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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.

THE ROMAN CATHOLIC BISHOP OF OAKLAND,

Plaintiff,

v.

PACIFIC INDEMNITY, a Delaware corporation; INSURANCE COMPANY OF AMERICA, a Delaware corporation; AETNA INSURANCE COMPANY, a Delaware corporation; TRAVELERS INSURANCE COMPANY, a Delaware corporation; CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON SUBSCRIBING TO SYNDICATES 2623 (AFB) AND 623 (AFB), a foreign organization; INSURANCE COMPANY OF NORTH AMERICA, a Delaware corporation; ACE LIMITED, a foreign organization; UNITED STATES FIRE INSURANCE, a Delaware corporation;

Case No. 23-40523 WJL

Chapter 11

Adversary Case No. 23-04028-WJL

REVISED RULE 26 CASE MANAGEMENT STATEMENT [PLAINTIFF/DEBTOR'S SUBMISSION] FOR NOVEMBER 14, 2023, SCHEDULING CONFERENCE

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EMPLOYERS REINSURANCE, a Delaware corporation; CNA INSURANCE COMPANY, a Delaware corporation; PACIFIC EMPLOYERS INSURANCE, a Delaware corporation; WESTCHESTER FIRE INSURANCE COMPANY, a Pennsylvania corporation; and the CALIFORNIA INSURANCE GUARANTEE ASSOCIATION, a state entity,

Defendants.

The Roman Catholic Bishop of Oakland ("RCBO"), Plaintiff in the above-captioned adversary proceeding (the "Adversary Proceeding"), and the debtor and debtor in possession in the underlying chapter 11 case (the "Debtor"), hereby submits this Revised Case Management Statement under Federal Rule of Civil Procedure Rule 26, the Standing Order for All Judges of the Northern District of California, and Local Civil Rule 16-9. As set forth in RCBO's prior Rule 26 Case Management Statement, filed on October 12, 2023 [Dkt. No. 128] the ("Prior Statement"), on September 22, 2023, RCBO delivered to 32 counsel representing the various insurer-defendants a copy of a proposed Rule 26 Case Management Statement, and on the same date held a meet and confer with counsel for each of the insurers and counsel for the UCC. During the conference, various counsel for the insurers expressed that they would not agree to the dates proposed by RCBO. Since the conference, RCBO has not been able to obtain agreement from counsel for the defendants regarding the proposed schedule and the Rule 26 Case Management Statement. Consequently, on October 12, 2023, RCBO filed the Prior Statement. On October 18, 2023, the defendants filed their on Rule 26 case management statement [Dkt. No. 130] (the "Insurers' Statement"). The Insurers Statement does not provide any proposed alternative dates or discovery schedule.

Due to the passage of time since October 12, 2023, some of the dates in RCBO's Prior Statement are now stale. RCBO therefore has updated the proposed dates and now submits this updated separate Rule 26 Case Management Statement, because it has been unable to obtain the insurers' position or proposed changes to the proposed schedule. RCBO continues to hope that the insurers will move forward with the schedule in this Adversary Proceeding without further delay.

Additionally, the Court has indicated that it intends to deliver its oral ruling on November 14, 2023, on the two motion to dismiss filed by separate groups of insurers, and hearing on October 18, 2023. [*See*, Dkt. No. 69, 74] (the "Insurer Motions"). To the extent appropriate, RCBO will file a further revised Rule 26(f) statement following that ruling.

1. JURISDICTION

The Court has subject matter jurisdiction over RCBO's claims under section 157 and 1334 of title 28 of the United States Code.

2. FACTS

Plaintiff's Statement: RCBO is the debtor and debtor in possession in the chapter 11 case underlying this adversary proceeding. On May 8, 2023, RCBO caused its attorneys to file a voluntary petition for chapter 11 bankruptcy relief under the Bankruptcy Code. RCBO continues to operate its ministry and manage its properties as a debtor in possession under section 1107(a) and 1108 of the Bankruptcy Code. The Defendants in this Adversary Proceeding are various insurance companies and related entities (the "Insurers") with which RCBO maintained primary, excess layer, and umbrella policies over various periods from the early 1960s continuously through the present.

RCBO has been named in more than 300 complaints primarily filed in the Superior Court of Alameda County, California, seeking recovery for alleged negligent supervision and hiring of certain clerical and ministerial personnel over a period of decades (the "Underlying Lawsuits"). These suits have been filed as a result of California's passing of AB 218, which extended the statute of limitations for the filing of similar civil suits. RCBO is also informed, and believes, that additional suits may be filed and/or served during the pendency of this Adversary Proceeding. RCBO has tendered through its broker and continues to tender through its broker both RCBO's defense and indemnity of these suits under all applicable insurance policies, where the insurance company that issued those policies was not insolvent. The Insurers have denied or failed to confirm coverage and/or provide defense and/or indemnity to RCBO with respect to the above-described lawsuits RCBO faces.

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3. LEGAL ISSUES

Plaintiff's Statement: The legal issues in this case pertain to the Insurers' obligations to confirm 1) coverage, 2) defense, and 3) indemnity, with respect to the Underlying Lawsuits, pursuant to the respective insurance policies applicable to each Insurer.

4. MOTIONS

The Court held a hearing on the Insurer Motions on October 18, 2023, and has indicated that it will deliver a ruling at the hearing on November 14, 2023. Defendant CIGA has filed its own motion to dismiss, which was heard on November 8, 2023. The CIGA motion was granted with leave to amend, with Plaintiff to file an amended complaint not later than November 28, 2023.

As reflected in the proposed discovery schedule below, RCBO intends to file a motion for summary judgment following the completion of certain discovery, with respect to the lack of preclusive effect of prior-executed settlement agreement involving some of the Insurers in a set of claims referred to as "Clergy III". Plaintiff believes such a motion will significantly narrow the scope of disputed issues in this Adversary Proceeding. Plaintiff anticipates that additional motions for summary judgment may be warranted in the action at a later time in the litigation.

5. JOINDER OF ADDITIONAL PARTIES AND AMENDMENT OF PLEADINGS

Plaintiff does not anticipate adding any additional parties as Defendants in this Adversary Proceeding, but reserves the right to do so should information received in discovery indicate that additional insurer entity (or entities) should be included in this matter. Plaintiff similarly reserves the right to further amend its complaint to reflect any additional entities that should be joined in this Adversary Proceeding.

Plaintiff will file an amended complaint not later than November 28, 2023, as directed by the Court in connection with the hearing on the CIGA motion, and to address any amendments necessary as a result of the ruling on the Insurer Motions.

6. DISCLOSURES

Plaintiff's Position: Plaintiff proposes that the Parties make initial disclosures on or before November 21, 2023 – one week after the continued scheduling conference in this Adversary Proceeding.

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7. DISCOVERY

Formal discovery has not yet occurred in this case. The parties have engaged in certain informal exchanges of documents and information, including the applicable insurance policies and evidence of insurance coverage from the Insurers' providing coverage to RCBO which RCBO has produced to the Insurers. The parties' proposed initial discovery schedules are listed below. The parties do not yet agree to the form of a protective order, and RCBO has filed a motion with this Court seeking entry of a protective order in substantially the same form as that previously ordered by this Court in the Chapter 11 case, which is set for hearing on November 13, 2023, concurrently with the scheduling conference. The Insurers have filed a competing motion in the main bankruptcy case. In addition, counsel for the UCC has filed a motion in the main case seeking a protective order relating to the production of proofs of claim information to the insurers.

8. RELATED CASES:

This Adversary Proceeding is related to the ongoing chapter 11 case in the United States Bankruptcy Court for the Northern District of California, Case No. 23-40523 WJL. This Adversary Proceeding is also related to the pending adversary proceeding before this court, Case No. 23-ap-04037 WJL, which involves claims against additional insurers that are substantially similar to the claims in this Adversary Proceeding.

9. RELIEF

Plaintiff's Statement: RCBO seeks three specific forms of relief: 1) a declaration in RCBO's favor that the Insurers issued effective policies of insurance and that Insurers were obligated to provide defense and indemnity to RCBO regarding claims made in the Underlying Lawsuits; 2) an award of damages for the Insurers' breach of each of their respective policies; and 3) an award of RCBO's costs, expenses, and reasonable attorneys' fees in litigating this Adversary Proceeding.

10. SETTLEMENT AND ADR

The Parties have generally discussed settlement and ADR options. RCBO believes mediation is best suited for the matter.

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11. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES

RCBO does not consent to a Magistrate to be assigned to this matter for all purposes.

12. OTHER REFERENCES

RCBO believes no other references are appropriate at this time.

13. NARROWING OF ISSUES

RCBO believes that the issues in this Adversary Proceeding can be significantly narrowed through a motion for summary judgment regarding the lack of preclusive effect of prior-executed settlement agreements involving some of the Insurers regarding claims which were solved over ten years ago in an action referred to as "Clergy III". A resolution of this issue will streamline the issues to be litigated for the remainder of the case, and will increase the likelihood of a full resolution of this Adversary Proceeding before trial.

14. EXPEDITED TRIAL PROCEDURE

RCBO does not believe this case should be handled under an expedited trial procedure.

15. SCHEDULING

Plaintiff's Statement: Plaintiff proposes that the Court enter the following schedule, through the filing of a partial motion for summary judgment at the end of this calendar year:

- **November 21, 2023:** Deadline for parties to exchange Rule 26 Initial Disclosures.
- **December 5, 2023**: Deadline to issue written discovery related to Clergy III coverage issue.
- **December 5, 2023**: Parties may begin serving notices for oral discovery.
- **January 4, 2024:** Final day to respond to written discovery related to Clergy III coverage issue.
- **January 9, 2024**: Deadline to produce documents in response to requests for production related to Clergy III coverage issue.
- **January 31, 2024**: Deadline for filing of partial motion for summary judgment motion with respect to impact of prior-executed settlements related to the Clergy III action.
- **March 29, 2024:** Deadline to complete all lay discovery.
- **April 30, 2024:** Deadline to complete all expert discovery.

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16. TRIAL

Defendant Travelers Casualty & Surety Company has included a jury demand in its Answer and Affirmative Defenses, filed September 1, 2023. RCBO estimates the length of trial will be approximately 7-10 court days. RCBO recommends trial in the late Spring of 2024.

17. PROFESSIONAL CONDUCT

All attorneys of record for RCBO have reviewed the Guidelines for Professional Conduct for the Northern District of California.

18. OTHER

RCBO believes there are no other issues of note at this time.

DATED: November 10, 2023

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/s/ Shane J. Moses
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