENBERG: Of course, Your Honor.

25 THE COURT: Okay. Can we start with some of the

1 less -- well, maybe the less contentious matters, the language  
2 of the release and the exculpation?

3 MR. MOORE: Thank you, Your Honor. Mark Moore on  
4 behalf of RCBO.

5 And I'm going to defer to Mr. Lee as we get into  
6 arguments about what is patently unconfirmable versus what  
7 isn't because that was going to be how we kind of broke this  
8 up.

9 THE COURT: Okay.

10 MR. MOORE: I do think that the Court has already  
11 somewhat solved both of these issues. And by both I mean the  
12 hypothetical liquidation analysis test, whatever you want to  
13 call it, and the releases because we've already heard the Court  
14 say that we need more precision, frankly, on who's getting  
15 exculpated and why, who's getting released and why --

16 THE COURT: Yeah.

17 MR. MOORE: -- what the implications of those things  
18 would be. And so we hear that. And we will make those  
19 alterations --

20 THE COURT: Okay.

21 MR. MOORE: -- in both the executive summary and in  
22 our FAQ-like formulation.

23 THE COURT: All right. Do you have any doubt about  
24 what the tension points are?

25 MR. MOORE: No, Your Honor.

1 THE COURT: You've heard it.

2 MR. MOORE: and I think we can be absolutely certain  
3 that we didn't intend to provide for a release of the  
4 Archdiocese of San Francisco, for example.

5 THE COURT: Okay. All right.

6 MR. MOORE: And that kind of illustrates why we may  
7 need a little bit more precision.

8 THE COURT: Montali would be so upset if you did.

9 MR. MOORE: Well --

10 THE COURT: He'd have nothing to do.

11 MR. MOORE: I think you'd have a lot more lawyers in  
12 the room probably. So that's just one example of how that  
13 issue can be resolved through more disclosure and more  
14 precision.

15 THE COURT: Yeah. But I agree that's a now issue.  
16 You do too, right?

17 MR. MOORE: I'm sorry?

18 THE COURT: That's a now issue, let's fix that now,  
19 right?

20 MR. MOORE: In the disclosure statement, yeah.

21 THE COURT: Yes.

22 MR. MOORE: Absolutely, Your Honor.

23 THE COURT: Yes.

24 MR. MOORE: The second issue, to the extent that we  
25 need to talk about what the argument is, I'm going to defer to

1 Mr. Lee. But I think that the Court actually paved the way for  
2 the resolution of that issue as well, because the Court already  
3 indicated that we need to provide you with the why, the why of  
4 the debtor's, for lack of a better way to put it, business  
5 judgment in proposing the plan and putting out what is  
6 conservatively, we think about 160 million dollars, maybe 150  
7 million dollars from the debtor alone. That's not pennies on  
8 the dollar. That's a significant and meaningful contribution.

9 And you've already said that we need to provide the  
10 why of that. How did we get to those numbers? What do we  
11 believe is or is not to be included and why? And we hear you.  
12 That is something that we can do in a revision to the  
13 disclosure statement.

14 THE COURT: And I'm not trying to be cynical when I  
15 say this. I don't know what's the chicken and what's the egg  
16 here between we think this is fair and we think the claims are  
17 worth this much.

18 MR. MOORE: Absolutely.

19 THE COURT: I don't know which -- I don't know where  
20 you're starting, if you're starting with the claims analysis or  
21 you're starting with what you think is available, and those are  
22 just magically syncing up.

23 MR. MOORE: Well, I think --

24 THE COURT: I don't mean -- that sounded way more  
25 cynical than I meant it to sound.



1 MR. MOORE: I think that it's appropriate in the  
2 context of your prior comments where you said we need to  
3 understand where you start, debtor, because you are the plan  
4 proponent.

5 THE COURT: Yep.

6 MR. MOORE: And you need to provide a little bit more  
7 information about that --

8 THE COURT: Yeah.

9 MR. MOORE: -- about how you get there, why you get  
10 there, what the arguments are, which we can do.

11 I think the Court has also given the committee an  
12 opportunity, and we've agreed to it, to provide their view and  
13 provide their appendix A or their committee letter or whatever  
14 you want to describe it, which is where if they believe that  
15 there's real estate that should be available that's worth 400  
16 to 700 million dollars, they can say that and they can say why,  
17 and they can say what they rely on for that. I think that the  
18 Court has already given kind of that link that maybe solves  
19 that problem.

20 But then finally, Your Honor, and this is where Mr.  
21 Lee can maybe take over for me, these are ultimately  
22 confirmation issues. These are ultimately your discretion to  
23 approve or not approve the plan if we get to the point where  
24 claimants vote it down. Where we are right now, Your Honor, is  
25 that we don't actually know what claimants believe. We know

1 what counsel says that they'll probably believe, but we don't  
2 really know. And we do believe that the disclosure statement,  
3 as directed to be amended by you, will provide them with a  
4 meaningful opportunity to tell us. And at that point, we'll be  
5 much more informed about what they think about all of this.

6 And it, frankly, sounds a little bit like the  
7 committee saying, well, they may think that this is a good idea  
8 and that's helpful or it's not. But ultimately, what you're  
9 describing is a confirmation issue where the Court is going to  
10 have to make a decision.

11 THE COURT: How do you react to the suggestion that we  
12 maybe brief this question of whether you could be compelled to  
13 sell all assets and possibly liquidate, for lack of a better  
14 word.

15 MR. MOORE: Your Honor, I think it's part and parcel  
16 of what the Court will ultimately determine in confirmation.  
17 So we're very much aware that that is going to be a contested  
18 legal issue. I'm not sure that it should be, but I think that  
19 the time for briefing of that will come. I don't think the  
20 time for briefing for that is now.

21 THE COURT: So help me out here. I think I know the  
22 answer to this. Just read from the language of the Code, I  
23 think Mr. Weisenberg is not wrong that there is some very  
24 direct language about the best interest tests. It's a big deal  
25 to protect creditors. And your argument is that there's a

1 superseding principle here or because it's a hypothetical test,  
2 even if we gave you a number, it would be useful only in some  
3 sort of fair-and-equitable context that's arguably different  
4 and must be adjudicated as part of a plan or something -- well,  
5 choose either of those or both or more. So tell me how this  
6 plays out for you.

7 MR. MOORE: Your Honor, hold on.

8 THE COURT: If you guys want to -- if you want to  
9 switch up here, feel free.

10 MR. MOORE: Okay. And this was actually going to be  
11 part of the second (indiscernible) --

12 THE COURT: Okay.

13 MR. MOORE: So I'm going to defer to Mr. Lee.

14 THE COURT: Yeah. Sure, sure, sure. Okay.

15 MR. MOORE: Thank you.

16 THE COURT: Okay. My question makes sense?

17 MR. LEE: Matt Lee for the debtor. Can you repeat it,  
18 Your Honor? I'm sorry.

19 THE COURT: Yeah. What I'm being told is, look, this  
20 is a gating issue because 1129(a) -- I forget which now. Maybe  
21 (10).

22 MR. LEE: (7).

23 THE COURT: (7)? Thank you. Says, look, it is an  
24 absolute requirement that one demonstrate that the confirmation  
25 is in the best interest of the creditors because they are doing

1 at least as well under confirmation as they would under a under  
2 liquidation. So there aren't any off ramps built into that per  
3 se.

4 But you could tell me any number of different things.  
5 You could tell me, well, there's a superseding issue here,  
6 which is that we can't be liquidated under applicable  
7 nonbankruptcy law. And I need to be respectful of that and  
8 play that into the bankruptcy analysis. Or because it's a  
9 hypothetical test, all you really need to do, you could show  
10 that in the abstract. Okay, it's 700 million. Who cares.  
11 Doesn't matter. It can't be done. So it becomes a fair-and-  
12 equitable test that we have to deal with at confirmation and  
13 not before.

14 Those are my -- those are two ideas for how you might  
15 think about that, but you may have others.

16 MR. LEE: Your questions and your ideas make sense and  
17 are clear. May I start with a clinical discussion of what  
18 1129(a)(7) says?

19 THE COURT: I'm not sure I've heard one before, so I  
20 guess I'm looking forward to that.

21 MR. LEE: I hope "clinical" is the right adjective.

22 THE COURT: Is this from personal experience or --

23 MR. LEE: Going to claim privilege on that.

24 THE COURT: Okay.

25 MR. LEE: 1129(a)(7)(A) gives the debtor an either-or

1 proposition for satisfying it.

2 THE COURT: Uh-huh.

3 MR. LEE: The first of the either-or, the first  
4 option, is that all impaired classes vote in favor of the plan.

5 THE COURT: Um-hum.

6 MR. LEE: The second option, if not all impaired  
7 classes vote in favor of the plan, then you have to satisfy the  
8 best-interest-of-creditors test.

9 THE COURT: Or for a dissenting class.

10 MR. LEE: Correct.

11 THE COURT: Okay.

12 MR. LEE: Yes. Because we're at the disclosure-  
13 statement phase of the case --

14 THE COURT: Um-hum.

15 MR. LEE: -- what matters now is not whether we can  
16 establish the 1129(a) requirements. What matters now is  
17 whether there's anything structural inherent in the fabric of  
18 the plan that makes it impossible to satisfy an -- to satisfy  
19 the 1129(a) requirements. And the committee has not argued and  
20 cannot argue that standing here today, it is impossible to  
21 confirm a plan under 1129(a)(7)(A)(i), that a holder of a claim  
22 in each class -- I'm sorry, that each class has accepted the  
23 plan, each impaired class has accepted the plan. We have four  
24 noninsider -- there are four noninsider classes in this plan,  
25 3, 4, 5, and 6.

1 THE COURT: Um-hum.

2 MR. LEE: 3 is general unsecureds.

3 THE COURT: Um-hum.

4 MR. LEE: 4 is the abuse claimants.

5 THE COURT: Um-hum.

6 MR. LEE: Holders of abuse claims. 5 is the holders  
7 of unknown abuse claims.

8 THE COURT: Unknown. Unknown. Yeah. Uh-huh.

9 MR. LEE: And then 6 is the nonabuse litigation  
10 claims, so the slip-and-fall cases.

11 THE COURT: And those are just, they're riding  
12 through, right, basically?

13 MR. LEE: That we're establishing a reserve and then  
14 making insurance available for them.

15 THE COURT: Okay.

16 MR. LEE: Under the current draft of the plan.

17 THE COURT: Okay.

18 MR. LEE: So on the issue of whether the plan is  
19 patently unconfirmable, it is not patently unconfirmable  
20 because it is possible -- it is not impossible -- that all four  
21 of those impaired classes could vote to support the plan. The  
22 committee is going to swear up and down, and they have sworn up  
23 and down, there's no way class 4 is going to support the plan.  
24 But they don't know that. I don't know that. You don't know  
25 that.

1 THE COURT: Um-hum.

2 MR. LEE: Okay. So for purposes of the disclosure  
3 statement, we don't have to get in at all into whether our  
4 liquidation analysis is good, is bad, is complete, or is  
5 incomplete. As it is, because I want to be responsive to your  
6 question and responsive to the --

7 THE COURT: Um-hum.

8 MR. LEE: -- committee's arguments, because it is an  
9 important issue, obviously. In the event that we can't  
10 satisfy, that the debtor cannot satisfy 1129(a)(7)(A)(i), we  
11 have to go to (ii), the best interest of creditors test. And  
12 obviously, this is what the committee's objection focuses on.  
13 And the debtor did, in fact, do a liquidation analysis.  
14 Nobody's disputing that the debtor did a liquidation analysis.  
15 The question is whether, at this phase, the disclosure  
16 statement -- I mean, even then, the question is whether at this  
17 phase, does the disclosure statement accurately describe the  
18 liquidation analysis.

19 Now, to your point, there are assumptions in the  
20 liquidation analysis that we're making and legal arguments that  
21 we're relying on for including or excluding certain things that  
22 are not in the disclosure statement as it's currently drafted.  
23 And I think what you've heard from us today is that we are  
24 absolutely willing to put that basis into the disclosure  
25 statement and also to give the committee an opportunity to

1 respond.

2 So that's why I agree with Mr. Moore. On the subject  
3 of briefing, it's premature to brief that. Okay. That issue  
4 is going to get hashed out at the confirmation phase. It's not  
5 the debtor's burden to prove that its liquidation analysis is  
6 sound at the disclosure statement phase. And the reason for  
7 that is because it's still possible that all the impaired  
8 classes are going to vote to approve the plan. So we might  
9 not, in theory, ever even have to get to the liquidation  
10 analysis. If we have to get to the liquidation analysis,  
11 Congress has set up a process that you do that at confirmation.

12 You want to know what our disclosure statement is  
13 going to say about the legal basis for including or excluding  
14 certain items. Okay.

15 THE COURT: Um-hum.

16 MR. LEE: I'm happy to get to that. If there were a  
17 Chapter 7 liquidation in this case, committee is incorrect  
18 about what assets have to be included. The committee's  
19 position is that all of the debtor's assets have to be  
20 included. And that's simply not the law in the Ninth Circuit.  
21 There's a case that we cited in our reply brief.

22 THE COURT: Um-hum.

23 MR. LEE: Security Farms v. the Teamsters. I'm just  
24 going to call it Security Farms because the name of the union's  
25 quite long, and it appears twice in the Ninth Circuit decision.



1 So I'm just going to call it Security Farms. The Court, I  
2 mean, in that case, obviously it wasn't a religious  
3 institution. Okay. But it was about a labor organization that  
4 was heavily -- that is heavily regulated by the National Labor  
5 Relations Act.

6 THE COURT: Um-hum.

7 MR. LEE: And the court affirmed the exclusion of two  
8 key assets that the creditors wanted to be valued, liquidated,  
9 and the proceeds of the liquidation used to pay creditors. One  
10 was the collective bargaining rights of the union, and the  
11 other -- I'm sure you know this. It's a twenty-three year old  
12 case. But one was the collective bargaining rights of the  
13 union, and then the other was the right to collect future union  
14 dues. And what the court said was, look, those assets, even if  
15 liquidated, cannot be used to pay creditors because as a matter  
16 of federal law, they are dedicated for specific purposes. The  
17 benefits of the members. The benefits of the union itself.  
18 You can't include those, even in a hypothetical liquidation --

19 THE COURT: Um-hum.

20 MR. LEE: -- analysis. So I think maybe a corollary  
21 in our case would be -- I'll get to the First Amendment issues  
22 in a moment and the idea of selling church buildings, but I'll  
23 start with restricted funds.

24 THE COURT: Um-hum.

25 MR. LEE: Okay. That's a creature of California state

1 law. Somebody makes a gift to a church. It's earmarked for a  
2 specific purpose. That gift, the church can't take that money  
3 outside of bankruptcy. Outside of the insolvency context. The  
4 church can't take that gift and pay the light bill. Can't take  
5 that gift and buy the bishop a car. Can only use that money  
6 for the purpose that the donor has granted to it.

7 So in a hypothetical Chapter 7 liquidation, the same  
8 is true. That money is not available to pay creditors because  
9 the donor intent restricts it to that specific gift, okay, and  
10 the purpose that the donor made the gift.

11 So now we'll get into the First Amendment issue. Do  
12 you have any questions about that as --

13 THE COURT: Well, I mean, it's "property of the estate  
14 but", right?

15 MR. LEE: I think it's not property of the estate --

16 THE COURT: Not property of the estate?

17 MR. LEE: Because of the restricted nature of the  
18 asset, it's not available to pay creditors. Now, again, it  
19 doesn't mean that it's available to pay the light bill, but it  
20 means that, under California law, it's not available other than  
21 for the specific purpose --

22 THE COURT: Okay.

23 MR. LEE: -- that the donor made the gift for.

24 THE COURT: This is very helpful, but in some ways,  
25 the principle I have was the debtor should say why. You're

1 doing that now. The committee may not agree with you. And  
2 that's a fight -- I mean, my original conception of this is  
3 it's the debtor's obligation to provide a rationale for this,  
4 and it's the rationale that can be -- that can be reacted to  
5 and that can tee up the issue at confirmation so we know at --  
6 and people want to take discovery about this, that's fine, and  
7 file briefs at that. My sense was that this was a definition  
8 question, a disclosure statement time, and an argument question  
9 at confirmation.

10 MR. LEE: We agree, Your Honor.

11 THE COURT: Okay. But I'm not trying to cut you off.  
12 It's helpful.

13 MR. LEE: I won't be cut off. I'll answer your  
14 question because I think this is kind of --

15 THE COURT: Yeah.

16 MR. LEE: -- where the discussion is leading.

17 THE COURT: Uh-huh.

18 MR. LEE: There's a supreme -- there's a body of  
19 Supreme Court case law that talks about what is the -- what are  
20 the limits and what are the -- what is the scope of the free  
21 exercise clause. What is the scope of the establishment  
22 clause. That's an understatement. There's tons of cases on  
23 that.

24 But specifically as to how you square religious  
25 missions with generally applicable, laws that apply to all of

1 us, there's one in particular that I want to highlight. It's a  
2 2012 decision. It's called Hosanna-Tabor Evangelical Lutheran  
3 Church and School v. EEOC, Equal Employment Opportunity  
4 Commission.

5 THE COURT: Um-hum.

6 MR. LEE: It's a 2012 case. It was a unanimous  
7 decision of the court. And in that case, the court was dealing  
8 with the ministerial exception. I don't know if you're  
9 familiar with the case. I don't want to --

10 THE COURT: Not as much as you are. Go ahead.

11 MR. LEE: It just means you hadn't read it in the last  
12 two days. But so the case is dealing with the ministerial  
13 exception --

14 THE COURT: Um-hum.

15 MR. LEE: -- to the employment discrimination laws.

16 THE COURT: Um-hum.

17 MR. LEE: Discrimination and retaliation laws. In  
18 that case, it was a disability claim against a chapter of the  
19 Lutheran Church. And they had fired a minister for not  
20 following church protocols in dealing with her issue  
21 surrounding her disability. And so she sued for disability  
22 discrimination and retaliation. And the unanimous court said,  
23 no -- she was a minister. I'm sorry. She was an ordained  
24 minister who had taken vows and agreed to be bound by specific  
25 code and specific set of conduct.

1 THE COURT: Um-hum.

2 MR. LEE: And what the what the Court ultimately  
3 held -- I'll read a brief quote from it.

4 "Requiring a church to accept or retain an unwanted  
5 minister or punishing a church for failure to do so  
6 intrudes upon more than a mere employment decision.  
7 Such action interferes with the internal governance of  
8 the church, depriving the church of control over the  
9 selection of those who will personify its beliefs.  
10 And by imposing an unwanted minister, the state  
11 infringes the free exercise clause, which protects a  
12 religious groups right to shape its own faith and  
13 mission through its appointments. According to state,  
14 the power to determine which individuals will minister  
15 to the faithful also violates the establishment  
16 clause, which prohibits government involvement in such  
17 ecclesiastical decisions."

18 Now, the decision of when and where to establish a  
19 church, a Catholic Church, or to sell property with a church  
20 building on it is fundamental to the mission of the church, and  
21 it's fundamentally a decision left to the bishop of the diocese  
22 in which the church sits.

23 In the Catholic faith, the church building itself is  
24 of significance that is difficult to describe. I'm going to  
25 try and do it for you now. The church is where the faithful

1 experiences the Holy Trinity. You walk into the church. You  
2 are in the presence of God. You go get communion. You receive  
3 the body and blood of Christ. And the whole time you're there,  
4 you're surrounded by the Holy Spirit descended upon those  
5 gathered there. It is the mission. It is the church.

6 And yes, it's a piece of real estate. And yes, it's a  
7 piece of real estate on planet Earth in the State of  
8 California, United States of America. But to tell the bishop  
9 that he has to close X number of churches or that he has to  
10 close this church or he has to sell this church and combine  
11 that congregation with another congregation fundamentally  
12 infringes on the debtor's First Amendment rights and on the  
13 bishop's First Amendment rights. It substitutes church  
14 doctrine for the will of the Court. And our position is going  
15 to be that the Court can't do that. That the government can't  
16 do that.

17 Now, I want to say what we're not saying. We are not  
18 saying that this applies to every asset. We are not saying  
19 that it means we are exempt from any particular requirement of  
20 1129. It does not mean that we can get around the fair-and-  
21 equitable point. We have to propose a plan that's fair and  
22 equitable.

23 The plan we've proposed -- and we could perhaps be  
24 more specific about this in the disclosure statement as well.  
25 But the plan that we have proposed depends upon the sale of

1 church real estate, vacant land, and land that is not vacant.  
2 It depends on it. It depends on it to make our plan payments,  
3 which are significant, 103 million to the survivors trust from  
4 the debtor, reorganized debtor, over the course of a four-year  
5 period after the effective date, including a 63-million-dollar  
6 payment on the effective date of the plan. How are we paying  
7 for that? We're taking out a fifty-five-million-dollar loan --

8 THE COURT: Um-hum.

9 MR. LEE: -- from the Roman Catholic Cemeteries of  
10 Oakland. And it's a real loan. We're going to give them  
11 mortgages on other properties, which then we're going to have  
12 to sell -- we're going to have to sell assets to pay that off.  
13 So not only are we paying 103 million to the survivors, we've  
14 got to pay back our lender and we've got to make all of our  
15 other payments.

16 THE COURT: Um-hum.

17 MR. LEE: We can consensually and the bishop can  
18 consensually and has acknowledged that he's willing to do that.  
19 He's willing to alienate church real estate in order to do  
20 right by the survivors. But as far as the 1129(a)(7) argument  
21 goes, and specifically 1129(a)(7)(A)(ii), our position is going  
22 to be that the we cannot be, in a hypothetical Chapter 7  
23 liquidation, forced to sell buildings with churches on it  
24 because of the reason I described. Briefing on this will be  
25 much more eloquently stated --

1 THE COURT: Um-hum.

2 MR. LEE: -- than what you've heard today --

3 THE COURT: But your position is that for today's  
4 purpose, what I need to direct you to do is articulate exactly  
5 what these principles are so that at confirmation, with further  
6 briefing, we can have an intelligent argument.

7 MR. LEE: That's exactly what I'm saying, Your Honor.

8 THE COURT: Okay.

9 MR. LEE: I agree with you.

10 THE COURT: All right.

11 MR. LEE: And if I can add --

12 THE COURT: Yeah.

13 MR. LEE: -- none of this makes the plan patently  
14 unconfirmable sitting here today because of the clinical  
15 argument I made before.

16 THE COURT: No, but I do think -- I mean, I don't  
17 think it would be -- I may not make a ruling on this now. I  
18 don't know that it would necessarily be out of bounds to  
19 include in that presentation that it may be that if the Court  
20 is not convinced that the diocese has the winning legal  
21 position here, the plan isn't confirmable because I think at  
22 that point, we're just going to be -- we may be at the end of  
23 our rope, and it may be that Chapter 11 is not a viable concept  
24 anymore if I agree more with the committee than I agree with  
25 you.



1 MR. LEE: Or it may be that you order us to redo the  
2 liquidation analysis, including --

3 THE COURT: Okay. I mean, you tell me where the hard  
4 stop is on that. Okay.

5 MR. LEE: Well, if we're talking at confirmation, I  
6 think you have a number of options. I think for today's --

7 THE COURT: And look, I mean, the elephant in the  
8 room. You guys are going to talk. Right. And this is a  
9 highly iterative process. I have no illusions that this is the  
10 last-and-best offer at all, nor do you, nor does the committee,  
11 which is another reason why, if this is a moving target in that  
12 sense, it's one that ought to keep moving and not stop now,  
13 right, is what you're going to tell me?

14 MR. LEE: Yes, Your Honor.

15 THE COURT: Right? Okay. Got it. All set?

16 MR. LEE: On 1129(a)(7), yes.

17 THE COURT: Okay. Is there something else you want to  
18 talk about?

19 MR. LEE: They raised the number of patent --

20 THE COURT: Okay.

21 MR. LEE: -- unconfirmability issues. I'm happy to  
22 let you --

23 THE COURT: Well, I wanted to pause on this one and  
24 get everybody's input. Okay. But Mr. Weisenberg, it's your  
25 objection, so you get the last word. Okay.

1 MR. WEISENBERG: Thank you, Your Honor. Mr. Prol is  
2 going to take the last whack at it.

3 THE COURT: Okay. Thanks. Appreciate it.

4 MR. PROL: Thank you, Judge. Jeff Prol, Lowenstein  
5 Sandler, on behalf of the committee.

6 THE COURT: Um-hum.

7 MR. PROL: Just addressing this 1129(a)(7)(A) issue --

8 THE COURT: Um-hum.

9 MR. PROL: -- the debtor argues that the committee  
10 cannot argue that the plan is patently unconfirmable because  
11 they can potentially meet the Romanette (i). And we would  
12 argue in response to that, Your Honor, that what we're trying  
13 to do here is to eliminate a costly detour and frolic.

14 THE COURT: Yeah.

15 MR. PROL: And that if, ultimately, this Section  
16 1129(a)(7)(A)(i) and (ii) cannot be met, we shouldn't spend the  
17 time or the money that the debtor says it doesn't have to go on  
18 a --

19 THE COURT: Um-hum.

20 MR. PROL: -- three, four, five, however-long-month  
21 junket it is to go through discovery --

22 THE COURT: Yeah.

23 MR. PROL: -- and a confirmation hearing and that this  
24 issue can be determined as a matter of law, either today or  
25 after subsequent briefing, before we go through that process.

1           Although they say the committee can't argue that they  
2 cannot meet Romanette (i), I will tell you that there are only  
3 two cases, two diocese cases, that have ever gone to  
4 solicitation of a plan without the consent of a committee. And  
5 both cases, the tort claim has voted more than ninety percent  
6 to reject the plan. So I think that that -- and we reference  
7 those cases in our brief. I think Your Honor can take judicial  
8 notice that it's very unlikely that this case will be any  
9 different than the only two cases in history that have  
10 proceeded down that course.

11           Secondly, with regard to Romanette (ii), the debtor  
12 conflates a hypothetical liquidation test with somehow Your  
13 Honor forcing them to sell churches. That's not the case. In  
14 a hypothetical liquidation test, the debtor has to show what  
15 the assets would bring in a liquidation. They don't have to  
16 sell them. The point is, and Your Honor made this in your  
17 opening comments, you don't have to confirm the plan. If they  
18 don't meet this test --

19           THE COURT: Um-hum.

20           MR. PROL: -- Your Honor cannot confirm the plan. And  
21 it has nothing to do with whether or not you can force them to  
22 sell churches. It has nothing to do with religious freedom.  
23 Okay. They ultimately don't have to sell churches. They can  
24 raise the money somehow else.

25           I haven't read the Security Farms case, but Mr. Lee's

1 recitation is that there were two key assets that were  
2 excluded, and I wrote this down, collective bargaining rights  
3 and the right to collect future dues. In a liquidation, I'm  
4 assuming the collective bargaining rights aren't worth anything  
5 because they go away, and future dues don't exist because  
6 they're not collected. And that could be the reason why the  
7 court didn't require them to value those particular assets.  
8 Completely different than valuing real estate in this case.

9 The terms of the argument with regard to religious  
10 freedom and the establishment clause, again, I don't think that  
11 that really weighs in in this case. So this is a hypothetical  
12 liquidation. It's not an actual liquidation. It doesn't  
13 prevent parishioners from continuing to worship in their  
14 churches or in other churches.

15 And I don't have the citation at hand, but I think we  
16 cited a case in our papers that stands for the proposition that  
17 even if churches are liquidated in a bankruptcy case, it's not  
18 the only church. There are other churches in the area. And we  
19 did cite in our papers the fact that the bishop here, pre-  
20 bankruptcy, did engage in a mission realignment process, where  
21 he himself acknowledged that the diocese, because of the  
22 economic condition, because of the survivor liabilities here,  
23 would have to close churches. And if that's necessary, it's  
24 necessary, but again, it's not impacted by the 1129(a)(7) test,  
25 which is only hypothetical. Okay. Thank you, Your Honor.

1 THE COURT: Thank you. Anything more on this?

2 No? Anybody else want to be heard?

3 No? Okay. Let me make a quasi-ruling. I'm very  
4 aware -- I appreciate everybody's concern about the status of  
5 the case now and the burn rate and the need to move forward. I  
6 also appreciate that, where you have an objection that really  
7 is, as a matter of law, not resolvable, one should not go  
8 through the exercise of soliciting a plan. This doesn't fall  
9 there for me for a couple reasons.

10 I think a disclosure statement time, the exercise is  
11 for the debtor to articulate a basis on which they believe they  
12 could confirm a plan and that plan is, in their belief, fair  
13 and equitable and meets the other 1129(a) requirements. I'm  
14 hearing loud and clear what the committee is saying about their  
15 views of the plan and what's happened in other situations where  
16 a plan's gone out without committee approval. I'm going to,  
17 notwithstanding that, focus more on teeing up the issues and  
18 framing the issues because I do think there is at least an  
19 argument that a hypothetical test is appropriate here.

20 And look, you can create two versions of a balance  
21 sheet. You can create one that says, okay, if we sold  
22 everything, here's the result. We don't think that's pertinent  
23 to anything. We think, based on the principles we're  
24 articulating in another portion of the disclosure statement,  
25 that it is a principled position that the result of a

1 liquidation would be X.

2 And then we will argue about that. And the committee  
3 will take a very different view of it. And having articulated  
4 that, I think the debtor should say something along the lines  
5 of there is a material risk that if the Court does not agree  
6 with the debtor about this limitation and the debtor is not  
7 able otherwise to make assets available and satisfy what the  
8 debtor -- what the committee will say is the hard-and-fast  
9 liquidation analysis. We may not be able to confirm a plan in  
10 this case. Period. End of story. The case may have to be  
11 dismissed. I think it's just about that stark.

12 And I'm not trying to be funny here. I also think  
13 because this is a highly iterative process and because maybe  
14 I'm kidding myself that this case has been especially  
15 constructive and cordial, and I think it has been, that the  
16 opportunity for further discussion here and to reach some  
17 accord is alive, even though I thoroughly expect the committee  
18 to say, we think this plan is unconfirmable. We think the  
19 values are not in line with reality. I get all that. It  
20 doesn't mean that there can't be further discussion and this is  
21 not a solvable problem. This is potentially a solvable  
22 problem.

23 So I think I'm going to ask the -- I'm going to  
24 require that the debtor articulate the basis for whatever  
25 limits it thinks it has with respect to assets available. And

1 if that includes assets that the debtor believes it may hold  
2 but are not property of the estate, okay, they can articulate  
3 that too. And the committee may say, well, it is property of  
4 the estate, and therefore, that precludes the State law  
5 analysis you want to provide us re the use of the property. We  
6 can have those fights.

7 But I think, for today's purposes, for disclosure  
8 statement purposes, this is a matter of definition, sharpening  
9 up the question and making sure we all understand what we're  
10 going to be talking about before and during confirmation so  
11 that everybody knows what the risks are. All right. Thank you  
12 very much for the very good arguments on that.

13 MR. PROL: Just to be clear on that --

14 THE COURT: Yeah.

15 MR. PROL: I'd like to understand and make sure that  
16 if the debtor is going to put in its liquidation analysis and  
17 its explanation, the committee will have an opportunity --

18 THE COURT: Absolutely.

19 MR. PROL: -- to criticize that --

20 THE COURT: Oh, absolutely.

21 MR. PROL: -- and put it in its own liquidation  
22 analysis.

23 THE COURT: Absolutely. I mean, why not. Right.

24 MR. PROL: Yeah. Yeah.

25 THE COURT: Absolutely right. Yeah.

1 MR. PROL: And Your Honor, we --

2 THE COURT: And that's beyond the briefing. I mean,  
3 that's just something that people can look at that. I get it.

4 MR. PROL: Okay. And Your Honor, just structurally,  
5 we've talked before about the committee attaching an appendix A  
6 on some of these issues.

7 THE COURT: Yeah.

8 MR. PROL: I think it would be much more helpful to  
9 the reader if it appeared in the text of the document, rather  
10 than having to have creditors have to read a separate document.  
11 So if the debtor puts in its liquidation analysis and  
12 explanation, we should be able to have a paragraph right below  
13 it that says, "the committee says".

14 THE COURT: Anybody have a reaction to that?

15 MS. UETZ: Yes. Your Honor, it's not uncommon for  
16 there to be a letter. An appendix. Something. But to have  
17 the debtor's disclosure statement confused with statements by  
18 the committee in the middle of it, we think, would actually  
19 worsen the disclosure. So keeping it in a separate appendix  
20 makes the most sense.

21 THE COURT: Well, if we do that, I think it's  
22 incumbent on the debtor to say at each one of those places--

23 MS. UETZ: Sure.

24 THE COURT: -- the committee vigorously disagrees, and  
25 their explanation is included at. Okay. And please read that



1 for a full understanding of the competing positions. Okay.

2 MS. UETZ: Noted.

3 THE COURT: I think that's what I want to do on that.  
4 Okay.

5 MS. UETZ: Thank you.

6 THE COURT: Okay. We have more to talk about.

7 MR. WEISENBERG: Brent Weisenberg on behalf of the  
8 committee. I think the next issue is somewhat related and --

9 THE COURT: By the way, anybody want to take a break?  
10 Been going about an hour and a half.

11 MS. UETZ: Everybody said yes.

12 THE COURT: Okay. All right. I didn't mean to cut  
13 you off. You want to tell us what it is so we can come back  
14 with anticipation?

15 MR. WEISENBERG: I've been voted down. I'm happy to  
16 take a break, Your Honor.

17 THE COURT: Okay. Thank you very much. All right.  
18 Thank you. How long, folks? Ten minutes? All right. Five-  
19 to-3? Okay. Thank you.

20 (Recess from 2:44 p.m., until 3:03 p.m.)

21 THE CLERK: Come to attention. The court is back in  
22 session.

23 THE COURT: Okay. Please be seated.

24 MR. WEISENBERG: Brent Weisenberg on behalf of the  
25 committee. Your Honor, there are a few insurance-specific

1 issues that we'd like to raise with you. And I'd like to ask  
2 Mr. Burns if he can address the Court.

3 THE COURT: You bet. You're a part of your objection,  
4 right?

5 MR. BURNS: Yes. Your Honor, some of them aren't  
6 spelled out in detail in the objection, but we alluded to  
7 having insurance issues with the plan. We mentioned  
8 specifically the set off.

9 THE COURT: Okay.

10 MR. BURNS: And the bad-faith issue. All right. But  
11 first, let me apologize, Your Honor. I am Tim Burns.

12 THE COURT: Yeah. Um-hum.

13 MR. BURNS: I am special insurance counsel --

14 THE COURT: Yep.

15 MR. BURNS: -- for the committee. And thank you.

16 THE COURT: Um-hum.

17 MR. BURNS: I'm going to start with something the  
18 Court said very early on today, which we --

19 THE COURT: Don't know when I've been quoted more  
20 frequently.

21 MR. BURNS: So the Court said that the provisions in  
22 the plan regarding the litigation option and the continuing  
23 rights of the insurers had been thought through with enormous  
24 detail. We would agree with that.

25 THE COURT: Yeah.

1 MR. BURNS: The plan is intent on making sure that the  
2 insurers are in no way prejudiced. But the plan, there's  
3 actually, as the Court knows, a five-and-a-half page section of  
4 the plan, 8.3, aimed at preserving nonsettling insurers'  
5 rights.

6 THE COURT: Right.

7 MR. BURNS: But the plan actually results in an array  
8 of insurance-law benefits for the insurers that prejudice the  
9 survivors' rights. I'm going to talk about five of what I'd  
10 call the most glaring of these. I'm cognizant that some of  
11 these probably fall within all three buckets that the Court  
12 pointed out this morning. Some are designed to aid the  
13 iterative process here --

14 THE COURT: Yeah.

15 MR. BURNS: -- of saying, we have a real problem with  
16 this. Some, in our view, go to confirmability.

17 So let me start. And I love roadmaps, so you just saw  
18 the brief introduction. I'm going to hit five points, and  
19 thankfully only five because of the concession this morning, or  
20 at least --

21 THE COURT: Okay.

22 MR. BURNS: -- the announcement of the design to fix  
23 the sixth problem that I would have pointed out here.

24 THE COURT: Okay.

25 MR. BURNS: Then I have a short conclusion.

1           So first, section 5.14 of the plan, and I point folks  
2 to -- I call them red pages 35 and 36 because the it's the  
3 docket page number, as opposed to the page number of the  
4 disclosure statement itself. So section 5.14 of the plan at  
5 red page 35 and 36 limits and abuse claim and from recovering  
6 from the trust or the nonsettling insurers more than the abuse  
7 claim judgment. Totally inconsistent with California law.  
8 This provision wipes out the survivors' rights with respect to  
9 claims-handling bad faith, and post-judgment bad faith, which  
10 is alive and well in California under the Hand v. Farmer  
11 Insurance Exchange decision.

12           It amounts, Your Honor, and to a silent release of the  
13 insurers from bad faith liability or certain types of bad faith  
14 liability. And we think that's actually confirmability issues.  
15 A Purdue issue. What you call the Purdue willingness issue we  
16 had an earlier argument this morning. So in order to recover  
17 for --

18           THE COURT: That's, in your view, compulsive and not  
19 be consensual?

20           MR. BURNS: Um-hum. And --

21           THE COURT: Okay. And that relates to the release?

22           MR. BURNS: Yes. So we ended up fixing this problem  
23 in Rockville Center. But in Rockville Center, we had settling  
24 insurers who were paying money. But Judge Glenn expressed a  
25 lot of concern about a very similar problem, the silent

1 releases --

2 THE COURT: Okay.

3 MR. BURNS: -- of direct claims against the insurers.  
4 And how I characterize it for myself is in order to recover  
5 debtor's insurance assets, the survivors are being compelled to  
6 release their direct -- their statutory bad faith, their bad  
7 faith, their other statutory claims against the insurers  
8 because they can't collect more than the abuse judgment. And  
9 these amounts would be on top of the abuse judgment. So that's  
10 number one.

11 THE COURT: Um-hum.

12 MR. BURNS: Second point is the slips (phonetic), and  
13 I want to be careful about this because I worry if I'm stuck  
14 with a plan like this, if I say too much now, I harm myself  
15 later. And so I just want to be very cognizant. But I do want  
16 to explain to the Court probably my biggest concern at the  
17 moment about the plan. The plan creates a huge risk for  
18 survivors with respect to holding the insurers liable for  
19 refusing to settle these cases in good faith.

20 This, Your Honor, is our greatest bargaining leverage  
21 in representing claimants in these cases and others, the  
22 ability, if an insurer doesn't settle reasonably, to hold the  
23 insurer liable in bad faith. Ideally, to preserve bad faith  
24 claims, bad faith refusal to settle claims in California,  
25 survivors would be required to make demands to the insurers.

1 The insurers would have to refuse. And then after both of  
2 those things happen, the diocese would have to trade its bad  
3 faith rights for a nonrecourse agreement. That's under the  
4 Hamilton decision under California law.

5 So in an ideal world, all of this would happen before  
6 discharge and release of the debtor because bad faith is based  
7 on the debtor being held potentially liable for more than  
8 policy limits. So ideally, it would happen before discharge  
9 and release, survivors' most powerful tool, and there's no  
10 process contemplated in this plan to allow us to do that.

11 I'm very hesitant. I realized that I live in an  
12 imperfect world, and I'm going to have to deal with plans. We  
13 represent five or six committees in California in these cases.  
14 I may have to end up dealing with plans that give me a less-  
15 than-ideal outcome. And so but it creates a risk that we  
16 shouldn't have with bad faith refusal to settle claims.

17 My third point, the third problem, and admittedly,  
18 this may fall in the iterative-process category. And trying to  
19 get clarification. Trying to get change here. But the plan  
20 takes away the trust's ability to pursue the insurance  
21 declaratory judgment action for the benefit of all claimants.  
22 Plan provision 8.3.13, and I'm quoting, "Any effort to collect  
23 from abuse insurance policies issued by the nonsettling  
24 insurers to satisfy an abuse claim after confirmation of the  
25 plan shall be set individually by the applicable holder."

1           There are many reasons that the trust would want to  
2 pursue the DJ. It's efficient. There are many questions that  
3 can be decided by declaration, ones that would conceivably  
4 apply to all. And we fear that this plan takes away that  
5 right. Admittedly, and Mr. Bair may talk about this when we  
6 talk about true disclosure statement issues, the language is a  
7 bit confusing at times about whether that's happening or not.

8           Fourth point. Mr. Weisenberg talked about how the  
9 diocese contribution is based on uninsured exposures. That's  
10 set out in plan section 9.8.4.1. And I'm not going to the set-  
11 off point, being the dioceses and the insurers are helpfully  
12 trying to fix that point. But there's another point.

13           Even though the contribution is based on uninsured  
14 exposure, a survivors' share of the contribution is held back,  
15 instead of paid like other claimants if they choose the  
16 litigation option. Or at least there's a huge concern at that  
17 because some of the language says that there's a little  
18 ambiguity because frankly, the plan could potentially be said  
19 to go both ways on this. So if we stop and think about that,  
20 why are we holding back these funds from folks who choose the  
21 litigation option?

22           The natural effect of making their receipt of the  
23 diocesan contribution wait until the litigation option is  
24 concluded is it discourages litigation. I don't know what  
25 their motive was, but I do know that in most of our plans

1 around the country that we've been working on, the diocesan  
2 contribution is also treated as covering uninsured exposures.  
3 But survivors would each get their portion of a diocesan  
4 contribution, whether they chose the litigation option or not.  
5 It increases the dioceses' and insurers' bargaining power.

6 Fifth point, Cumis counsel, and let me explain what  
7 that is, Your Honor. California law requires insurers to  
8 provide a policyholder independent counsel when the insurance  
9 company's defense under a reservation of rights creates a  
10 conflict in the sense that insurer-controlled counsel can steer  
11 the defense of the claim to noncovered aspects of the claim.  
12 That's a real concern. California weighed in on statute after  
13 weighing in on case law.

14 So this conflict doesn't disappear because the debtor  
15 is only nominally in the picture. The insurers' handpicked  
16 defense counsel could, for example, attempt to show that the  
17 diocese acted with actual intent to injure the abuse claimants  
18 in an effort to try to destroy coverage. So they've gotten rid  
19 of the check of Cumis counsel. The plan takes away independent  
20 counsel in these cases.

21 So those are the five what I call the most significant  
22 problems from an insurance standpoint at the moment. I'm  
23 taking folks at their word they're fixing the one that Mr.  
24 Weisenberg talked about.

25 THE COURT: Um-hum.



1 MR. BURNS: I want to say this. And Your Honor, I  
2 actually say it sadly and respectfully for all the parties'  
3 efforts at a plan. From an insurance standpoint, this  
4 nonconsensual plan, and we believe it will be nonconsensual,  
5 may be the predictable result of the dynamics of mediation in  
6 these cases. And I don't want to go into this particular  
7 mediation. I'm speaking mediation writ large in these cases.

8 The automatic stay, and I'm well aware of the benefits  
9 of the automatic stay, but the automatic stay takes away the  
10 survivors' bargaining power --

11 THE COURT: Um-hum.

12 MR. BURNS: -- not only with respect to the diocese,  
13 but also with respect to the insurance company. It takes away  
14 the courthouse steps, where these disputes are often resolved,  
15 when the courthouse steps of these underlying sexual abuse  
16 cases probably what's most needed. And we mediate for months,  
17 and the survivors are unhappy with the result because they're  
18 in a process where a large part of their bargaining power has  
19 been taken away.

20 And I would say there are ways to fix this. Lifting  
21 the stay with respect to test cases would start to give some of  
22 that bargaining leverage back. Get us a normal bargaining  
23 leverage. Allowing us to proceed. And we'll talk about this  
24 more on the 8th.

25 THE COURT: Um-hum.

1 MR. BURNS: I know, with the insurance adversary in an  
2 aggressive manner, would begin to give us some of the  
3 bargaining power back.

4 And with that, Your Honor, I thank you --

5 THE COURT: Thank you.

6 MR. BURNS: -- for the opportunity to address the  
7 Court and the parties --

8 THE COURT: Okay.

9 MR. BURNS: -- on these issues.

10 THE COURT: Appreciate it.

11 Okay. Who wants to tell me the debtor's version of  
12 this?

13 MS. UETZ: Your Honor, I have a brief comment, and  
14 then Mr. Moore is going to be responding.

15 THE COURT: Okay.

16 MS. UETZ: I think much of what we just heard was not  
17 in the objection. We were struggling to find the arguments.  
18 And so we're going to do our best to respond to the Court today  
19 based on Mr. Burns' presentation. And Mr. Moore is going to do  
20 that.

21 I would also note Ms. Ridley is in London. She's  
22 coming back. And with that, I'm going to yield to Mr. Moore,  
23 if that's okay.

24 THE COURT: Okay.

25 MS. UETZ: Thank you.

1 THE COURT: Um-hum. I guess one opening comment would  
2 be, and I'm not trying to critique Mr. Burns, but to the extent  
3 that maybe some of these comments were a little more precise  
4 than they were in the papers, it's probably less likely that I  
5 find that they're in a bucket-2 showstopper. I mean, these are  
6 things hopefully people can talk about. And so I mean -- so I  
7 mean, from Mr. Burns' standpoint, some of them are  
8 clarifications and some of them aren't. But I look forward to  
9 your comments.

10 MR. MOORE: Well, Your Honor, I think that's right. I  
11 would agree with you. And I would go a step further and say, I  
12 didn't actually hear a reference to the disclosure statement in  
13 that entire presentation.

14 THE COURT: Well, okay. But it describes a plan, and  
15 we're here to talk about that.

16 MR. MOORE: So but what you have, Your Honor, is that  
17 to the extent that they exist, they are confirmation issues.

18 And Ms. Uetz is correct. As we were listening to the  
19 presentation, we were scanning the committee's objection, and  
20 the first issue that he raised was the plan section 5.14. That  
21 doesn't appear in -- and it was about releases and then about  
22 potentially bad faith claims. Doesn't appear in section  
23 2(a)(1) about releases or in section 2(b) about bad faith. So  
24 frankly, we don't really know how to respond to that issue.

25 But to the extent that it's a plan issue that they

1 believe impacts inadvertently or improperly the insurers'  
2 rights, then I think we can address that at confirmation. The  
3 same thing is basically --

4 THE COURT: Can I stop you for a sec and let me just  
5 see if this makes sense? To the extent that Mr. Burns would  
6 say this isn't just clarification. This plan is contra  
7 California statutes or long-standing public policy. It can't  
8 be confirmed. You could address -- you could have a  
9 conversation about that between now and January 8th.

10 MR. MOORE: Certainly, we could, Your Honor.

11 THE COURT: And certainly, if Mr. Burns believes that  
12 under those circumstances, the plan wouldn't be confirmable, he  
13 can make -- if you haven't resolved it, I can hear it again on  
14 the 8th. Maybe with a little bit more context. And that may  
15 be something that goes into the lengthening appendix A.

16 MR. MOORE: I think that's right, Your Honor. And I  
17 think that probably goes to all five of the points that Mr.  
18 Burns raised that --

19 THE COURT: Some of them sounded more clarifying than  
20 others. But you go ahead, and you tell me.

21 MR. MOORE: Well, I think that to the extent that  
22 clarification is needed, let's talk about the litigation  
23 option. The litigation option is intended to allow survivors  
24 that so elect to pursue litigation to monetize the insurance,  
25 for lack of a better word. To go after insurance proceeds, to

1 the extent that it exists. And the way that it works  
2 mechanically is that their claim will be scored by the claims  
3 abuse reviewer, and a reserve will be created for them of their  
4 pro rata distribution of then-available assets or later-  
5 available assets based on their scoring. That will not be  
6 provided to them at that time because we don't know the outcome  
7 of the litigation option.

8 There is a world in which there is an amount reserved  
9 for them for that claimant, but then a judgment comes back that  
10 says the survivor trusts -- the survivors' trust liability to  
11 that claimant is actually less than the reserve. And we built  
12 into the plan that if that happens, whether it's large or  
13 small, the remainder part or the gap will be redistributed to  
14 all of the other creditors.

15 But it can't be paid to them until the litigation  
16 option is resolved. Mechanically speaking, it's necessary to  
17 do it that way. And the intent is obviously not to discourage  
18 the litigation option because at that point the debtor, to use  
19 the phrase, has no dog in the fight. We're a nominal party  
20 only. We have made our contribution to the survivors' trust  
21 assets, and we're a nominal party only.

22 THE COURT: Would it be -- would it be anomalous to  
23 say, well, we'll just have a hold back?

24 MR. MOORE: Well, it's effectively the same thing.  
25 It's a reserved amount for that claimant.

1 THE COURT: Right, but I mean, could you pay sixty  
2 percent of that?

3 MR. MOORE: Well, I suppose you could, Your Honor, but  
4 then you run the risk of -- let's just use round numbers, and  
5 I'm not suggesting that these are right. But let's say that  
6 the trust reserves 500,000 dollars for a given claim.

7 THE COURT: Um-hum.

8 MR. MOORE: And then the litigation comes back and  
9 says, yes, the claim is worth however much that it's worth, and  
10 it could be millions in that circumstance. But it's all  
11 covered by insurance. And the insurer, they've made the point  
12 under 8.7, there's this offset issue that we're going to  
13 resolve. The insurer is directly liable to that claimant under  
14 this plan. Will make the payment directly to the claimant.  
15 Well, the claimant can't get paid twice for the same amount.  
16 So the rest of that number that was reserved for it, assuming  
17 that it's entirely allocated to the insurer, is redistributed  
18 to everyone else.

19 And so you could theoretically do a holdback on if you  
20 did some kind of a statistical analysis about what the  
21 likelihood is that you're going to come out, but you just won't  
22 know. But in the meantime, the claimant's protected because  
23 they're reserved for. And then the trust gets the option of if  
24 someone else is going to pay the claim and it's insured, then I  
25 can distribute the rest to all my other claimants.

1 Mechanically, I think that's the way that it has to work. And  
2 the offset issue kind of plays into that because who gets the  
3 credit. And so I don't know that you can say at both times you  
4 can't give an offset to the insurer, but then the trust pays  
5 first, if that makes sense.

6 THE COURT: Well, I mean, it's one way of looking at  
7 it. I'm not sure that's exhausting all the possibilities, so  
8 let me just -- I'm not going to rule on this now, obviously.

9 MR. MOORE: Sure. Sure.

10 THE COURT: But I think that if you can explore that  
11 with some flexibility, I think it's probably worth the  
12 conversation.

13 MR. MOORE: I understand, Your Honor.

14 THE COURT: Okay.

15 MR. MOORE: But fundamentally, the litigation option  
16 is clearly not intended to discourage litigation. It's  
17 actually intended to allow claimants to choose --

18 THE COURT: Right.

19 MR. MOORE: -- an individualized option to be able to  
20 increase their own recoveries using that insurance.

21 THE COURT: Yeah.

22 MR. MOORE: And to the Court's point, we did spend a  
23 significant amount of time trying to figure out how to make  
24 that work. And I think that's fundamental to both 3, which is  
25 that the plan takes away -- Mr. Burns's 3 -- the plan takes

1 away the trust's ability to pursue insurance declaratory  
2 judgment action for the benefit of all claimants, necessarily  
3 so, because our plan is an individualized litigation option.  
4 You don't have both at the same time. And but to the extent  
5 that they don't like that, then they can object to that on  
6 confirmation.

7 THE COURT: Well, and I'm not hearing that that's void  
8 as a matter of California statutes. The world would be a  
9 better place if it proceeded otherwise. All right.

10 MR. MOORE: From the committee's perspective, Your --

11 THE COURT: Yeah.

12 MR. MOORE: Yeah, absolutely. That's --

13 THE COURT: I mean, so it's not -- no one's going to  
14 tell me that X section of the insurance code says you can't do  
15 that.

16 MR. MOORE: I haven't heard it yet, Your Honor.  
17 Certainly not --

18 THE COURT: Okay.

19 MR. MOORE: -- seen in the briefing.

20 THE COURT: I got it.

21 MR. MOORE: But it is an individualized option to  
22 allow individual claimants to --

23 THE COURT: Yeah.

24 MR. MOORE: -- elect to proceed that direction. And  
25 if they elect not to proceed that direction, that's their



1 choice as well.

2 THE COURT: Yeah, but I guess all I'm -- I'm not going  
3 to resolve any of this today. I'm not hearing anything here  
4 that couldn't be part of a comprehensive discussion --

5 MR. MOORE: Absolutely. I think --

6 THE COURT: -- with Mr. Burns.

7 MR. MOORE: -- we're going to have that discussion --

8 THE COURT: And I think you should.

9 MR. MOORE: -- as we continue to refine and to clarify  
10 and to amplify some of these issues.

11 THE COURT: All right.

12 MR. MOORE: And Your Honor, I'm not going to address  
13 the automatic stay. We'll be back in a couple of weeks on that  
14 issue. I think that the last was that the policyholder must  
15 have independent counsel. Again, I think that's part of the  
16 discussion that we can have. To the extent that the plan says  
17 otherwise and they disagree, we can deal with that on  
18 confirmation. So to use the Court's phrase, I don't think any  
19 of these issues are showstoppers, to the extent that they're  
20 even issues at all.

21 THE COURT: Okay. I appreciate it.

22 Okay. Mr. Burns, do you want to clarify anything  
23 or --

24 MR. BURNS: (Indiscernible) Your Honor --

25 MR. PLEVIN: Your Honor, could I speak?

1 THE COURT: Yeah. Let Mr. Burns finish if he needs  
2 to.

3 Are you all set?

4 Okay. Come on up, Mr. Plevin.

5 MR. PLEVIN: Your Honor, Mark Plevin on behalf of  
6 continental. When I gave my appearance at the beginning of the  
7 hearing, I said I probably wouldn't be speaking. And that was  
8 based on the fact that the committee's disclosure statement  
9 objection said nothing about insurance.

10 THE COURT: Um-hum.

11 MR. PLEVIN: They were, I think, two sentences, and  
12 the word "bad faith" was in there. But Mr. Burns talked about  
13 statutes.

14 THE COURT: Um-hum.

15 MR. PLEVIN: He didn't identify any. He talked about  
16 the Hamilton case. I think he gave one other citation.

17 THE COURT: Um-hum.

18 MR. PLEVIN: There's none of this in their brief.

19 THE COURT: And I'm not deciding it now.

20 MR. PLEVIN: Well, that's good. I want to join the  
21 debtor's remarks by saying I think these are confirmation  
22 objections. What's clear is that Mr. Burns and the committee  
23 don't like the agreement that was reached in mediation --

24 THE COURT: Um-hum.

25 MR. PLEVIN: -- with the assistance of Judge Newsome

1 and Mr. Gallagher, between the insurers on the one hand and the  
2 debtor on the other hand.

3 THE COURT: Um-hum.

4 MR. PLEVIN: We don't think there's anything that's  
5 even a confirmation problem. Certainly, there's no disclosure  
6 problem here. And therefore, we would urge the Court to not  
7 rely on anything that was said today as a reason for not  
8 approving the disclosure statement. If we have to have a  
9 confirmation hearing about it, I look forward to seeing Mr.  
10 Burns' arguments in writing so we could respond --

11 THE COURT: Um-hum.

12 MR. PLEVIN: -- because I think some of what he said,  
13 if not a lot of what he said, is just wrong. And it's not  
14 reflective of California law. And I would welcome the  
15 opportunity to explain to the Court at the right time in a  
16 brief that responds to an objection by the committee why that's  
17 so.

18 THE COURT: Okay.

19 MR. PLEVIN: Thank you.

20 THE COURT: Um-hum. I think we're headed toward  
21 further consideration of an amended version of this document  
22 I'm guessing on January 8th. But if people want to reserve a  
23 different day, that's up to you. I don't want to -- if Mr.  
24 Burns wants to translate anything he said into something that  
25 he thinks is fundamentally contra California law and the plan

1 would be void were it confirmed in that fashion, I want to give  
2 him a chance to do that. And you can respond. Okay. If  
3 that's all doable before the 8th, great. I'm not hearing that  
4 now, but I'm not going to silence him on that.

5 Did you want to say something?

6 MS. UETZ: Just on that point, Your Honor, if I'm  
7 hearing implicit in what you're saying a suggestion that if Mr.  
8 Burns wants to brief that issue, just in terms of the  
9 calendar --

10 THE COURT: Yeah.

11 MS. UETZ: -- going from recall, but I think our  
12 response to some motions are due maybe December 30th. And then  
13 there's a reply date.

14 THE COURT: Yeah.

15 MS. UETZ: Maybe we use those same dates for that  
16 follow up.

17 THE COURT: Okay for me. And by the way, we put this  
18 on the 8th, look, it's a Wednesday. It's a 10:30 calendar.  
19 If, between now and the time we break, people have a better  
20 idea about when we ought to be taking chapter 2 of this, I'm  
21 all ears. Okay. We don't have to do it on the 8th. If a day  
22 here or there is helpful, that's a possibility. Okay.

23 MR. MOORE: I think before we get to the hearing,  
24 Judge, just looking at the holiday calendar and what they're  
25 going to need to do to modify documents --

1 THE COURT: Uh-huh.

2 MR. MOORE: -- and us review it and prepare our own  
3 piece, seems the 8th might be a little aggressive.

4 THE COURT: It might be, and that's okay.

5 MR. MOORE: But let's just put up (indiscernible) --

6 THE COURT: Well, you guys --

7 MR. MOORE: -- then we'll talk about it before the end  
8 of the day.

9 THE COURT: Whatever you guys agree with, within  
10 reason, I'll try to work with. Okay. The only thing. I'm  
11 fairly certain I'm leaving early on the 22nd. So the 22nd will  
12 be a tough day for me to do.

13 Is that right, Ms. Fan?

14 THE CLERK: Yes, Your Honor.

15 THE COURT: Okay. Unless you all want to come to Las  
16 Vegas and hear some BAP arguments. Okay.

17 MS. UETZ: Your Honor, just a clarification.

18 UNIDENTIFIED SPEAKER: Oh, sounds good.

19 UNIDENTIFIED SPEAKER: Yeah. No, I'm good with that.

20 MS. UETZ: Are you talking about the continuation on  
21 the disclosure statement hearing date, or are you talking about  
22 everything that's scheduled for the 8th. I just want to  
23 understand.

24 THE COURT: You guys tell me what works.

25 MS. UETZ: We should talk and then return.

1 THE COURT: Yes. You guys tell me what works. Okay.  
2 I mean, if you agree that we should have the hearing is  
3 currently set on the 8th on the 8th and have the disclosure  
4 statement hearings on some other day, I'll do my best to  
5 accommodate you. Okay. But you tell me.

6 MS. UETZ: Okay. Well, we should take the break and  
7 then talk and --

8 THE COURT: Yeah. So yeah, at an appropriate time.  
9 Let's do that. Okay.

10 MS. UETZ: Thanks.

11 THE COURT: Okay. Thanks.

12 MR. WEISENBERG: Your Honor, Brent Weisenberg on  
13 behalf of the committee. If it's okay with Your Honor, given  
14 the time, what I'd like to do is run through a list of issues  
15 that we haven't yet covered.

16 THE COURT: Um-hum.

17 MR. WEISENBERG: It sounds like we are going to have  
18 the opportunity after this hearing to work with the debtor to  
19 either refine the language --

20 THE COURT: Yep.

21 MR. WEISENBERG: -- or insert our differences.

22 THE COURT: Right.

23 MR. WEISENBERG: I think some of these issues may need  
24 to be called by you. And so that's why I want to get them out  
25 on the table. And then we can --

1 THE COURT: Okay. Is the hope I can call them today  
2 or that I call them at a further hearing?

3 MR. WEISENBERG: At some point. I just want to -- I  
4 just want to flag the issue for Your Honor.

5 THE COURT: That's fine. That's a good idea.

6 MR. WEISENBERG: Thank you.

7 THE COURT: Okay. Ms. Uetz, do you want to tell me  
8 it's a bad idea?

9 MS. UETZ: No, it's a good --

10 THE COURT: No?

11 MS. UETZ: -- idea. I just want to use the most time  
12 we can get with Your Honor today to try to call some of the  
13 issues and have (audio interference) but --

14 THE COURT: Okay. Well, look, if Mr. Weisenberg is  
15 saying, I'd rather talk than tell you this is a showstopper, I  
16 assume you're going to enjoy --

17 MS. UETZ: Very much, Your Honor.

18 THE COURT: -- that remark. Right. Okay. Thank you.  
19 Appreciate it.

20 MS. UETZ: But it also helps to get your direction.

21 THE COURT: And we got to get Ms. Albert home to watch  
22 Cal. Okay. That's important.

23 MS. ALBERT: Thank you, Your Honor.

24 THE COURT: You're welcome.

25 MR. WEISENBERG: Your Honor, in no particular order --

1 THE COURT: Um-hum.

2 MR. WEISENBERG: -- we believe that the disclosure  
3 statement is deficient or misleading in the following ways.

4 Number one, we identified for Your Honor the ninety-  
5 eight-million-dollar valuation that the debtor puts on sexual  
6 abuse claims.

7 THE COURT: Yeah.

8 MR. WEISENBERG: Yet there is no methodology or report  
9 or anything of the like to support that analysis.

10 Number two is --

11 THE COURT: Um-hum.

12 MR. WEISENBERG: -- with respect to each class of  
13 claims, we would submit, there needs to be an approximation of  
14 the number of claimants in that class. An approximation of the  
15 value of their claims. The reason for that, Your Honor, is I  
16 think the best example is the general unsecured creditor pool.  
17 The debtor may very well have more than sufficient funds to pay  
18 them in full.

19 THE COURT: Um-hum.

20 MR. WEISENBERG: But if it's choosing not to in order  
21 to create an impaired accepting class, then that's something  
22 we're entitled to argue at plan confirmation and so -- and by  
23 the way, that's not just for us. That's also for that class  
24 itself to understand its treatment as compared to the debtor's  
25 assets and the comparative treatment of other classes. So as a



1 matter of disclosure, we think that's required.

2 THE COURT: Well, can I stop you and see? I don't  
3 mean to get in the weeds on this, but it'd be one thing for the  
4 debtor to say, our position is that we're unable to pay these  
5 claims on X date because, and you can test that in discovery.  
6 But you think this should all be articulated more fully in the  
7 disclosure statement?

8 MR. WEISENBERG: Yes, Your Honor.

9 THE COURT: Okay. Okay.

10 MR. WEISENBERG: Again, just flagging the issue.

11 THE COURT: Um-hum.

12 MR. WEISENBERG: We would like to discuss with Your  
13 Honor the classification of the unknown abuse claimants.

14 THE COURT: Meaning?

15 MR. WEISENBERG: There's two issues with that  
16 classification, Your Honor. Number one. There's no estimation  
17 of how many claims may fall within that bucket. The estimated  
18 value of their claims. The amount. I'm sorry, Your Honor.

19 With respect to the unknown abuse claimant, the  
20 objection is more specific, which is as a matter of due  
21 process, we don't believe that the --

22 THE COURT: Yeah.

23 MR. WEISENBERG: -- future claims representative has  
24 sufficient time.

25 THE COURT: I know. I read that loud and clear.

1 MR. WEISENBERG: Right. Okay. Sorry.

2 THE COURT: No, no problem.

3 MR. WEISENBERG: What I was alluding to, Your Honor,  
4 was actually class 6, which is the nonabuse litigation claims.  
5 And for the same reason I just identified for you,  
6 understanding the treatment of that class is important. I  
7 heard today that the debtor would revise the disclosure  
8 statement to inform readers of the amount being put into the  
9 nonabuse litigation reserve. It still begs the question of  
10 whether there are any claimants in that class and if so what  
11 the value of their claims are so that a creditor could  
12 understand the treatment being proposed to them.

13 Your Honor, with respect to the executive summary, we  
14 think, again, it's misleading and also inaccurate in a few  
15 ways.

16 First, I think the most material issue we'd like to  
17 discuss with you is the use of the charts. We think that is  
18 entirely misleading and frankly, a dangerous road to go down.  
19 We spoke about the omitted claims valuation. The valuation of  
20 the Livermore property, that appears in several places. It's  
21 in the charts. It's also in the executive summary, standing  
22 alone, and also in the liquidation analysis or the comparison  
23 to the liquidation analysis.

24 I may ask Mr. Bair to better identify for the Court  
25 some of the issues that are raised by the litigation option and

1 the distribution option. There were instances where it was  
2 unclear the ramifications of a creditor doing so. There was  
3 also some confusion on our end about, even with respect to the  
4 litigation option, what a claimant having elected that option,  
5 what their rights would be. In certain instances, it seemed  
6 like he or she may be the claimant. In other places, it  
7 appeared the survivors' trust would be the claimant.

8 In addition, the plan -- or excuse me, the disclosure  
9 statement also alludes to the fact that the survivors' trustee  
10 can settle the claims with the insurers. It's entirely unclear  
11 how that settlement would impact a distribution option claimant  
12 or a litigation option claimant.

13 So if it's okay with Your Honor, let's talk about the  
14 charts.

15 THE COURT: Um-hum.

16 MR. WEISENBERG: And Your Honor is not the first  
17 person to be asked to address this. Judge Glenn spent  
18 considerable time speaking with the debtor about the charts.  
19 In fact, we attached to our objection the transcript of the  
20 hearing, where Judge Glenn found that the charts were highly  
21 misleading.

22 Number one, he was concerned by the fact that the  
23 information was only half there. The debtor admits that it is  
24 selectively chosen what cases to include. It is glaring that  
25 they have not chosen the San Diego diocese case or the Stockton

1 Diocese case or frankly, other cases, which would -- even if  
2 this was a comparison, I'm going to tell you why it's not to  
3 contextualize the return in this case to others. But Your  
4 Honor, let's start with this.

5         There is no comparison about what a return in one case  
6 should mean in another. The joke we made in our pleadings was  
7 the creditors in Sears don't look to Lord & Taylor and say, oh,  
8 my return is reasonable based upon how creditors were treated  
9 in that case. Why? Because we have different facts. We have  
10 different law. We have a different insurance program. Here,  
11 specifically, whether the statute of limitations applies is one  
12 of the most meaningful drivers to the value of a claim.

13         The cases or at least certain of the cases that are  
14 set forth in that chart were greatly impacted by the statute of  
15 limitations. Okay. And so when each of these creditor bodies  
16 in these cases was trying to determine what they believe would  
17 be fair and equitable in the construct of that case, they  
18 looked at the drivers I just spoke about. What is the -- what  
19 is the debtor's insurance policy? What are the severity of the  
20 claims? What is the state law? Then what are the debtor's  
21 assets in this particular case? What circuit are we in such  
22 that there may be informing decisions about any number of  
23 varying opinions about how to interpret the Bankruptcy Code?

24         There's also, again, the number of claims, and I think  
25 I referred to the different severity. And again, it can't be

1 understated that the statute of limitations has one of the most  
2 meaningful drivers. And so in Rockville Center, the judge  
3 ultimately instructed the debtor to not include the charts or  
4 if it was or if they were going to be included, there was going  
5 to need to be meaningful changes to what was being presented to  
6 creditors.

7 And again, Judge Glenn referenced the fact that there  
8 needs to be a reference to recoveries outside of bankruptcy.  
9 For example, this very diocese historically settled their  
10 claims for 1.1-million dollars. Adjusted for inflation, it's  
11 1.7 million. Shouldn't creditors be informed about that  
12 recovery? It is very possible, if, unfortunately, we're unable  
13 to settle, and the debtor has said it's running out of cash,  
14 this case might be dismissed. And if so, creditors should  
15 understand what a recovery outside of bankruptcy should be.

16 But again, I don't want to go there, Your Honor,  
17 because I think it's highly misleading to make a creditor  
18 believe that the reasonableness of this recovery is based upon  
19 looking at other cases. There's no market for sexual abuse  
20 claims. There's nothing of the sort. And so we can't look to  
21 those other cases.

22 So we would submit, Your Honor, that the charge should  
23 be omitted. And if Your Honor thought there was some validity,  
24 then we would have extensive comments, not only to the  
25 selection of the cases, but we also have disagreements about

1 some of the facts embedded in the charts. For example, the  
2 debtor submits that a recovery in Syracuse may be X. We don't  
3 believe that's the recovery. Or the number of claims they  
4 used. And so we would like the opportunity to speak with the  
5 debtor because we don't agree with the valuations that even  
6 they've used.

7 THE COURT: I'm thinking I'm going to be noodling this  
8 a little bit and rereading Glenn's transcript between now and  
9 the 8th or so. Okay. But you're open to different  
10 possibilities here? I mean, omission of the charts is one.  
11 Heavy clarification is another, right?

12 MR. WEISENBERG: I don't think I have the luxury of  
13 deciding what I am and I'm not okay with. Yes, we would prefer  
14 the charge to be omitted.

15 THE COURT: Okay.

16 MR. WEISENBERG: If Your Honor ultimately says you  
17 want them in, then we will work with the debtor and work with  
18 Your Honor to make what we think is at least --

19 THE COURT: I appreciate it.

20 MR. WEISENBERG: -- a more realistic --

21 THE COURT: I appreciate it. Thank you.

22 MR. WEISENBERG: Do you want to allow the debtor to  
23 speak to this, Your Honor?

24 THE COURT: If it's okay, yeah.

25 MR. WEISENBERG: Of course.

1 THE COURT: I mean, I don't know if it's -- there may  
2 not be much conversation now but --

3 MR. WEISENBERG: I'm sorry. Before that, could I let  
4 Mr. Bair just make --

5 THE COURT: Yeah. Come on up.

6 MR. WEISENBERG: -- one or two points and then --

7 THE COURT: Sure, sure, sure.

8 MR. BAIR: Your Honor, we appreciate the opportunity  
9 to be able to respond without moving to another set of issues.

10 THE COURT: Well, I don't know that we are. Are we  
11 talking about the same issue?

12 MR. BAIR: Same issue.

13 THE COURT: Okay.

14 MR. BAIR: Your Honor, Jesse Bair, special insurance  
15 counsel --

16 THE COURT: Okay.

17 MR. BAIR: -- for the committee.

18 THE COURT: Okay.

19 MR. BAIR: I just wanted --

20 THE COURT: I mean, look, we've all been kind of open  
21 minded about who grabs the lectern here. Okay. So I --

22 MR. BAIR: Yes.

23 THE COURT: -- appreciate it. Thank you.

24 MR. BAIR: I just wanted to provide two illustrative  
25 examples. Mr. Weisenberg mentioned that we have some

1 disagreements with the facts that are embedded --

2 THE COURT: Yeah.

3 MR. BAIR: -- even within the chart as presented. So  
4 just for Your Court's -- for the Court's edification, I wanted  
5 to provide examples of that, just --

6 THE COURT: Okay.

7 MR. BAIR: -- to explain why we feel strongly about  
8 the charts --

9 THE COURT: Okay.

10 MR. BAIR: -- so that, for example, on page 12 of 86,  
11 the first chart --

12 THE COURT: Yep. Um-hum.

13 MR. BAIR: -- which talks about debtor contributions,  
14 for example, the debtor here is listed at about a hundred-  
15 million dollars, and that's money coming from the debtor and  
16 the parishes.

17 THE COURT: Yep.

18 MR. BAIR: And here, they say that, well, the parishes  
19 are part of the debtor, so it's all the debtor money. That's  
20 listed as a hundred million. But if you go down to the middle  
21 of the chart, Syracuse, New York, it's listed as around fifty-  
22 million dollars. Now, the debtor in parish contribution in  
23 Syracuse is a hundred-million dollars. And what I assume  
24 they're doing here is they're saying, well, in New York, the  
25 parishes are separately incorporated. So the debtor



1 contribution is fifty. And they just cut fifty off.

2 So this chart would look very different if you  
3 included the debtor contribution in other states and the parish  
4 money. And so I think we need to just be very careful here if  
5 we're going --

6 THE COURT: Okay.

7 MR. BAIR: -- to have these comparisons to really show  
8 the whole pool of assets because if you're going to say the  
9 hundred million here is debtor and parishes but we're just not  
10 going to include parish money in other jurisdictions, that can  
11 skew this chart quite substantially.

12 THE COURT: Okay. All right. Thank you.

13 MR. BAIR: So and then the other point is just in the  
14 second chart, when they're talking about average payments in  
15 other cases, we just need to be very careful about how they're  
16 counting claims because here in the debtor numbers, they're  
17 using 345 as the number. And they say here that they're  
18 deducting duplicate claims, for example. But when you do the  
19 math in these other cases, they're clearly leaving duplicate  
20 claims in. And so that's skewing those average claimant  
21 numbers.

22 And I'm not saying they're doing that on purpose  
23 necessarily. But if they're outsiders looking into a case, for  
24 example, in Rockville Center, they might say, oh, there's over  
25 700 claims. But if you go through the claim objections and

1 count up all the claims that are left at the end, it's closer  
2 to 600 so -- and that can make --

3 THE COURT: Okay.

4 MR. BAIR: -- a big difference here. So I think we  
5 just need to be --

6 THE COURT: Okay.

7 MR. BAIR: -- careful with these charts.

8 THE COURT: Okay.

9 MR. BAIR: And I appreciate the time, Your Honor.

10 THE COURT: Sure.

11 MR. MOORE: Thank you, Your Honor. Mark Moore, on  
12 behalf of the RCBO.

13 THE COURT: Um-hum.

14 MR. MOORE: Your Honor, let's start with the charts,  
15 and let's start with contextualizing why they exist. One of  
16 the reasons that the debtor has proposed this plan is that we  
17 think it's a good plan. One of the reasons that we think it's  
18 a good plan is that we compare it to other similar diocesan  
19 religious order cases, and we come out to a place where we  
20 believe we are providing more, we being the debtor and related  
21 entities.

22 This is a point of comparison that is important to our  
23 creditors to be able to understand what we're giving them and  
24 how it compares to other cases. I understand that the  
25 committee doesn't like that because they want to go get

1 information about jury verdicts and use that instead, jury  
2 verdicts that we filed bankruptcy because we can't pay the  
3 multiplicity. I understand that they have concerns about the  
4 representation of different cases, whether you choose San Diego  
5 or Stockton or Rockville Center, which was confirmed last week,  
6 or not.

7 And again, I think the Court's already provided them  
8 with the method to put that into the world, which is their  
9 letter, their appendix, whatever it is that they want their  
10 position to be. They can say, no, the debtors are wrong, and  
11 they have the right to do that, as the Court has recognized.  
12 But this information is important about other cases. We have  
13 taken great care to try and delve through publicly available  
14 filings, other disclosure statements, other claim objections,  
15 and other cases to try and figure out how these things do  
16 compare to each other because it is a data point. It frames a  
17 point of reference. And it's a point of reference that's  
18 important for the debtor because it gets to what is a fair,  
19 ultimate outcome, whether the committee agrees with that or  
20 not.

21 Regarding the ninety-eight-million value of the abuse  
22 claims, that's not a value. That is a pledge of assets from  
23 the Diocese of Oakland, plus five-million dollars for the  
24 unknown abuse claims, which, if it's not paid, will be spilled  
25 back over into the survivors' trust. It's not a valuation.

1 And we've been very explicit in our plan that we've not  
2 attempted a valuation because these unliquidated tort claims  
3 are by nature unliquidated.

4 And so to say that we need to back into how we get to  
5 ninety-eight-million dollars, I think, number one, the Court's  
6 already said we need to make more disclosure about how we got  
7 there and why about what we're doing. So we will. But it's  
8 not a valuation, and it can't be construed as a valuation. To  
9 say that it is goes against the language of our plan.

10 About other asset valuation, Livermore, for example,  
11 again, we're not required to disclose in a disclosure statement  
12 precisely how we get to a valuation for that. It's a  
13 confirmation issue where we'll put on our evidence. I  
14 understand the committee may have a different view about what  
15 Livermore is worth. They can present that view if it's  
16 informed and show us how it's informed.

17 Other issues, Your Honor. Omitted information  
18 regarding claim value and number, again, we're happy to put in  
19 the number of claims that we think are in each class. That's  
20 relatively easy. I think that there may be three in class 6.  
21 Unknown claims, the tricky part about unknown claims is that  
22 they're unknown. And obviously we have described in some  
23 detail our claims review analysis and claims review process in  
24 the plan.

25 Regarding settlement information from previous to --

1 from the diocese, we actually did have that in our plan. It's  
2 on page 35 of 86. We clearly disclosed the prior settlements  
3 from what I think is called the initial legislation in the  
4 plan. You can find it there. It was fifty-six-million dollars  
5 for fifty-two claims, or maybe fifty-two-million dollars for  
6 fifty-six claims. Actually, I think I was right the first  
7 time.

8 Your Honor, but again, a lot of this is going to be  
9 stuff that we're going to talk about over the next couple of  
10 weeks, which I think is where the Court's going to direct us to  
11 go.

12 THE COURT: Okay.

13 MR. MOORE: A lot of it is going to be things that  
14 they want us to say differently that we're just not willing to  
15 say, because we do believe that it's true. We do believe that  
16 it's fair. We do believe that it's right. And it is our  
17 disclosure statement for our plan. If they want to say  
18 something different, we've already given them the opportunity  
19 to do that, and we welcome their submission. Obviously, we're  
20 going to need to take a look at that too, and we'll have the  
21 opportunity to do that.

22 Finally, I think the last thing that was mentioned was  
23 the classification of the unknown claims. Your Honor, this is  
24 something we've seen in multiple diocese bankruptcy cases,  
25 particularly where you now have an approved unknown claims

1 representative. That class is separate from the known class,  
2 but again, to the point that the Court disagrees with that  
3 somehow, again, that's a confirmation issue. If you don't like  
4 our classification, then you can tell us that whenever we come  
5 back, whenever it is that we come back.

6 But for right now, Your Honor, I think that all of  
7 these issues are either confirmation issues. They're either  
8 the committee's perspective, which it's able to communicate.  
9 But these are not issues that should prohibit the ultimate  
10 solicitation of the debtor's disclosure statement.

11 THE COURT: Well, I think that I'm somebody I don't  
12 have to order you guys to meet and confer. You're going to do  
13 that, and I think that --

14 MR. MOORE: We will do that, Your Honor.

15 THE COURT: And I think we begin there. And if you do  
16 not -- if the committee makes a comment or requests  
17 clarification or an amendment and you don't make it, that may  
18 prompt you to say, with more clarity, why you're taking the  
19 position you are. And that will either end up with me in the  
20 charts, maybe deciding that they're more trouble than they're  
21 worth, we'll see, or a lengthening exhibit A.

22 MR. MOORE: I understand, Your Honor. And coming out  
23 of this hearing, we've heard loud and clear that there's things  
24 that we need to clarify. There's things

25 THE COURT: Yeah.

1 MR. MOORE: -- we need to amplify.

2 THE COURT: Yep.

3 MR. MOORE: And there's a discussion that needs to be  
4 had.

5 THE COURT: Okay.

6 MR. MOORE: And we've already committed ourselves to  
7 eliminate some things or to clarify some things, and we're  
8 going to do that.

9 THE COURT: Okay.

10 MR. MOORE: We'll be doing that over the next days and  
11 weeks.

12 THE COURT: Yeah.

13 MR. MOORE: Hopefully we can resolve some of these  
14 issues.

15 THE COURT: Um-hum.

16 MR. MOORE: But as to use your term "showstoppers", we  
17 don't think that any of this stuff rises to that level  
18 because --

19 THE COURT: Okay.

20 MR. MOORE: -- ultimately, it's about information.  
21 It's about casting an informed vote. And that's what we want  
22 our creditors to do.

23 THE COURT: Okay. Thank you very much.

24 MR. WEISENBERG: Brent Weisenberg for the committee.

25 THE COURT: Um-hum.

1 MR. WEISENBERG: Your Honor, we hear you loud and  
2 clear with respect to how we should move forward. And so we  
3 would submit that there's no need to go through the litany of  
4 other issues. We understand how Your Honor wants us to try to  
5 solve it. We will.

6 THE COURT: Um-hum.

7 MR. WEISENBERG: We'll try. I don't know if we will.  
8 And so again, I don't think we need to argue any further about  
9 those issues. We're going to work through that with the  
10 debtor.

11 THE COURT: I appreciate it. Thank you.

12 MR. WEISENBERG: If you don't mind, we do need to  
13 speak with one another about hearing dates.

14 THE COURT: Shall we adjourn for a minute and let you  
15 guys talk about that?

16 MS. UETZ: Yes. It would be helpful, Your Honor, if I  
17 may, if we might get a preview from the Court on available  
18 dates, perhaps the week of the 13th and the 20th. That might  
19 help inform our discussion, if that's possible to hear that.

20 THE COURT: Well, sure. I mean, 22 through 24 are  
21 out.

22 MS. UETZ: Are no?

23 THE COURT: Yeah, are no.

24 MS. UETZ: Okay.

25 THE COURT: Yeah, I've got to be somewhere else.



1 MS. UETZ: Good. So does Mr. Lee.

2 THE COURT: Okay. Well, maybe you're arguing  
3 something in Las Vegas for all I know.

4 MS. UETZ: Sorry, I just outed Mr. Lee.

5 THE COURT: Yeah. Okay. That, I'm highly confident  
6 about.

7 Remind me, Ms. Fan, if anything else is blocked out at  
8 the moment.

9 THE CLERK: The week of the 13th is pretty open, Your  
10 Honor. We just have the calendars on the 15th. So Monday,  
11 Tuesday, Wednesday --

12 THE COURT: Okay.

13 THE CLERK: -- Thursday's open. And the week --

14 THE COURT: Okay.

15 THE CLERK: -- of the 20th, the 20th is a holiday, so  
16 we would only have the 21st.

17 THE COURT: Oh, right. Okay. So the 21st is open,  
18 but the rest of the week is not so great?

19 THE CLERK: Yes, Your Honor.

20 THE COURT: But we have a lot of -- I take it we're  
21 having the 13 calendar on the 9th?

22 THE CLERK: Yes, Your Honor.

23 THE COURT: Okay. So we have a lot of availability  
24 the week of the 13th. Everything but the Wednesday morning is  
25 pretty open.

1 MS. UETZ: That's helpful, Your Honor, because --

2 MR. MOORE: We're actually here in front of Judge  
3 Corley on the 16th.

4 THE COURT: Okay.

5 MR. MOORE: So if we could have it --

6 THE COURT: Yeah, you tell me.

7 MR. MOORE: -- on the 15th or the 17th --

8 THE COURT: Yeah.

9 MR. MOORE: -- that would eliminate some airfare.

10 MS. UETZ: Early afternoon on the 16th. So that's  
11 what --

12 THE COURT: I'm sorry.

13 MS. UETZ: -- I was going to talk with counsel about  
14 that.

15 THE COURT: Okay.

16 MS. UETZ: Maybe the break, and then we'll return with  
17 suggestions?

18 THE COURT: That's fine. Yeah. No, the afternoon of  
19 the 15th is fine for me. And I'll work with the rest of the  
20 week. Okay.

21 MS. UETZ: For the afternoon of 16th, is that good  
22 too?

23 THE COURT: Sure. Are you seeing Corley in the  
24 morning? Okay.

25 MS. UETZ: Back and hopefully squeeze it in. Well,

1 schedule it for --

2 THE COURT: A couple of years ago, we were on a panel  
3 presentation about bankruptcy appeals at all levels. And she  
4 was a brand new DJ, and she hadn't had a bankruptcy appeal yet.  
5 So she asked me to sort of take the laboring oar, which I tried  
6 to do. She's a delightful human being and wonderfully smart  
7 judge.

8 MS. UETZ: I've had one ever. That's it.

9 THE COURT: Oh, really? Okay. All right. Okay.

10 MS. UETZ: I was just telling somebody that yesterday.

11 THE COURT: Very good. All right. How long do you  
12 guys want?

13 MS. UETZ: Five, ten minutes, I think.

14 UNIDENTIFIED SPEAKER: Yeah.

15 MS. UETZ: Yeah.

16 THE COURT: All right. Come back about ten after.

17 MS. UETZ: Thanks so much.

18 (Recess from 3:56 p.m., until 4:15 p.m.)

19 THE CLERK: The court is back in session.

20 THE COURT: Okay. Are some dates others may try to  
21 pencil in or --

22 MS. UETZ: Yes, Your Honor.

23 THE COURT: Okay. Sure.

24 MS. UETZ: I can go? Okay.

25 THE COURT: Yeah.

1 MS. UETZ: Thanks. I'm sorry, are we on the record?  
2 Do I make an appearance? I'm just -- we are, right?

3 THE COURT: We should be.

4 MS. UETZ: Okay. I'm sorry. Ann Marie Uetz for the  
5 debtor, Foley & Lardner, Your Honor.

6 THE COURT: Okay. Thank you.

7 MS. UETZ: We are looking at the following schedule.

8 THE COURT: Uh-huh.

9 MS. UETZ: Backing off of Thursday, January 16th, for  
10 the hearing and the continuation of the disclosure statement.

11 THE COURT: Okay.

12 MS. UETZ: So backing off from that, January 14th,  
13 which is Tuesday, the debtor's reply to any objection. Friday,  
14 January 10, the committee objection. Friday, January 3rd, the  
15 debtor will file its amended disclosure statement. So I went  
16 backwards there.

17 THE COURT: Okay. Okay.

18 MS. UETZ: Two related items. One of them I just  
19 thought of. The appendix for the committee and what they  
20 might -- what they might attach, we didn't actually talk about  
21 that. I guess I would suggest it be with the objection.

22 MR. WEISENBERG: That's what I was going to suggest.  
23 Fine.

24 MS. UETZ: Cool.

25 THE COURT: That's fine.

1 MS. UETZ: Okay. See, we're all agreeing. So the  
2 appendix with the objection on --

3 THE COURT: Okay.

4 MS. UETZ: -- the 10th, and we talked about extending  
5 the solicitation period with a recognition and a commitment  
6 statement that neither the committee nor the insurers will file  
7 any plan through and including January 16th. And we'll address  
8 it again on that day when we're back in court.

9 THE COURT: Okay. Do you have in mind already how  
10 many days it takes you to get from approval to out-the-door?

11 MS. UETZ: This is where Mr. Moore is going to stand  
12 up.

13 THE COURT: All right.

14 MR. MOORE: Remind him of January 8th.

15 MS. UETZ: Oh, and --

16 THE COURT: We're not moving the 8th?

17 MS. UETZ: -- we're staying with January 8th.

18 THE COURT: Got it. To the extent we're filing things  
19 on the 14th, can we make that noon?

20 MS. UETZ: Yes, Your Honor.

21 THE COURT: Okay. Thanks.

22 MS. UETZ: Hundred percent.

23 THE COURT: Okay.

24 MS. UETZ: Thank you for --

25 THE COURT: Sure.

1 MS. UETZ: -- indulging us on that.

2 THE COURT: That's okay.

3 MR. MOORE: Your Honor, in the run up to filing the  
4 plan and disclosure statement, we talked a little bit to our  
5 claims noticing agent. They think that they can get it done in  
6 three business days.

7 THE COURT: Wow.

8 MR. MOORE: If it's over a weekend, it may be the  
9 following Monday or Tuesday. Because I think we just said was  
10 the 16th is a Thursday.

11 THE COURT: Okay.

12 MR. MOORE: So it may be as long as five business  
13 days. I'll have to discuss that with them --

14 THE COURT: Okay.

15 MR. MOORE: -- taking into account the weekend.

16 THE COURT: Okay.

17 MR. MOORE: But I think that that should work.

18 THE COURT: All right. Well, look, in the meantime,  
19 I'll at least give you some strong inclinations on the 8th  
20 about a whole bunch of things. And as I teased before,  
21 soliciting is one thing. Actually having the confirmation  
22 hearing is another. We can build in -- I'll hear everybody  
23 about how that ought to work. Okay.

24 MR. MOORE: That's why I stood, Your Honor, which is,  
25 I suspect we will not be able to agree on a timetable. And so

1 we'll likely need Your Honor to call.

2 THE COURT: We'll take it up, I promise. Okay.  
3 Anything else?

4 MR. MOORE: We'll take that up on the 16th. Is that  
5 right, Your Honor? You gave inclinations on things on the 8th  
6 and then be back.

7 THE COURT: Oral rulings.

8 MR. MOORE: Right. Of course.

9 THE COURT: Yeah.

10 MR. MOORE: Okay.

11 THE COURT: Okay.

12 MR. MOORE: Yeah.

13 MR. PLEVIN: Your Honor, Mark Plevin. Just a point of  
14 clarification because we weren't involved in the discussion.

15 THE COURT: Um-hum. Do you want to participate in  
16 some briefing?

17 MR. PLEVIN: No, no. Just what time the hearings are.

18 THE COURT: Are you sure?

19 MR. PLEVIN: I've got enough briefs to write, Your  
20 Honor.

21 THE COURT: Okay.

22 MR. PLEVIN: Just when the hearings will be on January  
23 the 16th.

24 THE COURT: Well, the 8th is already 2 o'clock et seq.  
25 Right.

1 UNIDENTIFIED SPEAKER: Yes, Your Honor.

2 THE COURT: And you guys, you're going to -- you need  
3 to go see Judge Corley in the morning on the 16th.

4 MS. UETZ: Correct.

5 THE COURT: So should we say 2, or is there a better  
6 time?

7 MR. MOORE: I think maybe more time.

8 MS. UETZ: I think the soonest we could start in the  
9 afternoon would be optimal. We'll be done with Judge Corley by  
10 noon, I would imagine. So maybe 1 o'clock start or whatever  
11 the --

12 THE COURT: All right. You want to -- I mean, 1:30,  
13 just to be --

14 MS. UETZ: 1:30 would be great.

15 THE COURT: -- build in a half hour? Okay.

16 MS. UETZ: Sure.

17 MR. PLEVIN: That's on the 16th?

18 THE COURT: Yes.

19 MR. PLEVIN: And then I had heard, I think, that the  
20 start of the hearing on January 8 had been moved back.

21 THE COURT: Well, I think we're doing it in the  
22 afternoon. We're not trying to compete with all the --

23 MR. PLEVIN: Okay. So --

24 THE COURT: -- business on the way. I understood it  
25 was 2. If somebody wants to tell me that's wrong, I'm all



1 ears.

2 THE CLERK: It's currently scheduled for 2 p.m., Your  
3 Honor.

4 THE COURT: Okay. Anybody need to change that or are  
5 we good?

6 MR. PLEVIN: I just wanted to know when to be where.  
7 Thank you, Your Honor.

8 THE COURT: Okay. All right. Anything else for the  
9 good of the order?

10 No? There's always one more thing.

11 No? All set? See you, guys.

12 MS. UETZ: Not today, Your Honor.

13 THE COURT: All right. Well, have a lovely holiday.

14 IN UNISON: Thank you, Your Honor.

15 THE COURT: Yeah, it was a pleasure, as always. Thank  
16 you so much. Okay. See you later.

17 (Whereupon these proceedings were concluded at 4:19 PM)

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## I N D E X

## RULINGS:

PAGE LINE

Motion to approve Judge Michael Hogan as  
unknown abuse survivors representative is  
granted.

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

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



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|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | <b>deficient (1)</b><br>140:3                                                                                                                                     | <b>determined (3)</b><br>84:21;89:6;110:24                                               | <b>directly (3)</b><br>61:10;130:13,14                                                                                                                                                                                                                                        | <b>discussed (3)</b><br>12:13;18:1;53:13                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
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|                                                                                                                                    |                                                                                                                        |                                                                                               |                                                                                                                                                  |                                                                                                                                                         |
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| <b>done (10)</b><br>35:24;37:12;39:19;<br>52:16;70:6;75:8;83:9;<br>96:11;162:5;164:9                                               | <b>earliest (1)</b><br>21:22                                                                                           | <b>either-or (2)</b><br>96:25;97:3                                                            | <b>entirely (4)</b>                                                                                                                              | <b>estimated (1)</b><br>141:17                                                                                                                          |
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|                                                                                                                                    |                                                                                                                        | <b>eliminate (3)</b><br>110:13;155:7;158:9                                                    |                                                                                                                                                  |                                                                                                                                                         |

|                                                                                                                                                                                  |                                                                                    |                                                                                                                                                               |                                                                                                                                                            |                                                                                                     |
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1 UNITED STATES BANKRUPTCY COURT  
2 NORTHERN DISTRICT OF CALIFORNIA

3 Case No. 23-40523

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5 In the Matter of:

6

7 THE ROMAN CATHOLIC BISHOP OF OAKLAND,

8

9 Debtor.

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11

12 United States Bankruptcy Court

13 1300 Clay Street

14 Oakland, CA 94612

15

16 January 8, 2025

17 2:00 p.m.

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20

21 B E F O R E :

22 HON WILLIAM J. LAFFERTY, III

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: P.L. Wright



1 HEARING re Motion for Relief from Stay, Filed by Creditor  
2 Committee (Doc. 1460). Cont'd from 12/18/24

3  
4 HEARING re Motion of the Official Committee of Unsecured  
5 Creditors (1) For Standing to Assert, Prosecute and  
6 Compromise All Claims and Causes of Action the Debtor and its  
7 Estate Hold Against the Insurers and (II) To Be Substituted  
8 as the Named Plaintiff in the Insurance Coverage Actions  
9 Filed by Official Committee of Unsecured Creditors of the  
10 Roman Catholic Bishop of Oakland (Doc. 1462). Cont'd from  
11 12/18/24.

12  
13 HEARING re Motion of the Official Committee of Unsecured  
14 Creditors (I) For Standing to Assert, Prosecute and  
15 Compromise All Claims and Causes of Action the Debtor and its  
16 Estate Hold Against the Insurers and  
17 (II) To Be Substituted as the Named Plaintiff in the  
18 Insurance Coverage Actions Filed by Creditor Committee  
19 Official Committee of Unsecured Creditors of the Roman  
20 Catholic Bishop of Oakland (Doc.  
21 1538)

22  
23 HEARING re Status Conference. Cont'd from 11/27/24

24  
25 Transcribed by: Joanne Morrison



1     A P P E A R A N C E S :

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3     F O L E Y   &   L A R D N E R   L L P

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13     K E L L E R   B E N V E N U T T I   K I M   L L P

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P R O C E E D I N G S

CLERK: All rise. Please come to attention. The Court is in session. This is the United States Bankruptcy Court, Northern District, California, the Honorable William J. Lafferty presiding.

THE COURT: Okay, please be seated. This is a matter that we specially set, so let's go ahead and call the matter.

CLERK: Yes, Your Honor. Calling Line Item No. 1 for The Roman Catholic Bishop of Oakland, Case No. 23-40523.

THE COURT: Okay, why don't we start out with appearances in the courtroom; although, I think we have a few folks on the Zoom.

MR. MOORE: Good afternoon, Your Honor. Mark Moore, Goeff Goodman, and Shane Moses from Foley & Lardner on behalf of The Roman Catholic Bishop of Oakland.

THE COURT: Okay, very good. Anybody else on that side making an appearance? Not sure yet? Okay.

MS. ALBERT: Good afternoon, Your Honor. Gabrielle Albert, Keller Benvenuti Kim, on behalf of the committee. And also with me is Brent Weisenberg, not Loewenstein.

THE COURT: That was a field promotion some time ago, so now he's back among the regulars.

MS. ALBERT: Exactly.

1 THE COURT: All right.

2 MS. ALBERT: Sorry, we've demoted him back.

3 THE COURT: All right. He seems content  
4 nonetheless.

5 MS. ALBERT: And Mr. Jeff Prol.

6 THE COURT: Nice to see you.

7 MS. ALBERT: And also Mr. Tim Burns and Mr. Jesse  
8 Bair from Burns Bair.

9 THE COURT: Lovely. Okay, very good. Okay,  
10 anyone else expecting to make an appearance today? Come on  
11 up.

12 MR. FINNEGAN: Good afternoon, Your Honor. Mike  
13 Finnegan with Jeff Anderson Associates on behalf of Certain  
14 Abuse Survivors.

15 THE COURT: Is this your first time here?

16 MR. FINNEGAN: It is, yes.

17 THE COURT: Welcome.

18 MR. FINNEGAN: Thank you.

19 THE COURT: You're welcome.

20 MR. PLEVIN: Good afternoon, Your Honor. Mark  
21 Plevin on behalf of Continental Casualty Company.

22 THE COURT: Nice to see you.

23 MR. SIMMONS: Good afternoon, Your Honor. Rick  
24 Simmons, and also making an appearance on behalf of Certain  
25 Creditors.

1 THE COURT: Very good. Nice to see you.

2 MR. SCHIAVONI: Your Honor, Tancred Schiavoni from  
3 O'Melveny for the Pacific Insurers and INA. And Your Honor,  
4 I would, just as a point of order, we have joinders here  
5 from six plaintiffs' firms, none of which identify the  
6 clients on whose behalf they're going to speak. I'm not  
7 asking for their names, but their POC numbers would be --

8 THE COURT: Okay.

9 MR. SCHIAVONI: -- adequate.

10 THE COURT: You don't want to voir dire them?

11 MR. SCHIAVONI: Well, Your Honor, here's the  
12 thing. The motion that will be heard treats claimants  
13 differently. And arguably, there's a conflict of interest  
14 whether you represent one of the claimants whose --

15 THE COURT: Right.

16 MR. SCHIAVONI: -- let's say --

17 THE COURT: I'll hear you on that.

18 MR. SCHIAVONI: Thank you. Appreciate it.

19 THE COURT: Okay.

20 MR. JACOBS: Good afternoon, Your Honor. Todd  
21 Jacobs on behalf of Westport Insurance Corporation. Nice to  
22 see you again.

23 THE COURT: Nice to see you again.

24 MR. JACOBS: And I'm here with my co-counsel,  
25 Blaise Curet.



1 THE COURT: Nice to see you.

2 MR. JACOBS: Thank you.

3 THE COURT: Okay.

4 MR. STOREY: Good afternoon, Your Honor. Devin  
5 Storey on behalf of Certain Creditors.

6 THE COURT: Okay. Good afternoon.

7 MR. AMALA: Good afternoon, Your Honor. Jason  
8 Amala, Pfau Cochran Vertetis and Amala on behalf of the  
9 Panish and PCVA claimants, and our claimants are identified  
10 in our joinder.

11 THE COURT: Okay. Thank you very much. All  
12 right. Anybody else in the courtroom expecting to make an  
13 appearance? All right, how about on the screen?

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

16 THE COURT: Okay. Others?

17 MS. LUU: Good afternoon, Your Honor.

18 THE COURT: Others?

19 MS. LUU: Good afternoon, Your Honor. Betty Luu  
20 of Duane Morris on behalf of Certain Underwriters at Lloyd's  
21 Linden and Certain London Market Insurers.

22 THE COURT: Okay. One last gentleman on the  
23 screen. Go ahead.

24 MR. MANNS: Good afternoon, Your Honor. Ryan  
25 Manns with Norton Rose Fulbright on behalf of RCWC, RCC,

1       OPF, and Adventist.

2               THE COURT:   Got it.   Okay.   Thank you very much.  
3       Do you expect to speak today?   Do you know?

4               MR. MANNS:   Potentially, Your Honor.

5               THE COURT:   Okay, very good.   All right.   Thank  
6       you, everybody.   Just for organizational purposes, I don't  
7       know who's presenting arguments.   There's some fairly hefty  
8       things on for consideration today and if it would be  
9       helpful, just let everybody know who's presenting the  
10      argument, if you're splitting it up in any way on the  
11      committee side of things, if you want to let us know that  
12      now, I'd be grateful.   If you're handling the whole thing  
13      with Mr. Prol jumping in where he may help, that's fine.   We  
14      haven't stood on ceremony too badly around here.   But if you  
15      want -- if there's anything you want to do in your traffic  
16      cop role, let me know.

17              MR. WEISENBERG:   Thank you, Your Honor.   Brent  
18      Weisenberg.

19              THE COURT:   Yeah.

20              MR. WEISENBERG:   There are three motions before  
21      you, Your Honor.

22              THE COURT:   Right, right.

23              MR. WEISENBERG:   And we anticipate that I will be  
24      addressing the lift stay motion.

25              THE COURT:   Okay.

1 MR. WEISENBERG: Mr. Burns will be addressing what  
2 we can refer to as the insurance standing.

3 THE COURT: Okay.

4 MR. WEISENBERG: And Mr. Prol will be addressing  
5 the other standing motion.

6 THE COURT: I got you. Okay.

7 MR. WEISENBERG: With one caveat, if it's okay  
8 with you, Your Honor.

9 THE COURT: Sure.

10 MR. WEISENBERG: There are going to be some  
11 insurance elements of the lift stay motion. And to that  
12 extent, Mr. Bair is going to assist.

13 THE COURT: Sure.

14 MR. WEISENBERG: And obviously there are a number  
15 of people here who have joined.

16 THE COURT: Okay.

17 MR. WEISENBERG: And we can talk about that.

18 THE COURT: Okay. I suspect we will. Okay. Thank  
19 you very much. Okay, on this side, you're mostly responding  
20 today, so I don't know if the same concerns are really  
21 relevant, but you tell me how you want to deal with this.

22 MR. MOORE: Thank you, Your Honor. Mark Moore on  
23 behalf of RCBO. I will be handling Docket No. 1460, which  
24 is the lift stay motion. Mr. Goodman will be handling the,  
25 I guess what we call the OPF derivative standing motion --

1 THE COURT: Yeah.

2 MR. MOORE: -- which is Docket No. 1462. And then  
3 Mr. Moses will be handling Docket No. 1538, which is the  
4 insurance coverage litigation --

5 THE COURT: Okay.

6 MR. MOORE: -- standing motion. To the extent  
7 that there are questions that arise about the plan as it  
8 relates to any of this stuff, we may need to jump in and out  
9 because --

10 THE COURT: Okay.

11 MR. MOORE: -- some of us have more familiarity  
12 with that.

13 THE COURT: Okay. Can I hold you there for a  
14 second? I don't -- I'm not remembering when we were going  
15 to be blessed with the new disclosure statement and plan.  
16 Has it happened already?

17 MR. WEISENBERG: Yes, Your Honor. We filed it on  
18 Friday afternoon.

19 THE COURT: Okay, I thought I saw it. Okay.  
20 Never mind.

21 MR. WEISENBERG: We filed an amended plan and --

22 THE COURT: got it.

23 MR. WEISENBERG: -- amended disclosure statement.

24 THE COURT: Okay.

25 MR. WEISENBERG: And then a notice with red lines

1 of all of the --

2 THE COURT: That's --

3 MR. WEISENBERG: -- documents.

4 THE COURT: That's what I thought. Okay, so we're  
5 all set, right? Are we anticipating a further response from  
6 the committee and then a reply or?

7 MR. WEISENBERG: I'll let the committee speak for  
8 itself, but --

9 THE COURT: Okay.

10 MR. WEISENBERG: -- understanding is that their  
11 objection to the amendments --

12 THE COURT: Yeah.

13 MR. WEISENBERG: -- are due Friday the 10th.

14 THE COURT: Okay.

15 MR. WEISENBERG: -- committee letter.

16 THE COURT: Okay.

17 MR. WEISENBERG: correct?

18 MR. MOORE: Yeah, correct. Our deadline is this  
19 Friday.

20 THE COURT: Okay, very good. Okay. All right.  
21 Well, these are the committee's motions, so if you have a  
22 suggestion for how you want to proceed.

23 MR. MOORE: Your Honor --

24 THE COURT: I mean, I don't have a strong mean, I  
25 don't have a strong feeling, so whatever.

1 MR. MOORE: If it pleases the Court, we would  
2 suggest doing the lift stay motion --

3 THE COURT: Sure.

4 MR. MOORE: And then, in terms of next, we would  
5 prefer the insurance standing motion and --

6 THE COURT: Okay.

7 MR. MOORE: -- then the OPF/church ---

8 THE COURT: Okay.

9 MR. MOORE: -- standing motion.

10 THE COURT: All right, and everybody remembers  
11 we're back here on the 16th on the disclosure statement,  
12 right? Okay. All right, great. Okay.

13 MR. WEISENBERG: Brett Weisenberg on behalf of the  
14 committee. I think that's the first time during  
15 introductions to the Court that I've had an objection, but  
16 we'll save that for a little bit. But first --

17 THE COURT: Okay.

18 MR. WEISENBERG: -- Your Honor, I think if it's  
19 okay with you, rather than presenting to the Court and  
20 potentially addressing issues that are of no moment to you,  
21 I found it most helpful when we engage in a dialogue. You  
22 always ask pointed questions and I enjoy trying to answer  
23 them. And so I haven't really prepared much of an  
24 introduction.

25 THE COURT: It's very nice of you to say enjoy.

1 You might use another word when I'm not in the room. I  
2 don't know. Okay.

3 MR. WEISENBERG: So I guess, Your Honor, if it's  
4 okay with you, if there are particular issues you'd like us  
5 to address with respect to the relief requested --

6 THE COURT: Okay.

7 MR. WEISENBERG: -- I'm happy to do that.

8 THE COURT: Okay.

9 MR. WEISENBERG: Otherwise, I can proceed in a  
10 different way.

11 THE COURT: Well, let me lead off with a couple.  
12 I think you're reading my mind here, okay? The first one  
13 is, I appreciate the efforts to educate me about what's  
14 going on in another Court that is potentially going to be  
15 ultimately responsible for some very important issues here.  
16 By the way, am I correct in remembering that Judge Wise was  
17 involved in this, and obviously she's moved on to bigger and  
18 better things? Is there somebody else who's assigned, do  
19 you know, to these matters?

20 MR. WEISENBERG: That's a question for Mr.  
21 Simmons.

22 MR. SIMMONS: Yes, Your Honor.

23 THE COURT: Okay.

24 MR. SIMMONS: You are correct in both aspects.

25 THE COURT: Okay.

1 MR. SIMMONS: Judge Wise was confirmed --

2 THE COURT: Yes.

3 MR. SIMMONS: -- right at the end of the year  
4 there.

5 THE COURT: Yes.

6 MR. SIMMONS: After serving one year as  
7 coordination --

8 THE COURT: All right.

9 MR. SIMMONS: -- trial judge.

10 THE COURT: Okay.

11 MR. SIMMONS: She has been replaced by Judge  
12 Chatterjee.

13 THE COURT: That's happened already?

14 MR. SIMMONS: Yes.

15 THE COURT: Got it. Okay. That's --

16 MR. SIMMONS: (indiscernible) and --

17 THE COURT: Okay.

18 MR. SIMMONS: -- first session set up for hearing  
19 on January 27th.

20 THE COURT: So, no hearings yet in front of the  
21 new judge?

22 MR. SIMMONS: Correct.

23 THE COURT: Okay. Got you. All right, very good.  
24 Another question, and if you're not the best person to  
25 answer this, feel free to defer to somebody else. I did



1 read over some of the materials re coordination, for lack of  
2 a better word, and there were a number of factors that were  
3 listed there as to how you -- how one intelligently groups  
4 these things. Is it your understanding that it would be the  
5 same factors or similar factors that the coordinating judge  
6 would use in determining the bellwethers or is a whole other  
7 series of considerations?

8 MR. WEISENBERG: Unless --

9 THE COURT: If you know.

10 MR. WEISENBERG: Well, unless Mr. Simmons tells me  
11 otherwise, my understanding that is pursuant to a Court  
12 order, those are the factors.

13 THE COURT: Okay.

14 MR. WEISENBERG: And things will continue in the  
15 ordinary course.

16 THE COURT: Okay.

17 MR. WEISENBERG: In other words, that the  
18 bellwether trials that had been anticipated to occur would  
19 occur using the factors that have been ordered by the Court.

20 THE COURT: So, okay. I wasn't sure if it was as  
21 certain as there were X number that had been definitively  
22 identified and would have gone forward. Is that the case?

23 MR. WEISENBERG: There were six.

24 THE COURT: Okay.

25 MR. WEISENBERG: That had been identified.

1 THE COURT: And is it --

2 MR. WEISENBERG: That --

3 THE COURT: And it's the same six we're talking  
4 about here or not necessarily?

5 MR. WEISENBERG: Not necessarily --

6 THE COURT: Okay.

7 MR. WEISENBERG: -- for the following reason. At  
8 least two of the cases were against the San Francisco  
9 Archdiocese. And another case was against the Santa Rosa  
10 Diocese.

11 THE COURT: Okay.

12 MR. WEISENBERG: Both are in bankruptcy.

13 THE COURT: Yeah.

14 MR. WEISENBERG: And so, obviously those would not  
15 go forward absent --

16 THE COURT: Okay.

17 MR. WEISENBERG: -- the stay.

18 THE COURT: Do you have any sense of what -- would  
19 it be the proposal that you find three others that are  
20 Oakland cases or go forward with the three you have?

21 MR. WEISENBERG: You're asking all the right  
22 questions, Your Honor. And if it's okay with you, we  
23 purposely asked Mr. Simmons to be here today.

24 THE COURT: Sure.

25 MR. WEISENBERG: So, that --

1 THE COURT: People mind getting into this at the  
2 outset? It's very practical, but it's very helpful to me.  
3 Hope that's okay.

4 MR. WEISENBERG: Your Honor, if it would be more  
5 helpful to you to have Mr. Simmons lead off and answer your  
6 questions, I'm more than --

7 THE COURT: Well, no, I don't know that I have --  
8 but my next questions are going to go to sort of how we  
9 frame some things that you're probably going to be more  
10 ready to answer. But no, if Mr. Simmons wants to add  
11 anything at this point because of the questions, come on up.

12 MR. SIMMONS: Your Honor, prior to the filing of  
13 the petition in this matter --

14 THE COURT: Yeah.

15 MR. SIMMONS: -- only one Oakland case had been  
16 set for trial in the JCCP 5108.

17 THE COURT: Okay.

18 MR. SIMMONS: All the other cases that had been  
19 set were involving other diocese: Santa Rosa --

20 THE COURT: Okay.

21 MR. SIMMONS: -- Sacramento --

22 THE COURT: Okay.

23 MR. SIMMONS: -- Fresno --

24 THE COURT: Okay.

25 MR. SIMMONS: -- Archdiocese of San Francisco and

1 Salesian Society.

2 THE COURT: Okay.

3 MR. SIMMONS: And so, one case only --

4 THE COURT: Okay.

5 MR. SIMMONS: -- has been set for Oakland.

6 THE COURT: Okay. So, if we -- if I were to think  
7 about the practicalities of the request and you just give me  
8 as best you can how you would -- if I were to grant the  
9 motion, what happens in a week, in a month, in two months?  
10 Where do you go?

11 MR. SIMMONS: For the one case that was set, trial  
12 was imminent. We were just a couple of weeks away.  
13 Virtually all of the discovery was done. There are a couple  
14 of remaining tasks that we were in the process of performing  
15 and concluding all of the matters for pretrial. So, that  
16 case is almost ready to go, the only caveat being, we have  
17 to have a courtroom assigned.

18 THE COURT: Okay.

19 MR. SIMMONS: We don't have a courtroom. We did  
20 in --

21 THE COURT: It's Alameda County?

22 MR. SIMMONS: -- the other case, but --

23 THE COURT: It's Alameda County?

24 MR. SIMMONS: Yes, Alameda County Superior Court.

25 THE COURT: As would all these be, right?

1 MR. SIMMONS: All these cases would be Alameda  
2 County.

3 THE COURT: Okay. Got it.

4 MR. SIMMONS: As to the other cases, we have,  
5 depending on who the offender is, the perpetrator is,  
6 significant discovery that was done 20 years ago in Clergy  
7 III.

8 THE COURT: Okay.

9 MR. SIMMONS: Almost all of the leading  
10 perpetrators by number were deposed. There were video  
11 depositions. Many of those survived. The transcripts  
12 survived.

13 THE COURT: Okay.

14 MR. SIMMONS: So, there's some discovery.  
15 Personnel files were produced. Police reports were  
16 subpoenaed, et cetera, et cetera. There was some  
17 considerable discovery, plus a trial in which punitive  
18 damages were sought. I tried that case.

19 THE COURT: Okay.

20 MR. SIMMONS: And a lot of evidence was put in to  
21 the trial in front of the jury and the transcript remains  
22 concerning other perpetrators showing policy, procedures, et  
23 cetera, one of the prongs, if you will, of due process in a  
24 punitive damage case. So, there's a large volume of  
25 information having to do with almost all of the major

1 perpetrators by numbers. And by reference, I think over 80  
2 percent of the claims that are in this proceeding are the  
3 top 11 or 12 perpetrators.

4 THE COURT: Okay.

5 MR. SIMMONS: Father Kiesle --

6 THE COURT: (indiscernible).

7 MR. SIMMONS: -- close to 70, et cetera. Yeah.

8 So --

9 THE COURT: Okay.

10 MR. SIMMONS: What remains to be done is some  
11 individual discovery, including depositions of the  
12 individual survivor, probably some depositions of one or two  
13 or three other damage witnesses, expert discovery, things  
14 that could be done in probably a 90- to 120-day timeframe,  
15 if accelerated, would normally probably be done over a  
16 period of a slightly longer. Disclosure of experts usually  
17 comes, you know, 50 days before trial.

18 So, that's the timeframe. And that timeframe also  
19 would allow the new coordination judge to be able to locate  
20 judges, courtrooms, jury panels, and all the things that are  
21 mechanically required to be able to assign the case to  
22 trial.

23 THE COURT: Okay.

24 MR. SIMMONS: Or take it on under his own wing, if  
25 you will, and try it, find a space in his schedule and try

1     it --

2                 THE COURT:   Okay;

3                 MR. SIMMONS:  -- in his own department.  That's  
4     what Judge Wise had intended to do.

5                 THE COURT:  Yeah, okay.  Couple of other quick  
6     ones, and this may be very naive, but in all of this, is  
7     there any sort of mandatory settlement requirement?  Would  
8     you have to go to a settlement conference before you  
9     actually got to the trial or are we past that kind of --

10                MR. SIMMONS:  There's no requirement.

11                THE COURT:  Okay.  So, the parties may choose to  
12     do that, but you may tell me that wouldn't be your first  
13     thought.  I don't know.

14                MR. SIMMONS:  Well, because of the unique  
15     circumstances of having a case referred from the bankruptcy  
16     court --

17                THE COURT:  Yeah.

18                MR. SIMMONS:  -- as opposed to an individual case  
19     --

20                THE COURT:  Yeah, yeah, yeah.

21                MR. SIMMONS:  -- that --

22                THE COURT:  Yeah.

23                MR. SIMMONS:  -- makes individual settlement  
24     discussions --

25                THE COURT:  Yeah, yeah.

1 MR. SIMMONS: -- much more problematic --

2 THE COURT: Yeah.

3 MR. SIMMONS: -- in this context.

4 THE COURT: Okay, and just so I understand then, a  
5 followup to that, I -- obviously you're in a mediation, have  
6 been in a mediation, and I'm assuming that that's pausing,  
7 for lack of a better word, for a little while. If that's  
8 not true, certainly tell me. Anyone can tell me if I'm  
9 wrong about that. But at the point, were I to grant relief  
10 from stay, is there any involvement by the bankruptcy court  
11 at that -- until -- unless and until something is determined  
12 in the state court and we figure out what to do about it, is  
13 the bankruptcy court involved in any way, in your mind?

14 MR. SIMMONS: I would defer --

15 THE COURT: Yeah, that's fine, that's fine.

16 MR. SIMMONS: -- the guy who's got his hand on my  
17 jacket --

18 THE COURT: That's okay.

19 MR. SIMMONS: -- and is pulling me away from the  
20 microphone --

21 THE COURT: That's okay.

22 MR. SIMMONS: -- that issue.

23 THE COURT: That's okay.

24 MR. WEISENBERG: He only said hand on his jacket.  
25 He didn't say yanking, so that --



1 THE COURT: Okay.

2 MR. WEISENBERG: That's a win, Your Honor. Brent  
3 Weisenberg. Your Honor, you've heard us say this a number  
4 of times, which is, given the procedural path of this case  
5 --

6 THE COURT: Yeah.

7 MR. WEISENBERG: -- we believe that there is a  
8 better way to go about resolving the parties' issues. One  
9 of them is through the lift stay motion, right? And that,  
10 we hope, will bridge the huge chasm between the various  
11 values that parties attribute to survivor claims.

12 The other issue is what are or are not estate  
13 assets, what are restricted assets, and that should occur at  
14 the same time in this Court. And so, there's a lot for this  
15 bankruptcy court to do.

16 THE COURT: That I --

17 MR. WEISENBERG: We will not be sitting idly by.

18 THE COURT: I didn't -- I -- and you're kind of  
19 anticipating my next words, and I've got one more for Mr.  
20 Simmons. We'll come back -- no, we'll come back in a  
21 second. One way to look at this, and I think you're -- I  
22 may be expressing it differently from you. I don't suspect  
23 that we're really thinking about it all that differently, is  
24 there is a certain discrete character to the relief from  
25 stay, that there is something we don't know that is more

1 knowable than it is right now.

2 The way to know it is to put the rubber to the  
3 road and find out. And not to be -- not to appear to be  
4 cynical, but if beginning that process by itself has a  
5 salutary effect, that's not the worst thing that ever  
6 happens in these cases. That's number one.

7 One could argue that there is a value to that, no  
8 matter whether I, for lack of a better word, link everything  
9 else to a plan process that you're going to tell me is  
10 fatally flawed and they're going to tell me should at least  
11 continue. Is that fair?

12 MR. WEISENBERG: It is, Your Honor.

13 THE COURT: All right, so we're looking at that  
14 the same way.

15 MR. WEISENBERG: It is, Your Honor.

16 THE COURT: Okay.

17 MR. WEISENBERG: And you're actually going right  
18 down the path that other courts have when looking at a lift  
19 stay motion --

20 THE COURT: yeah,

21 MR. WEISENBERG: Which is, does it keep a level  
22 playing field --

23 THE COURT: Yeah, yeah.

24 MR. WEISENBERG: -- between the participants to  
25 negotiate a plan?

1 THE COURT: Yeah.

2 MR. WEISENBERG: And one of the reasons we're  
3 here, Your Honor, is right now, the Diocese has a plan.  
4 It's playing offense. It has nothing to lose, okay? And  
5 so, we also want to have an opportunity to share our  
6 perspective and frankly, give them something to lose.

7 THE COURT: Right.

8 MR. WEISENBERG: Right? And by the way, it's not  
9 one-sided, okay? We can lose. I think that's important.  
10 It is not like the committee and the individual survivors  
11 are not taking on risk, okay? That is what drives people to  
12 settle.

13 THE COURT: The other piece of this -- I  
14 appreciate all that. The other piece of this I'm trying to  
15 fit together, and if the answer is the same, you'll tell me  
16 that and I'll feel silly, but the -- another way to look at  
17 this is, a lot of what you don't like about the -- some of  
18 what you don't like about the plan is the way the litigation  
19 possibilities are lined up now and what's, in your mind, way  
20 more restrictive in terms of recoveries than would be the  
21 case if we were not in a bankruptcy and we were just  
22 litigating in state courts, okay?

23 But a very large part of it -- and I say this not  
24 knowing what the answer is yet because you're both taking --  
25 you know, you're taking very serious positions that I have

1 to play out more. A big part of it is what's in the estate,  
2 how do I think about this debtor, how do I think about  
3 parties related to this debtor, and why isn't that pot a  
4 whole lot bigger?

5 And that seems to me -- I mean, what I'm missing  
6 at the moment -- and I'm not saying there has to be a  
7 connection, but it seems to me there's two different things  
8 going on and two different dynamics between the let's lift  
9 the stay and find out what some of these claims are worth  
10 and what you are largely vocally telling me you don't like  
11 in the plan, which is it's not nearly adequate to the need  
12 here.

13 Now, if those things overlap simply because you  
14 need to know the amounts first, you know, there's some logic  
15 to that. But in terms of the, for lack of a better word,  
16 the leverage pieces, it seems to me they're a little  
17 different. And that -- that's a reason why I might grant  
18 the motion for relief from stay, too.

19 MR. WEISENBERG: Those issues go hand in hand.

20 THE COURT: Okay.

21 MR. WEISENBERG: In our mind, because we've  
22 explained to the Court that the two fulcrum issues  
23 preventing us from getting to yes are the value of survivor  
24 claims and what comprises the estate. Until we have those  
25 issues resolved, we believe there's a number of fatal flaws

1 in both the disclosure statement for its inability to tell  
2 survivors what the value of survivor claims are. We submit  
3 there's been no evidence whatsoever other than conjecture by  
4 the debtor.

5 We also believe that we are worlds apart on what  
6 comprises the debtor's estate. And so, you know, the debtor  
7 continually, you know, seeks to cast aspersions on us for  
8 our alternate vision. We don't shy away from that, Your  
9 Honor. This -- we've been very transparent that we are a  
10 party trying to set this case on course for a linear and  
11 logical conclusion. And that's allowing all parties to have  
12 the same knowledge.

13 If Your Honor decides certain property is or is  
14 not in the estate, that will guide the parties. If the  
15 state court ultimately issues certain rulings about the  
16 value of claims or the insurer's defenses, that too will  
17 guide parties and it's those where you see kind of them  
18 melding together and driving parties to settle, because  
19 right now we're just too far apart.

20 We have vehement disagreements and we can all  
21 submit expert reports or frankly, we can do our best to  
22 convince Your Honor. But why don't we allow a real Alameda  
23 jury to inform us on what is the value of a survivor claim?

24 THE COURT: So, one more question for you and  
25 maybe Mr. Simmons will have to jump in on this, too. In my

1 fairly simple view of this, I grant relief from stay and the  
2 task of the Alameda courts is to come up with a number on a  
3 liability amount, right? I mean, they will try them and  
4 there will be determination of liability or not and how  
5 much, but will that implicate any of the insurance coverage  
6 issues that you're talking -- will that by itself?

7 MR. WEISENBERG: It should, Your Honor.

8 THE COURT: Okay.

9 MR. WEISENBERG: In fact, one of the points we  
10 argue in our motion is that -- or at least as you know, one  
11 of the prongs of the lift stay test --

12 THE COURT: Yeah.

13 MR. WEISENBERG: -- is, what is the impact on the  
14 estate. And we submit that the impact on the estate will be  
15 de minimis. Why? Because the insurers will have to step up  
16 to defend. And if they don't, they're facing grave risk for  
17 putting themselves at exposure for additional claims.

18 THE COURT: But the -- is the second piece of that  
19 part of another proceeding or is that determined in some way  
20 by what the jury does?

21 MR. WEISENBERG: I'm getting a little out of my  
22 element and I'll --

23 THE COURT: Okay.

24 MR. WEISENBERG: My question make sense, Mr.  
25 Simmons?

1 MR. SIMMONS: Yes, it does, Your Honor.

2 THE COURT: Okay, come on up and tell me.

3 MR. SIMMONS: I think the answer to your question  
4 is, it's both.

5 THE COURT: Okay. Well, as in some of the things  
6 the jury would do would inform the second proceeding, would  
7 there be a second proceeding?

8 MR. SIMMONS: There would not necessarily be a  
9 second proceeding --

10 THE COURT: Okay.

11 MR. SIMMONS: But there certainly may be a second  
12 proceeding, an independent proceeding involving either the  
13 third party -- that would be the plaintiff in the case --  
14 direct action against the insurers or actions by the  
15 insured, the debtor, against their own insurer and some  
16 combination of the two ---

17 THE COURT: Okay.

18 MR. SIMMONS: -- bad faith law, so --

19 THE COURT: Okay.

20 MR. SIMMONS: That -- it's a complex --

21 THE COURT: Okay.

22 MR. SIMMONS: -- situation and the result of the  
23 case will drive which --

24 THE COURT: Right, right.

25 MR. SIMMONS: -- streets or multiple streets --

1 THE COURT: Okay.

2 MR. SIMMONS: -- the case goes.

3 THE COURT: I'll ask your opinion of this and I'm  
4 going to want to ask the debtors, too. Were I to grant  
5 relief from stay, what's the debtor's participation in the  
6 trials? Can you describe that for me?

7 MR. SIMMONS: The -- assuming that there's  
8 coverage paying costs of defense --

9 THE COURT: Yeah.

10 MR. SIMMONS: -- there would not be a financial  
11 implication to the debtor. However, who represents the  
12 debtor has been for the 25 years that I've been doing these  
13 cases with the Diocese of Oakland, the Foley firm. And I  
14 would assume that they would continue to be defense counsel,  
15 both because of their experience and knowledge in the field  
16 and with this defendant specifically.

17 THE COURT: Okay. And who -- and I'll ask this of  
18 the debtor, too. Who on the debtor side do you expect is  
19 like -- who are the witnesses? Am I -- are you going to  
20 have the CFO on the witness stand for a day or two or do you  
21 know yet?

22 MR. SIMMONS: I don't anticipate the current CFO  
23 having --

24 THE COURT: And I'm using that kind of  
25 metonymically.



1 MR. SIMMONS: Yeah.

2 THE COURT: I mean -- yeah.

3 MR. SIMMONS: The bishop is certainly a possible  
4 witness.

5 THE COURT: Okay.

6 MR. SIMMONS: The former bishop in the case that  
7 was selected for trial --

8 THE COURT: Would have been. '

9 MR. SIMMONS: The former bishop who's now  
10 Archbishop of San Francisco --

11 THE COURT: Okay.

12 MR. SIMMONS: -- would -- his deposition has been  
13 taken and --

14 THE COURT: Okay.

15 MR. SIMMONS: -- he would be a relevant witness.

16 THE COURT: Okay.

17 MR. SIMMONS: The former chancellor would be a  
18 witness from the defense.

19 THE COURT: Okay.

20 MR. SIMMONS: She is no longer an employee of the  
21 Diocese.

22 THE COURT: Okay.

23 MR. SIMMONS: And she has been videotape  
24 depositioned --

25 THE COURT: Okay.

1 MR. SIMMONS: -- in this case.

2 THE COURT: Okay.

3 MR. SIMMONS: She also testified in 2005.

4 THE COURT: Okay.

5 MR. SIMMONS: And we have that transcript.

6 THE COURT: Okay.

7 MR. SIMMONS: There would likely be one or two  
8 others who may be either priests, retired priests, or former  
9 priests who had relevant information from the  
10 contemporaneous time of Father Kiesle's service as a priest.  
11 There certainly would be Kiesle's videotaped deposition.  
12 It's been taken twice. We took it in 2005 at Mule Creek  
13 Prison and we took it as a collaborative effort of all of  
14 the Kiesle cases in the proceeding in state court that's  
15 currently pending.

16 THE COURT: Okay.

17 MR. SIMMONS: So, there's two video depositions --

18 THE COURT: Okay.

19 MR. SIMMONS: -- of the perpetrator.

20 THE COURT: Okay. One -- and then one last  
21 question, I think. What, if any, motion practice do you see  
22 between, I lift the stay and you end up in a trial? I mean,  
23 I'm assuming there's always motions in lim, right, that kind  
24 of thing, because it's a trial.

25 MR. SIMMONS: Certainly.

1 THE COURT: Anything else that you see now?

2 MR. SIMMONS: That is a question that would have  
3 to go to the defense.

4 THE COURT: Okay.

5 MR. SIMMONS: In my view -- well, if I could maybe  
6 give a little foundation --

7 THE COURT: Yeah, sure.

8 MR. SIMMONS: -- for that.

9 THE COURT: Yeah.

10 MR. SIMMONS: The way the first case was chosen  
11 was I chose the perpetrator, Kiesle, as the most prolific in  
12 all of Northern California.

13 THE COURT: Okay.

14 MR. SIMMONS: The defense, Mr. Carlucci, chose the  
15 individual survivor, Steve Woodall, the -- now chairman of  
16 the creditors committee. It was a collaborative effort.  
17 The process we have followed in setting trials throughout  
18 5108 has been a collaborative effort between plaintiffs'  
19 liaison counsel, defense liaison counsel, and then the  
20 attorney for the individual plaintiff, if it's not me, and  
21 for the individual defendant, if it's not liaison counsel.

22 THE COURT: Okay.

23 MR. SIMMONS: So, there's discussions among  
24 ourselves. We may or may not agree. Where there's  
25 disagreement, one of the processes that has been used is we

1 each submitted a brief with, you know, here's our eight  
2 nominations, and the trial coordination judge reviewed it  
3 and chose from the list. We have done it by agreement.

4 THE COURT: And that's all standard operating  
5 procedure there, right?

6 MR. SIMMONS: These are all standard --

7 THE COURT: Okay.

8 MR. SIMMONS: -- operating procedure in any  
9 coordination.

10 THE COURT: Right, so they're not reinventing the  
11 wheel or nobody's blindsided by any of this?

12 MR. SIMMONS: Right.

13 THE COURT: In your mind. Okay.

14 MR. SIMMONS: There's criteria.

15 THE COURT: Okay.

16 MR. SIMMONS: There's discussion and meeting and  
17 conferring what case makes the most sense to be set for  
18 trial is what we've been doing now for unfortunately about  
19 four years. But there's a lot of cases that --

20 THE COURT: I learned about this sort of  
21 indirectly through that MDL versus 11 conversation that was  
22 going on for a few years now, and I've been part of those in  
23 more academic places. So, thank you. Is -- this is very  
24 helpful.

25 MR. SIMMONS: There's probably -- we've had about

1 40 cases, I think, set for trial.

2 THE COURT: Okay.

3 MR. SIMMONS: In 5108.

4 THE COURT: Okay.

5 MR. SIMMONS: And we're going to have another list

6 --

7 THE COURT: Okay.

8 MR. SIMMONS: -- in --

9 THE COURT: Okay.

10 MR. SIMMONS: In January.

11 THE COURT: All right. Okay. Well, thank you.

12 MR. SIMMONS: -- Your Honor.

13 THE COURT: Mr. Weisenberg, that was a great  
14 opening and it educated me as always. But, no, I mean, now,  
15 make your argument.

16 MR. WEISENBERG: Your Honor, that's all I had.

17 Thank you.

18 THE COURT: Go ahead. Okay.

19 MR. MOORE: Well, briefly, Your Honor. May we  
20 respond to some of the things that have been said?

21 THE COURT: You want to do it now?

22 MR. WEISENBERG: That's fine by us, Your Honor.

23 THE COURT: I -- sure, if it's okay with you,  
24 sure. Come on up.

25 MR. MOORE: First, Your Honor, I want to note for

1 the record that this morning, the Diocese filed a motion to  
2 compel the parties back to mandatory mediation.

3 THE COURT: I saw that.

4 MR. MOORE: It's our intention that that mediation  
5 be unified, it be singular, and it be with all parties  
6 present. And we do believe that that's an appropriate next  
7 step. At the same time, we have filed our amended plan and  
8 amended --

9 THE COURT: Yeah.

10 MR. MOORE: -- disclosure statement --

11 THE COURT: Yep, yep, yep.

12 MR. MOORE: -- that we do believe is confirmable,  
13 fair, and equitable. I understand there's things that the  
14 committee doesn't like about that plan, and I understand  
15 that there's aspects to it that may need further  
16 development. We have spent a tremendous amount of time and  
17 energy trying to create something that we believe is  
18 confirmable, fair, and equitable.

19 THE COURT: Can I ask you a question? And you're  
20 more likely to answer this on the 16th. Are you able to  
21 tell me that if you were to, in your mind, resolve other  
22 technical or thematic issues that are on the table now, that  
23 I think we all talked about a couple weeks ago or so, if the  
24 voting in the abuse survivors class were largely negative,  
25 are you suggesting to me we could cram the plan down or will

1 you be suggesting that on the 16th?

2 MR. MOORE: Your Honor, we'll have to cross that  
3 bridge whenever we get there, but I --

4 THE COURT: Okay, but would that be an argument  
5 you'll be prepared to make on the 16th, for example?

6 MR. MOORE: From a legal perspective, Your Honor  
7 --

8 THE COURT: Yes.

9 MR. MOORE: -- there is no impediment in the  
10 bankruptcy code to cram down in a plan like this.

11 THE COURT: Okay.

12 MR. MOORE: Now, whether we go that direction --

13 THE COURT: Yeah.

14 MR. MOORE: -- will largely depend --

15 THE COURT: That's a fair answer, because I think  
16 there's many answers to that question; that's one of them.

17 MR. MOORE: I understand, Your Honor.

18 THE COURT: Okay.

19 MR. MOORE: But the goal of the disclosure  
20 statement is to propose our plan --

21 THE COURT: Yeah.

22 MR. MOORE: -- and to provide people with adequate  
23 information about it. We do believe that we have crafted a  
24 process that will allow creditors to make meaningful choices  
25 about their own distributions and accomplish basically the

1 exact same thing that test cases or the lift stay would do.  
2 Because what I think you have to think about, Your Honor, is  
3 what the committee wants to do is take six cases out of  
4 almost 400.

5 THE COURT: Can I just pause you for a second?

6 MR. MOORE: Of course.

7 THE COURT: I thought you were going to respond to  
8 what Mr. Weisenberg had said. He -- I would give him the  
9 chance to make his argument.

10 MR. MOORE: I apologize, Your Honor.

11 THE COURT: That's okay.

12 MR. MOORE: No, we --

13 THE COURT: If you want to -- if there's some  
14 other things that came out because this was totally even  
15 more unscripted than usual around here, and we all learned  
16 something, but so respond to that, if you would, first.

17 MR. MOORE: Absolutely, Your Honor, and the first  
18 thing that did jump to mind was, you asked the question  
19 about practically how would the lifting of the stay work.

20 THE COURT: Yeah.

21 MR. MOORE: The committee goes to great pains to  
22 distance itself from the actual selection of the six test  
23 cases, because they say we're going to go back to the state  
24 court, JCCP 5108, and use those criteria and they list the  
25 criteria. There's 14 of them --



1 THE COURT: Yeah.

2 MR. MOORE: -- that they list in their motion.

3 One of those is not trial readiness. There are all kinds of  
4 other things about issues and whether they're -- whether  
5 discovery's been taken, things of that nature, but it's not,  
6 are we ready for trial?

7 THE COURT: Well, let me ask you -- let me ask you  
8 a dumb question. Could I -- I mean, the stay is infinitely  
9 malleable, right? I -- if I'm going to do something to it,  
10 I can condition what I do to it. I mean, I could impose a  
11 condition that we only talk about cases that are ready to  
12 trial within X, right? Couldn't I do that?

13 MR. MOORE: You could, Your Honor, but --

14 THE COURT: I mean, I don't want to interfere with  
15 the Alameda court, but to the extent I'm allowing something  
16 to go forward that's not going forward otherwise, I -- could  
17 I do that?

18 MR. MOORE: You could do that, Your Honor, but --

19 THE COURT: Okay.

20 MR. MOORE: -- you're kind of getting to the point  
21 I'm trying to make, which is, you asked the question of  
22 practically how would this work.

23 THE COURT: Yeah.

24 MR. MOORE: The only real answer to that question  
25 is we don't know.

1 THE COURT: Okay.

2 MR. MOORE: Because those cases haven't been  
3 chosen.

4 THE COURT: Okay.

5 MR. MOORE: We're not back in state court. We  
6 can't say with any degree of certainty how quickly things  
7 would or would not happen because the cases aren't there.  
8 The committee's papers talk about the same case that Mr.  
9 Simmons talked about, which is Mr. Woodall's case.

10 THE COURT: Well -- go -- finish your line, I'm  
11 sorry.

12 MR. MOORE: But that's not guaranteed to be chosen  
13 --

14 THE COURT: Yeah.

15 MR. MOORE: -- by a new judge --

16 THE COURT: Yeah.

17 MR. MOORE: -- who's unfamiliar with this process  
18 or relatively unfamiliar with this process. And so, any  
19 takeaways that we try to make about this will only take 60  
20 to 90 days --

21 THE COURT: Yeah.

22 MR. MOORE: -- it'll only take six months. The  
23 fact of the matter is that we just don't know.

24 THE COURT: Yeah.

25 MR. MOORE: And the Court ended kind of where I

1 want to redirect, which is this will take a substantial  
2 amount of attention, time, and energy from the debtor during  
3 the time when we're simultaneously trying to propose and  
4 confirm our plan. You heard, I think, not fewer than four,  
5 maybe five witnesses that would have to testify or be  
6 deposed, one of whom is the bishop.

7 THE COURT: Now, again, I think we're getting a  
8 little into the main argument on this. So, I would -- I  
9 have a question for you, and then --

10 MR. MOORE: Absolutely.

11 THE COURT: -- I would ask you to direct back to  
12 things that were more, you know, more directly stated, okay?

13 MR. MOORE: Just trying to answer your question,  
14 Your Honor, but go ahead.

15 THE COURT: No, I -- well, if I've misconceived my  
16 own question, it's my fault. In this business of, you know,  
17 I'm sort of a traffic cop with respect to what happens here,  
18 and I become a traffic cop to the extent I'm asked to lift  
19 the stay.

20 MR. MOORE: Of course. You know, would it -- I  
21 know you don't like being asked this question, but is there  
22 a world in which I could say, I'm lifting the stay, but I'm  
23 doing it conditioned on, there would be some sort of a meet  
24 and confer among the parties and a proceeding in front of  
25 the Alameda state court, and then I would get a report about

1 the status so that we're -- you know, if I were concerned  
2 about not listing among the six cases one that's going to  
3 take eight years to get to trial, I could further modify my  
4 order at that point.

5 Do you think -- I mean, I don't want to be telling  
6 the Alameda County courts what to do, but it seems to me  
7 that if I am thinking favorably about this, it's because it  
8 is practically doable, and it's going to be a reasonably  
9 prompt schedule.

10 MR. MOORE: Your Honor, I'm at somewhat of a  
11 disadvantage because --

12 THE COURT: Maybe I shouldn't ask you that.

13 MR. MOORE: -- I am not a California state court  
14 attorney.

15 THE COURT: Yeah.

16 MR. MOORE: I will say, I am quite confident that  
17 the Court can fashion whatever it feels is an appropriate  
18 remedy.

19 THE COURT: Okay.

20 MR. MOORE: I think -- and this will go directly  
21 into the main argument, so I won't say too much about it.

22 THE COURT: Okay.

23 MR. MOORE: The question I think you have to  
24 answer is why. Why would we go to that step? What would it  
25 practically add to the process and what do we do in the

1 meantime?

2 THE COURT: Yeah, I mean, I did -- I'm not trying  
3 to interrupt you too much, but I did read in one of the  
4 transcripts that somebody had mentioned to Judge Wise that  
5 the possibility of some sort of discussion, coordination,  
6 whatever you want to call it, between that Court and this  
7 Court, and she said, I'm avoiding that, and I certainly  
8 understand why.

9 MR. MOORE: Right.

10 THE COURT: Can I plant a seed in everybody's head  
11 here? Were I to take this concept more seriously, does  
12 anybody think it would be a good thing for this Court and  
13 the state court to talk about that process? Or do you think  
14 -- does anybody think it's the worst idea you ever heard or  
15 inappropriate or -- you know, why don't we start with the  
16 gentleman at the lectern. I -- but I'll certainly hear you  
17 on it too, okay?

18 MR. MOORE: Your Honor, fundamentally, if the  
19 Court were to take that step --

20 THE COURT: Yeah.

21 MR. MOORE: -- I don't --

22 THE COURT: But I'm throwing it -- I don't -- I'm  
23 not saying I would. I'm curious --

24 MR. MOORE: I understand.

25 THE COURT: -- your reactions, okay?

1 MR. MOORE: If we were to take that place, then I  
2 am quite confident that the Court can speak to the other  
3 court, the state court, and fashion something that is  
4 appropriate under the circumstances.

5 THE COURT: Okay.

6 MR. MOORE: That doesn't --

7 THE COURT: Well, no. What that would be, if  
8 anything, is a whole other question. It may be the state  
9 court convinces me that this is the worst idea I ever had,  
10 and I should just leave it to them. If I'm going to leave  
11 it to them at all, leave it to them entirely, that's fine.  
12 I don't know. Okay, all right, thank you very much. I  
13 appreciate it.

14 MR. MOORE: Absolutely, Your Honor.

15 THE COURT: Okay. I look forward to you -- the  
16 rest of your argument. Thanks. Come on up.

17 MR. WEISENBERG: Few quick points, Your Honor.  
18 First, spoiler alert. The committee is going to oppose the  
19 mediation motion. And I never thought I'd utter those words  
20 because we want, equally as any other party, to resolve  
21 this. But we continually hear the debtor cry poverty, that  
22 they are in desperate need for a resolution.

23 But what has changed since the last time we  
24 mediated? Nothing. And so we're happy to mediate as things  
25 develop, when things change. That is the whole thrust of

1       these motions, is to drive settlement by giving everybody  
2       some exposure to risk. And once that progresses, okay, and  
3       decisions are made, the parties will have to reevaluate  
4       their positions.

5               But standing here today, as compared to November,  
6       nothing is different. Neither side has any incentive to  
7       have changed their worldview. And so again, that's one of  
8       the driving forces behind this. Even admittedly, if it  
9       exposes the committee, or more particularly survivors, to  
10      risk of loss, that's a fact of life. That's what drives  
11      mediation.

12             And I know, Your Honor, you'll give us an  
13      opportunity to speak more about that but I don't want Your  
14      Honor to be lulled into the sense that this proposed all-  
15      hands mediation will be the panacea, and we need not worry  
16      about any of these issues. Because we believe, even more  
17      so, that these issues need to be resolved.

18             Your Honor, one of the points we made earlier in  
19      our brief was that having studied the motions filed in other  
20      cases, the first argument in just about every objection by  
21      an insurer or the debtor was the committee has their fingers  
22      on the scale. They're choosing the cases. That's  
23      inherently unfair.

24             And so, in response, we decided, we will have no  
25      influence on this. We will follow the state court order and

1 its procedures in allowing what cases to go forward. Your  
2 Honor noticed the criteria? Ultimately, that is the state  
3 court's decision to allow what cases to proceed. And so, to  
4 avoid all the criticism, we purposely divorced ourselves  
5 from that process, okay?

6 That doesn't mean to say, as Mr. Simmons says, we  
7 don't have the opportunity to make suggestions, as does the  
8 defendants in those cases. But ultimately, it's up to the  
9 state court, and the state court will understand what it is  
10 trying to achieve. And if Your Honor feels the need to  
11 speak with the state court to remind them of what we're  
12 trying to do here, all the more better.

13 THE COURT: Okay.

14 MR. WEISENBERG: There's another indication or  
15 another fact, Your Honor, which cries for determining what  
16 the value of these claims are. In the debtor's disclosure  
17 statement, they assert that the aggregate value of abuse  
18 claims is \$98 million. Yet, in the plan, they're paying  
19 survivors \$103 million, plus assigning the Livermore  
20 property.

21 So, either this is a full pay plan, or the debtors  
22 are not so secure in their valuation. And so, to even  
23 determine what the treatment is under the plan, we have to  
24 do more than just make certain assumptions.

25 And again, I'll just make the point quickly,



1     because I've already made it. What better way to value  
2     claims than to listen to the very people who are charged  
3     with making that decision, a jury of a survivor's peers? We  
4     can eliminate the conjecture.

5             Now, you will undoubtedly hear from the parties,  
6     every case is unique. What's the purpose of this if it's  
7     only six? The committee has already argued there's no  
8     market for survivor claims. There's at least two responses  
9     to that. Number one, Your Honor, in order to be designated  
10    a coordinated proceeding, there has to be a finding that  
11    there's common issues of law and fact.

12            Number two, in the Court's order, it recognizes  
13    that there's common issues of law and fact, and in fact,  
14    that's one of the reasons the Court ordered the bellwethers.  
15    It said, I'm going to use these because it's going to help  
16    us determine the value of claims. Now, we all know each one  
17    has their differences, but here's an anecdote that I think  
18    is really important, and we put this in our papers.

19            In the Clergy III cases, there were roughly 60-ish  
20    survivors who were prosecuting their cases, but seven went  
21    to trial. And after those seven went to trial, the rest  
22    settled. Why is that? Because the parties were able to  
23    determine certain themes, depending on notice -- although we  
24    submit that notice under California is not required for  
25    cases like this -- depending on the perpetrator, depending

1 on the individual survivor.

2 Were they -- and I don't like using this phrase,  
3 but just to -- high-functioning or low-functioning. In  
4 other words, measuring damages. What would an Alameda  
5 County jury award someone who has these attributes? And so  
6 they extrapolated from those cases and that drove  
7 settlement. So, when you hear today, Your Honor, that this  
8 is a fool's errand, history tells us otherwise. That's just  
9 not the case. And in fact, as we pointed out in our papers,  
10 the Buffalo court said that very thing, that litigation at  
11 the courthouse steps drives settlement.

12 I'm sure Your Honor also noticed that the  
13 similarities between the Portland case and ours are  
14 overwhelming. So, you will hear in distinction to the  
15 Buffalo case, well, that happened after five years. We're  
16 not there yet. Well, guess what? In the Portland case,  
17 case was pending for 18 months. Also in that case, a plan  
18 was on file, but the Court ultimately decided that allowing  
19 that plan to go forward wasn't useful at that time because  
20 the parties were so far apart in mediation that allowing  
21 some cases to go forward may force the party to reevaluate  
22 their position.

23 THE COURT: Let me stop you for a second. Would  
24 it be your view that if I were to lift the stay that we  
25 would necessarily have to pause everything having to do with

1 the plan or could there still be good work done to focus the  
2 plan in on maybe complimentary, but arguably discrete  
3 issues?

4 MR. WEISENBERG: Your Honor, we want to be the  
5 party of progress. We don't necessarily want to slow things  
6 down. At the same time, we have fundamental disagreements  
7 about the plan's treatment of survivors. That doesn't mean  
8 that there can't be other places where we can work  
9 collaboratively to try to narrow our misunderstandings or  
10 differences, and we're all for that.

11 THE COURT: Okay.

12 MR. WEISENBERG: So --

13 THE COURT: So, to the extent Judge Perez  
14 basically said, if we're doing A, we're not doing B, you  
15 think there's a more nuanced approach?

16 MR. WEISENBERG: Right, Your Honor.

17 THE COURT: Okay. Appreciate it. Thank you very  
18 much. How about the cases that are cited to me where judges  
19 have said, I don't think it's a good idea to lift the stay?  
20 Give me some thoughts about those.

21 MR. WEISENBERG: Sure. Sure.

22 THE COURT: Some very distinguished jurists have  
23 come to that conclusion, so.

24 MR. WEISENBERG: That's right, Your Honor, and we  
25 would submit each is factually distinguishable. In fact --

1 THE COURT: Yeah, I know, but --

2 MR. WEISENBERG: The 40 or minutes so (sic) we've  
3 spent talking about the Oakland case makes that point.  
4 Which is, in those cases, there wasn't already a proceeding  
5 in place whereby bellwether trials were teed up, where there  
6 were actual criteria that a state court had ordered be  
7 considered in order to move the process forward. And so --

8 THE COURT: This is Syracuse and Rockville?

9 MR. WEISENBERG: Yeah, and so in a lot of those  
10 cases, the Court said, if I send this back to state court, I  
11 don't know how long it's going to take. How are you going  
12 to choose the cases? And remember, in a lot of those cases,  
13 it was the committee suggesting they select the cases. And  
14 I could appreciate if a judge may have concern about that.  
15 Again, all the more reason why we've said we won't have our  
16 finger arguably on the scale.

17 There's other reasons, Your Honor. We don't want  
18 to be here in five years, right? Timing is going to be a  
19 big issue. You're going to hear today that it's premature,  
20 okay? But our fear is that if we go down the road of plan  
21 confirmation, and if we're right, and you do not confirm the  
22 plan, we are right back here today having accomplished  
23 nothing.

24 We don't know what the value of the claims are and  
25 we certainly have adjudicated what the value of the estate

1 is. And so, I think Your Honor raised a good point, which  
2 is, can we do both? Potentially. Depends on what the  
3 Diocese means and what the Court means about progress in a  
4 plan. I don't think we're going to agree on the valuation  
5 of claims, absent a lifting of the stay, okay, but that's  
6 what makes this case different.

7 A few other distinctions that we pointed out. In  
8 the Guam case, I believe it was state court counsel that had  
9 proposed that two cases be selected. And when the Court  
10 asked the movants how the cases would be selected, they  
11 shrugged their shoulders. They had given it no thought,  
12 okay?

13 In Rochester, the irony here is that while the  
14 Court denied the lift stay -- and standing here today, I  
15 don't know why the Court denied that motion. Attached to  
16 the debtors' exhibit was the order, but there's no  
17 explanation. A few months later, the Court was asked  
18 whether it should extend the automatic stay or an injunction  
19 to the parish parties. And ultimately, it decided it should  
20 not. And eight, nine, ten months later, the case settled.  
21 Okay?

22 Rockville Centre, very similar. There were  
23 roughly 220 cases that were pending in the state courts.  
24 And ultimately the Court decided to allow those cases to  
25 proceed. Shortly thereafter, the case settled, and we

1 attached to our motion the four orders indicating when those  
2 state court cases --

3 THE COURT: Yeah.

4 MR. WEISENBERG: -- were going to trial and  
5 compare that to when a settlement was reached. There is a  
6 correlation. And so, our case is very different from those  
7 in those senses.

8 THE COURT: Okay.

9 MR. WEISENBERG: I'm sorry, Your Honor. One more  
10 distinction, which is important, which is in the New Orleans  
11 case, the judge had grave concerns about the administrative  
12 expense. And as we've indicated to Your Honor, we are  
13 trying to reach a global resolution, okay? We cited for  
14 Your Honor the insurer's pleadings in San Francisco, where  
15 they say the optimal goal in a bankruptcy case like this is  
16 global settlement.

17 They also point out the use of data points and how  
18 that might be helpful to that end. And so here, Your Honor,  
19 the hope is that the cases would be covered by insurance and  
20 the insurers would step up to defend. And again, if they  
21 didn't, there are consequences, but it's the very real  
22 possibility that the Diocese will suffer little, if any, in  
23 extra administrative burden because it's the insurers who  
24 have to defend. And that makes this case a lot different  
25 than New Orleans.

1 THE COURT: Okay.

2 MR. WEISENBERG: Bear with me, Your Honor. I just  
3 would like to go through my notes and obviously, if there's  
4 anything I haven't touched on that you'd like me to, I'm  
5 happy to do so.

6 THE COURT: No, it's been very helpful. And thank  
7 you for addressing my questions.

8 MR. WEISENBERG: Your Honor, there's one issue I  
9 haven't touched on, which is important, and Mr. Moore  
10 touched on it, but I think you need to hear our perspective.  
11 You're also going to hear today that the motion, in some  
12 senses, is unnecessary. What is the committee complaining  
13 about? This is what we're giving them in mere weeks. The  
14 insurers are salivating over the litigation option under the  
15 plan.

16 Why? Because it wholly prejudices survivors'  
17 rights. It is an unfair comparison to say these lift-stay  
18 cases are the same as what might happen in a few weeks. And  
19 in our papers, we explained to Your Honor that the  
20 assignment -- and we typically hear all about insurance  
21 neutrality. Well, the irony here is it's not insurance  
22 neutral because it so strips survivors' rights, their rights  
23 to request or to ban bad faith claims and a host of others.  
24 So, these -- that's not a fair comparison.

25 We're not getting what we'd be getting under these

1 lift-stay or these bellwether trials in a few weeks. In  
2 fact, if Your Honor was to approve them, survivors would be  
3 greatly detriment -- it would be greatly detrimental to  
4 their rights under California law, frankly violating  
5 California state law.

6 So, it's a false comparison when they say, I don't  
7 know what the problem is, they're getting this in mere  
8 weeks. I think that's a very important distinction that  
9 Your Honor should keep in mind.

10 THE COURT: Okay.

11 MR. WEISENBERG: Your Honor, we only heard a  
12 little bit about the relevancy of Rule 2-2019. I don't want  
13 to get out ahead of that. Obviously, we'd like the chance  
14 to respond after we hear what the insurers have to say about  
15 that.

16 THE COURT: Okay, thank you.

17 MR. WEISENBERG: One sec, Your Honor, if you don't  
18 mind. Could I ask my colleagues if I've missed anything?

19 THE COURT: Yeah. Okay, sure.

20 MR. WEISENBERG: Your Honor, I misspoke and I  
21 apologize and I want to correct the record. I may have  
22 intimated that the trials that the debtor and the insurers  
23 envision are mere weeks away; and in fact, we actually take  
24 a very different position in our papers and we point out  
25 that under the plan, a holder of a claim who wants to



1 exercise the litigation option can't do so for at least 90  
2 days after the initial determination. And we don't know how  
3 long it's going to take for that initial determination.

4 The initial determination is the abuse claims  
5 reviewer's review of the claim in order to quantify how many  
6 points it would be awarded and in turn, try to determine  
7 what their pro rata share of the survivor's trust is. So,  
8 the notion that those cases are mere weeks away, we  
9 obviously dispute.

10 One more thing, Your Honor, then I promise I will  
11 cease. Mr. Simmons thought he could be helpful to you in  
12 addressing one or two of your questions that I wasn't able  
13 to answer.

14 THE COURT: Okay.

15 MR. WEISENBERG: So, if it's okay with you, I'd  
16 like him to --

17 THE COURT: Sure.

18 MR. WEISENBERG: -- address that and then I'm  
19 complete for now. Thank you.

20 THE COURT: Thank you. Okay.

21 MR. SIMMONS: Thank you, Your Honor. Your comment  
22 about Judge Wise's comment, her actual comment was she wants  
23 to stay in her lane. That was directed towards what we call  
24 bucket two cases. We have three buckets. One, nobody's in  
25 bankruptcy. Two, some defendants are and some defendants

1       aren't. And three, everybody is.

2               In the bucket two cases, Judge Wise was reluctant  
3       to determine on her own without guidance from the bankruptcy  
4       court to what extent the automatic stay applied to various  
5       co-defendants, whether they be parishes, schools, religious  
6       orders, or whoever. And that was the stay in the lane  
7       comment --

8               THE COURT: Okay.

9               MR. SIMMONS: -- that she offered.

10              THE COURT: Okay.

11              MR. SIMMONS: It didn't pertain to anything else.

12              THE COURT: It was nothing -- it was not otherwise  
13       administratively --

14              MR. SIMMONS: Correct. Yes, Your Honor.

15              THE COURT: Okay, directed. Okay.

16              MR. SIMMONS: Secondly, there is already -- there  
17       has already been an extensive exchange of information called  
18       initial fact sheets and document productions in many of the  
19       cases, probably any case that would be legitimately  
20       considered for a bellwether trial out of the six. That was  
21       done in 2020.

22              The order was adopted in early 2021 and many cases  
23       had an exchange of significant biographical information,  
24       sort of like the equivalent of original written discovery in  
25       a non-bankrupt type of proceeding, original discovery, a

1 questionnaire under penalty of perjury, verified with  
2 document production, authorizations to obtain records, and  
3 all of this had been provided by the plaintiffs to the  
4 defendant in those early cases and in their part, the  
5 defense fact sheet provided personnel file, insurance  
6 information, and other information about other claims  
7 involving that perpetrator, et cetera.

8 So, for cases where we're going to consider them  
9 and that the Court would likely be ready to approve, we're  
10 not starting from the starting line. We're starting, you  
11 know, after a couple of laps have been run.

12 THE COURT: Okay.

13 MR. SIMMONS: Then the 2003 experience, which  
14 actually was 2005, because 2003 was the window, there was an  
15 open trial with two plaintiffs. Before that, two cases had  
16 settled, one in the middle of a jury trial and one involving  
17 some very unique circumstances that caused everyone to want  
18 to have that case settled. I was counsel in that case.

19 The remaining cases, there were 54 remaining open  
20 cases. After the verdict in 2005, we went to a mandatory  
21 settlement conference with Judge David Hunter presiding for  
22 all 54 cases. The process we followed was each case was  
23 negotiated individually. No individual settlement was  
24 effective unless all 54 cases settled.

25 And with the threat of more trials looming,

1 eventually Bishop Vigneron, then the Bishop of Oakland, and  
2 the plaintiffs individually all agreed and all 54 cases were  
3 settled and that was the end of the litigation against  
4 Oakland. It was the trial that we had and the threat of the  
5 next trial coming up that motivated everybody to the table  
6 and allowed Judge Hunter to obtain that settlement.

7 In 5108, there had been 21 settlements out of over  
8 1,700 cases, only 21. Those 21 included 15 cases that were  
9 set for trial and the rest were either affiliated with  
10 somebody who was set for trial like a sister in a separate  
11 case, or alternatively for a couple of them, special  
12 circumstances as I alluded to earlier that some cases  
13 uniquely have.

14 But without trial dates and without pressure,  
15 cases don't resolve in our world of litigation.

16 THE COURT: Okay.

17 MR. SIMMONS: Thank you, Your Honor.

18 THE COURT: Thank you very much.

19 MR. WEISENBERG: Your Honor, when we first began,  
20 you had asked our suggestion on how to proceed.

21 THE COURT: Yeah.

22 MR. WEISENBERG: And so, if it's okay with Your  
23 Honor, we'd like the state court counsel who are here  
24 representing survivors to address Your Honor. At that  
25 point, we'll have made our case and then at that point, the

1 debtors and the insurers can respond.

2 THE COURT: Well, let me hear from the debtors'  
3 side, including Mr. Schiavoni.

4 MR. WEISENBERG: Okay. Two housekeeping matters,  
5 Your Honor. One, I don't -- one thing we will not discuss  
6 today is that there is no opposition that the stay extends  
7 to any non-debtor. And so at minimum, that relief should be  
8 granted.

9 THE COURT: Well, nobody's asked me to take a  
10 different position.

11 MR. WEISENBERG: Thank you, Your Honor.

12 THE COURT: Okay, you may know I've taken a long  
13 position about that in another context, okay.

14 MR. WEISENBERG: Read the decision.

15 THE COURT: Yeah. Okay.

16 MR. MOORE: Thank you, Your Honor. Mark Moore on  
17 behalf of RCBO.

18 THE COURT: Yeah.

19 MR. MOORE: Your Honor --

20 THE COURT: I would be -- I want to hear from you  
21 --

22 MR. MOORE: Of course.

23 THE COURT: -- first with respect to your reaction  
24 to the notion of letting other counsel speak in light of  
25 their joinders and what you think the appropriate timing

1 would be if I should hear from those folks after I hear from  
2 you.

3 MR. MOORE: Your Honor, I certainly think that the  
4 debtor would prefer to go first.

5 THE COURT: I'm going to let you do that.

6 MR. MOORE: Thank you, Your Honor.

7 THE COURT: Okay.

8 MR. MOORE: At its core, with the motion that the  
9 committee has filed requests to do is to allow six of nearly  
10 400 -- it's actually 422 -- proofs of claim, some of which  
11 are duplicates, some of which are untimely, but it's 422 as  
12 of the filing of our amended disclosure statement to go  
13 forward to establish data points in state courts, state  
14 courts in Alameda and Contra Costa. I think it's really  
15 just Alameda.

16 The question that the Court has to answer, I  
17 think, is why. What is the value of those data points?  
18 What is the value of prior settlement data points that  
19 occurred in a solvent scenario where the debtor filed  
20 bankruptcy precisely for the reason that we cannot pay jury  
21 verdicts? That is a question that the committee cannot  
22 answer.

23 And instead they fall back on this idea of  
24 leverage, of pressure, of going on the offense, because what  
25 they really see is a way to use this as part of a

1 coordinated strategy to put pressure on the debtors and the  
2 insurers to make our deal better. Well, if that's their  
3 position, then we can negotiate that in mediation. We don't  
4 have to go through these other steps of a lift stay to  
5 establish irrelevant values and then try to bring them back  
6 into the bankruptcy court.

7 And they do this by presenting this as a necessary  
8 precondition to a consensual resolution. As we stand here  
9 today, by my count, there are 28 diocesan or religious order  
10 bankruptcies that have either been confirmed or have  
11 consensual resolutions between the debtor and the committee.  
12 They talked to you about three of them where the stay was  
13 lifted: Portland, DRVC, and I think it's Buffalo.

14 Notably, Buffalo has not reached a resolution.  
15 DRVC reached a resolution on the precipice of dismissal, not  
16 because of the test cases. And Portland is a case that's  
17 nearly 20 years old under very different circumstances, part  
18 of which is that we have a plan that accomplishes this goal  
19 already, and does it in a way that the claimant, not a state  
20 court, not Your Honor, not anyone else gets to decide what  
21 path they choose.

22 And what makes this case so different is that the  
23 insurers support this path. And I know that the committee  
24 wants to present it as being vastly tilted in favor of the  
25 insurers. That is not our intention. Whatever rights we

1 have as to our insurance, we are giving them to the  
2 survivor's trust. I feel like we've been very explicit  
3 about that. And so, if they want to fight with the insurers  
4 about bad faith, the insurers want to fight with them about  
5 bad faith, somewhere down the line, that's a fight that can  
6 still happen. We are not attempting in any way to foreclose  
7 that.

8 THE COURT: Well, I mean, okay. Let me make sure  
9 I understand that. And we're getting into a plan subject  
10 now.

11 MR. MOORE: Sure.

12 THE COURT: But are you telling me that the  
13 confirmation of a plan that said -- and I'm going to speak  
14 very ham-fistedly here, okay? The way the committee sees  
15 it, that basically strips rights that otherwise, in their  
16 view, would be available to state court plaintiffs. If  
17 they're right about that effect, what's the effect of my  
18 confirming that plan? Are you saying, well, people will  
19 still argue about that later?

20 MR. MOORE: Well, Your Honor, I'm not sure that  
21 that's their position. And I don't want to speak for the  
22 insurers. The insurers have forgotten more about insurance  
23 law than I'll ever know. All I -- what I can tell you, Your  
24 Honor, is that it's our position, whatever rights we have,  
25 we are transferring them. It is our intention --



1           THE COURT: But my question is a little bit  
2           different. My question is sort of a preclusion question. I  
3           mean, if, for the sake of argument, the committee is right  
4           that there is an argument that something that's happening in  
5           the plan is changing the rights of the survivors such that  
6           they are limited in a way, under the plan, that they  
7           arguably wouldn't be under California law, what's the effect  
8           of confirmation of that plan? Have they preserved an  
9           argument that that's wrongful or is that precluded under  
10          your plan?

11          MR. MOORE: Your Honor, first, I'll reiterate,  
12          that is not the intention of our plan --

13          THE COURT: Okay.

14          MR. MOORE: -- as from the debtor.

15          THE COURT: Okay.

16          MR. MOORE: Second, I think that's a confirmation  
17          issue. We'll need to have discussions --

18          THE COURT: One I want to talk about now, though.  
19          I mean, it's -- I hear you, but look, fair -- if you don't  
20          know, if your position is, look, we don't think we're doing  
21          that and we just haven't looked at it in a preclusive  
22          context, that's fine.

23          But what I think I'm hearing from this side is  
24          that the problem is not just that the plan, in their view --  
25          and you don't have to agree -- changes people's rights in a

1 way that's material and detrimental, but that once I confirm  
2 that plan, that has some preclusive effect and whatever  
3 arguments there are that that was wrongful is gone because  
4 I've said it's fair and equitable.

5 MR. MOORE: Well, again, Your Honor, I think I'll  
6 take your second option, which is to say that is not our  
7 intention. We don't think that the plan operates --

8 THE COURT: You don't have a position about the  
9 preclusive effect now?

10 MR. MOORE: I don't have a position about the  
11 preclusive effect now.

12 THE COURT: We can talk about that on the 16th.

13 MR. MOORE: I disagree with the fundamental legal  
14 --

15 THE COURT: No, I know, I know.

16 MR. MOORE: -- which is --

17 THE COURT: That's -- I know I know, I know,  
18 okay. All right, I interrupted you. You go ahead.

19 MR. MOORE: No, absolutely, Your Honor. And just  
20 to go back, though, the question again becomes, if we do  
21 this and we go into the state court and you get -- start to  
22 get these multimillion dollar judgments, what does that  
23 mean? What do we do with those numbers? Because the goal  
24 of the plan, as Mr. Weisenberg actually said, is to  
25 determine pro-rata distributions from survivors' trust

1 assets.

2 The second goal of the plan is to allow individual  
3 claimants to elect the litigation option and pursue those  
4 recoveries on an individualized basis. Imagine a scenario  
5 where you do get six large judgments or a large, medium,  
6 small, some mix. What's the relevance of that information?  
7 How do we translate that into a plan context with limited  
8 assets by definition? That's the question the committee  
9 hasn't even attempted to answer.

10 So, what is the relevance of those data points and  
11 how do we take those data points in six cases and  
12 extrapolate it over 350 plus, however many legitimate  
13 distributable claims that there are? How are they  
14 representative? Is anybody going to agree that they're  
15 representative? The insurers say no. The debtor will say  
16 no. So, what is the value of this exercise?

17 THE COURT: How do you do it otherwise?

18 MR. MOORE: We do it underneath the plan. We do  
19 it through --

20 THE COURT: Well, I know, but what's  
21 methodologically different about that from actually having a  
22 data point?

23 MR. MOORE: Your Honor, I think first, the data  
24 point only matters to the extent that it is scoring for  
25 distribution purposes, which is very clearly, you asked us

1 to put that information in the plan. We put a hypothetical  
2 analysis of that, how it would go in the plan. What they're  
3 wanting to do is to take those values now and then bring  
4 them back as part of the plan negotiation process. And the  
5 question is, why do those values matter?

6 THE COURT: Okay.

7 MR. MOORE: What difference does it make, what a  
8 jury in Alameda County think says the value of the claim,  
9 where I'm telling you, and we have said by virtue of filing  
10 the bankruptcy, we can't satisfy all of those claims if you  
11 extrapolate it out to the logical result. So, what are we  
12 doing all that for? And the question that you asked the  
13 committee that they didn't really answer was, what is their  
14 position on whether we can do this in parallel paths.

15 They actually gave you that position in their  
16 disclosure statement objection on page 20 -- 30 of 32, where  
17 they said, "The committee submits that any schedule this  
18 Court ultimately approves for confirmation must account for  
19 sufficient time for one, allowing the state court actions as  
20 defined in the lift stay motion to proceed to allow the  
21 parties' accurate data points from which to calculate the  
22 debtors' aggregate liability or in the alternative, allow  
23 the committee to conduct fact and expert discovery on the  
24 debtors' abuse claim valuation."

25 It seems obvious, at least to me, Your Honor, that

1       they want to pause this process. They want to --

2               THE COURT: Well, in what world where they not  
3 going to ask for two in any event, of the two things that  
4 you just mentioned? In what world weren't they going to ask  
5 for that? I have to decide how to traffic cop this thing,  
6 but I mean, isn't that kind of predictable?

7               MR. MOORE: Absolutely it is.

8               THE COURT: Okay.

9               MR. MOORE: They have the right to take discovery  
10 about our plan. I assume that they are already drafting it.

11              THE COURT: Yeah.

12              MR. MOORE: But the question become -- the  
13 question that you asked was, how do you see these things  
14 working together, and I think that's the right question  
15 because we're in a situation now where we've been in  
16 bankruptcy for about 20 months. We proposed our plan in the  
17 18th month. We do believe that our plan is confirmable and  
18 it's fair and equitable. I understand the committee  
19 disagrees with that.

20              THE COURT: Yeah.

21              MR. MOORE: We intend to move forward with  
22 confirmation. What is the value of having this process  
23 alongside that where those data points, they're not going to  
24 be agreed upon. They're not going to be determined for  
25 months, if not years. And then, you still have an -- you

1 have a lack of a linkage between those data points and  
2 something that we can actually use in this bankruptcy case.

3 Where our plan, different from every other plan,  
4 but similar to some, allows claimants to do that for  
5 themselves post effective date, if they so choose. And if  
6 they don't choose that, they don't choose that. They get to  
7 go a different direction.

8 THE COURT: Okay.

9 MR. MOORE: I think that the other thing, Your  
10 Honor, is they present this as a necessary precondition  
11 because they say, look where it happened and then look what  
12 happens. I would point the Court to the Syracuse case where  
13 Judge Kinsella denied a similar motion on September 28th,  
14 2023. There was a joint plan filed on December 6th. That's  
15 less than eight weeks later.

16 It is not a precondition to continue negotiation.  
17 It is not a precondition to continue development. And it's  
18 not something that every other case, the way that they want  
19 to present it, has done. There's more than two dozen cases  
20 that haven't done this and they haven't done this for a  
21 reason, which is there is no cause to lift the automatic  
22 stay, one of the foundational principle protections of the  
23 debtor to allow this process to go forward where it's going  
24 to benefit potentially six people and potentially prejudice  
25 300-plus more.

1           And that's one of the things that some of the  
2       Courts that have denied this have talked about, which is at  
3       a minimum, if you allow the six to go forward and then  
4       something bad happens in the case, those six will have a leg  
5       up. And the other 300-plus may not understand why they  
6       didn't get that same leg, and I'm sure the committee will  
7       tell you, well, we can explain it to them. We can make sure  
8       that they understand how this works for them.

9           But the fundamental principle is, it's six versus  
10      300-plus others. And those six are not representative of  
11      the 300-plus others and these data points that they want to  
12      use are really about leverage over us, not really about  
13      moving this case forward in a meaningful way. So, we do ask  
14      that the Court deny the motion, except with respect to the  
15      clarification as to non-debtors and grant subsequently our  
16      motion to go back to mediation and allow us to continue down  
17      our process of plan confirmation.

18           THE COURT: Okay, thank you very much. I'd like  
19      to hear from Mr. Schiavoni or Mr. Plevin. I mean, you guys  
20      decide who's going to go first.

21           MR. PLEVIN: Good afternoon, Your Honor. Mark  
22      Plevin for Continental. I'm going to start by responding to  
23      some of the points that were made. One thing I would say is  
24      that we have decades of data points. And Mr. Morris said  
25      that the Portland case was 20-plus years old. Since the

1 window opened in California, plaintiffs have been bringing  
2 cases, insurers have been defending cases alongside their  
3 insureds, and resolving cases, typically by settlement.

4 The same thing has been happening throughout the  
5 entire country. As you know, this is a national problem.  
6 We have data points. We know what a particular type of  
7 claim is worth, in a rough basis. Every case has to be  
8 decided on its own facts, but to the extent that there needs  
9 to be information for parties to know what to do, that  
10 information is out there.

11 And the problem is that, as Mr. Moore was just  
12 saying, having six persons go out when 375 or so are stuck,  
13 those six cases are not going to meaningfully add to the  
14 amount of information that the parties have. And if the  
15 results are mixed, as they likely will be, because juries  
16 are different and cases are different, they're not going to  
17 provide any information at all.

18 And in fact, Mr. Simmons supports this point.  
19 When he was up last before Mr. Moore, he was telling you  
20 about the cases that had settled and not settled. And he  
21 basically said, cases don't resolve without pressure. So,  
22 if that's the case, maybe these six will resolve. And I  
23 want to get to that point because he said something about  
24 that, too.

25 Maybe these six cases will resolve. If he's



1 right, that's not going to help with the others. And the  
2 thing I wanted to get back to is he suggested that -- you  
3 asked him a question about -- the first time he was up about  
4 how the cases would go in state court. And he said that  
5 individual settlement discussions would be problematic due  
6 to the cases being referred from the bankruptcy court.

7 I took that to mean that the people who are going  
8 to go out represented by their state court counsel are not  
9 going to be willing to talk about settlements. They want to  
10 establish verdicts. They want to get verdicts so they have  
11 verdict values. They're not going to be willing to talk  
12 about settlements. And so, this is not a process that would  
13 be normal where a case is on file, parties take discovery,  
14 maybe there's motion practice and they see their way to a  
15 resolution before you get to a jury or to a verdict.

16 I think the goal here is to establish verdicts and  
17 that's a very long and complicated process. So at most,  
18 we're only valuing six claims. We're not valuing the  
19 claims, as I think Mr. Weisenberg said.

20 There was some discussion about bad faith and what  
21 the survivors are not getting under the terms of the plan.  
22 There's a fundamental problem with talking about bad faith.  
23 First of all, the insurers are defending claims. Mr.  
24 Weisenberg said three or four times, if the insurers defend.  
25 Well, the insurers are defending. They've told the debtor

1 they're defending. The debtor dropped its duty to defend  
2 claims out of its fifth amended complaint before Judge  
3 Corley because of that. So, there is a defense. There's no  
4 bad faith failure to defend and there will not be.

5 And then we talk about, there was some talk about  
6 the survivors' rights to pursue bad faith under California  
7 law. Well, I suggest that's a fundamental misreading of  
8 California law. The rights at issue are contractual rights  
9 between the insured and the insurer. And if the insurer  
10 does something that is in bad faith, that's something that  
11 the insured, the policy holder, has a right of action for.

12 That's not something that a claimant can pursue.  
13 The classical example is the one where there's a settlement  
14 offer and the insurer doesn't accept the settlement offer  
15 and it's later determined that that was a reasonable  
16 settlement offer within policy limits.

17 The California Supreme Court held in Murphy, the  
18 claimant doesn't have a cause of action for that because  
19 it's not a party to the contract. Only the insured has a  
20 cause of action for that. And so, there's a lot of  
21 inventive theorizing on the part of the committee to come up  
22 with bad faith claims, and when we talk about settlement, I  
23 also want to make this point.

24 They're not asking us, this thing is not breaking  
25 down as between the insurers and the committee, because

1 they're concerned about whether they're going to be able to  
2 recover the limits of the policies, the amount of the  
3 contracts, the amount that the contracts require the  
4 insurers to pay. What they're fishing for is extra  
5 contractual damages, bad faith, and they want us to pay on  
6 that basis.

7 They want us to say, okay, we have a contract that  
8 limits our liability to this amount, but we should pay you  
9 this higher amount because of the possibility in the future  
10 -- for which there's no evidence and no support -- that we  
11 may commit bad faith, so we should pay that now. And as I  
12 said, it's not even a cause of action that the claimants are  
13 entitled to assert.

14 So, from my perspective, I don't think the plan  
15 assigns bad faith rights that the debtor might have to the  
16 trust. And if it did, I think that would be a problem from  
17 our side. I should also point out that this structure that  
18 we're talking about here is not a first time out of the box  
19 structure. A very similar structure was adopted in the  
20 Madison Square Boys and Girls Club case before Judge Lane,  
21 which was another sexual abuse claim involving a nonprofit  
22 with dozens of claimants.

23 The committee there was represented by the  
24 Pachulski firm, not known to be a -- have a light touch in  
25 these cases, especially in these sorts of cases, a very

1 well-respected firm. They supported the plan. The plan  
2 went through with no objections from anybody. The insurers  
3 didn't object; they supported it. The committee didn't  
4 object; they supported it. The debtor went in and out of  
5 bankruptcy.

6 We're also talking about the fact that we're going  
7 to have these same rights to pursue coverage as soon as the  
8 plan is confirmed. A claimant, as Mr. Moore said, has three  
9 options. They can take a quick pay amount, they can take a  
10 trust recovery, or they can go into the tort system to  
11 liquidate their claim and then seek coverage from an  
12 insurer.

13 In the Rochester case, which someone described as  
14 resolved -- which is news to me because my client's involved  
15 in that and we're not resolved -- but in the Rochester case,  
16 the plan that Mr. Burns and Mr. Bair are co-sponsoring along  
17 with the debtor permits claimants whose abuse happened  
18 during policy periods of my clients to go into the tort  
19 system and to establish their claims and then to seek  
20 coverage for it.

21 Now, there's a few things about that plan that I  
22 don't like and I don't think are appropriate, but that's the  
23 basic structure that they're pursuing there. And it's the  
24 same structure that the debtor and the insurers have agreed  
25 to here for this plan. So, it's -- you know, we started our

1 brief by saying they won't take yes for an answer and I  
2 think that's the case.

3 One thing I'll point out, there was some  
4 discussion about the other cases, New Orleans, Agana,  
5 Syracuse. Those three judges all expressed concern about  
6 discrimination among claimants. Mr. Moore mentioned that.  
7 I won't say much more about that, but that was the concern  
8 and that's something that would obviously happen here if we  
9 allowed six out of 375 claims to go forward.

10 There was some question about whether or not the  
11 underlying cases, if they go to trial, will they decide  
12 coverage issues or address coverage issues, and the answer  
13 to that is no, they won't. They will decide the liability  
14 of the debtor to the plaintiff. There won't be a dispute  
15 about the duty to defend because the insurers have already  
16 said we're going to defend. There won't be any right to  
17 seek indemnity until there's a judgment. Or if there's a  
18 settlement, then there's no need to seek anything, but if  
19 there's no settlement, then you get a judgment.

20 And then when you have a judgment, if there are  
21 any coverage issues, the insurers can assert those coverage  
22 issues, and the California Insurance Code, Section 11580,  
23 gives plaintiffs a right to pursue coverage directly to pay  
24 the judgment that they have. That's where all these issues  
25 are going to be resolved, late notice, expected or intended,

1 et cetera, et cetera.

2 The underlying cases are not going to make any  
3 progress towards resolution of coverage issues. So, in that  
4 sense, if they want to -- if that's the assertion, I think  
5 it's flatly wrong.

6 THE COURT: We have a lot of people to hear from,  
7 so I would respectfully ask you to give me your last best  
8 thoughts.

9 MR. PLEVIN: I think, Your Honor, I've completed  
10 doing that.

11 THE COURT: Okay, let me hear from Mr. Schiavoni.  
12 Thank you.

13 MAN: (indiscernible).

14 THE COURT: Okay.

15 MR. SCHIAVONI: Your Honor, I told Mr. Plevin, age  
16 before beauty, so he should speak before me. And to your  
17 Irish clerks on the --

18 THE COURT: On the Zoom.

19 MR. SCHIAVONI: -- on the Zoom, I suggest to them,  
20 come back in three or four hearings, and we'll be talking  
21 about Judge Murphy's seven-volume report out of Dublin,  
22 which has a section about the transfer of priests from  
23 Dublin to Northern California, which will be part of these  
24 proceedings at some point.

25 THE COURT: Okay.

1 MR. SCHIAVONI: Your Honor, I'd just like to just  
2 really level set to the basic question of what is the  
3 bankruptcy court, how is a bankruptcy court, what principles  
4 is it supposed to apply in deciding this sort of motion, and  
5 I know that may seem very simple, but I'd ask you, Your  
6 Honor, to just level set in looking at what two other  
7 distinguished jurists looked at on these very issues, Judge  
8 Grabill and Judge Kinsella in Syracuse.

9 The gravamen of the decision in New Orleans was  
10 that lifting the stay would, "defeat the purpose of the stay  
11 and -- of the automatic stay, and the goals of the  
12 bankruptcy code." In Syracuse, the judge in her decision  
13 talked about how granting the -- lifting the stay would be  
14 detrimental to the reorganization. What is that all about?  
15 What were they getting at? They weren't going on and on  
16 about really how to select the cases. There was some  
17 exploration of that idea, but that wasn't what those  
18 decisions were founded on.

19 The purpose of the automatic stay is to avoid a  
20 race to the courthouse and the introduction of  
21 discrimination into the plan process. It's lifting of the  
22 stay introduces exactly the type of discrimination that the  
23 automatic stay is intended to bar and goes against a core  
24 principle of bankruptcy, which is that similarly situated  
25 claimants should be treated the same. ]

1           The concept of test cases like you have in MDL  
2     proceedings, is absolutely foreign to the bankruptcy code.  
3     Congress looked at these issues and it adopted statutes  
4     implementing in a situation where there was not a bankrupt  
5     debtor, there were not limited assets, the MDL proceedings,  
6     which sets out elaborate proceedings about how to deal with  
7     many, you know, many tort cases and how to go forward with  
8     them.

9           When it adopted the bankruptcy code, Congress  
10    could have brought in the -- some of the MDL proceeding  
11    provisions.

12           THE COURT: Well, okay.

13           MR. SCHIAVONI: It could have easily adopted them.  
14    It didn't do that.

15           THE COURT: I don't know if it could have easily  
16    adopted them, but it might've looked at it differently.  
17    I'll give you that one. Okay, can I ask you a question?

18           MR. SCHIAVONI: Sure.

19           THE COURT: I mean, isn't the punchline in the MDL  
20    this -- kind of the same here? We're going to try a few  
21    bellwethers and then they're all going to settle.

22           MR. SCHIAVONI: No, Your Honor, I think it's --  
23    here's fundamental --

24           THE COURT: Maybe I've been misinformed about how  
25    that tends to work.



1 MR. SCHIAVONI: So, there's been somewhere in the  
2 neighborhood of 200 mass tort bankruptcies since I've been  
3 practicing. And with the odd exception of Buffalo and a  
4 couple of these others --

5 THE COURT: Yeah.

6 MR. SCHIAVONI: -- I can't think of any where  
7 there was even a suggestion, really, of lifting the stay to  
8 allow "test cases" to go forward. It's just, it's  
9 completely foreign.

10 THE COURT: But I was trying to ask a different  
11 question.

12 MR. SCHIAVONI: Yeah. Okay.

13 THE COURT: MDL, as far as it goes, isn't the  
14 notion that we're going to coordinate them, we'll choose  
15 bellwethers. Bellwethers will be addressed and resolved,  
16 and as a function of that, we will -- we expect there to be  
17 a mass settlement. Isn't that the case? Isn't that the  
18 premise behind MDL?

19 MR. SCHIAVONI: Yeah, but, Your Honor, let me just  
20 say --

21 THE COURT: But you're saying it doesn't happen  
22 that way.

23 MR. SCHIAVONI: That happens in an MDL proceeding.

24 THE COURT: Well, that --

25 MR. SCHIAVONI: -- limits on the assets --

1 THE COURT: So, why is this different, is my  
2 question.

3 MR. SCHIAVONI: But here, let me just -- what's  
4 really differently here --

5 THE COURT: Yeah.

6 MR. SCHIAVONI: -- is that sometimes you will see  
7 bankruptcy courts lift the stay to allow a tort action to go  
8 forward when the agreement --

9 THE COURT: I know. Yeah.

10 MR. SCHIAVONI: -- the recovery is limited --

11 THE COURT: Sure.

12 MR. SCHIAVONI: -- to the insurance.

13 THE COURT: Sure, sure, sure.

14 MR. SCHIAVONI: That's not what's happening here.

15 THE COURT: Sure.

16 MR. SCHIAVONI: That's -- it's like if that's been  
17 missed, that's not something that's happening here. The  
18 minute the stay is lifted, those claimants and those law  
19 firms that advance, they immediately are treated differently  
20 than everyone else. They immediately are put in a  
21 preferential position. And when they get a judgment, or  
22 even if they're near to a judgment, they're advanced to a  
23 position where they're ahead of everyone else should the  
24 plan fail.

25 They immediately lose any interest in formulating

1 a plan where they lose their preferential position. We've  
2 seen that in other cases where there's appeals, like  
3 sometimes you'll have a mass tort go in and there's a tort  
4 claim that's gotten a verdict already, and they're seeking  
5 to lift the stay to allow the appeal to go forward because  
6 it's bonded.

7 THE COURT: Sure.

8 MR. SCHIAVONI: Once those claimants come in and  
9 have a judgment or they're close to one, in the plan  
10 negotiation process, they are demanding that they be given  
11 full treatment for their claims. It immediately interjects  
12 into the process discrimination where those claimants are  
13 insisting on getting full economic treatment for whatever  
14 they've achieved. It's very different from the "bellwether"  
15 cases outside of bankruptcy where any one claimant doesn't -  
16 - isn't given sort of like a veto over what the outcome will  
17 be.

18 That's exactly what will happen here. And Your  
19 Honor, you've already seen that manifest itself. What we  
20 heard, the committee came to the podium and said they're not  
21 interested in mediation. They don't want to have any  
22 mediation. I guarantee you that if you lift the automatic  
23 stay, this -- which is an extraordinarily difficult case to  
24 resolve -- is going to become almost impossible to resolve.  
25 The plaintiffs will disengage from mediation. They will

1 focus 100 percent of their energy on the cases going forward  
2 on lift stay.

3 Absolutely nothing will happen on the plan or the  
4 plan process until they draw a verdict. Then there'll be  
5 disagreements over it. The difference between the parties  
6 will only get bigger. Those claimants who would have  
7 achieved a verdict will not want to back off on it. They'll  
8 want to get full treatment for it and the plaintiff's firms,  
9 more importantly -- and let's not forget here, it's like  
10 there haven't been 2019 statements filed, so you haven't  
11 seen really where the money is going to at the end of the  
12 day, but like 30 to 40 percent of the money is going to the  
13 plaintiffs' lawyers here.

14 The six firms that are here, I think if we had  
15 2019, you'd see they probably, most of them represent  
16 committee members, I think we would find. And they have no  
17 interest. They're the biggest beneficiaries of the stay  
18 being lifted. The ones who will get verdicts and will lock  
19 down 30 to 40 percent outcomes in the money. They will not  
20 negotiate. Negotiations will end, absolutely, until they  
21 get those verdicts. And when they get the verdicts, it will  
22 only widen the difference between the parties here and  
23 nothing will happen. We'll be locked in absolute  
24 indecision.

25 This is in fact exactly what happened in Buffalo.

1 The committee announced on the record it didn't want to  
2 negotiate anymore. And they would wait for the verdicts to  
3 come out, which in -- believe it or not, in New York might  
4 take over a year for that to happen. This will doom this  
5 case, I guarantee you, to just being completely tied in  
6 knots.

7 The notion here, I just have to say, even though I  
8 don't think, Your Honor, in looking at this and making a  
9 decision here, I don't think you're supposed to be looking  
10 at it and trying to weigh which of the scales a thumb should  
11 be put on to drive these parties to settlement. It's  
12 completely against the bankruptcy code to allow individual  
13 cases to go forward to get a preferential outcome, for the  
14 very reason that in Syracuse, the judge found that the stay  
15 shouldn't be lifted, because it would be detrimental to the  
16 plan process.

17 The more cases that have preferential outcomes,  
18 the more difficult it will be to get anybody to agree to a  
19 plan. And in a post-Purdue world, you're going to need a  
20 very significant vote yes. Anyone claimant, any one of  
21 these very distinguished plaintiff's lawyers who are here,  
22 who have one verdict, just one, will have a veto over the  
23 plan to try to -- in order to lock down on that outcome.

24 It will prevent anything from happening here, and  
25 when you hear this notion that, oh well, we're not somehow

1 involved in the selecting of the test cases, it's -- I don't  
2 even understand that. It's like, what's going to happen in  
3 the torts -- in the tort world when we get before the  
4 Superior Court judge, is they're going to propose to that.  
5 They're not going to hand the judge 400 cases and say, you  
6 pick. They're going to make a proposal, four or five. You  
7 just -- heard how that worked.

8 You heard what Mr. Simmons proposed for the case,  
9 the case that he has trial ready. The Father Kiesle case,  
10 as he described the most prolific perpetrator in Northern  
11 California, who he deposed in prison. That's the one that's  
12 ready. That's the one that on their list of what they  
13 proposed.

14 Yes, the judge could look at that one and say, no,  
15 I don't think it fits the criteria, but if he's only going  
16 to look at what's already been before him, then what do you  
17 think is going to come out of that outcome? And it doesn't  
18 really reflect the reality of where we are in these cases.  
19 If you pick, I suggest you might consider picking a half  
20 dozen of the proofs of claim and looking at them.

21 It's the barest of bones information. We have  
22 proofs of claim where the identifying information section of  
23 the proof of claim is blank. So, you can't even tell who  
24 the claimant really is. We have proofs of claim where they  
25 say they don't even know who the perpetrator is, that the

1 claim occurred within a period of a decade. There's  
2 virtually no information in those claims. It's like  
3 someone's supposed to turn around and say, okay, we're all  
4 valuing those at a million dollars? In the tort system,  
5 half these claims would fall aside.

6 When Boy Scouts went forward right now, what's  
7 ended up happening is 35,000 claimants didn't fill out the  
8 questionnaires and fell aside from that case. So, we think  
9 we worked very hard. I can't -- you know, early on in this  
10 case, you asked me what were the options to get this done  
11 and I talked about how O'Melveny would bring its best  
12 resources to the case. And we did that.

13 I got out of my bankruptcy group our best plan  
14 drafter, Steve Warren, who's got just immense experience.  
15 He put together large parts of the Boy Scout plan. He spent  
16 a huge amount of time on this with me. We're very indebted  
17 to Judge Newsom for his effort here. I can't tell you the  
18 discussions with any of these parties were easy, but we  
19 worked extremely hard on it. I wanted to have Steve here  
20 himself to talk about it. He's in -- you know, he's -- I  
21 haven't been able to reach him over the last 24 hours.

22 THE COURT: Okay.

23 MR. SCHIAVONI: I'm sort of upset about that. He  
24 lives in Pasadena. But this is -- this -- you are almost at  
25 a historic point. You have here a plan that is viable. By

1 the way, they talked about historical plans. In New Orleans  
2 yesterday, which I had to participate by phone to be there,  
3 Pachulski has proposed a pass-through plan.

4 It's a pass-through where the insurers would try  
5 their -- the cases would be tried against the insurers in  
6 the tort system. Two other plans like this are the Revlon  
7 plan, which was confirmed and another one was, of course,  
8 you heard the Boys Club case. These are viable plans.

9 The debtor has not had the opportunity to solicit  
10 these -- the plan here, and we haven't been able to go on a  
11 roadshow among the plaintiff's lawyers. You have the  
12 plaintiff's lawyers here who would benefit the most by  
13 defeating the plan individually. They have a conflict of  
14 interest in a sense, or at least an economic conflict with  
15 their own clients. They have a multi-party conflict in that  
16 if one claim goes forward and the others don't, arguably the  
17 others are not in a similar position to that.

18 To the extent they represent committee members,  
19 they have a fiduciary duty to all claimants and they have to  
20 explain why it is they would permit a situation where some  
21 claimants would get preferential treatment and others  
22 wouldn't. It's why I think they're here, most of them,  
23 except for Mr. Fow (phonetic), without having identified  
24 specifically who their clients are that they're  
25 representing.



1           It suggests to me that they don't have client  
2       consent to make this -- to make these arguments, but they're  
3       also in a position where they get the biggest recovery here  
4       overall among their -- among the claims. And their -- if  
5       the plan fails and they go forward with a dozen cases in the  
6       tort system and they exhaust the \$100 million of assets that  
7       the debtor has, they're in the same situation as if they  
8       confirmed a plan and equitably distributed all the money.

9           And that's the difference between this kind of  
10      case, a bankruptcy case, and what Congress considered in  
11      adopting the code, what Congress considered in adopting MDL  
12      proceedings. It's that there are not unlimited assets.  
13      There are limited assets here. And it might be that a  
14      particular verdict is entirely within coverage. It might be  
15      that even if there is coverage, it falls -- part of it falls  
16      outside of coverage, because part of the claim hits years  
17      where there's no coverage at all, where it's in excess of  
18      limits.

19           So, they're coming to you here with a plan that is  
20      discriminatory, where there's a limited pool of assets. I  
21      suggest to you that the Court has discretion normally to  
22      lift the stay, but in this kind of situation, in all due  
23      respect, I think it would be error to lift the stay, to  
24      allow this to go forward with the specific purpose here, and  
25      the specific direction by the committee that the whole

1 intent is to get preferential treatment for a group of  
2 claimants here going forward.

3 And in that event, we would just -- we would ask  
4 for an opportunity to get appellate review before we go down  
5 that, what I think will be a tragic path.

6 THE COURT: Okay.

7 MR. SCHIAVONI: Thank you, Your Honor.

8 THE COURT: Let me just give everybody kind of my  
9 own reality set here. We're going to have to conclude at  
10 five for reasons that are administrative here, and also  
11 things I need to be doing. So, I'm hoping we will conclude.  
12 If we don't, I'm assuming that we will find a way to  
13 continue the discussion. But unfortunately, the five  
14 o'clock is a pretty hard break for me. So, if we run up  
15 against that, I apologize, and let's keep that in mind as we  
16 try to make our way through the day today. Okay? Thank  
17 you. Thank you very much.

18 MR. SCHIAVONI: Thank you.

19 THE COURT: Appreciate it. Okay. Thanks.

20 MR. JACOBS: Good afternoon again, Your Honor.

21 Todd Jacobs for Westport. Thanks for hearing me. I'm only  
22 going to take a minute or two.

23 THE COURT: Okay.

24 MR. JACOBS: I guess we're all sort of prisoners  
25 of our own experience with these cases. And so I wanted

1 just to give you my experience, and I'm not saying this to  
2 be grandiose, but our firm and me, we are in 15 of these  
3 diocesan bankruptcies around the United States. We were in  
4 the Boy Scouts case. We're in a number of the university  
5 sexual abuse cases. We've seen these cases play out and  
6 it's not all bad news.

7 Some of these cases actually have settled.  
8 Rockville Centre settled in December in front of Judge Glenn  
9 on a fully consensual basis. And one of the reasons I can't  
10 go on too long today is because most of what I know about  
11 that is within the mediation privilege. I'd really love to  
12 tell Your Honor actually what happens in the mediations and  
13 what really does drive the settlements.

14 I think I can tell you that none of what the  
15 committee is proposing with the three motions that they have  
16 here drove a settlement in Rockville Centre. It drove \$100  
17 million in legal fees until four years into the case, people  
18 finally got realistic about settling the case. And I think  
19 that, you know, the debtor's idea that everybody should go  
20 to mediation and get serious about this and not spend  
21 another \$100 million here -- I don't think there is \$100  
22 million to spend here -- would be a very good idea.

23 And then, Mr. Plevin's client didn't settle in  
24 Rochester, but we did. And I know how that came down with  
25 Judge Warren, who -- sometimes, you know, I think judges

1       need to -- , I don't know what the right word is. Judge  
2       Warren --

3               THE COURT: Be careful.

4               MR. JACOBS: Judge Warren actually, inventive  
5       things. Like, Judge Warren got everyone to agree he could  
6       come to the mediation and that they wouldn't try and recuse  
7       him. Now, that --

8               THE COURT: You know I did something like that in  
9       a slumlord case up in Eureka? I did, and the U.S. Trustee  
10      never forgave me for it. Now, I'm not suggesting I'm going  
11      to do anything like that here, but -- no, I'm hearing what  
12      you're saying on the inventive side. I get it.

13              MR. JACOBS: Yeah, I don't know if yours worked,  
14      but Judge Warren's, it worked for us. It was --

15              THE COURT: Well, I mean, it worked functionally.  
16      It didn't work economically in the end, but nobody could  
17      predict that.

18              MR. JACOBS: I -- you know, I've been doing this  
19      for 35 years. I don't think I've actually seen a sitting  
20      judge in a mass tort case do what Judge Warren did, but it  
21      worked. And I think the answer is not running up a lot of  
22      estate expenses, which is, I think the one thing you're  
23      going to guarantee by granting the motions that are in front  
24      of Your Honor today, and I don't think it's going to drive  
25      resolution. I fully agree with what Mr. Plevin said,

1 particularly about our clients and what their knowledge of  
2 sort of what the market is and data for these cases.

3 I mean, we represent sophisticated clients who  
4 have these cases all over the United States, not just in  
5 California, also the other reviver states, New Jersey, New  
6 York. I see Mr. Burns and Mr. Bair all over the country. I  
7 see these guys in New Jersey. I think we know what the  
8 issues are, Your Honor. I don't think getting six -- even  
9 if you got six verdicts, it's not going to move the needle  
10 and it's going to -- you're going to spend a lot of time,  
11 you're going to spend a lot of money, and it's not going to  
12 get anything resolved.

13 And I think we ought to try not to repeat the  
14 mistakes that have been made, including by everyone. I'm  
15 not pointing fingers at one side or another, but let's not  
16 spend a lot of money to no end.

17 THE COURT: Okay. Thank you very much.

18 MR. JACOBS: Thank you.

19 THE COURT: Okay.

20 MR. WEISENBERG: Brent Weisenberg on behalf of the  
21 committee. Your Honor, we're cognizant of the time and --

22 THE COURT: Yeah.

23 MR. WEISENBERG: -- with your permission, this is  
24 how we would suggest we proceed.

25 THE COURT: Sure.

1 MR. WEISENBERG: There are two counsel here that  
2 would like to address Your Honor and then I would like to  
3 summarize. We will be done by four o'clock, so that's 20  
4 minutes.

5 THE COURT: Sure.

6 MR. WEISENBERG: That will leave us hour to  
7 address the insurance standing motion and we are prepared to  
8 rest on the papers with respect to the other motion, with  
9 respect to the claims against OPF and the churches. So,  
10 that should give us sufficient time to finish today, if  
11 that's okay with you.

12 THE COURT: Yeah, I would think -- not to destroy  
13 all dramatic irony, but in my mind, the, for lack of a  
14 better word, the OPF motion is the one that's most closely  
15 related to the discussion we're going to have on the 16th,  
16 in my view. So, if we end up either taking it up more fully  
17 then or truncating that discussion today and see where we  
18 end up, that's okay with me.

19 MR. WEISENBERG: Thank you, Your Honor. So, Mr.  
20 Finnegan can --

21 THE COURT: Okay.

22 MR. WEISENBERG: -- address the Court, we'd --

23 THE COURT: Sure.

24 MR. FINNEGAN: Thank you, Your Honor. Again, Mike  
25 Finnegan with Jeff Anderson Associates --

1 THE COURT: Okay.

2 MR. FINNEGAN: -- on behalf of a number of abuse  
3 survivors. I want to respond to two things that were said  
4 by counsel and then make two points.

5 First, Your Honor, is there's no discrimination of  
6 claims when they go back to state court. The Diocese, the  
7 insurers, they will be involved in that process as well,  
8 what cases to pick so they'll be able to have their voices  
9 heard as well about which cases should be the six. That's  
10 the process that Mr. Simmons outlined.

11 So, it's not a process where we, as the  
12 plaintiffs' attorneys are picking the six cases by ourselves  
13 and no input from them. And if there are disputes, what  
14 happens is that the trial judge, the coordinating judge,  
15 they pick the cases and they look at everything that gets  
16 submitted.

17 So, there's a equal opportunity for them to pick  
18 cases that they think are representative of the whole. And  
19 so they're not cherry picked cases. That was the main  
20 reason in Rockville Centre when we were there, that Judge  
21 Glenn, when we first tried to have cases released, why he  
22 denied the relief from stays. That's one, one point, Your  
23 Honor.

24 THE COURT: Well, did he deny it -- and if you  
25 don't know this, that's okay. Did he deny it as well on the

1 broader basis that I think the insurers and the debtor are  
2 arguing that there's -- no matter which case you fix or you  
3 pick, when you get to a resolution, you know, there's a  
4 discriminatory effect. Some people have adjudicated claims,  
5 some people don't.

6 MR. FINNEGAN: I don't believe that because you --

7 THE COURT: Okay.

8 MR. FINNEGAN: -- there over 200 cases that -- so  
9 New York has a different structure of corporate law. So,  
10 their Diocese is one corporation.

11 THE COURT: Yeah.

12 MR. FINNEGAN: And then they had --

13 THE COURT: Okay.

14 MR. FINNEGAN: -- all of their parishes are  
15 separate corporations. And so, we allowed the -- there over  
16 200 cases that were against the parishes that were allowed  
17 to move forward.

18 THE COURT: Okay.

19 MR. FINNEGAN: -- didn't put the -- extend the  
20 preliminary injunction automatic stay to.

21 THE COURT: Okay. I mean, I'll throw another  
22 question out there that Mr. Weisenberg can think about  
23 between now and time he gets up to the lectern. I mean, the  
24 same question I asked Mr. Schiavoni, that look, in the -- my  
25 understanding of the MDL is the benefit is you do coordinate



1 everything. There is a lot of thought into how you go  
2 forward to establish some principles on a spectrum or  
3 whatever you want to call it, but it's all done on the  
4 theory that once you've done that, then you can settle  
5 everything.

6 MR. FINNEGAN: Absolutely.

7 THE COURT: And that happens.

8 MR. FINNEGAN: That fits.

9 THE COURT: And that -- I mean, that's what I --  
10 that's what I want to -- I need to hear from both sides.  
11 I've heard the debtors' side of it. But my sense is that  
12 it's only when you start to put some meat on the bones here  
13 that you can settle these things and it's not that the  
14 people who get the judgments necessarily become holdouts.  
15 They become -- they're the vanguard more than anything else.

16 But that -- you know, that -- I'm not deciding  
17 that yet, but that's, you know, that's what I'm trying to  
18 process through my head. Okay?

19 MR. FINNEGAN: You're accurately describing that  
20 here and what happened to Rockville Centre.

21 The second response, Your Honor, that I wanted to  
22 make was that there's no conflict of interest here at all  
23 for us to represent survivors on contingent fees. That's  
24 what we do. Survivors are often, as you heard in the  
25 survivor statements, often have been through a lot. They

1 can't afford attorneys, most of them, and can't afford to  
2 pay them throughout. And so our system allows for us to  
3 work on contingent fees.

4 There's nothing wrong with that. Nothing  
5 unethical about that as counsel tries to make us out to be  
6 the wrong -- the bad -- wrongdoers here. We're not. We've  
7 represented -- I've been representing survivors for the last  
8 20 years, Mr. Simmons for longer, Mr. Amala, Mr. Storey, who  
9 you're going to hear from, all of us have been in this for  
10 our careers and have the honor of representing survivors.

11 There are two short points that I want to make  
12 Your Honor. First is that the Diocese current approach, a  
13 cramdown plan, will not work. It didn't work in Rockville  
14 Centre in that -- in the bishop's plan there where they  
15 tried to cram that down 88 percent --

16 MAN: (indiscernible).

17 THE COURT: Thank you for that. That's helpful.  
18 Go ahead.

19 MR. FINNEGAN: Comic relief.

20 THE COURT: Okay.

21 MR. FINNEGAN: But 88 percent in Rockville Centre  
22 of the survivors voted against the bishop's plan that did  
23 not have the support of the creditors committee, the  
24 survivors committee. And the other time where that  
25 happened, that we're involved was in the Archdiocese of St.

1 Paul, Minneapolis, over 90 percent of the survivors voted  
2 against the bishop -- archbishop's cramdown plan. So,  
3 that's not a path towards resolution here.

4 Second point, Your Honor, is that the stay relief  
5 factors strongly favor the survivors being allowed to -- the  
6 limited relief. The first factor there is that the trials  
7 here, is that the trials will lead to resolution. That is  
8 what happened in Rockville Centre, Your Honor, is, I think  
9 that is a single most important factor that led to a  
10 resolution in that case is that the parish cases were  
11 allowed to go to trial.

12 And so, what happened in that case is that it  
13 wasn't the doom and gloom that Mr. Schiavoni laid out for  
14 you. What happened there was that Judge Glenn allowed the  
15 parish cases to go forward. Ultimately, those went back to  
16 the state court, like here. There are four cases that were  
17 chosen for trial in June of 2004, those cases, there are  
18 four that got picked. And that was when Justice Steinman  
19 and the state court system put the first trial on ---

20 THE COURT: You did mean 2024, right?

21 MR. FINNEGAN: 2024, sorry. I said --

22 THE COURT: -- 2004?

23 MR. FINNEGAN: That would be way too long --

24 THE COURT: Okay.

25 MR. FINNEGAN: But some of these cases --

1 THE COURT: Okay.

2 MR. FINNEGAN: -- are going for, so --

3 THE COURT: Okay.

4 MR. FINNEGAN: -- excuse me and thank you.

5 THE COURT: It's all right.

6 MR. FINNEGAN: 2024. And what happened then, Your  
7 Honor, is once he set that, we were on dual paths and we  
8 engaged in mediation immediately. We had been engaging in  
9 mediation, but we also at the same time, we're on the  
10 litigation path. So, those two paths ran concurrently and  
11 that's what I see happening here --

12 THE COURT: Okay.

13 MR. FINNEGAN: -- is that both those things  
14 happen. And what we're able to do at trial was set for  
15 October 7th. As that got closer and we're making more  
16 progress on the mediation, that trial got bumped a little  
17 bit and by November, within six months of that first trial  
18 date getting set, it didn't get tried, but we had an overall  
19 consensual resolution.

20 THE COURT: Okay. Thank you very much.

21 MR. FINNEGAN: That's the only one in New York,  
22 New Jersey, or California, where there's been a whole  
23 resolution with all the insurers, the solvent insurers and  
24 the debtor and the committee.

25 THE COURT: Okay.

1 MR. FINNEGAN: Conversely, what we're facing in  
2 the other cases that counsel talked about -- Rochester,  
3 Buffalo, Syracuse, and Camden -- are variations of either no  
4 resolution or partial resolutions with some of the parties.  
5 But what happens in that scenario is we've had fights.  
6 Camden is a great example of a resolution with only the  
7 debtor and insurance rights, and the insurers appealed the  
8 confirmation, fought the confirmation, extended that by  
9 years. So, we're --

10 THE COURT: Okay.

11 MR. FINNEGAN: -- four or five years downstream in  
12 those cases.

13 THE COURT: Okay.

14 MR. FINNEGAN: And what I don't want either is for  
15 the survivors here to be here in five years from the start  
16 of this case in 2028, coming to you again, like we did in  
17 Buffalo recently, asking for relief from stay.

18 THE COURT: Okay. Thank you very much.

19 MR. FINNEGAN: Second quick factor, Your Honor, is  
20 the balance of harms factor in the Curtis factors strongly  
21 weighs in favor of survivors here. The harsh reality is  
22 that survivors are dying. And if we delay them having  
23 justice and getting closer to it --

24 THE COURT: Yeah.

25 MR. FINNEGAN: -- and getting a resolution --

1 THE COURT: Okay.

2 MR. FINNEGAN: -- more will die.

3 THE COURT: Okay.

4 MR. FINNEGAN: And so, that why we're here and  
5 that's why --

6 THE COURT: Thank you very much.

7 MR. FINNEGAN: -- support stay relief.

8 THE COURT: Okay. Thank you.

9 MR. FINNEGAN: Thank you, Your Honor.

10 THE COURT: Okay. You've got a colleague who  
11 wants to --

12 MR. FINNEGAN: Who's right behind me, ready to go.

13 THE COURT: -- right behind, lurking there,  
14 waiting to go. Okay. Go ahead.

15 MR. AMALA: Good afternoon, Your Honor, Jason  
16 Amala on behalf of the Panish and PCVA claimants. Like Mr.  
17 Finnegan, since I'm one of the only state court lawyers  
18 you'll hear from today, I want to be very clear. There's no  
19 effort here to obtain preferential treatment for anyone.  
20 Judge Glenn in Rockville Centre, I was the one who testified  
21 in the deposition that led to the relief from stay there,  
22 the injunction, and we made very clear. He asked the  
23 question, are you guys going to try to make a money grab  
24 with insurance and the response -- and the reason he granted  
25 the relief was no. If we get a judgment, we will come back

1 to you and you decide what we do with it. That would just  
2 be exactly what happened here. Nobody would do anything  
3 with the judgments without the Court approving it.

4 THE COURT: Okay.

5 MR. AMALA: I'm filing a motion for relief from  
6 state today in the Diocese of Albany. Our motion makes that  
7 exact same thing very clear. There will be no preferential  
8 treatment for use of these judgments for any purpose that  
9 would benefit an individual plaintiff. It's for the whole.

10 THE COURT: Okay.

11 MR. AMALA: I personally drafted parts of the  
12 Madison Square Boys and Girls Club that the carriers talk  
13 about, the plan there. I personally drafted portions of the  
14 Boy Scouts of America plan. The portions that I  
15 participated in drafting -- and this really gets to the  
16 heart of our joinder, Your Honor -- is the portions to  
17 address the fact that since 2019, there has not been a  
18 global settlement in any bankruptcy in this country with  
19 every single insurer. Hasn't happened other than Boy  
20 Scouts, mister -- I can never pronounce Tanc's last name  
21 correctly -- Mr. Schiavoni --

22 MR. SCHIAVONI: Tanc.

23 THE COURT: He says it's okay.

24 MR. AMALA: He murders my last name, so it's fair.

25 Other than his client in Hartford, which were the

1 two biggest primary carriers there, other than Boy Scouts,  
2 there has not been a global settlement with -- the carrier  
3 has the most claims in any bankruptcy filed since 2019.  
4 There are 17 of them. They're all pending.

5 You asked numerous times today about Rochester,  
6 Buffalo, New Orleans across the board.

7 THE COURT: Yeah.

8 MR. AMALA: There may be resolutions with the  
9 debtors for their cash. I'll say the non-insurance. But  
10 again, no global resolutions with the carriers. The reason  
11 we filed our joinder, Your Honor, it was a little different  
12 and this hasn't really been talked about. If you grant this  
13 relief, what's going to happen? Might there be trials to  
14 verdict?

15 There may be, but as Mr. Plevin indicated, a  
16 carrier in California, an insurance company, has a duty to  
17 settle a claim within the limits, if given a reasonable  
18 opportunity. If you ask Mr. Simmons, I have no doubt he  
19 will tell Your Honor that some of the cases that will be  
20 offers to settle within the limits and these carriers will  
21 have a choice. If they have a reasonable opportunity to  
22 settle -- a kid's badly abused for years and there's noticed  
23 evidence, there's a million dollar policy, there will be  
24 cases where they're asked to pay the million and the case is  
25 done.



1           There's no trial. There's no verdict. It's over.  
2           Answer your question earlier, how is -- is that a salutary  
3           benefit? Of course it is, because that will inform with the  
4           carriers the coverage positions that will hopefully get them  
5           to reconsider their position so far, right?

6           If you settle a case involving one of these  
7           notorious perpetrators for a million dollars, not only does  
8           that establish value in and of itself because they've paid  
9           their limits and that's at the jury value, but now the  
10          carrier's in the spot where they're going to have to agree  
11          to pay the limits, pay the million dollars, pay the 2  
12          million, and also look hard at their coverage defenses.

13          Again, this is black letter California law. If  
14          they don't, if they don't act reasonably and they don't  
15          settle some of these cases for the limits -- not talking  
16          about verdicts -- I'm not talking about the jackpot  
17          verdicts. They don't pay their limits, a million bucks, 2  
18          million bucks, whatever it is, and a case goes to trial and  
19          to a verdict and there's a \$5, \$10 million verdict, under  
20          California law they're on the hook for that and the fees and  
21          costs and potentially punitive damages.

22          And that's what I want to end with Your Honor. I  
23          guess we'll have a discussion about their plan and what it  
24          means and what it doesn't mean. The suggestion by the  
25          debtor that the relief from stay, it's just the same point

1 as their plan, nothing could be further from the truth and  
2 this is why. If you grant relief from stay, the carriers  
3 will have an incentive to settle these cases. Why? Because  
4 if they don't act reasonably to settle some of these cases  
5 within their limits, they're potentially liable for the  
6 entire verdict, fees and costs, and punitive damages.

7 That is a massive incentive to these insurance  
8 companies to settle. That is the public policy of the State  
9 of California. Some of the cases that were cited to you  
10 talk about why, why do we hold carriers liable for the full  
11 verdict for fees and costs and punitive damages? It's  
12 because it's the public policy of the state to encouraging  
13 companies to act reasonably and settle.

14 So, if you do relief from stay, there will be, I  
15 have no doubt, some of those settlements. That will move  
16 this ball forward because right now, because of the  
17 automatic stay, there's no incentive to settle. There's no  
18 risk of a judgment. There's no risk of a verdict. They can  
19 literally sit back, act unreasonably, not settle, and  
20 there's no risk to them.

21 And that's why when you look around the country,  
22 17 bankruptcies since 2019, not a single global settlement  
23 with all the carriers, that's why. They eventually figured  
24 out and credit -- and I don't mean this in a disparaging way  
25 -- there's no duty to globally settle. I, too, have been

1       doing this for 20 years, back to Spokane in 2004. We used  
2       to have global settlements. Before 2019, I believe every  
3       single one of these bankruptcies ended with a consensual  
4       global settlement. That was our world before 2019.

5               I don't know what's changed, but I can tell you  
6       it's changed. And I think the answer is, they figured out  
7       that the stay takes away that incentive that they have to  
8       act reasonably and settle. They know that until some of  
9       these cases are relieved from stay, and there's that risk of  
10      judgments and verdicts, they really don't have to do much.  
11      They can just sit and wait and this case could become the  
12      next Rochester, the next five-plus years, next Rockville  
13      Centre.

14             THE COURT: Okay.

15             MR. AMALA: Thank you, Your Honor.

16             THE COURT: Thank you very much. Okay.

17             MR. PLEVIN: Ten seconds, Your Honor?

18             THE COURT: No, not yet. Okay.

19             MR. WEISENBERG: Your Honor, I have five minutes,  
20      so we're going to make this a lightning round.

21             THE COURT: Okay, then we're going to give Plevin  
22      ten seconds, okay?

23             MR. WEISENBERG: Five minutes, ten seconds, Your  
24      Honor.

25             MR. MOORE: Your Honor, the debtor would also like

1 an opportunity to respond to state court counsel.

2 THE COURT: Like about two minutes is my thinking.

3 MR. MOORE: Thank you.

4 THE COURT: Okay, sure. Go ahead.

5 MR. WEISENBERG: Okay, Your Honor. First, the  
6 debtors' counsel made the point that the value that would be  
7 determined from the state court is irrelevant. That is  
8 inapposite and just not accurate, Your Honor. In fact,  
9 nowhere is it more important than a survivor picking up a  
10 disclosure statement and understanding the fairness of the  
11 treatment of their claim. That is how one values whether  
12 the treatment that they're being afforded is fair and  
13 equitable because you compare the treatment of the plan to  
14 the value of the claim.

15 Now, you're going to hear a lot, Your Honor, and  
16 you've already heard a preview about it, that I can tell you  
17 one way not to do it, which is to demonstrate what other  
18 survivors have received in other cases. That is entirely  
19 irrelevant. Litigation option, which at least is months  
20 away because obviously it cannot begin until the Diocese  
21 plan is confirmed and unfortunately, Your Honor, if it is  
22 confirmed, they'll be subject to years of appeal. That's  
23 not happening so quickly.

24 But even more important is that under the current  
25 plan, the survivor trustee can settle with the insurers at

1 any time, which means that a litigation claimant's -- or  
2 litigation against the insurers ceases, okay, and  
3 essentially, it could be sold out from under them. Now,  
4 we're going to talk in the context of a disclosure statement  
5 about why that's problematic for a lot of other reasons, but  
6 it's not a fait accompli that this litigation option is ever  
7 actually going to take place.

8 Mr. Plevin mentioned that only six cases are going  
9 to settle, okay? That's belied by the very facts of this  
10 case and what transpired during the previous window. Seven  
11 cases went to trial and then 54 settled.

12 Mr. Plevin also made the point that the insurers  
13 are defending. That proves the very point we made that  
14 there's no economic harm to the debtor, which was what the  
15 New Orleans case was hyper concerned with, which was the  
16 administrative burn on the debtors' estate. We appreciate  
17 the insurers that they care so much about the equality of  
18 treatment of survivors, okay?

19 Number one, we've made clear, and you've heard  
20 this now at least three times, no survivor is going to  
21 collect on the judgment, okay? But number two, all you're  
22 hearing is pure speculation about what's going to happen in  
23 the future. You're hearing a parade of horrors, which we  
24 hear in every case. If you do this, the sky will fall. No  
25 one could predict the future, Your Honor. In fact, if past

1 is prologue, it's fairly clear that lifting the stay will  
2 drive settlement.

3 The notion that there's a plethora of fraudulent  
4 claims, it's another mantra of the insurers. In every case,  
5 there are hundreds of survivors who've decided their get-  
6 rich-quick scheme is to file a claim in a diocese sexual  
7 abuse case. There's no evidence whatsoever of that.

8 I would urge Your Honor to read the Buffalo  
9 decision, not just for the facts that we've alleged today,  
10 but also at the conclusion of that hearing, the judge did  
11 two things. Number one, addressed the conflict of interest  
12 and said that is of no moment to the insurers. If there's a  
13 conflict, that's an issue between a client and their lawyer,  
14 but also ruled that 2019 in the way the insurer viewed that  
15 is simply incorrect.

16 Last point. Mr. Schiavoni argues that lifting the  
17 stay here actually cuts against the very protections it's  
18 intended to protect. Not surprisingly, we see it totally  
19 differently. Okay? In fact, lifting the stay is entirely  
20 consistent with what the automatic stay is intended to do.  
21 Okay? The automatic stay is intended to allow a debtor a  
22 breathing spell to restructure and focus on restructuring  
23 its operations.

24 This is not a traditional restructuring. This is  
25 a bankruptcy focused on resolving survivor claims. So, that

1 breathing spell, unnecessary. Number two, the chaotic and  
2 uncontrolled scramble to the courthouse, not happening.  
3 We're relying on a state court that has a linear logical  
4 process to move these cases forward. Okay? So, if  
5 anything, Your Honor, lifting -- what the lift say will do  
6 is to allow the parties time to negotiate, okay, based on  
7 facts and not conjecture.

8 And so, to the extent you hear anything else about  
9 the committee being the party of no, and we don't want to  
10 mediate, that's just not the case, Your Honor. Thank you.

11 THE COURT: Okay. Let me hear 10 seconds from  
12 Plevin and then you can close it out, okay?

13 MR. PLEVIN: Thank you, Your Honor. The only  
14 thing I wanted to say is on Mr. Amala's hypothetical of a \$1  
15 million policy with a offer to settle for a million dollars,  
16 which is accepted, the only data point that comes out of  
17 that is that there was a million dollar policy. Says  
18 nothing about the value of the claim. It's of no utility to  
19 anybody trying to value claims.

20 THE COURT: Okay. Thank you. Okay.

21 MR. PLEVIN: (indiscernible).

22 THE COURT: I think -- well, it's close enough.  
23 Okay?

24 MR. MOORE: I'll be under two minutes, I promise.

25 THE COURT: Okay. Thank you.

1 MR. MOORE: First, Your Honor, regarding the  
2 committee being the party of no, they said no in this  
3 hearing. We said, we want to go back to mediation. They  
4 said no, though there is no possibility of a second path.  
5 Second, regarding speculation, the committee's entire motion  
6 is founded and based in speculation. If you lift the stay,  
7 insurers might settle. If you lift the stay, we might get  
8 good data points. If you lift the stay, the case might  
9 resolve.

10 Everything that you've heard, trying to  
11 extrapolate other cases into this case is founded on that  
12 same speculation. And about that issue, state court counsel  
13 mentioned repeatedly DRVC. I want to point out for the  
14 Court, the stay was never lifted in DRVC. DRVC has  
15 separately incorporated parishes. It attempted to extend  
16 the stay to those parishes. (audio glitch)

17 THE COURT: It's -- you guys are --

18 CLERK: We're back on.

19 THE COURT: All right. Do we have all our  
20 participants as well? Do we know?

21 CLERK: Yes, Your Honor.

22 MS. UETZ: Your Honor, it's Ann Marie Uetz. I can  
23 hear and we're back.

24 THE COURT: Okay, good. Okay.

25 MR. MOORE: Last thing, Your Honor, just to



1 reiterate, the statement has been made that DRVC settled  
2 because the stay was lifted. That never happened. DRVC  
3 settled because the case was going to be dismissed because  
4 they spent a hundred million dollars plus in legal fees  
5 during the pendency of it. Where we don't want to be is  
6 with a party that won't negotiate with us pursuing this path  
7 and others a year, two years from now, having spent tens of  
8 millions of dollars that we don't have.

9 THE COURT: Okay.

10 MR. MOORE: So, we do want to go forward with our  
11 plan. We don't think that the stay should be lifted and we  
12 can point to you to Judge Kinsella's opinion where she talks  
13 about the connection with the bankruptcy case and  
14 interference with it. It detracts from the mediation  
15 process that's undergoing. It detracts from the  
16 reorganization process and the discovery in the process  
17 involved in those demands would be expensive, would have to  
18 result in delay, and could impede the negotiations and the  
19 good faith that has gone on in the mediation process.

20 That's why she denied that motion and that's why  
21 you should deny this one.

22 THE COURT: Okay, thank you very much. Okay. The  
23 matter is otherwise submitted? Okay. This was extremely  
24 helpful to me, both on the practical sides as well as  
25 fleshing out all the, I think very legitimate concerns that

1 everybody has here. The -- I think Mr. Schiavoni is right  
2 about one thing. I mean, they -- clearly Congress created  
3 an automatic stay and that is the default. The question is  
4 what to do about it because as we all know, the stay is a  
5 tool and it is -- you know, Congress would not have used  
6 four verbs to decide what I can do about it without  
7 understanding that there is -- there are many ways to deploy  
8 it, limit it, restrict it, whatever.

9 I need to give this a little bit of thought. I'm  
10 very appreciative of all the arguments today. I don't want  
11 to otherwise tip my hand here, but I'm going to give it a  
12 little bit of thought and I think I know everything that you  
13 could tell me at this point. So, I'm comfortable mulling it  
14 a bit and giving you guys my reactions soon, maybe as soon  
15 as on the 16th, I'm thinking. Okay?

16 All right. Do we want to take a minute before we  
17 launch under the insurance? Is that okay? You want -- I  
18 mean, literally, you want to come back in like three  
19 minutes? Is that all right? Okay, thank you very much.

20 (Recess)

21 THE COURT:

22 CLERK: Come back to attention. The Court is in  
23 session.

24 THE COURT: Okay, thank you. And let's have a  
25 seat and we are transitioning to the insurance litigation

1       that's presently before Judge Corley, right, the standing  
2       motion re that? Okay. Yeah. Okay.

3               MR. BURNS: Tim Burns, special insurance counsel  
4       for the committee, Your Honor.

5               THE COURT: Okay.

6               MR. BURNS: First, let me answer a question you  
7       asked earlier about MDLs because it's sort of cuts across  
8       both motions. So, I was appointed to lead in the MDL  
9       recently with two of the top mass tort lawyers in the  
10      country. They schooled me on MDLs, the whole --

11              THE COURT: They schooled or scolded?

12              MR. BURNS: Both, probably. Both, probably.

13              THE COURT: Okay.

14              MR. BURNS: But they did school me on MDLs and the  
15      Court is right. The whole game in MDLs of getting them  
16      resolved is test cases. That is the focus. It works in MDL  
17      after MDL. So, let me go to the insurance standing motion.

18              THE COURT: Yeah.

19              MR. BURNS: I have ten points; nine of them are  
20      exceedingly brief.

21              THE COURT: Okay.

22              MR. BURNS: Admittedly --

23              THE COURT: We'll be the judge of that, but go  
24      ahead.

25              MR. BURNS: So, admittedly the tenth point has a

1       few subparts.

2               THE COURT:   Okay.

3               MR. BURNS:   So, first point, no mediation can  
4       resolve a case when the parties don't feel appropriate  
5       incentives, as my colleague Mr. Amala said, to settle.

6               Second, I don't think any Court would really  
7       disagree with Judge Bucki and what he said in the Diocese of  
8       Buffalo case. Litigated disputes are often settled on the  
9       courthouse steps.

10              Third, that's where all the parties feel the  
11       incentives to settle. Everybody, not just the other side,  
12       but everybody has something to lose.

13              THE COURT:   Can I ask you, is this directed toward  
14       the insurance?

15              MR. BURNS:   It is.

16              THE COURT:   Okay.

17              MR. BURNS:   Your Honor, it's --

18              THE COURT:   It kind of sounds like it's directed  
19       to the relief from stay, but go ahead.

20              MR. BURNS:   And Your Honor, I was going to start  
21       by saying that if some of these themes seem to echo, purely  
22       happenstance, but they are related very much.

23              THE COURT:   Okay.

24              MR. BURNS:   So, fourth, the most monumental step  
25       in pushing the case toward resolution in our view would be

1 the lift stay motion, not the insurance derivative standing  
2 motion.

3 THE COURT: Okay.

4 MR. BURNS: Fifth, the next most important step  
5 would be the Court requiring active litigation of the  
6 insurance adversary by granting the committee derivative  
7 standing to pursue that on the estate's behalf.

8 Six. If aggressively litigated, the insurance  
9 adversary would give parties incentive to resolve their  
10 dispute on a global basis. All parties would have something  
11 to lose.

12 Seven. That's because the courthouse steps would  
13 be constantly recreated as Judge Corley is asked to issue  
14 declaration after declaration that impact potential  
15 liability of the insurers and the potential recoveries of  
16 the Diocese and the survivors through motions for partial  
17 summary judgment on coverage issues and some limited jury  
18 trials on loss policies. The courthouse steps are  
19 constantly recreated.

20 Eighth. The debtor in this case has made clear  
21 its desire to make the insurance the survivors' problem.  
22 Let the survivors' representatives, the committee, start  
23 working on that problem now, in one insurance coverage  
24 action that is cost effective, instead of the 300-plus  
25 insurance coverage action that their plan contemplates.

1           Ninth. This is the last brief point. If this  
2 motion and the lift stay motion are not granted, I fear that  
3 many months or years from now we'll be in the same place we  
4 are right now. No matter how long the lift stay process  
5 takes, the test case process, no matter how long the  
6 insurance adversary takes, we will be that amount of time  
7 ahead of the game, if we start the test cases and fire up  
8 the insurance adversary right now.

9           Even if their plan's adopted, progress will have  
10 been made. Even in the unlikely event that they get votes  
11 in favor of their plan and this Court confirms their plan,  
12 progress will have been made with the test cases and the  
13 insurance adversary.

14           So, here's my overarching tenth point. The  
15 Diocese and the insurers' arguments against derivative  
16 standing are pretty insubstantial in our view. First, it  
17 can simply not be the case that a debtor can thwart  
18 derivative standing by filing a lawsuit and parking the  
19 lawsuit. That won't -- would take --

20           THE COURT: Well, okay. There's parking and then  
21 there's parking. I mean, they are on a fifth amended  
22 complaint, right?

23           MR. BURNS: And --

24           THE COURT: And that doesn't -- I mean, that  
25 suggests something other than lack of diligence. You know,

1       you could make a joke about that, but at the moment they  
2       want to pause it and you're not happy about that, right?

3               MR. BURNS:   We aren't --

4               THE COURT:   Okay.

5               MR. BURNS:   -- Your Honor.

6               THE COURT:   Okay.

7               MR. BURNS:   And look, we're 18 months into this  
8       case.

9               THE COURT:   Yeah.

10              MR. BURNS:   And we're not out of the pleadings,  
11       and I'm not pointing fingers.   I would have to point at  
12       myself, too.   We've had a right to intervene.   The parties  
13       have gone down a path of settlement, but the answer in our  
14       view isn't to park it and --

15              THE COURT:   But my question, my point is there's a  
16       difference between, you didn't do something and now time's  
17       a-wasting; or you did it in a way that was kind of obviously  
18       not as aggressive as it might've been and you've made a  
19       strategic decision to go down one path that in your mind  
20       means you ought to pause something else.   So, in the  
21       question of whether -- I mean, to me, that's more of a  
22       hurdle in my mind than would be the case if the debtor had  
23       just said, I'm not -- we're not doing X.   We don't like the  
24       idea very much at all.   So --

25              MR. BURNS:   I agree.

1 THE COURT: That -- so that's -- I mean, I think  
2 it's a harder -- a higher bar for you, I think.

3 MR. BURNS: I would agree, that it's a higher bar  
4 --

5 THE COURT: Okay.

6 MR. BURNS: -- Your Honor. There's a spectrum,  
7 not filing --

8 THE COURT: Yeah.

9 MR. BURNS: -- a lawsuit, one end of the spectrum.  
10 Closer --

11 THE COURT: We'll talk about that in another  
12 context.

13 MR. BURNS: Closer to that end would be just  
14 parking it.

15 THE COURT: Okay.

16 MR. BURNS: What they want to do after pursuing it  
17 for a while is to pause it and give the problem to us. It  
18 seems to me that it creates the same risk for the derivative  
19 standing doctrine. Folks can decide not to pursue things  
20 and let an asset waste, and it's hard to see what teeth they  
21 have if someone else can come in and meet the four-part test  
22 and show there to be derivative standing.

23 THE COURT: Okay.

24 MR. BURNS: None of their cases, by the way, stand  
25 for this broad proposition that once you file a lawsuit,



1 even, if you pursue it for a while, that you're -- another  
2 party can no longer get derivative standing. All of those  
3 cases talk about pursuing it in good faith, the action not  
4 being delayed.

5 Second, no demand on the Diocese --

6 THE COURT: Yeah.

7 MR. BURNS: -- was necessary because it would have  
8 been futile. And I think it's clear it would have been  
9 futile here. The Diocese in its plan, in its disclosure  
10 statement, in its commitment to the insurance companies and  
11 its abeyance motion had made clear its intention not to  
12 pursue the insurance coverage action anymore in favor of  
13 pursuing a plan that would bring about 300-plus separate  
14 insurance coverage action. '

15 Futility is not limited to a tiny handful of  
16 circumstances. It's fact centered under the case law and it  
17 sort of means what it says. Would it have been futile? It  
18 doesn't require a specific type of wrongdoing for it to be  
19 futile.

20 Third, the debtor wants the Court to give  
21 deference to what it considers to be its business judgment  
22 on how to handle the litigation. But its business judgment  
23 now is not to handle the litigation, to stop the litigation,  
24 and later, if its plan's confirmed, make it our problem.

25 That brings us right back to the derivative

1 standing test. It isn't some deferential business judgment  
2 test and if it were a deferential business judgment test,  
3 they wouldn't be able to avail themselves of it under  
4 fiduciary duty law because their view is pre-baked.

5 They've told the world what their view is, the  
6 insurance litigation --

7 THE COURT: Well, let me --

8 MR. BURNS: (indiscernible).

9 THE COURT: Let me ask you a question there, okay?  
10 Is there a difference between pre-baked, as in they come in  
11 before they make any decision at all and say the only  
12 decision to be made is this one, versus they go through  
13 mediation for months with you folks and with the insurance  
14 companies, and in their mind -- I may not ultimately agree  
15 with it, you may not ultimately agree with it -- in their  
16 mind, they say, look, we've got to make a deal with  
17 somebody.

18 I'm not trying to be funny here. We've got to  
19 make a deal with somebody. We can make a deal with the  
20 insurance company. It may not be as perfect as the  
21 committee would like in some ways, but we think we can take  
22 the position it's good enough. And but for the votes that  
23 we may or may not get, we can defend it. I mean, if you're  
24 telling me they have a conflict, I'm not quite seeing the  
25 world that way. They made a decision. You may think it's a

1 very bad one, but that's not -- in my view, that's not a  
2 conflict. So, help me out with that part.

3 MR. BURNS: Your Honor, I'm only talking about the  
4 conflict in terms of independently assessing the best course  
5 for the litigation after they've already committed to  
6 another party.

7 THE COURT: But I guess my question, then, is the  
8 difference between was there something about a process that  
9 was so flawed versus they just made a decision that you  
10 don't think is the right one?

11 MR. BURNS: I --

12 THE COURT: I mean, what -- so, if you think it's  
13 in the world of the first scenario, tell me why, because  
14 that's where I have to be worried about a conflict. If they  
15 simply came to a decision that you think we don't see how  
16 you could conclude that, that's -- we can have a  
17 confirmation trial. Maybe. We'll see.

18 MR. BURNS: So, Your Honor, all I'm trying to get  
19 out --

20 THE COURT: Yeah.

21 MR. BURNS: -- is whether it should be the  
22 derivative standing test --

23 THE COURT: I understand.

24 MR. BURNS: -- the normal four-point test.

25 THE COURT: I understand.

1 MR. BURNS: Or some --

2 THE COURT: And I'm not trying to -- I'm not  
3 trying to decide. I'm giving you my sense of how I look at  
4 this factor. That's what I'm trying to do. Okay?

5 MR. BURNS: Okay. So, my view is that they're, of  
6 course, free to negotiate with anyone they want to. That  
7 doesn't mean the plan's going to be voted --

8 THE COURT: Yeah. I --

9 MR. BURNS: -- in their favor.

10 THE COURT: I know. I know.

11 MR. BURNS: What they aren't free to do is let an  
12 asset sit there in waste, in hope that a plan is going to be  
13 confirmed at some point, a plan that the committee doesn't  
14 support and the survivors are unlikely to support.

15 THE COURT: Okay.

16 MR. BURNS: That decision is decided under --

17 THE COURT: Well, how could they satisfy that  
18 other than agreeing with you they should just do something  
19 else? Is -- I mean, is it the result of the process that  
20 bothers you?

21 MR. BURNS: It's the result.

22 THE COURT: Okay. I got you. Okay. I  
23 understand. Okay. And there's a fourth factor, I'm  
24 thinking, right?

25 MR. BURNS: So, fourth. The debtors' failure to

1 pursue what even the debtor considers to be litigation worth  
2 hundreds of millions of dollars is not justified here by the  
3 costs they're talking about, the cost of the litigation.  
4 What they're going to do -- let's be real clear -- is if the  
5 insurance litigation goes forward, if the test cases don't  
6 go forward, they're throwing a hail Mary that this plan is  
7 going to be voted on and confirmed. But a hail Mary that's  
8 going to cost us all a lot of time.

9 THE COURT: So, can I reform that as to the third  
10 and fourth factors and see if I'm with you? That is, as a  
11 matter of law, irresponsible in your way that breaches a  
12 fiduciary duty; is that what you're saying?

13 MR. BURNS: I would agree with that.

14 THE COURT: But that's the focus of it. It's not  
15 so much you're telling me the process was from the inception  
16 a bad process and they knew going in that they had an  
17 undisclosed or improper influence that they were -- it's  
18 that in exercising that judgment, they've been so  
19 irresponsible that as a matter of as a matter of law,  
20 practically, it has to be a breach of fiduciary duty.

21 MR. BURNS: Well --

22 THE COURT: Is that it?

23 MR. BURNS: It -- I'm not casting aspersions on  
24 what they thought about it.

25 THE COURT: You don't have to.

1 MR. BURNS: Or that they --

2 THE COURT: You can tell me that this is just a  
3 terrible answer and nobody, you think, should come to this  
4 answer. That's okay. So, yeah.

5 MR. BURNS: It doesn't meet the justification  
6 standard.

7 THE COURT: Yeah.

8 MR. BURNS: I'm not --

9 THE COURT: No, you're far too elegant a thinker  
10 to cast aspersions on them. I know that. That's fine.  
11 That's not the issue at all. Okay? So, I think I'm hearing  
12 you. So, I'm interrupting you a lot. I'm sorry. You go  
13 ahead.

14 MR. BURNS: No, you're fine, Your Honor. I prefer  
15 your questions. They're helpful to narrow the issues.

16 THE COURT: Okay.

17 MR. BURNS: So, hopefully I'm answering.

18 THE COURT: I think you are. I appreciate it.  
19 Yeah.

20 MR. BURNS: The debtor says there's no harm  
21 because in a few months or whenever this plan goes into  
22 effect, we can pursue the same coverage actions that they're  
23 not pursuing now. Well, time is a harm. But more  
24 significantly than even the time, we're not talking one  
25 efficient coverage action now --

1 THE COURT: Yeah.

2 MR. BURNS: -- or potentially efficient coverage  
3 action. We're talking each survivor having to pursue their  
4 own coverage action. That's radically different from this  
5 comprehensive action being filed. The idea that there's no  
6 harm does not justify in any way they're stopping the  
7 litigation --

8 THE COURT: Okay.

9 MR. BURNS: -- at this point. So, the insurers  
10 argue that the derivative standing decision interferes with  
11 Judge Corley's potential decision on the motion to dismiss.  
12 That's just plain wrong, for this reason.

13 THE COURT: The motion to abate or to dismiss?

14 MR. BURNS: Dismiss.

15 THE COURT: Okay. In certain insurers' brief,  
16 they said that it would prejudge things, essentially that  
17 Judge Corley will be deciding in potential motions to  
18 dismiss that they intend to file.

19 THE COURT: Okay.

20 MR. BURNS: They haven't filed any motion to  
21 dismiss the fifth amended complaint.

22 THE COURT: Yeah.

23 MR. BURNS: Admittedly, they have more time to  
24 file the motions to dismiss the fifth amended complaint.  
25 But you're not interfering with anything currently pending

1 before Judge Corley by making a colorability analysis  
2 regarding these claims.

3 That leads into my next point, which is I'll  
4 actually be shocked if the insurers do file a motion to  
5 dismiss the fifth amended complaint. Judge Corley was quite  
6 clear in the -- that she thought declaratory counts on  
7 coverage issues were colorable claims, would survive a  
8 motion to dismiss on just disability issues. They didn't  
9 say boo, Your Honor. They were unusually silent. Judge  
10 Corley has handled, I think she mentioned, ten or a dozen  
11 insurance coverage --

12 THE COURT: Sure.

13 MR. BURNS: -- cases.

14 THE COURT: Sure.

15 MR. BURNS: District judges do not let non-  
16 colorable cases move forward with discovery like she's  
17 allowed this case to do.

18 THE COURT: Okay.

19 MR. BURNS: Colorability generally, I think she's  
20 spoken to it already by allowing discoverability --  
21 discovery to move forward.

22 THE COURT: Okay.

23 MR. BURNS: But the federal reporters are  
24 literally full of cases where the underlying dispute hasn't  
25 been resolved, but there are ongoing coverage disputes.



1 THE COURT: Okay.

2 MR. BURNS: So --

3 THE COURT: Let me just give you a heads up here.  
4 If I'm dividing the time between when you started in and  
5 five, I think you would go to about 4:38. Okay?

6 MR. BURNS: So, well, that's perfect, Your Honor.

7 THE COURT: Okay.

8 MR. BURNS: Unless you have any questions, I'll  
9 just --

10 THE COURT: No, it's very helpful. I mean, I  
11 think this is a tricky one. It's very helpful.

12 MR. BURNS: So, I'll conclude with this.

13 THE COURT: Okay.

14 MR. BURNS: Properly litigated and aggressively  
15 litigated, this insurance recovery action can start  
16 answering questions immediately, like what particular  
17 policies exist? What are their terms? What are their  
18 limits? Do solvent insurers have to pay more if they're  
19 insolvent insurers? How many occurrences and how many  
20 limits do these insurance companies have to pay? That puts  
21 the insurers at risk. That puts us at risk and will drive  
22 global resolution.

23 THE COURT: Okay. Thank you very much.

24 Appreciate it. Okay, who's going to take the argument for  
25 the debtor? Mr. Moses? Okay. If you want to cede some of

1 your time to some of the insurance counsel, let me know, but  
2 we're going to have to conclude at five. Okay?

3 MR. MOSES: Understood, Your Honor.

4 THE COURT: Okay.

5 MR. MOSES: So, I'll keep this quite brief. I  
6 will give the insurance -- try to leave some time --

7 THE COURT: Okay.

8 MR. MOSES: -- for the insurance companies to  
9 respond. Shane Moses, Foley & Lardner, for the debtor.

10 THE COURT: Okay, thank you.

11 MR. MOSES: We're not here, Your Honor, on an  
12 objection to our plan. We're not here to resolve whether or  
13 not the insurance assignment and the litigation option in  
14 the plan are confirmable or not confirmable. We're here on  
15 a motion by which the committee seeks to take over pending  
16 litigation that was brought by the debtor more than a year-  
17 and-a-half ago, that the debtor has been actively pursuing  
18 since then.

19 The committee seeks to do that based on a legal  
20 theory of derivative standing, despite the fact that they  
21 have not identified a single case where a bankruptcy court  
22 has used derivative standing legal theory to wrest control  
23 of the pending litigation away from a debtor or trustee.

24 Not only that -- and we'll get back to that in a  
25 second, but not only that, factually, it's based, the

1 committee's argument in their attempt to wrest control of  
2 this case away from the debtor is based on a disagreement  
3 with the debtor's good faith determination of how it should  
4 administer the coverage, its insurance coverage, and the  
5 coverage action as an asset.

6 And it's specifically based on two current  
7 circumstances. One is a pending motion before the district  
8 court in which the debtor asks to hold the coverage action  
9 temporarily in abeyance. We're not trying to dismiss it.  
10 We're not trying to do anything else with it, but  
11 temporarily pause it while we seek a ruling from this Court  
12 and move forward on the plan and, you know, I guess the  
13 cat's now out of the bag. We filed a mediation motion, so  
14 also on renewed mediation. And then also on the plan itself  
15 and specifically how the plan treats coverage.

16 The committee argues that a plan without committee  
17 support is not a basis for delay. We can get into that, but  
18 that's not the right question. That's not the question that  
19 this Court is really asked to determine. The question about  
20 whether or not there is a basis to pause the district court  
21 litigation is currently pending in a motion before Judge  
22 Corley that is set to be heard on January 16th in the  
23 morning before our return to Your Honor.

24 So the only explanation is that the committee is  
25 concerned about how Judge Corley might rule, that Judge

1 Corley might grant our motion and actually find that there's  
2 good cause. So, they're asking Your Honor to decide there's  
3 not good cause for the abeyance motion before Judge Corley  
4 has a chance to rule.

5 THE COURT: I'm acutely aware of that.

6 MR. MOSES: I want to turn to, second -- getting  
7 back to the issue of the legal standard and you know, we've  
8 heard some argument that there's not a bright line rule that  
9 says that the derivative standing legal theory cannot be  
10 implemented in a case where there is a case pending.

11 And specifically, the cases that we pointed to,  
12 the (indiscernible) cases, where the Court said we're  
13 denying this because there's a case pending, there was an  
14 acknowledgement -- I agree, there was an acknowledgement  
15 that those cases that maybe in some case, some other  
16 situation, there might be a circumstance where the debtor is  
17 abusing its discretion and there might be a different  
18 outcome.

19 But in trying to point to that, the issue is the  
20 committee is acknowledging that that could only ever apply  
21 if the debtors' decision was an abuse of discretion or not  
22 in good faith. What's actually happening here is that the  
23 debtor has, after many months of litigation -- sorry, of  
24 mediation, also litigation, but after many months of  
25 mediation, come to a resolution with the insurers as to how

1 coverage would be treated in the plan and the committee  
2 doesn't like that.

3 They try to make that into a conflict of interest.  
4 It's not a conflict of interest. The only conflict is  
5 between how the debtor has decided to administer this asset  
6 and treat it under a plan and how the committee thinks it  
7 should be treated. That's simply not, Your Honor, a basis  
8 to make a determination that the debtor is not acting in  
9 good faith.

10 Now, there's a lot of arguments about, you know,  
11 whether or not the litigation option in the plan and the  
12 assign -- insurance assignment that's embodied in the  
13 litigation option makes sense, whether or not they're in the  
14 best interest. We heard an argument about how it would be  
15 better to have these issues resolved in a unitary setting  
16 versus a litigation option where we give the right to  
17 determine what to do to each individual insured.

18 We allowed them to make the decision whether to  
19 pursue coverage. That objection, that's a plan objection,  
20 Your Honor. That's not a reason to decide that the debtor  
21 should not pursue this action.

22 I'm going to keep this very brief. I don't have a  
23 whole lot more that I want to say right now. I just think  
24 there is not a world in which the debtor's request to the  
25 district court to decide whether there's good cause to pause

1       this could be a breach of the debtors' duty as a matter of  
2       law. Your Honor asked that question. We heard from the  
3       committee that they think it is. I don't see how that's  
4       possible, Your Honor. That --

5               THE COURT: Well --

6               MR. MOSES: I'm happy to answer any questions the  
7       Court has.

8               THE COURT: No, never mind. That's okay. If  
9       you're --

10              MR. MOSES: Yeah, I guess I would like to circle  
11       back to. because it's probably worth at least acknowledging,  
12       the factors and we have made the point that we --

13              THE COURT: Yeah.

14              MR. MOSES: -- never made a demand and there's a  
15       lot of discussion about demand futility. The committee even  
16       recognizes in their reply that in the Greenspun case, the  
17       Ninth Circuit, you know, said that applies in a situation  
18       where there's bias or self-interest. What the Ninth Circuit  
19       was really talking about and where most demand futility  
20       cases are talking about is a situation where it would be a  
21       request to the board of directors of a company to sue  
22       itself. That's not what we're talking about. That's what  
23       I'm referring to when I say the only conflict of interest  
24       here.

25              THE COURT: Well --

1 MR. MOSES: It's not conflict of interest. It's a  
2 conflict --

3 THE COURT: Well --

4 MR. MOSES: -- opinion.

5 THE COURT: Yeah. I mean, if I could -- and  
6 that's exactly what I almost said and I'll say it more  
7 directly now. I mean, it's -- it would be a conflict of  
8 interest if there were really two interests that were  
9 adverse. What the debtor is saying is we just think this is  
10 a better plan and you know, is it a conflict of interest to  
11 say we've chosen, it's not smart to spend money doing X when  
12 we can resolve it doing Y? That may not be the right  
13 answer, but does that articulate a situation in which there  
14 were really two conflicting interests as opposed to just the  
15 debtor makes a decision about what's more expeditious,  
16 whether it's smart to spend money in this direction or that  
17 direction.

18 MR. MOSES: Right.

19 THE COURT: I mean, I -- in my -- I'm struggling  
20 with how I think of that as a conflict, as I think of  
21 conflicts. You know, there are duties to two parties and  
22 those parties are adverse and you can't possibly do both.  
23 The debtor could decide -- I mean, not to prove this by an  
24 absurd -- you could decide. Would it be a conflict if you,  
25 you know, decided to take the committee's position that

1 we'll fight this to the bitter end? That wouldn't be a  
2 conflict. It'd be a choice.

3 MR. MOSES: It would be a different decision.

4 THE COURT: Yeah. Now, it may be --

5 MR. MOSES: (indiscernible).

6 THE COURT: -- did they demonstrate that it was  
7 horribly improvident or the wrong decision or not fair?  
8 Goodness knows what, at plan time. What I'm struggling with  
9 is how to -- and it's to your advantage right now. I'm  
10 trying to process how is it a conflict. That's what I'm not  
11 getting.

12 MR. MOSES: I can't answer that for you, Your  
13 Honor, because I don't think it is.

14 THE COURT: I understand.

15 MR. MOSES: What I will say is that I think  
16 there's a couple -- two decision points here. There's a  
17 decision point on whether or not there is good cause to  
18 pause this litigation right now.

19 THE COURT: Oh, yeah, sure. Sure.

20 MR. MOSES: That question is before Judge Corley  
21 next Thursday. She will decide. If she decides that  
22 there's not good cause, then the debtor will be proceeding  
23 to litigate this case --

24 THE COURT: Well --

25 MR. MOSES: -- pending plan confirmation. If --



1 THE COURT: That --

2 MR. MOSES: -- the second --

3 THE COURT: That's a little awkward if she's  
4 reading my mind. I mean, I don't know how she decides that.  
5 And I mean that with all the respect. It is somewhat shared  
6 in a sense here. But if what she's saying is, is it an  
7 irrational request that while this thing is going on in  
8 front of Lafferty, we do not pursue this? You know, is that  
9 so far out of the mainstream that I should never countenance  
10 that decision? If that's the question, I get it. She can  
11 certainly answer that one.

12 MR. MOSES: Right. But I think on some level, the  
13 only decision you're being asked to make right this minute  
14 is whether --

15 THE COURT: I understand.

16 MR. MOSES: -- our suggestion to Judge Corley that  
17 she do that is so far out of the realm of possibility --

18 THE COURT: That I remove the --

19 MR. MOSES: -- that it's a breach of the debtors'  
20 good faith.

21 THE COURT: -- you're no longer the protagonist.  
22 I understand that. Okay.

23 MR. MOSES: I think that's all, Your Honor.

24 THE COURT: I understand that. Okay. Anything  
25 else on your end?

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

2 THE COURT: You want to leave a moment to Mr.  
3 Plevin or Mr. Schiavoni to say a word?

4 MR. MOSES: (indiscernible). So, I'm winding up  
5 now.

6 THE COURT: I appreciate it. Thank you very much.

7 MR. PLEVIN: Mark Plevin on behalf of Continental  
8 Casualty, Your Honor. I'll be quick and have, I think, only  
9 three points, 70 percent fewer than Mr. Burns.

10 The first is that this case is not colorable. We  
11 explain why that is. The removal of the duty to defend  
12 claims from the complaint means that all we have left is the  
13 duty to indemnify, but we don't have any judgments. And  
14 under California law, you can't have a -- you can't  
15 determine a duty to indemnify until you have the judgment.

16 And the HPS Mechanical case is the most recent  
17 case we found that said that, but Judge Corley herself in  
18 Essex Portfolio said the same thing and Judge Gilliam, among  
19 other federal judges, in the Starr Indemnity v. Chart  
20 Industries case, said the same thing as well.

21 It all derives from the fact that you cannot  
22 determine the duty to indemnify until you have a judgment.  
23 And that also speaks to the point that Mr. Burns was making  
24 about, you know, why would we do this in multiple  
25 litigations, one claimant at a time, as opposed to having

1 one big litigation? Well, the reason you can't have one big  
2 litigation is you don't have any judgments.

3 When a claimant has a judgment, then you can  
4 determine if there's a dispute about whether the insurer  
5 will pay, if there's a duty to indemnify. I'm not going to  
6 go into all the details about why it's not colorable, but we  
7 thought it was important to make that point and I should  
8 say, this.

9 The principal case cited by the committee in  
10 support of the idea that this is colorable, the American  
11 States v. Kearns case out of the Ninth Circuit, as both  
12 Judge Corley and Judge Gilliam and the HPS Mechanical court  
13 point out, the duty to defend and the duty to indemnify were  
14 at issue in Kearns, and that makes all the difference in the  
15 world. That's they didn't think that they were bound to  
16 follow the Kearns case.

17 Second point, Mr. Burns suggested a scenario in  
18 which there was going to be a request to Judge Corley for  
19 declaration after declaration so that we would continuously  
20 be on the courthouse steps if that action, in fact, were  
21 allowed to go forward. That would basically require either  
22 25 consecutive summary judgment motions heard sequentially  
23 over a long period of time or perhaps he's thinking about  
24 we're going to have 20 or 25 phase trials where we bring in  
25 a jury and we try one issue and then we bring in another

1 jury and we try another issue.

2 The more likely outcome, of course, is that if a  
3 case like that were to go forward, all the discovery is  
4 taken, all the motions for summary judgment are filed at the  
5 same time, and if there's anything left to try, it's one  
6 trial. So, we're not going to be at the courthouse steps  
7 continuously in any case before Judge Corley.

8 The last thing I want to say is something that the  
9 committee raised only in a footnote, but is extremely  
10 dangerous. And that is the idea that they should be given  
11 all of the privileges that the debtor has with respect to  
12 these claims. Now, it's a little bit vague, and I'm not  
13 sure I understand exactly what they're asking for, because,  
14 of course, they just did it in a footnote. They didn't  
15 develop an argument.

16 But the concern on our part is that we have a  
17 common legal interest with the debtor in defending these  
18 claims. And if the committee were to be given the debtor's  
19 privileged information that relates to the defense of the  
20 underlying claims, now you've given the defense playbook to  
21 the plaintiff and that is extraordinarily prejudicial, not  
22 only to the debtor but to the defending insurers and is a  
23 breach of cooperation that I think would jeopardize coverage  
24 for all of the claimants.

25 So, I wish I could say more about that point,

1 because I think it's a very, very important point. But  
2 their very brief footnote didn't give me enough information  
3 to be able to say anything more about it.

4 THE COURT: Okay, thank you.

5 MR. PLEVIN: Thank you.

6 THE COURT: Appreciate it.

7 MR. SCHIAVONI: Your Honor, Tancred Schiavoni from  
8 O'Melveny for Pacific Indemnity. I've been at all of the  
9 coverage proceedings before Judge Corley and all the meet  
10 and confers. Mr. Burns was at every single coverage  
11 hearing, along with at least one of his partners and someone  
12 from the committee, and I think maybe others on the calls.  
13 He was allowed to be heard by Judge Hurley at those  
14 proceedings. Mr. Burns and/or one of his colleagues was  
15 present at every single meet and confer in connection with  
16 the coverage case.

17 Mr. Burns was submitted statements, text, for the  
18 case management statements in every single case management  
19 statement. He's been an active participant. At no point in  
20 the coverage proceeding did he diverge from the debtors on  
21 anything. He didn't suggest that they were abandoning a  
22 claim or pursuing something the wrong way, whether there's a  
23 better way to do it.

24 He absolutely didn't say anything contrary that  
25 they had in any way steered the ship in the wrong direction.

1       There were submissions of case manage -- there's a  
2       submission of a case management plan on how to direct the  
3       case going forward. It sets -- you know, we set out  
4       something that is sort of a year plus. They send out  
5       something a little shorter.

6               But what I'm hearing from him today that, oh, he's  
7       got this new -- this plan of somehow these summary -- that's  
8       not in the case management proposal that he put before the  
9       Court.

10              THE COURT: Okay.

11              MR. SCHIAVONI: This is something new, okay.

12              THE COURT: Okay.

13              MR. SCHIAVONI: And we saw this exact thing happen  
14       in Camden when there was an effort to derail the plan with  
15       the insurers there. We're now at 40 plus million dollars of  
16       costs in Camden. This week, the Third Circuit issued an  
17       order staying the effectiveness of the Camden plan, finding  
18       that the insurers had met their burden to show that we've  
19       had a likelihood of success on appeal. Like that's the  
20       direction where this thing is being driven.

21              The Court previously found that or ruled that the  
22       debtor is well suited to handle the coverage action.  
23       There's been no basis offered here to suggest that the  
24       debtor has a conflict or is operating somehow differently  
25       from the committee's interest here in maximizing coverage.

1 They -- the committee has no interest in managing the  
2 effectiveness of the cost. There was a -- talk here.  
3 There's been a lot of talk about incentives.

4 It's like the incentives here where we have an  
5 adversary who's -- all their litigation is billed to another  
6 party is something to be thought about and how those -- the  
7 incentive works.

8 THE COURT: Okay.

9 MR. SCHIAVONI: It would be enormously -- the last  
10 point would be, it would -- they've suggested in that  
11 footnote that they need to have these privileges in order to  
12 litigate that coverage action. It would obviously be just  
13 incredibly prejudicial to have those privileges turned over  
14 to them both when they're now actively pursuing a lift stay  
15 and if the stay is not lifted later, the individual, you  
16 know, actions themselves. So, for all those reasons, I --

17 THE COURT: Okay.

18 MR. SCHIAVONI: -- ask that you deny the motion.  
19 Thank you very much. I appreciate it. Mr. Burns, you want  
20 to take about four minutes to wrap up?

21 MR. BURNS: Three points, Your Honor. First on  
22 the conflict point. Nothing hinges on whether there's a  
23 conflict or not. My only point was they aren't entitled to  
24 some deferential business judgment tests. The test is the  
25 four part test for derivative standing, but I would submit

1 this to the Court on a -- on the conflict issue.

2 The debtor has committed with the insurers to a  
3 plan that makes the insurance the survivors' problem. What  
4 if Judge Corley doesn't stay the case? What if Judge Corley  
5 rules against the debtor on the abeyance motion?

6 They need to pursue the litigation actively if  
7 that happens, and yet they're committed to a circumstance  
8 very different from that.

9 Second point. Mr. Plevin's point on the  
10 colorability of these claims and how they aren't colorable  
11 until there's a judgment in the sexual abuse cases, isn't  
12 that one of the best reasons that these test cases should  
13 move forward? How are we going to -- under Mr. Plevin's  
14 view of the world, how are we going to get to the coverage  
15 issues if --

16 THE COURT: Okay.

17 MR. BURNS: -- these claims aren't even --

18 THE COURT: Can I ask you another question?

19 MR. BURNS: Sure.

20 THE COURT: Would you tell me that his view might  
21 be a little bit limited in the sense that it's your view  
22 that with or without a judgment, you're going to establish  
23 some questions about coverage periods. Who's ex -- who's  
24 primary, who's excess, and that's going to be helpful --

25 MR. BURNS: Absolutely.



1 THE COURT: And has to be done anyway.

2 MR. BURNS: Absolutely.

3 THE COURT: Okay. I mean, I -- okay. I mean --

4 MR. BURNS: Your Honor, the colorability on his  
5 part, argument's flat out wrong, but all I'm saying, that  
6 even if it's right, that's a reason why test cases --

7 THE COURT: Okay.

8 MR. BURNS: -- move forward. And then my final  
9 point in response to Mr. Schiavoni, Your Honor, and the  
10 committee being at every hearing and not taking a contrary  
11 view to the debtor, they look back at the case management  
12 statements --

13 THE COURT: Yeah.

14 MR. BURNS: -- the committee's portion.

15 THE COURT: Yeah.

16 MR. BURNS: We made clear to the Court, we made  
17 clear to the parties that we should be allowed to file  
18 motions for partial summary judgment whenever appropriate in  
19 our view, because those motions are what will recreate the  
20 courthouse steps and let that case be useful in getting to  
21 global --

22 THE COURT: Okay.

23 MR. BURNS: -- consensus.

24 THE COURT: Okay. All right. Thank you very  
25 much.

1 MR. BURNS: Thank you.

2 THE COURT: We've come to the end of my time. I'm  
3 very thankful to all of you. I'm probably not a great poker  
4 player on this one. I'm a little worried about this one. I  
5 want to think about it a bit. I'm fairly confident by the  
6 time we're back together again on the 16th, I'll have some  
7 thoughts for you. I mean, I -- people expected me to decide  
8 it before Judge Corley was going to hear the abeyance  
9 motion. I don't expect doing that. I think she should hear  
10 that and do whatever she's going to do with it without any  
11 interference from me. I think that's appropriate.

12 And I'm very likely going to be able to give you  
13 my thoughts about this motion on the 16th. All right? Hope  
14 that doesn't ruin anybody's view of how the universe should  
15 work, but that's where we are. All right? Thank you for  
16 your very good arguments, all of you. It was a pleasure as  
17 always. I learned a lot, as always, and I will look forward  
18 to seeing you on the 16th, unless there's some emergency  
19 that we need to talk about between now and then.

20 MAN: Judge, could we have one moment --

21 THE COURT: Yeah.

22 MAN: -- with regard to the last motion that's on  
23 the calendar for today.

24 THE COURT: Yes.

25 MAN: The committee (audio ends here)

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

I, Joanne Morrison, certified that the foregoing

record of the proceedings.



Joanne Morrison, CET-1310

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Date: January 14, 2025

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