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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re:

The Roman Catholic Bishop of Oakland,

Debtor in Possession.

Chapter 11 Case No. 23-40523-WJL

Adv. Pro. No. 23-04028-WJL

INSURER DEFENDANTS AMENDED RULE 26(F) CASE MANAGEMENT STATEMENT

JURY TRIAL DEMANDED

The Roman Catholic Bishop of Oakland,

Plaintiff,

v.

Pacific Indemnity, Insurance Company of America, Aetna Insurance Company, Travelers Insurance Company, Certain Underwriters at Lloyds of London Subscribing to Syndicates 2623 (AFB) and 623 (AFB), Insurance Company of North America, ACE Limited, United States Fire Insurance, Employers Reinsurance, CNA Insurance Company, Pacific Employers Insurance, Westchester Fire Insurance Company, and California Insurance Guarantee Association,

Defendants.

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Defendant Insurance Company of North America, Pacific Indemnity Company and Pacific Employers Insurance Company and Westchester Fire Insurance Company (collectively, the "Insurer Defendants") state as follows.

I. INSURER DEFENDANTS STATEMENT

A. Motion to Withdraw the Reference

Insurer Defendants gave notice of their intent to move to withdraw the reference, meet and conferred with the Debtor and Committee on the time they need to respond and will move following the court's ruling on the pending motions to dismiss. If the motion to dismiss is granted or the Debtor indicates its intent to amend, after an amended complaint is filed.

This adversary proceeding presents non-core state law issues for which disputed factual issues predominate that cannot be decided on motion, they require a jury. "[W]here, as here, non-core claims completely overwhelm claims that can be finally adjudicated in Bankruptcy Court, the matter is more likely to eventually come before this Court and efficiency is best served by having the matter heard in the correct forum ***at the earliest possible opportunity***." *In re Cachet Financial Servs.*, 2023 WL 4752048, *6 (C.D. Cal. July 24, 2023) (quoting *Everett v. Art Brand Studios, LLC*, 556 B.R. 437, 445 (N.D. Cal. 2016)) (emphasis added).[1]

B. The Debtor's Proposed Schedule is Premature and Patently Unreasonable

It is premature to formulate a case management statement before the District Court has an opportunity first to address motions to withdraw the reference. It is also premature to formulate a case management plan until the Plaintiff amends its complaint and provides adequate notice of its claims and what actions of Defendants constitute a breach. This Court has already ordered Plaintiffs for file an amended Complaint by November 28. Consideration of the pending motions

[1] Pursuant to United States Bankruptcy Court, Northern District of California Local Bankruptcy Rule 7012-1, the Insurer Defendants respectfully represent that they do not consent to the entry of a final order or judgment by the Bankruptcy Court and assert their right to trial by jury on all issues. Thus, this filing does not constitute a waiver of Insurer Defendants right to have any and all final orders in any and all non-core matters entered only after *de novo* review by a Federal district court (or, as applicable, appellate court) and/or the Insurer Defendants' right to trial by jury in any proceeding as to any and all matters so triable, whether or not the same be designated legal or private rights, or in any case or controversy or proceeding related thereto, and whether such jury trial is pursuant to statute or the United States Constitution.

to dismiss will likely require further amendments. As set forth more fully in Defendants' motions to dismiss (Dkt. Nos. 74, 122), this case was prematurely filed against Defendants because, among other things, the Complaint fails to state a claim for breach of contract and declaratory judgment relief and fails to allege any nonconclusory factual basis for any of its claims. These issues must be resolved and an amended complaint filed before any schedule can be set. Even more fundamental, the claims for which coverage is sought that are subject of the adversary proceeding have not been disclosed. The Debtor has not produced to the Defendants any of the proofs of claim that have been filed for which coverage is sought and are opposing the insurers' experts' reviewing them. These deficiencies by the Debtor compound the inadequacy of the notice of what actions of Defendants constitute a breach, as alleged in the Complaint, and make it premature to offer, let alone set a case management plan.

In any event, the schedule that the Debtor proposes is unreasonable, prejudicial and completely at odds with the basic notions of due process. The speed at which the Debtor proposes progressing through the case goes far beyond any notion of efficiency and is simply unworkable for any party. Debtor does not cite a single case in the State of California or anywhere else that has moved with the reckless speed the Debtor proposes. This case concerns coverage claims for over 300 underlying cases that concern grave allegations reaching back nearly a half-century. Without the benefit of any concrete explication, let alone a single citation, the Debtor proposes that this case head to trial in late Spring of 2024 giving the parties *less* than six months to complete *all* discovery. As of the scheduled November 14 hearing, the Debtor will have had 64 days to review the proofs of claims, Insurer Defendants will need at least that much time and likely significantly more. It took the Debtor over a month just to redact the claimant information and create a matching security key (which Insurer Defendants have not yet seen), so to expect the parties to be able to complete discovery and be ready for trial regarding each and every proof of claim within just six months is simply not feasible. Among other things, the Debtor's proposed schedule:

- Requires initial disclosures to be produced by November 21 *before* the amended complaint is due on November 28;

- Allots a little over a month to respond to written discovery, including production of documents; not only does this fail provide *any* time for motion practice, it is also *during* the holidays, which can cause delays due to the parties' respective employees being absent; and

- Sets the deadline for summary judgment for less than month after document production is complete and two months *before* the completion of discovery.

Indeed, under the Debtor's proposal, the parties will have less than a half a day (including weekends) to address the 300+ claims. But each claim will involve different time periods, different witnesses and different documentary evidence, which means resolving unique issues that will certainly take more than half a day to resolve on average. And discovery issues in these kinds of cases need to be bifurcated, starting with discovery and litigation over lost policy and related form provision issues, followed by discovery and litigation regarding accident, occurrence and notice issues. The Debtor's assumption that all of these complex issues can be completed at the same time is a naïve assumption.

C. The Diocese/Committee Are Proceeding in a Manner at Odds with That of Other Dioceses

In the *Diocese of Santa Rosa* bankruptcy, the debtor has not initiated an adversary proceeding, has agreed to share with the Insurer Defendants the documents it provided the Committee in that case, has moved to have a mediator appointed and is conferring with the Insurer Defendants on the selection of a mediator.[2] As discussed below, none of these steps have been taken in his case.

1. Exclusion of Insurers From Formulation of Plan of Reorganization

The Debtor has not met and conferred with the Insurer Defendants on the terms of a plan of reorganization. Nor has the Debtor included Insurer Defendants in any of its communications with the Committee concerning a plan or shared with us any term sheets or drafts of plan documents.

[2] *See Motion For Entry of an Order Referring Parties to Global Mediation, Appointing Mediator and Granting Related Relief*, *In re The Roman Catholic Bishop of Santa Rosa*, Case No. 23-10113 (Dkt. No. 479) at ¶¶ 11-15 (Bankr. N.D. Cal. October 20, 2023).

2. No Disclosure of Documents Debtors Shared with Committee

The Debtor has not produced to the Insurer Defendants any of the documents it shared with the Committee. Nor has it provided the correspondence exchanged with the Committee that explains the scope of what it agreed to search for and produce.

3. No Disclosure of Proofs of Claim

On September 11, 2023, the Bar Date ran. The Insurer Defendants have not been given access to the proofs of claim and are being barred from accessing the claims register. Insurer Defendants have been told that the Debtor has redacted the name of the claimants throughout all the proofs of claim irrespective of the fact that many of the claimants filed complaints with their names and those of their alleged perpetrators on the public docket.[3]

In the other sex abuse bankruptcies, including the *Diocese of Santa Rosa* bankruptcy, it was sufficient that the identities of the persons filing claims was protected by a protective order acknowledged by the parties in interest for them to access the proofs of claim.

The Debtor and Committee were both given unredacted copies of all the proofs of claim over a month ago. The total number of proofs of claim the Debtor asserted were filed appears to be 100 or more larger than the number of lawsuits previously disclosed.

4. No Engagement by the Committee/Debtor on Mediation

The Debtor has not met and conferred with the Insurer Defendants on mediation or the selection of a mediator. In June, Pacific Indemnity, INA and CNA wrote the Debtor asking about mediation. No response has been received. While the Committee now says that it needs documents for mediation, it has not had met and conferred about a mediation or exchanged any correspondence about mediation. Quite the opposite, what has been conveyed is that there is no interest in consensual resolution.

[3] *See* Decl. of Redwan Saleh in Support of Insurers' Limited Objection to the Official Committee of Unsecured Creditors' Motion for a Protective Order Preventing Disclosure of Survivor Information, Dkt. No. 579-1.

D. Case Management Plan

Given the number of parties, the amounts involved, the varying policy forms and terms at issue, and the numerous factual and legal issues that must be resolved, this is the quintessential example of a "complex" case under California's Rules of Court.[4] The action involves (1) numerous pretrial motions raising difficult and novel legal issues; (2) a large number of witnesses and substantial amount of documentary evidence; (3) a large number of separately represented parties; and (4) substantial post-judgment judicial supervision.[5] Actions such as this are presumptively deemed complex under California's Rules of Court as they involve both mass torts claims, many parties, and insurance coverage claims arising out of such claims.[6] Cases falling within this designation by definition require at least a year to address.

1. The Complex and Intensely Factual Nature of the Issues

In the underlying actions, the plaintiffs contend that for decades clergy associated with the Diocese raped and molested children entrusted to them in Diocese affiliated churches, schools and camps and that the Diocese knew about, ratified, and covered up pervasive sexual abuse by such clergy.

In this unprecedented context, the Debtor bears the burden to show that any given claim comes within the coverage of a policy. Under California law, an insured seeking coverage bears the burden of proving that an accident actually occurred in the first instance. By definition, this includes proving that the insured did not expect or intend the resulting harm. Although the Debtor seeks coverage for injury arising from hundreds of underlying actions that allege conduct criminal in nature, it has not come forward with information about the relevant facts about how the alleged claims occurred, which are in the Debtor's exclusive control.

Whether the claims generally or those by a given alleged perpetrator arise out of one accident or occurrence or more than one is also an intensely factual issue. Similarly, whether the claims fall within the scope of the release granted in 2005 by the Diocese to insurers turns on the

[4] Cal. Rules of Court, rule 3.400, subd. (a).

[5] *Id.*, subd. (b).

[6] *Id.*, subd. (b).

intensely factual issue of whether representatives of the Diocese who are responsible for resolving or investigating such claims or providing notice of such claims were aware of the claims.

Other issues relate to whether the Debtor fulfilled its other conditions precedent to coverage and policy obligations, including providing timely notice of potential claims and met its duty to cooperate with the insurers also bear on coverage.

The Insurer Defendants propose a case management plan that involves the sequencing or phasing of disputed issues to prioritize resolution of the threshold issue—missing policies, *i.e.,* what they are and say, not what they mean—while allowing discovery to commence immediately on the other jury trial issues.

The following represents the Insurer Defendants' proposal for litigating this case in the most efficient manner possible:

2. <u>Threshold Issues</u>:

a. Establishing Court that Will Oversee Case

The first step must be the determination of the Court to hear and try this case. Efficiency is best served by having the matter heard in the correct forum at the earliest possible opportunity. Insurers will move to withdraw the reference following the court's ruling on the pending motions to dismiss. If the motion to dismiss is granted or the Debtor indicates it intent to amend, after an amended complaint is filed.

Oppositions to the motion should be due two weeks after the motion is filed so a hearing date can be scheduled. There are exclusively non-core claims and jury trial issues that predominate. The matter is certain to come before the District Court.

The withdrawal of the reference should occur now if an action is permitted to go forward, so that the Court that will preside over trial has input on case management of non-core matters that require a jury trial.

The way to proceed is to first address the Motion to Withdraw the Reference and then have the Court that will preside over the jury issues determine the case management plan.

b. Identifying Claims for Which Coverage is Sought

The Debtor has given the Committee access to the proofs of claim but not the insurers.

Until access is provided to the proofs of claim, it will not be clear for what claims coverage is sought. This is an essential first step. And the insurers will be severely hampered in getting through the proofs of claim without the aid of experts and consultants.

c. Debtor's Disclosure That it Intends to Amend its Complaint

The Debtor admits in footnotes 1 and 2 of its brief in opposition to the Moving Insurers motion to dismiss the complaint that it intends to amend its complaint. Thus, even if the Insurers motions to dismiss are denied, the current complaint is not the operative pleading. A near-term deadline should be set for the Debtor to file its amended complaint.

3. <u>Phase I: Establishing Policy Terms and Attachment Points (5-6 Months)</u>

The Insurer Defendants propose prioritizing resolution of disputes concerning the policies' contents (i.e., what they are and say, not what they mean), since the policy language will necessarily inform the determination and quantification of Insurer Defendants' and the Debtor's respective rights and obligations.

a. Phase I-A Policy Terms/Lost Policies

This exercise is complicated by the fact that most of the Insurer Defendants' policies were issued 50 or more years ago, and some copies may be incomplete or illegible.

Presentation of evidence on disputed facts associated with alleged policies requires a jury. *See, e.g.,*; *State of California v. Continental Ins. Co*., 169 Cal. App. 4th 1114, 1160-66 (2009) (discussing the admissibility of evidence proffered to the jury to prove the existence and terms of a lost policy as well as the adequacy of the jury instructions related thereto); *Boston Gas Co. v. Century Indem. Co*., 529 F.3d 8, 22-23 (1st Cir. 2008) (discussing the evidence considered by a jury at trial used to determine the terms of a lost insurance policy)

This process is further complicated by the fact that a full set of the claims have not been produced by the Debtor to the Insurer Defendants. The Debtor alleges in the pending complaint that the Insurer Defendants breached the policy contracts, but the Debtor acknowledges that it has not tendered all the claims for which coverage is sought. Until these have been produced, it will be unclear what periods are potentially implicated.

The parties should work to establish the contents and terms of these "lost policies." The parties began this process by producing policy documentation to the extent possible and the Insurer Defendants cooperate in continuing to do so once a full set of relevant claims have been provided to the Insurer Defendants. The parties can present the disputes that remain to the District Court for resolution through a jury trial or some other procedure on a date acceptable to the Court in April 2024, as it will take at least four months to review and analyze all of the complaints, proofs of claim and conduct any follow on policy searches and conduct depositions.

If the parties cannot reach agreement on the applicable attachment point for each policy, those disputes could be resolved at the same time or through a separate jury trial.

b. Phase I-B Follow Form Provisions

A related issue for establishing the terms of the policies at issue is the need to establish what terms and conditions individual policies incorporate from underlying insurance (generally referred to as "following form" to underlying coverage).

Motion practice on other contractual issues will necessarily be based on specific language incorporated on a following form basis. The parties intend to meet and confer to determine whether there are disputes as to what specific terms and conditions are incorporated into individual excess policies on a following form basis.

The following form issue may be complicated to the extent that policies in specific coverage blocks were issued on a quota share basis but have distinct following form language. Disputes may also arise to the extent policies do not identify the specific policy to which each follows form.[7] The parties will work toward the goal of identifying all outstanding disputes regarding following form issues and presenting those to the Court on one of the previously reserved dates. Depending on the mechanism selected to resolve a particular issue, resolution may require more than a single day.

The Insurer Defendants proposes that a hearing or evidentiary mini-trial on these issues be

[7] For example, some policies identify a specific policy as underlying insurance to which each follows form. Others simply indicate that they follow form on a "tbd" basis. Still others refer to generally underlying insurance, which may refer to directly underlying insurance or underlying insurance further below the directly underlying policy.

scheduled for a date in May or June of 2024 or shortly thereafter. The Insurer Defendants propose updating the Court after the parties identify disputes, if any, on the following form issue and to then establish the proper procedural mechanism for submitting those disputes to the Court.

4. Phase II: Accident, Occurrence, Notice (9 Months After Conclusion of Phase I)

a. The Unprecedented Nature of the Claims and the Coverage Issues in Light of the Conduct Alleged

The plaintiff firms bringing the abuse claims contend that the Debtor knew about the abuse, ratified it, and covered it up.[8] While the causes of action are sometimes framed as negligent-supervision claims, plaintiffs allege that the Diocese ratified and/or authorized the sexual abuse, refused to dismiss clergy who were known to be abusing children, and shielded clergy from responsibility for their sexual abuse.[9] Plaintiffs further allege that the Diocese refused to report the sexual abuse to civil or criminal authorities.[10]

Reports issued by plaintiffs' counsel name more than 95 clergy associated with the Diocese of Oakland who alleged sexually abused individuals, mostly children.[11] To put this in context, there are only about 350 priests currently active in the Diocese.[12] In the write-up of the accounts of abuse by plaintiffs' counsel, it is alleged that the Diocese knew about the abuse, ratified it, and covered it up.[13]

The Debtor bears the burden to show that any given claim comes within the coverage of a

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[8] Anderson Report, Sexual Abuse in Bay Area Archdiocese, p.13 ("The data collected suggests the patterns and practices of Church officials, including the orchestration of an institutional cover-up of an enormous magnitude. Perhaps most shocking among the discoveries is that some perpetrators were intentionally transferred and retained in trusted positions with direct access to children even when they were known to be abusers.").

[9] *Id.*.

[10] *Id.* at p. 13 ("[T]he Bay Area Dioceses, like many other dioceses and archdioceses, knew priests were perpetrators that posed a significant danger to children. The sexual abuse of children has long been a crime in California. However, Church officials chose and continue to keep the crimes hidden and allow its priests continued and unfettered access to children.").

[11] *Id.*

[12] *Id.*

[13] *Id.*

policy. Under fundamental principles of insurance law, an insurer is not liable for losses caused by willful acts of the insured or by injury that is expected or intended.[14] Thus, when seeking coverage, the insured bears the initial burden of proving that an accident occurred.[15] The plaintiff firms alleges facts that could preclude coverage, as those facts are inconsistent with accidental injury.[16]

When "[a]ll the evidence . . . adduced shows [an] act . . . was intentional" the insured bears the burden to show, to the contrary, that an accident occurred.[17] The insured bears the burden to come forward with facts that "demonstrate[] potential liability under the policy" since the insured—not the insurer—is in the best position to provide this information.[18] These factual issues are decided by the jury.[19]

Given the burden of proof, a controversy presently exists over whether the Diocese can establish that it did not expect or intend the harm alleged in the underlying actions. This is in dispute for two reasons. First, despite repeated requests, the Diocese has not provided information to the Insurer Defendants about this issue—let alone information sufficient to satisfy

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[14] *See, e.g.*, *Interinsurance Exch. v. Flores*, 45 Cal. App. 4th 661, 669-71 (1996) (passenger's intentional shooting of a pedestrian was an "intended and expected injury" and not an accident); Croskey, California Practice Guide: Insurance Litigation Ch. 7A-G ("[T]here is *no coverage in the first place for intentional (nonaccidental) acts*.") (emphasis in original).

[15] *See Royal Globe Ins. Co. v. Whitaker*, 181 Cal. App. 3d 532, 537 (Ct. App. 1986) (insured has the burden to show that an "accident" not "expected" or "intended" occurred); *see also Weatherman v. State Farm Ins. Co*., No. C 96-1975 MHP, 1997 WL 33804, at *4 (N.D. Cal. Jan. 10, 1997) ("[I]t is the insured's burden to show that he or she comes within [the] definition" of an "accident") (quoting *Royal Globe*).

[16] *See* Compl. ¶ 27 (the Diocese is defending "more than 300 complaints . . . seeking recovery for alleged negligent supervision and hiring of certain clerical and ministerial personnel" under "AB 218, which extended the statute of limitations" for claims regarding sexual abuse of children); *Schorno v. State Farm Fire & Cas. Co*., 445 F. App'x 956, 958 (9th Cir. 2011) (observing that "rape, molestation, sexual abuse of a child, sexual grooming, and intentional infliction of emotional distress" are not "accident[s]" subject to insurance coverage).

[17] *Royal Globe,* 181 Cal. App. at 537.

[18] *Id*. at 538.

[19] Croskey, California Practice Guide: Insurance Litigation ¶ 4:1; *see also Manneh v. Iverness Med. Innovations, Inc*., 2011 WL 662765, at *3 (S.D. Cal. Feb. 11, 2011) (the court has "only limited discretion" when a jury trial has been requested and "that discretion . . . must, wherever possible, be exercised to preserve a jury trial.") (citations and internal quotation marks omitted); *Patterson v. Insurance Co. of North America*, 6 Cal.App.3d 310, 315 (1970) (a party is entitled to a jury trial as a matter of right where a declaratory relief claim "is in effect used as a substitute for an action at law for breach of contract").

its burden as to all the underlying actions.[20] Second, it is alleged that the Diocese—together with, and at the direction of, the Catholic Church—has historically known about and actively concealed sexual abuse perpetrated by priests, nuns, and other church employees.[21] Based on those allegations, a jury might conclude that the Diocese indeed expected some—if not all—of the sexual abuse alleged in the underlying actions.[22]

These issues, together with whether the releases from the 2005 Insurer/Diocese Settlement discussed in the next section below, turn on a determination of what the Debtor knew and when they knew it. These disputed issues of fact require substantial discovery. Insurer Defendants propose that discovery commence immediately as it will likely take at least a year to complete for each of these very complex and fact-intensive issues in light of the number of claims.

The Insurer Defendants will work to maximize efficiency in discovery. The Insurer Defendants, however, should not be prevented from access to important information on the facts and circumstances giving rise to Debtor's liability.

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[20] Compl. ¶ 27 (stating that there are more than 300 lawsuits pending against the Diocese without identifying which insurer is purportedly obligated to provide insurance coverage under which insurance policy and based on what facts for any action).

[21] *See, e.g.,* Rachel Swan, "He Spent 17 Years as a Priest in Exile. His Final Act: A Scorching 'Farewell Letter' to the Catholic Church," *San Francisco Chronicle,* July 26, 2022 (former priest alleges that the Diocese was told about and ignored evidence of child sexual abuse by its priests); Julianna Barbassa, "7 Sue Diocese of Oakland over alleged sex abuse Church defrocked priest 3 years after he pled guilty to child molestation," *Associated Press*, August 20, 2010 (attorney Jeff Anderson stating that "Oakland Bishop John C. Cummins and other church officials knew there were multiple allegations of abuse against [a priest in the Diocese of Oakland], and did nothing to prevent the priest from continuing to access children); Brandon Bailey, "Abuse Claims Blame Church Officials," *Mercury News,* Dec. 29, 2003 (former Oakland Bishop Floyd Begin met with parishioners who claimed priest sexually molested children and priest was reassigned to other parishes where is accused of committing additional child sex crimes); Brooke Donald et al., "Letter Shows Pope Benedict Blocked Priest's Defrocking in 1985," *San Bernadino Sun,* Apr. 9, 2010 (correspondence between then-Cardinal Joseph Ratzinberger (future Pope Benedict XVI) and Diocese of Oakland officials recommended waiting to remove priest accused of child sex crimes from service); Yomi S. Wronge, "Ex-Priest Pleads Guilty to Sex Charge," *San Jose Mercury News,* Dec. 7, 2002 (victim of Diocese of Oakland priest who pled guilty to felony child sex crime alleges that perpetrator was allowed to remain in the ministry "even after it was known that he was a pedophile").

[22] *See Coit Drapery Cleaners, Inc. v. Sequoia Ins. Co.*, 14 Cal. App. 4th 1595, 1609 (1993) (insurer had no duty to defend where "sexual abuse" by insured's employee was "so widespread, well-known, and so ratified by the corporation as to constitute [an] intentional corporate policy").

b. The 2005 Diocese/Insurer Settlement and Release of Coverage for Sexual Abuse Claims Presents Disputed Factual Issues that Require Discovery

In 2005, after the one-year revival window closed, the Diocese entered into a settlement with numerous claimants and reached a separate agreement with its insurers that released coverage for sexual abuse claims known to the Diocese.

The 2005 Settlement Agreement released the insurers from all past, present, and future actions, known or unknown, foreseen or unforeseen, that "arise from the Abuse Claims." Importantly, the term Abuse Claims was not defined to be a fixed list of claims but was instead defined as including "all claims by all persons that the Diocese reasonably should have concluded were seeking monetary compensation that were filed and served prior to the Effective Date ***or that were known of prior to the Effective date by … representatives of the Diocese who are responsible for resolving or investigating such claims or providing notice of such claims under the Settling Policies…***"

Press reports indicate that more than 50 suits were filed against the Diocese, with plaintiffs alleging that they had been sexually abused and raped by clergy and that the Diocese knew about, ratified it, and covered up this abuse.[23] By its terms, the release delivers finality with respect to sexual-abuse claims and the Diocese's alleged role in the claims to insurers that participated in the 2005 settlement.

What was known prior to the Effective Date by representatives of the Diocese who are responsible for investigating abuse claim is a factual issue that will require discovery of what was known when and by whom.

c. Number of Occurrences

Whether the claims generally or those by a given alleged perpetrator arise out of one accident or occurrence, is an intensely factual issue. This issue has been the subject of extensive discovery in other California cases. As there are likely to be disputed issues of fact, jury trial on

[23] *See, e.g.* William Lobdell and Jean Guccione, "Church to Pay $3 Million in Rape," Los Angeles Times (Jan. 24, 2004); Terence Chea, "Fremont Priest Agrees to Pay $16 Million in Molestation Case," Associated Press (Nov. 25, 2003); Kim Curtis, "Two Brothers Received Nearly $2 Million in California Church Abuse Case," Associated Press (Apr. 13, 2005).

these issues may also be required.

5. Phase III: Allocation (8 Months After Conclusion of Phase II)

After resolving which policies impose an obligation on the Insurer Defendants to indemnify the Debtor's liabilities, the Debtor's liabilities can then be allocated among the implicated policies. The parties will confer about the issues that may be appropriate for resolution in Phase III. Issues that may be relevant to this allocation exercise may include the determination of the number of "occurrences" giving rise to the Debtor's liabilities (if not decided in Phase II), impact of so-called "non-cumulation" provisions contained in certain policies, the effect of insolvencies or settlements on allocation and the Debtor's election of coverage for indemnification and proof of exhaustion of underling coverage.

The Insurer Defendants believe a trial date for this phase should be scheduled during Phase II.

6. Phase IV: Contribution Disputes

To the extent necessary, the appropriate parties will address contribution issues. If there is a determination that the Debtor should be indemnified, the Insurer Defendants who pay the Debtor's liabilities may wish to seek contribution from other Defendants with policies found to provide indemnity coverage for the Debtor's liabilities. Settled insurers who are not parties may also be included in future phases, including Phase IV. The Insurer Defendants believe a trial date for this Phase should be scheduled during Phase III.

II. CONCLUSION

The parties look forward to discussing these issues with the Court at its convenience or during the next Status Conference.

Dated: November 10, 2023

By: */s/ Karen Rinehart*

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EXHIBIT A

EXHIBIT A
PROPOSED CASE MANAGEMENT PLAN
The Roman Catholic Bishop of Oakland v. Pacific Indemnity, et al.,
Adv. Case No. 23-04028 (WJL)

PHASE I: ESTABLISHING POLICY TERMS

Issues:

- Phase I-A: "Lost Policies" and policy attachment points; and
- Phase I-B: Follow form issues.

Discovery:

Parties proceed on all document discovery, including documentation of the Debtor's alleged damages.

Timing: Present – April 2024 (5 months)

Hearing and/or evidentiary mini-trial on Phase I-A issues set for April, 2024 if any issues unresolved, additional hearing dates as needed.

- Phase I-B motion practice; and
- Trial on any unresolved Phase I-B issues set for May or June 2024.

PHASE II: ACCIDENT, OCCURRENCE, NOTICE

Issues:

- Accident/Occurrences;
- Identification of aggregate limits;
- Insured status;
- Choice of law and related issues; and
- Additional issues.

Discovery:

Parties proceed on any remaining document discovery not completed during Phase I Insurer Defendants will work with the Debtor to efficiently conduct discovery on all other issues but should not be foreclosed on additional discovery on topics related to other phases in order to evaluate settlement and prepare for future phases Expert discovery regarding Phase II issues.

Method of Resolution:

- All Phase II Issues: Jury trial

Timing: March 2025 (9 months following conclusion of Phase I)

PHASE III: ALLOCATION

Parties to confer about issue ripe for resolution in Phase III, which may include:

- Effect of insolvencies/settlements;
- Effect of non-cumulation provisions; and
- The Debtor's election of coverage for indemnification and proof of exhaustion of underlying coverage.

Discovery:

- Any remaining document discovery;
- Insurer Defendants' position: Insurer Defendants will work with the Debtor to plan efficiently conduct discovery on all other issues but should not be foreclosed on additional discovery on topics related to other phases; and
- Expert discovery regarding allocation issues.

Timing: November 2025 (8 months following conclusion of Phase II)

- Phase III motion practice concluded by November 2025
- Trial on any unresolved Phase III issues: December 2025

PHASE IV: CONTRIBUTION DISPUTES BETWEEN INSURER DEFENDANTS

To the extent necessary, the appropriate parties will address contribution issues. If there is a determination that the Debtor should be indemnified, the Insurer Defendants who pay the Debtor's liabilities may wish to seek contribution from other Defendants with policies found to provide indemnity coverage for the Debtor's liabilities. Settled insurers who are not parties may also be included in future phases, including Phase IV. The Insurer Defendants believe a trial date for this Phase should be scheduled during Phase III.