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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

DECLARATION OF GABRIELLE L. ALBERT IN SUPPORT OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS' BRIEF IN RESPONSE TO MEMORANDUM CONCERNING CERTAIN ISSUES RAISED DURING JANUARY 21, 2025 HEARING ON APPROVAL OF DISCLOSURE STATEMENT

Judge: Hon. William J. Lafferty

Date: March 3, 2025
Time: 1:30 p.m. (Pacific Time)
Place: United States Bankruptcy Court
1300 Clay Street, Courtroom 220
Oakland, CA 94612

I, Gabrielle L. Albert, hereby declare pursuant to 28 U.S.C. § 1746:

1. I am an attorney with the firm Keller Benvenutti Kim LLP, a law firm with offices at 425 Market Street, 26th Floor, San Francisco, California 94105, counsel to The Official Committee of Unsecured Creditors (the "**Committee**") of The Roman Catholic Bishop of Oakland (the "**Debtors**").

2. Unless otherwise stated in this Declaration, I have personal knowledge of the facts set forth herein and could and would testify competently thereto.

3. I submit this declaration in support of *The Official Committee of Unsecured Creditors' Brief in Response to Memorandum Concerning Certain Issues Raised During January 21, 2025 Hearing on Approval of Disclosure Statement* (the "**Supplemental Brief**").

4. Attached hereto as **Exhibit 1** is the Transcript of Hearing, 23-40523, January 8, 2025.

5. Attached hereto as **Exhibit 2** is the Transcript of Hearing, 23-40523, January 21, 2025.

I declare under penalty of perjury that, to the best of my knowledge and after reasonable inquiry, the foregoing is true and correct. Executed this seventh day of February, 2025.

Dated: February 7, 2025

Gabrielle L. Albert
Gabrielle L. Albert

EXHIBIT 1

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

Case No. 23-40523

- x

In the Matter of:

THE ROMAN CATHOLIC BISHOP OF OAKLAND,

Debtor.

- x

United States Bankruptcy Court

1300 Clay Street

Oakland, CA 94612

January 8, 2025

2:00 p.m.

B E F O R E :

HON WILLIAM J. LAFFERTY, III

U.S. BANKRUPTCY JUDGE

ECRO: P.L. Wright

HEARING re Motion for Relief from Stay, Filed by Creditor Committee (Doc. 1460). Cont'd from 12/18/24

HEARING re Motion of the Official Committee of Unsecured Creditors (1) For Standing to Assert, Prosecute and Compromise Al Claims and Causes of Action the Debtor and its Estate Hold Against the Insurers and (Il) To Be Substituted as the Named Plaintiff in the Insurance Coverage Actions Filed by Official Committee of Unsecured Creditors of the Roman Catholic Bishop of Oakland (Doc. 1462). Cont'd from 12/18/24.

HEARING re Motion of the Official Committee of Unsecured Creditors (I) For Standing to Assert, Prosecute and Compromise Al Claims and Causes of Action the Debtor and its Estate Hold Against the Insurers and (II) To Be Substituted as the Named Plaintiff in the Insurance Coverage Actions Filed by Creditor Committee Official Committee of Unsecured Creditors of the Roman Catholic Bishop of Oakland (Doc. 1538)

HEARING re Status Conference. Cont'd from 11/27/24

Transcribed by: Joanne Morrison

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BY: RYAN E. MANNS, ESQ

P R O C E E D I N G S

CLERK: All rise. Please come to attention. The Court is in session. This is the United States Bankruptcy Court, Northern District, California, the Honorable William J. Lafferty presiding.

THE COURT: Okay, please be seated. This is a matter that we specially set, so let's go ahead and call the matter.

CLERK: Yes, Your Honor. Calling Line Item No. 1 for The Roman Catholic Bishop of Oakland, Case No. 23-40523.

THE COURT: Okay, why don't we start out with appearances in the courtroom; although, I think we have a few folks on the Zoom.

MR. MOORE: Good afternoon, Your Honor. Mark Moore, Goeff Goodman, and Shane Moses from Foley & Lardner on behalf of The Roman Catholic Bishop of Oakland.

THE COURT: Okay, very good. Anybody else on that side making an appearance? Not sure yet? Okay.

MS. ALBERT: Good afternoon, Your Honor. Gabrielle Albert, Keller Benvenuti Kim, on behalf of the committee. And also with me is Brent Weisenberg, not Loewenstein.

THE COURT: That was a field promotion some time ago, so now he's back among the regulars.

MS. ALBERT: Exactly.

THE COURT: All right.

MS. ALBERT: Sorry, we've demoted him back.

THE COURT: All right. He seems content nonetheless.

MS. ALBERT: And Mr. Jeff Prol.

THE COURT: Nice to see you.

MS. ALBERT: And also Mr. Tim Burns and Mr. Jesse Bair from Burns Bair.

THE COURT: Lovely. Okay, very good. Okay, anyone else expecting to make an appearance today? Come on up.

MR. FINNEGAN: Good afternoon, Your Honor. Mike Finnegan with Jeff Anderson Associates on behalf of Certain Abuse Survivors.

THE COURT: Is this your first time here?

MR. FINNEGAN: It is, yes.

THE COURT: Welcome.

MR. FINNEGAN: Thank you.

THE COURT: You're welcome.

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

THE COURT: Nice to see you.

MR. SIMMONS: Good afternoon, Your Honor. Rick Simmons, and also making an appearance on behalf of Certain Creditors.

THE COURT: Very good. Nice to see you.

MR. SCHIAVONI: Your Honor, Tancred Schiavoni from O'Melveny for the Pacific Insurers and INA. And Your Honor, I would, just as a point of order, we have joinders here from six plaintiffs' firms, none of which identify the clients on whose behalf they're going to speak. I'm not asking for their names, but their POC numbers would be --

THE COURT: Okay.

MR. SCHIAVONI: -- adequate.

THE COURT: You don't want to voir dire them?

MR. SCHIAVONI: Well, Your Honor, here's the thing. The motion that will be heard treats claimants differently. And arguably, there's a conflict of interest whether you represent one of the claimants whose --

THE COURT: Right.

MR. SCHIAVONI: -- let's say --

THE COURT: I'll hear you on that.

MR. SCHIAVONI: Thank you. Appreciate it.

THE COURT: Okay.

MR. JACOBS: Good afternoon, Your Honor. Todd Jacobs on behalf of Westport Insurance Corporation. Nice to see you again.

THE COURT: Nice to see you again.

MR. JACOBS: And I'm here with my co-counsel, Blaise Curet.

THE COURT: Nice to see you.

MR. JACOBS: Thank you.

THE COURT: Okay.

MR. STOREY: Good afternoon, Your Honor. Devin Storey on behalf of Certain Creditors.

THE COURT: Okay. Good afternoon.

MR. AMALA: Good afternoon, Your Honor. Jason Amala, Pfau Cochran Vertetis and Amala on behalf of the Panish and PCVA claimants, and our claimants are identified in our joinder.

THE COURT: Okay. Thank you very much. All right. Anybody else in the courtroom expecting to make an appearance? All right, how about on the screen?

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

THE COURT: Okay. Others?

MS. LUU: Good afternoon, Your Honor.

THE COURT: Others?

MS. LUU: Good afternoon, Your Honor. Betty Luu of Duane Morris on behalf of Certain Underwriters at Lloyd's Linden and Certain London Market Insurers.

THE COURT: Okay. One last gentleman on the screen. Go ahead.

MR. MANNS: Good afternoon, Your Honor. Ryan Manns with Norton Rose Fulbright on behalf of RCWC, RCC,

OPF, and Adventist.

THE COURT: Got it. Okay. Thank you very much. Do you expect to speak today? Do you know?

MR. MANNS: Potentially, Your Honor.

THE COURT: Okay, very good. All right. Thank you, everybody. Just for organizational purposes, I don't know who's presenting arguments. There's some fairly hefty things on for consideration today and if it would be helpful, just let everybody know who's presenting the argument, if you're splitting it up in any way on the committee side of things, if you want to let us know that now, I'd be grateful. If you're handling the whole thing with Mr. Prol jumping in where he may help, that's fine. We haven't stood on ceremony too badly around here. But if you want -- if there's anything you want to do in your traffic cop role, let me know.

MR. WEISENBERG: Thank you, Your Honor. Brent Weisenberg.

THE COURT: Yeah.

MR. WEISENBERG: There are three motions before you, Your Honor.

THE COURT: Right, right.

MR. WEISENBERG: And we anticipate that I will be addressing the lift stay motion.

THE COURT: Okay.

MR. WEISENBERG: Mr. Burns will be addressing what we can refer to as the insurance standing.

THE COURT: Okay.

MR. WEISENBERG: And Mr. Prol will be addressing the other standing motion.

THE COURT: I got you. Okay.

MR. WEISENBERG: With one caveat, if it's okay with you, Your Honor.

THE COURT: Sure.

MR. WEISENBERG: There are going to be some insurance elements of the lift stay motion. And to that extent, Mr. Bair is going to assist.

THE COURT: Sure.

MR. WEISENBERG: And obviously there are a number of people here who have joined.

THE COURT: Okay.

MR. WEISENBERG: And we can talk about that.

THE COURT: Okay. I suspect we will. Okay. Thank you very much. Okay, on this side, you're mostly responding today, so I don't know if the same concerns are really relevant, but you tell me how you want to deal with this.

MR. MOORE: Thank you, Your Honor. Mark Moore on behalf of RCBO. I will be handling Docket No. 1460, which is the lift stay motion. Mr. Goodman will be handling the, I guess what we call the OPF derivative standing motion --

THE COURT: Yeah.

MR. MOORE: -- which is Docket No. 1462. And then Mr. Moses will be handling Docket No. 1538, which is the insurance coverage litigation --

THE COURT: Okay.

MR. MOORE: -- standing motion. To the extent that there are questions that arise about the plan as it relates to any of this stuff, we may need to jump in and out because --

THE COURT: Okay.

MR. MOORE: -- some of us have more familiarity with that.

THE COURT: Okay. Can I hold you there for a second? I don't -- I'm not remembering when we were going to be blessed with the new disclosure statement and plan. Has it happened already?

MR. WEISENBERG: Yes, Your Honor. We filed it on Friday afternoon.

THE COURT: Okay, I thought I saw it. Okay. Never mind.

MR. WEISENBERG: We filed an amended plan and --

THE COURT: got it.

MR. WEISENBERG: -- amended disclosure statement.

THE COURT: Okay.

MR. WEISENBERG: And then a notice with red lines

of all of the --

THE COURT: That's --

MR. WEISENBERG: -- documents.

THE COURT: That's what I thought. Okay, so we're all set, right? Are we anticipating a further response from the committee and then a reply or?

MR. WEISENBERG: I'll let the committee speak for itself, but --

THE COURT: Okay.

MR. WEISENBERG: -- understanding is that their objection to the amendments --

THE COURT: Yeah.

MR. WEISENBERG: -- are due Friday the 10th.

THE COURT: Okay.

MR. WEISENBERG: -- committee letter.

THE COURT: Okay.

MR. WEISENBERG: correct?

MR. MOORE: Yeah, correct. Our deadline is this Friday.

THE COURT: Okay, very good. Okay. All right. Well, these are the committee's motions, so if you have a suggestion for how you want to proceed.

MR. MOORE: Your Honor --

THE COURT: I mean, I don't have a strong mean, I don't have a strong feeling, so whatever.

MR. MOORE: If it pleases the Court, we would suggest doing the lift stay motion --

THE COURT: Sure.

MR. MOORE: And then, in terms of next, we would prefer the insurance standing motion and --

THE COURT: Okay.

MR. MOORE: -- then the OPF/church ---

THE COURT: Okay.

MR. MOORE: -- standing motion.

THE COURT: All right, and everybody remembers we're back here on the 16th on the disclosure statement, right? Okay. All right, great. Okay.

MR. WEISENBERG: Brett Weisenberg on behalf of the committee. I think that's the first time during introductions to the Court that I've had an objection, but we'll save that for a little bit. But first --

THE COURT: Okay.

MR. WEISENBERG: -- Your Honor, I think if it's okay with you, rather than presenting to the Court and potentially addressing issues that are of no moment to you, I found it most helpful when we engage in a dialogue. You always ask pointed questions and I enjoy trying to answer them. And so I haven't really prepared much of an introduction.

THE COURT: It's very nice of you to say enjoy.

You might use another word when I'm not in the room. I don't know. Okay.

MR. WEISENBERG: So I guess, Your Honor, if it's okay with you, if there are particular issues you'd like us to address with respect to the relief requested --

THE COURT: Okay.

MR. WEISENBERG: -- I'm happy to do that.

THE COURT: Okay.

MR. WEISENBERG: Otherwise, I can proceed in a different way.

THE COURT: Well, let me lead off with a couple. I think you're reading my mind here, okay? The first one is, I appreciate the efforts to educate me about what's going on in another Court that is potentially going to be ultimately responsible for some very important issues here. By the way, am I correct in remembering that Judge Wise was involved in this, and obviously she's moved on to bigger and better things? Is there somebody else who's assigned, do you know, to these matters?

MR. WEISENBERG: That's a question for Mr. Simmons.

MR. SIMMONS: Yes, Your Honor.

THE COURT: Okay.

MR. SIMMONS: You are correct in both aspects.

THE COURT: Okay.

MR. SIMMONS: Judge Wise was confirmed --

THE COURT: Yes.

MR. SIMMONS: -- right at the end of the year there.

THE COURT: Yes.

MR. SIMMONS: After serving one year as coordination --

THE COURT: All right.

MR. SIMMONS: -- trial judge.

THE COURT: Okay.

MR. SIMMONS: She has been replaced by Judge Chatterjee.

THE COURT: That's happened already?

MR. SIMMONS: Yes.

THE COURT: Got it. Okay. That's --

MR. SIMMONS: (indiscernible) and --

THE COURT: Okay.

MR. SIMMONS: -- first session set up for hearing on January 27th.

THE COURT: So, no hearings yet in front of the new judge?

MR. SIMMONS: Correct.

THE COURT: Okay. Got you. All right, very good. Another question, and if you're not the best person to answer this, feel free to defer to somebody else. I did

read over some of the materials re coordination, for lack of a better word, and there were a number of factors that were listed there as to how you -- how one intelligently groups these things. Is it your understanding that it would be the same factors or similar factors that the coordinating judge would use in determining the bellwethers or is a whole other series of considerations?

MR. WEISENBERG: Unless --

THE COURT: If you know.

MR. WEISENBERG: Well, unless Mr. Simmons tells me otherwise, my understanding that is pursuant to a Court order, those are the factors.

THE COURT: Okay.

MR. WEISENBERG: And things will continue in the ordinary course.

THE COURT: Okay.

MR. WEISENBERG: In other words, that the bellwether trials that had been anticipated to occur would occur using the factors that have been ordered by the Court.

THE COURT: So, okay. I wasn't sure if it was as certain as there were X number that had been definitively identified and would have gone forward. Is that the case?

MR. WEISENBERG: There were six.

THE COURT: Okay.

MR. WEISENBERG: That had been identified.

THE COURT: And is it --

MR. WEISENBERG: That --

THE COURT: And it's the same six we're talking about here or not necessarily?

MR. WEISENBERG: Not necessarily --

THE COURT: Okay.

MR. WEISENBERG: -- for the following reason. At least two of the cases were against the San Francisco Archdiocese. And another case was against the Santa Rosa Diocese.

THE COURT: Okay.

MR. WEISENBERG: Both are in bankruptcy.

THE COURT: Yeah.

MR. WEISENBERG: And so, obviously those would not go forward absent --

THE COURT: Okay.

MR. WEISENBERG: -- the stay.

THE COURT: Do you have any sense of what -- would it be the proposal that you find three others that are Oakland cases or go forward with the three you have?

MR. WEISENBERG: You're asking all the right questions, Your Honor. And if it's okay with you, we purposely asked Mr. Simmons to be here today.

THE COURT: Sure.

MR. WEISENBERG: So, that --

THE COURT: People mind getting into this at the outset? It's very practical, but it's very helpful to me. Hope that's okay.

MR. WEISENBERG: Your Honor, if it would be more helpful to you to have Mr. Simmons lead off and answer your questions, I'm more than --

THE COURT: Well, no, I don't know that I have -- but my next questions are going to go to sort of how we frame some things that you're probably going to be more ready to answer. But no, if Mr. Simmons wants to add anything at this point because of the questions, come on up.

MR. SIMMONS: Your Honor, prior to the filing of the petition in this matter --

THE COURT: Yeah.

MR. SIMMONS: -- only one Oakland case had been set for trial in the JCCP 5108.

THE COURT: Okay.

MR. SIMMONS: All the other cases that had been set were involving other diocese: Santa Rosa --

THE COURT: Okay.

MR. SIMMONS: -- Sacramento --

THE COURT: Okay.

MR. SIMMONS: -- Fresno --

THE COURT: Okay.

MR. SIMMONS: -- Archdiocese of San Francisco and

Salesian Society.

THE COURT: Okay.

MR. SIMMONS: And so, one case only --

THE COURT: Okay.

MR. SIMMONS: -- has been set for Oakland.

THE COURT: Okay. So, if we -- if I were to think about the practicalities of the request and you just give me as best you can how you would -- if I were to grant the motion, what happens in a week, in a month, in two months? Where do you go?

MR. SIMMONS: For the one case that was set, trial was imminent. We were just a couple of weeks away. Virtually all of the discovery was done. There are a couple of remaining tasks that we were in the process of performing and concluding all of the matters for pretrial. So, that case is almost ready to go, the only caveat being, we have to have a courtroom assigned.

THE COURT: Okay.

MR. SIMMONS: We don't have a courtroom. We did in --

THE COURT: It's Alameda County?

MR. SIMMONS: -- the other case, but --

THE COURT: It's Alameda County?

MR. SIMMONS: Yes, Alameda County Superior Court.

THE COURT: As would all these be, right?

MR. SIMMONS: All these cases would be Alameda County.

THE COURT: Okay. Got it.

MR. SIMMONS: As to the other cases, we have, depending on who the offender is, the perpetrator is, significant discovery that was done 20 years ago in Clergy III.

THE COURT: Okay.

MR. SIMMONS: Almost all of the leading perpetrators by number were deposed. There were video depositions. Many of those survived. The transcripts survived.

THE COURT: Okay.

MR. SIMMONS: So, there's some discovery. Personnel files were produced. Police reports were subpoenaed, et cetera, et cetera. There was some considerable discovery, plus a trial in which punitive damages were sought. I tried that case.

THE COURT: Okay.

MR. SIMMONS: And a lot of evidence was put in to the trial in front of the jury and the transcript remains concerning other perpetrators showing policy, procedures, et cetera, one of the prongs, if you will, of due process in a punitive damage case. So, there's a large volume of information having to do with almost all of the major

perpetrators by numbers. And by reference, I think over 80 percent of the claims that are in this proceeding are the top 11 or 12 perpetrators.

THE COURT: Okay.

MR. SIMMONS: Father Kiesle --

THE COURT: (indiscernible).

MR. SIMMONS: -- close to 70, et cetera. Yeah. So --

THE COURT: Okay.

MR. SIMMONS: What remains to be done is some individual discovery, including depositions of the individual survivor, probably some depositions of one or two or three other damage witnesses, expert discovery, things that could be done in probably a 90- to 120-day timeframe, if accelerated, would normally probably be done over a period of a slightly longer. Disclosure of experts usually comes, you know, 50 days before trial.

So, that's the timeframe. And that timeframe also would allow the new coordination judge to be able to locate judges, courtrooms, jury panels, and all the things that are mechanically required to be able to assign the case to trial.

THE COURT: Okay.

MR. SIMMONS: Or take it on under his own wing, if you will, and try it, find a space in his schedule and try

it --

THE COURT: Okay;

MR. SIMMONS: -- in his own department. That's what Judge Wise had intended to do.

THE COURT: Yeah, okay. Couple of other quick ones, and this may be very naive, but in all of this, is there any sort of mandatory settlement requirement? Would you have to go to a settlement conference before you actually got to the trial or are we past that kind of --

MR. SIMMONS: There's no requirement.

THE COURT: Okay. So, the parties may choose to do that, but you may tell me that wouldn't be your first thought. I don't know.

MR. SIMMONS: Well, because of the unique circumstances of having a case referred from the bankruptcy court --

THE COURT: Yeah.

MR. SIMMONS: -- as opposed to an individual case --

THE COURT: Yeah, yeah, yeah.

MR. SIMMONS: -- that --

THE COURT: Yeah.

MR. SIMMONS: -- makes individual settlement discussions --

THE COURT: Yeah, yeah.

MR. SIMMONS: -- much more problematic --
THE COURT: Yeah.
MR. SIMMONS: -- in this context.
THE COURT: Okay, and just so I understand then, a followup to that, I -- obviously you're in a mediation, have been in a mediation, and I'm assuming that that's pausing, for lack of a better word, for a little while. If that's not true, certainly tell me. Anyone can tell me if I'm wrong about that. But at the point, were I to grant relief from stay, is there any involvement by the bankruptcy court at that -- until -- unless and until something is determined in the state court and we figure out what to do about it, is the bankruptcy court involved in any way, in your mind?
MR. SIMMONS: I would defer --
THE COURT: Yeah, that's fine, that's fine.
MR. SIMMONS: -- the guy who's got his hand on my jacket --
THE COURT: That's okay.
MR. SIMMONS: -- and is pulling me away from the microphone --
THE COURT: That's okay.
MR. SIMMONS: -- that issue.
THE COURT: That's okay.
MR. WEISENBERG: He only said hand on his jacket. He didn't say yanking, so that --

THE COURT: Okay.

MR. WEISENBERG: That's a win, Your Honor. Brent Weisenberg. Your Honor, you've heard us say this a number of times, which is, given the procedural path of this case --

THE COURT: Yeah.

MR. WEISENBERG: -- we believe that there is a better way to go about resolving the parties' issues. One of them is through the lift stay motion, right? And that, we hope, will bridge the huge chasm between the various values that parties attribute to survivor claims.

The other issue is what are or are not estate assets, what are restricted assets, and that should occur at the same time in this Court. And so, there's a lot for this bankruptcy court to do.

THE COURT: That I --

MR. WEISENBERG: We will not be sitting idly by.

THE COURT: I didn't -- I -- and you're kind of anticipating my next words, and I've got one more for Mr. Simmons. We'll come back -- no, we'll come back in a second. One way to look at this, and I think you're -- I may be expressing it differently from you. I don't suspect that we're really thinking about it all that differently, is there is a certain discrete character to the relief from stay, that there is something we don't know that is more

knowable than it is right now.

The way to know it is to put the rubber to the road and find out. And not to be -- not to appear to be cynical, but if beginning that process by itself has a salutary effect, that's not the worst thing that ever happens in these cases. That's number one.

One could argue that there is a value to that, no matter whether I, for lack of a better word, link everything else to a plan process that you're going to tell me is fatally flawed and they're going to tell me should at least continue. Is that fair?

MR. WEISENBERG: It is, Your Honor.

THE COURT: All right, so we're looking at that the same way.

MR. WEISENBERG: It is, Your Honor.

THE COURT: Okay.

MR. WEISENBERG: And you're actually going right down the path that other courts have when looking at a lift stay motion --

THE COURT: yeah,

MR. WEISENBERG: Which is, does it keep a level playing field --

THE COURT: Yeah, yeah.

MR. WEISENBERG: -- between the participants to negotiate a plan?

THE COURT: Yeah.

MR. WEISENBERG: And one of the reasons we're here, Your Honor, is right now, the Diocese has a plan. It's playing offense. It has nothing to lose, okay? And so, we also want to have an opportunity to share our perspective and frankly, give them something to lose.

THE COURT: Right.

MR. WEISENBERG: Right? And by the way, it's not one-sided, okay? We can lose. I think that's important. It is not like the committee and the individual survivors are not taking on risk, okay? That is what drives people to settle.

THE COURT: The other piece of this -- I appreciate all that. The other piece of this I'm trying to fit together, and if the answer is the same, you'll tell me that and I'll feel silly, but the -- another way to look at this is, a lot of what you don't like about the -- some of what you don't like about the plan is the way the litigation possibilities are lined up now and what's, in your mind, way more restrictive in terms of recoveries than would be the case if we were not in a bankruptcy and we were just litigating in state courts, okay?

But a very large part of it -- and I say this not knowing what the answer is yet because you're both taking -- you know, you're taking very serious positions that I have

to play out more. A big part of it is what's in the estate, how do I think about this debtor, how do I think about parties related to this debtor, and why isn't that pot a whole lot bigger?

And that seems to me -- I mean, what I'm missing at the moment -- and I'm not saying there has to be a connection, but it seems to me there's two different things going on and two different dynamics between the let's lift the stay and find out what some of these claims are worth and what you are largely vocally telling me you don't like in the plan, which is it's not nearly adequate to the need here.

Now, if those things overlap simply because you need to know the amounts first, you know, there's some logic to that. But in terms of the, for lack of a better word, the leverage pieces, it seems to me they're a little different. And that -- that's a reason why I might grant the motion for relief from stay, too.

MR. WEISENBERG: Those issues go hand in hand.

THE COURT: Okay.

MR. WEISENBERG: In our mind, because we've explained to the Court that the two fulcrum issues preventing us from getting to yes are the value of survivor claims and what comprises the estate. Until we have those issues resolved, we believe there's a number of fatal flaws

in both the disclosure statement for its inability to tell survivors what the value of survivor claims are. We submit there's been no evidence whatsoever other than conjecture by the debtor.

We also believe that we are worlds apart on what comprises the debtor's estate. And so, you know, the debtor continually, you know, seeks to cast aspersions on us for our alternate vision. We don't shy away from that, Your Honor. This -- we've been very transparent that we are a party trying to set this case on course for a linear and logical conclusion. And that's allowing all parties to have the same knowledge.

If Your Honor decides certain property is or is not in the estate, that will guide the parties. If the state court ultimately issues certain rulings about the value of claims or the insurer's defenses, that too will guide parties and it's those where you see kind of them melding together and driving parties to settle, because right now we're just too far apart.

We have vehement disagreements and we can all submit expert reports or frankly, we can do our best to convince Your Honor. But why don't we allow a real Alameda jury to inform us on what is the value of a survivor claim?

THE COURT: So, one more question for you and maybe Mr. Simmons will have to jump in on this, too. In my

fairly simple view of this, I grant relief from stay and the task of the Alameda courts is to come up with a number on a liability amount, right? I mean, they will try them and there will be determination of liability or not and how much, but will that implicate any of the insurance coverage issues that you're talking -- will that by itself?

MR. WEISENBERG: It should, Your Honor.

THE COURT: Okay.

MR. WEISENBERG: In fact, one of the points we argue in our motion is that -- or at least as you know, one of the prongs of the lift stay test --

THE COURT: Yeah.

MR. WEISENBERG: -- is, what is the impact on the estate. And we submit that the impact on the estate will be de minimis. Why? Because the insurers will have to step up to defend. And if they don't, they're facing grave risk for putting themselves at exposure for additional claims.

THE COURT: But the -- is the second piece of that part of another proceeding or is that determined in some way by what the jury does?

MR. WEISENBERG: I'm getting a little out of my element and I'll --

THE COURT: Okay.

MR. WEISENBERG: My question make sense, Mr. Simmons?

MR. SIMMONS: Yes, it does, Your Honor.
THE COURT: Okay, come on up and tell me.
MR. SIMMONS: I think the answer to your question is, it's both.
THE COURT: Okay. Well, as in some of the things the jury would do would inform the second proceeding, would there be a second proceeding?
MR. SIMMONS: There would not necessarily be a second proceeding --
THE COURT: Okay.
MR. SIMMONS: But there certainly may be a second proceeding, an independent proceeding involving either the third party -- that would be the plaintiff in the case -- direct action against the insurers or actions by the insured, the debtor, against their own insurer and some combination of the two ---
THE COURT: Okay.
MR. SIMMONS: -- bad faith law, so --
THE COURT: Okay.
MR. SIMMONS: That -- it's a complex --
THE COURT: Okay.
MR. SIMMONS: -- situation and the result of the case will drive which --
THE COURT: Right, right.
MR. SIMMONS: -- streets or multiple streets --

THE COURT: Okay.

MR. SIMMONS: -- the case goes.

THE COURT: I'll ask your opinion of this and I'm going to want to ask the debtors, too. Were I to grant relief from stay, what's the debtor's participation in the trials? Can you describe that for me?

MR. SIMMONS: The -- assuming that there's coverage paying costs of defense --

THE COURT: Yeah.

MR. SIMMONS: -- there would not be a financial implication to the debtor. However, who represents the debtor has been for the 25 years that I've been doing these cases with the Diocese of Oakland, the Foley firm. And I would assume that they would continue to be defense counsel, both because of their experience and knowledge in the field and with this defendant specifically.

THE COURT: Okay. And who -- and I'll ask this of the debtor, too. Who on the debtor side do you expect is like -- who are the witnesses? Am I -- are you going to have the CFO on the witness stand for a day or two or do you know yet?

MR. SIMMONS: I don't anticipate the current CFO having --

THE COURT: And I'm using that kind of metonymically.

MR. SIMMONS: Yeah.
THE COURT: I mean -- yeah.
MR. SIMMONS: The bishop is certainly a possible witness.
THE COURT: Okay.
MR. SIMMONS: The former bishop in the case that was selected for trial --
THE COURT: Would have been. '
MR. SIMMONS: The former bishop who's now Archbishop of San Francisco --
THE COURT: Okay.
MR. SIMMONS: -- would -- his deposition has been taken and --
THE COURT: Okay.
MR. SIMMONS: -- he would be a relevant witness.
THE COURT: Okay.
MR. SIMMONS: The former chancellor would be a witness from the defense.
THE COURT: Okay.
MR. SIMMONS: She is no longer an employee of the Diocese.
THE COURT: Okay.
MR. SIMMONS: And she has been videotape depositioned --
THE COURT: Okay.

MR. SIMMONS: -- in this case.
THE COURT: Okay.
MR. SIMMONS: She also testified in 2005.
THE COURT: Okay.
MR. SIMMONS: And we have that transcript.
THE COURT: Okay.
MR. SIMMONS: There would likely be one or two others who may be either priests, retired priests, or former priests who had relevant information from the contemporaneous time of Father Kiesle's service as a priest. There certainly would be Kiesle's videotaped deposition. It's been taken twice. We took it in 2005 at Mule Creek Prison and we took it as a collaborative effort of all of the Kiesle cases in the proceeding in state court that's currently pending.
THE COURT: Okay.
MR. SIMMONS: So, there's two video depositions --
THE COURT: Okay.
MR. SIMMONS: -- of the perpetrator.
THE COURT: Okay. One -- and then one last question, I think. What, if any, motion practice do you see between, I lift the stay and you end up in a trial? I mean, I'm assuming there's always motions in lim, right, that kind of thing, because it's a trial.
MR. SIMMONS: Certainly.

THE COURT: Anything else that you see now?

MR. SIMMONS: That is a question that would have to go to the defense.

THE COURT: Okay.

MR. SIMMONS: In my view -- well, if I could maybe give a little foundation --

THE COURT: Yeah, sure.

MR. SIMMONS: -- for that.

THE COURT: Yeah.

MR. SIMMONS: The way the first case was chosen was I chose the perpetrator, Kiesle, as the most prolific in all of Northern California.

THE COURT: Okay.

MR. SIMMONS: The defense, Mr. Carlucci, chose the individual survivor, Steve Woodall, the -- now chairman of the creditors committee. It was a collaborative effort. The process we have followed in setting trials throughout 5108 has been a collaborative effort between plaintiffs' liaison counsel, defense liaison counsel, and then the attorney for the individual plaintiff, if it's not me, and for the individual defendant, if it's not liaison counsel.

THE COURT: Okay.

MR. SIMMONS: So, there's discussions among ourselves. We may or may not agree. Where there's disagreement, one of the processes that has been used is we

each submitted a brief with, you know, here's our eight nominations, and the trial coordination judge reviewed it and chose from the list. We have done it by agreement.

THE COURT: And that's all standard operating procedure there, right?

MR. SIMMONS: These are all standard --

THE COURT: Okay.

MR. SIMMONS: -- operating procedure in any coordination.

THE COURT: Right, so they're not reinventing the wheel or nobody's blindsided by any of this?

MR. SIMMONS: Right.

THE COURT: In your mind. Okay.

MR. SIMMONS: There's criteria.

THE COURT: Okay.

MR. SIMMONS: There's discussion and meeting and conferring what case makes the most sense to be set for trial is what we've been doing now for unfortunately about four years. But there's a lot of cases that --

THE COURT: I learned about this sort of indirectly through that MDL versus 11 conversation that was going on for a few years now, and I've been part of those in more academic places. So, thank you. Is -- this is very helpful.

MR. SIMMONS: There's probably -- we've had about

40 cases, I think, set for trial.

THE COURT: Okay.

MR. SIMMONS: In 5108.

THE COURT: Okay.

MR. SIMMONS: And we're going to have another list --

THE COURT: Okay.

MR. SIMMONS: -- in --

THE COURT: Okay.

MR. SIMMONS: In January.

THE COURT: All right. Okay. Well, thank you.

MR. SIMMONS: -- Your Honor.

THE COURT: Mr. Weisenberg, that was a great opening and it educated me as always. But, no, I mean, now, make your argument.

MR. WEISENBERG: Your Honor, that's all I had. Thank you.

THE COURT: Go ahead. Okay.

MR. MOORE: Well, briefly, Your Honor. May we respond to some of the things that have been said?

THE COURT: You want to do it now?

MR. WEISENBERG: That's fine by us, Your Honor.

THE COURT: I -- sure, if it's okay with you, sure. Come on up.

MR. MOORE: First, Your Honor, I want to note for

the record that this morning, the Diocese filed a motion to compel the parties back to mandatory mediation.

THE COURT: I saw that.

MR. MOORE: It's our intention that that mediation be unified, it be singular, and it be with all parties present. And we do believe that that's an appropriate next step. At the same time, we have filed our amended plan and amended --

THE COURT: Yeah.

MR. MOORE: -- disclosure statement --

THE COURT: Yep, yep, yep.

MR. MOORE: -- that we do believe is confirmable, fair, and equitable. I understand there's things that the committee doesn't like about that plan, and I understand that there's aspects to it that may need further development. We have spent a tremendous amount of time and energy trying to create something that we believe is confirmable, fair, and equitable.

THE COURT: Can I ask you a question? And you're more likely to answer this on the 16th. Are you able to tell me that if you were to, in your mind, resolve other technical or thematic issues that are on the table now, that I think we all talked about a couple weeks ago or so, if the voting in the abuse survivors class were largely negative, are you suggesting to me we could cram the plan down or will

you be suggesting that on the 16th?

MR. MOORE: Your Honor, we'll have to cross that bridge whenever we get there, but I --

THE COURT: Okay, but would that be an argument you'll be prepared to make on the 16th, for example?

MR. MOORE: From a legal perspective, Your Honor --

THE COURT: Yes.

MR. MOORE: -- there is no impediment in the bankruptcy code to cram down in a plan like this.

THE COURT: Okay.

MR. MOORE: Now, whether we go that direction --

THE COURT: Yeah.

MR. MOORE: -- will largely depend --

THE COURT: That's a fair answer, because I think there's many answers to that question; that's one of them.

MR. MOORE: I understand, Your Honor.

THE COURT: Okay.

MR. MOORE: But the goal of the disclosure statement is to propose our plan --

THE COURT: Yeah.

MR. MOORE: -- and to provide people with adequate information about it. We do believe that we have crafted a process that will allow creditors to make meaningful choices about their own distributions and accomplish basically the

exact same thing that test cases or the lift stay would do. Because what I think you have to think about, Your Honor, is what the committee wants to do is take six cases out of almost 400.

THE COURT: Can I just pause you for a second?

MR. MOORE: Of course.

THE COURT: I thought you were going to respond to what Mr. Weisenberg had said. He -- I would give him the chance to make his argument.

MR. MOORE: I apologize, Your Honor.

THE COURT: That's okay.

MR. MOORE: No, we --

THE COURT: If you want to -- if there's some other things that came out because this was totally even more unscripted than usual around here, and we all learned something, but so respond to that, if you would, first.

MR. MOORE: Absolutely, Your Honor, and the first thing that did jump to mind was, you asked the question about practically how would the lifting of the stay work.

THE COURT: Yeah.

MR. MOORE: The committee goes to great pains to distance itself from the actual selection of the six test cases, because they say we're going to go back to the state court, JCCP 5108, and use those criteria and they list the criteria. There's 14 of them --

THE COURT: Yeah.

MR. MOORE: -- that they list in their motion. One of those is not trial readiness. There are all kinds of other things about issues and whether they're -- whether discovery's been taken, things of that nature, but it's not, are we ready for trial?

THE COURT: Well, let me ask you -- let me ask you a dumb question. Could I -- I mean, the stay is infinitely malleable, right? I -- if I'm going to do something to it, I can condition what I do to it. I mean, I could impose a condition that we only talk about cases that are ready to trial within X, right? Couldn't I do that?

MR. MOORE: You could, Your Honor, but --

THE COURT: I mean, I don't want to interfere with the Alameda court, but to the extent I'm allowing something to go forward that's not going forward otherwise, I -- could I do that?

MR. MOORE: You could do that, Your Honor, but --

THE COURT: Okay.

MR. MOORE: -- you're kind of getting to the point I'm trying to make, which is, you asked the question of practically how would this work.

THE COURT: Yeah.

MR. MOORE: The only real answer to that question is we don't know.

THE COURT: Okay.

MR. MOORE: Because those cases haven't been chosen.

THE COURT: Okay.

MR. MOORE: We're not back in state court. We can't say with any degree of certainty how quickly things would or would not happen because the cases aren't there. The committee's papers talk about the same case that Mr. Simmons talked about, which is Mr. Woodall's case.

THE COURT: Well -- go -- finish your line, I'm sorry.

MR. MOORE: But that's not guaranteed to be chosen --

THE COURT: Yeah.

MR. MOORE: -- by a new judge --

THE COURT: Yeah.

MR. MOORE: -- who's unfamiliar with this process or relatively unfamiliar with this process. And so, any takeaways that we try to make about this will only take 60 to 90 days --

THE COURT: Yeah.

MR. MOORE: -- it'll only take six months. The fact of the matter is that we just don't know.

THE COURT: Yeah.

MR. MOORE: And the Court ended kind of where I

want to redirect, which is this will take a substantial amount of attention, time, and energy from the debtor during the time when we're simultaneously trying to propose and confirm our plan. You heard, I think, not fewer than four, maybe five witnesses that would have to testify or be deposed, one of whom is the bishop.

THE COURT: Now, again, I think we're getting a little into the main argument on this. So, I would -- I have a question for you, and then --

MR. MOORE: Absolutely.

THE COURT: -- I would ask you to direct back to things that were more, you know, more directly stated, okay?

MR. MOORE: Just trying to answer your question, Your Honor, but go ahead.

THE COURT: No, I -- well, if I've misconceived my own question, it's my fault. In this business of, you know, I'm sort of a traffic cop with respect to what happens here, and I become a traffic cop to the extent I'm asked to lift the stay.

MR. MOORE: Of course. You know, would it -- I know you don't like being asked this question, but is there a world in which I could say, I'm lifting the stay, but I'm doing it conditioned on, there would be some sort of a meet and confer among the parties and a proceeding in front of the Alameda state court, and then I would get a report about

the status so that we're -- you know, if I were concerned about not listing among the six cases one that's going to take eight years to get to trial, I could further modify my order at that point.

Do you think -- I mean, I don't want to be telling the Alameda County courts what to do, but it seems to me that if I am thinking favorably about this, it's because it is practically doable, and it's going to be a reasonably prompt schedule.

MR. MOORE: Your Honor, I'm at somewhat of a disadvantage because --

THE COURT: Maybe I shouldn't ask you that.

MR. MOORE: -- I am not a California state court attorney.

THE COURT: Yeah.

MR. MOORE: I will say, I am quite confident that the Court can fashion whatever it feels is an appropriate remedy.

THE COURT: Okay.

MR. MOORE: I think -- and this will go directly into the main argument, so I won't say too much about it.

THE COURT: Okay.

MR. MOORE: The question I think you have to answer is why. Why would we go to that step? What would it practically add to the process and what do we do in the

meantime?

THE COURT: Yeah, I mean, I did -- I'm not trying to interrupt you too much, but I did read in one of the transcripts that somebody had mentioned to Judge Wise that the possibility of some sort of discussion, coordination, whatever you want to call it, between that Court and this Court, and she said, I'm avoiding that, and I certainly understand why.

MR. MOORE: Right.

THE COURT: Can I plant a seed in everybody's head here? Were I to take this concept more seriously, does anybody think it would be a good thing for this Court and the state court to talk about that process? Or do you think -- does anybody think it's the worst idea you ever heard or inappropriate or -- you know, why don't we start with the gentleman at the lectern. I -- but I'll certainly hear you on it too, okay?

MR. MOORE: Your Honor, fundamentally, if the Court were to take that step --

THE COURT: Yeah.

MR. MOORE: -- I don't --

THE COURT: But I'm throwing it -- I don't -- I'm not saying I would. I'm curious --

MR. MOORE: I understand.

THE COURT: -- your reactions, okay?

MR. MOORE: If we were to take that place, then I am quite confident that the Court can speak to the other court, the state court, and fashion something that is appropriate under the circumstances.

THE COURT: Okay.

MR. MOORE: That doesn't --

THE COURT: Well, no. What that would be, if anything, is a whole other question. It may be the state court convinces me that this is the worst idea I ever had, and I should just leave it to them. If I'm going to leave it to them at all, leave it to them entirely, that's fine. I don't know. Okay, all right, thank you very much. I appreciate it.

MR. MOORE: Absolutely, Your Honor.

THE COURT: Okay. I look forward to you -- the rest of your argument. Thanks. Come on up.

MR. WEISENBERG: Few quick points, Your Honor. First, spoiler alert. The committee is going to oppose the mediation motion. And I never thought I'd utter those words because we want, equally as any other party, to resolve this. But we continually hear the debtor cry poverty, that they are in desperate need for a resolution.

But what has changed since the last time we mediated? Nothing. And so we're happy to mediate as things develop, when things change. That is the whole thrust of

these motions, is to drive settlement by giving everybody some exposure to risk. And once that progresses, okay, and decisions are made, the parties will have to reevaluate their positions.

But standing here today, as compared to November, nothing is different. Neither side has any incentive to have changed their worldview. And so again, that's one of the driving forces behind this. Even admittedly, if it exposes the committee, or more particularly survivors, to risk of loss, that's a fact of life. That's what drives mediation.

And I know, Your Honor, you'll give us an opportunity to speak more about that but I don't want Your Honor to be lulled into the sense that this proposed all-hands mediation will be the panacea, and we need not worry about any of these issues. Because we believe, even more so, that these issues need to be resolved.

Your Honor, one of the points we made earlier in our brief was that having studied the motions filed in other cases, the first argument in just about every objection by an insurer or the debtor was the committee has their fingers on the scale. They're choosing the cases. That's inherently unfair.

And so, in response, we decided, we will have no influence on this. We will follow the state court order and

its procedures in allowing what cases to go forward. Your Honor noticed the criteria? Ultimately, that is the state court's decision to allow what cases to proceed. And so, to avoid all the criticism, we purposely divorced ourselves from that process, okay?

That doesn't mean to say, as Mr. Simmons says, we don't have the opportunity to make suggestions, as does the defendants in those cases. But ultimately, it's up to the state court, and the state court will understand what it is trying to achieve. And if Your Honor feels the need to speak with the state court to remind them of what we're trying to do here, all the more better.

THE COURT: Okay.

MR. WEISENBERG: There's another indication or another fact, Your Honor, which cries for determining what the value of these claims are. In the debtor's disclosure statement, they assert that the aggregate value of abuse claims is $98 million. Yet, in the plan, they're paying survivors $103 million, plus assigning the Livermore property.

So, either this is a full pay plan, or the debtors are not so secure in their valuation. And so, to even determine what the treatment is under the plan, we have to do more than just make certain assumptions.

And again, I'll just make the point quickly,

because I've already made it. What better way to value claims than to listen to the very people who are charged with making that decision, a jury of a survivor's peers? We can eliminate the conjecture.

Now, you will undoubtedly hear from the parties, every case is unique. What's the purpose of this if it's only six? The committee has already argued there's no market for survivor claims. There's at least two responses to that. Number one, Your Honor, in order to be designated a coordinated proceeding, there has to be a finding that there's common issues of law and fact.

Number two, in the Court's order, it recognizes that there's common issues of law and fact, and in fact, that's one of the reasons the Court ordered the bellwethers. It said, I'm going to use these because it's going to help us determine the value of claims. Now, we all know each one has their differences, but here's an anecdote that I think is really important, and we put this in our papers.

In the Clergy III cases, there were roughly 60-ish survivors who were prosecuting their cases, but seven went to trial. And after those seven went to trial, the rest settled. Why is that? Because the parties were able to determine certain themes, depending on notice -- although we submit that notice under California is not required for cases like this -- depending on the perpetrator, depending

on the individual survivor.

Were they -- and I don't like using this phrase, but just to -- high-functioning or low-functioning. In other words, measuring damages. What would an Alameda County jury award someone who has these attributes? And so they extrapolated from those cases and that drove settlement. So, when you hear today, Your Honor, that this is a fool's errand, history tells us otherwise. That's just not the case. And in fact, as we pointed out in our papers, the Buffalo court said that very thing, that litigation at the courthouse steps drives settlement.

I'm sure Your Honor also noticed that the similarities between the Portland case and ours are overwhelming. So, you will hear in distinction to the Buffalo case, well, that happened after five years. We're not there yet. Well, guess what? In the Portland case, case was pending for 18 months. Also in that case, a plan was on file, but the Court ultimately decided that allowing that plan to go forward wasn't useful at that time because the parties were so far apart in mediation that allowing some cases to go forward may force the party to reevaluate their position.

THE COURT: Let me stop you for a second. Would it be your view that if I were to lift the stay that we would necessarily have to pause everything having to do with

the plan or could there still be good work done to focus the plan in on maybe complimentary, but arguably discrete issues?

MR. WEISENBERG: Your Honor, we want to be the party of progress. We don't necessarily want to slow things down. At the same time, we have fundamental disagreements about the plan's treatment of survivors. That doesn't mean that there can't be other places where we can work collaboratively to try to narrow our misunderstandings or differences, and we're all for that.

THE COURT: Okay.

MR. WEISENBERG: So --

THE COURT: So, to the extent Judge Perez basically said, if we're doing A, we're not doing B, you think there's a more nuanced approach?

MR. WEISENBERG: Right, Your Honor.

THE COURT: Okay. Appreciate it. Thank you very much. How about the cases that are cited to me where judges have said, I don't think it's a good idea to lift the stay? Give me some thoughts about those.

MR. WEISENBERG: Sure. Sure.

THE COURT: Some very distinguished jurists have come to that conclusion, so.

MR. WEISENBERG: That's right, Your Honor, and we would submit each is factually distinguishable. In fact --

THE COURT: Yeah, I know, but --

MR. WEISENBERG: The 40 or minutes so (sic) we've spent talking about the Oakland case makes that point. Which is, in those cases, there wasn't already a proceeding in place whereby bellwether trials were teed up, where there were actual criteria that a state court had ordered be considered in order to move the process forward. And so --

THE COURT: This is Syracuse and Rockville?

MR. WEISENBERG: Yeah, and so in a lot of those cases, the Court said, if I send this back to state court, I don't know how long it's going to take. How are you going to choose the cases? And remember, in a lot of those cases, it was the committee suggesting they select the cases. And I could appreciate if a judge may have concern about that. Again, all the more reason why we've said we won't have our finger arguably on the scale.

There's other reasons, Your Honor. We don't want to be here in five years, right? Timing is going to be a big issue. You're going to hear today that it's premature, okay? But our fear is that if we go down the road of plan confirmation, and if we're right, and you do not confirm the plan, we are right back here today having accomplished nothing.

We don't know what the value of the claims are and we certainly have adjudicated what the value of the estate

is. And so, I think Your Honor raised a good point, which is, can we do both? Potentially. Depends on what the Diocese means and what the Court means about progress in a plan. I don't think we're going to agree on the valuation of claims, absent a lifting of the stay, okay, but that's what makes this case different.

A few other distinctions that we pointed out. In the Guam case, I believe it was state court counsel that had proposed that two cases be selected. And when the Court asked the movants how the cases would be selected, they shrugged their shoulders. They had given it no thought, okay?

In Rochester, the irony here is that while the Court denied the lift stay -- and standing here today, I don't know why the Court denied that motion. Attached to the debtors' exhibit was the order, but there's no explanation. A few months later, the Court was asked whether it should extend the automatic stay or an injunction to the parish parties. And ultimately, it decided it should not. And eight, nine, ten months later, the case settled. Okay?

Rockville Centre, very similar. There were roughly 220 cases that were pending in the state courts. And ultimately the Court decided to allow those cases to proceed. Shortly thereafter, the case settled, and we

attached to our motion the four orders indicating when those state court cases --

THE COURT: Yeah.

MR. WEISENBERG: -- were going to trial and compare that to when a settlement was reached. There is a correlation. And so, our case is very different from those in those senses.

THE COURT: Okay.

MR. WEISENBERG: I'm sorry, Your Honor. One more distinction, which is important, which is in the New Orleans case, the judge had grave concerns about the administrative expense. And as we've indicated to Your Honor, we are trying to reach a global resolution, okay? We cited for Your Honor the insurer's pleadings in San Francisco, where they say the optimal goal in a bankruptcy case like this is global settlement.

They also point out the use of data points and how that might be helpful to that end. And so here, Your Honor, the hope is that the cases would be covered by insurance and the insurers would step up to defend. And again, if they didn't, there are consequences, but it's the very real possibility that the Diocese will suffer little, if any, in extra administrative burden because it's the insurers who have to defend. And that makes this case a lot different than New Orleans.

THE COURT: Okay.

MR. WEISENBERG: Bear with me, Your Honor. I just would like to go through my notes and obviously, if there's anything I haven't touched on that you'd like me to, I'm happy to do so.

THE COURT: No, it's been very helpful. And thank you for addressing my questions.

MR. WEISENBERG: Your Honor, there's one issue I haven't touched on, which is important, and Mr. Moore touched on it, but I think you need to hear our perspective. You're also going to hear today that the motion, in some senses, is unnecessary. What is the committee complaining about? This is what we're giving them in mere weeks. The insurers are salivating over the litigation option under the plan.

Why? Because it wholly prejudices survivors' rights. It is an unfair comparison to say these lift-stay cases are the same as what might happen in a few weeks. And in our papers, we explained to Your Honor that the assignment -- and we typically hear all about insurance neutrality. Well, the irony here is it's not insurance neutral because it so strips survivors' rights, their rights to request or to ban bad faith claims and a host of others. So, these -- that's not a fair comparison.

We're not getting what we'd be getting under these

lift-stay or these bellwether trials in a few weeks. In fact, if Your Honor was to approve them, survivors would be greatly detriment -- it would be greatly detrimental to their rights under California law, frankly violating California state law.

So, it's a false comparison when they say, I don't know what the problem is, they're getting this in mere weeks. I think that's a very important distinction that Your Honor should keep in mind.

THE COURT: Okay.

MR. WEISENBERG: Your Honor, we only heard a little bit about the relevancy of Rule 2-2019. I don't want to get out ahead of that. Obviously, we'd like the chance to respond after we hear what the insurers have to say about that.

THE COURT: Okay, thank you.

MR. WEISENBERG: One sec, Your Honor, if you don't mind. Could I ask my colleagues if I've missed anything?

THE COURT: Yeah. Okay, sure.

MR. WEISENBERG: Your Honor, I misspoke and I apologize and I want to correct the record. I may have intimated that the trials that the debtor and the insurers envision are mere weeks away; and in fact, we actually take a very different position in our papers and we point out that under the plan, a holder of a claim who wants to

exercise the litigation option can't do so for at least 90 days after the initial determination. And we don't know how long it's going to take for that initial determination.

The initial determination is the abuse claims reviewer's review of the claim in order to quantify how many points it would be awarded and in turn, try to determine what their pro rata share of the survivor's trust is. So, the notion that those cases are mere weeks away, we obviously dispute.

One more thing, Your Honor, then I promise I will cease. Mr. Simmons thought he could be helpful to you in addressing one or two of your questions that I wasn't able to answer.

THE COURT: Okay.

MR. WEISENBERG: So, if it's okay with you, I'd like him to --

THE COURT: Sure.

MR. WEISENBERG: -- address that and then I'm complete for now. Thank you.

THE COURT: Thank you. Okay.

MR. SIMMONS: Thank you, Your Honor. Your comment about Judge Wise's comment, her actual comment was she wants to stay in her lane. That was directed towards what we call bucket two cases. We have three buckets. One, nobody's in bankruptcy. Two, some defendants are and some defendants

aren't. And three, everybody is.

In the bucket two cases, Judge Wise was reluctant to determine on her own without guidance from the bankruptcy court to what extent the automatic stay applied to various co-defendants, whether they be parishes, schools, religious orders, or whoever. And that was the stay in the lane comment --

THE COURT: Okay.

MR. SIMMONS: -- that she offered.

THE COURT: Okay.

MR. SIMMONS: It didn't pertain to anything else.

THE COURT: It was nothing -- it was not otherwise administratively --

MR. SIMMONS: Correct. Yes, Your Honor.

THE COURT: Okay, directed. Okay.

MR. SIMMONS: Secondly, there is already -- there has already been an extensive exchange of information called initial fact sheets and document productions in many of the cases, probably any case that would be legitimately considered for a bellwether trial out of the six. That was done in 2020.

The order was adopted in early 2021 and many cases had an exchange of significant biographical information, sort of like the equivalent of original written discovery in a non-bankrupt type of proceeding, original discovery, a

questionnaire under penalty of perjury, verified with document production, authorizations to obtain records, and all of this had been provided by the plaintiffs to the defendant in those early cases and in their part, the defense fact sheet provided personnel file, insurance information, and other information about other claims involving that perpetrator, et cetera.

So, for cases where we're going to consider them and that the Court would likely be ready to approve, we're not starting from the starting line. We're starting, you know, after a couple of laps have been run.

THE COURT: Okay.

MR. SIMMONS: Then the 2003 experience, which actually was 2005, because 2003 was the window, there was an open trial with two plaintiffs. Before that, two cases had settled, one in the middle of a jury trial and one involving some very unique circumstances that caused everyone to want to have that case settled. I was counsel in that case.

The remaining cases, there were 54 remaining open cases. After the verdict in 2005, we went to a mandatory settlement conference with Judge David Hunter presiding for all 54 cases. The process we followed was each case was negotiated individually. No individual settlement was effective unless all 54 cases settled.

And with the threat of more trials looming,

eventually Bishop Vigneron, then the Bishop of Oakland, and the plaintiffs individually all agreed and all 54 cases were settled and that was the end of the litigation against Oakland. It was the trial that we had and the threat of the next trial coming up that motivated everybody to the table and allowed Judge Hunter to obtain that settlement.

In 5108, there had been 21 settlements out of over 1,700 cases, only 21. Those 21 included 15 cases that were set for trial and the rest were either affiliated with somebody who was set for trial like a sister in a separate case, or alternatively for a couple of them, special circumstances as I alluded to earlier that some cases uniquely have.

But without trial dates and without pressure, cases don't resolve in our world of litigation.

THE COURT: Okay.

MR. SIMMONS: Thank you, Your Honor.

THE COURT: Thank you very much.

MR. WEISENBERG: Your Honor, when we first began, you had asked our suggestion on how to proceed.

THE COURT: Yeah.

MR. WEISENBERG: And so, if it's okay with Your Honor, we'd like the state court counsel who are here representing survivors to address Your Honor. At that point, we'll have made our case and then at that point, the

debtors and the insurers can respond.

THE COURT: Well, let me hear from the debtors' side, including Mr. Schiavoni.

MR. WEISENBERG: Okay. Two housekeeping matters, Your Honor. One, I don't -- one thing we will not discuss today is that there is no opposition that the stay extends to any non-debtor. And so at minimum, that relief should be granted.

THE COURT: Well, nobody's asked me to take a different position.

MR. WEISENBERG: Thank you, Your Honor.

THE COURT: Okay, you may know I've taken a long position about that in another context, okay.

MR. WEISENBERG: Read the decision.

THE COURT: Yeah. Okay.

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

THE COURT: Yeah.

MR. MOORE: Your Honor --

THE COURT: I would be -- I want to hear from you --

MR. MOORE: Of course.

THE COURT: -- first with respect to your reaction to the notion of letting other counsel speak in light of their joinders and what you think the appropriate timing

would be if I should hear from those folks after I hear from you.

MR. MOORE: Your Honor, I certainly think that the debtor would prefer to go first.

THE COURT: I'm going to let you do that.

MR. MOORE: Thank you, Your Honor.

THE COURT: Okay.

MR. MOORE: At its core, with the motion that the committee has filed requests to do is to allow six of nearly 400 -- it's actually 422 -- proofs of claim, some of which are duplicates, some of which are untimely, but it's 422 as of the filing of our amended disclosure statement to go forward to establish data points in state courts, state courts in Alameda and Contra Costa. I think it's really just Alameda.

The question that the Court has to answer, I think, is why. What is the value of those data points? What is the value of prior settlement data points that occurred in a solvent scenario where the debtor filed bankruptcy precisely for the reason that we cannot pay jury verdicts? That is a question that the committee cannot answer.

And instead they fall back on this idea of leverage, of pressure, of going on the offense, because what they really see is a way to use this as part of a

coordinated strategy to put pressure on the debtors and the insurers to make our deal better. Well, if that's their position, then we can negotiate that in mediation. We don't have to go through these other steps of a lift stay to establish irrelevant values and then try to bring them back into the bankruptcy court.

And they do this by presenting this as a necessary precondition to a consensual resolution. As we stand here today, by my count, there are 28 diocesan or religious order bankruptcies that have either been confirmed or have consensual resolutions between the debtor and the committee. They talked to you about three of them where the stay was lifted: Portland, DRVC, and I think it's Buffalo.

Notably, Buffalo has not reached a resolution. DRVC reached a resolution on the precipice of dismissal, not because of the test cases. And Portland is a case that's nearly 20 years old under very different circumstances, part of which is that we have a plan that accomplishes this goal already, and does it in a way that the claimant, not a state court, not Your Honor, not anyone else gets to decide what path they choose.

And what makes this case so different is that the insurers support this path. And I know that the committee wants to present it as being vastly tilted in favor of the insurers. That is not our intention. Whatever rights we

have as to our insurance, we are giving them to the survivor's trust. I feel like we've been very explicit about that. And so, if they want to fight with the insurers about bad faith, the insurers want to fight with them about bad faith, somewhere down the line, that's a fight that can still happen. We are not attempting in any way to foreclose that.

THE COURT: Well, I mean, okay. Let me make sure I understand that. And we're getting into a plan subject now.

MR. MOORE: Sure.

THE COURT: But are you telling me that the confirmation of a plan that said -- and I'm going to speak very ham-fistedly here, okay? The way the committee sees it, that basically strips rights that otherwise, in their view, would be available to state court plaintiffs. If they're right about that effect, what's the effect of my confirming that plan? Are you saying, well, people will still argue about that later?

MR. MOORE: Well, Your Honor, I'm not sure that that's their position. And I don't want to speak for the insurers. The insurers have forgotten more about insurance law than I'll ever know. All I -- what I can tell you, Your Honor, is that it's our position, whatever rights we have, we are transferring them. It is our intention --

THE COURT: But my question is a little bit different. My question is sort of a preclusion question. I mean, if, for the sake of argument, the committee is right that there is an argument that something that's happening in the plan is changing the rights of the survivors such that they are limited in a way, under the plan, that they arguably wouldn't be under California law, what's the effect of confirmation of that plan? Have they preserved an argument that that's wrongful or is that precluded under your plan?

MR. MOORE: Your Honor, first, I'll reiterate, that is not the intention of our plan --

THE COURT: Okay.

MR. MOORE: -- as from the debtor.

THE COURT: Okay.

MR. MOORE: Second, I think that's a confirmation issue. We'll need to have discussions --

THE COURT: One I want to talk about now, though. I mean, it's -- I hear you, but look, fair -- if you don't know, if your position is, look, we don't think we're doing that and we just haven't looked at it in a preclusive context, that's fine.

But what I think I'm hearing from this side is that the problem is not just that the plan, in their view -- and you don't have to agree -- changes people's rights in a

way that's material and detrimental, but that once I confirm that plan, that has some preclusive effect and whatever arguments there are that that was wrongful is gone because I've said it's fair and equitable.

MR. MOORE: Well, again, Your Honor, I think I'll take your second option, which is to say that is not our intention. We don't think that the plan operates --

THE COURT: You don't have a position about the preclusive effect now?

MR. MOORE: I don't have a position about the preclusive effect now.

THE COURT: We can talk about that on the 16th.

MR. MOORE: I disagree with the fundamental legal --

THE COURT: No, I know, I know.

MR. MOORE: -- which is --

THE COURT: That's -- I know I know, I know, okay. All right, I interrupted you. You go ahead.

MR. MOORE: No, absolutely, Your Honor. And just to go back, though, the question again becomes, if we do this and we go into the state court and you get -- start to get these multimillion dollar judgments, what does that mean? What do we do with those numbers? Because the goal of the plan, as Mr. Weisenberg actually said, is to determine pro-rata distributions from survivors' trust

assets.

The second goal of the plan is to allow individual claimants to elect the litigation option and pursue those recoveries on an individualized basis. Imagine a scenario where you do get six large judgments or a large, medium, small, some mix. What's the relevance of that information? How do we translate that into a plan context with limited assets by definition? That's the question the committee hasn't even attempted to answer.

So, what is the relevance of those data points and how do we take those data points in six cases and extrapolate it over 350 plus, however many legitimate distributable claims that there are? How are they representative? Is anybody going to agree that they're representative? The insurers say no. The debtor will say no. So, what is the value of this exercise?

THE COURT: How do you do it otherwise?

MR. MOORE: We do it underneath the plan. We do it through --

THE COURT: Well, I know, but what's methodologically different about that from actually having a data point?

MR. MOORE: Your Honor, I think first, the data point only matters to the extent that it is scoring for distribution purposes, which is very clearly, you asked us

to put that information in the plan. We put a hypothetical analysis of that, how it would go in the plan. What they're wanting to do is to take those values now and then bring them back as part of the plan negotiation process. And the question is, why do those values matter?

THE COURT: Okay.

MR. MOORE: What difference does it make, what a jury in Alameda County think says the value of the claim, where I'm telling you, and we have said by virtue of filing the bankruptcy, we can't satisfy all of those claims if you extrapolate it out to the logical result. So, what are we doing all that for? And the question that you asked the committee that they didn't really answer was, what is their position on whether we can do this in parallel paths.

They actually gave you that position in their disclosure statement objection on page 20 -- 30 of 32, where they said, "The committee submits that any schedule this Court ultimately approves for confirmation must account for sufficient time for one, allowing the state court actions as defined in the lift stay motion to proceed to allow the parties' accurate data points from which to calculate the debtors' aggregate liability or in the alternative, allow the committee to conduct fact and expert discovery on the debtors' abuse claim valuation."

It seems obvious, at least to me, Your Honor, that

they want to pause this process. They want to --

THE COURT: Well, in what world where they not going to ask for two in any event, of the two things that you just mentioned? In what world weren't they going to ask for that? I have to decide how to traffic cop this thing, but I mean, isn't that kind of predictable?

MR. MOORE: Absolutely it is.

THE COURT: Okay.

MR. MOORE: They have the right to take discovery about our plan. I assume that they are already drafting it.

THE COURT: Yeah.

MR. MOORE: But the question become -- the question that you asked was, how do you see these things working together, and I think that's the right question because we're in a situation now where we've been in bankruptcy for about 20 months. We proposed our plan in the 18th month. We do believe that our plan is confirmable and it's fair and equitable. I understand the committee disagrees with that.

THE COURT: Yeah.

MR. MOORE: We intend to move forward with confirmation. What is the value of having this process alongside that where those data points, they're not going to be agreed upon. They're not going to be determined for months, if not years. And then, you still have an -- you

have a lack of a linkage between those data points and something that we can actually use in this bankruptcy case.

Where our plan, different from every other plan, but similar to some, allows claimants to do that for themselves post effective date, if they so choose. And if they don't choose that, they don't choose that. They get to go a different direction.

THE COURT: Okay.

MR. MOORE: I think that the other thing, Your Honor, is they present this as a necessary precondition because they say, look where it happened and then look what happens. I would point the Court to the Syracuse case where Judge Kinsella denied a similar motion on September 28th, 2023. There was a joint plan filed on December 6th. That's less than eight weeks later.

It is not a precondition to continue negotiation. It is not a precondition to continue development. And it's not something that every other case, the way that they want to present it, has done. There's more than two dozen cases that haven't done this and they haven't done this for a reason, which is there is no cause to lift the automatic stay, one of the foundational principle protections of the debtor to allow this process to go forward where it's going to benefit potentially six people and potentially prejudice 300-plus more.

And that's one of the things that some of the Courts that have denied this have talked about, which is at a minimum, if you allow the six to go forward and then something bad happens in the case, those six will have a leg up. And the other 300-plus may not understand why they didn't get that same leg, and I'm sure the committee will tell you, well, we can explain it to them. We can make sure that they understand how this works for them.

But the fundamental principle is, it's six versus 300-plus others. And those six are not representative of the 300-plus others and these data points that they want to use are really about leverage over us, not really about moving this case forward in a meaningful way. So, we do ask that the Court deny the motion, except with respect to the clarification as to non-debtors and grant subsequently our motion to go back to mediation and allow us to continue down our process of plan confirmation.

THE COURT: Okay, thank you very much. I'd like to hear from Mr. Schiavoni or Mr. Plevin. I mean, you guys decide who's going to go first.

MR. PLEVIN: Good afternoon, Your Honor. Mark Plevin for Continental. I'm going to start by responding to some of the points that were made. One thing I would say is that we have decades of data points. And Mr. Morris said that the Portland case was 20-plus years old. Since the

window opened in California, plaintiffs have been bringing cases, insurers have been defending cases alongside their insureds, and resolving cases, typically by settlement.

The same thing has been happening throughout the entire country. As you know, this is a national problem. We have data points. We know what a particular type of claim is worth, in a rough basis. Every case has to be decided on its own facts, but to the extent that there needs to be information for parties to know what to do, that information is out there.

And the problem is that, as Mr. Moore was just saying, having six persons go out when 375 or so are stuck, those six cases are not going to meaningfully add to the amount of information that the parties have. And if the results are mixed, as they likely will be, because juries are different and cases are different, they're not going to provide any information at all.

And in fact, Mr. Simmons supports this point. When he was up last before Mr. Moore, he was telling you about the cases that had settled and not settled. And he basically said, cases don't resolve without pressure. So, if that's the case, maybe these six will resolve. And I want to get to that point because he said something about that, too.

Maybe these six cases will resolve. If he's

right, that's not going to help with the others. And the thing I wanted to get back to is he suggested that -- you asked him a question about -- the first time he was up about how the cases would go in state court. And he said that individual settlement discussions would be problematic due to the cases being referred from the bankruptcy court.

I took that to mean that the people who are going to go out represented by their state court counsel are not going to be willing to talk about settlements. They want to establish verdicts. They want to get verdicts so they have verdict values. They're not going to be willing to talk about settlements. And so, this is not a process that would be normal where a case is on file, parties take discovery, maybe there's motion practice and they see their way to a resolution before you get to a jury or to a verdict.

I think the goal here is to establish verdicts and that's a very long and complicated process. So at most, we're only valuing six claims. We're not valuing the claims, as I think Mr. Weisenberg said.

There was some discussion about bad faith and what the survivors are not getting under the terms of the plan. There's a fundamental problem with talking about bad faith. First of all, the insurers are defending claims. Mr. Weisenberg said three or four times, if the insurers defend. Well, the insurers are defending. They've told the debtor

they're defending. The debtor dropped its duty to defend claims out of its fifth amended complaint before Judge Corley because of that. So, there is a defense. There's no bad faith failure to defend and there will not be.

And then we talk about, there was some talk about the survivors' rights to pursue bad faith under California law. Well, I suggest that's a fundamental misreading of California law. The rights at issue are contractual rights between the insured and the insurer. And if the insurer does something that is in bad faith, that's something that the insured, the policy holder, has a right of action for.

That's not something that a claimant can pursue. The classical example is the one where there's a settlement offer and the insurer doesn't accept the settlement offer and it's later determined that that was a reasonable settlement offer within policy limits.

The California Supreme Court held in Murphy, the claimant doesn't have a cause of action for that because it's not a party to the contract. Only the insured has a cause of action for that. And so, there's a lot of inventive theorizing on the part of the committee to come up with bad faith claims, and when we talk about settlement, I also want to make this point.

They're not asking us, this thing is not breaking down as between the insurers and the committee, because

they're concerned about whether they're going to be able to recover the limits of the policies, the amount of the contracts, the amount that the contracts require the insurers to pay. What they're fishing for is extra contractual damages, bad faith, and they want us to pay on that basis.

They want us to say, okay, we have a contract that limits our liability to this amount, but we should pay you this higher amount because of the possibility in the future -- for which there's no evidence and no support -- that we may commit bad faith, so we should pay that now. And as I said, it's not even a cause of action that the claimants are entitled to assert.

So, from my perspective, I don't think the plan assigns bad faith rights that the debtor might have to the trust. And if it did, I think that would be a problem from our side. I should also point out that this structure that we're talking about here is not a first time out of the box structure. A very similar structure was adopted in the Madison Square Boys and Girls Club case before Judge Lane, which was another sexual abuse claim involving a nonprofit with dozens of claimants.

The committee there was represented by the Pachulski firm, not known to be a -- have a light touch in these cases, especially in these sorts of cases, a very

well-respected firm. They supported the plan. The plan went through with no objections from anybody. The insurers didn't object; they supported it. The committee didn't object; they supported it. The debtor went in and out of bankruptcy.

We're also talking about the fact that we're going to have these same rights to pursue coverage as soon as the plan is confirmed. A claimant, as Mr. Moore said, has three options. They can take a quick pay amount, they can take a trust recovery, or they can go into the tort system to liquidate their claim and then seek coverage from an insurer.

In the Rochester case, which someone described as resolved -- which is news to me because my client's involved in that and we're not resolved -- but in the Rochester case, the plan that Mr. Burns and Mr. Bair are co-sponsoring along with the debtor permits claimants whose abuse happened during policy periods of my clients to go into the tort system and to establish their claims and then to seek coverage for it.

Now, there's a few things about that plan that I don't like and I don't think are appropriate, but that's the basic structure that they're pursuing there. And it's the same structure that the debtor and the insurers have agreed to here for this plan. So, it's -- you know, we started our

brief by saying they won't take yes for an answer and I think that's the case.

One thing I'll point out, there was some discussion about the other cases, New Orleans, Agana, Syracuse. Those three judges all expressed concern about discrimination among claimants. Mr. Moore mentioned that. I won't say much more about that, but that was the concern and that's something that would obviously happen here if we allowed six out of 375 claims to go forward.

There was some question about whether or not the underlying cases, if they go to trial, will they decide coverage issues or address coverage issues, and the answer to that is no, they won't. They will decide the liability of the debtor to the plaintiff. There won't be a dispute about the duty to defend because the insurers have already said we're going to defend. There won't be any right to seek indemnity until there's a judgment. Or if there's a settlement, then there's no need to seek anything, but if there's no settlement, then you get a judgment.

And then when you have a judgment, if there are any coverage issues, the insurers can assert those coverage issues, and the California Insurance Code, Section 11580, gives plaintiffs a right to pursue coverage directly to pay the judgment that they have. That's where all these issues are going to be resolved, late notice, expected or intended,

et cetera, et cetera.

The underlying cases are not going to make any progress towards resolution of coverage issues. So, in that sense, if they want to -- if that's the assertion, I think it's flatly wrong.

THE COURT: We have a lot of people to hear from, so I would respectfully ask you to give me your last best thoughts.

MR. PLEVIN: I think, Your Honor, I've completed doing that.

THE COURT: Okay, let me hear from Mr. Schiavoni. Thank you.

MAN: (indiscernible).

THE COURT: Okay.

MR. SCHIAVONI: Your Honor, I told Mr. Plevin, age before beauty, so he should speak before me. And to your Irish clerks on the --

THE COURT: On the Zoom.

MR. SCHIAVONI: -- on the Zoom, I suggest to them, come back in three or four hearings, and we'll be talking about Judge Murphy's seven-volume report out of Dublin, which has a section about the transfer of priests from Dublin to Northern California, which will be part of these proceedings at some point.

THE COURT: Okay.

MR. SCHIAVONI: Your Honor, I'd just like to just really level set to the basic question of what is the bankruptcy court, how is a bankruptcy court, what principles is it supposed to apply in deciding this sort of motion, and I know that may seem very simple, but I'd ask you, Your Honor, to just level set in looking at what two other distinguished jurists looked at on these very issues, Judge Grabill and Judge Kinsella in Syracuse.

The gravamen of the decision in New Orleans was that lifting the stay would, "defeat the purpose of the stay and -- of the automatic stay, and the goals of the bankruptcy code." In Syracuse, the judge in her decision talked about how granting the -- lifting the stay would be detrimental to the reorganization. What is that all about? What were they getting at? They weren't going on and on about really how to select the cases. There was some exploration of that idea, but that wasn't what those decisions were founded on.

The purpose of the automatic stay is to avoid a race to the courthouse and the introduction of discrimination into the plan process. It's lifting of the stay introduces exactly the type of discrimination that the automatic stay is intended to bar and goes against a core principle of bankruptcy, which is that similarly situated claimants should be treated the same.]

The concept of test cases like you have in MDL proceedings, is absolutely foreign to the bankruptcy code. Congress looked at these issues and it adopted statutes implementing in a situation where there was not a bankrupt debtor, there were not limited assets, the MDL proceedings, which sets out elaborate proceedings about how to deal with many, you know, many tort cases and how to go forward with them.

When it adopted the bankruptcy code, Congress could have brought in the -- some of the MDL proceeding provisions.

THE COURT: Well, okay.

MR. SCHIAVONI: It could have easily adopted them. It didn't do that.

THE COURT: I don't know if it could have easily adopted them, but it might've looked at it differently. I'll give you that one. Okay, can I ask you a question?

MR. SCHIAVONI: Sure.

THE COURT: I mean, isn't the punchline in the MDL this -- kind of the same here? We're going to try a few bellwethers and then they're all going to settle.

MR. SCHIAVONI: No, Your Honor, I think it's -- here's fundamental --

THE COURT: Maybe I've been misinformed about how that tends to work.

MR. SCHIAVONI: So, there's been somewhere in the neighborhood of 200 mass tort bankruptcies since I've been practicing. And with the odd exception of Buffalo and a couple of these others --

THE COURT: Yeah.

MR. SCHIAVONI: -- I can't think of any where there was even a suggestion, really, of lifting the stay to allow "test cases" to go forward. It's just, it's completely foreign.

THE COURT: But I was trying to ask a different question.

MR. SCHIAVONI: Yeah. Okay.

THE COURT: MDL, as far as it goes, isn't the notion that we're going to coordinate them, we'll choose bellwethers. Bellwethers will be addressed and resolved, and as a function of that, we will -- we expect there to be a mass settlement. Isn't that the case? Isn't that the premise behind MDL?

MR. SCHIAVONI: Yeah, but, Your Honor, let me just say --

THE COURT: But you're saying it doesn't happen that way.

MR. SCHIAVONI: That happens in an MDL proceeding.

THE COURT: Well, that --

MR. SCHIAVONI: -- limits on the assets --

THE COURT: So, why is this different, is my question.

MR. SCHIAVONI: But here, let me just -- what's really differently here --

THE COURT: Yeah.

MR. SCHIAVONI: -- is that sometimes you will see bankruptcy courts lift the stay to allow a tort action to go forward when the agreement --

THE COURT: I know. Yeah.

MR. SCHIAVONI: -- the recovery is limited --

THE COURT: Sure.

MR. SCHIAVONI: -- to the insurance.

THE COURT: Sure, sure, sure.

MR. SCHIAVONI: That's not what's happening here.

THE COURT: Sure.

MR. SCHIAVONI: That's -- it's like if that's been missed, that's not something that's happening here. The minute the stay is lifted, those claimants and those law firms that advance, they immediately are treated differently than everyone else. They immediately are put in a preferential position. And when they get a judgment, or even if they're near to a judgment, they're advanced to a position where they're ahead of everyone else should the plan fail.

They immediately lose any interest in formulating

a plan where they lose their preferential position. We've seen that in other cases where there's appeals, like sometimes you'll have a mass tort go in and there's a tort claim that's gotten a verdict already, and they're seeking to lift the stay to allow the appeal to go forward because it's bonded.

THE COURT: Sure.

MR. SCHIAVONI: Once those claimants come in and have a judgment or they're close to one, in the plan negotiation process, they are demanding that they be given full treatment for their claims. It immediately interjects into the process discrimination where those claimants are insisting on getting full economic treatment for whatever they've achieved. It's very different from the "bellwether" cases outside of bankruptcy where any one claimant doesn't -- isn't given sort of like a veto over what the outcome will be.

That's exactly what will happen here. And Your Honor, you've already seen that manifest itself. What we heard, the committee came to the podium and said they're not interested in mediation. They don't want to have any mediation. I guarantee you that if you lift the automatic stay, this -- which is an extraordinarily difficult case to resolve -- is going to become almost impossible to resolve. The plaintiffs will disengage from mediation. They will

focus 100 percent of their energy on the cases going forward on lift stay.

Absolutely nothing will happen on the plan or the plan process until they draw a verdict. Then there'll be disagreements over it. The difference between the parties will only get bigger. Those claimants who would have achieved a verdict will not want to back off on it. They'll want to get full treatment for it and the plaintiff's firms, more importantly -- and let's not forget here, it's like there haven't been 2019 statements filed, so you haven't seen really where the money is going to at the end of the day, but like 30 to 40 percent of the money is going to the plaintiffs' lawyers here.

The six firms that are here, I think if we had 2019, you'd see they probably, most of them represent committee members, I think we would find. And they have no interest. They're the biggest beneficiaries of the stay being lifted. The ones who will get verdicts and will lock down 30 to 40 percent outcomes in the money. They will not negotiate. Negotiations will end, absolutely, until they get those verdicts. And when they get the verdicts, it will only widen the difference between the parties here and nothing will happen. We'll be locked in absolute indecision.

This is in fact exactly what happened in Buffalo.

The committee announced on the record it didn't want to negotiate anymore. And they would wait for the verdicts to come out, which in -- believe it or not, in New York might take over a year for that to happen. This will doom this case, I guarantee you, to just being completely tied in knots.

The notion here, I just have to say, even though I don't think, Your Honor, in looking at this and making a decision here, I don't think you're supposed to be looking at it and trying to weigh which of the scales a thumb should be put on to drive these parties to settlement. It's completely against the bankruptcy code to allow individual cases to go forward to get a preferential outcome, for the very reason that in Syracuse, the judge found that the stay shouldn't be lifted, because it would be detrimental to the plan process.

The more cases that have preferential outcomes, the more difficult it will be to get anybody to agree to a plan. And in a post-Purdue world, you're going to need a very significant vote yes. Anyone claimant, any one of these very distinguished plaintiff's lawyers who are here, who have one verdict, just one, will have a veto over the plan to try to -- in order to lock down on that outcome.

It will prevent anything from happening here, and when you hear this notion that, oh well, we're not somehow

involved in the selecting of the test cases, it's -- I don't even understand that. It's like, what's going to happen in the torts -- in the tort world when we get before the Superior Court judge, is they're going to propose to that. They're not going to hand the judge 400 cases and say, you pick. They're going to make a proposal, four or five. You just -- heard how that worked.

You heard what Mr. Simmons proposed for the case, the case that he has trial ready. The Father Kiesle case, as he described the most prolific perpetrator in Northern California, who he deposed in prison. That's the one that's ready. That's the one that on their list of what they proposed.

Yes, the judge could look at that one and say, no, I don't think it fits the criteria, but if he's only going to look at what's already been before him, then what do you think is going to come out of that outcome? And it doesn't really reflect the reality of where we are in these cases. If you pick, I suggest you might consider picking a half dozen of the proofs of claim and looking at them.

It's the barest of bones information. We have proofs of claim where the identifying information section of the proof of claim is blank. So, you can't even tell who the claimant really is. We have proofs of claim where they say they don't even know who the perpetrator is, that the

claim occurred within a period of a decade. There's virtually no information in those claims. It's like someone's supposed to turn around and say, okay, we're all valuing those at a million dollars? In the tort system, half these claims would fall aside.

When Boy Scouts went forward right now, what's ended up happening is 35,000 claimants didn't fill out the questionnaires and fell aside from that case. So, we think we worked very hard. I can't -- you know, early on in this case, you asked me what were the options to get this done and I talked about how O'Melveny would bring its best resources to the case. And we did that.

I got out of my bankruptcy group our best plan drafter, Steve Warren, who's got just immense experience. He put together large parts of the Boy Scout plan. He spent a huge amount of time on this with me. We're very indebted to Judge Newsom for his effort here. I can't tell you the discussions with any of these parties were easy, but we worked extremely hard on it. I wanted to have Steve here himself to talk about it. He's in -- you know, he's -- I haven't been able to reach him over the last 24 hours.

THE COURT: Okay.

MR. SCHIAVONI: I'm sort of upset about that. He lives in Pasadena. But this is -- this -- you are almost at a historic point. You have here a plan that is viable. By

the way, they talked about historical plans. In New Orleans yesterday, which I had to participate by phone to be there, Pachulski has proposed a pass-through plan.

It's a pass-through where the insurers would try their -- the cases would be tried against the insurers in the tort system. Two other plans like this are the Revlon plan, which was confirmed and another one was, of course, you heard the Boys Club case. These are viable plans.

The debtor has not had the opportunity to solicit these -- the plan here, and we haven't been able to go on a roadshow among the plaintiff's lawyers. You have the plaintiff's lawyers here who would benefit the most by defeating the plan individually. They have a conflict of interest in a sense, or at least an economic conflict with their own clients. They have a multi-party conflict in that if one claim goes forward and the others don't, arguably the others are not in a similar position to that.

To the extent they represent committee members, they have a fiduciary duty to all claimants and they have to explain why it is they would permit a situation where some claimants would get preferential treatment and others wouldn't. It's why I think they're here, most of them, except for Mr. Fow (phonetic), without having identified specifically who their clients are that they're representing.

It suggests to me that they don't have client consent to make this -- to make these arguments, but they're also in a position where they get the biggest recovery here overall among their -- among the claims. And their -- if the plan fails and they go forward with a dozen cases in the tort system and they exhaust the $100 million of assets that the debtor has, they're in the same situation as if they confirmed a plan and equitably distributed all the money.

And that's the difference between this kind of case, a bankruptcy case, and what Congress considered in adopting the code, what Congress considered in adopting MDL proceedings. It's that there are not unlimited assets. There are limited assets here. And it might be that a particular verdict is entirely within coverage. It might be that even if there is coverage, it falls -- part of it falls outside of coverage, because part of the claim hits years where there's no coverage at all, where it's in excess of limits.

So, they're coming to you here with a plan that is discriminatory, where there's a limited pool of assets. I suggest to you that the Court has discretion normally to lift the stay, but in this kind of situation, in all due respect, I think it would be error to lift the stay, to allow this to go forward with the specific purpose here, and the specific direction by the committee that the whole

intent is to get preferential treatment for a group of claimants here going forward.

And in that event, we would just -- we would ask for an opportunity to get appellate review before we go down that, what I think will be a tragic path.

THE COURT: Okay.

MR. SCHIAVONI: Thank you, Your Honor.

THE COURT: Let me just give everybody kind of my own reality set here. We're going to have to conclude at five for reasons that are administrative here, and also things I need to be doing. So, I'm hoping we will conclude. If we don't, I'm assuming that we will find a way to continue the discussion. But unfortunately, the five o'clock is a pretty hard break for me. So, if we run up against that, I apologize, and let's keep that in mind as we try to make our way through the day today. Okay? Thank you. Thank you very much.

MR. SCHIAVONI: Thank you.

THE COURT: Appreciate it. Okay. Thanks.

MR. JACOBS: Good afternoon again, Your Honor. Todd Jacobs for Westport. Thanks for hearing me. I'm only going to take a minute or two.

THE COURT: Okay.

MR. JACOBS: I guess we're all sort of prisoners of our own experience with these cases. And so I wanted

just to give you my experience, and I'm not saying this to be grandiose, but our firm and me, we are in 15 of these diocesan bankruptcies around the United States. We were in the Boy Scouts case. We're in a number of the university sexual abuse cases. We've seen these cases play out and it's not all bad news.

Some of these cases actually have settled. Rockville Centre settled in December in front of Judge Glenn on a fully consensual basis. And one of the reasons I can't go on too long today is because most of what I know about that is within the mediation privilege. I'd really love to tell Your Honor actually what happens in the mediations and what really does drive the settlements.

I think I can tell you that none of what the committee is proposing with the three motions that they have here drove a settlement in Rockville Centre. It drove $100 million in legal fees until four years into the case, people finally got realistic about settling the case. And I think that, you know, the debtor's idea that everybody should go to mediation and get serious about this and not spend another $100 million here -- I don't think there is $100 million to spend here -- would be a very good idea.

And then, Mr. Plevin's client didn't settle in Rochester, but we did. And I know how that came down with Judge Warren, who -- sometimes, you know, I think judges

need to -- , I don't know what the right word is. Judge Warren --

THE COURT: Be careful.

MR. JACOBS: Judge Warren actually, inventive things. Like, Judge Warren got everyone to agree he could come to the mediation and that they wouldn't try and recuse him. Now, that --

THE COURT: You know I did something like that in a slumlord case up in Eureka? I did, and the U.S. Trustee never forgave me for it. Now, I'm not suggesting I'm going to do anything like that here, but -- no, I'm hearing what you're saying on the inventive side. I get it.

MR. JACOBS: Yeah, I don't know if yours worked, but Judge Warren's, it worked for us. It was --

THE COURT: Well, I mean, it worked functionally. It didn't work economically in the end, but nobody could predict that.

MR. JACOBS: I -- you know, I've been doing this for 35 years. I don't think I've actually seen a sitting judge in a mass tort case do what Judge Warren did, but it worked. And I think the answer is not running up a lot of estate expenses, which is, I think the one thing you're going to guarantee by granting the motions that are in front of Your Honor today, and I don't think it's going to drive resolution. I fully agree with what Mr. Plevin said,

particularly about our clients and what their knowledge of sort of what the market is and data for these cases.

I mean, we represent sophisticated clients who have these cases all over the United States, not just in California, also the other reviver states, New Jersey, New York. I see Mr. Burns and Mr. Bair all over the country. I see these guys in New Jersey. I think we know what the issues are, Your Honor. I don't think getting six -- even if you got six verdicts, it's not going to move the needle and it's going to -- you're going to spend a lot of time, you're going to spend a lot of money, and it's not going to get anything resolved.

And I think we ought to try not to repeat the mistakes that have been made, including by everyone. I'm not pointing fingers at one side or another, but let's not spend a lot of money to no end.

THE COURT: Okay. Thank you very much.

MR. JACOBS: Thank you.

THE COURT: Okay.

MR. WEISENBERG: Brent Weisenberg on behalf of the committee. Your Honor, we're cognizant of the time and --

THE COURT: Yeah.

MR. WEISENBERG: -- with your permission, this is how we would suggest we proceed.

THE COURT: Sure.

MR. WEISENBERG: There are two counsel here that would like to address Your Honor and then I would like to summarize. We will be done by four o'clock, so that's 20 minutes.

THE COURT: Sure.

MR. WEISENBERG: That will leave us hour to address the insurance standing motion and we are prepared to rest on the papers with respect to the other motion, with respect to the claims against OPF and the churches. So, that should give us sufficient time to finish today, if that's okay with you.

THE COURT: Yeah, I would think -- not to destroy all dramatic irony, but in my mind, the, for lack of a better word, the OPF motion is the one that's most closely related to the discussion we're going to have on the 16th, in my view. So, if we end up either taking it up more fully then or truncating that discussion today and see where we end up, that's okay with me.

MR. WEISENBERG: Thank you, Your Honor. So, Mr. Finnegan can --

THE COURT: Okay.

MR. WEISENBERG: -- address the Court, we'd --

THE COURT: Sure.

MR. FINNEGAN: Thank you, Your Honor. Again, Mike Finnegan with Jeff Anderson Associates --

THE COURT: Okay.

MR. FINNEGAN: -- on behalf of a number of abuse survivors. I want to respond to two things that were said by counsel and then make two points.

First, Your Honor, is there's no discrimination of claims when they go back to state court. The Diocese, the insurers, they will be involved in that process as well, what cases to pick so they'll be able to have their voices heard as well about which cases should be the six. That's the process that Mr. Simmons outlined.

So, it's not a process where we, as the plaintiffs' attorneys are picking the six cases by ourselves and no input from them. And if there are disputes, what happens is that the trial judge, the coordinating judge, they pick the cases and they look at everything that gets submitted.

So, there's a equal opportunity for them to pick cases that they think are representative of the whole. And so they're not cherry picked cases. That was the main reason in Rockville Centre when we were there, that Judge Glenn, when we first tried to have cases released, why he denied the relief from stays. That's one, one point, Your Honor.

THE COURT: Well, did he deny it -- and if you don't know this, that's okay. Did he deny it as well on the

broader basis that I think the insurers and the debtor are arguing that there's -- no matter which case you fix or you pick, when you get to a resolution, you know, there's a discriminatory effect. Some people have adjudicated claims, some people don't.

MR. FINNEGAN: I don't believe that because you --

THE COURT: Okay.

MR. FINNEGAN: -- there over 200 cases that -- so New York has a different structure of corporate law. So, their Diocese is one corporation.

THE COURT: Yeah.

MR. FINNEGAN: And then they had --

THE COURT: Okay.

MR. FINNEGAN: -- all of their parishes are separate corporations. And so, we allowed the -- there over 200 cases that were against the parishes that were allowed to move forward.

THE COURT: Okay.

MR. FINNEGAN: -- didn't put the -- extend the preliminary injunction automatic stay to.

THE COURT: Okay. I mean, I'll throw another question out there that Mr. Weisenberg can think about between now and time he gets up to the lectern. I mean, the same question I asked Mr. Schiavoni, that look, in the -- my understanding of the MDL is the benefit is you do coordinate

everything. There is a lot of thought into how you go forward to establish some principles on a spectrum or whatever you want to call it, but it's all done on the theory that once you've done that, then you can settle everything.

MR. FINNEGAN: Absolutely.

THE COURT: And that happens.

MR. FINNEGAN: That fits.

THE COURT: And that -- I mean, that's what I -- that's what I want to -- I need to hear from both sides. I've heard the debtors' side of it. But my sense is that it's only when you start to put some meat on the bones here that you can settle these things and it's not that the people who get the judgments necessarily become holdouts. They become -- they're the vanguard more than anything else.

But that -- you know, that -- I'm not deciding that yet, but that's, you know, that's what I'm trying to process through my head. Okay?

MR. FINNEGAN: You're accurately describing that here and what happened to Rockville Centre.

The second response, Your Honor, that I wanted to make was that there's no conflict of interest here at all for us to represent survivors on contingent fees. That's what we do. Survivors are often, as you heard in the survivor statements, often have been through a lot. They

can't afford attorneys, most of them, and can't afford to pay them throughout. And so our system allows for us to work on contingent fees.

There's nothing wrong with that. Nothing unethical about that as counsel tries to make us out to be the wrong -- the bad -- wrongdoers here. We're not. We've represented -- I've been representing survivors for the last 20 years, Mr. Simmons for longer, Mr. Amala, Mr. Storey, who you're going to hear from, all of us have been in this for our careers and have the honor of representing survivors.

There are two short points that I want to make Your Honor. First is that the Diocese current approach, a cramdown plan, will not work. It didn't work in Rockville Centre in that -- in the bishop's plan there where they tried to cram that down 88 percent --

MAN: (indiscernible).

THE COURT: Thank you for that. That's helpful. Go ahead.

MR. FINNEGAN: Comic relief.

THE COURT: Okay.

MR. FINNEGAN: But 88 percent in Rockville Centre of the survivors voted against the bishop's plan that did not have the support of the creditors committee, the survivors committee. And the other time where that happened, that we're involved was in the Archdiocese of St.

Paul, Minneapolis, over 90 percent of the survivors voted against the bishop -- archbishop's cramdown plan. So, that's not a path towards resolution here.

Second point, Your Honor, is that the stay relief factors strongly favor the survivors being allowed to -- the limited relief. The first factor there is that the trials here, is that the trials will lead to resolution. That is what happened in Rockville Centre, Your Honor, is, I think that is a single most important factor that led to a resolution in that case is that the parish cases were allowed to go to trial.

And so, what happened in that case is that it wasn't the doom and gloom that Mr. Schiavoni laid out for you. What happened there was that Judge Glenn allowed the parish cases to go forward. Ultimately, those went back to the state court, like here. There are four cases that were chosen for trial in June of 2004, those cases, there are four that got picked. And that was when Justice Steinman and the state court system put the first trial on ---

THE COURT: You did mean 2024, right?

MR. FINNEGAN: 2024, sorry. I said --

THE COURT: -- 2004?

MR. FINNEGAN: That would be way too long --

THE COURT: Okay.

MR. FINNEGAN: But some of these cases --

THE COURT: Okay.

MR. FINNEGAN: -- are going for, so --

THE COURT: Okay.

MR. FINNEGAN: -- excuse me and thank you.

THE COURT: It's all right.

MR. FINNEGAN: 2024. And what happened then, Your Honor, is once he set that, we were on dual paths and we engaged in mediation immediately. We had been engaging in mediation, but we also at the same time, we're on the litigation path. So, those two paths ran concurrently and that's what I see happening here --

THE COURT: Okay.

MR. FINNEGAN: -- is that both those things happen. And what we're able to do at trial was set for October 7th. As that got closer and we're making more progress on the mediation, that trial got bumped a little bit and by November, within six months of that first trial date getting set, it didn't get tried, but we had an overall consensual resolution.

THE COURT: Okay. Thank you very much.

MR. FINNEGAN: That's the only one in New York, New Jersey, or California, where there's been a whole resolution with all the insurers, the solvent insurers and the debtor and the committee.

THE COURT: Okay.

MR. FINNEGAN: Conversely, what we're facing in the other cases that counsel talked about -- Rochester, Buffalo, Syracuse, and Camden -- are variations of either no resolution or partial resolutions with some of the parties. But what happens in that scenario is we've had fights. Camden is a great example of a resolution with only the debtor and insurance rights, and the insurers appealed the confirmation, fought the confirmation, extended that by years. So, we're --

THE COURT: Okay.

MR. FINNEGAN: -- four or five years downstream in those cases.

THE COURT: Okay.

MR. FINNEGAN: And what I don't want either is for the survivors here to be here in five years from the start of this case in 2028, coming to you again, like we did in Buffalo recently, asking for relief from stay.

THE COURT: Okay. Thank you very much.

MR. FINNEGAN: Second quick factor, Your Honor, is the balance of harms factor in the Curtis factors strongly weighs in favor of survivors here. The harsh reality is that survivors are dying. And if we delay them having justice and getting closer to it --

THE COURT: Yeah.

MR. FINNEGAN: -- and getting a resolution --

THE COURT: Okay.

MR. FINNEGAN: -- more will die.

THE COURT: Okay.

MR. FINNEGAN: And so, that why we're here and that's why --

THE COURT: Thank you very much.

MR. FINNEGAN: -- support stay relief.

THE COURT: Okay. Thank you.

MR. FINNEGAN: Thank you, Your Honor.

THE COURT: Okay. You've got a colleague who wants to --

MR. FINNEGAN: Who's right behind me, ready to go.

THE COURT: -- right behind, lurking there, waiting to go. Okay. Go ahead.

MR. AMALA: Good afternoon, Your Honor, Jason Amala on behalf of the Panish and PCVA claimants. Like Mr. Finnegan, since I'm one of the only state court lawyers you'll hear from today, I want to be very clear. There's no effort here to obtain preferential treatment for anyone. Judge Glenn in Rockville Centre, I was the one who testified in the deposition that led to the relief from stay there, the injunction, and we made very clear. He asked the question, are you guys going to try to make a money grab with insurance and the response -- and the reason he granted the relief was no. If we get a judgment, we will come back

to you and you decide what we do with it. That would just be exactly what happened here. Nobody would do anything with the judgments without the Court approving it.

THE COURT: Okay.

MR. AMALA: I'm filing a motion for relief from state today in the Diocese of Albany. Our motion makes that exact same thing very clear. There will be no preferential treatment for use of these judgments for any purpose that would benefit an individual plaintiff. It's for the whole.

THE COURT: Okay.

MR. AMALA: I personally drafted parts of the Madison Square Boys and Girls Club that the carriers talk about, the plan there. I personally drafted portions of the Boy Scouts of America plan. The portions that I participated in drafting -- and this really gets to the heart of our joinder, Your Honor -- is the portions to address the fact that since 2019, there has not been a global settlement in any bankruptcy in this country with every single insurer. Hasn't happened other than Boy Scouts, mister -- I can never pronounce Tanc's last name correctly -- Mr. Schiavoni --

MR. SCHIAVONI: Tanc.

THE COURT: He says it's okay.

MR. AMALA: He murders my last name, so it's fair. Other than his client in Hartford, which were the

two biggest primary carriers there, other than Boy Scouts, there has not been a global settlement with -- the carrier has the most claims in any bankruptcy filed since 2019. There are 17 of them. They're all pending.

You asked numerous times today about Rochester, Buffalo, New Orleans across the board.

THE COURT: Yeah.

MR. AMALA: There may be resolutions with the debtors for their cash. I'll say the non-insurance. But again, no global resolutions with the carriers. The reason we filed our joinder, Your Honor, it was a little different and this hasn't really been talked about. If you grant this relief, what's going to happen? Might there be trials to verdict?

There may be, but as Mr. Plevin indicated, a carrier in California, an insurance company, has a duty to settle a claim within the limits, if given a reasonable opportunity. If you ask Mr. Simmons, I have no doubt he will tell Your Honor that some of the cases that will be offers to settle within the limits and these carriers will have a choice. If they have a reasonable opportunity to settle -- a kid's badly abused for years and there's noticed evidence, there's a million dollar policy, there will be cases where they're asked to pay the million and the case is done.

There's no trial. There's no verdict. It's over. Answer your question earlier, how is -- is that a salutary benefit? Of course it is, because that will inform with the carriers the coverage positions that will hopefully get them to reconsider their position so far, right?

If you settle a case involving one of these notorious perpetrators for a million dollars, not only does that establish value in and of itself because they've paid their limits and that's at the jury value, but now the carrier's in the spot where they're going to have to agree to pay the limits, pay the million dollars, pay the 2 million, and also look hard at their coverage defenses.

Again, this is black letter California law. If they don't, if they don't act reasonably and they don't settle some of these cases for the limits -- not talking about verdicts -- I'm not talking about the jackpot verdicts. They don't pay their limits, a million bucks, 2 million bucks, whatever it is, and a case goes to trial and to a verdict and there's a $5, $10 million verdict, under California law they're on the hook for that and the fees and costs and potentially punitive damages.

And that's what I want to end with Your Honor. I guess we'll have a discussion about their plan and what it means and what it doesn't mean. The suggestion by the debtor that the relief from stay, it's just the same point

as their plan, nothing could be further from the truth and this is why. If you grant relief from stay, the carriers will have an incentive to settle these cases. Why? Because if they don't act reasonably to settle some of these cases within their limits, they're potentially liable for the entire verdict, fees and costs, and punitive damages.

That is a massive incentive to these insurance companies to settle. That is the public policy of the State of California. Some of the cases that were cited to you talk about why, why do we hold carriers liable for the full verdict for fees and costs and punitive damages? It's because it's the public policy of the state to encouraging companies to act reasonably and settle.

So, if you do relief from stay, there will be, I have no doubt, some of those settlements. That will move this ball forward because right now, because of the automatic stay, there's no incentive to settle. There's no risk of a judgment. There's no risk of a verdict. They can literally sit back, act unreasonably, not settle, and there's no risk to them.

And that's why when you look around the country, 17 bankruptcies since 2019, not a single global settlement with all the carriers, that's why. They eventually figured out and credit -- and I don't mean this in a disparaging way -- there's no duty to globally settle. I, too, have been

doing this for 20 years, back to Spokane in 2004. We used to have global settlements. Before 2019, I believe every single one of these bankruptcies ended with a consensual global settlement. That was our world before 2019.

I don't know what's changed, but I can tell you it's changed. And I think the answer is, they figured out that the stay takes away that incentive that they have to act reasonably and settle. They know that until some of these cases are relieved from stay, and there's that risk of judgments and verdicts, they really don't have to do much. They can just sit and wait and this case could become the next Rochester, the next five-plus years, next Rockville Centre.

THE COURT: Okay.

MR. AMALA: Thank you, Your Honor.

THE COURT: Thank you very much. Okay.

MR. PLEVIN: Ten seconds, Your Honor?

THE COURT: No, not yet. Okay.

MR. WEISENBERG: Your Honor, I have five minutes, so we're going to make this a lightning round.

THE COURT: Okay, then we're going to give Plevin ten seconds, okay?

MR. WEISENBERG: Five minutes, ten seconds, Your Honor.

MR. MOORE: Your Honor, the debtor would also like

an opportunity to respond to state court counsel.

THE COURT: Like about two minutes is my thinking.

MR. MOORE: Thank you.

THE COURT: Okay, sure. Go ahead.

MR. WEISENBERG: Okay, Your Honor. First, the debtors' counsel made the point that the value that would be determined from the state court is irrelevant. That is inapposite and just not accurate, Your Honor. In fact, nowhere is it more important than a survivor picking up a disclosure statement and understanding the fairness of the treatment of their claim. That is how one values whether the treatment that they're being afforded is fair and equitable because you compare the treatment of the plan to the value of the claim.

Now, you're going to hear a lot, Your Honor, and you've already heard a preview about it, that I can tell you one way not to do it, which is to demonstrate what other survivors have received in other cases. That is entirely irrelevant. Litigation option, which at least is months away because obviously it cannot begin until the Diocese plan is confirmed and unfortunately, Your Honor, if it is confirmed, they'll be subject to years of appeal. That's not happening so quickly.

But even more important is that under the current plan, the survivor trustee can settle with the insurers at

any time, which means that a litigation claimant's -- or litigation against the insurers ceases, okay, and essentially, it could be sold out from under them. Now, we're going to talk in the context of a disclosure statement about why that's problematic for a lot of other reasons, but it's not a fait accompli that this litigation option is ever actually going to take place.

Mr. Plevin mentioned that only six cases are going to settle, okay? That's belied by the very facts of this case and what transpired during the previous window. Seven cases went to trial and then 54 settled.

Mr. Plevin also made the point that the insurers are defending. That proves the very point we made that there's no economic harm to the debtor, which was what the New Orleans case was hyper concerned with, which was the administrative burn on the debtors' estate. We appreciate the insurers that they care so much about the equality of treatment of survivors, okay?

Number one, we've made clear, and you've heard this now at least three times, no survivor is going to collect on the judgment, okay? But number two, all you're hearing is pure speculation about what's going to happen in the future. You're hearing a parade of horribles, which we hear in every case. If you do this, the sky will fall. No one could predict the future, Your Honor. In fact, if past

is prologue, it's fairly clear that lifting the stay will drive settlement.

The notion that there's a plethora of fraudulent claims, it's another mantra of the insurers. In every case, there are hundreds of survivors who've decided their get-rich-quick scheme is to file a claim in a diocese sexual abuse case. There's no evidence whatsoever of that.

I would urge Your Honor to read the Buffalo decision, not just for the facts that we've alleged today, but also at the conclusion of that hearing, the judge did two things. Number one, addressed the conflict of interest and said that is of no moment to the insurers. If there's a conflict, that's an issue between a client and their lawyer, but also ruled that 2019 in the way the insurer viewed that is simply incorrect.

Last point. Mr. Schiavoni argues that lifting the stay here actually cuts against the very protections it's intended to protect. Not surprisingly, we see it totally differently. Okay? In fact, lifting the stay is entirely consistent with what the automatic stay is intended to do. Okay? The automatic stay is intended to allow a debtor a breathing spell to restructure and focus on restructuring its operations.

This is not a traditional restructuring. This is a bankruptcy focused on resolving survivor claims. So, that

breathing spell, unnecessary. Number two, the chaotic and uncontrolled scramble to the courthouse, not happening. We're relying on a state court that has a linear logical process to move these cases forward. Okay? So, if anything, Your Honor, lifting -- what the lift say will do is to allow the parties time to negotiate, okay, based on facts and not conjecture.

And so, to the extent you hear anything else about the committee being the party of no, and we don't want to mediate, that's just not the case, Your Honor. Thank you.

THE COURT: Okay. Let me hear 10 seconds from Plevin and then you can close it out, okay?

MR. PLEVIN: Thank you, Your Honor. The only thing I wanted to say is on Mr. Amala's hypothetical of a $1 million policy with a offer to settle for a million dollars, which is accepted, the only data point that comes out of that is that there was a million dollar policy. Says nothing about the value of the claim. It's of no utility to anybody trying to value claims.

THE COURT: Okay. Thank you. Okay.

MR. PLEVIN: (indiscernible).

THE COURT: I think -- well, it's close enough. Okay?

MR. MOORE: I'll be under two minutes, I promise.

THE COURT: Okay. Thank you.

MR. MOORE: First, Your Honor, regarding the committee being the party of no, they said no in this hearing. We said, we want to go back to mediation. They said no, though there is no possibility of a second path. Second, regarding speculation, the committee's entire motion is founded and based in speculation. If you lift the stay, insurers might settle. If you lift the stay, we might get good data points. If you lift the stay, the case might resolve.

Everything that you've heard, trying to extrapolate other cases into this case is founded on that same speculation. And about that issue, state court counsel mentioned repeatedly DRVC. I want to point out for the Court, the stay was never lifted in DRVC. DRVC has separately incorporated parishes. It attempted to extend the stay to those parishes. (audio glitch)

THE COURT: It's -- you guys are --

CLERK: We're back on.

THE COURT: All right. Do we have all our participants as well? Do we know?

CLERK: Yes, Your Honor.

MS. UETZ: Your Honor, it's Ann Marie Uetz. I can hear and we're back.

THE COURT: Okay, good. Okay.

MR. MOORE: Last thing, Your Honor, just to

reiterate, the statement has been made that DRVC settled because the stay was lifted. That never happened. DRVC settled because the case was going to be dismissed because they spent a hundred million dollars plus in legal fees during the pendency of it. Where we don't want to be is with a party that won't negotiate with us pursuing this path and others a year, two years from now, having spent tens of millions of dollars that we don't have.

THE COURT: Okay.

MR. MOORE: So, we do want to go forward with our plan. We don't think that the stay should be lifted and we can point to you to Judge Kinsella's opinion where she talks about the connection with the bankruptcy case and interference with it. It detracts from the mediation process that's undergoing. It detracts from the reorganization process and the discovery in the process involved in those demands would be expensive, would have to result in delay, and could impede the negotiations and the good faith that has gone on in the mediation process.

That's why she denied that motion and that's why you should deny this one.

THE COURT: Okay, thank you very much. Okay. The matter is otherwise submitted? Okay. This was extremely helpful to me, both on the practical sides as well as fleshing out all the, I think very legitimate concerns that

everybody has here. The -- I think Mr. Schiavoni is right about one thing. I mean, they -- clearly Congress created an automatic stay and that is the default. The question is what to do about it because as we all know, the stay is a tool and it is -- you know, Congress would not have used four verbs to decide what I can do about it without understanding that there is -- there are many ways to deploy it, limit it, restrict it, whatever.

I need to give this a little bit of thought. I'm very appreciative of all the arguments today. I don't want to otherwise tip my hand here, but I'm going to give it a little bit of thought and I think I know everything that you could tell me at this point. So, I'm comfortable mulling it a bit and giving you guys my reactions soon, maybe as soon as on the 16th, I'm thinking. Okay?

All right. Do we want to take a minute before we launch under the insurance? Is that okay? You want -- I mean, literally, you want to come back in like three minutes? Is that all right? Okay, thank you very much.

(Recess)

THE COURT:

CLERK: Come back to attention. The Court is in session.

THE COURT: Okay, thank you. And let's have a seat and we are transitioning to the insurance litigation

that's presently before Judge Corley, right, the standing motion re that? Okay. Yeah. Okay.

MR. BURNS: Tim Burns, special insurance counsel for the committee, Your Honor.

THE COURT: Okay.

MR. BURNS: First, let me answer a question you asked earlier about MDLs because it's sort of cuts across both motions. So, I was appointed to lead in the MDL recently with two of the top mass tort lawyers in the country. They schooled me on MDLs, the whole --

THE COURT: They schooled or scolded?

MR. BURNS: Both, probably. Both, probably.

THE COURT: Okay.

MR. BURNS: But they did school me on MDLs and the Court is right. The whole game in MDLs of getting them resolved is test cases. That is the focus. It works in MDL after MDL. So, let me go to the insurance standing motion.

THE COURT: Yeah.

MR. BURNS: I have ten points; nine of them are exceedingly brief.

THE COURT: Okay.

MR. BURNS: Admittedly --

THE COURT: We'll be the judge of that, but go ahead.

MR. BURNS: So, admittedly the tenth point has a

few subparts.

THE COURT: Okay.

MR. BURNS: So, first point, no mediation can resolve a case when the parties don't feel appropriate incentives, as my colleague Mr. Amala said, to settle.

Second, I don't think any Court would really disagree with Judge Bucki and what he said in the Diocese of Buffalo case. Litigated disputes are often settled on the courthouse steps.

Third, that's where all the parties feel the incentives to settle. Everybody, not just the other side, but everybody has something to lose.

THE COURT: Can I ask you, is this directed toward the insurance?

MR. BURNS: It is.

THE COURT: Okay.

MR. BURNS: Your Honor, it's --

THE COURT: It kind of sounds like it's directed to the relief from stay, but go ahead.

MR. BURNS: And Your Honor, I was going to start by saying that if some of these themes seem to echo, purely happenstance, but they are related very much.

THE COURT: Okay.

MR. BURNS: So, fourth, the most monumental step in pushing the case toward resolution in our view would be

the lift stay motion, not the insurance derivative standing motion.

THE COURT: Okay.

MR. BURNS: Fifth, the next most important step would be the Court requiring active litigation of the insurance adversary by granting the committee derivative standing to pursue that on the estate's behalf.

Six. If aggressively litigated, the insurance adversary would give parties incentive to resolve their dispute on a global basis. All parties would have something to lose.

Seven. That's because the courthouse steps would be constantly recreated as Judge Corley is asked to issue declaration after declaration that impact potential liability of the insurers and the potential recoveries of the Diocese and the survivors through motions for partial summary judgment on coverage issues and some limited jury trials on loss policies. The courthouse steps are constantly recreated.

Eighth. The debtor in this case has made clear its desire to make the insurance the survivors' problem. Let the survivors' representatives, the committee, start working on that problem now, in one insurance coverage action that is cost effective, instead of the 300-plus insurance coverage action that their plan contemplates.

Ninth. This is the last brief point. If this motion and the lift stay motion are not granted, I fear that many months or years from now we'll be in the same place we are right now. No matter how long the lift stay process takes, the test case process, no matter how long the insurance adversary takes, we will be that amount of time ahead of the game, if we start the test cases and fire up the insurance adversary right now.

Even if their plan's adopted, progress will have been made. Even in the unlikely event that they get votes in favor of their plan and this Court confirms their plan, progress will have been made with the test cases and the insurance adversary.

So, here's my overarching tenth point. The Diocese and the insurers' arguments against derivative standing are pretty insubstantial in our view. First, it can simply not be the case that a debtor can thwart derivative standing by filing a lawsuit and parking the lawsuit. That won't -- would take --

THE COURT: Well, okay. There's parking and then there's parking. I mean, they are on a fifth amended complaint, right?

MR. BURNS: And --

THE COURT: And that doesn't -- I mean, that suggests something other than lack of diligence. You know,

you could make a joke about that, but at the moment they want to pause it and you're not happy about that, right?

MR. BURNS: We aren't --

THE COURT: Okay.

MR. BURNS: -- Your Honor.

THE COURT: Okay.

MR. BURNS: And look, we're 18 months into this case.

THE COURT: Yeah.

MR. BURNS: And we're not out of the pleadings, and I'm not pointing fingers. I would have to point at myself, too. We've had a right to intervene. The parties have gone down a path of settlement, but the answer in our view isn't to park it and --

THE COURT: But my question, my point is there's a difference between, you didn't do something and now time's a-wasting; or you did it in a way that was kind of obviously not as aggressive as it might've been and you've made a strategic decision to go down one path that in your mind means you ought to pause something else. So, in the question of whether -- I mean, to me, that's more of a hurdle in my mind than would be the case if the debtor had just said, I'm not -- we're not doing X. We don't like the idea very much at all. So --

MR. BURNS: I agree.

THE COURT: That -- so that's -- I mean, I think it's a harder -- a higher bar for you, I think.

MR. BURNS: I would agree, that it's a higher bar --

THE COURT: Okay.

MR. BURNS: -- Your Honor. There's a spectrum, not filing --

THE COURT: Yeah.

MR. BURNS: -- a lawsuit, one end of the spectrum. Closer --

THE COURT: We'll talk about that in another context.

MR. BURNS: Closer to that end would be just parking it.

THE COURT: Okay.

MR. BURNS: What they want to do after pursuing it for a while is to pause it and give the problem to us. It seems to me that it creates the same risk for the derivative standing doctrine. Folks can decide not to pursue things and let an asset waste, and it's hard to see what teeth they have if someone else can come in and meet the four-part test and show there to be derivative standing.

THE COURT: Okay.

MR. BURNS: None of their cases, by the way, stand for this broad proposition that once you file a lawsuit,

even, if you pursue it for a while, that you're -- another party can no longer get derivative standing. All of those cases talk about pursuing it in good faith, the action not being delayed.

Second, no demand on the Diocese --

THE COURT: Yeah.

MR. BURNS: -- was necessary because it would have been futile. And I think it's clear it would have been futile here. The Diocese in its plan, in its disclosure statement, in its commitment to the insurance companies and its abeyance motion had made clear its intention not to pursue the insurance coverage action anymore in favor of pursuing a plan that would bring about 300-plus separate insurance coverage action. '

Futility is not limited to a tiny handful of circumstances. It's fact centered under the case law and it sort of means what it says. Would it have been futile? It doesn't require a specific type of wrongdoing for it to be futile.

Third, the debtor wants the Court to give deference to what it considers to be its business judgment on how to handle the litigation. But its business judgment now is not to handle the litigation, to stop the litigation, and later, if its plan's confirmed, make it our problem.

That brings us right back to the derivative

standing test. It isn't some deferential business judgment test and if it were a deferential business judgment test, they wouldn't be able to avail themselves of it under fiduciary duty law because their view is pre-baked.

They've told the world what their view is, the insurance litigation --

THE COURT: Well, let me --

MR. BURNS: (indiscernible).

THE COURT: Let me ask you a question there, okay? Is there a difference between pre-baked, as in they come in before they make any decision at all and say the only decision to be made is this one, versus they go through mediation for months with you folks and with the insurance companies, and in their mind -- I may not ultimately agree with it, you may not ultimately agree with it -- in their mind, they say, look, we've got to make a deal with somebody.

I'm not trying to be funny here. We've got to make a deal with somebody. We can make a deal with the insurance company. It may not be as perfect as the committee would like in some ways, but we think we can take the position it's good enough. And but for the votes that we may or may not get, we can defend it. I mean, if you're telling me they have a conflict, I'm not quite seeing the world that way. They made a decision. You may think it's a

very bad one, but that's not -- in my view, that's not a conflict. So, help me out with that part.

MR. BURNS: Your Honor, I'm only talking about the conflict in terms of independently assessing the best course for the litigation after they've already committed to another party.

THE COURT: But I guess my question, then, is the difference between was there something about a process that was so flawed versus they just made a decision that you don't think is the right one?

MR. BURNS: I --

THE COURT: I mean, what -- so, if you think it's in the world of the first scenario, tell me why, because that's where I have to be worried about a conflict. If they simply came to a decision that you think we don't see how you could conclude that, that's -- we can have a confirmation trial. Maybe. We'll see.

MR. BURNS: So, Your Honor, all I'm trying to get out --

THE COURT: Yeah.

MR. BURNS: -- is whether it should be the derivative standing test --

THE COURT: I understand.

MR. BURNS: -- the normal four-point test.

THE COURT: I understand.

MR. BURNS: Or some --

THE COURT: And I'm not trying to -- I'm not trying to decide. I'm giving you my sense of how I look at this factor. That's what I'm trying to do. Okay?

MR. BURNS: Okay. So, my view is that they're, of course, free to negotiate with anyone they want to. That doesn't mean the plan's going to be voted --

THE COURT: Yeah. I --

MR. BURNS: -- in their favor.

THE COURT: I know. I know.

MR. BURNS: What they aren't free to do is let an asset sit there in waste, in hope that a plan is going to be confirmed at some point, a plan that the committee doesn't support and the survivors are unlikely to support.

THE COURT: Okay.

MR. BURNS: That decision is decided under --

THE COURT: Well, how could they satisfy that other than agreeing with you they should just do something else? Is -- I mean, is it the result of the process that bothers you?

MR. BURNS: It's the result.

THE COURT: Okay. I got you. Okay. I understand. Okay. And there's a fourth factor, I'm thinking, right?

MR. BURNS: So, fourth. The debtors' failure to

pursue what even the debtor considers to be litigation worth hundreds of millions of dollars is not justified here by the costs they're talking about, the cost of the litigation. What they're going to do -- let's be real clear -- is if the insurance litigation goes forward, if the test cases don't go forward, they're throwing a hail Mary that this plan is going to be voted on and confirmed. But a hail Mary that's going to cost us all a lot of time.

THE COURT: So, can I reform that as to the third and fourth factors and see if I'm with you? That is, as a matter of law, irresponsible in your way that breaches a fiduciary duty; is that what you're saying?

MR. BURNS: I would agree with that.

THE COURT: But that's the focus of it. It's not so much you're telling me the process was from the inception a bad process and they knew going in that they had an undisclosed or improper influence that they were -- it's that in exercising that judgment, they've been so irresponsible that as a matter of as a matter of law, practically, it has to be a breach of fiduciary duty.

MR. BURNS: Well --

THE COURT: Is that it?

MR. BURNS: It -- I'm not casting aspersions on what they thought about it.

THE COURT: You don't have to.

MR. BURNS: Or that they --

THE COURT: You can tell me that this is just a terrible answer and nobody, you think, should come to this answer. That's okay. So, yeah.

MR. BURNS: It doesn't meet the justification standard.

THE COURT: Yeah.

MR. BURNS: I'm not --

THE COURT: No, you're far too elegant a thinker to cast aspersions on them. I know that. That's fine. That's not the issue at all. Okay? So, I think I'm hearing you. So, I'm interrupting you a lot. I'm sorry. You go ahead.

MR. BURNS: No, you're fine, Your Honor. I prefer your questions. They're helpful to narrow the issues.

THE COURT: Okay.

MR. BURNS: So, hopefully I'm answering.

THE COURT: I think you are. I appreciate it. Yeah.

MR. BURNS: The debtor says there's no harm because in a few months or whenever this plan goes into effect, we can pursue the same coverage actions that they're not pursuing now. Well, time is a harm. But more significantly than even the time, we're not talking one efficient coverage action now --

THE COURT: Yeah.

MR. BURNS: -- or potentially efficient coverage action. We're talking each survivor having to pursue their own coverage action. That's radically different from this comprehensive action being filed. The idea that there's no harm does not justify in any way they're stopping the litigation --

THE COURT: Okay.

MR. BURNS: -- at this point. So, the insurers argue that the derivative standing decision interferes with Judge Corley's potential decision on the motion to dismiss. That's just plain wrong, for this reason.

THE COURT: The motion to abate or to dismiss?

MR. BURNS: Dismiss.

THE COURT: Okay. In certain insurers' brief, they said that it would prejudge things, essentially that Judge Corley will be deciding in potential motions to dismiss that they intend to file.

THE COURT: Okay.

MR. BURNS: They haven't filed any motion to dismiss the fifth amended complaint.

THE COURT: Yeah.

MR. BURNS: Admittedly, they have more time to file the motions to dismiss the fifth amended complaint. But you're not interfering with anything currently pending

before Judge Corley by making a colorability analysis regarding these claims.

That leads into my next point, which is I'll actually be shocked if the insurers do file a motion to dismiss the fifth amended complaint. Judge Corley was quite clear in the -- that she thought declaratory counts on coverage issues were colorable claims, would survive a motion to dismiss on just disability issues. They didn't say boo, Your Honor. They were unusually silent. Judge Corley has handled, I think she mentioned, ten or a dozen insurance coverage --

THE COURT: Sure.

MR. BURNS: -- cases.

THE COURT: Sure.

MR. BURNS: District judges do not let non-colorable cases move forward with discovery like she's allowed this case to do.

THE COURT: Okay.

MR. BURNS: Colorability generally, I think she's spoken to it already by allowing discoverability -- discovery to move forward.

THE COURT: Okay.

MR. BURNS: But the federal reporters are literally full of cases where the underlying dispute hasn't been resolved, but there are ongoing coverage disputes.

THE COURT: Okay.

MR. BURNS: So --

THE COURT: Let me just give you a heads up here. If I'm dividing the time between when you started in and five, I think you would go to about 4:38. Okay?

MR. BURNS: So, well, that's perfect, Your Honor.

THE COURT: Okay.

MR. BURNS: Unless you have any questions, I'll just --

THE COURT: No, it's very helpful. I mean, I think this is a tricky one. It's very helpful.

MR. BURNS: So, I'll conclude with this.

THE COURT: Okay.

MR. BURNS: Properly litigated and aggressively litigated, this insurance recovery action can start answering questions immediately, like what particular policies exist? What are their terms? What are their limits? Do solvent insurers have to pay more if they're insolvent insurers? How many occurrences and how many limits do these insurance companies have to pay? That puts the insurers at risk. That puts us at risk and will drive global resolution.

THE COURT: Okay. Thank you very much. Appreciate it. Okay, who's going to take the argument for the debtor? Mr. Moses? Okay. If you want to cede some of

your time to some of the insurance counsel, let me know, but we're going to have to conclude at five. Okay?

MR. MOSES: Understood, Your Honor.

THE COURT: Okay.

MR. MOSES: So, I'll keep this quite brief. I will give the insurance -- try to leave some time --

THE COURT: Okay.

MR. MOSES: -- for the insurance companies to respond. Shane Moses, Foley & Lardner, for the debtor.

THE COURT: Okay, thank you.

MR. MOSES: We're not here, Your Honor, on an objection to our plan. We're not here to resolve whether or not the insurance assignment and the litigation option in the plan are confirmable or not confirmable. We're here on a motion by which the committee seeks to take over pending litigation that was brought by the debtor more than a year-and-a-half ago, that the debtor has been actively pursuing since then.

The committee seeks to do that based on a legal theory of derivative standing, despite the fact that they have not identified a single case where a bankruptcy court has used derivative standing legal theory to wrest control of the pending litigation away from a debtor or trustee.

Not only that -- and we'll get back to that in a second, but not only that, factually, it's based, the

committee's argument in their attempt to wrest control of this case away from the debtor is based on a disagreement with the debtor's good faith determination of how it should administer the coverage, its insurance coverage, and the coverage action as an asset.

And it's specifically based on two current circumstances. One is a pending motion before the district court in which the debtor asks to hold the coverage action temporarily in abeyance. We're not trying to dismiss it. We're not trying to do anything else with it, but temporarily pause it while we seek a ruling from this Court and move forward on the plan and, you know, I guess the cat's now out of the bag. We filed a mediation motion, so also on renewed mediation. And then also on the plan itself and specifically how the plan treats coverage.

The committee argues that a plan without committee support is not a basis for delay. We can get into that, but that's not the right question. That's not the question that this Court is really asked to determine. The question about whether or not there is a basis to pause the district court litigation is currently pending in a motion before Judge Corley that is set to be heard on January 16th in the morning before our return to Your Honor.

So the only explanation is that the committee is concerned about how Judge Corley might rule, that Judge

Corley might grant our motion and actually find that there's good cause. So, they're asking Your Honor to decide there's not good cause for the abeyance motion before Judge Corley has a chance to rule.

THE COURT: I'm acutely aware of that.

MR. MOSES: I want to turn to, second -- getting back to the issue of the legal standard and you know, we've heard some argument that there's not a bright line rule that says that the derivative standing legal theory cannot be implemented in a case where there is a case pending.

And specifically, the cases that we pointed to, the (indiscernible) cases, where the Court said we're denying this because there's a case pending, there was an acknowledgement -- I agree, there was an acknowledgement that those cases that maybe in some case, some other situation, there might be a circumstance where the debtor is abusing its discretion and there might be a different outcome.

But in trying to point to that, the issue is the committee is acknowledging that that could only ever apply if the debtors' decision was an abuse of discretion or not in good faith. What's actually happening here is that the debtor has, after many months of litigation -- sorry, of mediation, also litigation, but after many months of mediation, come to a resolution with the insurers as to how

coverage would be treated in the plan and the committee doesn't like that.

They try to make that into a conflict of interest. It's not a conflict of interest. The only conflict is between how the debtor has decided to administer this asset and treat it under a plan and how the committee thinks it should be treated. That's simply not, Your Honor, a basis to make a determination that the debtor is not acting in good faith.

Now, there's a lot of arguments about, you know, whether or not the litigation option in the plan and the assign -- insurance assignment that's embodied in the litigation option makes sense, whether or not they're in the best interest. We heard an argument about how it would be better to have these issues resolved in a unitary setting versus a litigation option where we give the right to determine what to do to each individual insured.

We allowed them to make the decision whether to pursue coverage. That objection, that's a plan objection, Your Honor. That's not a reason to decide that the debtor should not pursue this action.

I'm going to keep this very brief. I don't have a whole lot more that I want to say right now. I just think there is not a world in which the debtor's request to the district court to decide whether there's good cause to pause

this could be a breach of the debtors' duty as a matter of law. Your Honor asked that question. We heard from the committee that they think it is. I don't see how that's possible, Your Honor. That --

THE COURT: Well --

MR. MOSES: I'm happy to answer any questions the Court has.

THE COURT: No, never mind. That's okay. If you're --

MR. MOSES: Yeah, I guess I would like to circle back to. because it's probably worth at least acknowledging, the factors and we have made the point that we --

THE COURT: Yeah.

MR. MOSES: -- never made a demand and there's a lot of discussion about demand futility. The committee even recognizes in their reply that in the Greenspun case, the Ninth Circuit, you know, said that applies in a situation where there's bias or self-interest. What the Ninth Circuit was really talking about and where most demand futility cases are talking about is a situation where it would be a request to the board of directors of a company to sue itself. That's not what we're talking about. That's what I'm referring to when I say the only conflict of interest here.

THE COURT: Well --

MR. MOSES: It's not conflict of interest. It's a conflict --

THE COURT: Well --

MR. MOSES: -- opinion.

THE COURT: Yeah. I mean, if I could -- and that's exactly what I almost said and I'll say it more directly now. I mean, it's -- it would be a conflict of interest if there were really two interests that were adverse. What the debtor is saying is we just think this is a better plan and you know, is it a conflict of interest to say we've chosen, it's not smart to spend money doing X when we can resolve it doing Y? That may not be the right answer, but does that articulate a situation in which there were really two conflicting interests as opposed to just the debtor makes a decision about what's more expeditious, whether it's smart to spend money in this direction or that direction.

MR. MOSES: Right.

THE COURT: I mean, I -- in my -- I'm struggling with how I think of that as a conflict, as I think of conflicts. You know, there are duties to two parties and those parties are adverse and you can't possibly do both. The debtor could decide -- I mean, not to prove this by an absurd -- you could decide. Would it be a conflict if you, you know, decided to take the committee's position that

we'll fight this to the bitter end? That wouldn't be a conflict. It'd be a choice.

MR. MOSES: It would be a different decision.

THE COURT: Yeah. Now, it may be --

MR. MOSES: (indiscernible).

THE COURT: -- did they demonstrate that it was horribly improvident or the wrong decision or not fair? Goodness knows what, at plan time. What I'm struggling with is how to -- and it's to your advantage right now. I'm trying to process how is it a conflict. That's what I'm not getting.

MR. MOSES: I can't answer that for you, Your Honor, because I don't think it is.

THE COURT: I understand.

MR. MOSES: What I will say is that I think there's a couple -- two decision points here. There's a decision point on whether or not there is good cause to pause this litigation right now.

THE COURT: Oh, yeah, sure. Sure.

MR. MOSES: That question is before Judge Corley next Thursday. She will decide. If she decides that there's not good cause, then the debtor will be proceeding to litigate this case --

THE COURT: Well --

MR. MOSES: -- pending plan confirmation. If --

THE COURT: That --

MR. MOSES: -- the second --

THE COURT: That's a little awkward if she's reading my mind. I mean, I don't know how she decides that. And I mean that with all the respect. It is somewhat shared in a sense here. But if what she's saying is, is it an irrational request that while this thing is going on in front of Lafferty, we do not pursue this? You know, is that so far out of the mainstream that I should never countenance that decision? If that's the question, I get it. She can certainly answer that one.

MR. MOSES: Right. But I think on some level, the only decision you're being asked to make right this minute is whether --

THE COURT: I understand.

MR. MOSES: -- our suggestion to Judge Corley that she do that is so far out of the realm of possibility --

THE COURT: That I remove the --

MR. MOSES: -- that it's a breach of the debtors' good faith.

THE COURT: -- you're no longer the protagonist. I understand that. Okay.

MR. MOSES: I think that's all, Your Honor.

THE COURT: I understand that. Okay. Anything else on your end?

MR. MOSES: That's all, Your Honor.

THE COURT: You want to leave a moment to Mr. Plevin or Mr. Schiavoni to say a word?

MR. MOSES: (indiscernible). So, I'm winding up now.

THE COURT: I appreciate it. Thank you very much.

MR. PLEVIN: Mark Plevin on behalf of Continental Casualty, Your Honor. I'll be quick and have, I think, only three points, 70 percent fewer than Mr. Burns.

The first is that this case is not colorable. We explain why that is. The removal of the duty to defend claims from the complaint means that all we have left is the duty to indemnify, but we don't have any judgments. And under California law, you can't have a -- you can't determine a duty to indemnify until you have the judgment.

And the HPS Mechanical case is the most recent case we found that said that, but Judge Corley herself in Essex Portfolio said the same thing and Judge Gilliam, among other federal judges, in the Starr Indemnity v. Chart Industries case, said the same thing as well.

It all derives from the fact that you cannot determine the duty to indemnify until you have a judgment. And that also speaks to the point that Mr. Burns was making about, you know, why would we do this in multiple litigations, one claimant at a time, as opposed to having

one big litigation? Well, the reason you can't have one big litigation is you don't have any judgments.

When a claimant has a judgment, then you can determine if there's a dispute about whether the insurer will pay, if there's a duty to indemnify. I'm not going to go into all the details about why it's not colorable, but we thought it was important to make that point and I should say, this.

The principal case cited by the committee in support of the idea that this is colorable, the American States v. Kearns case out of the Ninth Circuit, as both Judge Corley and Judge Gilliam and the HPS Mechanical court point out, the duty to defend and the duty to indemnify were at issue in Kearns, and that makes all the difference in the world. That's they didn't think that they were bound to follow the Kearns case.

Second point, Mr. Burns suggested a scenario in which there was going to be a request to Judge Corley for declaration after declaration so that we would continuously be on the courthouse steps if that action, in fact, were allowed to go forward. That would basically require either 25 consecutive summary judgment motions heard sequentially over a long period of time or perhaps he's thinking about we're going to have 20 or 25 phase trials where we bring in a jury and we try one issue and then we bring in another

jury and we try another issue.

The more likely outcome, of course, is that if a case like that were to go forward, all the discovery is taken, all the motions for summary judgment are filed at the same time, and if there's anything left to try, it's one trial. So, we're not going to be at the courthouse steps continuously in any case before Judge Corley.

The last thing I want to say is something that the committee raised only in a footnote, but is extremely dangerous. And that is the idea that they should be given all of the privileges that the debtor has with respect to these claims. Now, it's a little bit vague, and I'm not sure I understand exactly what they're asking for, because, of course, they just did it in a footnote. They didn't develop an argument.

But the concern on our part is that we have a common legal interest with the debtor in defending these claims. And if the committee were to be given the debtor's privileged information that relates to the defense of the underlying claims, now you've given the defense playbook to the plaintiff and that is extraordinarily prejudicial, not only to the debtor but to the defending insurers and is a breach of cooperation that I think would jeopardize coverage for all of the claimants.

So, I wish I could say more about that point,

because I think it's a very, very important point. But their very brief footnote didn't give me enough information to be able to say anything more about it.

THE COURT: Okay, thank you.

MR. PLEVIN: Thank you.

THE COURT: Appreciate it.

MR. SCHIAVONI: Your Honor, Tancred Schiavoni from O'Melveny for Pacific Indemnity. I've been at all of the coverage proceedings before Judge Corley and all the meet and confers. Mr. Burns was at every single coverage hearing, along with at least one of his partners and someone from the committee, and I think maybe others on the calls. He was allowed to be heard by Judge Hurley at those proceedings. Mr. Burns and/or one of his colleagues was present at every single meet and confer in connection with the coverage case.

Mr. Burns was submitted statements, text, for the case management statements in every single case management statement. He's been an active participant. At no point in the coverage proceeding did he diverge from the debtors on anything. He didn't suggest that they were abandoning a claim or pursuing something the wrong way, whether there's a better way to do it.

He absolutely didn't say anything contrary that they had in any way steered the ship in the wrong direction.

There were submissions of case manage -- there's a submission of a case management plan on how to direct the case going forward. It sets -- you know, we set out something that is sort of a year plus. They send out something a little shorter.

But what I'm hearing from him today that, oh, he's got this new -- this plan of somehow these summary -- that's not in the case management proposal that he put before the Court.

THE COURT: Okay.

MR. SCHIAVONI: This is something new, okay.

THE COURT: Okay.

MR. SCHIAVONI: And we saw this exact thing happen in Camden when there was an effort to derail the plan with the insurers there. We're now at 40 plus million dollars of costs in Camden. This week, the Third Circuit issued an order staying the effectiveness of the Camden plan, finding that the insurers had met their burden to show that we've had a likelihood of success on appeal. Like that's the direction where this thing is being driven.

The Court previously found that or ruled that the debtor is well suited to handle the coverage action. There's been no basis offered here to suggest that the debtor has a conflict or is operating somehow differently from the committee's interest here in maximizing coverage.

They -- the committee has no interest in managing the effectiveness of the cost. There was a -- talk here. There's been a lot of talk about incentives.

It's like the incentives here where we have an adversary who's -- all their litigation is billed to another party is something to be thought about and how those -- the incentive works.

THE COURT: Okay.

MR. SCHIAVONI: It would be enormously -- the last point would be, it would -- they've suggested in that footnote that they need to have these privileges in order to litigate that coverage action. It would obviously be just incredibly prejudicial to have those privileges turned over to them both when they're now actively pursuing a lift stay and if the stay is not lifted later, the individual, you know, actions themselves. So, for all those reasons, I --

THE COURT: Okay.

MR. SCHIAVONI: -- ask that you deny the motion. Thank you very much. I appreciate it. Mr. Burns, you want to take about four minutes to wrap up?

MR. BURNS: Three points, Your Honor. First on the conflict point. Nothing hinges on whether there's a conflict or not. My only point was they aren't entitled to some deferential business judgment tests. The test is the four part test for derivative standing, but I would submit

this to the Court on a -- on the conflict issue.

The debtor has committed with the insurers to a plan that makes the insurance the survivors' problem. What if Judge Corley doesn't stay the case? What if Judge Corley rules against the debtor on the abeyance motion?

They need to pursue the litigation actively if that happens, and yet they're committed to a circumstance very different from that.

Second point. Mr. Plevin's point on the colorability of these claims and how they aren't colorable until there's a judgment in the sexual abuse cases, isn't that one of the best reasons that these test cases should move forward? How are we going to -- under Mr. Plevin's view of the world, how are we going to get to the coverage issues if --

THE COURT: Okay.

MR. BURNS: -- these claims aren't even --

THE COURT: Can I ask you another question?

MR. BURNS: Sure.

THE COURT: Would you tell me that his view might be a little bit limited in the sense that it's your view that with or without a judgment, you're going to establish some questions about coverage periods. Who's ex -- who's primary, who's excess, and that's going to be helpful --

MR. BURNS: Absolutely.

THE COURT: And has to be done anyway.

MR. BURNS: Absolutely.

THE COURT: Okay. I mean, I -- okay. I mean --

MR. BURNS: Your Honor, the colorability on his part, argument's flat out wrong, but all I'm saying, that even if it's right, that's a reason why test cases --

THE COURT: Okay.

MR. BURNS: -- move forward. And then my final point in response to Mr. Schiavoni, Your Honor, and the committee being at every hearing and not taking a contrary view to the debtor, they look back at the case management statements --

THE COURT: Yeah.

MR. BURNS: -- the committee's portion.

THE COURT: Yeah.

MR. BURNS: We made clear to the Court, we made clear to the parties that we should be allowed to file motions for partial summary judgment whenever appropriate in our view, because those motions are what will recreate the courthouse steps and let that case be useful in getting to global --

THE COURT: Okay.

MR. BURNS: -- consensus.

THE COURT: Okay. All right. Thank you very much.

MR. BURNS: Thank you.

THE COURT: We've come to the end of my time. I'm very thankful to all of you. I'm probably not a great poker player on this one. I'm a little worried about this one. I want to think about it a bit. I'm fairly confident by the time we're back together again on the 16th, I'll have some thoughts for you. I mean, I -- people expected me to decide it before Judge Corley was going to hear the abeyance motion. I don't expect doing that. I think she should hear that and do whatever she's going to do with it without any interference from me. I think that's appropriate.

And I'm very likely going to be able to give you my thoughts about this motion on the 16th. All right? Hope that doesn't ruin anybody's view of how the universe should work, but that's where we are. All right? Thank you for your very good arguments, all of you. It was a pleasure as always. I learned a lot, as always, and I will look forward to seeing you on the 16th, unless there's some emergency that we need to talk about between now and then.

MAN: Judge, could we have one moment --

THE COURT: Yeah.

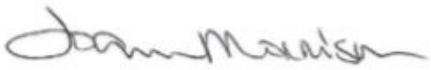
MAN: -- with regard to the last motion that's on the calendar for today.

THE COURT: Yes.

MAN: The committee (audio ends here)

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

I, Joanne Morrison, certified that the foregoing



cord of the proceedings.

Joanne Morrison, CET-1310

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: January 14, 2025

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EXHIBIT 2

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

-oOo-

In Re:	) Case No. 23-40523
	) Chapter 11
THE ROMAN CATHOLIC BISHOP OF OAKLAND	)
	) Oakland, California
	)Tuesday, January 21, 2025
Debtor.	) 10:00 AM
_____	)

1. HEARING ON APPROVAL OF DISCLOSURE STATEMENT. CONT'D FROM 12/18/24, 1/16/25

2. MOTION TO AMEND MEDIATION ORDERS AND REQUIRING PARTIES TO ATTEND GLOBAL MEDIATION (DOC. 1612). CONT'D FROM 1/16/25

3. STATUS CONFERENCE. CONT'D FROM 11/27/24, 1/16/25

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

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

OAKLAND, CALIFORNIA, TUESDAY, JANUARY 21, 2025, 9:46 AM

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(Call to order of the Court.)

THE CLERK: Calling line item number 1 for the Roman Catholic Bishop of Oakland, case number 23-40523.

And I'm moving the parties over now, Your Honor.

THE COURT: Okay.

(Pause.)

THE CLERK: And Your Honor, all the parties have been moved over.

THE COURT: Okay. Let's take appearances. And why don't we start with everybody who's going to be representing the debtor today?

MS. UETZ: Good morning, Your Honor. Anne Marie Uetz of Foley & Lardner for --

THE COURT: Hi.

MS. UETZ: -- the debtor. We have a few others.

THE COURT: Okay. Go ahead.

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

THE COURT: Okay. Nice to see you again.

MR. LEE: Likewise.

THE COURT: Okay.

MR. MOORE: Good morning, Your Honor. Mark Moore from Foley & Lardner on behalf of the debtor.

THE COURT: Okay. Good morning.

MS. RIDLEY: Good morning, Your Honor. Eileen Ridley, Foley & Lardner, on behalf of the debtor.

THE COURT: Right. Good morning.

MR. MOSES: And finally, Your Honor, Shane Moses, Foley & Lardner, on behalf of the debtor. Good morning.

THE COURT: Okay. Thank you.

Let's get anybody representing the committee.

MR. PROL: Good morning, Your Honor. Jeff Prol, Lowenstein Sandler.

THE COURT: Okay. Good morning.

MR. PROL: It is my partner Brent Weisenberg. And also Tim Burns from the Burns Bair firm.

THE COURT: Okay. I see Mr. Burns.

Mr. Weisenberg, you want to separately appear or --

MR. WEISENBERG: Sure, Your Honor. Brent Weisenberg of Lowenstein Sandler on behalf of the committee.

THE COURT: Okay. Mr. Bair.

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

THE COURT: Okay. And then we have some folks representing insurance companies. Let's hear from them.

Okay. Mr. Plevin, we're not hearing you.

MR. PLEVIN: Trying to keep you from hearing my dog. Good morning, Your Honor. Mark Plevin on behalf of Continental

Casualty Company.

THE COURT: Okay. Anybody else for the insurance companies?

MR. JACOBS: Yeah. Good morning, Your Honor. Todd Jacobs from Parker Hudson on behalf of Westport. And I am here with my co-counsel, Blaise Curet.

MR. CURET: Good morning, Your Honor.

THE COURT: Okay. Wonderful. Anybody else?

Okay. How about the U.S. Trustee?

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

THE COURT: Okay. Anybody else whom I have not mentioned yet?

MR. MANNS: Good morning, Your Honor. Ryan Manns on behalf of RCC, RCWC, OPF, and Aventis.

THE COURT: Okay. Very good. Mr. Plevin, can I tell a dog story?

MR. PLEVIN: Sure.

THE COURT: Okay.

MR. PLEVIN: I have lots of them though.

THE COURT: Yeah. Here's mine. Years ago, when we were fairly early into the pandemic, we had a Zoom hearing on a motion for summary judgment. And counsel for the party defending against the motion was making an impassioned argument to me. And at one point, he turned very slightly and said,

you're just not helping. And everybody froze. And he said, oh, I'm sorry. I was talking to the dog, who's been trying to jump into my lap for the past ten minutes. Well, so if you have a -- if you have a dog who's going to make an appearance today, I'm sure we'll all find it very helpful.

MR. PLEVIN: Well, my (indiscernible) --

MS. UETZ: I may put --

MR. PLEVIN: -- very well-known to Judge Silverstein because he's made several appearances in both Boy Scouts and Imerys.

THE COURT: Very good. Okay. Then he's a veteran. Okay.

MS. UETZ: Your Honor, if it would be helpful to our cause, my four-pound dog is at my feet in my office right now, and I would be happy to have him make an appearance.

THE COURT: Well, I mean, it's only fair. I mean, if Plevin's --

MS. UETZ: Whatever happens.

THE COURT: Whatever. So let me begin this way. If there have been any developments as a result of you folks talking over the long weekend and since Thursday, I'm happy to hear them. We had a few things that were open-ended and not yet decided on Thursday, and I'm prepared to give you my thoughts on a number of them, but I certainly want to lead off with whatever -- if you guys have made some progress on

something, or if you have something that you think should be noted at the beginning about a different approach or whatever, I want to defer first to you, and then I'll give you my thoughts.

MS. UETZ: Thank you, Your Honor. If I may, Anne Marie Uetz for the debtor. We have had much internal caucusing and review since we were with you last week.

THE COURT: Okay.

MS. UETZ: Recognizing the holiday, we have not yet had that follow up with the committee, which we will intend to have.

THE COURT: Sure. Okay.

MS. UETZ: We did have some follow up with Mr. Plevin in respect of one of the issues that arose sort of late --

THE COURT: Yeah.

MS. UETZ: -- in the hearing. And I would ask Mr. Plevin if he could -- well, I would ask Your Honor to consider Mr. Plevin's view as to one of the questions that you raised late in the hearing concerning the litigation option and exactly what was being assigned. So if it please the Court, I do think that there's an update to be had --

THE COURT: Okay.

MS. UETZ: -- and I'm directing my comments to the Court rather than Mr. Plevin. But I know --

THE COURT: Yeah.

MS. UETZ: -- that we've had the discussion with Mr. Plevin.

THE COURT: Okay. Can I just clarify one thing to make sure we're all on the same page?

MS. UETZ: Yes. Of course.

THE COURT: In my mind, and I hope I articulated this well the other day, there's a difference between what the legal effect is of a plan doing X, something we can argue about at confirmation, and whether the debtor and a counterparty to effectively an agreement -- we'll call it an agreement, for lack of a better word for it, are in agreement about what they are -- to what they are agreeing because that, to me, is a disclosure statement issue. What happens when you do X is more likely a confirmation issue. And I was trying to separate those two. As kind of intertwined as they are, that's what I was getting at.

So I'm not trying to put words in Mr. Plevin's mouth. But if we're talking about the disclosure statement aspect of this, I am more worried about is there an agreement or not. If there isn't, can we really solicit if it's uncertain what the what the understanding is between the debtor and one of the insurance companies?

Mr. Plevin, that's what I was trying to get at. I suspect you knew that, but I wanted to make sure we began with that. Okay.

MR. PLEVIN: Right. And Your Honor, I guess I should plead confusion because I'm not a hundred-percent sure what conversation Ms. Uetz is referring to. And maybe --

THE COURT: Well --

MR. PLEVIN: we can have a break later, and she and I can talk.

THE COURT: Sure. That's fine. That's fine. Yeah, I mean, I don't want to put you on the spot about something that -- well, we can take a break in a little while.

Mr. Weisenberg, you want to go ahead?

MR. WEISENBERG: Yes, Your Honor. Brent Weisenberg, on behalf of the committee. Your Honor, it's the committee's position that both of the issues that you identified are present here, meaning there's a disclosure issue.

THE COURT: Yeah.

MR. WEISENBERG: But there is also a plan confirmation issue. And it's our position that if the plan on its face runs afoul of California law, it will be impossible for the plan to be confirmed. And as you know --

THE COURT: Right.

MR. WEISENBERG: -- at times, courts have decided that rather than going down that road, they would --

THE COURT: Yes.

MR. WEISENBERG: -- take that issue up now. And so we can discuss that at length if you'd --

THE COURT: Sure.

MR. WEISENBERG: -- like, Your Honor, but I did want to make clear that we sit on both sides of that argument.

THE COURT: Well, I know I've heard you say that, and I certainly understand it. I think let's get where we can get with my rulings and what's left that may be -- I mean, some of the matters that are left may be fairly easily dealt with or less consequential. And if we need to take a break and have Mr. Plevin and Ms. Uetz talk about that.

I agree with you. I saw them as two different issues, and I was not yet as convinced as you'd like me to be that I need to stop the presses with respect to the second one, but I'm going to hear you today. Okay. I get it.

Makes sense? Okay.

MS. UETZ: Thanks, Your Honor.

THE COURT: Does anybody else have anything preliminary before I give you guys some thoughts on matters that were sort of hanging out there on Thursday?

No? Ready to go?

Okay. Let me address a few things here. The first one -- well, the first thing we talked about Thursday was what I think we called in shorthand form the OPF motion, which was the committee's motion to have standing to prosecute various claims, most notably what the committee has identified as at least a potential fraudulent transfer claim or maybe preference

claim that sort of was articulated as we went along, but most obviously, a fraudulent transfer claim with respect to the transfer of about 106-million dollars and then I think about 5-million dollars each within the forty days prior to the commencement of the bankruptcy case.

The question that I -- well, the first question to deal with in this analysis most typically is is there a colorable action here. And that is usually defined as is there an action that one believes would survive a 12(b)(6) motion. I believe that the critical question in that analysis, and I kept trying to figure out if we could preview that or get some sense of that before we decided to go forward with this or not was the fairly simple sounding, but not probably simple in practice question whether there was a transfer of property to the debtor because although I think these funds were located at the diocese, the debtor has arguments that significant portions of them really weren't the debtor's property.

There's a significant portion that was belonging to the schools and would have been their -- although it was in the debtor's bank accounts, maybe for investment purposes, it really was money that belonged to the schools. And there were other funds as to which I'm told, at the very least, the use is restricted.

So I began the analysis with, okay, how would we think about those issues and how 12(b)(6)-able (sic) would this be on

that basis because I thought that's really where the debtor was coming from. There was an elongated discussion between me and one of the debtor's counsel where I kept trying to ask, well, is this something more than just that question of property of the estate or debtor's property. And counsel was urging on me some further theories as to why this couldn't be a fraudulent transfer, which maybe it's my shortcoming, but I didn't find to be all that analytically helpful. To me, the question keeps coming back to, well, was this the debtor's property or not.

So again, the debtor elongated somewhat the description of why that's problematic during oral argument, which is fine. As to the question of whether some property is the school's, it wasn't so clear to me. I know that there were different programs referenced for money that came into the diocese but was held for different purposes.

One question that I don't think is articulated quite yet is well, in what form was it held. Were these all held in different segregated accounts, or were they held with some understanding that, gee, this is for this and this is for that, even though it's in the same account? Some courts have relied on the manner in which the money was held as being very helpful in determining whether this kind of question is 12(b)(6)-able (sic) or not. I'm not sure I would rely solely on that, but that's a matter as to which I don't think I quite have the understanding that I would need if I were to make a decision on

that basis.

I'll note as well that all of you guys who are bankruptcy lawyers know that it is frequently the creditors position that, well, I know the debtor's holding that, but it's "really mine". I don't have a claim to it. It's mine. I'll take it. The rest of you have a lot of -- have a lot of fun with the bankruptcy, and I'll just go home and take my stuff. That's an argument that obviously we hear all too often, and there's a big difference between somebody having a claim and somebody actually being able to assert that was mine. Those are two very different things.

And while the Bankruptcy Code and the bankruptcy cases certainly understand and respect a difference between property that the debtor may hold for another and property the debtor otherwise holds, I think it's also fair to say that the bankruptcy cases take a fairly jaundiced view of the broad way the creditors would like to assert that position. So I don't think it's a position that I should assume is easily taken or easily proven.

So the debtor's statements about, well, it's really the school's money are fine. I'm not so sure I would accept them at face value enough to be certain that I would grant a 12(b)(6) motion on that. And I think similarly with respect to restricted funds, it may be that there really was something like a trust that was set up here under California law, and

that would be a fairly easy answer. It doesn't sound like it. If that were the case, I think we'd be having -- we'd be hearing different arguments.

So the extent of the restriction in my mind is something that would probably take a little bit more legal sleuthing and fact examining than a 12(b)(6) motion would be likely to involve. It may well be that the debtor would, on a summary judgment motion or something along those lines, be successful or partially successful here. But in the hypothetical world of I would look at a 12(b)(6) motion, I don't necessarily feel at the moment that it is so certain that I would grant that, that I would find this claim isn't colorable. But having made that determination for this purpose, I would also want to skip down to the last factor, which is would the pursuit of this action -- sort of cut through and make the language simpler -- benefit the estate. It might, but not now.

So my instinct is to recognize that there may well be a claim worth pursuing here, but that I continue to believe that we need to play out some issues with respect to the plan and that allowing the litigation to go forward now would not presently be a benefit to the estate. It would be, I believe, a significant monetary drain and a significant drain on attention. Having said that, if we do not make progress with the plan, then I think that this is exactly the thing that, for

a whole bunch of reasons, might well be appropriately pursued. So I mean, just hypothetically, for example, if we get to May and the plan is voted down or is not going to be pursued or there other issues that come up, I think I would look at this very differently for that purpose.

So I'm basically going to deny the motion without prejudice on the theory that I think the timing is really critical here and the timing very much informs the question of benefit to the estate. Having said all that, I'm very mindful, as I'm sure the committee is, that there's a two year statute on these kinds of things. And I'll just say, if the debtor wants to entertain a stipulation with the committee to extend any 546(b) statute of limitation issues, I would approve that. If they don't do it, I'll do it myself. We are not going to run up against the 546(b) limitations here. So if you guys want to pay some attention to that, great. If you don't, I'll just keep it on my docket to do it, and I will extend the deadline on my own. So that's the OPF motion.

With respect to the motion for relief from stay, I was leaning very much toward granting that. I thought an awful lot of good could come from getting some real data on the claims. And frankly, I don't mean to be flip here, but also from creating in everybody's mind the possibility that you're going to hear something in those determinations that you don't like, which I think has been and an incentive to move cases along

more quickly than perhaps they were proceeding without that incentive.

But I'm a little bit concerned that what I heard the other day, and I thank Mr. Simons and others for their candor, was that really only one of the six advertised potential bellwether actions is potentially ready anytime soon. That undercuts the practical effect and the practical benefit of this.

I'm also somewhat concerned about the fact that there's a new presiding judge with respect to these matters and that that person has yet to have a hearing with respect to the consolidated matter. And I'm both not sure how that judge would otherwise want to handle matters. And I want to be very loathe about either dictating anything in that proceeding or not understanding that once I grant relief from stay, I don't want to ungrant (sic) it. I think that doing it is going to be consequential if and when I do it, and I don't want to do it with any strings.

So at the moment, because of my uncertainty about how fast we would get to anything that looked like a helpful data point, for the moment, I'm going to deny the motion for relief from stay, but it's very much without prejudice because things may change, and it may be that it's something that will be very helpful in the future. I don't have the sense that it would be helpful now.

Turning to the disclosure statement, I want to deal sort of in tandem with the questions of whether to include charts, and if I let the debtor include charts, whether let the committee include charts, as well as the committee's request that I require that the debtor, for lack of a better word, estimate the total amount of the survivor claims. I'm going to answer both those questions in the negative.

I think that charts, while the debtor may believe that they're helpful in the context of what has been accomplished in different bankruptcy cases, I'm going to agree with the committee that I think every one of these situations is different enough, every context is different enough, that including charts -- I don't think anybody's trying to be misleading here. I just believe that it's really not terribly helpful to the otherwise uneducated reader of disclosure statements to look at a chart without understanding all the reasons why the context and many base facts might be completely different from one case to another, let alone the fact that there are other ways of resolving these kinds of claims that do not depend upon a bankruptcy case. And those results might be very different. And that's exactly something that I think a claimant is entitled to think about, if we're not in a bankruptcy, what might happen. So I think that for all those reasons, I think charts are better left out of this exercise.

And in my mind, analytically, for a similar reason,

I'm going to resist the urge to ask the debtor to, for lack of a better word, estimate or come up with a aggregate number with respect to the abuse survivor claims. I'm going to agree with the debtor that again, there are ways in which every claim is different, although I realize that when we treat these things under the post-confirmation world, we do treat them in a -- we try to routinize them in some fashion.

But having said that, these claims are unliquidated, and most of the claim forms, I'm told, don't even purport to include an amount. And I'm not sure what it would help to have the debtor take even what might be a very educated guess as to what those numbers are. I think that also would end up being more confusing than anything else, and I don't see that it really helps the process all that much to have the debtor take that position and have somebody who has a dog in that fight in terms of each of their own claims try to make sense of what that means. So I'm going to resist the urge to have the debtor estimate the claims.

With respect to the liquidation analysis and the 1129(a)(7) issues, we had an extensive discussion about that. The debtor at the moment is not providing what you would think of as a traditional liquidation analysis on the theory that really, we couldn't be liquidated outside of bankruptcy. And I think that may well be correct, but it may also be the case that under those circumstances, the debtor simply isn't a good

candidate for reorganization under Chapter 11. I'm going to agree with the committee that 1129(a)(7) is an integral part of the confirmation process. And the liquidation analysis is required in every case. And I think that I'm prepared to discuss some practical ways we deal with that, but I think the argument that we can't be liquidated overstates the proposition in a number of ways.

The legal protections that underlie that assertion by the debtor, I think, are real. There clearly are protection of religious functions and First Amendment issues that go to why we would never entertain thoroughly liquidating a debtor. But those are not protections that go to any particular asset. It's not as if state law says a judgment creditor may execute against assets, except something affiliated with a religious organization. The point is more that as you go through that liquidation, a time would come, I believe, when the liquidation would severely enough impinge upon the function and the sacred duties of a religious organization that, for public policy reasons, you wouldn't want to continue it.

Now, I think all of this in the bankruptcy context is pretty undefined, which is why I was asking the debtor as a matter of disclosure and in the disclosure statement, to articulate what is the theory that would limit the liquidation in your minds in this context. And it could be anything from well, given that we are providing the service and it's the

bishop's sacred duty to do it, given all that, it's whatever we say it is because we're the only ones who can judge at what point we're effectively not being able to perform our religious duties and our religious functions. If that were the debtor's position, they can say it, and then everybody could decide whether that's consistent with what they believe nonbankruptcy law to be and whether it's "fair and equitable". It may be that there is a way to articulate a functional agreement that at this point if we liquidate these kinds of assets at this level, at that point, we are unquestionably no longer able to perform our duties.

So I think, first of all, what we need from the debtor is just some statement of whatever they think it is that limits that in this context. And I realize that's -- I'm assuming that the fact that I haven't gotten a lot of case law about this is because I don't think this has been all that well articulated. So the debtor just has to take a position.

And I think that's going to be helpful on a disclosure basis, both to explain, if they have two liquidation analyzes, why one is perfectly persuasive and the other one isn't. And we'll come back to that in a second. I think it's also appropriate for creditors to see this because one of the things a creditor decides in voting on a plan is the embrace of the stark reality if they vote a plan down, there may be no other options and then back out in the cold, cruel world. But I

think that's something for creditors to decide.

So I think that that analysis and that articulation of the principle would be helpful not only to the Court. It would be helpful, frankly, to the creditors at disclosure statement time to decide whether this plan comports with their understanding and their sense of what's fair and equitable. And I think that's a fight we have -- we don't have to have that fight now. We have to be able to have that fight at confirmation, which is why I think it's important for the debtor to articulate it now for all those purposes.

Also, I also believe that, although I want to -- I think I'm prepared to hear some flexible approaches to how we have a liquidation analysis. I think we need one that, at least hypothetically, encompasses everything that might in some world be liquidated. And I realize that's not going to be easy. Just for my own curiosity, I went back into the docket and looked at the initial schedule A and schedule B and SOFA statements by the debtor and the various amendments. And one thing that I noticed, and I know you guys all know this better than I do, as stated and as amended from time to time, the debtor's position on the value of real property was undetermined. And it's still that, as far as I can tell.

So I want to -- in making this determination, I want to be open to ideas as to how we might come up with some numbers or otherwise express this liquidation analysis concept.

But I think we need something that goes beyond, well, we couldn't be made to do it, so therefore we're not going to give it to you. And I'm not trying to be flip because I'm going to give you a number here, and it's a little misleading because a parcel of real property doesn't mean that it's 400-square acres. It just means that for certain purposes and recording and so on, there are different parcels that are deemed to be separate entities. There are 205 parcels of real property that the debtor identifies here. None of them have a value. Again, I'm willing to be somewhat open minded about how we skin this cat, but this is something that we simply have to address.

Moving on a little bit, the request from the committee that I require the affiliates seeking a release to include financial information in the disclosure statement, I think I was a little abrupt with Mr. Prol because I think we were really more in agreement than I was letting on. I agree with him that -- well, I don't know that we want to hold up the disclosure statement for this information. I agree with him it's important to anybody voting on this plan and deciding whether to give a release or not. I think that analysis should be informed by some understanding of what the assets are and what, for lack of a better word, the net worth is of any party seeking such a release.

On that matter, I'll give you a preview. I think we are likely to have a very involved discussion. If we do

approve a disclosure statement here, we're likely to have a very involved discussion of the timing, which would include discovery and which would include voting. I don't think this -- if I approve a disclosure statement in the next week or so, I don't think that means we have to have votes in twenty-eight or thirty-five days.

I think we can -- with your guys indulgence and your intelligent thinking about this, I think we can stage this in a way that will make sense and will make the discovery that I think is fairly important here meaningful to the process and to the people voting on the plan. So I agree with Mr. Prol that information is important. I think that all gets worked out in how we schedule the voting and how we schedule the discovery that I'm sure the committee is going to want to take of anybody seeking a release.

The last point that I had in my open list was the motion to compel further mediation, which we at least began to talk about. The place where I'm a little bit stuck here is there are clearly conflicting versions of how things were left in Judge Sontchi's view of the status. One way or the other, I'm going to want to know his views. I can literally give him a call and not get into anything that's confidential and behind the settlement mediation privilege. We could have him file a declaration that would clarify his views. We could have him appear at a hearing to clarify his views.

But before I make a ruling on that motion, I think it's a very important motion. I would want to be informed by his views. So we can talk about different ways we do that. But that's a prelude to me to making a decision on that motion.

So those are the matters that I had outstanding that I wanted to give you my thoughts on. With that, I'm prepared to resume discussion of other disclosure statement points or take a break and let Ms. Uetz and Mr. Plevin talk and get square on whatever points they want to make. So it's your guys' pleasure.

MS. UETZ: Your Honor, I have at least one follow-up question, if I may, posed to the Court, if you're willing to answer it or not. But I'd like to ask it, if I may, about your ruling so I understand something better.

THE COURT: Sure.

MS. UETZ: Thank you. And then I have one or two other things. But your ruling with respect to the charts, my question is I'm trying to understand the scope of the Court's ruling there. I understand that the charts ought not be in the disclosure statement, and so we will take them out.

THE COURT: Right. But I think --

MS. UETZ: I take that in your ruling.

THE COURT: But could that be relevant to confirmation? Sure. That answer your question?

MS. UETZ: It answers my question, Your Honor.

THE COURT: Yeah. I mean, the other side can say, well, no, it isn't. Or we took some discovery and we don't agree. Yeah, I mean, I think is that a reasonable as a confirmation issue? Sure. I mean, that's a version of fair and equitable. Right?

MS. UETZ: And Your Honor, just relatedly, related to that, then, because it is -- because it will come up at confirmation and the debtor would include, among its arguments as to why the plan is fair and reasonable, a reference to some outcomes in other cases will be part of what we argue. It won't be all of what we argue, clearly.

THE COURT: Yeah.

MS. UETZ: But it will be part of it. My question, just for clarity as we revise the disclosure statement, is may we say anything in the narrative about outcomes in other bankruptcy cases, or should we just leave that alone?

THE COURT: I would leave it alone because among other things, I'm willing to bet that if you preview that issue as a confirmation issue, there may be the world's greatest motion in lim (sic) coming from the committee. We'll see. Right. I mean, I don't want to prejudge that. If I were committee counsel, I might certainly have that in mind. So I would --

MS. UETZ: It might be the committee's worst great motion in limine. I'm just kidding.

THE COURT: You never know. You never know.

MS. UETZ: Understand.

THE COURT: I mean, I think of all of you as heroic. I know you know that so that's why. No, I --

MS. UETZ: No, I appreciate your (indiscernible) question.

THE COURT: -- I think that -- I expect the question. I don't think it's irrelevant at confirmation, but the committee may have a position why, as presented, it's should be limited in some way, or we shouldn't go there for some other reason I'm not articulating now but they will. Okay.

THE COURT: Okay.

THE COURT: Makes sense?

MS. UETZ: That really helps clarify for us, Your Honor --

THE COURT: I appreciate it.

MS. UETZ: -- and I appreciate that.

THE COURT: I appreciate it. Okay.

MS. UETZ: One other point I want to raise, which was left open the other day, admittedly, we have not had the further meet-and-confer with the committee, but I think this will help inform it if I ask --

THE COURT: Sure.

MS. UETZ: -- the question and depending on --

THE COURT: Sure.

MS. UETZ: -- how Your Honor responds.

THE COURT: Sure.

MS. UETZ: It has to do with the appendix versus the inserting the committee's position throughout the disclosure statement.

THE COURT: Yeah, I had an idea about that. Can I give you an idea?

MS. UETZ: Please.

THE COURT: I mean, everybody is assuming that this goes out in a hard-copy form?

MS. UETZ: I'm not.

THE COURT: Well, if it goes out, is it going to go out in an electronic form?

MS. UETZ: I would think it would go out in an electronic form --

THE COURT: Okay.

MS. UETZ: -- given the length of the document, Your Honor.

THE COURT: Well, then here's an idea. I'll be stunned if I'm the first person to think about this. Would it be possible to have, rather than have the committee put their many paragraphs disputing aspects of what the disclosure statement is saying, would it be possible simply to have a link to wherever in the committee discussion at that point is so somebody can literally click a link and go right to what the committee says about this. Is that possible?

MS. UETZ: Your Honor, if I may, I'd like to discuss that with the committee. It's an interesting concept.

THE COURT: Okay. Mr. Moore wants to tell me something about that or something else.

MR. MOORE: Your Honor, from a technical standpoint, it's certainly possible to do that inside of a PDF document.

THE COURT: Yeah.

MR. MOORE: You can bookmark. You can link.

THE COURT: Right.

MR. MOORE: You can hyperlink --

THE COURT: Right.

MR. MOORE: -- inside of the document itself.

THE COURT: Right. I mean, the committee -- I mean, the committee has made the point that it's going to be -- this is going to be a lot of stuff. It's going to be cumbersome. I think they're right about that. If there's a way to make this less cumbersome --

MR. MOORE: They don't the page turning.

THE COURT: Sorry.

MR. MOORE: They don't want the page turning, to say, okay, I'm on page 7. I need to go to page 212.

THE COURT: Yeah.

MR. MOORE: But if you can shortcut that somehow.

THE COURT: Well, I think that's right. I mean, I think potentially that will cut down the number of people who

make the effort to go see what the committee says about something. If there is a way through a hyperlink to do that efficiently so you just click and now here's the committee's position, maybe that helps solve that problem. If you guys want to talk about that, I'm open to some clever thinking about that. I mean, I cannot be the cleverest person about that, I assure you. It's just an idea.

MS. UETZ: I think, Your Honor, for the debtor's perspective, and just to make really clear, we hadn't expressed this, but yeah, we did assume and plan that we --

THE COURT: Yeah.

MS. UETZ: -- would be sending it electronically.

THE COURT: Sure. Sure.

MS. UETZ: So we will absolutely discuss that --

THE COURT: Okay. All right.

MS. UETZ: -- with the committee, and maybe that will --

THE COURT: Okay.

MS. UETZ: -- help to resolve that issue.

THE COURT: Okay. Great.

MR. PROL: Okay. Judge, Jeff Prol on behalf of the committee. I think we just want to caucus amongst ourselves, and talk to our client.

THE COURT: Yeah. That's fine. And by the way, I mean, I'm very sympathetic to what you're saying. So this is

just --

MR. PROL: Okay.

THE COURT: -- an idea, Mr. Prol.

MR. PROL: Yeah.

THE COURT: Okay.

MR. PROL: Thank you. I appreciate it. I guess the first thing that comes to mind is, look, the disclosure statement will be going not only to plaintiffs' lawyers, but plaintiffs are going to want to read this themselves.

THE COURT: Absolutely. They should.

MR. PROL: And a lot of them are not terribly sophisticated. And so getting something electronically with a link might present a little bit of problem. But again, it's just something that I want to talk through.

THE COURT: Okay. I appreciate it.

MR. PROL: Okay. Okay.

THE COURT: Thank you very much.

MR. PROL: Thank you.

THE COURT: Okay. Ms. Uetz, did you have something else before we --

MS. UETZ: On the subject of mediation, Your Honor --

THE COURT: Yes.

MS. UETZ: -- I'm going to make a comment and then ask my question.

THE COURT: Sure.

MS. UETZ: Because I was struck by your focus on getting Judge Sontchi's view, presumably because it is the committee which has objected. And Judge Sontchi was responsible for the committee mediation sessions that occurred.

THE COURT: Yes.

MS. UETZ: My suggestion, if I may, Your Honor, is I think that it would be useful to get all three mediators' views. I don't know to the extent to which you have any of their views. And so I think for this Court to be best informed -- and frankly, you getting the views of the three mediators I think would better inform Your Honor's decision on the global mediation motion more than I ever could. And so --

THE COURT: Well, it might. It might. I mean, I was focusing -- as you're commenting, I was focusing on what I was told, which is two significantly different versions of Judge Sontchi's commentary when the mediation suspended, for lack of a better word. Okay.

MS. UETZ: And we use the word "paused", I think. Yeah.

THE COURT: Yeah, I know. I know.

MS. UETZ: So if I may be so bold, I would really urge the Court to get the input of all three mediators into the mediation process. Frankly, they may recommend something I haven't, and it may be better. I don't know, Your Honor.

THE COURT: Okay.

MS. UETZ: We really are just pushing to move that forward. And in that vein, you said, how can you be informed of their views?

THE COURT: Yeah.

MS. UETZ: For my part, Your Honor, for the debtor, I believe that the mediators would respect, of course, the mediation privilege. While not informing you as to the substance of offers --

THE COURT: Yeah.

MS. UETZ: -- and such, I think they could absolutely talk with you about the process. And for the debtor's --

THE COURT: And that's all I'm suggesting. That's all I'm suggesting.

MS. UETZ: For the debtor's part, I actually think that that conversation would be better had between you and the mediators without the influence of counsel so --

THE COURT: Yeah. And I believe that some of my colleagues have agreed with that position and have actually had those conversations. So I don't think I would be the first person to do this. But also --

MS. UETZ: You would not, in our observation, Your Honor --

THE COURT: Yeah. Okay. But I'm --

MS. UETZ: -- in review other matters.

THE COURT: Right. I'm happy to hear from the

insurers.

MS. UETZ: And the debtor would be very supportive of that.

THE COURT: Okay. I'm happy to hear from the committee or the insurers, but I think, at the end of the day, I have the ability to make a decision if a phone call is just the best way to pursue this. If people want to react to that now, that's fine. I sprang it on you. If you want to talk about it, that's fine too, and we can take this up soon. Or we can take it up after a break, if we're going to take a break for Mr. Plevin and Ms. Uetz to talk about the plan confirmation insurance issue.

MR. PROL: Your Honor, Jeff Prol on behalf of the committee. Your Honor, once we get through the preliminaries, I think a break would be very helpful.

THE COURT: Yeah.

MR. PROL: Not only so that they can confer, but I'd also like to talk to the (indiscernible) team and in order to be able to react to this (indiscernible).

THE COURT: Okay. Mr. Prol, I'm losing you a little bit. I don't know if you're close to the mic.

MR. PROL: I apologize. I have problems with my mic on this computer. Is that better?

THE COURT: It's better. Yes. Thank you.

MR. PROL: Yeah. Okay. Thank you.

THE COURT: I'm sorry. Did you want to -- did you have something else you want to tell me?

MR. PROL: No. No, Your Honor. I'll repeat what I said. And that is --

THE COURT: Which is you want a break after this would be helpful?

MR. PROL: Yes. Thank you.

THE COURT: Gotcha. Okay. Thank you.

All right. Anybody else want to --

MR. SCHIAVONI: Your Honor.

THE COURT: Yes.

MR. SCHIAVONI: Yes. If I could, it's Tanc Schiavoni, Your Honor.

THE COURT: You bet. Sure. Nice to see you.

MR. SCHIAVONI: For Century. I'm sorry. I had a little problem with the video at the beginning.

THE COURT: No problem.

MR. SCHIAVONI: I honestly don't have a clue what Mr. Sontchi wants -- Judge Sontchi wants to talk about because we weren't really part -- like, we were excluded from his discussions between the debtor and the committee. So I don't know if we could -- I would suggest that we at least be given an opportunity to confer ourselves with him to find out what his thoughts are in the context of the mediation. I don't know how you speaking with the mediators in a sense doesn't end up

violating the sanctity of sort of what's been mediating. I just don't see it.

It's like, and I know this is an issue of different judges have different views, and there are some --

THE COURT: Yeah.

MR. SCHIAVONI: -- who just feel it just really shouldn't speak to them. And --

THE COURT: Yeah.

MR. SCHIAVONI: -- I do, Judge, I want to be clear, I have great trust in your judgment and discretion, even if you end up disagreeing with me on this. Okay.

THE COURT: Thank you.

MR. SCHIAVONI: So I mean, just to be clear about that, but --

THE COURT: No, I --

MR. SCHIAVONI: -- it might actually just be helpful if we just had a day to talk to him first, though, because we might at least be able to narrow the issues because I'm not sure --

THE COURT: Okay.

MR. SCHIAVONI: -- what he thinks the issue is, so to speak.

THE COURT: Well, can I respond to that? By the way, thank you for saying that. It's an important point. Even if I end up disagreeing with you, I respect the point enormously,

and you even more.

I mean, I'm reacting to the fact that I have a motion to compel folks back to mediation. It seems to be focused on the mediation between the debtor and the committee on the theory that, at least for now, the debtor and the insurance companies have hit their stagnarian (phonetic) angle of repose. And we have a plan that reflects that. Also I'm further told -- I just have different versions of what the status was when the matter when the mediation suspended. And one side's telling me that the mediator basically said they were at an impasse, and the other side said, no, we're only pausing.

So I'm just trying to follow up on that, most immediately, and get a sense of if the mediator has a position about what the status was when things ended. Without knowing who said what to whom, I think he can tell me what he thought the status was when things ended, and that might be helpful to me. I'm not sure I need much more than that.

But I'm open to -- if people think it's a better process for Judge Sontchi or others to be here at a hearing and tell us all that or to file a declaration, I'm willing to consider different ways of thinking about it. I think there are reasons why a phone call might be a little better, frankly, from a candor standpoint. But I wanted to throw that idea out there, and you can all give me your thoughts about it.

And Mr. Schiavoni, as always, thank you for your

thoughts.

Do we have anything else that we would want to get into before I take a little break and let people huddle about different things?

MS. UETZ: Not from the debtor's perspective, Your Honor. Thank you.

THE COURT: Okay. Anybody else?

How long do you want to take?

MS. UETZ: I would suggest fifteen or thirty minutes. And I'll be informed --

THE COURT: Okay.

MS. UETZ: -- by Mr. Plevin if he thinks fifteen --

THE COURT: Okay. No --

MS. UETZ: -- or thirty minutes is best.

THE COURT: -- one thing I -- one thing I can tell you is we have a social engagement at the court today. And I will be -- I'm going to be breaking at about ten to 12 for that and back at about probably 1:15-ish. And I'm happy to go into the afternoon. I mean, we'll get as much done today as we can get done. Okay. But I know that we're going to -- we're going to need to recess for a while.

So if that helps you think through when you want to come back, great. If it doesn't, that's fine. But at about ten to 12, we'll be breaking one way or the other. Okay.

MS. UETZ: Thank you, Your Honor.

MR. PLEVIN: Your Honor, this is Mark Plevin. Why don't we say about twenty minutes?

THE COURT: All right. That gets us to about ten after; is that okay?

MR. PLEVIN: Yeah.

MS. UETZ: Great, Your Honor.

THE COURT: Okay. Thank you very much. Thanks to all of you. See you in about twenty. Thank you.

MS. UETZ: Your Honor, just a technical question for Ms. Fan. If we exit --

THE COURT: Yes.

MS. UETZ: -- and rejoin, does that work, or do we need to stay on? I just, technically, it may help.

THE COURT: Go ahead, Mr. Fan.

THE CLERK: Yes, Your Honor. Parties can exit. I will keep the Zoom open, and they can rejoin as

THE COURT: Okay.

THE CLERK: -- they need to, Your Honor.

THE COURT: All right.

MS. UETZ: Thank you.

THE COURT: See you guys -- see you guys at about ten after.

MS. UETZ: Appreciate it. Thank you.

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

(Recess from 10:31 a.m., until 10:31 a.m.)

THE CLERK: Please come back to attention. The court is in session.

THE COURT: Okay. We're back.

Ms. Uetz, I think the ball's back in your court. Where do you want to start?

MS. UETZ: Yes, Your Honor. Thank you, Your Honor. I would ask the Court to hear Mr. Plevin on the subject of the assignment and the --

THE COURT: Okay.

MS. UETZ: -- issue that you described as one of the two issues, whether there is a meeting of the minds as between the debtor and the committee.

THE COURT: Okay.

MS. UETZ: Separate from that, I've given you the debtor's view with respect to the motion to compel mediation and --

THE COURT: Yeah.

MS. UETZ: -- that the debtor is absolutely fine and actually thinks it would be a good thing for this Court to get the input of all three mediators with respect to process.

THE COURT: Okay.

MS. UETZ: And not only do we not have any objection to that, I actually think it would be better than the parties trying to influence that discussion.

THE COURT: Well, can I break that in pieces then?

MS. UETZ: Sure.

THE COURT: If Mr. Schiavoni wants to pick up the phone and call a mediator and ask the same question I would, do you have a problem with that?

MS. UETZ: No, Your Honor. I don't control that, and --

THE COURT: I don't either. Okay.

MS. UETZ: -- I don't purport to.

THE COURT: I don't either. Okay. Okay.

MR. SCHIAVONI: Judge, if I could, just, like, I personally thought the selection of the caption for the motion was not perfectly worded. Okay. I personally never viewed the mediation as ending or that there'd be need to compel a mediation. I really saw what the debtor was doing was suggesting let's get all together in February. And I will call Judge Sontchi, if that's acceptable to everyone, but I don't think --

THE COURT: I have no problem with it.

MR. SCHIAVONI: I don't think anybody really -- at least from our perspective at Pacific, we didn't view anyone as suggesting the mediation was over. So that's like, it'd be the first case I ever had where we weren't talking going right into the confirmation hearing.

THE COURT: Right. Understood. Okay. Thanks.

MS. UETZ: And so Your Honor, with that, after those

two issues, I think ball is in my court to convene, meet-and-confer, productive meeting with my friends who are counsel for the committee --

THE COURT: Right.

MS. UETZ: -- and see what progress we can make. In terms of timing, I actually would want to have that discussion and maybe return to the Court with a suggestion on timing because I'm not certain how much time we will need to turn the next and hopefully final amendment. So --

THE COURT: Okay.

MS. UETZ: -- I'll look for direction, but that's what I was thinking about timing.

THE COURT: I appreciate it, but I want to make sure that I'm not cutting you off if there were other issues that you thought we needed to get clarity on re objections to the disclosure statement. Now is the time. Okay.

MS. UETZ: Understood, Your Honor.

THE COURT: Now, maybe you're in the happy place where you think where we've really resolved all the things that you need a judge for. That's fine.

MS. UETZ: Not yet happy, Your Honor. I will be happy when we have a plan confirmed. But for purposes of today --

THE COURT: Well, how about content? Okay. Didn't you say content for today? Okay. All right.

MS. UETZ: Content for today. And I think that you've

given us things that will really help inform our discussion with the committee counsel --

THE COURT: Okay.

MS. UETZ: -- going forward and so --

THE COURT: All right. Well, why don't I -- so I should hear from Mr. Plevin, and we'll see where that leaves us?

MS. UETZ: Yes.

THE COURT: Is that fair? Okay.

All right. Mr. Plevin.

MR. PLEVIN: Thank you, Your Honor. I started off by saying I was confused. We had this morning, afternoon doubleheader last week in two cities, and there were a lot of conversations. And I wasn't a hundred percent sure which one --

THE COURT: Sure.

MR. PLEVIN: -- I was being asked to talk about. But just to clarify, there is no daylight between the debtor and the insurers with respect to the terms of the assignment. We are in alignment that the debtor is assigning the rights they have to the trust as described in the plan and the disclosure statement. And as Your Honor recognized last week and at the beginning of the hearing today, the legal effect of confirmation may have a role in how those rights are applied later. But for purposes of disclosure, there is no

disagreement between the debtor and the committee -- the debtor and the insurers rather.

THE COURT: Can I pursue that for just a second? I mean, I certainly take your point that this is unknowable in the sense that a lot of what is being described here is going to depend on some conduct that is going to occur, if at all, after we're blessed with an effective date here. Right. So if there are these -- I mean, putting aside your arguments about the effect of confirmation, if there are these claims, they're not even -- the predicate for them won't even occur until some later date. So to describe them with any kind of specificity beyond they may occur if they do X is something that we really can't do.

But I guess, where I really want to push back a little bit is if the debtor says I'm transferring all my rights. And confirmation will result in the creation of a trust. The debtor's going to put some money in the pot. At least one affiliate is going to do the same thing. Some insurance companies may settle, although I don't have any sense of the likelihood of that at the moment. And at the end of the day, then you're left with your rights against the insurance company.

If the debtor says either, well, I don't think that confirmation affects those rights and a discharge affects those rights or I'm not sure but I'm giving you everything I have

otherwise, and the insurance company's position is the discharge terminates some of those rights, I'm kind of at a loss to how to describe that to somebody trying to vote on a plan.

MR. PLEVIN: Well, it's hard to -- it's hard to describe because, as you pointed out, the facts haven't arisen yet.

THE COURT: So that part, I give you. But you're taking the position that, look, once this debtor is discharged, those claims are gone as a matter of law. The debtor either agrees with that or doesn't know. And I think that, for disclosure purposes, I'm not entirely comfortable with that. And I'm certainly going to let the committee weigh in on this. So if you can help me with that piece of it, I'd be grateful.

MR. PLEVIN: Well, I think, Your Honor, at the hearing last week, there was reference. I don't think this exact phrase was used, but it was described as essentially being a sort of quitclaim deed that the debtor, as I understand it, hasn't necessarily gone through an analysis of the effect of the discharge on these rights because once the trust is -- once the effective date occurs and the trust has the rights, it's not the debtor's problem. And so I don't know that the debtor has anything more that they could disclose on that point.

THE COURT: Well, I guess I'll come at it from a very slightly different angle. If, for disclosure statement

purposes, what a creditor is looking at is look, there's no other plan here. And I'm not sure if in reality there ever would be one. You guys know better than me whether committees have ever really robustly put together a plan and a religious case or not and if they have, whether they've ever thought they'd get it confirmed.

But if the decision is we either take this plan with risks that the debtor either can't or won't identify but risks that the insurance company believes are quite real, or we don't take this and at least in that alternative universe, we certainly have those claims, I mean, I think that's just, that that's not a choice -- well, I'm uncomfortable with the way that choice gets articulated and lined up. That's what I'm worried about.

I'm not trying to begrudge you your position that confirmation would have a certain effect. But I mean, I don't know if we can say the insurance companies believe this. It may well be litigated after this is all said and done. If somebody thinks I can make a determination about that and I can do it, I don't know, as part of this process, before we get to confirmation, or at confirmation, maybe that's the way to think about it.

But let me pause for a moment and hear from the committee because I have a feeling they're going to tell me this is a disclosure statement issue.

MR. PLEVIN: If I could just make one point, Your Honor. I think it's an --

THE COURT: Yeah.

MR. PLEVIN: -- information issue. What you're basically saying is that the parties should consider putting in legal briefs about the effect of the discharge on these rights, and that's not a disclosure statement issue. That's a statement -- that's an issue for confirmation, where the committee says, incorrectly, in my view, that the plan somehow violates California law. And if that's their view, then that's a confirmation objection --

THE COURT: Well --

MR. PLEVIN: -- (indiscernible) 1129(a) (indiscernible)

THE COURT: No, I --

MR. PLEVIN: -- (indiscernible) file a brief on that.

THE COURT: I hear you. I mean, another way to articulate it would be in light of the plan and the confirmation that the plan wishes to have happen, there is a -- from the insurance company's perspective, the rights will be gone. There's a significant risk. We really can't predict until a judge makes a decision. At that point, somebody could just say, well, I don't want to vote for this plan. I don't want any part of that risk. I'm not voting for this plan. And I'm not sure -- I don't know if that's a fair choice or not.

So let me hear from the committee about how thoroughly I've misstated what they're worried about.

MR. BAIR: Thank you, Your Honor. This is Jesse Bair on behalf of the committee.

THE COURT: Yeah.

MR. BAIR: Setting aside the piece of this about whether the plan violates California law, the committee continues to believe that there is a very real disclosure statement issue here. And it sounds like what we're hearing from the debtor and the insurance companies is that they agree on the words on the page, but they don't agree on the legal impact that those words will have on the insurance rights post-confirmation.

And why we think that's significant is what a survivor is going to see in this disclosure statement are representations by the debtor that all of the insurance claims are being transferred to the survivors post-confirmation. But if it's the case, as the insurance companies have said in their briefing and appear to be saying today, that their view is that by confirmation of the plan, an entire class of claims, bad faith, extra contractual claims are being extinguished, that needs to be described clearly because there's a difference there between the survivors' rights --

THE COURT: Okay.

MR. BAIR: -- in state court and what their rights

will be post-confirmation --

THE COURT: Yeah. So can I --

MR. BAIR: -- (indiscernible).

THE COURT: I hear you. Can I play it back and see if I have it right?

MR. BAIR: Sure.

THE COURT: With all that, would it be sufficient in your mind -- and if you don't want to answer it now, you need to talk to your cocounsel, that's okay -- would it be sufficient for a disclosure statement to say the debtor's position is they're transferring all their rights to the abuse survivors through the plan. They are not taking a -- and I'll not put words in Ms. Uetz's mouth. They're not taking -- they're not warning that that necessarily means the rights survive. They're just, they're doing what trustees do, which is whatever rights I have, you can have.

On the other hand, the insurance company's position is that once that's accomplished through confirmation, the debtor is discharged, those rights are, as a matter of law, gone. It is unclear what the answer is, and it will be unclear until the judge makes a ruling on this at confirmation because I'm just playing it out now in this fashion. It is therefore entirely uncertain, as we sit here today, whether your rights with respect to certain claims against insurance companies are preserved or not preserved through confirmation of this plan.

I mean, would that be -- if that were the disclosure, would that be disclosure sufficient for you, or would that not be?

MR. BAIR: I think we would want to talk. As the committee, we want to confer on that.

THE COURT: Yeah.

MR. BAIR: Just being presented with that, that seems much clearer to me --

THE COURT: Well, it's also very simplistic.

MR. BAIR: -- of what's going on here.

THE COURT: It's incredibly simplistic because I don't know these issues the way you guys do. But my question, Mr. Bair, is this. I think there's two levels to this. One is, is there enough information is one. And the second is, is this so uncertain that who should vote on this. We don't know what we're talking about. I mean, because I think it would be Mr. Prol's and Mr. Weisenberg's position, perhaps, that if this is that uncertain, why vote on it? Why solicit on something. that's that undefined?

MR. BAIR: I agree, Your Honor.

THE COURT: And so I'm trying to -- I'm trying to get to the answer to both of those questions.

MR. BAIR: Yeah. We do think there's a fundamental issue with the fact that what appears to have happened here is the debtor and the carriers reached what they represent to be a consensual agreement --

THE COURT: Right.

MR. BAIR: -- when, in fact, the debtor is representing that all of the insurance rights are being transferred. And it appears that the insurers interpret that same agreement to mean bad faith claims are being extinguished --

THE COURT: Right.

MR. BAIR: -- as a matter of law upon confirmation of the plan and so --

THE COURT: Well, upon discharge, really. Yeah. I gotcha. Yeah.

MR. BAIR: Yeah. And so in order to be coproponents of the plan, I think they do need to come to a landing spot on exactly how these extra contractual bad faith claims are being handled and explain that clearly in the plan one way or the other.

THE COURT: Well, if they don't and if we are left with simply a very sobering, perhaps, description of this, that the debtor's position is we have no reason not to give you anything we have, and we'll do it. And the insurance company's position is that's fine, but the discharge means something. Means that the claims are gone. The debtor is not taking a position about that because if they're acting like a trustee, they don't have to. And I'm not trying to be cynical. They don't have to. I mean, they're putting everything in the pot,

whatever it is. The effect of putting it in the pot and having the pot be managed through confirmation is the issue.

So on the one hand, can you make enough disclosure about that that people know what the risk is, and two, at some point, are you describing a risk that is just a meaningless choice?

MR. BAIR: I do think that, Your Honor, I do think the carriers and the debtor should come to an agreement on this. I mean, if you are -- I think they've both made representations that the insurance assignment is a fundamental component of this plan. And so --

THE COURT: Right.

MR. BAIR: -- if survivors are going to vote on it, they really should be speaking with one voice about if bad faith survive or don't survive confirmation.

THE COURT: I don't agree that in a perfect world that had happened. I have a -- I have a feeling it might not -- we may not be able to do that in the way you would like.

So before I hear from the committee, Ms. Uetz, you want to clarify something for me?

MS. UETZ: Yes. Your Honor, I have a couple of comments to this.

THE COURT: Yeah.

MS. UETZ: Just one, to be clear, the insurers are not coproponents --

THE COURT: Right.

MS. UETZ: -- of this plan. The debtor --

THE COURT: Yeah.

MS. UETZ: -- has proposed the plan. There --

THE COURT: Right.

MS. UETZ: -- is no coproponent.

THE COURT: Okay.

MS. UETZ: Secondly, and I'm going to respond to Your Honor's suggestion, but I want to just make one or two points before I do.

THE COURT: Okay.

MS. UETZ: Secondly, we're not aware of any requirement that a debtor's disclosure statement have to describe other parties' legal positions on given issues, especially where the debtor is the sole proponent of the plan. Implicit in your suggestion, Your Honor, and I think what the debtor would be prepared to do is to identify if this Court were to require it, a risk associated with this. But to start to try to articulate the insurers' view, not a plan proponent, not the committee, but the insurers' view of a legal issue and how that may play out after confirmation, in our view, goes a step too far at this stage for disclosure purposes.

I'll make another note, Your Honor, and that is that the debtor is assigning its rights. It's not assigning claims. And I think, Your Honor, while stated it, we're not repping and

warranting. You had that discussion with Ms. Ridley last week on the record. We're not repping and warranting that.

So we are in agreement with the insurers that we are assigning what we are assigning. And if the Court requires us to add a sentence or two that says there's some risk associated with how that may play out post-confirmation, depending on how a court may decide a legal issue, that's one thing to identify that as a risk. There's a risk of that with respect to a lot of different parts of any plan of reorganization, how it may later be challenged, defended, interpreted, et cetera. And I just think we, from the debtor's perspective, think it goes quite a step too far to try to insert into the disclosure statement the legal arguments concerning this issue or other issues.

THE COURT: Well, at the moment, I'm not agreeing with you in the following way. Okay. People reading this plan are being told that there's a certain amount of money in a trust for you, and we're transferring our rights. And if, but for this plan, those rights would unquestionably include things like bad faith claims that could be pursued against insurance companies, if there turn out to be any, but the plan, at least by the logic of a significant player here, it's the very act of confirmation that's going to radically affect those rights.

I think that's -- I mean, what legal position somebody may take down the line once the plan is confirmed, sure.

There's too many of those to try to game-plan every one of them. But where the argument is, it's confirmation itself that does this. In my view, that's just a different layer of complexity and risk. I mean, it's a risk that the plan itself is creating. That's what worries me about this.

MS. UETZ: Your Honor, I'm going to ask, if I may, Ms. Ridley to weigh in. But I will leave you with this for my part. I think the debtor can well identify the risk for a creditor to consider voting without going down the path of articulating or attempting to articulate the arguments of multiple insurers on that issue, as well as the argument of the committee on that issue.

In other words, I think there's a simpler way for the debtor to identify this risk. And maybe I'm reading too much into what you suggested, but I strongly believe that trying to have me articulate the legal arguments and objections of this group of insurers as well as the committee, whereas instead of doing that, we can identify this as a risk. I think there's a difference between those two things.

THE COURT: Okay.

MS. UETZ: And I think identifying it as a risk is really what is important for creditors.

THE COURT: Well, it may be that this is the one place in the plan where we should have three modules. Module 1 is what the debtor thinks about this. And this is just an idea,

so nobody freak out yet. Okay. Module 1 is the debtor believes X. Module 2 is the insurance companies believe Y. Module 3 is the committee is very worried about Z. And let me just -- somebody had their hand up. Was it Mr. Bair, maybe?

MR. BAIR: Yes, Your Honor. But --

MS. UETZ: If -- I'm sorry. Go ahead.

MR. BAIR: Oh, Your Honor, I did have one comment in response to Mr. Uetz's argument, but I --

THE COURT: Yeah.

MR. BAIR: -- can speak after the Court has finished (indiscernible).

THE COURT: Well, I want to -- I certainly wanted to hear from your colleagues. I think Mr. Weisenberg and Mr. Prol have been very patient in having me say things that they're going to say better than I did. So I don't know which of you is going to take the lead on this.

MR. BAIR: Sure, sure. I just wanted to respond on one point, Your Honor. And then if --

THE COURT: Okay.

MR. BAIR: -- any of the other committee professionals wish to speak --

THE COURT: Yeah.

MR. BAIR: -- of course, they should speak up as well.

But just in response to Ms. Uetz's comment about sort of the uncertainty and difficult nature of --

THE COURT: Yeah.

MR. BAIR: -- listing other parties' positions, I mean, the whole reason we're having this discussion is because the carriers have stated their position. And I'm just looking at certain insurers' opposition to --

THE COURT: Yeah.

MR. BAIR: -- the committee's insurance derivative standing motion, they say, any confirmed plan will provide debtor with a discharge, and debtor then will not be at any future risk of having to pay in excess of limits verdict. And then they explain that that would, in effect, extinguish any bad faith claim. So it's not --

THE COURT: Right.

MR. BAIR: -- there's no mystery here about what their position is. Their position has been stated, that they believe no bad faith claims will survive confirmation of this plan.

And we agree with Your Honor's concern here. We think this is fundamentally different than the concept of maybe there's ultimately no coverage here. We think it's different to say --

THE COURT: Yeah.

MR. BAIR: -- maybe ultimately there is no coverage versus this plan --

THE COURT: Right.

MR. BAIR: -- by its structure eliminates

THE COURT: Right.

MR. BAIR: -- an entire class of claims so --

THE COURT: To me, that -- to me, I mean, look, there are a lot of plans that say, we got a piece of litigation. We think it's great. We're going to give it to the liquidating trustee. They'll pursue it. But hey, it's litigation. Who the hell knows?

MR. BAIR: Yeah.

THE COURT: To me, that's different from somebody says confirming this plan is going to change everybody's rights. Those are apples and oranges in my view. That's why I'm pausing on this as long as I am.

MR. BAIR: Agreed, Your Honor. And two other things that that I have. The other thing, we think this case is a bit unique, and this is in response to the debtor's comment about putting in other parties' positions. There's been representations made in the briefing and in court about how the insurance assignment is the cornerstone of this plan and how this plan is so beneficial because the insurance companies don't object.

And so if it turns out that the insurers and the debtor have a different interpretation of what they agreed to, and now all of a sudden there's not a meeting of the minds, it could disrupt this plan. And so we just want to get to the bottom of what people's --

THE COURT: Yeah.

MR. BAIR: -- what their interpretation of the plan is --

THE COURT: Okay.

MR. BAIR: -- so survivors can understand that and vote.

THE COURT: Okay. All right.

MR. BAIR: And lastly, Your Honor, we did raise a third-party-release issue at the last hearing that I don't know if we got to the bottom of. The committee does still believe that under California law, the Hand decision, 1994 court of appeals decision, survivors have direct claims once they become judgment creditors. If an insurance company in bad faith refuses to pay a final judgment, we do think section 5.14 of this plan, as it's currently drafted releases that claim. It says there's no -- in our view, it says there's no exposure in excess of the state court abuse judgment.

That would release any extra contractual claims. And we do think that that's a Purdue issue. That's a nonconsensual third-party release in our view. And we continue to have that objection to the disclosure statement at this point.

THE COURT: Okay. Mr. Moore, you want to have a quick word before I go back to the committee?

MR. MOORE: Thank you, Your Honor. Mark Moore for the Roman Catholic Bishop of Oakland.

Your Honor, this is the issue that we talked about where I believe the language is "based on the abuse claim".

THE COURT: Yeah.

MR. MOORE: And it's in two different places.

THE COURT: Yeah.

MR. MOORE: And we discussed talking with the committee about whether we --

THE COURT: I thought so.

MR. MOORE: -- I think the Court used the -- yeah, the Court used the language --

THE COURT: Yeah.

MR. BAIR: -- maybe "concerning the abuse claim", or something along those lines, maybe an alternate formulation.

THE COURT: Uh-huh. Uh-huh.

MR. MOORE: -- but I don't think that there's any dispute as between us and the insurers in any way that that particular language, by preventing double-dipping or double recovery from the trust and the insurer --

THE COURT: Yeah.

MR. MOORE: -- on the same claim --

THE COURT: Yeah.

MR. MOORE: -- has any third-party impact as far as claims go.

THE COURT: Well, and I think you can work that out. I'm highly confident. Okay.

MR. MOORE: Understood.

MR. BAIR: Your Honor.

THE COURT: Mr. Bair, look, look, we've got ten minutes. I want to hear from the committee about the disclosure aspects of it from your other professionals, if they have something to say. So just hold on one second.

Mr. Weisenberg, from a disclosure statement standpoint, where are we with this discussion?

MR. WEISENBERG: Your Honor, I think Mr. Bair was going to make the point, and it's an important one --

THE COURT: Yeah.

MR. WEISENBERG: -- that that I don't think Mr. Moore's point was on all -- was responding to the point we're trying to make, which is there is a gating issue that this Court needs to address, which is, frankly, the legality of the plan because we believe that there are provisions of the plan that, on their face, violate California law. And so the plan could not be confirmed.

And so I turn over the mic to Mr. Bair to see if he just wanted to add more to that point.

MR. BAIR: Oh, Your Honor, actually the point I did want to raise is in response to Mr. Moore, I would be interested in hearing from the insurance companies if they do interpret section 5.14 the same way the debtor does. If it's true that they have no objection to a survivor recovering their

state court abuse judgment and any additional extra contractual judgment that they may obtain against the insurance companies, that may change things. But I do think it's material to understand if they view section 5.14 the same as the debtor or if they view it differently.

THE COURT: Okay. Mr. Plevin, I think that is an invitation to you.

MR. PLEVIN: Yes. So Your Honor, with respect to 5.1.4, or 5.14, we're prepared to talk about that with the debtor and the committee. Not, I think, on the record, but --

THE COURT: Okay.

MR. PLEVIN: -- to talk about that because we've read the Hand case, and I don't disagree with Mr. Bair that that case is different in that it does appear to give claimants direct rights. And that's why it's also misleading to otherwise, putting that case to the side talk about survivors' rights because survivors have no rights under California law with respect to the other bad faith issues that the committee is raising. Those are rights that belong to the debtor.

And this is part of the problem where Mr. Bair was reading from a brief that we filed. And if we're going to try to disclose a lot of the nuances and complexities of this, we have to insert briefs into the disclosure statement explaining what California case law says, explaining what the effect of the discharge under Chapter 11 is, and so on. And it becomes a

legal brief. These are issues that are confirmation issues as to whether or not there are rights. Whether there's a violation of those rights by virtue of the plan.

If anything, I think the much more general kind of statement that Ms. Uetz was suggesting is the appropriate way to go because otherwise the complexities are just going to confuse people because unless they're lawyers, and bankruptcy lawyers and coverage lawyers at that, it's going to -- it's going to go right over their heads. And so I think we should avoid putting legal arguments here on the issue of 5.14. We're prepared to talk with the debtor and the committee about that issue.

THE COURT: All right. Let's reserve 5.14.

And let me turn to anybody else, and I'm really, I guess, leaning toward Mr. Weisenberg here. To what extent, put putting aside the issue that you can envision this disagreement about what rights exist pre and post-confirmation and you could argue about that at confirmation as a legal -- as a disclosure statement question, comment on whether a disclosure statement that says you're going to get all these wonderful things, but is it -- but as one possible effect of confirmation, a lot of them may be gone.

I mean, to what extent is that a -- what are we asking people to vote on, if that's the -- if that's the disclosure? Do you want to give me any thoughts on that?

MR. WEISENBERG: I think Your Honor is hitting the nail on the head, which is you can't ask someone to vote on something that's amorphous. Okay. I appreciate the distinction you're drawing between a trustee who says, I'm going to assign this litigation for whatever it's worth, versus --

THE COURT: Yeah.

MR. WEISENBERG: -- what may be a fundamental disagreement between the parties on what they're actually assigning. And we think that goes far beyond a disclosure issue that goes to the bedrock cornerstone of this plan. I mean, don't forget, Your Honor, this is not a throw in. Right. This is a cornerstone of the consideration that the debtor is supposedly assigning to the trust. Right. I mean, in numerous pages, the disclosure statement talks about the value of the insurance and why that's meaningful. And yet, on day one of if this plan were confirmed, the entirety of that value would be eviscerated. That goes far beyond disclosure.

MR. PLEVIN: Your Honor --

THE COURT: Well, I mean, would it really be totally eviscerated, or there's something that if there's some bad conduct in the future, you wouldn't be able to realize on that? I mean, there is a distinction, right?

MR. WEISENBERG: There's a distinction. But I also think, Your Honor, it depends on how much value you put on what

may be extra contractual damages and whatnot. And that could be meaningful. And that's maybe a drastic understatement.

THE COURT: All right. Why don't I hear from Ms. --

MR. SCHIAVONI: Your Honor, if I may be heard? Sorry.

THE COURT: Well, before I hear from anybody else, I've literally got to stop this in about five minutes. So I don't know if we're going to wrap this up. You guys want to come back this afternoon? And I mean, would it be helpful to have people talk over the next hour or hour and a half and reconvene, or we're going to reconvene some other day? What's your pleasure?

MS. UETZ: Your Honor, from my perspective, I doubt that convening on this issue will be useful because we believe --

THE COURT: Today.

MS. UETZ: -- that the committee wants to block approval of this disclosure statement. And this is just one that we're going to have to present to Your Honor and have Your Honor make a ruling. I'm sorry to say that about this issue, but I believe that we're not going to make progress on this one issue without some further discussion and direction from Your Honor.

THE COURT: All right. Ms. Ridley, anything you want to tell me?

MS. RIDLEY: I agree with Ms. Uetz. I just want to

make the statement. Nothing in the assignment is violative of California insurance law. What's described in the disclosure is not violative of insurance law. In fact, insurance law says an insured can assign their rights. What we're arguing about is what might be the effect of a discharge regarding acts that haven't happened that might happen in the future. And so I think we're melding certain things. But for the disclosure and the assignment, what's described doesn't violate California law at all.

MR. SCHIAVONI: Your Honor, if I could just --

THE COURT: Um-hum.

MR. SCHIAVONI: Tanc Schiavoni.

THE COURT: Yep.

MR. SCHIAVONI: I am repeatedly now struck by how good my adversaries here are as lawyers because I've seen them argue the same point exactly the opposite in two different cases.

THE COURT: Well, they can't be wrong both ways. Right. They've got to -- one of them's got to be right.

MR. SCHIAVONI: In the Camden plan that they advocated and --

THE COURT: Yeah.

MR. SCHIAVONI: -- sought confirmation for that's the subject of a stay by the Third Circuit, it's --

THE COURT: Yeah.

MR. SCHIAVONI: -- the language says they assign

whatever they have as a matter of -- like, whatever the law is, it is, and that's what they assign.

THE COURT: Okay.

MR. SCHIAVONI: That's what they ask for. We had extensive argument. And that's what they got. That's what the Boy Scout plan -- that's how it's phrased. That's how the Rockville Centre plan is phrased and the disclosure statement is presented. The same thing with Syracuse, which has not been confirmed. There is not some sort of extensive addition about what everybody thinks might happen and what might be the law and what might all be all the defenses that could happen here.

And the hyperbole here that like, somehow they're losing all their rights, there is no bad faith claim right now. The notion that they're losing all their rights, at most, what's at issue is a speculative bad faith claim that they don't have right now that's in excess of limits. The plan is conveying an enormous value here in conveying the coverage. It's --

THE COURT: Okay. Thank you. I hear you. I'm hearing you.

Okay. Mr. Prol.

MR. PROL: Judge, I didn't want to weigh in on this issue, but I did, before we conclude today, wanted to see if we could have a little further conversation with regard to the lift stay motion. And what I wanted to ask Your Honor to

consider is, given that Your Honor's concerns about that motion surround what the coordinating judge might do and how this new court and judge might handle it, that during this interim period, while Your Honor denied it without prejudice, subject to remaking it, to request that Your Honor grant -- I don't know if it's from the stay or authority, at least, for the coordinating attorneys to confer with the state court judge to float this idea in terms of what the judge might do if state relief were granted so that if as in when it becomes appropriate to renew this application, we might have some answers to those questions.

THE COURT: Let me think about that. Thank you.

MR. PROL: Thank you, Your Honor.

THE COURT: Okay. Mr. Bair, real fast.

MR. BAIR: Real quick, Your Honor. Just responding to Mr. Schiavoni, our firm's in a lot of cases. We're not in all of them, so I can't speak to Camden and Boy Scouts. But I can say that in Rochester and Syracuse, the litigation option is structured differently. So it's apples and oranges. Our issue here is the discharge. The timing of it we think is inappropriate. It should come later at the conclusion of each litigation claim. So we do think this plan is structured differently, which is why we're so concerned about this.

THE COURT: Well, that's the other question I've had, which is this is the only way to skin this cat. It's the way

that some very sophisticated parties decided they wanted to do it. So I'm not going to suggest that we go back to the drawing board. But I've had that in the back of my head the whole time. I very much appreciate that comment, Mr. Bair. Thank you.

MR. BAIR: Thank you.

THE COURT: Okay. Ms. Uetz, you want to wrap it up here?

MS. UETZ: I know Your Honor has got a hard stop. We oppose Mr. Prol's suggestion. We think that your ruling is without prejudice. If they want to bring the motion based on timing at the appropriate time, we'll address it at that time. But we don't think allowing what was suggested by Mr. Prol is helpful to the process. And Your Honor has already ruled on that motion.

THE COURT: Yeah. But in denying it without prejudice, I am not at all offended by Mr. Prol's suggestion. I want to think about that a little bit. That might be a good idea.

MS. UETZ: And I would --

THE COURT: Well, in part because I'm very sensitive to appearing to tell the state court what to do about this. It would be a very different question to go to the state court and say if there were relief from stay, what would you do. That's apples and oranges to me. Okay.

MS. UETZ: And Your Honor, if you are going to --

THE COURT: So I'm thinking about -- I'm thinking about it in that context. Go ahead.

MS. UETZ: If you are going to consider it, when we have time, I would just request time to address the Court with respect to it.

THE COURT: Okay. Appreciate it. Going forward, when do you guys want to reconvene? I mean, I realize I've got a question about this, the disclosure statement aspects of the plan and the effect of the discharge now. I may, for example, want to, in a day or two, suggest to you that each of you give me the language that you think might be sufficient to address this issue as a disclosure statement issue with respect to the confirmation. If I do that, I will do it thoroughly respecting Mr. Weisenberg's, Mr. Bair's, and Mr. Prol's argument that this is a disclosure statement issue. I mean, the very choice is a disclosure statement issue that cannot be overcome.

But I may want to entertain a request to have you guys tell me what you think the language would be, were we to try to address this as a this-is-the-risk issue in a disclosure statement. All right.

So with that, I'm sorry to interrupt you. When should we -- when should we be talking again?

MS. UETZ: And Your Honor, I know you mentioned that you have the BAP, and I'm not clear on when that is. So I may

ask the --

THE COURT: It's basically Thursday and Friday.

MS. UETZ: Yeah. So I think I would ask the Court when the Court -- we're going to convene with the committee, Your Honor. I'm not confident that we'll resolve many issues. And so how soon would the Court, can the Court hear back from us? Do you want to see the further amendment, or do you want to reconvene just to kind of see where we are, like we did today? Do you know what I mean?

THE COURT: I'm more inclined to do a version of today.

MS. UETZ: That's what I was thinking would be productive.

THE COURT: Because you may suggest to me, we think we're getting there. We don't have the language yet. And even that would be helpful. Okay. So let --

MS. UETZ: Yeah. So with that in mind, Your Honor, soonest early next week would be preferred, given your Thursday, Friday BAP schedule.

THE COURT: Yeah. Where are we during the first week, Mr. Fan?

THE CLERK: Your Honor, we have the 27th -- I mean, the week other than Wednesday is open.

THE COURT: Okay. So the 27th and 28th?

THE CLERK: Yes, Your Honor.

THE COURT: Is the 27th too soon, gang? What do you think?

MS. UETZ: The 27th is not too soon for the debtor.

THE COURT: Okay.

MS. UETZ: But Tuesday would also be fine, the 28th, if that's open.

THE COURT: Let me hear from the committee and Mr. Plevin.

Mr. Plevin, I'm sorry, not hearing you again.

MR. PLEVIN: Unless I have my calendar mixed up, Your Honor, on the 28th, I believe we have an all-day in-person mediation in the Archdiocese of San Francisco case.

THE COURT: Okay.

MR. PLEVIN: And so that might be a little bit cumbersome to try to do a hearing as well on the 28th.

THE COURT: So is the 27th -- I mean, assuming the 27th is sufficient time to make meaningful progress, it works logistically?

MR. PLEVIN: We can make it happen.

THE COURT: How about from Mr. Weisenberg or Mr. Prol or Mr. Bair? What do you guys think?

MR. PROL: Well, Your Honor, I'm not sure exactly what Ms. Uetz contemplates, whether she's going to turn another draft of this or whether we're going to just discuss the issue --

THE COURT: Mr. Prol, I'm losing you again on your mic. Sorry.

MR. PROL: I'm sorry. I'm just not sure what Ms. Uetz contemplates here with regard to how we're going to proceed. Is she going to turn another draft of this that she wants us to review and then discuss with her, or are we just going to continue a discussion with regard to the issues generally? I had thought she suggested --

THE COURT: Well, you can -- I mean --

MR. PROL: I thought she suggested earlier that we meet and confer with regard to a schedule. And that might make some more sense in terms of how we hope to get from here to the next substantive hearing because I think there are a lot of issues that we can probably agree on language, based upon the advice Your Honor has given us.

THE COURT: Right.

MR. PROL: As Ms. Uetz suggested, there are some issues that we may just not be able to get there on that you're ultimately going to have to call.

THE COURT: Yeah.

MR. PROL: And so --

THE COURT: Well, let me put it to you this -- look, it's not just that I love seeing all of you. I do. I find we always make progress when we get this group together.

So whether it's going to be progress to say, okay, now

I've got a disclosure statement that can go out on Monday, I don't know that -- I doubt it will be because I think there's some pretty big homework assignments for the debtor. And I mean them, on the liquidation analysis and a couple of other things. And I think they're going to have to think about that. That will not be an easy assignment to fulfill. But even if we just get together for half an hour to an hour on Monday, I think we need to keep propelling things here, and I'm prepared to do that. Okay.

So let's say 10 o'clock on Monday. Does that work for folks?

MS. UETZ: That's best for the debtor, Your Honor.

THE COURT: All right. And if in the meantime something happens and you think, no, we'd be way better off meeting Thursday, just tell me. That's fine. Okay. I'll be very flexible about that. All right.

MS. UETZ: Thank you, Your Honor.

MR. PROL: That's fine, Your Honor. Thank you.

THE COURT: Okay. Thank you very much, all of you. And I look forward to seeing you next Monday.

(Whereupon these proceedings were concluded at 11:14 AM)

I N D E X

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

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

/s/ RIVER WOLF, CDLT-265

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Date: January 27, 2025

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