MICHAEL D. COMPEAN, State Bar No. 125106
FREDERICK G. HALL, State Bar No. 130465
BLACK, COMPEAN & HALL
A Limited Liability Partnership
275 E. Hillcrest Drive, Suite160-1021
Thousand Oaks, CA 91360

Attorneys for Defendant, California Insurance Guarantee Association

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In Re: THE ROMAN CATHOLIC BISHOP OF OAKLAND, a California corporation sole Debtor, _____ THE ROMAN CATHOLIC BISHOP OF OAKLAND, a California corporation sole Plaintiff v. PACIFIC INDEMNITY INSURANCE COMPANY OF AMERICA, AETNA INSURANCE COMPANY, TRAVELERS INSURANCE COMPANYM CERTAIN UNDERWRITERS OF LLOYDS OF LONDON SUBSCRIBING TO SYNDICATES 2623 (AFB)) AND 632 (AFB), INSURANCE COMPANY OF NORTH AMERICA, ACE LIMITED, UNITEDE STATES FIRE INSURANCE, EMPLOYERS REINSURANCE, CAN INSURANCE COMPANY, PACIFIC EMPLOYERS INSURANCE, WESTCHESTER FIRE INSURANCE COMPANY AND CALIFORNIA INSURANCE GUARANTEE ASSOCIATION Defendants.	**Chapter 11** **Case No.: 23-40523 WJL** **Adversary Case No.: 23-04028 WJL** **REPLY TO DEBTOR'S OPPOSITION TO MOTION OF DEFENDANT CALIFORNIA INSURANCE GUARANTEE ASSOCIATION TO DISMISS ADVERSARIAL COMPLAINT OR ALTERNATIVELY FOR A MORE DEFINITE STATEMENT** Hearing Judge: Hon. William J Lafferty, III Objections Due: October 25, 2023 Hearing Date: November 8, 2023 Courtroom: 220 Time: 10:30 a.m Location: 1300 Clay Street, Oakland, CA 94612

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TO THE COURT IN THE ABOVE-ENTITLED MATTER AND TO ALL PARTIES AND TO THEIR RESPECTIVE COUNSEL OF RECORD:

Defendant California Insurance Guarantee Association (CIGA) in the above-entitled adversary proceeding hereby submits its reply to the opposition filed by Plaintiff Roman Catholic Bishop of Oakland ("RCBO") [Docket No. 136] to the Notice of Motion and Motion of Defendant California Insurance Guarantee Association to Dismiss Adversarial Complaint or Alternatively for a More Definite Statement, filed on September 26, 2023 (the "Motion") [Docket No. 106].

I. Introduction

Initially, CIGA's Motion must be granted, at least in part, as to the second cause of action for Breach of Contract of the First Amended Adversarial Complaint [Docket no. 2] (hereinafter referred to as "Adversarial Complaint") as the RCBO's opposition concedes "CIGA was not a contracting entity with RCBO" and that RCBO will amend its Adversary Complaint to remove the breach of contract claim as to CIGA. See Opp. Mem. P. & A. at 1 and 9.

As such, the opposition solely argues that the Adversary Complaint states a valid claim for declaratory relief as against CIGA. See Opp. Mem. P. & A. at 1. RCBO admits CIGA is not an insurer, but a statutory entity obligated under California Insurance Code § 1063.2 is to pay and discharge certain "covered claims" as defined and limited under the provisions of California Insurance Code §§ 1063.1 and 1063.2. *Id*. To do so then, the Adversary Complaint must, at the very least, allege that RCBO has one or more "covered claims", but the Adversary Complaint does not do so. In fact, the Adversary Complaint is devoid of the term "covered claim" and does not refer to any of the provisions of California Insurance Code §§ 1063.1 and 1063.2 or allege that the RCBO complied with any of the statutory requirements of a "covered claim."

Nevertheless, in its opposition, the RCBO now states "that RCBO timely submitted proof of claims during Commercial Union/Armour Insurance Company's insolvency proceedings" as required by California Insurance Code §§ 1063.1(c)(1)(C). See Opp. Mem. P. & A. at 1 and 7; also see *HCM Healthcare, Inc. v. California Ins. Guarantee Assn.* 187 Cal.App.4th 1317, 115 Cal.Rptr.3d 185 (2010). The opposition also includes 27 exhibits, not part of the Adversary Complaint, that include

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the 24 proofs of claim (POC) that were sent to the statutory liquidator in Pennsylvania just prior to the December 31, 2021 deadline plus proof of FedEx delivery of the POC's to the Pennsylvania liquidator, and copies of the form letters from the liquidator and CIGA acknowledging receipt of the POC's.

However, even assuming that the only requirement of a "covered claim" that needed to be alleged in the Adversary Complaint was the timely filing of proper POC's in the liquidation, and that the 27 exhibits to the opposition could be somehow be incorporated into the Adversary Complaint, these exhibits are not sufficient to establish that the RCBO complied with the timely filing requirements of California Insurance Code §§ 1063.1(c)(1)(C) with respect to the Clergy Abuse claims alleged in the Adversary Complaint. The 24 POC's attached to the opposition do not set forth any Clergy Abuse claims as alleged in the Adversary Complaint, but rather are claims for attorney fees of the RCBO's counsel. Indeed, one POC that asserts a claim for attorney fees in excess of $235,000 related to "common defense" of what appear to be California Assembly Bill 218. See Opposition Ex. 6.

Although the RCBO's POC's all checked the box for "Policyholder or Third Party Claim", none of the POC's set forth any facts or information as to any such third party claim, all the POC's set forth the "Amount of Claim" as the total amount of the attorney bills attached to each of the POC's, and all the POC's indicate that no lawsuit or legal action has been instituted regarding these claims. See Opposition Ex. 1-24, page 2. The only attachments to the POC's were sets of 1-page attorney invoices from Foley & Lardner LLP with a 1 or 2 line description of "Amount due for professional services rendered regarding…" and what appears to be a case name. No other information is set forth in the POC's relating to any other claims, damages, or lawsuits.

Furthermore, even if the POC's belatedly attached to the opposition could be considered part of the Adversary Complaint in the adversary proceeding and somehow sufficient to present some of the alleged Clergy Abuse claims, the RCBO's declaratory relief cause of action against CIGA should be limited to the 23 claims and the amounts thereof for which POC's were submitted that included attachments referring to a case name in the legal bills, notwithstanding that all of the POC's disclaimed that there was any lawsuit related to the claims. See Opposition, Ex. 1-5, 7-24.

Therefore, the Motion should be granted as to the second cause of action for Breach of

Contract. As to the first cause of action for Declaratory Relief, the Motion should also be granted as the Adversary Complaint fails to set forth a valid claim as the Adversary Complaint and the opposition to the Motion fails to set forth facts to establish that the RCBO complied with the timely filing requirements of California Insurance Code § 1063.1(c)(1)(C) with respect to the Clergy Abuse claims alleged in the Adversary Complaint. Alternatively, the Motion should be granted as to the first cause of action for Declaratory Relief with leave to amend to assert a cause of action for declaratory relief as against CIGA with respect to only the 23 claims or lawsuits referred to in the attorney bills attached to the opposition's exhibits 1-5 and 7-24.

2. The Motion Should Be Granted As To Breach Of Contract.

CIGA's Motion must be granted, at least in part, as to the second cause of action for Breach of Contract as the RCBO's opposition concedes "CIGA was not a contracting entity with RCBO" and that RCBO will amend its Adversary Complaint to remove the breach of contract claim as to CIGA. See Opp. Mem. P. & A. at pp. 1 and 9; also see *Isaacson v. California Ins. Guarantee Assn.,* 44 Cal.3d 775, 787, 244 Cal.Rptr. 655, 663, 750 P.2d 297, 305 (1988) holding "CIGA is not in the 'business' of insurance …. CIGA issues no policies, collects no premiums, makes no profits, and *assumes no contractual obligations to the insureds* (Emphasis added).

3. RCBO Has Failed Allege Compliance with the timely filing requirements of California Insurance Code § 1063.1(c)(1)(C)

As to the first cause of action for Declaratory Relief, the issue raised by the Motion is not whether CIGA is subject to an action for declaratory relief in the abstract, but whether the Adversary Complaint in this adversary proceeding sufficiently alleges such a claim against CIGA. As the RCBO admits CIGA is not an insurer. Its statutory duty under California Insurance Code § 1063.2 is to pay and discharge certain "covered claims" as defined and limited under the provisions of California Insurance Code §§ 1063.1 and 1063.2. To do so then, the Adversary Complaint must, at the very least, allege that RCBO has one or more "covered claims", but the Adversary Complaint does not do so. In fact, the Adversary Complaint is devoid of the term "covered claim" and does not refer to any

of the provisions of California Insurance Code §§ 1063.1 and 1063.2 or allege that the RCBO complied with any of the statutory requirements of a "covered claim."

As a result, in its opposition, the RCBO attempts to augment the allegations of the Adversary Complaint to rectify this by now stating "that RCBO timely submitted proof of claims during Commercial Union/Armour Insurance Company's insolvency proceedings" as required by California Insurance Code §§ 1063.1(c)(1)(C). See Opp. Mem. P. & A. at 1 and 7; also see *HCM Healthcare, Inc. v. California Ins. Guarantee Assn.* 187 Cal.App.4th 1317, 115 Cal.Rptr.3d 185 (2010). The opposition also includes 27 exhibits, not part of the Adversary Complaint, that include the 24 proofs of claim (POC) that were sent to the statutory liquidator in Pennsylvania just prior to the December 31, 2021 deadline plus proof of FedEx delivery of the POC's to the Pennsylvania liquidator, and copies of the form letters from the liquidator and CIGA acknowledging receipt of the POC's. See Opposition, Ex. 1-27.

As set forth in the Motion on page 6, California Insurance Code §1063.1(c)(1) defines "covered claim", in pertinent part, as:

> "…the obligations of an insolvent insurer, …, that satisfy all of the following requirements:
>
> …
>
> *(C) Which are presented as a claim to the liquidator in the state of domicile of the insolvent insurer or to the association on or before the last date fixed for the filing of claims in the domiciliary liquidating proceedings.*
>
> (Emphasis added.)

These additional facts and documents supposedly cure any deficiencies in the Adversary Complaint by effectively alleging that the RCBO complied with the timely filing requirements of California Insurance Code §§ 1063.1(c)(1)(C) with respect to the Clergy Abuse claims alleged in the Adversary Complaint, and therefore, now alleges "covered claims" as against CIGA. However, even accepting the facts set forth in the opposition and the documents attached thereto as exhibits, the RCBO has not complied with the timely filing requirements of California Insurance Code §

1063.1(c)(1)(C) as to the Clergy Abuse claims alleged in the Adversary Complaint. Assuming all 24 POC's attached as exhibits to the opposition were timely, none actually set forth any Clergy Abuse claims as alleged in the Adversary Complaint.

Exhibits 1-5 and 7-24 of the Opposition are POC's that are almost identical. Each is on the liquidator's POC form, states the claimant's name as the RCBO, checks the box for "Policyholder or Third Party Claim", in response to the statement "give a Concise Statement of the Facts giving rise to your claim", RCBO filled in:

> "Under RCBO's insurance contract with Armour Risk Management, Armour Risk Management agreed to provide a defense to RCBO in underlying civil litigation matters. The RCBO hereby submits the accompanying invoices for legal fees incurred. The RCBO is entitled to reimbursement by the receiver in the Bedivere liquidation process. All legal privileges are not waived and are explicitly preserved. Matter: [a 4 digit number]"

RCBO completed "Claim Amount" as the total amount of the legal invoices attached to each POC. The only attachments to the POC's were a set of 1-page attorney invoices from Foley & Lardner LLP with a 1- or 2-line description of "Amount due for professional services rendered regarding…" and what appears to be a case name and a single dollar amount. No other information is set forth in the POC's relating to any other claims, damages, or lawsuits. Exhibit 6 to the opposition is the same except that attorney invoices attached to the POC do not refer to any case name, but instead refer to "AB218 Common Defense Matters".

As noted above, California Insurance Code §1063.1(c) defines "covered claim" as "…the obligations of an insolvent insurer, …, (C) Which are presented as a claim … on or before the last date fixed for the filing of claims in the domiciliary liquidating proceedings" which was December 31, 2021. Based on the allegations of the Adversary Complaint, Commercial Union Insurance Company (which is also alleged to be "Armour Insurance Company") issued policies to RCBO that provided coverage for the hundreds of Clergy Abuse lawsuits being asserted against it as noted in Exhibit A to the Adversarial Complaint. However, at best, the POC's attached to the RCBO's opposition "present as a claim" only obligations of Armour Risk Management, which pursuant to

some agreement, required it to pay certain attorney fees of RCBO's counsel in the fixed amount set forth in each of the POC's. The "Concise Statement of the Facts" relating to the claim called for in the POC form and filled out by the RCBO does not refer to any "Clergy Abuse" claims, lawsuits or facts, and the RCBO checked "No" in response to the POC form's question "Has a Lawsuit or other LEGAL ACTION been instituted by anyone regarding this claim?" As such, the remaining questions set forth in the POC form seeking information as to where any lawsuit or legal action was filed, the date filed, docket number, plaintiff and defendant are all left blank.

Thus, it appears clear that the POC's attached as exhibits to the opposition only intended to present the claims set forth therein i.e., the claims for reimbursement of certain attorney fees in the fixed amounts noted on the POC's, and not for obligations of defense and indemnity of the hundreds of Clergy Abuse lawsuits that are the subject of the Adversary Complaint. Therefore, the Motion should be granted as the additional facts and exhibits attached to the opposition do not provide sufficient facts to raise a "covered claim" as to CIGA. See California Insurance Code § 1063.1(c)(1)(C).

4. Alternatively, Declaratory Relief Should Be Limited To The POC's Allegedly Timely Filed.

Even if the POC's belatedly attached to the opposition could be considered part of the Adversary Complaint and somehow sufficient to present some of the alleged Clergy Abuse claims, the RCBO's declaratory relief cause of action against CIGA should be limited to the 23 claims and the amounts thereof for which POC's were submitted that included attachments referring to a case name in the legal bills, notwithstanding that all of the POC's disclaimed that there was any lawsuit related to the claims. See Opposition, Ex. 1-5, 7-24.

The RCBO readily admits that the 24 POC's attached as exhibits to the opposition were the only claims the RCBO knew of under the Commercial Union/Armour Insurance Company policies at the time of filing with the liquidator. See Opposition, p. 3 , fn. 1. As noted above, one of such POC's claimed attorney fees without reference to any specific case name and so could not be construed to present any claim relating to any lawsuit. Further, all of the RCBO's POC's were dated December 27, 2021, just 4 days prior to the December 31, 2021 last date fixed for the filing of claims

in the domiciliary liquidating proceedings and were received by the Pennsylvania liquidator on December 29, 2021, just 2 days prior to the deadline. See Opposition, p. 3 and Ex. 1-25. As such, it is clear that the RCBO did not submit any additional POC's prior to the December 31, 2021 "last date." Therefore, the only claims that could have possibly complied with the statutory claim filing deadline under California Insurance Code §1063.1(c)(1)(C) are the 23 claims set forth in exhibits 1-5 and 7-24 of the opposition.

All other claims relating to the Clergy Abuse lawsuits referred to in the Adversary Complaint are necessarily untimely for CIGA's purposes. The fact that RCBO was unaware of such other claims as of the December 31, 2021 last date does not change this result. See Opposition, p. 3 , fn. 1.

In *HCM Healthcare, Inc. v. California Ins. Guarantee Assn.* 187 Cal.App.4th 1317, 115 Cal.Rptr.3d 185 (2010), HCM was insured under a policy issued by the insolvent Legion Insurance Company that was also liquidated in Pennsylvania. In October 2003, Legion's liquidator mailed to HCM notice of Legion's insolvency and a proof of claim form. The form stated HCM had until June 30, 2005 to file claims against Legion. *HCM*, 187 Cal.App.4th at 1320.

In April 2005, the family of Lupe Barela, a former resident of one of HCM's nursing homes, sued HCM and others for elder abuse that Barela allegedly suffered at HCM's facility. After the POC deadline had passed, HCM tendered the Barela claim to CIGA on October 20, 2005 under Legion's policy. More than two months later on December 23, 2005, appellants signed and later submitted to Legion's Pennsylvania liquidator a POC for the Barela suit. *Id.*

In November 2005, again after the POC deadline had passed, the family of Carl Fulsom, another former resident of one of HCM's nursing homes, sued HCM and others for elder abuse, alleging Fulsom suffered personal injuries while living at HCM's facility. On November 21, 2005, HCM notified CIGA of the Fulsom lawsuit, and on February 6, 2006, appellants signed and later submitted to Legion's liquidator a proof of claim for the Fulsom suit. *Id.*

HCM contended their claims were timely because the June 30, 2005 deadline did not apply to them. HCM noted that the Pennsylvania liquidation statutes specifically allowed late filing of a claim for good cause. *HCM*, 187 Cal.App.4th at 1322. HCM argued that there was clearly good cause as the Fulsom suit was not even filed until after the claim filing deadline had passed, and, in any event,

HCM's principal did not recall receiving any notice of the Legion liquidation or a POC form until after the claim filing deadline had expired. *HCM*, 187 Cal.App.4th at 1322, 1324-1325.

However, the *HCM* Court held that HCM could cite no authority that Pennsylvania's "good cause" statute "trumps" California's statutory requirement that a policyholder must file its claim "on or before the last date fixed for the filing of claims in the domiciliary liquidating proceedings." *HCM,* 187 Cal.App.4th at 1322. The Court noted that the differences between the California and Pennsylvania statutes necessarily exemplify that it is the California statute that must be honored. *Id*., f.n. 1. As such, the *HCM* Court upheld CIGA denial of the HCM claims holding "…California reasonably may enforce a different deadline for the processing of claims with CIGA than a liquidating jurisdiction might apply in deciding whether as a matter of equity and discretion to process claims that were not timely filed in the foreign jurisdiction." *HCM,* 187 Cal.App.4th at 1324.

The *HCM* decision establishes that in order for a claim to qualify as a "covered claim" for CIGA's purposes, the claim must be presented to CIGA or the liquidator on or before the "last date" fixed for the filing of claims (or more commonly referred to as the "bar date") established in the domiciliary liquidation proceeding. *HCM*, 187 Cal.App.4th at 1322 see also *Middleton v. Imperial Ins. Co.* 34 Cal.3d 134, 136, fn. 2, 193 Cal.Rptr. 144, 666 P.2d 1 (1983) noting "The filing of a timely claim in the insolvency proceeding is a prerequisite to obtaining relief from CIGA." Even more significantly, it establishes a claim that is presented late for "good cause" (e.g., the claim was not asserted against the insured until after the bar date) still does not qualify as a "covered claim" even if the claim may be "deemed" timely under the liquidation law. The court acknowledged that the fact that a claim may be accepted by the liquidator under discretionary authority granted by the liquidating state does not affect whether the claim qualifies as a "covered claim" for CIGA's purposes under California law. *HCM*, 187 Cal.App.4th at 1324, see also *Romano v. Mercury Ins. Co.* 128 Cal.App.4th 1333, 1342, 27 Cal.Rptr.3d 784 (2005) [statute's plain meaning controls].

Under HCM, it is clear that even if the RCBO was unaware of other claims at the time of the claim filing deadline, December 31, 2021, or even if such claims were not even asserted or lawsuits not filed until after the deadline, such claims are still untimely and do not qualify as "covered claims" for CIGA's purposes. Thus, even if the 23 POC's (exhibits 1-5 and 7-24) are somehow sufficient to

present those Clergy Abuse lawsuits, any other Clergy Abuse lawsuits would be untimely and cannot qualify as "covered claims" as to CIGA. Therefore, the first cause of action for Declaratory Relief must be limited to those 23 claims as referred to in those POC's, and the Motion should be granted with leave to amend the first cause of action of the Adversary Complaint to that effect.

5. Conclusion

Therefore, the Motion should be granted as to the second cause of action for Breach of Contract. As to the first cause of action for Declaratory Relief, the Motion should also be granted as the Adversary Complaint fails to set forth a valid claim as the Adversary Complaint and the opposition to the Motion fails to set forth facts to establish that the RCBO complied with the timely filing requirements of California Insurance Code § 1063.1(c)(1)(C) with respect to the Clergy Abuse claims alleged in the Adversary Complaint. Alternatively, the Motion should be granted as to the first cause of action for Declaratory Relief with leave to amend to assert a cause of action for declaratory relief as against CIGA with respect to only the 23 claims or lawsuits referred to in the attorney bills attached to the opposition's exhibits 1-5 and 7-24.

Dated: November 1, 2023

BLACK, COMPEAN & HALL, L.L.P.

By: _____

By: Michael D. Compean
Frederick G. Hall

Attorneys for Defendant CALIFORNIA INSURANCE GUARANTEE ASSOCIATION

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