UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

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In Re:

THE ROMAN CATHOLIC BISHOP OF OAKLAND

Debtor.

Case No. 23-04028
Chapter 11

Oakland, California
Tuesday, March 19, 2024
10:30 AM

ADV#: 23-04028
THE ROMAN CATHOLIC BISHOP OF OAKLAND v. PACIFIC INDEMNITY, ET AL.

DEFENDANT'S MOTION TO DISMISS THIRD AMENDED ADVERSARY PROCEEDING OR ALTERNATIVELY FOR A MORE DEFINITE STATEMENT UNDER FEDERAL RULE OF CIVIL PROCEDURE RULE (E) FILED BY CALIFORNIA INSURANCE GUARANTEE ASSOCIATION (DOC. 171)

INTERIM APPLICATION FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR BERKELEY RESEARCH GROUP, LLC (JUNE 23, 2023 THROUGH DECEMBER 31, 2023), FINANCIAL ADVISOR, FEE $716,269.50, EXPENSES: $5,536.72. (DOC. 860)

INTERIM APPLICATION FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR BURNS BAIR LLP (JULY 14, 2023 THROUGH DECEMBER 31, 2023), SPECIAL COUNSEL, FEE: $438,446.10, EXPENSES: $11,772.89 (DOC. 864)

INTERIM APPLICATION FOR COMPENSATION AND

REIMBURSEMENT OF EXPENSES FOR KELLER BENVENUTTI KIM LLP (SEPTEMBER 1, 2023 THROUGH DECEMBER 31, 2023), CREDITOR COMM. ATY, FEE: $58,272.50, EXPENSES: $3,961.15 (DOC. 867)

INTERIM APPLICATION FOR COMPENSATION FOR STOUT RISIUS ROSS, LLC (SEPTEMBER 8, 2023 THROUGH DECEMBER 31, 2023), CONSULTANT, FEE: $304,516.00, EXPENSES: $0.00 (DOC. 870)

FIRST INTERIM FEE APPLICATION OF BREALL & BREALL LLP, (AUGUST 1, 2023 THROUGH DECEMBER 31, 2023), DEBTOR'S SPECIAL COUNSEL, FEE: $28,912.50, EXPENSES: $3,712.90 (DOC. 873)

INTERIM APPLICATION FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR LOWENSTEIN SANDLER LLP (SEPTEMBER 1, 2023 THROUGH DECEMBER 31, 2023), CREDITOR COMM. ATY, FEE: $1,041,223.50, EXPENSES: $20,633.77 (DOC. 876)

SECOND INTERIM FEE APPLICATION OF FOLEY & LARDNER LLP, AS GENERAL BANKRUPTCY COUNSEL TO THE DEBTOR, FOR ALLOWANCE AND PAYMENT OF COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR THE PERIOD OF SEPTEMBER 1, 2023 THROUGH DECEMBER 31, 2023, FEE: $2,273,753.50, EXPENSES: $26,026.71 (DOC. 881)

SECOND INTERIM FEE APPLICATION OF ALVAREZ & MARSAL NORTH AMERICA, LLC FOR

ALLOWANCE AND PAYMENT OF COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR THE PERIOD OF SEPTEMBER 1, 2023 THROUGH DECEMBER 31, 2023, FINANCIAL ADVISOR, FEE: $1,483,210.00, EXPENSES: $6,777.01 (DOC. 884)

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

APPEARANCES:

For the Debtor:
ANN MARIE UETZ, ESQ.
Foley & Lardner LLP
555 California Street
Suite 1700
San Francisco, CA 94104
(415)434-4484

JOSEPH M. BREALL, ESQ.
Breall & Breall, LLP
3625 California Street
San Francisco, CA 94118
(415)345-0545

For California Insurance Guarantee Association:
FREDERICK G. HALL, ESQ.
Black, Compean & Hall, LLP
275 East Hillcrest Drive
Suite 160-1021
Thousand Oaks, CA 91360
(818)833-9500

For Official Committee of Unsecured Creditors:
GABRIELLE ALBERT, ESQ.
Keller Benvenutti Kim LLP
650 California Street
Suite 1900
San Francisco, CA 94108
(415)796-0709

JEFFREY D. PROL, ESQ.
MICHAEL A. KAPLAN, ESQ.
Lowenstein Sandler LLP
One Lowenstein Drive
Roseland, NJ 07068
(973)597-2490

	JESSE J. BAIR Burns Bair 10 E. Doty Street Suite 600 Madison, WI 53703 (608)286-2840
For Pacific Indemnity Company:	JUSTINE M. DANIELS, ESQ. O'Melveny & Myers LLP 400 Sout Hope Street 18th Floor Los Angeles, CA 90071 (213)430-7657
For Certain Underwriters at Lloyd's of London Subscribing:	MARK D. PLEVIN, ESQ. Crowell & Moring LLP 3 Embarcadero Center 26th Floor San Francisco, CA 94111 (415)365-7446
For Certain Underwriters at Lloyd's of London Subscribing:	NATHAN REINHARDT, ESQ. Duane Morris LLP 865 South Figueroa Street Suite 3100 Los Angeles, CA 90017 (213)689-7428
For Certain Underwriters at Lloyd's of London Subscribing:	BRADLEY PUKLIN, ESQ. Clyde & Co LLP 30 South Wacker Drive Suite 2600 Chicago, IL 60606 (312)635-7000
For Westport Insurance Corporation:	BLAISE S. CURET, ESQ. Sinnott, Puebla, Champagne & Curet, APLC 2000 Powell Street Suite 830 Emeryville, CA 94608 (415)352-6200

	MATTHEW WEISS, ESQ. Parker, Hudson, Rainer & Dobbs LLP 303 Peachtree Street NE Suite 3600 Atlanta, GA 30308 (404)523-5300
	TODD JACOBS, ESQ. Parker, Hudson, Rainer & Dobbs LLP Two N. Riverside Plaza Suite 1850 Chicago, IL 60606 (312)477-3306
For the United States Trustee:	JASON BLUMBERG, ESQ. United States Department of Justice Office of the U.S. Trustee 450 Golden Gate Avenue 5th Floor Suite #05-0153 San Francisco, CA 94102 (415)705-3300
Also Appearing:	CHARLES MOORE MATTHEW BABCOCK
Court Recorder:	D. CHAMBERS United States Bankruptcy Court 1300 Clay Street Oakland, CA 94612
Transcriber:	JAMIE GALLAGHER eScribers, LLC 7227 N. 16th Street Suite #207 Phoenix, AZ 85020 (800) 257-0885

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OAKLAND, CALIFORNIA, TUESDAY, MARCH 19, 2024, 10:31 AM

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(Call to order of the Court.)

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

THE COURT: Okay. Please be seated. Let's go ahead and call the matter.

THE CLERK: Your Honor, would you like me to call both matters together or --

THE COURT: Oh, sure.

THE CLERK: Calling all the matters jointly for the line item number 1. That's the Roman Catholic Bishop of Oakland v. Pacific Indemnity, et al. Case Number 23-04028. And the bankruptcy matter is for the Roman Catholic Bishop of Oakland, Case Number 23-40523.

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

THE COURT: Okay. Tell me when we have everybody and all.

THE CLERK: And that's everyone, Your Honor.

THE COURT: Okay. Why don't we have appearances in the courtroom first, please?

MS. UETZ: Good morning, Your Honor. Anne Marie Uetz of Foley and Lardner, on behalf of the debtor.

THE COURT: Okay.

MS. UETZ: I also have Chuck Moore from A&M here.

THE COURT: Okay. That'll be --

MS. UETZ: And I'm sorry, I have this set to do not disturb, but that's my emergency.

THE COURT: I'm sorry?

MS. UETZ: My phone is tweeting because it's my daughter's emergency signal, so I'm just going to turn it off. I'm sure she's fine. It's on do not disturb, though.

THE COURT: Well, do you want to take a moment and --

MS. UETZ: Just one. I'm so sorry. I know it's not supposed to go off.

THE COURT: No. That's okay. All right. Okay.

MR. PROL: Good morning, Your Honor. Jeffrey Prol, Lowenstein Sandler for the committee.

THE COURT: Okay.

MR. PROL: I have Matt Babcock from BRG --

THE COURT: I'm sorry?

MR. PROL: Matt -- Matthew Babcock from BRG --

THE COURT: Okay.

MR. PROL: -- is also in the courtroom with me.

THE COURT: Okay. Very good. All right. On the screen, please.

Sorry. Is anybody -- anybody else appearing for the debtor? Let's start with that.

MS. UETZ: No, Your Honor.

THE COURT: Okay. Anybody -- let's get all the committee appearances on the screen.

MS. ALBERT: Good morning, Your Honor. Gabrielle Albert. Keller Benvenutti Kim, on behalf of the committee.

THE COURT: Okay.

MR. KAPLAN: Good morning, Your Honor. Michael Kaplan from Lowenstein Sandler, on behalf of the committee.

THE COURT: Okay. Let's get the U.S. Trustee.

MR. BAIR: Excuse me, Your Honor. Jesse Bair from Burns Bair.

THE COURT: Oh, sure. Sure, sure, sure, sure. Okay. Okay. Great. Thank you.

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

THE COURT: Okay. Insurance company counsel.

MR. JACOBS: Good morning, Your Honor. Todd Jacobs for Westport. And I'm here with my co-counsel, Matt Weiss and Blaise Cura.

THE COURT: Okay. Great. Anybody -- others?

MS. DANIELS: Good morning, Your Honor. Justine Daniels, O'Melveny & Myers for the Pacific Insurance.

THE COURT: Okay. Good morning.

MR. PUKLIN: Good morning, Your Honor. Bradley Puklin for London Market insurers.

THE COURT: Okay. Good morning.

MR. PLEVIN: Good morning, Your Honor. Mark Plevin for Continental Casualty Company.

THE COURT: Okay. Good morning. Anybody else?

MR. BREALL: Good morning, Your Honor. Joseph Breall for special insurance counsel for debtor.

THE COURT: Okay. Good morning. Is that everybody?

THE CLERK: We all have -- we also have Mr. Hall.

THE COURT: I beg pardon?

THE CLERK: We also have Mr. Hall.

THE COURT: Okay.

THE CLERK: Mr. Hall, you need to turn --

MR. HALL: Good morning, Your Honor. Frederick Hall for the California Insurance Guarantee Association.

THE COURT: Okay. Great. Thank you very much.

Well, thanks, everybody, for suspending your efforts to listen to the truck argument, which I think is probably still ongoing, for those of you who are following these things since we.

MR. BLUMBERG: It's completed, Your Honor. We finished it a couple minutes ago.

THE COURT: Okay. I went back a few minutes ago and thought I was hearing what sounded like it might have been the tail end. So it was -- we had a very long morning this morning between evidence code Section 704(b) and -- and this question,

I think the Court was duly taxed.

We've got -- in my understanding, we have three matters on today. I think two of them are -- have become essential -- well, one of them I think has become essentially housekeeping. The other one is something I put on that is my version of a housekeeping question. And then I think we have some minor, relatively few unresolved issues with respect to fee applications.

So if we can start with the with the AP, you're probably all aware, I know I am, that Judge Corley, I think, has issued an order that grants the motion to withdraw the reference. So you are in her exceptionally capable hands. If there's anything you think I need to do to facilitate that and getting the matter to her in some way that is not already accomplished, you can let me know.

Other than that, I'm assuming that she will take it from here with respect to any motion practice. I did read her -- I did read her order. I think it largely reflects the parties' understanding that any other way you want to think about this, it's probably going to be expeditious and timely to have her go forward with those matters. I think that's true.

And again, I mentioned before that there have been occasions where because of some, you know, weird constitutional power questions, there are some matters that really are sort of bankruptcy centric that end up having to be decided ultimately,

perhaps, by the district court. In those situations, I've been much more active in filing a recommendation that says, essentially, let me do all kinds of things here until you get to that point, because I think I can be helpful. And I would be -- I would have been as happy to be helpful here, but in an insurance question, I doubt I have anything uniquely wonderful to offer.

So you're in front of Judge Corley, good luck. If there's anything anybody thinks we need to do other than just wish you all Godspeed there, I will do that. And I'm sure I'll stay abreast of what's happening there. So good luck with that. Okay?

MS. UETZ: Thanks, Your Honor.

THE COURT: You're welcome. I wanted to just -- and this is purely logistics, with respect to the -- the motion to quash that resulted in a separate proceeding in New Jersey, I saw that that had been done. I see that it's been transferred. And my only question for you folks today is whether there is any difference between whether we should open an AP here for purposes of acknowledging the transfer of that matter or whether it's handleable within the bankruptcy case, since I think it -- it really is a matter within the case.

I am indifferent to how we do it. So if anybody has an idea for the best way to do it, and the most expeditious way to do it, I'm all ears. But I don't have a dog in that fight

one way or the other. You guys tell me what you think is going to make most sense.

MR. KAPLAN: Your Honor, if I might, on behalf of the committee.

THE COURT: Sure.

MR. KAPLAN: We see no need to open a separate adversary proceeding. We certainly understand LMI's stated reasoning for filing it.

THE COURT: Yeah.

MR. KAPLAN: We can consolidate it. And we certainly, I think, all the interested parties will agree that we have teed up a rather fulsome day for you on April 17th related to --

THE COURT: That's fine.

MR. KAPLAN: -- these issues that --

THE COURT: Okay.

MR. KAPLAN: -- and all will be handled -- I -- and so --

THE COURT: Okay. No, I mean it --

MR. KAPLAN: -- if anyone on the line feels differently --

THE COURT: It really was just a housekeeping question. I don't want to begin this the wrong way. If somebody thinks that they're prejudiced by it being an AP, not being an AP, I'm willing to hear you. I just want to make sure

that we have every opportunity to give it all the attention it deserves, and that we're not inadvertently doing something that's going to be problematic. That's all. Okay.

MS. UETZ: And Your Honor, Ann Marie Uetz of Foley for the debtor.

We agree with that, and we think it's most efficient to proceed the way Mr. Kaplan has suggested.

THE COURT: Okay. All right.

MS. UETZ: Thank you.

THE COURT: All right. LMI feel any differently?

MR. PUKLIN: Your Honor, this is Bradley Puklin speaking.

I don't want to step on his toes. I think our bankruptcy counsel is waiting to -- or he's logged into Zoom, but (indiscernible).

THE COURT: Okay.

MR. PUKLIN: I can see no -- I have no objection to that.

THE COURT: Okay. So is somebody -- is somebody joining us.

MR. PUKLIN: He is on. I think he's waiting to be added to the panel. Maybe his hand is raised.

THE COURT: Okay. Okay.

THE CLERK: Your Honor, may I ask the last name of the party that --

THE COURT: Sure.

THE CLERK: He just --

MR. PUKLIN: Nathan Reinhardt.

THE CLERK: Thank you.

THE COURT: Okay. Thank you.

THE CLERK: Mr. Reinhardt is moving now over now.

MR. REINHARDT: I'm sorry about that, Your Honor.

THE COURT: No. No problem. Nice to see you.

MR. REINHARDT: Nathan Reinhardt -- I'll just make my appearance. Nathan Reinhardt, Duane Morris.

THE COURT: Okay. Okay.

MR. REINHARDT: For Lloyd's London. Again, I apologize. I was having computer issues.

THE COURT: No problem.

MR. REINHARDT: I don't think -- I don't think we have an objection on -- on that particular point as well.

THE COURT: Okay. Okay. All right. If anybody -- if anybody comes to a different view, let me know. But in the meantime, we may, not to go against what I just said, we may determine that for our own purposes in order to accept the matter, it's easier just to open up an AP, because that's kind of a way that we do things. That does -- that doesn't mean that you have to do anything differently. We'll figure out a way to get it consolidated with the main case. Okay? So it will not be a problem.

And I appreciate -- wait a minute, I guess I shouldn't say I appreciate that it came back here, but I did have a somewhat similar situation in Mariner Health where we spent about two weeks wondering, you know, who ought to be determining these issues. And I'm delighted to do it, and I hope I can be helpful on April 17th. Okay?

So that's all I had on that. If anybody has any other issues, any other housekeeping issues on that, I'm happy to hear them. Otherwise, I'll look forward to your wonderful arguments and your great briefing. Okay?

All right. That gets us to fee apps. Okay. My -- my roster suggests that we've reached resolution -- well, you've reached resolution with respect to the objections on all of the applications that have been raised by the Office of the U.S. Trustee, with the exception, I think, of Alvarez & Marsal. Is that right? That's the only one that's outstanding at the moment?

MS. UETZ: That is my understanding, Your Honor.

THE COURT: Okay. Well, I can go through a roster of matters that I'd be willing to -- I mean, I am willing to accept the agreed upon resolution with respect to all the other applications for which an objection had been raised. And if we need to go through that roster, I'm happy to do it. I think it's -- I think that certainly would include Foley & Lardner on behalf of the debtor, Keller Benvenutti, on behalf of the

committee. I think it involved BRG. Am I wrong about that? That there was a resolution there? Right? Okay. Great. And that's financial advisor for the committee, correct?

MR. PROL: Correct.

THE COURT: Okay. Great. Burns Bair as special counsel. I'm sorry. I guess I'm hearing myself. Burns Bair as special counsel for the committee. Correct?

MR. BAIR: Special insurance counsel for the committee.

THE COURT: Okay. And that's resolved as well. Right?

MR. BAIR: Yes.

THE COURT: Although that was relatively lately resolved. Okay.

Stout Risius Ross as a consultant for, remind me, for the committee?

MR. PROL: For the committee as well, Your Honor.

THE COURT: Okay. That's resolved as well, correct?

MR. PROL: Yes, Your Honor.

THE COURT: Okay. I'm not sure there was an objection to Breall, but there was there were some points noted, and I think that -- I don't think that is resolved as much as it is if there's a reservation, there's a reservation. Is that fair? Anybody -- anybody feel differently about that one? But I mean, I don't think there's a pending objection. Okay.

I mean, obviously Lowenstein Sandler was resolved. So this leaves Alvarez & Marsal. So let me ask you this. There is -- there is an overall -- well, there's an overall request that I indulge a holdback. Would you folks rather talk about that first, since you're probably all concerned/involved on that, and we come to -- we do the particulars for A&M down the road? Does that make sense?

MS. UETZ: I think so Your Honor, because some of my comments with respect to that first issue will, I think, inform even the A&M's application.

THE COURT: Okay. So it makes sense to deal with that first?

MS. UETZ: Yes.

THE COURT: Okay. All right. Can I -- since the objection was -- well, the comment, whatever we're going to call it, was raised by the U.S. Trustee, why don't I give them the floor and have them go ahead and make their presentation?

MR. BLUMBERG: Thank you, Your Honor. Jason Blumberg for the United States Trustees.

I do not have much to add to what we filed, but I would just like to emphasize a couple of quick points. We are concerned about the burn rate of professional fees in this case. They are quite substantial. We are also concerned by the fact that it appears from the January operating report, that that the debtor's cash has declined by nearly $9 million

during the course of the case.

With respect to the holdback request, Section 331 is permissive, not mandatory, with respect to the allowance of interim fees. The interim compensation procedures order gives the Court the option at any time to modify the terms of the -- of that order. And just in our view, given the context of the case and given we don't know exactly where we're going yet, it is our view that a holdback can preserve any solvency concerns -- well, alleviate any solvency concerns. We, more importantly, provide an incentive for timely case resolution.

THE COURT: Okay. Can I make sure I understand the holdback? It's -- am I correct in understanding that it's not just period to period, as in the current payment would be eighty percent, but it would be a holdback until the end of the case? Or is it just period to period?

MR. BLUMBERG: I think for this application, it would be for this period. And I suppose the professionals could move for payment of the holdback if the Court were to impose a holdback at the end of the case or at any time, the Court is inclined to --

THE COURT: Well, that -- but that -- my question is, do you want the holdback to pertain basically until the end of the case so that the most I'm awarding in any given application period is eighty percent, and then the twenty percent just rolls up to the end of the case? Is that the idea or is it

just in any -- with respect to every set of applications when they come due, I consider the twenty percent then? Which of those two is it?

MR. BLUMBERG: Your Honor, we only made the request with respect to this set of applications. So with respect to this set of applications, we would request that the twenty percent, if the Court impose it, be considered or delayed until the end of the case. We might make a similar request with respect to the third set of interim applications, but I don't know yet, Your Honor.

THE COURT: Okay. Anything else you want to add?

MR. BLUMBERG: No, thank you, Your Honor.

THE COURT: All right. Who wants to speak first about this issue?

MS. UETZ: I would, Your Honor.

THE COURT: Okay. Come on up.

MS. UETZ: Thank you. Ann Marie Uetz for the debtor, Foley & Lardner.

THE COURT: Uh-huh.

MS. UETZ: A couple of points that I just want to emphasize, and I'm not going to repeat the argument in our -- in our brief. I'm going to stand on that, Your Honor.

THE COURT: Yeah.

MS. UETZ: I want to share with the Court again something about the debtor's strategy in this case, which we've

made clear. We have had a lot of discussion with our leadership about this case and our goals in this case, which is to efficiently get to a fair and equitable resolution with the sexual abuse survivors and pay them.

We have reflected on the Diocese cases that are being filed across the nation, and I'm working very hard to be proved right here, Your Honor. These cases, in our opinion, don't need to last for three or four or five years. We are working really hard on a strategy, which I think did front end some fees in this case. And that that's part of, I think, what drove it. And I just want to highlight that again for the Court.

As the Court knows, we have -- I think as the Court knows, we have begun the mediation process and the data remains extremely committed to its strategy in this case, to stick to a timeline that gets to that efficient outcome to pay the sexual abuse survivors. So that's one thing I want to highlight for the Court.

Another thing I want to highlight is that before we filed, the debtor took out a 35 million dollar -- I'm pretty sure is the amount -- loan. It wasn't DIP financing, but it was a loan taken out with the recognition that there would be expenses incurred in the Chapter 11 process. And it has been, you know -- we've been utilizing and drawing on it for that purpose. And so while we absolutely respect the United States

Trustee's observations on the burn rate, we want to also tie it to the fact that we planned for this.

THE COURT: Uh-huh.

MS. UETZ: We --

THE COURT: The loan was from an affiliate?

MS. UETZ: Excuse me?

THE COURT: The loan was from an affiliate?

MS. UETZ: The loan was from OPF. Yes, Your Honor.

THE COURT: Okay.

MS. UETZ: And it's fully disclosed and everybody knows.

THE COURT: Yeah. Yeah.

MS. UETZ: Another comment I would make is as we begin mediation, we have been working with A&M, which has requested of us to shift as much of the work that they have been doing away from A&M to lower cost of ordinary course professionals or indeed to in-house finance folks. So we'll hear more about that, I think, in connection with A&M's --

THE COURT: Yeah.

MS. UETZ: -- application.

THE COURT: Yeah. Yeah. Yeah.

MS. UETZ: But I do want to let the Court know and let the parties know that we're not just burning professional fees to burn professional fees. It is something that we're focused on. I acknowledge the dollars are what they are. There's

no -- there's no hiding that. But there is a plan here. There is a strategy. And we are on track, in the debtor's view, according to that strategy and that plan.

Beyond that, Your Honor, I would rest on our opposition that we filed with respect to the twenty percent holdback, and I'm happy to answer any questions for the Court.

THE COURT: Okay. Let me let me hear from everybody else. Then we'll see where we are.

MS. UETZ: Thanks, Your Honor.

THE COURT: Okay. Committee counsel want to be heard as well? You vehemently disagree, right?

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

THE COURT: Okay. Good morning.

MR. PROL: Again, I don't have much to add beyond our papers.

THE COURT: Yeah.

MR. PROL: I support what Ms. Uetz had to say. And I also just want the Court to understand that there's been, since the inception of the case, very cooperative, extensive discovery process that has gone on, not only with regard to the assets of the Diocese, but assets of its affiliated entities, which there are a lot of assets there and a lot of theories that the committee believes that -- that would incorporate those assets back into the estate and should be available.

That's a lot of work, unwinding that, and the fees do reflect it. And we agree that -- that a lot of this is front-end loaded. We've been hard at work with mediation with regard to the debtor. We've met several times with the mediator on our own.

Yesterday, we kicked off mediation at Foley's office here in San Francisco, and we're due back there as soon as Your Honor releases us here. We're hopeful that we'll be able to make progress there. And I'm hopeful that, as Ms. Uetz said, that we can create a new dynamic here and move these cases along much more quickly than have occurred in the past.

THE COURT: Okay. Anybody -- anybody else want to be heard? No? Okay.

Well, look, since the U.S. Trustee's, for lack of a better word, the proponent of the request, I'll let you have the last word if there's anything else you want to add.

MR. BLUMBERG: I have nothing to add. Thank you, Your Honor.

THE COURT: Okay. I'm going to I'm going to basically deny the U.S. Trustee request at this point. I'm going to thank them. And -- and I mean this, I want to thank them for their concern about the case. They are uniquely situated and really, they have a voice that nobody else -- I mean, it's ironic that we're talking at such enormous length today in front of a Supreme Court that may or may not really appreciate

the issues and the depth that we do, but it's somewhat ironic that there are conversations going on today in a different context. I think the U.S. Trustee, as I say, speaks with a very unique voice here, and it's one that I always try to take seriously.

I'm taking this equally seriously because it is a lot of money, and it is a burn rate that is -- that is relatively high. But having said that, I'm going to remark that -- that as of today, I've been extraordinarily impressed with everybody's efforts to get to the point on the matters that we have in front of us and to act in a cooperative way, and to be fully informed when we come to a hearing and you're making presentations to the Court and the Court has questions. I feel that if I'm a barometer of how well this process is being served, I'm feeling that it's being very well served.

I do -- I'm not unmindful of the fact that in many cases, in many instances, these cases have gone on for what may appear to be longer than people would certainly hope or think is necessary. And I will make the following comment that subject to being proved wrong by the U.S. Trustee at some future date, I have absolutely no sense now that there's anything in the dynamic of this case that is suggesting that people are engaged in any kind of a delay or any kind of a process that is not focused on getting to a resolution in this case.

And that I will note in the other cases, although I'm not as intimately familiar with them as you are, I don't have the sense and I don't think the U.S. Trustee is telling me today that there's evidence that whatever might be the delay in those cases is based on anything other than very strong-minded people not being able to agree on matters of enormous importance.

And I think that there are some aspects of that that one might decry, and that are certainly being decried in different fora. But I don't have a sense that any of that is related to a billing issue or a desire to elongate a process for that purpose.

There are times when process -- when folks want to elongate a process for strategic purpose. That, to me, is a -- is a different question than the one that I think the U.S. Trustee would try to address through the holdback.

So for today's purposes, and again, if the U.S. Trustee believes that the circumstances and facts have changed and that there's a different story to be told, whether it's in the next round or the round after that, I am all ears at all times. I thank them for their good work on the case. I thank them for their vigilance and their diligence.

I don't think at this point a holdback is going to be helpful, and I -- I do think that for the firms involved, it's important to be paid for your hard work. And for all those

reasons, for now, I'm going to deny the request. But this is not meant to chill the U.S. Trustee's participation in this case, or if they think the facts and circumstances have changed and there's a different story to be told and a different argument to be made, I will happily hear it down the road whenever that's appropriate. All right.

So thanks to all of you. Thanks for your good arguments on that. And I will respectfully deny that request for now. Okay?

That gets us to A&M, I think. Okay. Are you speaking for A&M today, Ms. Uetz or --

MS. UETZ: Your Honor, on behalf of the debtor, I have some comments, and I think Mr. Moore is here as well for the Court.

THE COURT: Okay. All right. Do you want to lead off with your comments?

MS. UETZ: Please.

THE COURT: Okay. Well, actually, I'll tell you what. May I -- may I reverse the order a bit since it's the U.S. Trustee's objection?

MS. UETZ: Yes.

THE COURT: Okay. Is there anything that you wanted to highlight, Mr. Blumberg, in respect to your objection?

MR. BLUMBERG: Yes.

THE COURT: Okay.

MR. BLUMBERG: Yes, Your Honor, very briefly --

THE COURT: Because you -- because you, I mean, look, you now have a response. So if the response takes care of some of your concerns, let's just proceed that way, okay?

MR. BLUMBERG: Yes, that makes sense. Thank you, Your Honor.

THE COURT: Okay. Do that. Thank you.

MR. BLUMBERG: Jason Blumberg for the United States Trustee.

THE COURT: Okay.

MR. BLUMBERG: So our objection has two -- basically two buckets. The first bucket were objections to specific kind of time entries and --

THE COURT: Yeah.

MR. BLUMBERG: -- like conferences and such.

THE COURT: Right.

MR. BLUMBERG: And then the second bucket was the vendor management project category. Frankly, our concern there was that maybe the -- maybe Alvarez & Marsal was doing a little bit too much.

I have reviewed Alvarez & Marsal's reply, and if I'm reading it correctly, Alvarez & Marsal has proposed a voluntary reduction of $13,172.38 to address the -- kind of the specific time entry objections.

THE COURT: Yeah.

MR. BLUMBERG: That reduction resolves our objections on those matters.

THE COURT: Okay.

MR. BLUMBERG: So what that leaves then is -- is the vendor management project.

THE COURT: Okay. Can I -- can I throw an idea in here? And this is a little bit like, you know, asking to see the cards of the guy who's just bluffed you out of the round.

But I do have some very specific thoughts about some of the -- some of these categories of objections, and I would like to share them if it's okay. All right?

MR. BLUMBERG: Absolutely, Your Honor.

THE COURT: Okay. With respect to block billing issues, and I think this came up in a few instances, maybe not so much this one as others. Any entry less than an hour, and the U.S. Trustee did object to some entries that were less than an hour on block billing, I just ignore. I mean, you just can't get up to enough mischief in an hour to have it matter one way or the other. And frankly, at less than two hours, I'm kind of in the same place.

I'm looking for something that strikes me as really egregious. And you just couldn't tell what people were doing within a certain period of time. So I -- you know, my threshold is certainly an hour. It's frequently two in these circumstances.

With respect to the transient billing, I'm always open to arguments that in a particular instance, it's problematic. I don't find it inherently problematic or suspicious because in my view, there are just so many reasons why one might ask a particular person to do a particular thing, whether it's their particular expertise or, frankly, everybody else is tapped out or you know, twenty other things I could think of that make it, in my mind, really more a question of the discretion of the attorney leading the team and having, you know, been on some big cases in my prior firm.

I just know there's just too much that goes into that question to have me generically think it's suspect. That what's called, I think, the transient time keeper point. I will always listen to particular arguments there. But as a general matter, that's not an objection that I usually think per se has a lot of weight. So that's -- that's neither here nor there. Those are all resolved now.

So let me go ahead and turn to the U.S. Trustee's thoughts about the vendor management issue.

MR. BLUMBERG: Thank you, Your Honor. Jason Blumberg for the United States Trustee.

I don't have much to add to our objection on that issue. I'll concede that it's certainly understandable, especially at the outset of the case, that there might be some overlap between the services of a financial advisor and a

debtor's internal accounting department. But I think our concern here is that this is the second interim period. And so we would hope by this second interim period that the internal accounting department would be up to speed about the bankruptcy issues, specifically what is pre-petition, what is post-petition? And we think based on that, because it's the second interim period, a reduction may be appropriate in that project category.

THE COURT: Okay. Do you have a suggestion for what that ought to be?

MR. BLUMBERG: Your Honor, I don't have a specific objection, but the billing rate is $670 for the -- for the project billing category approximately.

THE COURT: Is that -- that's blended?

MR. BLUMBERG: That's the blended rate for the project billing category. I think it's about 660.

THE COURT: And it's about 88,000?

MR. BLUMBERG: 88,000, Your Honor.

THE COURT: Okay.

MR. BLUMBERG: 88,085 dollars. It would seem to me that this is more in the nature of not quite -- not quite the 670 hour rate. It seems more in the nature of, I don't want to say a bookkeeper, but a lower rate would be appropriate. Something on the order of half of that amount.

THE COURT: Well, some of the questions -- you know,

Mr. Blumberg, you and I do this all the time. So we're maybe not as confused about things like what could be a pre-petition, what could be a post-petition claim, but that is -- on some level, that is conceptual, isn't it? For example?

MR. BLUMBERG: Yes, Your Honor.

THE COURT: Okay. Now, I certainly hear you that over time, one would expect that there would be some instructive function going on here, and the debtor would be better able to answer those questions by themselves, but it is still a conceptual -- at least to some degree, a conceptual question. Right?

MR. BLUMBERG: Yes, Your Honor.

THE COURT: Okay. Are you -- well, I mean, I don't want to put words in your mouth, but if -- are you suggesting that rather than 670, roughly half that amount at an hourly rate would be appropriate? Is that the suggestion?

MR. BLUMBERG: That's the suggestion I'm making right now, Your Honor.

THE COURT: All right. So that would be a cut of about 44,000.

MR. BLUMBERG: Yes, Your Honor.

THE COURT: Okay. Anything else you want to add to that? And do you -- I guess the question is, and certainly Mr. Moore is going to address this. There's -- if there's a level at which, although it's not A&M's fault per se and you're not

suggesting it is, this sounds overhead-ish, right? This sounds like the kind of thing the debtor ought to be able to do themselves, right?

MR. BLUMBERG: Your Honor, when I read the fee application, that's what struck me.

THE COURT: Okay. Did the further filings give you any further insight into what the debtor and A&M's thinking is here?

MR. BLUMBERG: I -- well, Your Honor, I will say that the further filings gave me the insight that the debtor wanted A&M to --

THE COURT: Yeah, well, there you go. That's true. Okay.

MR. BLUMBERG: So it didn't necessarily alleviate my concerns that maybe the debtor should have been doing the work.

THE COURT: All right. Well, what -- is there another way to approach this other than to reduce A&M fees?

MR. BLUMBERG: The other option, Your Honor, would be to defer ruling on this and pull, I guess, the final application.

THE COURT: Okay. I hear you. I'm -- and I'm not making light of what you're saying. It's not a small amount of money. Okay. Who would like to address this? Do you want to address it first and then --

MS. UETZ: I would, Your Honor. And then --

THE COURT: Okay.

MS. UETZ: -- Mr. Moore, if that's okay.

THE COURT: Sure. You bet you. Okay. Look, he came all the way here. He's got to get to that lectern at some point, okay.

MS. UETZ: He's -- all the way from San Francisco for the mediation.

THE COURT: There you go. Okay.

MS. UETZ: Thanks, Your Honor. Where they are continuing without us. So it's uninterrupted by our presence here.

THE COURT: All right.

MS. UETZ: We actually wanted to make that clear, Your Honor, as well.

THE COURT: Okay. I appreciate it.

MS. UETZ: Your Honor. Just a couple of comments. And I alluded to it in my earlier statements. I think, you know, vendor management may be an inartful phrase.

THE COURT: Yeah.

MS. UETZ: I think that A&M's response explained in greater detail what they've been doing. And one would hope that the debtor could do this in-house. I certainly would.

I will tell you, as counsel for the debtor, it is exceedingly important to me that we absolutely comply with this Court's orders. Of course. Right. And even on things that

are seemingly easy, like let's make sure the checks don't go out to the wrong people. We actually had something early in this case where we did have to do a mea culpa and say to the United States Trustee and to counsel for the committee, we're sorry this payment went out and we didn't give you the proper notice. That happened really early in the case.

And I can tell you Ann Marie went bananas at home that evening when we found out that had occurred, because it was not consistent with this Court's orders. So yes, we have been relying on A&M and their expertise to supplement an exceedingly lean finance department, which we've told you before includes a CFO who, God bless him, is going to retire at the end of this month, but has been working seven days a week.

THE COURT: Do I have to approve that? No. Just kidding.

MS. UETZ: You might have to approve his --

THE COURT: Don't tell him I said that. I'm sure that'll keep him up at night. W

MS. UETZ: We may be back before you for a little bit of tail work from him as an ordinary course professional.

THE COURT: All right. Okay.

MS. UETZ: But that has to do with my next statement, which is we are literally working right now. We've been working the last couple of weeks to transition work from A&M to ordinary course professionals and to the finance staff. And

when Your Honor asked at the end of the exchange with Mr. Blumberg, how else might you resolve this?

THE COURT: Yeah.

MS. UETZ: I would suggest that you would consider resolving this by like a go forward. We are shifting responsibility. And when I go through the vendor management services that A&M identified in its response, I literally in my head have a chart in mind that I've created to go through with the client. We have a meeting scheduled for tomorrow where it's a chart and it says, okay, who's going to make sure that we comply with cash management? Who's going to ensure we comply with the insurance order?

So we take seriously both this Court's prior comments, as well as the United States Trustee's position. But the fact is, the unique circumstances of this case, the unique circumstances of this particular finance department, this has been necessary for the estate in the debtor's judgment. And we would respectfully request that the objection as to this issue on vendor management be overruled.

And again, hold me to it, we're shifting things going forward. And the next fee application, while it will incorporate, you know, last month before we were here, the go forward really, truly is being changed because our client is very focused on minimizing the cost of the estate as well.

And with that, Your Honor, I don't have anything

further to add, unless you have questions for me.

THE COURT: Okay. Why don't I hear from Mr. Moore, if he wants to add anything.

MS. UETZ: Thank you.

THE COURT: You bet.

MR. MOORE: Good morning, Your Honor. Charles Moore, Alvarez & Marsal. Thank you for your time.

THE COURT: Yeah.

MR. MOORE: I do want to just highlight a few additional points. A&M runs into situations like this very often in cases. We are a safety blanket. And so when people are stretched for time, it's easy to ask us to do something because of our knowledge.

We have, as Ms. Uetz indicated for several months now, we have been proactively challenging whether we are the right party to do things, and that actually is bearing out in the fees, as both Mr. Prol and Ms. Uetz indicated early on in the case, there were -- there was a lot of front loading of items, but actually that has allowed us to be in such a good position for mediation right now.

If you look at just the fees of A&M early on in the case, the first interim fee application period, we had over two million dollars. That has come down significantly. So right after that, once we got into September, our restructuring team was in the 300,000 range per month. That quickly dropped down

into the twos. And now the preliminary number for the month of February, which was before all of these objections, or I should say before this objection, preliminary number is about 160,000 for February.

So this is something that, as Ms. Uetz indicated, has been on the mind of everyone figuring out how do we utilize the right people at the right cost to get things done?

The last thing that I'll mention is, I think it's -- it does a disservice to the debtor's finance staff to say, well, you should be able to do this item without understanding all of the work that the debtor's very limited finance staff is doing, in addition to all of the diligence requests, which are natural and are needed. Hundreds of diligence requests by the committee, all of the reporting that the debtor has to do, the annual budget process. I could go on and on and on. There's just only so much time in the day for these people. And so that is also a big driver.

They need assistance. We want to make sure that the right assistance is provided, but also at the right price. And so that's what we've been doing. And again, I think that is really showing up now with where the fees have gone. And so we would respectfully request that this, especially based on Mr. Bongiovanni's letter, where he specifically has asked A&M to perform these services, that this objection be overruled.

THE COURT: Let me ask you a couple of questions. And

one of them really is much more for the debtor than for you. These are unusual times. Is there a reason why the debtor doesn't just hire another person or two in the finance department to give a hand here?

MS. UETZ: Sorry. Your Honor, it's -- in fact, we have had some unusual situations where the finance staff has been even further strained. We had one person with a life event who, you know, can't work full time. We had another person who has not been able to work full time. So it has been a struggle. We did identify a new CFO who actually started yesterday.

THE COURT: Okay.

MS. UETZ: So there's some transition with Mr. Bongiovanni.

THE COURT: Well, I mean, my -- I think my point is really considerably more mundane. I mean, it sounds like there could be another staff person or two who could really help out here, you know, if they had the benefit of A&M's knowledge about how to think about some of these things.

MS. UETZ: And indeed, Your Honor, that is part of the solution we're working on is --

THE COURT: Okay.

MS. UETZ: -- actually at a lower rate, although not an employee.

THE COURT: Yeah.

MS. UETZ: We have an ordinary course professional who's retained and we're --

THE COURT: Sure. Okay.

MS. UETZ: -- broadening their scope. Much lower rate than Mr. --

THE COURT: That's -- okay. Well, that's half of it. The other question, let's say hypothetically I overrule the objection, but I hear the U.S. Trustee, Mr. Moore, would it be possible for you to create a category for A&M that when you're responding to these questions, the rate is not 670, it's 300 or something along those lines on a go forward basis?

MR. MOORE: Yeah. Your Honor, I understand the request of the U.S. Trustee. That is about the rate of a paraprofessional in our firm. They don't have the -- not only the bankruptcy knowledge --

THE COURT: Yeah.

MR. MOORE: -- but also just the institutional knowledge. We do have our lowest staff people responding to these items.

THE COURT: And that's what billing rate?

MR. MOORE: Approximately 600.

THE COURT: Well, I guess I'll ask the question again, putting aside all the hierarchies, which I'm not trying to disrespect, I mean, because this is maybe a slightly unique situation because of the short-handedness of the debtor and the

importance of the questions, would you be willing to consider simply creating a billing category that would just be standalone for this purpose under -- I mean, on the theory, among others, that you're going to be asking these questions with greater infrequency going forward. Would -- could you consider putting, you know, just designating so when we're answering these kinds of questions, the billing rate, we'll just say for purposes of managing this, per Judge Lafferty's concerns, the billing rate is X. It's not 600. It's something less than that. You'd have to create it. But if you're willing to consider that, it gives me a lot more comfort in saying, okay, I don't want to penalize you for answering good questions, okay, today, but on a go forward basis between the debtor hopefully getting a little bit more help at an effective level, and you deciding that to the extent you're going to be asked these questions, you know, you could simply designate a different billing category and a different billing level.

MR. MOORE: Yes, Your Honor, we will consider that as part of the whole transition that Ms. Uetz --

THE COURT: All right. I mean, I would suggest to you that something in the $400 range might make a lot of sense there. Okay?

MR. MOORE: Okay.

THE COURT: If you're going to do that, does that make sense?

MR. MOORE: Yes.

MS. UETZ: If I may, Your Honor?

THE COURT: Yes.

MS. UETZ: I think as a practical matter, that work will shift likely to Veracruz anyway. So even.

THE COURT: Even better. Even better.

MS. UETZ: Yeah.

THE COURT: Okay. And if that helps it shift, that's not a bad thing either.

MS. UETZ: Yeah.

THE COURT: Okay. All right. All right. Let me hear from Mr. Blumberg.

You hear where I'm going on this? I'm taking very seriously what you're saying, but I find it -- I mean, I find it a little bit anomalous to stick A&M with this problem because I don't think it's really of their making. And I think their expertise is very much appreciated here. But I do think on a go forward basis, a combination of having the debtor make concerted efforts to beef up the staffing and having Mr. Moore consider something that is probably more in line with what your sense of what an appropriate billing rate would be here, Mr. Blumberg, is a good answer going forward. Does that make sense to you?

MR. BLUMBERG: Your Honor, it does make sense. I have nothing to add, Your Honor.

THE COURT: Okay. Then I'll tell you what. I mean, look, all these objections are preserved until the end no matter what we do, okay? So if at the end of the case you think this is still a pertinent objection, have at it. All right? All right.

I'm inclined to resolve it that way. I will overrule the objection for today's purposes. But with the admonitions that I've given and what I think -- what I take is Mr. Moore's very receptive comments to me. Okay?

MR. BLUMBERG: Thank you, Your Honor.

THE COURT: Make sense?

MR. BLUMBERG: Yes.

THE COURT: All right. Anything else for fee app time? I think the other -- I've approved all the others as resolved. Okay?

MS. UETZ: Nothing else on fee apps, Your Honor. I do have one thing to raise --

THE COURT: Sure.

MS. UETZ: -- when we're done with that.

THE COURT: Anybody else have a fee app issue, concern, comment, observation? No. Okay. Come on up.

MS. UETZ: Thanks. Your Honor.

Actually, I may be stepping on Mr. Prol's toes or prompting him. As I recall, we exchanged --

THE COURT: All right.

MS. UETZ: -- an email this morning on this. There's an order yet to be answered with respect to a motion for a further protective order, I think, that that committee filed.

THE COURT: Okay.

MS. UETZ: And we just wanted to raise that with the Court --

THE COURT: Okay.

MS. UETZ: -- so we're on the same page.

THE COURT: Yeah. No, I was out for a while, and sometimes things fall between the cracks. So if that's something that -- do you want to remind me if there's --

MS. UETZ: Jeff, do you want to -- it's a 2004. It's a motion for protective order related to the barred -- to the --

THE COURT: And it's --

MS. UETZ: -- the proofs of claim being produced to the insurers.

THE COURT: Well, and it's agreed upon, right?

MS. UETZ: It's fully briefed.

MR. KAPLAN: Well --

MS. UETZ: I shouldn't speak to it. It's not my motion, Your Honor. I just wanted to --

THE COURT: Okay. All right. So let me hear from Mr. Kaplan.

MS. UETZ: Thank you.

MR. KAPLAN: Thank you, Your Honor. And again, I want to intentionally not re-argue the merits so as to not burden the Court.

THE COURT: Yeah.

MR. KAPLAN: And Ms. Albert will get the numbers. But back in October, we raised in connection with multiple protective orders and petition to the bar date -- clarification to the bar date order that ISO and similar vendors were not --

THE COURT: Oh, okay.

MR. KAPLAN: -- authorized partners. We and century have -- or excuse me, not Century, Pacific, I'm sorry, Ms. Daniels. I get them wrong. Century in some cases and -- but Pacific in this case. Have submitted a couple of rounds of briefings following the -- following the argument. I think I'm comfortable with saying that the letters we submitted, each outlining our position --

THE COURT: Okay.

MR. KAPLAN: We just need Your Honor to enter whatever order you see fit.

THE COURT: All right. Got it. Okay. Thank you.

MS. UETZ: Thanks, Your Honor.

THE COURT: Okay.

MS. UETZ: And the debtor doesn't have anything further.

THE COURT: Anything further for today?

MR. PROL: Nothing further, Your Honor.

THE COURT: Okay. Am I seeing you guys on the 27th now? To the extent there was argument on a motion to dismiss, I think that's probably in Judge Corley's capable hands.

MS UETZ: Right. Agreed.

THE COURT: All right. And I don't remember what else might have been on the 27th, but --

MS. UETZ: There -- my calendar is still showing that --

THE COURT: All right. Okay. I mean, I'll -- we'll take it from there. Okay. Thank you very much.

MS. UETZ: Yeah. Thank you.

THE COURT: All right. Nice to see you all.

MS. UETZ: Thank you. You as well.

THE COURT: Thank you very much. Okay. Thanks.

(Whereupon these proceedings were concluded at 11:17 AM)

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

I, Jamie Gallagher, certify that the foregoing transcript is a true and accurate record of the proceedings.



_____

/s/ JAMIE GALLAGHER, CET-1243

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