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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re: THE ROMAN CATHOLIC BISHOP OF OAKLAND, Debtor.	Chapter 11 Case No. 23-40523 WJL Adv. Pro. No. 23-04028 WJL
THE ROMAN CATHOLIC BISHOP OF OAKLAND, Plaintiff, v. PACIFIC INDEMNITY, et al., Defendants	**INSURERS' OBJECTION TO PLAINTIFF'S MOTION FOR ENTRY OF PROTECTIVE ORDER** Hearing Date: November 14, 2023 Hearing Time: 9:00 a.m. PDT Courtroom: 1300 Clay Street, Rm. 220 Oakland, CA 94612

Case: 23-04028 Doc# 145 Filed: 11/03/23 Entered: 11/03 2340523231106000000000001

The Insurers,[1] by and through their undersigned counsel, hereby file this objection (the "Objection") to *Plaintiff's Motion for Entry of Protective Order* [Adv No. 124] ("Plaintiff's Motion") and the *Official Committee of Unsecured Creditors' Joinder to Plaintiff's Motion for Entry of a Protective Order* [Adv. No. 135] (the "Committee's Joinder"). In support of this Objection, the Insurers respectfully state as follows:

I. ARGUMENT

1. There should be one protective order that governs both the Chapter 11 case and the Adversary Proceeding, vis-à-vis the Debtor, Committee and Insurers. And it should be a protective order; not an agreement among private parties. Unlike the Debtor's confidentiality agreement with the Committee (the "Committee Confidentiality Agreement") in the Chapter 11 Case, the form of Protective Order that the Insurers have proposed would apply in both the main Chapter 11 case and the Adversary Proceeding, which achieves uniformity and conforms to this District's standard form of Protective Order that has been subjected to appellate review. It avoids the Plaintiff's overly impractical and onerous requirements set forth in the Debtor's Proposed Confidentiality Agreement. *See* Pl. Mot., Exh. A.

2. Unlike the form of Protective Order proposed by the Insurers, the Debtor's Proposed Insurer Confidentiality Agreement is a two-party agreement between the Committee and Debtor, which was negotiated without the Insurers' consent or input. It is akin to a non-disclosure agreement between two sides. It is not workable for multi-party adversarial litigation for several key reasons:

3. *First*, the Debtor's Proposed Confidentiality Agreement precludes the examination of witnesses in deposition and trial unless (i) the witness signs a Declaration to be bound to the Committee Confidentiality Agreement and (ii) the designating party first consents. This gives an adverse witness and the "designating party," *i.e.*, the Diocese and Committee, a veto right over who is examined contrary to the Federal Rules.

[1] The list of Insurer Defendants are included in the signature block of this Objection. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the *Moving Insurers Motion for Court's Approval of Confidentiality and Protective Order* [Case No. 23-40523, Dkt. No. 523] (the "Insurer Protective Order Motion").

Case: 23-04028 Doc# 145 Filed: 11/03/23 Entered: 11/03/23 17:49:29 Page 2 of 8

4. *Second*, the Debtor's Proposed Insurer Confidentiality Agreement does not adopt of the Federal Rules governing confidentiality made applicable by section 107(b)(1) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 7026.[2]

5. *Third*, the Debtor's Proposed Insurer Confidentiality Agreement substantially deviates from the Northern District of California's standard form, which has been adopted in other large chapter 11 cases in this District and tested on appeal.[3]

6. *Fourth,* as a two-party agreement, the Debtors' Proposed Insurer Confidentiality Agreement subjects the Court and the parties to public criticism about cover ups, and implicates California's statutes involving confidentiality agreements. The Court's adoption of the Debtor's proposed format would set bad precedent in this District.

7. All of these reasons weigh against granting the Plaintiff's Motion in the Adversary Proceeding. Accordingly, the Court should deny the Plaintiff's Motion and instead enter the Insurer Protective Order filed in the Chapter 11 Case.

8. The Committee Confidentiality Agreement is the product of negotiation ***solely*** between the Debtor and Committee, and was filed by the Debtor on July 24, 2023. *See* Insurer Prot. Order Mot. at ¶ 2.

9. That Agreement, which the Court approved by order[4] in the Chapter 11 Case on August 4, 2023, had ***zero*** input from the Debtor's insurers prior to its filing. Nevertheless, the Debtor and Committee both seek to bind the insurers to it in contested matters (through the Committee Confidentiality Agreement) and adversarial litigation (through the Debtor's Proposed Insurer Confidentiality Agreement, which is a practical carbon copy of the Committee Confidentiality Agreement for the Adversary Proceeding and suffers from the same issues). The Debtor and Committee have done so notwithstanding the Court's directions that the insurers "will

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[2] *See* Pl. Mot., Exh. B. at ¶ 2.

[3] *See, e.g., In re: PG&E Corporation and Pacific Gas Electric Company*, Case No. 19-30088-DM, Dkt. No. 3045; *In re: Blue Earth, Inc. et al*., Case No. 16-30296-DM, Dkt. No. 399; *In re: Yellow Cab Cooperative, Inc*., Case No. 16-30063-DM, Dkt. No. 273.

[4] *See Order Approving Revised Confidentiality Agreement and Stipulated Protective Order* [Case No. 23-40523, Dkt. No. 331]

Case: 23-04028 Doc# 145 Filed: 11/03/23 Entered: 11/03/23 17:49:29 Page 3 of 8

have their say down the road on a different form of agreement." *See* Insurer Prot. Order Mot. at ¶ 2, n. 4.

10. On October 5, 2023, the Insurers sent the form of Protective Order they propose to the Debtor and Committee for review and comment. Instead of engaging with the Insurer on ***their*** proposed form of protective order, the Debtor indicated by e-mail on October 9, 2023 that it did not intend to mark it up or negotiate it.

11. In light of the above, and the fact that the insurers' receipt of documents pursuant to the *Court's Order Granting Moving Insurers' Ex Parte Motion for Entry of an Order Under Federal Rule of Bankruptcy Procedure 2004* [Case No. 23-40523, Dkt. No. 511] hinges on the Court's entry of a protective order, on October 11, 2023, the Insurer Defendants filed the Insurer Protective Order Motion in the main Chapter 11 Case.

12. The Insurers hereby incorporate by reference all arguments advanced in the Insurer Protective Order Motion in this Objection. Because the Insurer Protective Order covers both the Chapter 11 Case and the Adversary Proceeding (unlike the Debtor's Proposed Insurer Confidentiality Agreement and, by the Debtor's own admission in filing the Plaintiff's Motion, the Committee Confidentiality Agreement), the Plaintiff's Motion, and Committee's Joinder, should be denied in their entirety.

II. CONCLUSION

WHEREFORE, the Insurers respectfully request that the Court (i) deny the Plaintiff's Motion and Committee's Joinder in their entirety, (ii) grant the Insurer Protective Order Motion in the main Chapter 11 Case, and (iii) award all other relief as is equitable, just and appropriate.

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Case: 23-04028 Doc# 145 Filed: 11/03/23 Entered: 11/03/23 17:49:29 Page 4 of 8

Dated: November 3, 2023

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Case: 23-04028 Doc# 145 Filed: 11/03/23 Entered: 11/03/23 17:49:29 Page 5 of 8

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Case: 23-04028 Doc# 145 Filed: 11/03/23 Entered: 11/03/23 17:49:29 Page 6 of 8

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Case: 23-04028 Doc# 145 Filed: 11/03/23 Entered: 11/03/23 17:49:29 Page 7 of 8

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Case: 23-04028 Doc# 145 Filed: 11/03/23 Entered: 11/03/23 17:49:29 Page 8 of 8