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*Counsel for the Debtor  
and Debtor in Possession***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

Chapter 11

**DEBTOR'S NOTICE OF SUBMISSION OF  
ORDER FOLLOWING NOVEMBER 12, 2025  
STATUS CONFERENCE ON DEBTOR'S  
MOTION TO DISMISS CHAPTER 11 CASE  
PURSUANT TO 11 U.S.C. §1112(b)**

Judge: Hon. William J. Lafferty



1 **TO THE HONORABLE WILLIAM J. LAFFERTY, UNITED STATES BANKRUPTCY JUDGE**  
2 **AND ALL INTERESTED PARTIES AND/OR THEIR COUNSEL OF RECORD:**

3 The Roman Catholic Bishop of Oakland, a California corporation sole, and the debtor and debtor  
4 in possession (the “Debtor”) in the above-captioned chapter 11 bankruptcy case (the “Chapter 11 Case”),  
5 hereby files this notice of submission of its proposed form of order on following the status conference  
6 conducted on November 12, 2025 (the “Status Conference”) on the *Debtor’s Motion to Dismiss Chapter*  
7 *11 Case Pursuant to 11 U.S.C. §1112(b)* [Docket No. 2293] (the “Motion”). The Debtor’s proposed form  
8 of order (the “Proposed Order”) following the Status Conference is attached hereto as **Exhibit A** and has  
9 been uploaded to the Court through CM/ECF concurrent with the filing of this notice. The Debtor submits  
10 this Proposed Order because it is consistent with the Court’s statements and ruling as reflected in the  
11 transcript from the Status Conference (the “Transcript” which, for ease of reference, a copy of the  
12 transcript is attached to this Notice as **Exhibit B**).

13 The Debtor provided its Proposed Order to the Official Committee of Unsecured Creditors (the  
14 “Committee”) together with a copy of the Transcript. The Committee refused to approve the Proposed  
15 Order as to form and has demanded changes that are not at all supported by the record at the Status  
16 Conference, or supported by the Court’s direction to the parties. These changes would provide the  
17 Committee with rights to a procedure it is now insisting on regarding dismissal which the Committee did  
18 not request, and which this Court did not order, at the Status Conference. By contrast, the Debtor’s  
19 Proposed Order reflects the Court’s ruling that “if nothing is filed [on or before 11:59 p.m. PT on  
20 November 26, 2025] indicating movement toward a fourth amended plan will be filed, then the case should  
21 be dismissed, and will be dismissed.” *See* Transcript, p. 71:7-17.

22 Counsel for the Debtor (Ann Marie Uetz) met and conferred with counsel for the Committee  
23 (Jeffrey Prol) on November 20, 2025 and did not obtain the Committee’s consent as to form. The Debtor  
24 therefore files this notice of Proposed Order, which is being served on all counsel who appeared at the  
25 hearing, consistent with Bankruptcy Local Rule 9021-1.

26 The Motion first came for hearing on October 29, 2025. At that hearing, the Court concluded there  
27 was no bad faith by the Debtor in the filed of the Chapter 11 Case, or in the Debtor’s conduct of the Case.  
28 *See* Transcript from October 29, 2025 Hearing, **Exhibit C**, p. 80:7-10. The Court ruled, therefore, for the

NOTICE OF SUBMISSION OF ORDER FOLLOWING NOVEMBER 12, 2025 STATUS CONFERENCE

1 reasons set forth in the Motion, argued by the parties and as stated on the record by this Court, that any  
2 dismissal of the Chapter 11 Case would be without prejudice and without any bar to future filings under  
3 Title 11 of the United States Code. At the Debtor's request and over the Committee's objection, the Court  
4 did not dismiss the Chapter 11 Case and instead set a further status conference hearing on the Motion for  
5 November 12, 2025, to allow additional time for mediation. No order was entered after October 29  
6 hearing.

7 Following the October 29 hearing, the Debtor worked diligently with mediators Tim Gallagher  
8 and Judge Randall Newsome (Ret.) to try to reach an outcome to this Chapter 11 Case other than dismissal.  
9 On November 10, the Debtor filed a short status conference statement with the Court indicating these  
10 discussions were ongoing [Docket No. 2444].

11 At the Status Conference on November 12, Judge Newsome requested a 14-day extension before  
12 any entry of any order of dismissal to allow continued mediation. *See* transcript of November 12, 2025  
13 hearing ("Transcript"), p. 10:12-15. The full text of Judge Newsome's statement to the Court follows:

14 fMR. NEWSOME: This has probably been the most difficult mediation I've  
15 been involved in out of the hundreds I've been involved in over the last  
16 thirty-plus years or forty-plus years, and it continues to be the most difficult  
17 mediation I've been involved in. But over the last ten days, there has been  
18 progress like I haven't seen before in this case. And I believe that there -- if  
19 there is not light at the end of the tunnel, I believe at least things are getting  
20 a little brighter in the tunnel. There's no guarantee, of course, as to where  
21 this is headed, but I would respectfully request that we be given another  
22 fourteen-day extension before an order of dismissal is entered in this case  
23 and that it be entered not one minute later than fourteen days from today.  
24 That's all I have to say.

25 Transcript, p. 10:3-16.

26 The Debtor stated its support for Judge Newsome's request for additional time for mediation  
27 before a dismissal would be entered (*see* Transcript, p. 11:4-10). Multiple insurers also supported the  
28 request for additional time (*see* Transcript, p.12:11-13-11). The Committee opposed the request for  
additional time and again requested immediate dismissal. *See* Transcript, p11:13-12:1. The Court sided  
with Judge Newsome, the Debtor and the Insurers, rejecting the Committee's request for immediate  
dismissal. Specifically, the Court granted the request "that we go out another two weeks." Transcript, p.  
20:18-22. The Committee did not request any particular procedure to be followed or deadline by which

NOTICE OF SUBMISSION OF ORDER FOLLOWING NOVEMBER 12, 2025 STATUS CONFERENCE

1 action must be taken to avoid automatic dismissal on November 26. Nor did the Committee request the  
2 Debtor be required to file a joint statement with the Committee about settlement progress.

3 Consistent with the discussion at the hearing, and the Court's direction, the Debtor's Proposed  
4 Order reflects the Chapter 11 Case shall be dismissed without prejudice on November 26, 2025, unless  
5 the Debtor files a statement indicating that the Debtor believes progress has been made toward a settlement  
6 and will file and seek confirmation of a fourth amended plan. The Committee's opposition to the Debtor's  
7 Proposed Order is a transparent attempt by the Committee – if it does not agree to settle with the Debtor  
8 on or by November 26 – to impose additional conditions, deadlines, and procedures it never requested,  
9 and which this Court never ordered, at the Status Conference. A copy of the Committee's redline of the  
10 Proposed Order is attached hereto as **Exhibit D**.

11 Nothing in the Committee's edits is supported by the record. First, the Committee's edits would  
12 require a joint statement by the Committee and Debtor. The problems with this approach are self-evident  
13 in light of the Committee's demand at the Status Conference that the case be immediately dismissed  
14 without opportunity for further mediation or settlement discussions. Second, the Committee's edits would  
15 require the Debtor to file "a request for an extension" sooner than ordered by this Court at the Status  
16 Conference, together with an accelerated briefing schedule in advance of a possible hearing on November  
17 26. The Committee's newly requested process should be rejected by this Court because:

- 18 (1) the Committee has never requested the Court impose such a process, or any process;
- 19 (2) the Committee's newly requested process would shorten by 48 critical hours the time this Court  
20 ordered to be available for mediation;
- 21 (3) the Committee's newly requested process is not supported by the record of the Status  
22 Conference and is not consistent with this Court's ruling at the Status Conference;
- 23 (4) the Committee's newly requested process it ignores the Court's unavailability during the week  
24 of November 24.<sup>1</sup>

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25  
26  
27 <sup>1</sup> While the Court did indicate that it might be able to be available if needed, this was never requested, as  
28 further reflected below.

1 (5) The Committee’s newly requested process would grant the Committee a right to seek dismissal  
2 of the Chapter 11 Case and prevent the Debtor from even filing and presenting to this Court  
3 for its consideration a possible fourth amended plan, which was not requested or even  
4 contemplated at the Status Conference.

5 A review of the Transcript confirms the Committee’s requested restrictions, deadlines, and process  
6 are not consistent with the Court’s direction and were never raised during the Status Conference. The  
7 Court asked all parties whether any further hearing or Court involvement would be needed on or before  
8 November 26. *See* Transcript, p. 19:2-20:3. Judge Newsome responded that nothing further was needed  
9 from the Court prior to November 26. *See id.* The Court specifically asked for any other comments or  
10 responses, and the Committee did not request the hearing it now demands. *See id.*, p. 20:4-6.

11 After granting Judge Newsome’s request to extend the case two weeks, the Court addressed the  
12 form of Order. The Court specifically suggested: “an order that would reflect that, so that it's totally self-  
13 executing, that **unless something is filed** by, you guys give me the date and the time, the case is dismissed.  
14 Is that sensible?” Transcript, p. 20:20-23 (emphasis added). Counsel for the Debtor confirmed the Debtor’s  
15 concurrence, stating: “the debtor does believe that entry of an order, really, along the lines that **if nothing**  
16 **is filed indicating movement toward a fourth amended plan will be filed**, then the case should be  
17 dismissed, and will be dismissed.” *Id.*, p. 20:11-15 (emphasis added). Once again, the Committee did not  
18 object at this point, nor did it propose any other process, requirements, or deadlines. The Court then  
19 requested a form of order “as it’s been described.” *Id.*, p. 22:12.

20 The Transcript thus confirms the order on the Debtor’s motion to dismiss should reflect that  
21 dismissal on November 26, 2025, will be automatic unless “*something* is filed” indicated progress toward  
22 a fourth amended plan. Nothing supports now dictating what the “*something*” must be in the way the  
23 Committee belatedly requests. The Committee never requested or argued that more should be required  
24 than a filing by the Debtor indicating “movement toward an amended plan.”

25 Further, nothing supports the Committee’s new demand, never raised at the hearing, that the filing  
26 must be a joint statement to forestall self-executing dismissal. Indeed, both the Court and Debtor’s counsel  
27 expressly acknowledged there might not be consent from the Committee for a further extension of the  
28

NOTICE OF SUBMISSION OF ORDER FOLLOWING NOVEMBER 12, 2025 STATUS CONFERENCE

dismissal date. The Court addressed this possibility, asking “would the thesis be that look, if we end up there, we’ll be in the same place we were six months ago, when we had a committee that didn't like the plan very much.” Transcript, p. 16:12-14. Debtor’s counsel responded by reiterating the hope for a fully consensual plan but also stating that it is possible that the Debtor might propose a fourth amended plan with the support of insurers and/or some plaintiffs, but without the Committee’s support. *Id.*, p. 16:19-25. While the Court emphasized the importance of discussions with the Committee, and both the Debtor and Mr. Gallagher committed to reach out to Committee counsel, there is no support in the record for the Committee’s belated demand it be granted a veto over keeping settlement discussions alive.

Of course, if the Debtor files a statement without the Committee’s concurrence, the Committee may file whatever it chooses and make whatever arguments it wants. The Debtor’s Proposed Order does not preclude the Committee from doing so. The only question presented now is *what* must be filed to forestall a self-executing dismissal on November 26. The Proposed Order is consistent with this Court’s ruling. Given the significance of a dismissal which this Court described as a “tragedy” for all parties involved, the Court should enter the Proposed Order.

## CONCLUSION

In sum, the Committee belatedly seeks to impose new requirements and processes it never sought at the Status Conference. Indeed, it is striking that after requesting immediate dismissal (Transcript, p. 11:13-12:1), **Committee counsel did not speak again during the Status conference.** See Transcript. At any point, Committee counsel could have argued that any filing before November 26 should be a joint filing, or requested a deadline for a request by the Debtor, or even requested a hearing on November 26. Instead, the Committee stayed silent, never challenging the Debtor’s proposal that dismissal should be self-executing unless something is filed “**indicating movement toward a fourth amended plan.**” *Id.*, p. 20:11-15 (emphasis added).

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NOTICE OF SUBMISSION OF ORDER FOLLOWING NOVEMBER 12, 2025 STATUS CONFERENCE

1           WHEREFORE, for the reasons set forth above, the Debtor respectfully requests the Court enter  
2 the Proposed Order in the form submitted by the Debtor.

3  
4 DATED: November 20, 2025

Respectfully submitted,

5           **FOLEY & LARDNER LLP**

6 Eileen R. Ridley

7 Shane J. Moses

8 Ann Marie Uetz

9 Matthew D. Lee

10 Geoffrey S. Goodman

11 Mark C. Moore

12 /s/ Shane J. Moses

13 SHANE J. MOSES

14 *Counsel for the Debtor*  
15 *and Debtor in Possession*

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28 NOTICE OF SUBMISSION OF ORDER FOLLOWING NOVEMBER 12, 2025 STATUS CONFERENCE

# **Exhibit A**



**FOLEY & LARDNER LLP**

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*Counsel for the Debtor  
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**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

**PROPOSED**

**ORDER PURSUANT TO STATUS  
CONFERENCE CONDUCTED ON  
NOVEMBER 12, 2025, ON DEBTOR'S  
MOTION TO DISMISS CHAPTER 11 CASE  
PURSUANT TO 11 U.S.C. §1112(B)**

Judge: Hon. William J. Lafferty

1 Following the hearing conducted by the Court on October 29, 2025 on the *Debtor's Motion to*  
2 *Dismiss Chapter 11 Case Pursuant to 11 U.S.C. §1112(b)* [Docket No. 2393] (the "Motion"), filed by  
3 the Roman Catholic Bishop of Oakland, a California corporation sole, and the debtor and debtor in  
4 possession (the "Debtor") in the above-captioned chapter 11 bankruptcy case (the "Chapter 11 Case"),  
5 and the Status Conference conducted in the Chapter 11 Case on November 12, 2025, for the reasons  
6 stated on the record October 29, 2025 and November 12, 2025, which constitute the Court's findings of  
7 fact and conclusions of law pursuant to Fed. Rule Bankr. Proc. 7052, **IT IS HEREBY ORDERED:**

8 1. The Motion is GRANTED for the reasons stated on the record October 29, 2025 and subject  
9 to the terms set forth herein.

10 2. The Court concludes for the reasons stated on the record October 29, 2025, there is no bad  
11 faith by the Debtor which would cause the Court to dismiss the Chapter 11 Case with prejudice or with a  
12 bar to the Debtor filing another bankruptcy case.

13 3. The Court concludes the Chapter 11 Case shall be dismissed without prejudice unless, on  
14 or before November 26, 2025 at or by 11:59 p.m. Pacific Time, the Debtor files a statement with the Court  
15 indicating that in the Debtor's judgment it has made progress toward a settlement and accordingly will  
16 file and pursue confirmation of a fourth amended plan of reorganization.

17 4. This Court shall retain jurisdiction with respect to all matters arising from or related to the  
18 implementation of or interpretation of this Order.

19 \*\*\* END OF ORDER \*\*\*

**COURT SERVICE LIST**

All ECF Recipients.

ORDER PURSUANT TO STATUS CONFERENCE CONDUCTED ON NOVEMBER 12, 2025

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of 4

# **Exhibit B**

1 UNITED STATES BANKRUPTCY COURT  
2 NORTHERN DISTRICT OF CALIFORNIA

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4 In Re: ) Case No. 23-40523  
5 ) Chapter 11  
6 THE ROMAN CATHOLIC BISHOP OF )  
OAKLAND ) Oakland, California  
7 ) Wednesday, November 12, 2025  
Debtor. ) 10:30 AM  
\_\_\_\_\_) )  
8 STATUS CONFERENCE RE: MOTION  
9 TO DISMISS CASE PURSUANT TO  
10 SECTION 11 U.S.C. SECTION  
11 1112(B) FILED BY THE ROMAN  
12 CATHOLIC BISHOP OF OAKLAND  
(DOC 2293)

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

13 APPEARANCES:

14 For the Debtor: EILEEN R. RIDLEY, ESQ.  
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Also Present: Randall Newsome, Esq. (Via Zoom)  
Mediator  
Tim Gallagher, Esq. (Via Zoom)  
Mediator  
Christopher Sontchi, Esq. (Via Zoom)  
Mediator

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4 Transcriber: HANA COPPERMAN  
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8 Proceedings recorded by electronic sound recording;  
transcript provided by transcription service.

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**The Roman Catholic Bishop Of Oakland**

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1 OAKLAND, CALIFORNIA, WEDNESDAY, NOVEMBER 12, 2025, 11:08 AM

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3 (Call to order of the Court.)

4 THE CLERK: 23-40523. Call the parties now, Your  
5 Honor.

6 THE COURT: We can start with the folks in the  
7 courtroom for appearances. Assuming you're making appearances,  
8 come up.

9 MS. RIDLEY: I am. Good morning, Your Honor.

10 THE COURT: Okay.

11 MS. RIDLEY: Eileen Ridley on behalf of the debtor,  
12 RCBO.

13 THE COURT: Okay.

14 MS. RIDLEY: I have my colleagues on the line.

15 THE COURT: Yeah, I'm about to -- we'll get to them in  
16 a sec.

17 MS. RIDLEY: Okay.

18 THE COURT: Okay. But anybody else in the courtroom?  
19 Let's do that now.

20 MR. KEMNER: Good morning, Your Honor. Matthew  
21 Kemner, special counsel to the Bishop of Oakland.

22 THE COURT: Okay. Good morning.

23 MR. PLEVIN: Good morning, Your Honor. Mark Plevin on  
24 behalf of Continental Casualty Company.

25 THE COURT: Okay. Good morning. All right. And we

**The Roman Catholic Bishop Of Oakland**

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1 are filling up the screen as usual on this case. Anybody else?

2 THE CLERK: Parties with their hand raised are now  
3 transferring, Your Honor.

4 THE COURT: Okay. Why don't we start with appearances  
5 on the screen from debtor's counsel?

6 MS. UETZ: Good afternoon, Your Honor. Or morning.  
7 Excuse me. Ann Marie Uetz on behalf of the debtor. And Your  
8 Honor, I'll note that Bishop Barber is working right now and  
9 could not join the hearing today, but as you heard, Mr. Kemner,  
10 Matthew Kemner is here, and counsel for the debtor are present.

11 THE COURT: Okay. All right. Well, we have other --  
12 are we done adding parties?

13 MR. LEE: Good morning, Your Honor. Matt Lee for the  
14 debtor.

15 THE COURT: Okay. Good morning.

16 Are we done adding parties, Mr. Singh?

17 Okay. All right. Anybody else for the debtor?

18 MR. MOSES: Good morning, Your Honor. Shane Moses for  
19 the debtor.

20 THE COURT: Oh, there you go. Okay. Thank you.  
21 Let's get committee counsel.

22 MR. WEISENBERG: Good morning, Your Honor. This is  
23 Brent Weisenberg of Lowenstein Sandler on behalf of the  
24 committee.

25 THE COURT: Okay. No, I didn't hear Mr. Prol. Do you

## The Roman Catholic Bishop Of Oakland

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1 want to do that again, just so we've got you?

2 MR. PROL: Good morning, Your Honor. Jeff Prol,  
3 Lowenstein Sandler, for the committee.

4 THE COURT: Okay. Thank you. Anybody else for the  
5 committee?

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

8 THE COURT: Okay. Good morning. Okay. Anybody else  
9 for the committee?

10 Okay. How about counsel for the insurers?

11 MR. JACOBS: Good morning, Your Honor. Todd Jacobs  
12 for Westport Insurance Corporation.

13 THE COURT: Okay. Good morning.

14 MR. WYATT: Good morning, Your Honor. Andrew Wyatt  
15 for the Travelers entities.

16 THE COURT: Okay. Good morning. Anybody else for  
17 insurance companies?

18 MR. EVANSTON: Good morning, Your Honor. Tim  
19 Evanston, appearing on behalf of the London market insurers.

20 THE COURT: Okay. Anybody else?

21 UNIDENTIFIED SPEAKER: On behalf of the California  
22 Insurance Guarantee Association.

23 THE COURT: Okay. And Mr. Schiavoni, you want to try  
24 again?

25 MR. SCHIAVONI: Tancred Schiavoni from O'Melveny for

1 the Pacific insurers, Your Honor.

2 THE COURT: Okay. Anybody else on the insurance side  
3 of things? Okay. We have some, what I will call, without  
4 meaning to ruffle any feathers, affiliated parties, perhaps  
5 represented. Let's get those appearances.

6 MR. MANNS: Good morning, Your Honor. Ryan Manns on  
7 behalf of RC, WC, RCC, OPF, and Adventus.

8 THE COURT: Okay. Anybody else from that category?  
9 Okay. I see two of our mediators. Let's see if they want to  
10 make an appearance.

11 MR. NEWSOME: This is Randall Newsome, mediator.

12 THE COURT: Okay. Good morning.

13 MR. GALLAGHER: Tim Gallagher, Your Honor. Good  
14 morning. Mediator.

15 THE COURT: Okay. I think there's a couple of folks  
16 whom I've managed not to capture in my attempt to categorize  
17 everybody, so go ahead and make appearances if you like.  
18 Anybody else?

19 MR. FINNEGAN: Good morning, Your Honor. Mike  
20 Finnegan, certain abuse survivors, with Jeff Anderson.

21 THE COURT: Okay. Thank you. Others?

22 MS. WICKS: Good morning, Your Honor. Rebecca Wicks  
23 for Berkeley Research Group.

24 THE COURT: Okay. Good morning. Anybody else?  
25 That's it.

1           Okay. Well, this is billed as a status conference  
2 with respect to the dismissal of this case. I did read the  
3 status conference statement of a day or two ago.

4           And Ms. Uetz, anything you want to add?

5           MS. UETZ: Thank you, Your Honor. Ann Marie Uetz of  
6 Foley & Lardner on behalf of the debtor. Your Honor, former  
7 Judge Newsome has indicated to the debtor that he wishes to  
8 first address the Court, if that's okay with the Court.  
9 Otherwise, we'll proceed as directed by Your Honor.

10          THE COURT: All right. Does anybody have a concern  
11 about Judge Newsome's addressing the Court first? I'm  
12 certainly curious to hear from him. Okay.

13          MR. PROL: Your Honor, Jeff Prol on behalf of the  
14 committee. Again, we would just --

15          THE COURT: Okay. All right. Please go ahead.

16          MR. NEWSOME: Good morning, Your Honor.

17          THE COURT: Good morning.

18          MR. NEWSOME: I have very brief remarks.

19          THE COURT: And we are not as audible as you'd like.  
20 If you can get a little closer to the mic, I'd be grateful.

21          MR. NEWSOME: Can you hear me better now?

22          THE COURT: Yes. Thank you. That's better.

23          MR. NEWSOME: This has probably been the most  
24 difficult mediation that I've been involved with out of the  
25 hundreds that I've been involved in over --

1 THE COURT: Again, you're breaking. You're, sort of,  
2 fading a bit. Yeah. Go ahead.

3 MR. NEWSOME: This has probably been the most  
4 difficult mediation I've been involved in out of the hundreds  
5 I've been involved in over the last thirty-plus years or forty-  
6 plus years, and it continues to be the most difficult mediation  
7 I've been involved in. But over the last ten days, there has  
8 been progress like I haven't seen before in this case. And I  
9 believe that there -- if there is not light at the end of the  
10 tunnel, I believe at least things are getting a little brighter  
11 in the tunnel. There's no guarantee, of course, as to where  
12 this is headed, but I would respectfully request that we be  
13 given another fourteen-day extension before an order of  
14 dismissal is entered in this case and that it be entered not  
15 one minute later than fourteen days from today. That's all I  
16 have to say.

17 THE COURT: Okay. That would be the 26th, right?

18 MR. NEWSOME: Correct.

19 THE COURT: Well, before anybody reacts to that, and I  
20 don't mean to take this into levels of ridiculous mundanity,  
21 I'm not going to be in that week. And if one needed to be  
22 nimble around the 26th, I will not be around and nimble, for  
23 what that's worth. So if that means we plan around slightly  
24 differently than fourteen days, if that's going to be  
25 important, let's keep that in mind. But let me get anyone's

1 reaction. I'm happy to start with the debtor.

2 Reaction to Judge Newsome's suggestion for a little  
3 more time?

4 MS. UETZ: Thank you, Your Honor. Again, Ann Marie  
5 Uetz on behalf of the debtor. Your Honor, we agree that there  
6 has been progress made within the last ten days. We have been  
7 working with former Judge Newsome and Mr. Gallagher. We have  
8 had communications with counsel for various parties and various  
9 creditors, and the debtor would support Judge Newsome's  
10 request.

11 THE COURT: Okay. I would turn next to the committee  
12 and see if they have a reaction.

13 MR. PROL: Thank you, Your Honor. Jeff Prol on behalf  
14 of the committee. Your Honor, we would oppose that request.  
15 As we reported to Your Honor at the last status conference, we  
16 had not been invited to participate in any discussions leading  
17 up to that status conference. We've not been invited to  
18 participate in any mediation sessions since that status  
19 conference. And frankly, Your Honor, this is the same request  
20 made at the last hearing, and the committee finds itself in the  
21 same position it was at the last hearing.

22 There's simply nothing that we've heard that leads us  
23 to conclude that we're any closer to a negotiated settlement in  
24 this case, and we would ask that Your Honor stick with what you  
25 ordered the last time, dismiss the case effective today. Thank

1 you, Your Honor.

2 THE COURT: Okay. Without meaning to indicate that  
3 I'm guessing who else is involved in all this, anybody on the  
4 insurance side want to address the request?

5 Mr. --

6 MR. JACOBS: Can you hear me?

7 THE COURT: Yeah. Can we let -- Mr. Plevin's here?  
8 Can we let him go first? Then I'll call you, Mr. Jacobs.

9 MR. JACOBS: Oh, sure. Thank you, Your Honor. Sure.

10 THE COURT: Yeah. You bet. Go ahead.

11 MR. PLEVIN: Your Honor, Mark Plevin. Just briefly.  
12 Continental Casualty supports the request.

13 THE COURT: Okay. Thank you very much. Okay.

14 Mr. Jacobs, go ahead.

15 MR. JACOBS: Yeah. Good morning, Your Honor. Todd  
16 Jacobs for Westport. I'll be real brief. So as you know,  
17 Westport has supported trying to reach a consensual resolution  
18 of the case from the beginning, and we fully support Judge  
19 Newsome and Mr. Gallagher's request.

20 THE COURT: Okay. Anybody else on the insurance side  
21 want to be heard on that question?

22 MR. WYATT: This is Andrew Wyatt on behalf of  
23 Travelers. Travelers supports Judge Newsome's request.

24 THE COURT: Okay. Thank you. Anybody else?

25 MR. EVANSTON: Yes, Your Honor. This is Timothy



1 Evanston on behalf of the London market insurers. We also  
2 support Judge Newsome's request.

3 THE COURT: Okay. Thank you very much. Anybody else  
4 on the insurer's side want to weigh in?

5 MR. HALL: Yes. This is Frederick Hall on behalf of  
6 the California Insurance Guarantee Association. We also  
7 support the request of Judge Newsome and Mr. Gallagher.

8 THE COURT: Okay.

9 MR. SCHIAVONI: Your Honor, this is Tanc Schiavoni  
10 from O'Melveny for the Pacific insurers, and the Pacific  
11 insurers support the debtor and the debtor's request.

12 THE COURT: Okay. Anybody else? Putting aside other  
13 categories now, anybody else want to weigh in on this question?  
14 Okay.

15 MS. UETZ: Your Honor.

16 THE COURT: Yes?

17 MS. UETZ: Excuse me. Ann Marie Uetz for the debtor.  
18 My understanding is Mr. Gallagher wants to be heard, including  
19 with respect to additional support --

20 THE COURT: Okay.

21 MS. UETZ: -- for the mediators' requested two weeks.

22 THE COURT: Okay. Okay. I didn't see you there, Mr.  
23 Gallagher, if you're --

24 MR. GALLAGHER: Hi, Your Honor. Not a leading  
25 question, but I would say this much, that there have been

1 conversations with the debtor, certain selected state court  
2 counsel, and the insurers. I will acknowledge that I have not  
3 had any conversations with Mr. Prol and Brent Weisenberg. Did  
4 have a brief videoconference this morning. We will engage them  
5 going forward, understand their position, and whatever the  
6 Court decides, we'll move forward and see what we can put  
7 together.

8 THE COURT: Okay. Before I ask a couple of questions,  
9 anybody else want to be heard on this?

10 MS. UETZ: Your Honor, again, Ann Marie Uetz for the  
11 debtor. I will just offer the following. I'm aware of certain  
12 state court counsel who support the request as well,  
13 notwithstanding the committee's opposition to it.

14 THE COURT: Well, okay. Anybody else before I --

15 MS. UETZ: I don't speak for them, but I know the  
16 mediators may, and I just --

17 THE COURT: Well, okay.

18 MS. UETZ: I just want to provide that to the Court.

19 THE COURT: Well, I don't know that that's of great --  
20 well, I'll leave it there. Okay.

21 Anybody else before I ask a question or two?

22 Well, let me direct this.

23 MR. SONTCHI: Your Honor, I'm sorry.

24 THE COURT: Yeah.

25 MR. SONTCHI: I had my hand up, but this is

1 Christopher Sontchi.

2 THE COURT: Oh, there you are. Okay. You're not on  
3 the screen, so thank you.

4 MR. SONTCHI: I apologize.

5 THE COURT: No problem.

6 MR. SONTCHI: I just want to -- I just want to make it  
7 clear that I consider my job to try to work with the committee  
8 and the debtor to reach a resolution, obviously cooperating  
9 with Mr. Newsome and Mr. Gallagher. I just want to reiterate  
10 what I said last time, which is there have been no  
11 communications between the debtor and the committee. Period.

12 The last action, I hesitate to say this, but the last  
13 action before that stopped was the debtor declining to move  
14 forward with something. So I just wanted to support Mr. Prol  
15 on that, just that, I mean, the debtor and the committee are  
16 not talking. I just wanted to make sure you knew that. That's  
17 all.

18 THE COURT: All right. Well okay. Let me ask a  
19 couple of process questions, just so I understand this. At the  
20 moment, the committee is not involved in the discussions, but  
21 I'm led to believe, without people naming names, that others  
22 are and that those discussions are with the debtor, and they  
23 give former Judge Newsome hope that something might result here  
24 that would support some bankruptcy friendly outcome here, like  
25 a plan.

1           So is the idea that, putting aside my potential  
2   unavailability at 4:59 on Wednesday the 26th, there's either  
3   something signed off that looks like at least the outline of a  
4   plan, or there isn't? Is that the idea?

5           MR. NEWSOME: Yes.

6           THE COURT: Okay.

7           MS. UETZ: From the doctor's perspective, yes.

8           THE COURT: Is it any more complicated than that?

9           MR. NEWSOME: No.

10          MR. SONTCHI: No.

11          THE COURT: Okay. Thank you. I appreciate it. And  
12   would the thesis be that look, if we end up there, we'll be in  
13   the same place we were six months ago, when we had a committee  
14   that didn't like the plan very much. Is that the notion?

15          MS. UETZ: Your Honor, I'll respond if I should? I  
16   was talking over Judge Newsome, so I'll respond to that, if I  
17   may.

18          THE COURT: Yeah. Go ahead.

19          MS. UETZ: Your Honor, the debtor still hopes for a  
20   fully consensual plan. It is also possible that the debtor  
21   submits a fourth amended plan with the support of the insurers,  
22   with the support of select state court counsel who represent  
23   individual members of the official committee of unsecured  
24   creditors, and possibly others. It is also possible the  
25   creditor's committee gets on board.

1 THE COURT: Well, can I -- I'm sorry. You finish.  
2 I'm sorry.

3 MS. UETZ: I was just going to finish by saying to  
4 your process question, in the debtor's perspective, we would  
5 file with the Court expressions of support for such a plan, if,  
6 indeed, we get there and pursue confirmation of it.

7 THE COURT: Okay. Let me give you the following  
8 reaction. Okay. I don't need to tell any of you what a  
9 tragedy it would be if we dismiss this case today, or in two  
10 weeks, given the amount of time and effort and frankly, money  
11 that's been spent trying to resolve this case between and among  
12 people who know how to do that, and for some reason, it's not  
13 yet been successful. So like any judge, I think my inclination  
14 is to latch onto anything that looks like a light at the end of  
15 the tunnel, or a glimmer or two in the tunnel, or something  
16 more gray than black at the end of the tunnel. Any of those  
17 things?

18 Because I don't know the particulars, I would hope  
19 there would be some way to involve the committee. This is  
20 going to be infinitely a better process, even if a deal, a  
21 completely consensual deal is not reached in two weeks, this is  
22 going to be an infinitely better process if you include the  
23 committee. And I don't know what else I can do to urge you to  
24 do that other than to urge you to do that. I don't think I  
25 want to necessarily condition further talks on that, because I

1 don't know the dynamics as well as all of you do. But I will  
2 tell you something that you already know, which is that with  
3 the committee, at least in the room, it seems to me there is  
4 the possibility of something consensual. And if they are not,  
5 I think it's considerably less likely that the end of the  
6 process, even if you have twenty-seven other sponsors, that  
7 it's consensual, and that's less than optimum. I know you know  
8 that.

9 Anybody else want to make a comment before I give you  
10 a couple of further thoughts?

11 Mr. Schiavoni, go ahead.

12 MR. SCHIAVONI: I'm reminded of the phrase, let's not  
13 let the perfect be --

14 THE COURT: Be the enemy of the good. Yeah. Well,  
15 back in Aristotle's time, you knew that, right? So go ahead.

16 MR. SCHIAVONI: So Your Honor, I, personally,  
17 definitely hear you. In the Boy Scouts, a plan was arrived at  
18 with a coalition of the plaintiffs' lawyers, and the committee  
19 came on later, and that has been a course in other of these. I  
20 don't want to get into any further about problems here.

21 THE COURT: No. Yeah, yeah, yeah. I appreciate it.

22 MR. SCHIAVONI: But we're working, like, we're all  
23 working in good faith.

24 THE COURT: Yeah.

25 MR. SCHIAVONI: I mean, we're only asking for a couple

1 of weeks here.

2 THE COURT: Okay. Well, let me ask, then, a logistics  
3 question. I want to respect very much former Judge Newsome's  
4 sense that this should be two weeks and not a minute more.  
5 What would you need the Court to do if we get down to something  
6 that is, on that 13th or 14th day, for lack of a better word,  
7 frantic? What do you think I would need to do to help you?  
8 Anybody have a sense? I mean, if the answer is nothing, that's  
9 fine. You either file something, or you don't. But if you  
10 need my input, tell me what you think it would be, and I'll see  
11 what I can do to help you, or we can explore, maybe, a  
12 different D-day.

13 And former Judge Newsome, if you want to tell me that  
14 first, I'd love to hear your thoughts.

15 MR. NEWSOME: Yes, Your Honor. There is nothing that  
16 comes to mind that you could do that would help us. This is --

17 THE COURT: Not the first time I've heard that. Okay.

18 MR. NEWSOME: This is, as I said, this continues to be  
19 a difficult --

20 THE COURT: Yes.

21 MR. NEWSOME: -- a very difficult situation.

22 THE COURT: Yes.

23 MR. NEWSOME: We're all working our way through it.  
24 There may come a time when there's something you can do, and we  
25 will not hesitate to contact you --

1 THE COURT: Okay.

2 MR. NEWSOME: -- if that's the case. But that is not  
3 the case right now.

4 THE COURT: All right. Anybody else want to be heard  
5 before I give you a couple more thoughts? Anybody in here?  
6 No? I have nothing. Okay.

7 Look. I am inclined to indulge anything that  
8 reasonable and responsible and highly experienced people like  
9 all of you think is worth some indulgence. I will reiterate,  
10 again, both as a matter of respecting the process and  
11 respecting their incredibly important role in this case.  
12 Including the committee in this, it seems to me, is of the  
13 highest importance. I'm not going to tell you exactly how to  
14 do that or make that a condition, but all I can tell you is you  
15 need to respect where they're coming from and who they  
16 represent and the incredible commitment they've made to try to  
17 get to a good outcome here.

18 With that, I will go ahead. I will indulge the  
19 request that we go out another two weeks. Would it be prudent  
20 now to enter an order that would reflect that, so that it's  
21 totally self-executing, that unless something is filed by, you  
22 guys give me the date and the time, the case is dismissed. Is  
23 that sensible? Anybody want to?

24 MS. UETZ: Your Honor, Ann Marie Uetz --

25 THE COURT: Yes.



1 MS. UETZ: -- of Foley on behalf of the debtor. We do  
2 think that that is sensible.

3 THE COURT: Okay.

4 MS. UETZ: We appreciate if I can just make a comment,  
5 Your Honor.

6 THE COURT: Yes. Yes.

7 MS. UETZ: We appreciate that Your Honor is not  
8 available during those days that you referenced. We also  
9 appreciate our belief, at least, that the urgency associated  
10 with the last ten days has helped with the perceived progress  
11 that's been made. And for that reason, Your Honor, the debtor  
12 does believe that entry of an order, really, along the lines  
13 that if nothing is filed indicating movement toward a fourth  
14 amended plan will be filed, then the case should be dismissed,  
15 and will be dismissed.

16 So short answer to your question, Your Honor, is the  
17 debtor agrees with you.

18 THE COURT: Okay.

19 MS. UETZ: And if I may just make one other comment,  
20 Your Honor?

21 THE COURT: Yes.

22 MS. UETZ: I will call Mr. Prol. I'm committing to do  
23 that. And the debtor will continue --

24 THE COURT: Okay.

25 MS. UETZ: -- to try to work with the committee. And

1 I want Your Honor to hear me say that.

2 THE COURT: I appreciate that. Okay. Well, I'll, in  
3 a similar quasi confessional mode, judge's availability is a  
4 loose concept. So if there's something I can do on the 24th,  
5 25th, 26th, I won't be here, but I'll pack the robe, okay?

6 Let's put it that way. And if you guys -- if you guys --

7 MS. UETZ: We appreciate that, Your Honor.

8 THE COURT: If you need me, if there's something I can  
9 do that's going to get this over the line, let me know.

10 MS. UETZ: Thank you, Your Honor.

11 THE COURT: All right. Who wants to take a whack at  
12 preparing the order as it's been described?

13 MS. UETZ: Your Honor, I will prepare the order.

14 THE COURT: Okay.

15 MS. UETZ: And it will be part of my conversation with  
16 Mr. Prol.

17 THE COURT: All right. Anything else for the good of  
18 the order today?

19 MS. UETZ: Oh, yes. There's one thing on behalf of  
20 the debtor, Your Honor, if I may?

21 THE COURT: Yes.

22 MS. UETZ: A bit of housekeeping. We had filed a  
23 retention application for Covington to step in as conflicts  
24 counsel in the case.

25 THE COURT: Yeah. Yeah.

1 MS. UETZ: Had not pressed that, given the posture,  
2 but given the date and the calendar, we would appreciate the  
3 Court's consideration of that potential application.

4 THE COURT: Well, my delay there was purely, are we  
5 going to have a case? There was nothing else. Okay?

6 MS. UETZ: Thank you.

7 THE COURT: I mean, I've got the order in my inbox.  
8 All right?

9 MS. UETZ: Thank you, Your Honor.

10 THE COURT: All right. Anything else for the good of  
11 the order? No?

12 MS. UETZ: Not from the debtor, Your Honor.

13 THE COURT: All right. Good luck to all of you. And  
14 I'll leave it at that. Okay?

15 MS. UETZ: Thank you, Your Honor.

16 THE COURT: Thank you.

17 MS. RIDLEY: Thank you, Your Honor.

18 THE COURT: Thank you very much. Thank you.

19 UNIDENTIFIED SPEAKER: Thank you very much.

20 THE COURT: Okay. Thank you.

21 (Whereupon these proceedings were concluded at 11:32 AM)

22

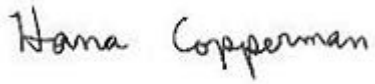
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## C E R T I F I C A T I O N

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



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/s/ HANA COPPERMAN, CET-487

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Date: November 13, 2025

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<b>Westport (3)</b> 7:12;12:16,17				
<b>whack (1)</b> 22:11				
<b>Whereupon (1)</b> 23:21				
<b>Wicks (2)</b> 8:22,22				
<b>wishes (1)</b> 9:7				
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<b>without (3)</b> 8:3;12:2;15:21				
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<b>working (5)</b> 6:8;11:7;18:22,23; 19:23				
<b>worth (2)</b> 10:23;20:9				
<b>Wyatt (4)</b> 7:14,14;12:22,22				
<b>Y</b>				
<b>years (2)</b> 10:5,6				

# **Exhibit C**

## 1 UNITED STATES BANKRUPTCY COURT

2 NORTHERN DISTRICT OF OAKLAND

3 -oOo-

4 In Re: ) Case No. 23-40523  
5 THE ROMAN CATHOLIC BISHOP OF ) Chapter 11  
OAKLAND )  
6 Debtor. ) Oakland, California  
7 ) Wednesday, October 29, 2025  
8 ) 1:30 PM

9 MOTION TO DISMISS CASE  
10 PURSUANT TO 11 U.S.C. SECTION  
11 1112(B) FILED BY THE ROMAN  
CATHOLIC BISHOP OF OAKLAND

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

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1 OAKLAND, CALIFORNIA, WEDNESDAY, OCTOBER 29, 2025 01:29 PM

2 oOo-

3 (Call to order of the Court.)

4 THE CLERK: Roman Catholic Bishop of Oakland, case  
5 number, case number 23-40523.

6 THE COURT: Okay. Why don't we start in the courtroom  
7 with appearances?

8 MS. UETZ: Your Honor, Ann Marie Uetz, of Foley &  
9 Lardner, on behalf of the debtor.

10 THE COURT: Okay.

11 MR. WEISENBERG: Good afternoon, Your Honor. Matt  
12 Lee, of Foley & Lardner, on behalf of the debtor.

13 THE COURT: Okay.

14 MR. FINNEGAN: Good afternoon. Shane Moses, of Foley  
15 & Lardner, for the debtor.

16 THE COURT: Okay.

17 MS. RIDLEY: Good afternoon, Your Honor. Matthew  
18 Kemner.

19 THE COURT: Okay.

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

22 THE COURT: Okay.

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

24 THE COURT: Okay. Just make sure you're close enough  
25 to a mic that, as I joked earlier, Judge Corley can know who

1 was here.

2 MS. ALBERT: Good afternoon. Gabrielle Albert, Keller  
3 Benvenuti Kim, on behalf of the committee.

4 THE COURT: Okay. Nice to see you.

5 MR. WEISENBERG: Good afternoon, Your Honor. Brent  
6 Weisenberg, of Lowenstein Sandler, on behalf of the committee.

7 THE COURT: Okay. Good afternoon.

8 MR. FINNEGAN: Good afternoon, Your Honor. Ryan  
9 Manns, Norton Rose Fulbright, on behalf of RCWC, RCC, Adventus,  
10 and OPF.

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

12 MS. RIDLEY: Your Honor, Eileen Ridley, Foley &  
13 Lardner, coverage counsel for RCBO.

14 THE COURT: Very good. Thank you. Okay.

15 MS. TURNER: Good afternoon, Your Honor. Todd Jacobs  
16 for Westport Insurance Corporation. I'm here with my co-  
17 counsel, Blaise Curet.

18 THE COURT: Nice to see you.

19 MS. TURNER: Thank you.

20 MR. FINNEGAN: Good afternoon, Your Honor. Mike  
21 Finnegan, with Jeff Anderson & Associates, on behalf of a  
22 number of abuse survivors.

23 THE COURT: Okay. Thank you.

24 MR. SCHIAVONI: Good afternoon, Your Honor. Timothy  
25 Evanston on behalf of the London market insurers.



1 THE COURT: Nice to see you. Okay. We have a few  
2 folks on Zoom as well. There's something else you want to tell  
3 me?

4 MR. PROL: Your Honor, if I may.

5 THE COURT: Yes.

6 MR. PROL: I'd just like to introduce you to one of  
7 our community members, Jason Jay.

8 THE COURT: Oh, certainly. Yeah, yeah, yeah. Okay.  
9 All right. Nice to see you. Thank you for coming. Okay.  
10 Thank you.

11 MR. PROL: I believe that several other committee  
12 members will be participating via the Zoom in this --

13 THE COURT: Well, participating as in they would like  
14 to talk, or they're just -- okay. Okay. Okay. All right.

15 MR. PROL: Just listening in, Your Honor.

16 THE COURT: Okay. Let's go ahead and start the roll  
17 call on Zoom.

18 Actually, I'm ahead of myself. Let's get people  
19 checked in on Zoom.

20 MS. TURNER: Good afternoon, Your Honor. Miranda  
21 Turner on behalf of Continental Insurance Company.

22 THE COURT: Okay.

23 MS. UETZ: Excuse me, Your Honor. At least our  
24 cameras aren't showing her.

25 THE COURT: Same. Well, I'm seeing a very small --

1 MS. UETZ: And Bishop Barber is attending, it looks  
2 like.

3 THE COURT: -- version -- oh, there we go. Are you  
4 seeing the attendees now?

5 MS. UETZ: We are, Your Honor. Thank you.

6 THE COURT: Okay. Thank you.

7 Okay. Anybody else who wants to make an appearance  
8 today?

9 MR. SCHIAVONI: Your Honor, Tim Gallagher. Good  
10 afternoon. Mediator.

11 THE COURT: Good afternoon.

12 MR. SCHIAVONI: Good afternoon, Your Honor. Bishop  
13 Michael Barber attending, sir.

14 THE COURT: Okay. Good afternoon. Do you expect to  
15 to speak to us today, Bishop Barber?

16 MR. SCHIAVONI: No, I don't, Your Honor.

17 THE COURT: Okay. Well, thank you for attending. I  
18 appreciate it.

19 Okay. Others?

20 MR. SCHIAVONI: Yes. This is Randall Newsome,  
21 mediator.

22 THE COURT: Okay. Thank you. Nice to see you.

23 MR. SCHIAVONI: Nice to see you.

24 THE COURT: Anybody else?

25 MS. TURNER: Parties with their hand raised have been

1 transferred, Your Honor.

2 THE COURT: Okay. Ms. Uetz?

3 By the way, I think I've read everything, including  
4 what I suppose was last night's status conference report,  
5 right? Okay.

6 MS. UETZ: Yes, Your Honor.

7 THE COURT: Okay.

8 MS. UETZ: Ann Marie Uetz, of Foley & Lardner,  
9 appearing on behalf of the debtor, Your Honor.

10 I'd like to spend just a couple of minutes on  
11 status --

12 THE COURT: Sure.

13 MS. UETZ: -- and then pivot to the motion to dismiss,  
14 if it pleases the Court.

15 THE COURT: Um-hum.

16 MS. UETZ: Your Honor, the status report that we filed  
17 last night covered the following subjects: the recent  
18 mediation, the retention application for Covington as conflicts  
19 counsel, the status of the lift stay in the state court, and  
20 fee applications.

21 THE COURT: Um-hum.

22 MS. UETZ: Your Honor, because the mediation summary  
23 sort of ties over to the timing that I'm going to propose to  
24 the Court, I'd like to spend just a couple of minutes on that.

25 THE COURT: Sure. Go ahead.

1 MS. UETZ: And I won't repeat it when I get to the  
2 motion to dismiss.

3 THE COURT: Mr. Prol, do you want to say something?

4 MR. PROL: Your Honor, if I may. We object to the  
5 filing of the late-filed status conference report, which we  
6 would really prefer to call an unauthorized surreply. The  
7 thing that Ms. Uetz failed to mention is that a large portion  
8 of that document is a surreply to the last brief that we filed  
9 with regard to the lift stay motion.

10 In addition, the mediation section portion of it is a  
11 blatant violation of the mediation privilege again. That has  
12 to stop, Your Honor. We ask Your Honor to strike that from the  
13 record. And we also ask that Your Honor, at the outset, set  
14 rules for this hearing that nothing covered by the mediation  
15 privilege should be discussed.

16 The mediation privilege is designed to protect  
17 mediation communications. It covers oral communications, it  
18 covers written communications, it covers documents exchanged.  
19 And the purpose of the mediation privilege is to encourage  
20 parties to mediate in good faith.

21 The debtor repeatedly, before this Court, violates  
22 that privilege in the hopes of prejudicing Your Honor and also,  
23 I believe, in the hopes of gaining litigation advantage,  
24 negotiation advantage by aligning themselves with the insurance  
25 carriers. Judge, we strenuously object. We request you to

1 strike it from the record and to warn all parties that they  
2 should not discuss anything covered by mediation privilege this  
3 afternoon.

4 THE COURT: Well, let me handle a couple -- let me  
5 pull that apart a bit and handle a couple of pieces on, sort  
6 of, a neutral logistics ground before I let Ms. Uetz describe  
7 her sense of the mediation privilege issues. Okay?

8 Number one, there was a motion to dismiss to which the  
9 debtor -- I'm sorry; the debtor filed a motion to dismiss. The  
10 committee filed a response. The debtor filed a reply. The  
11 committee filed something completely unauthorized thereafter.  
12 But --

13 Do not interrupt me, Mr. Prol. Thank you very much.  
14 Okay?

15 So if we're talking about who's filing things last, I  
16 think both parties have been taking advantage of the liberality  
17 with which I want to hear from all of you and want to know what  
18 all of you are thinking.

19 I would also note that this certainly is a motion to  
20 dismiss. It's also, in many ways, as we frequently do around  
21 here, a status conference. And there are times when I simply  
22 need to be updated about various issues. So in those neutral  
23 logistics senses, not getting to your mediation arguments, I  
24 would overrule the objection on those bases.

25 Now let's hear from Ms. Uetz about the mediation

1 issues.

2 MS. UETZ: Thank you, Your Honor.

3 THE COURT: And I'll let you respond, okay? I  
4 promise.

5 MS. UETZ: Thank you, Your Honor. With respect to  
6 mediation, the fact of the parties having met for mediation is  
7 something that we reported in the conference, and we don't  
8 believe that that is something that should be secret from this  
9 Court. It's not a secret that we had a two-day all hands  
10 mediation with all three mediators.

11 THE COURT: I remember talking to you from Hawaii on  
12 the 6th just before that. So yeah, that was hardly a secret.

13 MS. UETZ: Correct, Your Honor.

14 THE COURT: Go ahead.

15 MS. UETZ: I'll say the following. We have not  
16 revealed the terms of the mediators' proposal. We purposely  
17 haven't done that. We haven't told you the dollars. We  
18 haven't told you the terms. But we do believe that it is  
19 within the debtor's purview to let the Court know, and indeed  
20 the world know that the debtor has accepted the mediators'  
21 proposal.

22 I actually think it would be okay if we told the Court  
23 and the world how much the debtor is willing to pay. But we  
24 didn't do that in our status report. What we did was report on  
25 the fact of the mediation, that the debtor has accepted the

1 three-mediators' proposal, and the debtor's estimation as to a  
2 possible chance for an exit from this case other than through a  
3 dismissal.

4 So I don't believe that we have violated the mediation  
5 privilege. There are certainly a lot of facts concerning  
6 mediation that we have not included in our submission,  
7 including redacted sections of an email that my firm sent to  
8 the Lowenstein law firm on Friday. We redacted that so that  
9 the Court would not see those mediation documents.

10 In light of that, Your Honor, we took pains, in our  
11 case report yesterday, and I take pains, in my statements  
12 before this Court, to respect the mediation privilege. And we  
13 believe that we have respected it. Again, I will emphasize, I  
14 think it is within the debtor's purview to announce to the  
15 world the amount of dollars it is willing to pay survivors.  
16 But we haven't even done that today because we don't think that  
17 that is germane to this Court's consideration of the issues  
18 before it today. So I don't want to waive on that. But I  
19 think, certainly as it relates to mediation, everything that  
20 we've put in our statement and everything I have said in this  
21 Court has been consistent with the privilege.

22 THE COURT: Remind me, who was it who informed me  
23 that, at the conclusion of the session on the 8th, no agreement  
24 was yet reached, but there was a mediators' proposal?

25 MS. UETZ: The debtor -- at least the debtor has made

1 that statement --

2 THE COURT: Okay.

3 MS. UETZ: -- to you, Your Honor. I don't know, with  
4 my recall standing here --

5 THE COURT: Okay.

6 MS. UETZ: -- if any other party has made that  
7 representation to this Court.

8 THE COURT: Okay. Well, certainly -- I'm going to  
9 let Mr. Prol talk in a second, but I do recall Mr. Prol telling  
10 me, without getting into whether the committee had accepted or  
11 had not accepted the mediators' proposal, that there was  
12 another proposal that was made by the committee on Friday that  
13 was rejected on Sunday. So that I remember from a --

14 MS. UETZ: I recall the --

15 THE COURT: -- particularly important footnote from  
16 one of his pleadings.

17 MS. UETZ: And --

18 THE COURT: I read that with great interest. So --

19 MS. UETZ: If I followed, Your Honor -- you're now  
20 jogging my memory -- the committee, through Lowenstein, as  
21 counsel, in its most recent brief filed with the Court, did in  
22 fact note --

23 THE COURT: Yeah.

24 MS. UETZ: -- an offer that it made during mediation  
25 and my response. I haven't even put, in any of my pleadings,



1 the insurer's responses or the committee's.

2 THE COURT: Well, and understand that, as much as  
3 possible, what people can tell me about status -- not about  
4 numbers, and ask and get, but about status is helpful to me. I  
5 have no problem, and I'm glad the committee told me that,  
6 without telling me, by the way, we did or didn't accept the  
7 mediators' proposal, but we made an offer. That suggests to me  
8 they're in good faith, okay, that they're they're trying here.  
9 The fact that you didn't accept it, okay, you didn't accept it.  
10 Here we are. Okay?

11 All right. Mr. Prol, come on up, and you can tell me  
12 the rest of your thoughts about the mediator proposal.

13 MR. PROL: So Your Honor, if we can start -- for the  
14 record, Jeff Prol, for the committee.

15 THE COURT: Yeah.

16 MR. PROL: If I can start, Your Honor, with the  
17 briefing schedule. When we were here to discuss briefing on  
18 the motion to dismiss, Your Honor was the one who opened the  
19 door and suggested that the committee might want to file a  
20 reply. So that was built in --

21 THE COURT: The reply to the reply?

22 MR. PROL: Yes, Your Honor.

23 THE COURT: I don't remember that. But okay, if  
24 you're right about that, you're right about that.

25 MR. PROL: So the --

1 THE COURT: But it goes to my further point, which is  
2 I am eager to hear from all of you. And I read what you had to  
3 say. I thought it was out of order. I didn't say I'm going to  
4 strike it. I didn't say I'm not going to read it. I read it.  
5 Okay?

6 MR. PROL: I mean, in fairness, though, Your Honor, we  
7 were before Your Honor, and we agreed on a briefing schedule.  
8 What was already before Your Honor was the motion and the  
9 committee's statement in support. The debtor requested the  
10 opportunity to file a reply, which was granted. And then there  
11 was discussion, well, you know, this issue of dismissal with  
12 prejudice is raised for the first time in the committee's  
13 pleading; perhaps the committee should then reply to what the  
14 debtor says. And that was the agreed-upon briefing schedule.

15 THE COURT: Okay.

16 MR. PROL: All right. The difficulty comes in when a  
17 party says, don't really care about the briefing schedule,  
18 we're going to file something at 9:15, while the other parties  
19 are traveling here from New Jersey, and we're left scrambling  
20 to review a pleading the morning before, no opportunity to  
21 discuss it with our client. And again, we think it's highly  
22 prejudicial.

23 With respect to the reply, with regard to the motion  
24 to dismiss, we think that that portion should be stricken. The  
25 other parts that deal with -- other than the mediation section,

1 that deal with status of other matters, they're fair. Again, I  
2 would appreciate having received it in a timely fashion, not  
3 right before the hearing.

4 THE COURT: Um-hum.

5 MR. PROL: And as it relates to the mediation  
6 privilege section, Your Honor, the problem with the slippery  
7 slope that we're going down here is, every time the debtor  
8 stands up in court and discloses something that happened in  
9 mediation, you feel like you have to respond. And you don't  
10 want to waive the privilege.

11 And even what they've said here, it's not complete,  
12 it's not accurate. And we believe it leaves Your Honor with  
13 the wrong impression of what happened in mediation and what  
14 could potentially happen in mediation, which is why we think it  
15 should be stricken. And we want a rule that says everybody has  
16 to respect the mediation privilege.

17 THE COURT: Okay. I'm going to take that under  
18 submission, okay? Thank you.

19 MS. UETZ: Your Honor, if I may make one further  
20 point -- two short ones. The first is that our case report,  
21 filed last night, doesn't have any case law citations in it.  
22 There's no legal argument in it. So that's one thing.

23 The second thing I want to say, and it may come up  
24 during the hearing on the motion to dismiss, is the following.  
25 The committee has accused my client, and my law firm, and other

1 professionals in this case, of acting in bad faith. And it may  
2 be that, in defending that accusation, we do need to address  
3 things that happened in mediation.

4 THE COURT: Well --

5 MS. UETZ: I haven't done that yet. I'm not sure.

6 THE COURT: -- yeah.

7 MS. UETZ: But the committee -- and this has come up  
8 before, Your Honor. We don't believe it's permissible for the  
9 committee to make accusations that can be disproved by things  
10 that happened in mediation, and then potentially get a ruling  
11 from Your Honor prevailing on those accusations, because I  
12 can't defend the accusations because the mediation privilege.  
13 That may come up; I'm not sure.

14 THE COURT: Well, let me make two points, okay? First  
15 of all, there's a distinction between you, in Mr. Prol's mind,  
16 arguably, violating a mediation privilege by contesting what  
17 he's saying, as opposed to telling me you should disregard what  
18 Prol said because. You could have done the latter, right? I  
19 mean, if your position is, look, they started it, they violated  
20 the mediation privilege, all you had to tell me was ignore X,  
21 right?

22 MS. UETZ: I don't think that's my position, Your  
23 Honor.

24 THE COURT: All right. That's what I was hearing.  
25 But let me make another point, okay? The whole question of the

1 conditions under which this case is going to be dismissed, if  
2 it is going to be dismissed, is something that everybody's  
3 going to get a chance to weigh in on. We don't need to do it  
4 anymore piecemeal. Everybody should stop the submissions about  
5 that at this point, okay? Make sense?

6 MS. UETZ: Yes.

7 THE COURT: I appreciate it. Okay. Go ahead. You've  
8 got other important things to say, I'm sure.

9 MS. UETZ: I do, Your Honor.

10 THE COURT: Okay.

11 MS. UETZ: Thank you. And it has to do with the  
12 timing before I get into arguing the motion to dismiss.

13 THE COURT: Can I ask you a question?

14 MS. UETZ: Yes.

15 THE COURT: Given that we have --

16 MS. UETZ: Of course.

17 THE COURT: We have the 12th out there as a status  
18 conference date. And I realize that the debtor said, on paper,  
19 something that maybe they've said orally, that the 12th should  
20 be an absolute D-day, one way or the other. I will tell you, I  
21 may not have articulated this before, but that's -- I mean,  
22 I'll tell you right now, if we're not in a very different place  
23 by the 12th, the case is dismissed. It's just that simple,  
24 okay?

25 But tell me where this hearing fits, and what you

1 expect to accomplish, given that there may be -- somebody may  
2 want to tell me there's a way for us to keep talking, okay?

3 MS. UETZ: Thank you, Your Honor.

4 THE COURT: So contextualize what you're about to say,  
5 if you wouldn't mind. Thank you.

6 MS. UETZ: I skipped a page-and-a-half of my notes,  
7 because now I'm --

8 THE COURT: Well, no, I mean, if it's something I need  
9 to know --

10 MS. UETZ: I don't want to repeat everything that I  
11 put in my filing last night.

12 THE COURT: Yeah.

13 MS. UETZ: So I will get to that point that Your Honor  
14 just raised.

15 THE COURT: Thank you. I appreciate it.

16 MS. UETZ: Your Honor --

17 THE COURT: By the way, if you see it differently, Mr.  
18 Prol you're going to tell me, Okay? You may have a totally  
19 different conception of what we're doing today. And I --

20 MR. PROL: I'd like to be heard on timing before we  
21 get into the merits.

22 THE COURT: Okay. That's fine. Why don't we do that?  
23 Why don't you give me your sense of the context, and I'll let  
24 Mr. Prol respond to that, okay?

25 MS. UETZ: Sure, Your Honor. The debtor believes

1 that, as we stand here today, we don't have to present to the  
2 Court a global resolution, nor do we have the terms or the  
3 parties for a fourth amended plan of reorganization. We do  
4 believe that parties are still talking, including with  
5 mediators.

6 And because of that, and because of the debtor's  
7 position with respect to the mediators' proposal we believe,  
8 between now and November 12th, we will be able to present to  
9 this Court whether the debtor believes there's no hope for an  
10 exit, other than a dismissal, or whether the debtor has either  
11 support among all stakeholders, or what I would describe as  
12 sufficient additional support from additional stakeholders,  
13 whether those be insurers, whether those be individual  
14 claimants, whether that be the committee, to present to this  
15 Court a fourth amended plan.

16 If the debtor believes, in the exercise of its  
17 reasonable business judgment at that time, that it makes sense  
18 to pursue a fourth amended plan, we will do so. And when I say  
19 "makes sense" to do so, Your Honor, what I mean is, if the  
20 debtor believes that it is capable of achieving confirmation of  
21 a fourth amended plan and capable of paying for the hearing and  
22 the proceedings attendant to such a plan.

23 So that is the space between where we are today and  
24 November 12th. But importantly, Your Honor, I want to really  
25 emphasize this. The debtor seeks from this Court an order that

1 the case be dismissed without prejudice. The debtor believes,  
2 as we stand here today -- and you'll hear argument, and you've  
3 got the record before you -- that the Court can rule that when  
4 this case -- if this case is dismissed at that outside date,  
5 that it be done without prejudice.

6 We believe, Your Honor, that you deciding that issue  
7 will be very important to how the next couple of weeks ensue  
8 and how the parties view their positions in getting to the  
9 12th. And I'll just say it expressly, as you've heard it  
10 argued, including by counsel for the committee, we need to  
11 understand, and there's things folks file with the Court and  
12 they get decided a certain way.

13 And right now, this claim of bad faith is hanging over  
14 the debtor. We think it's entirely unfounded. And we think  
15 that this Court should make a ruling that the case be dismissed  
16 at an outside date, November 12th, without prejudice. I'm  
17 going to try really hard today to not mix up when I say that,  
18 because I tend to. So everybody will jump on me on this side  
19 of the room if I say it wrong.

20 THE COURT: Okay. I got it. Okay. Thank you.

21 MS. UETZ: That is the debtor's position, Your Honor.

22 THE COURT: Okay. Thanks a lot.

23 MS. UETZ: Do you want me to pause there?

24 THE COURT: Yes. Uh-huh.

25 MS. UETZ: Thank you.



1           THE COURT: Because, among other things, what I think,  
2 in a perfect world, we would -- assuming we're going to argue  
3 the with-prejudice and bar issues today, you want a ruling as  
4 soon as we can get one, from your perspective.

5           MS. UETZ: A hundred percent.

6           THE COURT: And you don't think this goes over to the  
7 12th for any reason?

8           MS. UETZ: No.

9           THE COURT: All right.

10          MS. UETZ: In fact, I think it's counterproductive to  
11 an exit, other than a dismissal, if this pushes out past today.

12          THE COURT: Okay.

13          MS. UETZ: Thank you.

14          THE COURT: Yes. Okay.

15          MR. PROL: Jeff Prol on behalf of the committee.

16               Your Honor, we oppose proceeding in that fashion. The  
17 debtor comes before Your Honor today on a motion to dismiss in  
18 order to obtain dismissal of the case. They're not entitled to  
19 that as of right. They have to show cause, and they have to  
20 show that dismissal is in the best interest of creditors and in  
21 the best interest of the estate. Notice it's creditors and  
22 estate; it's not the best interests of the debtor. The cause  
23 that they assert for dismissal of the case is that they are  
24 administratively insolvent.

25          THE COURT: Are you objecting to something?

1 MS. UETZ: I am, Your Honor. It sounds like Mr. Prol  
2 is arguing the merits of the motion, which is my motion, not  
3 the timing of the motion.

4 MR. PROL: This goes to timing, Your Honor.

5 THE COURT: Okay. Let's get to timing.

6 MR. PROL: Okay. And I'll get there very quickly.

7 THE COURT: Okay. I appreciate it.

8 MR. PROL: The cause that the debtor asserts is that  
9 they're administratively insolvent and that they cannot afford  
10 to pay the costs of the case. And they've been very strident  
11 about that in their pleadings. I'll just quote their response  
12 at page 4. This is the first response.

13 "The debtor can no longer afford the administrative  
14 expense associated with pursuing confirmation of the plan  
15 through a contested plan confirmation process." And then,  
16 several lines later, "With no end in sight and insufficient  
17 funds to pursue a nonconsensual plan, the debtor can no longer  
18 bear the burden of these costs".

19 But what they're saying to you now is, if mediation  
20 breaks the right way, and we can make deals with -- it must be  
21 the insurance carriers -- that make this more attractive, we  
22 have the ability to go out and find the money. We're no longer  
23 administratively insolvent. When the debtor wants money, it  
24 seems to be able to press --

25 THE COURT: Can you get a little more directly to the

1 timing issue, please?

2 MR. PROL: Sure.

3 THE COURT: I appreciate it.

4 MR. PROL: So what the debtor is proposing to do, by  
5 arguing today and getting a dismissal in the future, is they're  
6 basically buying an option from Your Honor. Your Honor has to  
7 find there's cause that they're insolvent, they can't afford  
8 this case. It's in the best interest to dismiss, either with  
9 or without prejudice, but it's not effective for twelve days.  
10 And if we like what happens, trust us, Judge, we'll no longer  
11 be administratively insolvent.

12 So you're no longer deciding the motion, Your Honor.  
13 They are. If they want to proceed with the motion to dismiss,  
14 they should proceed with the motion to dismiss. We think this  
15 case should be dismissed. We think the case should be  
16 dismissed and it should be dismissed today.

17 Going back to mediation, they've said in their papers  
18 mediation hasn't borne fruit. Read the language they use. And  
19 so we think the process whereby we argue today, Your Honor  
20 rules, and then they get to play this out is -- again, it's  
21 unfair, prejudicial, and we would oppose it.

22 If Your Honor is not inclined to rule on the motion  
23 today or -- their other alternative is to withdraw the motion  
24 or adjourn the hearing. Thank you, Your Honor.

25 THE COURT: Okay. Appreciate it. I'm reserving my

1 thoughts, so come on up, and let's get to the next phase, okay?

2 MS. UETZ: Thank you, Your Honor. Ann Marie Uetz, of  
3 Foley & Lardner, appearing on behalf of the debtor, Your Honor.  
4 I'll give you a preview, Your Honor. I'm going to take between  
5 five and eight minutes.

6 Your Honor, the debtor has moved for a dismissal,  
7 pursuant to 1112(b), without prejudice. A tiny bit of  
8 background just for the record. Throughout the past thirty  
9 months of this cas, the debtor has worked tirelessly to balance  
10 two important objectives. We've repeated them throughout the  
11 case, and they have not change: a fair and equitable  
12 resolution of the claims against it and the continuation of its  
13 vital mission in support of its ministry of more than half a  
14 million Catholic faithful and others in the broader East Bay  
15 community.

16 To achieve these goals, the debtor has conducted  
17 itself, throughout the case, in intensive and extensive  
18 mediation with all stakeholders. As of today, the debtor's  
19 conclusion is that there are no prospects today for a  
20 consensual resolution between and among the debtor, the  
21 committee, and the insurers, for reasons think the Court has  
22 observed in prior arguments. It is true that the debtor can no  
23 longer afford the administrative expense associated with  
24 pursuit of confirmation of the pending plan of reorganization  
25 through a contested process.

1           The debtor has said that, even if it could afford  
2 that, it does not believe it should continue to pay the Chapter  
3 11 administrative expenses under the current circumstances.  
4 Its funds should be preserved, including to pay survivor  
5 claims.

6           There have been more than twenty mediation sessions to  
7 date; I think about twenty-four. Your Honor, we reported, in  
8 the CMC, on the status of the outcome, at least, from the  
9 debtor's perspective, having accepted the mediation proposal  
10 from all three mediators. Notwithstanding that, we are still  
11 before you today arguing this motion to dismiss.

12           It is fair to say that the debtor has increased the  
13 amount that both the debtor and schools would pay to try to  
14 resolve this case. For the most part, the insurers have not  
15 really gone hard with offers of money. Some might say that  
16 some of the insurers have offered less to date than in any  
17 other case. And yet the debtor is here today, and the  
18 mediators are here today, at this hearing, hoping yet to still  
19 get an outcome from this Chapter 11 case other than a  
20 dismissal.

21           The debtor's position with respect to resolution  
22 supports an outcome that is not only fair and equitable, but  
23 again, would pay an amount that substantially exceeds any other  
24 recovery to date. We get that the committee's position is that  
25 doesn't matter, but we think it does.

1           There are no objections filed to the motion to  
2 dismiss. Only the committee filed a statement supporting the  
3 motion to dismiss but seeking a dismissal with prejudice,  
4 arguing now, thirty months into the case, the debtor filed the  
5 case in bad faith and has conducted itself in bad faith  
6 throughout the Chapter 11.

7           We believe the committee's argument boils down to the  
8 following. The Court should conclude bad faith on the part of  
9 the debtor because the debtor is not offering the committee  
10 more money to settle, or perhaps also including that the  
11 insurers have not offered --

12           MR. SCHIAVONI: Objection, Your Honor. Mediation  
13 privilege.

14           THE COURT: Okay. Do you want to respond to that?

15           MS. UETZ: I'm just characterizing what I think are  
16 the arguments of the committee now that --

17           THE COURT: Well, why don't we --

18           MS. UETZ: I can move on.

19           THE COURT: Yeah. Why don't we not get into that,  
20 okay?

21           MS. UETZ: The committee also --

22           THE COURT: If that sounds like sustained to you, Mr.  
23 Schiavoni, I think it was sustained, okay?

24           MR. SCHIAVONI: Thank you, Your Honor.

25           THE COURT: You bet.

1 MS. UETZ: The committee argues bad faith because it  
2 says the debtor is not using Chapter 11 to -- and I quote --  
3 "rightsize its operations", which means it's not closing enough  
4 churches, selling enough churches. That's what that means.  
5 Despite the fact that we have made plain what the debtor is  
6 willing to utilize in order to fund a settlement through  
7 unrestricted assets.

8 And the committee now ties its bad-faith argument to  
9 its objection to one of the two liquidation analyses submitted  
10 by the debtor and says that we didn't include everything in the  
11 liquidation analysis that should have been included. We should  
12 have valued the claims under state law.

13 Your Honor, those are arguments about how 1129(a)(7)  
14 applies. Those don't support bad faith by the debtor. We did  
15 two liquidation analyses. Hilco and A&M are internationally  
16 recognized well-respected professionals in this field. And for  
17 that matter, so are Stout and BRG. A dispute among experts and  
18 among lawyers about how 1129(a)(7) applies is not bad faith.

19 Your Honor, in our filings before the Court, we  
20 believe that we have refuted every factual allegation of bad  
21 faith by the committee. The committee has also now withdrawn  
22 its baseless arguments regarding the debtor's disclosures  
23 regarding Livermore. Of course, it did that after spending two  
24 pages in its brief about Livermore, but nonetheless, a small  
25 victory; it withdrew that baseless argument. And so that can't

1 be the basis for a bad-faith finding.

2 In its most recent filing regarding the motion to  
3 dismiss, the committee wrongly characterizes the argument of  
4 the debtor. The committee says, quote, "The debtor argues that  
5 dismissal of a Chapter 11 case without prejudice is unheard  
6 of". But that's not what the debtor said. The debtor said  
7 it's virtually unheard of.

8 And I would submit that this is supported by the fact  
9 that the most recent filing by the committee cites to two  
10 cases, not ten, or twenty, or thirty, but two. And those two  
11 cases are very, very different than the case before this Court.  
12 Both of those cases are two-party disputes. And the facts in  
13 those cases are dramatically different, polar opposite, I would  
14 submit, of what we have here.

15 And so, Your Honor, today we stand ready to answer any  
16 questions that you have about the debtor's faith in this case,  
17 about the filing of the case, in the first instance, about the  
18 debtor's conduct throughout the case. In short, Your Honor,  
19 neither the debtor, the Roman Catholic Bishop of Oakland, nor  
20 any of its professionals are liars. And we have not conducted  
21 ourselves, nor has our client, throughout this case, over the  
22 course of thirty months, not less than twenty mediation  
23 sessions, three amended plans of reorganization, culminating in  
24 acceptance of a mediators' proposal by all three mediators to  
25 settle the case. We have not conducted ourselves in bad faith.



1           And I say "we" because the bad faith allegation is  
2           thrown at both my client and the professionals in this case.  
3           That the debtor was not able to achieve a consensual resolution  
4           with this committee is not bad faith.

5           Again, Your Honor, I stand ready to answer specific  
6           questions, but I don't want to repeat all of the arguments we  
7           made, with the support in our briefs, regarding each of the  
8           facts that the committee attacks in respect of bad faith.

9           We believe this Court should grant this motion,  
10          setting November 12th as the outside date for a dismissal,  
11          without prejudice, to provide all of the parties a final  
12          opportunity for all parties, jurors, the committee, the  
13          unsecured creditors themselves, Your Honor, to finally and  
14          definitively reach a resolution in this case other than a  
15          dismissal. That is what I have for you today, Your Honor.

16          THE COURT: Okay. Appreciate it. Go ahead. Give me  
17          one minute, okay?

18          Okay. Sorry. Thank you.

19          MS. UETZ: Thank you, Your Honor.

20          THE COURT: Okay. We have some other folks on the  
21          screen. If you want to make your appearances, go ahead and do  
22          so.

23          MR. WYATT: Good morning, Your Honor. Andrew Wyatt  
24          for the Travelers insurer entities.

25          THE COURT: Okay. Good morning. I'm sorry. Good

1 afternoon. Excuse me.

2 MR. WYATT: Good afternoon. Yeah. Sorry.

3 THE COURT: Okay. Mr. Schiavoni, do you want to go  
4 ahead?

5 MR. SCHIAVONI: Tancred Schiavoni for the Pacific  
6 insurers. Thank you, Your Honor.

7 THE COURT: You're welcome. Okay.

8 MR. PROL: Jeff Prol, on behalf of the committee, Your  
9 Honor.

10 As Your Honor is aware, the debtor filed its  
11 bankruptcy case two-and-a-half years ago on May 28th, 2023. It  
12 filed on the eve of a trial beginning, here in Oakland, I  
13 believe, on the first of more than 370 survivors who have filed  
14 claims against the diocese for negligent supervision of priests  
15 and other employees who raped and sodomized children thirty,  
16 forty, fifty years ago.

17 The clients that I represent have waited for justice  
18 for an indeterminate amount of time, and it's a travesty that  
19 we're here, that we've been unable to reach resolution. And  
20 it's in the interest of survivors, it's in the interest of the  
21 bankruptcy estate, as is required by 1112(b), that these cases  
22 proceed to resolution as promptly as possible.

23 We've been here for two-and-a-half years, and the  
24 debtor, now dissatisfied with having removed those cases here,  
25 by the filing of the Chapter 11 petition, has now filed a

1 motion to dismiss to send those cases back to state court.

2 The debtor seeks dismissal without prejudice, although  
3 in its pleadings it acknowledges it has no intention of ever  
4 filing again. You should take them at their word, Your Honor,  
5 and the case should be dismissed with prejudice, because we  
6 believe that the standard for dismissal has been met.

7 Section 349 of the Code provides for dismissal with  
8 prejudice. And courts in the Ninth Circuit look to the test  
9 set forth by the Ninth Circuit Bankruptcy Appellate Panel in In  
10 re Leavitt, I believe it is. And it's a four-prong analysis:  
11 Number one, whether the debtor misrepresented facts in its  
12 petition or plan, unfairly manipulated the Bankruptcy Code, or  
13 otherwise filed its petition or plan in an inequitable manner.  
14 Second, the debtor's history of filings and dismissals. Third,  
15 whether the debtor only intended to defeat state court  
16 litigation by its filing. And fourth, whether egregious bad-  
17 faith behavior is present.

18 I know, Judge, that only the fourth element contains  
19 the word "egregious", and the use of bad faith in connection  
20 with the others is probably overly generous. I don't think  
21 this is the same bad-faith finding that you have for a bad-  
22 faith filing of actually dismissing a case.

23 According to In re Randall, which is another Ninth  
24 Circuit BAP case, the Court may also look at the totality of  
25 the circumstances. And included in that are other other

1 elements of bad faith, like the bankruptcy case was filed on  
2 the eve of a trial or litigation in another court, a plan that  
3 proposes little payment to creditors, a plan that has no hope  
4 of confirmation, or general dishonesty or misrepresentations by  
5 a debtor.

6 Here the debtor has only filed once, so we would  
7 submit that the second element, history of filings, is not  
8 relevant and shouldn't be considered. But the Court can and  
9 should find that the remaining three elements and the totality  
10 of the circumstances here warrant a dismissal with prejudice.

11 In our opening brief, we cited a number of incidents  
12 of circumstances that showed misrepresentations, unfair  
13 manipulation, or inequitable conduct, including litigation over  
14 the OPF claim, whether or not church property belonged to the  
15 estate, and the questions with regard to the Livermore  
16 property, which again got raised today.

17 Suffice it to say, we don't think Your Honor needs to  
18 resolve any of those disputes. Simply, we ask that Your Honor  
19 be aware of them and the amount of time and paper and  
20 transcripts that those issues have required.

21 But there are other indisputable facts, we believe,  
22 that completely support the relief that we're requesting. And  
23 I just want to run through those quickly.

24 First, as Ms. Uetz indicated, the debtor has not used  
25 this bankruptcy case to reorganize its affairs. Everything

1 we've done before Your Honor relates to attempting to resolve  
2 survivor claims. Even though the debtor, prior to its  
3 bankruptcy filing, acknowledged its need to restructure, the  
4 third amended disclosure statement, which is the operative  
5 disclosure statement at present, talks about the mission  
6 realignment process that the diocese went through, I believe,  
7 beginning in 2020. There a task force was appointed to talk  
8 about clustering, merging, closing churches and other  
9 properties in order to rightsize the operation of the diocese.

10           It's a fairly high-level discussion. And I just  
11 wanted to quote for Your Honor some of the statements that were  
12 made, and I think they've been been discussed here in open  
13 court before. Bishop Barber himself said, in a presentation to  
14 to members of the church, "As part of MAP, we're looking for  
15 ways to join forces and realign the resources of our diocese  
16 for a church of 2022 and forward, not a church of 1965".

17           He also said, "One of the problems is we don't have  
18 enough people attending mass in each of our churches to keep  
19 them all going".

20           Another quote, "I don't have enough priests to keep a  
21 priest in every parish. We don't have enough money to pay the  
22 bills in every parish. And concluding, we may have to  
23 structure down from eighty-one parishes that we have now to  
24 fifty-plus parishes, you know, fifty, fifty-four, or something  
25 like that. So we're going to have to make some pretty strong

1 changes in our diocese".

2 And as Your Honor is aware, even though we've been  
3 here for two-and-a-half years, there's not been a single motion  
4 to reject a contract, a single motion to sell a parcel of real  
5 estate. All we've talked about is survivor claims.

6 And that leads to point two, which is the third  
7 element of the Leavitt test, whether the debtor only intended  
8 to defeat state court litigation. And there's two principal  
9 tenets of bankruptcy that we think the debtor has violated in  
10 regard to what they're trying to do with regard to survivors.  
11 First -- and I respectfully disagree with Ms. Uetz on this --  
12 it's black letter law that tort claims in bankruptcy,  
13 substantive law that governs those is the applicable state law  
14 that governs liability, burden of proof, and damages.

15 We've done nothing here to value the claims. The  
16 debtor has maintained, since the initial filing, right up  
17 through the last filing it filed last night, that the only  
18 relevant data point here, in valuing survivor claims, is to  
19 compare this case to cases of other dioceses filed around the  
20 country, dioceses in other jurisdictions, where different state  
21 law applies, where there's a different number of claims,  
22 different severity of claims.

23 We would submit to Your Honor that that comparison has  
24 little, probably more like no value in these cases. And we've  
25 said it in a prior pleading. It's like me representing the

1 committee in the Sears case and arguing to Your Honor that we  
2 really should get the same dividend that they got in the Lord &  
3 Taylor case.

4 THE COURT: Well --

5 MR. PROL: And you might say to me that's not a court  
6 claim, right?

7 THE COURT: Okay. Well, help me out then, okay? If  
8 this is a matter of perspective, and not just numbers, but  
9 perspective, where do you start the analysis and what are the  
10 critical factors, is there a bankruptcy case that's been  
11 resolved in the manner that you're suggesting this one should  
12 be, with an eye on something other than average claims as it  
13 may be negotiated, which is, I think, kind of where most of the  
14 cases have gone that I'm aware of. But if there's one that's  
15 taken the approach that you think this one should take, tell me  
16 about that.

17 MR. PROL: I can't tell you there are cases in the sex  
18 abuse space, Your Honor, but cases in the asbestos arena, which  
19 were what really started what was a large part of the mass tort  
20 practice back in the late '90s and 2000 --

21 THE COURT: Okay.

22 MR. PROL: -- there was always an estimation of claims  
23 done. And those cases were resolved not by comparison to each  
24 other, but by settlement discussions surrounding expert  
25 valuation of claims and the value of the assets that were

1 available to satisfy those claims.

2 THE COURT: Well, to the extent other cases have  
3 resolved without going through that exercise, have those all  
4 been in bad faith?

5 MR. PROL: Your Honor, that's not the only element.

6 THE COURT: No, but I just want to focus on this,  
7 because I respect enormously the fact that you just have a  
8 different perspective here. And it may be that it's one that  
9 most of the cases dealing with these problems haven't taken.  
10 But what you're saying is maybe they should.

11 So what I'm asking for in the first place is, is there  
12 somebody, is there a judge out there, and a debtor, and a  
13 committee, and a bunch of other constituents who have done what  
14 you think should be done in this case and reached a resolution?  
15 Tell me about that.

16 MR. PROL: I cannot cite to a case --

17 THE COURT: Okay.

18 MR. PROL: -- in the sex abuse space where --

19 THE COURT: Okay. Okay.

20 MR. PROL: -- where --

21 THE COURT: Okay.

22 MR. PROL: There have been, at confirmation trials --

23 THE COURT: Yeah.

24 MR. PROL: -- expert testimony --

25 THE COURT: Sure. Okay.



1 MR. PROL: -- with regard to the valuation of claims.

2 THE COURT: Well, I mean, a lot of that is --

3 MR. PROL: And --

4 THE COURT: Not to be funny, a lot of that is --I  
5 don't want to say it's a done deal, but it's in support of  
6 something that everybody has said they can live with, right?  
7 That's a whole different dynamic.

8 MR. PROL: But -- but --

9 THE COURT: And that's in your defense; it may be.  
10 Okay.

11 MR. PROL: But I posit to Your Honor that --

12 THE COURT: Yeah. Yeah.

13 MR. PROL: -- that those settlements were reached, in  
14 part, because people had valued the claims and --

15 THE COURT: Well, maybe. Okay. Maybe. That's what  
16 I'm trying to figure out, okay?

17 MR. PROL: I can't cite you to a case, but just --  
18 looking at the --

19 THE COURT: Okay. I got you. I got you. That's a  
20 good answer. Fair enough. Okay.

21 MR. PROL: But in addition to that tenet, Your Honor,  
22 and I think what's even more concerning, is the approach that  
23 the debtor has taken with regard to the availability of its  
24 assets. We've obviously had a dispute for a long time about  
25 what assets are and what assets are not available.

1 THE COURT: Yeah.

2 MR. PROL: We attempted to persuade the Court and the  
3 debtor that the better way to pursue this case, rather than a  
4 contested plan confirmation, would be to start trying to  
5 resolve some of those issues. And we've been down the  
6 contested plan route instead. We did try to file some  
7 adversary proceedings to expand the estate, but we never really  
8 got at the issue of whether or not real estate is available.  
9 And there is an adversary proceeding pending on restricted  
10 assets, cash restricted assets.

11 THE COURT: Yeah. And God will love you. I mean, I  
12 know.

13 MR. PROL: Yeah.

14 THE COURT: I mean, I don't know what happened to  
15 that, but no, that was one that --

16 MR. PROL: Well, that adversary proceeding, Your  
17 Honor, was stayed when the debtor came and said we'd like to  
18 take a pause on plan confirmation --

19 THE COURT: Um-hum.

20 MR. PROL: -- because we don't have enough funds to  
21 confirm the plan, but we'll get back to that. And so I think  
22 we all agreed --

23 THE COURT: That hasn't --

24 MR. PROL: -- we all agreed at that time that it  
25 didn't make sense --

1 THE COURT: It hasn't happened yet. Okay.

2 MR. PROL: -- to spend money pursuing that --

3 THE COURT: Okay. I got you. I got you.

4 MR. PROL: -- right?

5 THE COURT: Well, can I remind myself of a couple of  
6 things you're probably going to know better than me? I mean,  
7 this is not a case where the debtor has said, well, you know,  
8 this church is somehow not property of the estate. There are  
9 cases where they go through that drill. I think, to some  
10 extent, San Francisco might be going through that drill.

11 I think, if I'm remembering correctly, the committee's  
12 efforts have been to get me to look at the enterprise  
13 differently and say it's artificial not to think of all these  
14 entities as being so closely aligned that, whether you're  
15 substantively consolidating, or whatever the word you want to  
16 use, the pot should be bigger, from that perspective,  
17 externally and not internally; is that fair?

18 MR. PROL: So just to draw a little finer distinction,  
19 Your Honor --

20 THE COURT: Yeah.

21 MR. PROL: -- we did file a motion for standing to  
22 bring an adversary proceeding to substantively consolidate some  
23 of the related -- what we call related Catholic entities,  
24 schools, cemeteries, and the like.

25 THE COURT: Yeah.

1 MR. PROL: That's the subcon piece. Your Honor didn't  
2 grant us standing. And that decision is up on appeal.

3 THE COURT: Okay.

4 MR. PROL: The issue with regard to the real property  
5 in the church is slightly different. Here the debtor  
6 acknowledged that the churches are not separately incorporated.

7 THE COURT: Yeah. Now, maybe it took longer --

8 MR. PROL: And that the --

9 THE COURT: -- than you would have liked to get there,  
10 but --

11 MR. PROL: -- assets of the church --

12 THE COURT: -- yeah.

13 MR. PROL: -- were owned by the bishop but held in  
14 trust for the churches. And we had some skirmishes about that.  
15 And I think ultimately there was an adversary proceeding -- a  
16 consent order entered acknowledging that the bishop owns the  
17 churches.

18 THE COURT: Yeah.

19 MR. PROL: And the real question now is whether or not  
20 the First Amendment protects those churches from the reach of  
21 creditors. That, Your Honor, we also submit, is an issue that  
22 the debtor is way out there on. The First Amendment doesn't  
23 say -- the establishment clause doesn't say that a religious  
24 organization has the right to practice its religion in that  
25 particular building over there. Under --

1 THE COURT: Okay. Then --

2 MR. PROL: Under state law in California --

3 THE COURT: Okay. Then --

4 MR. PROL: Under state law in California, real estate  
5 and other assets owned by nonprofits and religious  
6 organizations are subject to attachment.

7 THE COURT: Well, then can I ask you the following  
8 question? Let's say I agree with you -- and I probably do --  
9 that at some point a religious entity says, well, I have all  
10 these rights as a religious entity. At some point the response  
11 is, well, there's no Constitutional right to a discharge or to  
12 be in a bankruptcy, so maybe you're just not a good Chapter 11  
13 debtor, to which the response should be, okay, dismiss the  
14 case.

15 MR. PROL: All right.

16 THE COURT: But why would that be bad faith? Why  
17 would that cause me to bar them from further filing?

18 MR. PROL: What's bad faith, Your Honor, is if  
19 they're -- because the businesses they're taking, they're not  
20 entitled to discharge, we've wasted two-and-a-half years,  
21 millions and millions and millions of dollars. Our clients  
22 have been delayed from pursuing their rights in a case where  
23 they never had a chance to get a discharge. And if they're  
24 going to go back to state court, if they're not going to  
25 resolve the case here and now, we're here.

1 THE COURT: But do I have to -- okay. Let me agree  
2 with you, okay? Let's say I agree with that ultimate point. I  
3 haven't done it yet. I mean, do I have to resolve that issue  
4 to be able to say it was bad faith?

5 MR. PROL: Resolve?

6 THE COURT: The issue of whether they never should  
7 have raised the issue of First Amendment, or RFRA, or whatever  
8 it was.

9 MR. PROL: Well, they're in a position to have that  
10 resolved here and now, if they so decide. But if they decide  
11 they don't want to have it resolved --

12 THE COURT: That's bad faith?

13 MR. PROL: -- and they want to go back to state court,  
14 okay, the key here is, right, the survivors shouldn't be put in  
15 a position where we can get ping-ponged back and forth between  
16 this Court and the state court. We've been here two-and-a-half  
17 years.

18 THE COURT: Okay.

19 MR. PROL: They haven't been able to get a plan  
20 confirmed, whether it's because we have objected, or because --

21 THE COURT: Yeah.

22 MR. PROL: Whatever the reasons are, they haven't been  
23 able to get a plan confirmed.

24 THE COURT: Okay.

25 MR. PROL: If they consensually dismiss their case and

1 go back to state court, what prevents them from litigating in  
2 state court the next time the first trial comes up, they can  
3 refile again. Or maybe they take their chances and they allow  
4 several cases to get tried.

5 THE COURT: Okay.

6 MR. PROL: And all of a sudden, we don't like what's  
7 going on here.

8 THE COURT: Okay. Okay.

9 MR. PROL: Well, let's go back across the street.

10 THE COURT: All right. But let me just say I'm kind  
11 of playing a hypothetical game with you here, but I -- these  
12 are not rulings that I was going to determine, if the First  
13 Amendment does or -- it's just the argument would be you can  
14 have all the First Amendment rights you want; it doesn't  
15 necessarily make you a good Chapter 11 debtor. And I haven't  
16 decided that, but I hear it. Okay? I got it.

17 MR. PROL: I agree with that. Your Honor --

18 THE COURT: I got it.

19 MR. PROL: Your Honor has said that. Your Honor  
20 said that --

21 THE COURT: Well, but I haven't --

22 MR. PROL: -- a year-and-a-half ago.

23 THE COURT: I --

24 MR. PROL: And if they weren't a good Chapter 11  
25 debtor, and they weren't going to --

1 THE COURT: Okay.

2 MR. PROL: -- they weren't going to pursue a course  
3 that was going to get them there, having pursued it, we submit,  
4 warrants a bad-faith finding sufficient to dismiss --

5 THE COURT: I hear you. Okay.

6 MR. PROL: -- with prejudice.

7 THE COURT: Okay.

8 MR. PROL: So third, Your Honor, we would also submit  
9 that the filing of prosecution of confirmation of a patently  
10 unconfirmable plan also constitutes bad faith. And we cited a  
11 case that supports that proposition. And in this case, again,  
12 almost a year has gone by since the mediators declared a pause  
13 in the mediation.

14 There were two paths that this case could have gone  
15 down. We urged a path that would help reconcile what is and is  
16 not property of the estate. The debtors determined that they  
17 were going to file a plan of reorganization and they were going  
18 to try to confirm it over our objection.

19 We begged, literally begged, not to go down that path.  
20 And we warned that it was going to be an expensive path and it  
21 was going to be a time-consuming path. And if you go back and  
22 look at the transcripts, Your Honor, Mr. Weisenberg stood here  
23 and said we could potentially be a year down the road, have  
24 spent tons of money, and accomplished absolutely nothing. But  
25 the debtor went ahead. In fact, the debtor went so far as to



1 criticize the committee's efforts as trying to commandeer the  
2 case. And I forget the language they used, but they were  
3 not --

4 THE COURT: I remember commandeer.

5 MR. PROL: They were not very complimentary.

6 THE COURT: Um-hum.

7 MR. PROL: And even when the result that we predicted,  
8 overwhelming rejection by the survivors, was the result of the  
9 vote, debtor's counsel stood here at the podium, gleefully  
10 telling Your Honor that they had accomplished exactly what they  
11 needed to do. They had an impaired consenting class and they  
12 were going to cram the plan down.

13 We again told them it was a horrible idea, that it  
14 was going to take many, many months and a lot of money to go  
15 through the plan discovery process, and to go to trial, and  
16 that the likelihood of being able to confirm a plan, cram a  
17 plan down over survivors, was next to nothing. But they  
18 persisted and they pursued.

19 And then in August of this year, we stood here, Your  
20 Honor, to hear the debtor say, we're insolvent, we're out of  
21 money, we can't afford to do this, we want you to adjourn  
22 confirmation, schedule a status conference in November, and  
23 we'll come back to Your Honor and tell you what we want to do.  
24 And in the meantime, we need to sell some real estate to raise  
25 money in order to fund this case.

1           They retained a real estate broker, promised us that  
2 they would keep us abreast of what properties were listed and  
3 what the market was like, and we would be seeing motions to  
4 sell real estate in order to fund the case. Well, surprise,  
5 Your Honor, no such motion has ever been filed, nor have we  
6 received any information, nor have we been able to glean, from  
7 the public records, that a single parcel of real estate has  
8 been listed since August.

9           And now they've toggled from the idea of trying to  
10 confirm that plan to dismissal. And now we hear today that  
11 they're toggling again to give us a little more time. You  
12 know, we can raise the money to confirm a plan if something  
13 else happens. We submit to Your Honor that the back and forth,  
14 and the toggling, and the delay is bad faith that warrants a  
15 dismissal with prejudice.

16           Finally, Your Honor, We believe that the debtor's  
17 conduct at mediation, and the repeated violations of mediation  
18 privilege, also constitutes bad faith. Reading their  
19 pleadings, even if you only read the pleadings here, on this  
20 particular motion, the way they castigate survivors, those that  
21 they failed to protect as children, they ascribe bad motives,  
22 impure motives to committee counsel, state court counsel, all  
23 in an effort to gain advantage.

24           The discussion that we had earlier today of the  
25 statement that they filed, the disclosure of the fact that

1 there is a mediators' proposal is, in of itself, a violation of  
2 the mediation privilege.

3 And the most egregious example of that, Your Honor,  
4 you'll recall, when we were last before Your Honor, the debtor  
5 had requested an emergency hearing for Your Honor to authorize  
6 dissemination of the committee's September 9 proposal, a  
7 proposal that Your Honor shouldn't have even known. The fact  
8 that that existed is a violation of the mediation privilege.  
9 But they filed an emergency application to ask Your Honor to  
10 allow them to disclose that offer to Chubb, Mr. Schiavoni's  
11 client.

12 And Your Honor held a hearing. The debtor was  
13 represented by Mr. Lee. And after a fair amount of discussion,  
14 Your Honor basically ruled that that was a mediation matter, we  
15 should take it up with the mediators. And we, in fact, had a  
16 mediation session; I believe it was the very next day.

17 THE COURT: Yeah, it should have been.

18 MR. PROL: Okay? Well, Your Honor, I hate to report  
19 to you, but Mr. Lee left the courtroom and promptly emailed the  
20 committee's offer to Mr. Schiavoni. No opportunity to discuss  
21 it in front of the mediator. And in fact, he had the gall to  
22 not even copy us on it, and we didn't know about it until after  
23 we got to mediation the following day.

24 I submit, Your Honor, again, that these breaches of  
25 mediation privilege are not benign, okay? They are designed to

1 put the committee in a compromised position with regard to  
2 mediation. Every time they breach the privilege it makes it  
3 more difficult for us, not only to deal with them, but to deal  
4 with the insurance carriers, and even to deal with the  
5 mediators.

6 It's not fair. And that, Your Honor, in and of  
7 itself, the fact that we've been in mediation, twenty, twenty-  
8 five sessions, whatever it is, and we cannot effectively  
9 mediate, because we have to be concerned about what we say, and  
10 when we say it, because it's not confidential. That, Your  
11 Honor, in and of itself, is bad faith and warrants the  
12 dismissal of this case with prejudice.

13 I reiterate again, with regard to timing, Your  
14 Honor -- I know you wanted to hear this today -- we would ask  
15 that Your Honor either deny the motion, at this point, or defer  
16 ruling until after the November 12th status conference.

17 THE COURT: Okay.

18 MS. UETZ: Thank you, Your Honor. I'll make a few  
19 points. Going in reverse, following the hearing that Mr. Prol  
20 referred to, the debtor did send to Mr. Schiavoni the  
21 settlement proposal with the support of the mediator. And Your  
22 Honor should note that none of the mediators who are appearing  
23 at these hearings -- they've been at the status conferences;  
24 they're here today. I might have just lost an important one  
25 because I don't see him on the screen anymore. But they have

1 not supported the committee's charges that we have violated the  
2 mediation privilege. If we had, I would think the mediators --

3 MR. PROL: Again, I object to --

4 MS. UETZ: Excuse me?

5 MR. PROL: -- violation of mediation privilege.

6 MS. UETZ: They haven't come to this Court and  
7 supported --

8 THE COURT: Well --

9 MS. UETZ: -- the committee's charges that we have  
10 violated the mediation privilege.

11 THE COURT: I don't know that they would. Let's move  
12 on to another point, okay?

13 MS. UETZ: Okay.

14 THE COURT: Thank you.

15 MS. UETZ: Your Honor, I haven't done anything  
16 gleefully in this case since the day I filed it. Not one  
17 thing. The substantive consolidation adversary proceeding was  
18 not dismissed on standing grounds; it was dismissed on the  
19 merits. That's a point of clarification for Your Honor.

20 The 1129 --

21 THE COURT: Was that the, sort of, fraudulent transfer  
22 claim, or was it something --

23 MS. UETZ: That was the subcon adversary proceeding  
24 through which the committee sought to bring in the assets of  
25 the nondebtor Catholic entities.

1 THE COURT: Yeah.

2 MS. UETZ: And if I heard Mr. Prol right, I thought he  
3 said it was --

4 THE COURT: He may talking --

5 MS. UETZ: -- on standing.

6 THE COURT: He may be talking about something else.  
7 But that's okay. You can --

8 MS. UETZ: Okay.

9 THE COURT: You can make your point. He may be  
10 talking about something else.

11 MS. UETZ: Okay.

12 MR. PROL: If I said that, I misspoke. The subcon  
13 adversary --

14 THE COURT: You meant something else, right?

15 MR. PROL: -- was dismissed.

16 THE COURT: I remember it. I remember it. Thank you.

17 MS. UETZ: That's fair.

18 THE COURT: Okay. Good correction. Thank you.

19 MS. UETZ: As to 1129(a)(7), the best interest of  
20 creditors test, Your Honor, we've done two liquidation  
21 analyses. You might recall, we called them 1.0 and 2.0. And  
22 that test, what creditors -- the creditors would get more than  
23 they would in a Chapter 7 liquidation, not that they get X  
24 percent of what they would get in state court.

25 And Your Honor has said, more than once, and I almost

1 don't -- I've got it almost committed to memory -- you can have  
2 all those First Amendment rights; you might just not be a good  
3 candidate for a Chapter 11 discharge.

4 THE COURT: And I mean, look, I haven't decided that.  
5 I've made the comment.

6 MS. UETZ: I heard you loud and clear.

7 THE COURT: That's how one would argue it either way.

8 MS. UETZ: Understood, Your Honor.

9 THE COURT: Yeah.

10 MS. UETZ: And that's why we have two analyses. And  
11 the second analysis stands on its own and does not evidence bad  
12 faith by the debtor.

13 THE COURT: I mean, I think I recall a dialogue with  
14 Mr. Lee where I said, well, couldn't you do a second one? And  
15 he said, I suppose I could.

16 MS. UETZ: We did.

17 THE COURT: And we did, right?

18 MS. UETZ: We did.

19 THE COURT: Okay.

20 MS. UETZ: By one of the most renowned restructuring  
21 experts in the world.

22 THE COURT: Yeah.

23 MS. UETZ: We did. Just a couple more points, Your  
24 Honor. The churches in this case, in the Diocese of Oakland,  
25 are in the plan. So if there's any question about that, they

1 were and are in the plan.

2 And I want to make one point. Much has been said  
3 about our intent and our bad faith with respect to rightsizing  
4 and MAP, the mission alignment process. Your Honor, in its  
5 plan, the debtor had made clear its plan to utilize at least  
6 the following assets to pay unsecured creditors, and this was  
7 described in the disclosure statement as to which the committee  
8 withdrew its objection.

9 All twelve vacant real estate parcels titled in the  
10 name of the debtor, which are not part of a larger parcel  
11 containing a church or ministry-related building. Vacant  
12 portions of eighteen real estate parcels titled in the name of  
13 the debtor, which the debtor determined could be liquidated  
14 while allowing the debtor to continue its mission even though  
15 they are part of a larger church site. Twelve real property  
16 locations where churches operate. I'm going to say that one  
17 more time. Twelve churches that operate would be utilized to  
18 pay creditors, seven residential homes that are used in the  
19 debtor's ministry, and if necessary, other real estate  
20 currently being used in support of the debtor's ministry.

21 So the charge, Your Honor, that the debtor has not  
22 done anything, throughout the course of these thirty months, to  
23 restructure its operations is just not true. I think Your  
24 Honor touched on it in one of your earlier questions.

25 We obviously have different perspectives from the



1 committee. We have disagreements about the application of  
2 1129(a)(7). We have disagreements that have permeated this  
3 case, including about the plan of reorganization that we filed,  
4 that we tried to cram down, that the Bankruptcy Code provides  
5 the debtor the opportunity to do.

6 We understand that there are those disagreements, but  
7 those fundamental disagreements do not mean that the Roman  
8 Catholic Bishop of Oakland has conducted itself in bad faith,  
9 nor does it mean that its professionals have conducted  
10 themselves in bad faith throughout this case.

11 And Your Honor, I will rest with that. We request  
12 that the Court grant the motion, including a finding that there  
13 is no bad faith by the debtor, and set November 12th as the  
14 date for dismissal with a conference to the Court on that date.

15 THE COURT: Okay. Is there anybody else -- I realize  
16 nobody else has filed any pleadings here, but -- and I don't  
17 know if the mediators have anything to offer. They may not.  
18 They may feel that it's better for them to say as little as  
19 possible at this point. But I will allow either the mediators  
20 or other parties to throw an idea in here if they would like to  
21 do so.

22 MS. UETZ: Your Honor, if I may, I see, at least on my  
23 screen, that --

24 THE COURT: Mr. Gallagher.

25 MS. UETZ: -- Mr. Gallagher, who I understand is

1 double tasking today in mediation.

2 THE COURT: Yeah.

3 MS. UETZ: I don't think I'm breaching the mediation  
4 privilege to say that my understanding is he wants to address  
5 the Court.

6 THE COURT: Okay.

7 MS. UETZ: I'm going to try to reach him.

8 THE COURT: And it would certainly -- it would not be  
9 on, well, here's the ask and get. It might be on something  
10 relevant to between now and November 12th that is just  
11 logistical and nothing else.

12 MS. UETZ: I just want to report that.

13 THE COURT: I appreciate it.

14 MS. UETZ: And with that, I will stand.

15 THE COURT: All right. I see, well, Mr. Schiavoni's  
16 got his hand up already, so he gets to go first.

17 MR. SCHIAVONI: Thank you, Your Honor. Tancred  
18 Schiavoni for the Pacific insurers.

19 I wanted to be heard just on one issue that I think  
20 might, in a sense, interface with me. We did, my client and  
21 O'Melveny, work very hard with the diocese professionals to try  
22 to reach consensus on terms that were incorporated in the plan.  
23 That involved a lot of compromises. It involved a significant  
24 amount of our time. I brought up some bankruptcy lawyers from  
25 Los Angeles to help on this.

1           We looked for creative solutions. And that effort by  
2 my client was in utmost good faith. And I feel that the  
3 bishop's professionals, with respect to working on how to deal  
4 with the contracts, in incorporating the new plan, were in good  
5 faith.

6           And I just want to thank the Bishop and Ms. Uetz with  
7 respect to that aspect of the effort. We have disagreements on  
8 other issues, but we're grateful for them having worked with us  
9 on that.

10           We think, Your Honor, that that effort was informed by  
11 an overarching view of really what this project is about. The  
12 statutory scheme for charitable bankruptcies, I've said before,  
13 it's fundamentally not that complicated. Congress  
14 contemplated, as part of the scheme, the contribution of the  
15 unrestricted assets of the charity, that the charity would then  
16 be able to otherwise continue its mission, and that other  
17 aspects of the Code contemplate that the contracts would pass  
18 through as they're written. They wouldn't be rewritten or they  
19 wouldn't be the rights prejudiced in that regard.

20           That was what informed our effort with the diocese.  
21 And that is -- I think it would -- to the extent there's any  
22 suggestion that we acted in bad faith, like, I would just  
23 reject that. I think a lot of effort went into that.

24           I don't think, Your Honor, that the Code or Congress  
25 contemplated that a committee could exercise a veto and, in

1 that way, override the statutory scheme. And it's notable here  
2 that the committee did not come forward, or propose, or ask for  
3 permission to file an alternative plan. And I think the reason  
4 for that is very straightforward. If they had proposed an  
5 alternative plan that set out what they have described in open  
6 court they want to achieve, it would include them seeking  
7 unrestricted assets, and it would seek them significantly  
8 modifying or impairing the contracts.

9           They can, if permitted by a court, I suppose, exercise  
10 a veto, and using the threat of that veto and the threat of  
11 very high monthly expenditures, as a weapon, almost, they can  
12 try to extract something that the Code itself doesn't  
13 contemplate. They can, in effect, sort of, extort that  
14 outcome.

15           They can look at a debtor and say, sell sixty percent  
16 of all your operating parishes, sell more, shut down a  
17 significant amount of the church, modify your contracts, create  
18 a bad-faith claim that doesn't otherwise exist.

19           I'm not in any way discussing what's happened in the  
20 mediation. But the plan that we worked on was one that the  
21 aspects that we participated in were in good faith. They were  
22 consistent with the statutory scheme of the Code. To the  
23 extent a committee or a small group of out-of-state plaintiffs  
24 are seeking an alternative outcome, that's not -- no one can  
25 fault a debtor or its insurers for acting in other than good

1 faith in response to that.

2 I do think this is exactly why Congress has a cramdown  
3 provision, because if any one constituency has a veto over an  
4 outcome of a plan, and that veto is being exercised to achieve  
5 a result inconsistent with the Code, that's the unique and  
6 unusual situation where cramdown is appropriate.

7 So Your Honor, we went forward, I believe, on those  
8 issues, in good faith. And Your Honor, this plays itself out  
9 over a bigger field. There's three or four different firms  
10 representing these committees. I'm a huge fan of Mr. Prol.  
11 I've said many times I'd like to have him as a neighbor. But  
12 the bottom line is Lowenstein has never confirmed a plan. Five  
13 years out, six years out, Camden's not confirmed, after two  
14 findings of bad faith in the plan. And Friars is nowhere.

15 Your Honor, there's a fundamental problem here, but I  
16 don't think it is one that merits a bad-faith finding with  
17 respect to the aspect of the plan that we worked on with this  
18 debtor. Thank you, Your Honor.

19 THE COURT: Okay. I appreciate it.

20 Anybody else want to be heard?

21 MR. PROL: Your Honor, could we just have  
22 clarification as to what document Ms. Uetz was reading from  
23 when she was talking about the assets that were being  
24 contributed to the plan?

25 THE COURT: That was the disclosure statement or

1 something else? You were talking about various assets being  
2 offered.

3 MS. UETZ: The disclosure statement.

4 THE COURT: Okay.

5 MR. PROL: Thank you, Your Honor.

6 THE COURT: Okay. Yeah. Um-hum.

7 MS. TURNER: Good afternoon, Your Honor.

8 THE COURT: Good afternoon.

9 MS. TURNER: Todd Jacobs for Westport. I want to make  
10 this real brief and stay in my lane here.

11 THE COURT: Okay.

12 MS. TURNER: And I see Mr. Gallagher is on, and Judge  
13 Newsome is on. And we, for Westport, very much respect the  
14 mediation privilege. We're not going to talk about what  
15 happened during the mediation. There were some statements made  
16 here today about what the insurers, sort of, generically have  
17 done.

18 THE COURT: Um-hum.

19 MS. TURNER: I'm not going to get into that. I don't  
20 represent the insurers generically. I represent Westport. I  
21 know what we did in mediation. I know Judge Newsome knows what  
22 we did in the mediation. I know Mr. Gallagher knows what we  
23 did in mediation. And it's confidential. And any suggestion  
24 that Westport has done anything other than try to get a  
25 consensual resolution of this case is just simply untrue. And

1 that's all I'd like to say.

2 I don't know if Mr. Gallagher or Judge Newsome want to  
3 say anything, but --

4 THE COURT: I don't want to --

5 MS. TURNER: -- I didn't want to let that hang.

6 THE COURT: I appreciate it. I don't want to urge  
7 them to. I want to give them the opportunity if they think  
8 there's something that will be helpful.

9 MR. WYATT: Your Honor, this is Andrew Wyatt for  
10 Travelers.

11 I'll just join Westport's position. And it's the same  
12 thing, that Travelers takes issue with some of the comments  
13 that the debtor made in the arguments regarding the insurers'  
14 participation and good-faith participation throughout this  
15 entire process.

16 THE COURT: Okay. Fine.

17 All right. If anybody else wants to be heard, now's  
18 the time. Otherwise, I'm going to take a quick break and --

19 MR. PROL: Your Honor, could I be heard briefly in  
20 response to Ms. Uetz and Mr. Schiavoni?

21 THE COURT: Okay. Ms. Uetz, okay with you?

22 MS. UETZ: Yeah. Can I just say one thing? Because I  
23 think something I said -- I didn't mean to say what everybody  
24 thinks I said.

25 THE COURT: Okay. Yeah.

1 MS. UETZ: I didn't mean to suggest that the insurers  
2 participated in mediation in anything other than good faith.

3 THE COURT: Okay.

4 MS. UETZ: And I want to make that clear.

5 THE COURT: All right.

6 MR. SONTCHI: Your Honor, this is Chris Sontchi. Can  
7 you hear me?

8 THE COURT: Yeah. I can't see you, but I can hear  
9 you.

10 MR. SONTCHI: Yes. I'm sorry. I'm in a car, so I'm  
11 not going to put you on video.

12 THE COURT: Okay.

13 MR. SONTCHI: Your Honor, just thank you for hearing  
14 me very briefly. I just want to correct -- well, not correct,  
15 clarify something. There are no ongoing mediation efforts --

16 THE COURT: That's -- that's --

17 MR. SONTCHI: -- between the committee and the debtor.  
18 I just want to say that.

19 THE COURT: Okay.

20 MR. SONTCHI: And I don't anticipate any before the  
21 end of November. That's all I'm going to say, sir.

22 THE COURT: That's something I was curious about.  
23 Thank you for confirming that. I appreciate it.

24 MR. SONTCHI: You're welcome. Thank you, Your Honor.

25 THE COURT: Okay. All right. Mr. Gallagher has his



1 hand up. I want to get through the nondebtor noncommittee,  
2 folks, okay, and then hear from Mr. Prol for sure.

3 Okay. Mr. Gallagher?

4 MR. SCHIAVONI: Yes. I think the additional time to  
5 the 12th would help, notwithstanding what Judge Sontchi said.  
6 I understand that those discussions may come to an end, but  
7 there are other mediation discussions that are taking place.

8 THE COURT: All right. Okay. I don't see any other  
9 hands raised on the Zoom gallery.

10 So Mr. Prol, come on up and make your one or two  
11 points.

12 MR. PROL: Again, Jeff Prol, on behalf of the  
13 committee. I, again, thank Mr. Schiavoni for his nice  
14 compliments. I will certainly --

15 THE COURT: But you'd rather not live next door to  
16 him.

17 MR. PROL: I will certainly send him the recent  
18 listings of houses in my neighborhood and build a large fence.

19 THE COURT: Okay. Get him into your country club  
20 too, if you can, okay?

21 MR. PROL: Anyway, several things I do need to correct  
22 with regard to Mr. Schiavoni. He said Loewenstein has never  
23 confirmed a plan. The plan in Camden has been confirmed. It  
24 is presently on appeal before the Third Circuit Court of  
25 Appeals. In that case, we've settled with two insurance

1 carriers, and we're presently at mediation with two others.

2 THE COURT: Okay.

3 MR. PROL: That case is making progress, slow, but it  
4 is making progress.

5 Secondly, Your Honor just needs to understand the  
6 context of his comments. His client is one of the primary  
7 beneficiaries of the ping pong that I expressed concern about.  
8 Chubb, his client, has provided primary coverage, and they have  
9 a duty to defend. If cases go forward in the tort system,  
10 they're going to start paying, day one, for defense.

11 I would also note, and we haven't alleged bad faith on  
12 behalf of the carriers, that's not part of the standard here.  
13 But they did negotiate what I would characterize as the most  
14 favorable assignment that we've ever seen in a diocese  
15 bankruptcy-related case. Our objections to that were laid out  
16 in multiple pleadings, in connection with the disclosure  
17 statement hearings, and I won't go into that further.

18 Mr. Schiavoni's concern about the committee having a  
19 veto, the committee doesn't have a veto here. The debtor has  
20 the right to try to cram a plan down. And they did. And they  
21 realized that, under these facts, in this case, these  
22 circumstances, that they can't do it with this plan.

23 With regard to Ms. Uetz's comments, I thought I heard  
24 her say that our settlement proposal was transmitted to Chubb  
25 with the support of a mediator. I didn't hear her say which

1 mediator that was. But I would just say we did not have any  
2 opportunity to discuss that with a mediator. They did it  
3 unilaterally as far as we're concerned.

4 THE COURT: Got it.

5 MR. PROL: With regard to the recitation of assets  
6 that Ms. Uetz indicated have been committed to the plan, I  
7 would just recommend to Your Honor's reading exactly what the  
8 disclosure statement says, because they have not committed to  
9 sell -- as I think she implied -- those assets.

10 Reading from the disclosure statement -- and this is  
11 page 3 of the executive summary, "The reorganized debtor will  
12 either utilize as collateral for the cemetery loan" -- defined  
13 as RCC -- "collateral for the RCC loan will make to the debtor  
14 in support of the plan, or liquidate all twelve real estate  
15 parcels titled in the name of the debtor". They're not  
16 committing to liquidate it. They may use it as collateral for  
17 an affiliated party loan.

18 THE COURT: Yeah, the word she used was "use". But so  
19 I mean, you're saying the right thing; it's use.

20 MR. PROL: But there's a key distinction there, okay?  
21 It's one thing to be able to borrow money from an affiliated  
22 entity, which they historically have borrowed on an unsecured  
23 basis. Now all of a sudden they need to give collateral, and  
24 they're claiming credit for using real estate by giving it as  
25 collateral to an affiliated entity. It's a whole different

1 kettle of fish to commit it to the reorganization by agreeing  
2 to monetize it, sell it, in order to raise proceeds. And I  
3 would just recommend to Your Honor's reading that --

4 THE COURT: Appreciate it.

5 MR. PROL: -- that most of the real estate that  
6 they've committed to the reorganization, they hedge a bit, and  
7 they say it's either going to be sold or utilized as  
8 collateral. And so --

9 THE COURT: Okay.

10 MR. PROL: So it's not clear exactly how much of that  
11 is actually going to be sold.

12 THE COURT: Okay. I appreciate it. Anything else  
13 before we take a quick break?

14 All right. I want to break for maybe ten, fifteen  
15 minutes, okay? So I'll have Mr. Singh communicate to you when  
16 I'm ready to come back. Thank you.

17 MS. UETZ: Thank you.

18 - - -

19 (Whereupon, a brief recess was taken.)

20 - - -

21 THE COURT: I've put some thoughts together. Please  
22 be seated. Sorry.

23 So unless you guys have agreed on everything in the  
24 scant few moments I was gone, I will give you some thoughts and  
25 rulings. So no other updates, right?

1 MS. UETZ: Correct.

2 THE COURT: Okay. Well, we have a motion to dismiss  
3 that is, in its simplest form, not opposed by anybody. And  
4 it's supported by the committee with the condition that I'm  
5 going to address now.

6 There was a reference, in Mr. Prol's presentation,  
7 about the interests of creditors. And the way that plays out,  
8 typically, I think, best interests of creditors, it becomes a  
9 debate, in many cases, as to whether conversion or dismissal is  
10 the better outcome.

11 I think this case naturally gravitates away from  
12 conversion. I think that there's authority, which there may be  
13 some basis to contest, or say that it isn't quite as meaningful  
14 as it might be otherwise. But I don't think conversion is an  
15 option here, and I don't think there's any scenario in which  
16 the creditors would be better off were that to happen. So I  
17 don't think there's much doubt but that it's either dismissal  
18 or not dismissal.

19 So I'm going to dismiss the case. And we'll talk  
20 about -- there were two conditions that were suggested, one by  
21 the committee, one by the debtor. Dealing first with the  
22 committee's -- you know what? I just realized I had a whole  
23 bunch of notes that I left in the other room.

24 Can you guys bear with me for two minutes? I have to  
25 go get my --

1 MS. UETZ: We noticed you walked out empty-handed.

2 THE COURT: Yeah, and I walked out that way, not  
3 empty-handed. I apologize. Can you give me a minute?

4 MR. PROL: No problem, Your Honor.

5 THE COURT: All right. Thank you. I hope it'll be  
6 worth it.

7 (Pause.)

8 THE COURT: Thank you. I do think that -- sorry.  
9 Sorry. Have a seat.

10 I do think that, in thinking my way through the  
11 question of whether I should dismiss the case either with  
12 prejudice or with a bar, I'll make the following, kind of,  
13 opening comments, that the debtor has -- I mean, they obviously  
14 can't pledge never to refile, because five years from now  
15 things might be different, and who knows, right, theoretically.  
16 But it's certainly been the debtor's -- the spirit of their  
17 pleading has been we would not go through this exercise and go  
18 back to state court and basically come back here. That would  
19 be pointless. I think that's probably true. Absent much  
20 longer time having passed and very different circumstances  
21 being present, I think that's true.

22 So I don't want to say this is moot, because I think  
23 it matters a lot to the constituencies whether I put a bar or a  
24 prejudiced bad-faith filing on this. And let me say that I am  
25 going to rule fairly definitively, but in doing so, I want to

1 remark, as I always do, the respect I have for the positions  
2 that people take in this case and how thoroughly I know they  
3 feel the integrity of their positions and their responsibility  
4 to this system. So I want everyone to know that I always  
5 assume that of you. And I think everybody has lived up to that  
6 expectation in connection with this matter. So my compliments  
7 as always.

8 I think there's two or three levels to look at this.  
9 The first one is the basic Leavitt factors which are the Ninth  
10 Circuit's factors. And the case has been cited all over the  
11 place; I'm not going to give you citations here. But everybody  
12 has cited it as a four-part test in the Ninth Circuit for  
13 determining whether a case is filed in bad faith. And I think,  
14 were I to find that, I think I would be certainly able to bar  
15 the debtor. With prejudice is a different story, but I think  
16 that I would have to find it's filed in bad faith to get  
17 anywhere near a with-prejudice ruling.

18 So the four factors Mr. Prol articulated, and I'm  
19 going to come back to those in a second. There's a couple of  
20 other layers here, I think. One is -- and I tried to get at  
21 this a little bit with Mr. Prol, and he didn't have a ready  
22 answer right there, right at the lectern. But a lot of what's  
23 being argued about here is argued about with people taking  
24 positions that they deeply believe about what Chapter 11 allows  
25 different debtors, and this kind of debtor, which is a very

1 different kind of debtor, to do.

2 And I will comment only -- and I'll come back to this  
3 at greater length -- that I'm aware, generally, that many if  
4 not all of these issues come up, and they come up kind of  
5 inevitably in church cases. And they either get resolved, and  
6 you have a settlement, or they don't.

7 But the kinds of issues that people are arguing about  
8 here are kind of built into the fabric and the tension between  
9 all the things we get to do in Chapter 11 and the particular  
10 restrictions or characteristics that come up when we have a  
11 charitable and indeed a church debtor. So thinking through  
12 what that means, I think, dictates an answer to me too.

13 And lastly, there's an element here of, if the case  
14 does not resolve consensually, people have not agreed, they may  
15 get to that disagreement for a bunch of reasons. And some of  
16 those reasons may include the fact that certain folks haven't  
17 behaved as they should have, whether they've misrepresented  
18 something on the schedules or they've behaved badly in the  
19 mediation, or whatever.

20 It seems to me it's very, very difficult for me to get  
21 a bottom line on that. The committee believes the debtor is  
22 guilty of some infractions. The debtor probably believes,  
23 though that hasn't been the focus, that the committee has been  
24 behaving badly in some ways. Those are folks to whom they  
25 account to me in different ways. But they don't account to me



1 about things they've done in the mediation, and nor should  
2 they, and they're not going to, and I'm not going to get into  
3 that. Nor am I going to quiz the mediators about who's been  
4 naughty and nice.

5 And I will remark, as well, that there are people who  
6 are very integral to this process over whom I have absolutely  
7 no control whatsoever. And in the hypothetical world in which  
8 the folks who represent the people who are deeply involved in  
9 this process on the committee maybe should have done something  
10 different, I don't know if they should or shouldn't. I have no  
11 control over that.

12 So it's very hard for me, for example, to figure out  
13 if there's an ultimate question of why hasn't this worked. If  
14 that's the ultimate question here, and it hasn't worked because  
15 somebody has acted in bad faith, that's just way too dynamic a  
16 question for me to resolve, it seems to me, on what I have in  
17 front of me or what I could have in front of me, because  
18 there's an awful lot I could never have in front of me.

19 Same thing with the insurers. I mean, maybe they  
20 behaved splendidly; maybe they haven't. I'm never going to  
21 know that. And I really cannot call them to account the same  
22 way I could, theoretically, a debtor, or I could,  
23 theoretically, a committee.

24 So for all those reasons, I'm finding it hard to line  
25 this situation up with a bad-faith finding. Let me begin at

1 the beginning. With respect to Leavitt, if the first factor is  
2 misrepresentations, okay, there was some disagreement about an  
3 OPF claim. There was some back-and-forth about that. It was a  
4 little bit perhaps opaque and shouldn't have been.

5 And there were different characterizations. The  
6 debtor settled on one. I don't think there's any doubt about  
7 what that resolution is. I don't think that resolution  
8 particularly had any long-term deleterious effect on the  
9 reorganization process one way or the other.

10 And I will say that, when I'm looking at the Leavitt  
11 factors, what I think I'm looking at is behavior by the debtor  
12 or a purpose that is either totally inconsistent with the  
13 requirements and the ethics and the purpose of a bankruptcy  
14 case, or otherwise calls into question the integrity of the  
15 bankruptcy system. So I think it's a pretty high bar.

16 I agree it's totality of the circumstances, but the  
17 kinds of factors that I think I have here are not approaching  
18 the level of severity that I think might support a finding of  
19 either a dismissal with prejudice or a bar.

20 The first representation was the OPF claim. Okay.  
21 that was resolved. Second was the church property rights as to  
22 the estate. I think there was some -- again, there was some  
23 language back and forth that needed to be clarified. It got  
24 clarified. I don't think anything in that process has upended  
25 the reorganization process or prejudiced anybody in a way that

1 made a resolution here more difficult in any material way.

2           The Livermore property status, I think the debtor  
3 has -- obviously, there's been disagreements about that. The  
4 debtor believes that's been put to rest in terms of the  
5 committee, arguably, not being as straight about how that was  
6 resolved as they might have been.

7           I don't think -- nothing that I'm hearing, in the  
8 various alleged misrepresentations, comes close, in my mind, to  
9 satisfying what the requirements under Leavitt should be for  
10 the kind of misrepresentation or other bad conduct that is  
11 so -- I mean, I know the word "egregious" isn't used, but I  
12 think what I have to read into that is, is this really  
13 frustrating the purposes of a bankruptcy? And it just isn't,  
14 in my view.

15           The second factor, I think everybody agreed, is not  
16 terribly relevant because there's been only one filing so far.

17           The next factor is whether -- I guess it's sort of  
18 articulatable in two ways, whether the sole purpose or the  
19 principal purpose of the filing was to frustrate state law  
20 claim collection/enforcement/pursuit and whether one is using  
21 the bankruptcy Chapter 11 truly to reorganize.

22           I would comment, on the first matter, if filing a  
23 bankruptcy case in this context, in this mass tort context, and  
24 taking that litigation process that's been in state court and  
25 importing it here, for whatever good that can do, understanding

1 in no case does that allow this judge to decide those claims  
2 because I don't have that power.

3 If that, by itself, were going to tip a Leavitt  
4 factor, there'd be an awful lot of explaining to be done in the  
5 diocese cases around the country, because that's exactly what  
6 happens. The point is that we will disrupt the state court  
7 process, we will do it, hopefully, with the expectation that,  
8 in a bankruptcy, we can centralize the disposition of assets,  
9 we can resolve questions about the assets that are going to be  
10 available, and that may be a more favorable outcome in this  
11 circumstance, and we're able to get to those answers in this  
12 Court in a way you just can't do it in any kind of MDL or other  
13 state court process.

14 I think it's also true that, even though I don't  
15 particularly adjudicate those claims, and I never will, I can  
16 preside over a process where the parties can decide. And when  
17 they decide they don't want to, they can take steps to  
18 frustrate the process as one might argue happened here; I'm not  
19 making a decision about that. But the parties can decide to  
20 get into various vehicles for trying to come to an overall  
21 resolution of those claims.

22 It is a different process. It's not trying the claims  
23 one by one, but it is something that is consistent, I think,  
24 with the bankruptcy ethic of we figure out, in a general sense,  
25 what the claims are, we put them through the plan confirmation

1 process, and we end up with something that's consensual or is  
2 good enough, under 1129, that it satisfies due process rights  
3 and property rights. So I don't think that taking that process  
4 from the state court to here, by itself, really is probative  
5 one way or the other.

6 I'll say one other thing about the reorganization  
7 process. I don't mean to elevate the debtor's concerns here.  
8 Let's face it; it is true, and the committee, I think, begins  
9 from the premise that the primary purpose of these cases is to  
10 try to come to an appropriate, just, fair, and equitable  
11 resolution of these horrible claims that are the result of  
12 horrific conduct and people who are truly scarred physically.  
13 And as you know, I sat through, as we all did, hours of the  
14 statements, and I'm glad I did, because the harm to folks who  
15 have had these experiences is lifelong. The main point of  
16 these cases is to reach some resolution of that.

17 But the resolution has two pieces. One piece is that  
18 the victims hopefully get something that recompenses them  
19 fairly, and they get to get on with their lives. And that's  
20 the single most important piece.

21 Another piece that's important, maybe not equally  
22 important, is that an institution that prides itself on  
23 providing spiritual guidance, and spiritual sustenance, and  
24 meaningful communication, and facilitating people's  
25 relationship with their deity, can turn a page. And that is

1 not a small thing.

2 And getting to a resolution in bankruptcy, which you  
3 can, in most cases, do more quickly and more comprehensively  
4 than you can in state court, one decision after another, there  
5 is a benefit to that. If you want to call that a  
6 reorganization, you can. But it is a way for the church to  
7 account, not only to the people who it harmed, but to the  
8 people who come and sit in the pew every week. That is not a  
9 small thing. There is a reorganization purpose and function  
10 for the benefit of the church here.

11 I would note as well, and I'm not trying to be arch  
12 here, part of the reorganization process, while part of the  
13 plan process, involved the committee, entirely appropriately,  
14 making a bunch of suggestions to the debtor about reforms in  
15 its practices and its procedures, all of which I hope the  
16 debtor said, tell us, we'll do it.

17 There is a reorganization element to that, and it's a  
18 big one. It's horribly important that the debtor hear from the  
19 committee what has gone wrong and what can be done better. And  
20 if the church is hearing that, they should. And there is a  
21 reorganization prerogative to that.

22 So on the third factor I'm convinced that there is an  
23 awful lot of good that can be done here that begins with, let's  
24 please pay these poor people who've had these horrific  
25 experiences, but doesn't end there. That does encompass an

1 awful lot, many functions, that are horribly important to the  
2 church and horribly important to the idea that debtors come  
3 here in distress and want to leave here with a fresh start. So  
4 I think, on the third factor, I would argue -- I would conclude  
5 that the Leavitt factor was not satisfied.

6 And the fourth factor of basic egregious conduct, I  
7 think there have been some very, very firmly held positions  
8 about issues such as what must be liquidated. What must the  
9 liquidation analysis show? What is a fair disposition? Should  
10 you begin from the claims estimation or allowance process, or  
11 begin from the experiential process of what might be available  
12 here and why X is available and Y isn't?

13 Those are positions that I think I cannot say that  
14 either one has been taken in bad faith. To the extent the  
15 debtor says we're offering more, on average, than has been  
16 offered in other cases, that's fine. That may not be the  
17 answer. It may be that this should be looked at in a different  
18 way. But it's very hard for me to conclude that the disconnect  
19 between the two pieces is evidence of bad faith.

20 And I would go back again to the comment I made  
21 earlier that you guys, and particularly the committee counsel,  
22 have many more of these cases than I will ever see. And I  
23 think you're aware that most, if not all, of these issues  
24 necessarily are present in the other cases. What can be  
25 liquidated? What's a fair outcome here? What kind of assets

1 should be subject to dedication to the creditors? What should  
2 be preserved? What's restricted and what isn't?

3 I have to believe that those factors are present in  
4 every case. I have to believe that the tension between First  
5 Amendment, and RFRA rights, and liquidation rights of creditors  
6 are present in every case. And in many cases, those are  
7 resolved because people get to a point where they simply want  
8 to resolve it, and they settle it, and there's a number, or  
9 there isn't, and you settle it, or you don't. And that, to me,  
10 does not equal bad faith. That equals positions strongly held.  
11 And it all goes into a negotiation process that is free and  
12 fair and confidential. And people make their decisions.

13 And if a party decides that this just is not the  
14 outcome I want, and I'm not going to agree to it, it's not  
15 going to be consensual, and the case cannot go forward, I'm not  
16 going to fault that party for that. That's their right to  
17 evaluate what they think their rights are and why bankruptcy is  
18 not satisfactory. And we don't get there very often in these  
19 circumstances. But when we do, I'm not going to second guess  
20 that, nor am I going to second guess or find bad faith in the  
21 debtor's failure to accommodate whatever those requests were.  
22 That's just negotiation.

23 And I realize there were vastly different views on how  
24 the case should go. And I realize the committee articulated  
25 them at different times, and I give them credit for that. But



1 the debtor's declination to look at the case the way the  
2 committee did simply is not, in my mind, evidence of bad faith.

3 And lastly, I'll come back to the last point I made  
4 that, to the extent I'm trying to figure out if the debtor is  
5 "at fault" here, if there's some bad conduct or some other bad  
6 faith, or bad animus, or whatever it would be, in a situation  
7 like this where one files the case -- and remember, bankruptcy  
8 is totally different from litigation. Litigation, you file a  
9 complaint: here's me, here's what I want, here's the law,  
10 here's the facts, here's who I want it from, and here's the  
11 relief. Bankruptcy is totally different. We begin with this  
12 notion of here's my financial condition, here's why I care  
13 about it; now let's figure out what we do about it.

14 So the whole process here is different, and it  
15 necessarily involves people coming together and separating,  
16 buying in and not buying in throughout. So I think to  
17 characterize that buy in, or not, process is resulting in some  
18 kind of bad faith, or emanating from bad faith, absent the most  
19 extreme circumstances of evidence that I simply don't have  
20 here, would be highly problematic to this process. I just  
21 think it would be a very bad precedent to set.

22 And I will note again that there's only some folks who  
23 are really in front of me on these issues and whose conduct I  
24 can -- well, I can -- whether I should or not, I can  
25 potentially judge. And that's really the debtor and the

1 committee. And there are other participants in this dynamic  
2 about whom it is none of my business what they do or why they  
3 do it, and they may be as contributory as anybody to the  
4 success or lack of success here. And I'm never going to know  
5 that, and I never should. But it convinces me that trying to  
6 scale this in that manner is probably just a mistake.

7 So for all of those reasons, I'm going to conclude  
8 that I would not find that there's sufficient bad faith here  
9 either to dismiss the case with prejudice or to bar the debtor  
10 from filing for a year or any similar period. I'm not trying  
11 to suggest we do this piecemeal, but I did think it was  
12 important to make that finding right now.

13 My instinct is to dismiss the case -- to indicate  
14 there is no impediment to dismissing the case at this point.  
15 And if the debtor wants that to be -- I mean, I think it can be  
16 effective today. It could be effective in two weeks. If  
17 there's any hope of getting anything else done here, nobody has  
18 to agree with the debtor that there is. And if people think  
19 there isn't, they're entirely within their rights to to make  
20 that assessment. But I don't see any reason why this has to  
21 happen today with the order entry today.

22 I mean, in commercial cases, for example, you could  
23 dismiss a case with the understanding, well, I have assets I  
24 have to dispose of because they're perishable or -- you know,  
25 there's a lot of circumstances under which you have to stage

1 things a bit. I think this is one of them.

2 So there is the possibility of some further good to be  
3 done here. I'm not going to gainsay that. And I think the  
4 case is dismissable at this point; there is no impediment to  
5 it. Nobody objected. And the with-prejudice aspect of it, I  
6 think, is not sustainable. I would overrule that.

7 And I will leave the exact wording of this, Ms. Uetz,  
8 to you. And if you and the committee have an understanding or  
9 have an agreed-upon way of expressing this, that's fine. But I  
10 mean, I'm perfectly happy dismissing this thing effective  
11 November 12th.

12 And if people want to come in and tell me it should  
13 happen before then, for reasons that they agree on, that's  
14 fine. But absolutely I think that's there's no question that  
15 some good might be done here. If it can be done, great. If it  
16 can't, okay, we've all had our say. And everybody --  
17 everybody, in my view, in my thinking, is operating in good  
18 faith. So that's where we are. Okay?

19 So that was kind of lengthy. But come on up.

20 MS. UETZ: If memory serves, we currently have a  
21 status conference set --

22 THE COURT: On the 12th.

23 MS. UETZ: -- November 12th.

24 THE COURT: Yep.

25 MS. UETZ: May I suggest that we leave that status

1 conference on calendar?

2 THE COURT: Yeah, I would.

3 MS. UETZ: And the debtor will make clear its position  
4 regarding the date for dismissal or discussion at that  
5 conference.

6 THE COURT: Well, I will tell you right now, in my  
7 mind, it's the 12th, okay?

8 Now, if everybody agrees, well, wait a minute, you  
9 know, peace has broken out, I will listen to that. But I think  
10 we need deadlines at this point. I think it's going to help  
11 everybody to have deadlines at this point.

12 MS. UETZ: Yes. And that's what I was suggesting --

13 THE COURT: Okay.

14 MS. UETZ: -- that the 12th is the deadline.

15 THE COURT: Absolutely.

16 MS. UETZ: As we submitted to the Court earlier, and I  
17 think the possibility of some further good to be done, it is  
18 possible that some further good will be done such that the  
19 debtor will advocate for the filing of a fourth amended plan.

20 THE COURT: Okay.

21 MS. UETZ: It's also possible that some further good  
22 could be done by way of a global resolution. And --

23 THE COURT: Okay.

24 MS. UETZ: -- I guess I just want to make plain to the  
25 Court that we will inform the Court and the parties, as that

1 develops, in advance of the 12th.

2 THE COURT: Okay. Good.

3 MS. UETZ: And in terms of the proposed order, we will  
4 refer to the Court's oral ruling.

5 THE COURT: Yeah.

6 MS. UETZ: And rather than try to characterize it --

7 THE COURT: Right.

8 MS. UETZ: -- I think, for my part --

9 THE COURT: Somebody is going to use the word  
10 "meandering" someday in one of these orders.

11 MS. UETZ: Possibly soon with my comments, Your Honor.

12 THE COURT: Okay.

13 MS. UETZ: But my point is, I'm not going to try to  
14 characterize what you said.

15 THE COURT: Right.

16 MS. UETZ: We're going to rely on the record and what  
17 you stated --

18 THE COURT: Yeah.

19 MS. UETZ: -- on the record. I mean, I will tell you,  
20 it may be obvious I've given this some thought before today. I  
21 really had in mind to write something, but I was convinced  
22 there was an imperative in clearing away some of the issues  
23 sooner rather than later.

24 MS. UETZ: Thank you.

25 THE COURT: So I would have -- I mean, had it been in

1 writing, it would have been a little more -- well, it would  
2 have been shorter. The old Blaise Pascal, I would have written  
3 a shorter letter, but I didn't have the time.

4 MS. UETZ: And to be clear, Your Honor, we heard you  
5 say the case is dismissable but not that it is dismissed today.

6 THE COURT: Well, but it's -- I would certainly  
7 indicate there is a hard deadline of November 12th, okay? It's  
8 dismissed as of that date, if not before. Let's put it that  
9 way. If you want to come and tell -- if you guys want to  
10 jointly come and tell me this is silly, we agree to dismiss it  
11 before then, that's fine.

12 MS. UETZ: What I'm trying to leave open, though, is  
13 the possibility that the debtor comes to you before then and  
14 says something different so that it's not dismissed on the  
15 12th.

16 THE COURT: Yeah, I mean, sure --

17 MS. UETZ: There was --

18 THE COURT: -- you can always tell me that, and the  
19 committee can tell me why that's not a good idea.

20 MS. UETZ: Okay.

21 THE COURT: Okay? I mean, everybody reserves their  
22 rights on that. Okay?

23 MS. UETZ: Thank you, Your Honor.

24 THE COURT: Okay. Thanks, Mr. Prol.

25 MR. PROL: Your Honor, may I be heard on timing?

1 THE COURT: Yeah, absolutely.

2 MR. PROL: Jeff Prol, on behalf of the committee, Your  
3 Honor.

4 We would respectfully request that Your Honor dismiss  
5 the case effective immediately. We don't believe -- we have no  
6 optimism that there's a likelihood of a global deal being  
7 negotiated here. You heard from Judge Sontchi that there's no  
8 session scheduled between the debtor and the committee. You  
9 also heard from Mr. Gallagher that there are sessions scheduled  
10 with the insurers. And Your Honor can infer what you want from  
11 those comments.

12 THE COURT: Yeah. Well, it's okay.

13 MR. PROL: We're concerned that nothing good can come.  
14 Mr. Schiavoni referred to the Camden case the other day, a case  
15 in which the debtor reached settlements with the insurance  
16 carriers separate and apart from the committee.

17 THE COURT: Um-hum.

18 MR. PROL: Subsequently, a plan was agreed to between  
19 the committee and the debtor, which has led to litigation,  
20 which continues to pend, over whether or not the insurance  
21 carriers have an administrative claim arising out of the  
22 debtors breaching that settlement agreement. We don't think  
23 anything -- if the committee's not involved, nothing good can  
24 happen. The case should be dismissed and we should go back to  
25 state court where these cases belong.

1 THE COURT: Okay. Thank you very much.  
2 Anybody else want to be heard on that point?  
3 I'm going to keep my ruling as it was.

4 MR. PROL: Okay.

5 THE COURT: Okay. Thank you very much.  
6 Anything else for the good of the order?

7 MS. UETZ: No, Your Honor.

8 THE COURT: All right. Good luck, everybody. Thank  
9 you. And thank you for your very good arguments, all of you.  
10 Thanks.

11 (Whereupon these proceedings were concluded at 3:48 p.m.)  
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I N D E X

RULINGS:	PAGE	LINE
Motion to dismiss case is granted without	67	19
prejudice, effective November 12th		



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

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

Sharona Shapiro

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/s/ SHARONA SHAPIRO, CET-492

eScribers

7227 N. 16th Street, Suite #207

Phoenix, AZ 85020

November 3, 2025



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# **Exhibit D**

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**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

**ORDER PURSUANT TO STATUS  
CONFERENCE CONDUCTED ON  
NOVEMBER 12, 2025, ON GRANTING  
DEBTOR'S MOTION TO DISMISS  
CHAPTER 11 CASE PURSUANT TO 11  
U.S.C. §1112(B)**

Judge: Hon. William J. Lafferty

Following the hearing conducted by the Court on October 29, 2025 on the *Debtor's Motion to Dismiss Chapter 11 Case Pursuant to 11 U.S.C. §1112(b)* [Docket No. 2393] (the "Motion"),<sup>1</sup> filed by the Roman Catholic Bishop of Oakland, a California corporation sole, and the debtor and debtor in possession (the "Debtor") in the above-captioned chapter 11 bankruptcy case (the "Chapter 11 Case"), and the Status Conference conducted in the Chapter 11 Case on November 12, 2025, for the reasons stated on the record October 29, 2025 and November 12, 2025, which constitute the Court's findings of fact and conclusions of law pursuant to Fed. Rule Bankr. Proc. 7052, **IT IS HEREBY ORDERED:**

1. The Motion is GRANTED for the reasons stated on the record October 29, 2025 and subject to the terms set forth herein.

2. The Court concludes for the reasons stated on the record October 29, 2025, there is no bad faith by the Debtor which would cause the Court to dismiss the Chapter 11 Case with prejudice or with a bar to the Debtor filing another bankruptcy case.

3. The Court concludes the Chapter 11 Case shall be dismissed without prejudice ~~unless, on~~ ~~or before~~ effective on November 26, 2025 at ~~or by~~ 11:59 p.m. Pacific Time (the "Effective Date"), provided, however, the Court may extend the Effective Date if: (a) the Debtor and the Committee file a joint the Debtor files a statement with the Court indicating that in the Debtor's judgment it has made progress toward a settlement has been made: or (b) the Debtor or any other party in interest files a statement with the Court indicating that progress has been made, and the Court after notice and a hearing finds cause for such an extension. All parties in interest reserve all rights to support or object to any request to extend the Effective Date. and accordingly will file and pursue confirmation of a fourth amended plan of reorganization.

3.4. Any request for an extension of the Effective Date shall be filed not later than 4:00 p.m. PT on November 24, 2025. Any objections to a request for an extension of the Effective Date must be filed by no later than 4:00 pm PT on November 25, 2025. The Court shall hold a hearing on any request for an extension of the Effective Date on November 26, 2025 at \_\_\_\_\_.m. PT via Zoom.

<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

1           4.5. This Court shall retain jurisdiction with respect to all matters arising from or related to the  
2 implementation of or interpretation of this Order.

3                               \*\*\* END OF ORDER \*\*\*  
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ORDER PURSUANT TO STATUS CONFERENCE CONDUCTED ON NOVEMBER 12, 2025

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**COURT SERVICE LIST**

All ECF Recipients.