UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

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In Re:

THE ROMAN CATHOLIC BISHOP OF OAKLAND

Debtor.

) Case No. 23-40523
) Chapter 11
)
) Oakland, California
) Tuesday, March 4, 2025
) 10:30 AM

ADV#: 24-04051
THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF THE ROMAN CATHOLIC BISHOP OF OAKLAND v. THE ROMAN CATHOLIC BISHOP OF OAKLAND

ADV#: 24-04053
THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF THE ROMAN CATHOLIC BISHOP OF OAKLAND v. THE ROMAN CATHOLIC BISHOP OF OAKLAND

1. MOTION TO DISMISS ADVERSARY PROCEEDING FILED BY THE OAKLAND PAROCHIAL FUND, INC. (DOC. 6)

2. DEBTOR'S MOTION TO DISMISS ADVERSARY COMPLAINT FOR DECLARATORY RELIEF FILED BY DEFENDANT THE ROMAN CATHOLIC BISHOP OF OAKLAND. (DOC. 11)

1. MOTION TO DISMISS ADVERSARY PROCEEDING FILED BY ADVENTUS (DOC. 9)

2. DEBTOR'S MOTION TO DISMISS THE ADVERSARY COMPLAINT FOR DECLARATORY RELIEF FILED BY DEFENDANT THE ROMAN CATHOLIC BISHOP OF OAKLAND (DOC. 14)

DEBTOR'S FOURTH MOTION FOR ENTRY OF AN ORDER, PURSUANT TO BANKRUPTCY RULES 9006 AND 9027, ENLARGING THE PERIOD WITHIN WHICH THE DEBTOR MAY REMOVE ACTIONS PURSUANT TO 28 U.S.C. S 1452 FILED BY THE ROMAN CATHOLIC BISHOP OF OAKLAND (DOC. 1689)

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

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OAKLAND, CALIFORNIA, TUESDAY, MARCH 4, 2025, 8:43 AM

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(Call to order of the Court.)

THE CLERK: Yes, Your Honor. Calling line items number 1 and 2 jointly. The first line item is the Official Committee of Unsecured Creditors, The Roman Catholic Bishop of Oakland, case number 24-04051, and line item number 2 is the Official Committee of Unsecured Creditors v. Roman Catholic Bishop of Oakland, case number 24-04053.

THE COURT: Okay. Why don't we start with appearances in the courtroom?

MR. MOSES: Good morning, Your Honor. Shane Moses, Foley & Lardner, for the debtor. And also appearing are Geoff Goodman --

THE COURT: Right.

MR. MOSES: -- and Matt Lee from Foley & Lardner.

THE COURT: Okay. Very good.

MR. MOSES: And Mr. Goodman is going to be handling the argument on the motions to dismiss.

THE COURT: Okay. With respect to all the matters?

MR. MOSES: Yes.

THE COURT: Okay.

MR. MOSES: Thank you.

THE COURT: Okay.

MR. MANNS: Good morning, Your Honor. Ryan Manns of

Norton Rose Fulbright. I'm joined by my colleague Jason Blanchard. And we represent RCC, RCWC, Aventis, and OPF.

Mr. Blanchard.

THE COURT: Okay. Great.

MR. MANNS: Yes.

THE COURT: Thank you. Okay.

MS. ALBERT: Good morning, Your Honor. Gabrielle. Albert, Keller Benvenutti Kim, on behalf of the committee. And with me today are Michael Kaplan and Jeffrey Prol from Lowenstein Sandler.

THE COURT: Okay. Great. Okay. Anybody on the screen going to be making any appearances?

THE CLERK: Your Honor, the parties that I promoted have declined to be promoted over as panelists.

THE COURT: Okay. So we had another matter that was on calendar today, but we took care of it yesterday, right, the motion re extending the time for removal?

MR. MOSES: Yes, Your Honor. That, I believe, I saw that order and was entered yesterday --

THE COURT: Okay.

MR. MOSES: -- on the CNO.

THE COURT: Okay. All right. Thank you.

MR. MOSES: Thank you.

THE COURT: There is some but not complete overlap here, so have you given any thought to how you want to address

the two different adversary proceedings?

MR. GOODMAN: Good morning, Your Honor. Geoff Goodman on behalf of the debtor.

THE COURT: Um-hum.

MR. GOODMAN: I think, to avoid repetition --

THE COURT: Um-hum.

MR. GOODMAN: -- it may make sense, rather than take one all the way in and then go all the way back and then take the other one, we're going end up repeating ourselves substantially. It may make sense for us to do them completely and try to, in many cases, not repeat ourselves --

THE COURT: Yeah.

MR. GOODMAN: -- particularly with some certain consolidation points in particular. There's no perfect way to do it, Your Honor. But that --

THE COURT: Yeah.

MR. GOODMAN: -- on our side, what our intention would be is that I would start, and then Mr. Blanchard --

THE COURT: Um-hum.

MR. GOODMAN: -- would follow me.

THE COURT: Okay.

MR. GOODMAN: And try not to repeat ourselves either in terms of that.

THE COURT: Okay. So you guys begin with the presentation in favor supporting the motion. You conclude

that. We turn to your worthy adversaries. And are you comfortable with the same intermingling, for lack of a better word, of the two APs?

MR. BLANCHARD: Whatever everyone wants to do, Your Honor --

THE COURT: All right.

MR. BLANCHARD: -- we're happy to do.

THE COURT: That's fine with me. I think it makes sense. I think if there's something that's really unique about one or the other, that can be called out, and we can all listen to the recording afterward. Okay.

All right. You ready to proceed?

MR. GOODMAN: Thank you, Your Honor.

THE COURT: Okay.

MR. GOODMAN: Again, for the record, Geoff Goodman, and I'm here on behalf of the debtor.

THE COURT: Okay.

MR. GOODMAN: Your Honor, I will start, I believe, if it please the Court --

THE COURT: Um-hum.

MR. GOODMAN: -- with the adversary, which is the -- we call the OPF adversary. It's the 24-04051.

THE COURT: Um-hum.

MR. GOODMAN: And I'll start with the points -- I think, Your Honor, I'll start with the points unique to this

adversary --

THE COURT: Um-hum.

MR. GOODMAN: -- and then hit some of the stuff that will overlap, and then I'll hit --

THE COURT: Okay.

MR. GOODMAN: -- the unique ones.

THE COURT: Sure.

MR. GOODMAN: And if, Your Honor, if I'm not doing it in the right way, you can -- (indiscernible) Your Honor won't be shy to tell me.

THE COURT: I've been known to ask a question or two. Okay.

MR. GOODMAN: For sure, Your Honor.

THE COURT: Okay.

MR. GOODMAN: So there's essentially two remaining parts of this complaint. There are six counts. Count V is now -- the committee agrees, that's not properly pled, so that, we can set that aside. There's essentially a section of what I would call church property of the estate issues in one way or another. And I'll get to the specifics in Counts I through IV. And then Count VI is the substantive consolidation claim against OPF. So I'll kind of take them one by one --

THE COURT: Um-hum.

MR. GOODMAN: -- to address why we believe these should be dismissed. And when I say this dismissed, dismissed

because in many cases here, they already have the relief they're seeking. They've essentially won through admissions the debtor has made, and there is no controversy.

Start with Count I.

THE COURT: Okay. Why don't I start off with a question?

MR. GOODMAN: Yes, Your Honor.

THE COURT: Thank you. Assuming for the moment you are at least formally correct that there's really not much of a dispute anymore. I mean, let's say I know there's been a back and forth about the stipulation. Okay. Let's just say, hypothetically, that I took the stipulation from your standpoint as an admission. And I said, well, what do I do with that? Am I right that there's still a question as to, in particular instances, what property is restricted or not? And is that encompassed in this lawsuit, in your view, or is that something we just should handle totally separate in some other way?

MR. GOODMAN: Thank you, Your Honor. It's a great question. Yes, to your first question. There is a -- I understand there's a dispute, at least as to some. The committee can say how much. There is a dispute. There may be a dispute as to which property is restricted, that they may have some challenge on that. We don't know the specifics of that. I believe that would have to be a separate adversary,

Your Honor. They would have to file an adversary in which -- and they could do this --

THE COURT: Um-hum.

MR. GOODMAN: -- in which they say, we believe X property is property the estate for A, B, C reasons, and it relates to the restricted property issue, whatever their theory is under California law on why it doesn't apply or whatever the case may be. They --

THE COURT: Let me stop you again, but just, I apologize. There are now -- I'm very aware I have not read the latest version of disclosure statement, because even as we sit here now idly chatting, it's being improved. So there were some references in the disclosure statement, the last one I saw, to the church's position that certain things are restricted. Is there a more detailed statement about that somewhere from which to begin, that the following is restricted because there's an agreement about X, or the following is restricted because California law provides why? Is that out there now for somebody to react to?

MR. GOODMAN: I'm going to have to --

THE COURT: No? Yeah, if you want to take a minute, I --

MR. GOODMAN: On that particular thing, you mind if I (indiscernible) Your Honor?

THE COURT: No, not at all. And again, I just wanted

to --

MR. GOODMAN: Your Honor, the answer to the question, we don't have a -- I mean, we've had certain parts we say how much. We do not have a specific list of here's the amounts of restricted items. We certainly --

THE COURT: Okay.

MR. GOODMAN: I believe we could do that.

THE COURT: Okay.

MR. GOODMAN: No, and I'm going to defer to Mr. Lee and get over my (indiscernible) here, Your Honor.

THE COURT: Okay. This was inevitable, Mr. Lee. Thank you for riding to the rescue here.

MR. LEE: I talked yesterday thinking that today you could listen to somebody else, but here I am, Your Honor.

THE COURT: Well, I'm sorry.

MR. LEE: No. Oh, no, no, no, no, no apology necessary.

THE COURT: No, I'm laughing as I say it. It's always nice to see you.

MR. LEE: So what I can tell you is that --

THE COURT: Yeah.

MR. LEE: -- the debtor has shared its own analysis of what funds --

THE COURT: Okay.

MR. LEE: -- it believes is restricted and what funds

it believes are not restricted --

THE COURT: Okay.

MR. LEE: -- with the committee. It was shared with them in the context of, I believe, mediation.

THE COURT: Okay.

MR. LEE: But we haven't publicly stated --

THE COURT: Okay. Okay. Well --

MR. LEE: -- these assets are unrestricted. These assets are.

THE COURT: Okay. And again, I apologize because no matter what we do here, we always end up in the middle of something, right? So my question really is if I'm going to -- is there still some -- would there still be some utility to keeping Counts I through IV on the theory that what we're really getting at here is really what is restricted and what isn't.

Because you seem to be conceding that, look, we're not telling you that the church, Saint Anthony's owns the pews. That's not the issue. But the very real issue is we firmly believe that we have a restriction that we have to -- that we have to respect. And there may be many bases for that. One might be a written agreement. There might be other things in California law. There might be other things in canon law that would be applicable here. I don't know.

MR. LEE: It's an asset-by-asset analysis.

THE COURT: Yeah.

MR. LEE: I'll defer to Mr. Goodman on that. Yeah.

THE COURT: And the reason why I'm asking is, is if I agree with you that you've basically mooted the guts of what they're asking for, were I to agree with that, would it still -- would there still be some utility in keeping this as a vehicle to get at, in a centralized way, what's really the question here, if we're going to fight about it, which is what's restricted and why. That's the question.

MR. LEE: That, Your Honor, that's a good question. That analysis, I think the utility would be if Your Honor thinks this is the right vehicle for it, and maybe it is.

THE COURT: Okay. No, but you can say it is.

MR. GOODMAN: No, no, I think that you would dismiss Counts I through IV.

THE COURT: Uh-huh.

MR. GOODMAN: But without prejudice to keep this adversary open to pleading a claim based on restricted assets not being property of the estate. So they would replead a new count because --

THE COURT: Okay.

MR. GOODMAN: -- it's not these counts because these counts --

THE COURT: Yeah.

MR. GOODMAN: -- don't get at that issue, they are

that churches and the debtor are one and the same. That's not the dispute. It's a completely new count. They could then file an action --

THE COURT: Okay.

MR. GOODMAN: -- saying we think --

THE COURT: Okay.

MR. GOODMAN: -- based on their analysis --

THE COURT: Okay.

MR. GOODMAN: -- they got from Mr. Lee --

THE COURT: Okay. And we'll get to how they would know enough to do that as we go today. We might.

MR. GOODMAN: Thank you, Your Honor.

THE COURT: Okay. All right. Sorry. I interrupted you right at the beginning so --

MR. GOODMAN: No, no, no, no, Your Honor. Thank you. Those are important questions.

So I'll try to be brief on this. We spend a lot of our time in our briefs --

THE COURT: Um-hum.

MR. GOODMAN: -- but Count I, and it kind of goes to some of the points Your Honor is making, it's a declaration that churches are not separately incorporated legal entities. And we've said that in writing and orally. We've admitted this point. I mean, regardless of whether we can agree on the exact language of the stipulation, mind you, the stipulation, the

language, the dispute is on how we word the issue on the restriction, and I don't believe anything else material.

But again, as to this issue, Count I, we put in the disclosure statement -- I mean, there's a number of places, but I'll just highlight this one. Page 32 --

THE COURT: Um-hum.

MR. GOODMAN: "As a matter of matter of California law, the churches" -- that's in brackets, but it's referencing the churches -- "are not separate from the debtor, and they do not own or hold a legal or equitable interest in property separate from the debtor." I mean, there's nothing more other than the plan. The plan doesn't usually explain things. There is nothing more --

THE COURT: Yeah.

MR. GOODMAN: -- fundamental in bankruptcy than a disclosure statement, a statement of the debtor's position. And we have it in there. We'd be estopped eighty times to Sunday by saying otherwise. They have that relief --

THE COURT: No pun intended, but yeah.

MR. GOODMAN: -- in Count I.

THE COURT: Um-hum.

MR. GOODMAN: It would estop us, Your Honor. I don't usually say what I expect judges to do. In this case, I'm pretty sure you would estop us if we tried to say otherwise. So they don't need a complaint. There's no controversy on

Count I.

Count II is a declaration that property of the churches is property of the estate. And Count III is a declaration that a property is allegedly held in trust. No valid trust exists. For the same reasons -- I'm going to take those together. For the same reasons as Count I, because there's no churches -- we've already said churches aren't separate from the debtor, and the debtor has acknowledged on multiple occasions, including the disclosure statement, that they don't own property from the debtor -- there is no actual controversy.

Again, the only controversy there could be would be a new count, we referenced this, started out with this, about how there may be on the restricted donation issue. There may be a controversy on that. We have to see how they plead it. But that's the only issue.

We believe they're held in trust. They may have a theory to the contrary. If they do, they should plead a new count that says why they don't believe it's restricted donations.

THE COURT: Okay. Now, I'm a little bit confused --

MR. GOODMAN: Yes, Your Honor.

THE COURT: -- and I'm not being funny. I really am. If to the extent the third count goes to whether something's held in trust or not, it sounds like there is a dispute about

that. Am I wrong about that?

MR. GOODMAN: There may be a dispute as to a restricted donation. This is a blanket statement that to the extent -- they're making a broad -- not to put words in the committee's mouth, but there was a concern they had --

THE COURT: Um-hum.

MR. GOODMAN: -- that the debtor was taking the position that churches, because under canon law they are separate juridic persons, right --

THE COURT: Um-hum.

MR. GOODMAN: -- from the debtor, that they have assets in trust and therefore weren't property of the estate, writ large, restricted and unrestricted, all property. Okay. We are not taking that position under civil law.

THE COURT: So can I --

MR. GOODMAN: There may be a dispute as to a subset --

THE COURT: Okay.

MR. GOODMAN: -- on the restricted donation.

THE COURT: Can I play it back and see if I have it right? That there is nothing inherently in the relationship between -- and again, I mean, I know that there's controversy about using the word "dioceses". Just forgive me for saying diocese. Well, or the debtor in churches. There's nothing inherent in that relationship that would per se create a trust relationship that would change the legal rights with respect to

those assets. Is that fair?

MR. GOODMAN: That's right. The issue is the restricted donation.

THE COURT: No, I --

MR. GOODMAN: It's not the nature of the churches, which is what they pled.

THE COURT: Yeah, that's what I'm --

MR. GOODMAN: That's right.

THE COURT: What you're (indiscernible) is --

MR. GOODMAN: That's right (indiscernible) --

THE COURT: -- is there is nothing inherently in the relationship between the debtor and the church that would by itself create a trust relationship.

MR. GOODMAN: Correct. It's the nature of the donation, not the nature of the church-debtor relationship.

THE COURT: Or an agreement or who knows what.

MR. GOODMAN: Correct. And that's --

THE COURT: Okay.

MR. GOODMAN: -- why Count III, while it's getting closer to the issue which could be in dispute about the restricted donation, it's a church-debtor issue, not a donation issue.

THE COURT: Yeah. Well, they may believe they're hitting both of them. So we'll hear that in a second.

MR. GOODMAN: Understood.

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

MR. GOODMAN: So again, I think, Your Honor, because of all of our -- and then fourth is subsequent consolidation of the churches with the debtor. Again, we because we say the churches are part of the debtor, there's no need to consolidate anything. These are all pushed together as to --

THE COURT: Um-hum.

MR. GOODMAN: -- so you don't need to consolidate because --

THE COURT: Um-hum.

MR. GOODMAN: -- they're not separate. We've already said they're not separate from the debtor, and they don't hold any legal equitable interest in property so --

THE COURT: Well, okay. So just to be really clear, it's not just that the assets are there or accessible, for lack of a better word. It's that the churches by themselves don't have any authority to do anything about that, right? They're not going to alienate property or --

MR. GOODMAN: That's right. There is no --

THE COURT: We don't need them under the bankruptcy court's supervision --

MR. GOODMAN: Under the Bankruptcy Code --

THE COURT: -- differently from the debtor.

MR. GOODMAN: The churches have no separate existence

under the Bankruptcy Code --

THE COURT: And they don't take --

MR. GOODMAN: -- and under canon law and under (indiscernible) --

THE COURT: They don't take legal actions.

MR. GOODMAN: Right. Correct.

THE COURT: Okay.

MR. GOODMAN: So that's why I through IV, they've already got --

THE COURT: Okay.

MR. GOODMAN: -- they've already got all the relief, they've pled. They may be --

THE COURT: Okay.

MR. GOODMAN: -- a distinction about donations, but that's not a church issue. That's a donation issue.

THE COURT: Okay. Okay. Thank you very much for that.

MR. GOODMAN: Again Count V, they --

THE COURT: And you stand by the stip? I mean, you still enter into the stip?

MR. GOODMAN: I stand by the stip that we attached to them.

THE COURT: Okay.

MR. GOODMAN: And we would sign that today.

THE COURT: Okay.

MR. GOODMAN: Count V, again, they admit that's not properly pled, so that's moot for a different reason.

THE COURT: Um-hum.

MR. GOODMAN: Count VI is -- and this, some of these issues will overlap with the other ones, so I'll try to hit it now and then try not to repeat myself later or just --

THE COURT: Um-hum.

MR. GOODMAN: -- reference it. This is the substantive consolidation claim --

THE COURT: Um-hum.

MR. GOODMAN: -- of the debtor with OPF. And so this this count fails for several reasons. The most significant one is they pled one thing, substantive consolidation. That's simply not available under the law against OPF, under binding Supreme Court precedent as interpreted by the Eighth Circuit. OPF, there's no dispute that they're a nonprofit religious corporation and that they couldn't be an involuntary debtor under 303(a). So that's not in dispute. And Bonham, the Ninth Circuit case, says that the power -- and this is consistent with the law around the country, actually, even though it's in the Ninth Circuit. The power to consolidate --

THE COURT: Think that came out wrong.

MR. GOODMAN: Oh, yeah. That was not -- yeah, for the record, that was not to cast any aspersions on the fine Ninth Circuit jurisprudence.

THE COURT: Okay.

MR. GOODMAN: The power to consolidate the nondebtor with the debtor is under the court's Section 105(a) power. So that's a --

THE COURT: Uh-huh.

MR. GOODMAN: -- 105(a) power. Some courts don't allow the nondebtor debtor. Ninth Circuit does. Some other courts do. So it's allowed. It could happen under appropriate circumstances, but it can't be here. Law v. Siegel said you can't use 105 powers to circumvent specific provisions of the Bankruptcy Code, and that's 303(a) here.

And this exact issue, I mean, it's very rare in law you get exact issue. It's very easy, like, oh, it's kind of similar. The Saint Paul in Minnesota, the committee, so you have the committee as the plaintiff --

THE COURT: Um-hum.

MR. GOODMAN: -- that diocese case, they're trying to use substantive consolidation of a nondebtor nonprofit entity. Schools and cemeteries.

THE COURT: Um-hum.

MR. GOODMAN: In that case, it was actually churches. I believe they were separate. Don't quote me on that, but I believe they were.

THE COURT: Sure.

MR. GOODMAN: And the court considered that issue.

There was a motion -- which was the bankruptcy court and ultimately all the way up to the Eighth Circuit. And the court ruled that under Law v. Siegel, 105, you can't use 105 powers to get around the prohibitions of another provision of the Bankruptcy Code, 303(a), and the complaint had to be dismissed. That's all.

THE COURT: Let me stop you there for a second and talk about where Law v. Siegel fits in all this. By the way, you guys know my unfortunate involvement with Law v. Siegel? I began my appellate career as a pro tem on a panel that staunchly affirmed the bankruptcy court in Law v. Siegel, only to find out I was wrong nine to nothing. So I've never forgotten it.

In some of the aftermath of Law v. Siegel, there were certainly some discussion as to whether it effectively precludes other predicates to relief. And one example of that was there was some discussion thereafter because it's sort of an exemptions case. Right.

MR. GOODMAN: Um-hum.

THE COURT: There was some discussion, well, if California law would authorize itself, the negating of an exemption or the limit of an exemption because of bad conduct, would Law v. Siegel have any effect on that? And at least for a while, the answer was no. So I mean, what I'm trying to explore here is should I look at the Eighth Circuit decision

the same way, where what it's basically saying is, everything else being equal, you cannot substantively consolidate a truly independent entity. If under state law, you were to find yet weren't a truly independent entity, well, then that's a different question.

MR. GOODMAN: Well, Your Honor --

THE COURT: Is that --

MR. GOODMAN: -- if Your Honor -- and I think that gets into the argument the committee's making, and I think I can address that, Your Honor.

THE COURT: Well, I think it's also one of the ways people looked at Law v. Siegel and how much it really was a limiter or not because I mean, you ask, what is the font of the law? And it may be that it's something other than 303.

MR. GOODMAN: It'd have to be something other than 303.

THE COURT: Yeah.

MR. GOODMAN: I'm saying it would have to be something other than bankruptcy powers. I can't get to the issue --

THE COURT: Yes. Yes. Exactly. right Thank you.

MR. GOODMAN: I think I can get to the issue of --

THE COURT: Thank you. That's it exactly.

MR. GOODMAN: It's got to be something other -- if you're trying to use subcon, maybe you could do something else -- let's get to alter ego in a minute.

THE COURT: Uh-huh.

MR. GOODMAN: If you're trying to do substantive consolidation, which is a 105-specific power, you can't do it in -- Law v. Siegel says --

THE COURT: Yeah.

MR. GOODMAN: -- you can't do it under 303.

THE COURT: That was the next --

MR. GOODMAN: (Indiscernible) you can do alter ego --

THE COURT: Well, that was the next question.

MR. GOODMAN: That's fine.

THE COURT: We can get to that. That's fine. I gotcha. I gotcha.

MR. GOODMAN: Why do I don't think -- so I think -- and I say alter ego cannot be an escape hatch. And if Your Honor would bear with me, I'm going to get through the kind of two components with that.

THE COURT: No, these things are related. There's no --

MR. GOODMAN: Yeah.

THE COURT: -- way around it. Okay.

MR. GOODMAN: So the committee tries to save this Count VI by repackaging it --

THE COURT: Yeah.

MR. GOODMAN: -- as an alter ego claim.

THE COURT: Uh-huh.

MR. GOODMAN: I don't think it worked for multiple reasons, and I'm going to get to it. So first is there's not an alter ego exception to get you under subcon. I'm going to get to that. That's what I was saying is under -- which is so Saint Paul, they are right that Saint Paul didn't decide alter ego issues.

THE COURT: Um-hum.

MR. GOODMAN: They said we'll leave for another day the issue of whether a nonprofit nondebtor that's the alter ego under state law the debtor has been formed as part of the fraudulent scheme can be consolidated.

THE COURT: Um-hum.

MR. GOODMAN: So they just punted the issue of --

THE COURT: But you're probably going to tell me, too, they pitched that barrier fairly high.

MR. GOODMAN: They did.

THE COURT: Yeah.

MR. GOODMAN: And my point is -- but I want to -- and there's two components. Including alter ego allegations -- we don't believe they did, but we'll get to that in a minute -- in a substantive consolidation claim that's not a separate alter ego claim --

THE COURT: Um-hum.

MR. GOODMAN: -- does not change that you'd be relying on 105 to make an end -- if you're saying substantive

consolidation -- this isn't a separate pleading an alter ego claim. That might be possible.

THE COURT: Um-hum.

MR. GOODMAN: But if you're going to rely on the substantive consolidation power --

THE COURT: Um-hum.

MR. GOODMAN: -- the fact that you're adding alter-ego-like allegations without pleading an alter ego claim, you're still relying on 105. You still can't do it. The Eighth Circuit didn't decide it. I understand that.

THE COURT: Well, did they decide you couldn't get there through alter ego or just that alter ego's a wholly different thing?

MR. GOODMAN: What they said is they just don't decide.

THE COURT: Okay.

MR. GOODMAN: This is my argument.

THE COURT: Yeah, that's what's I thought. Okay.

MR. GOODMAN: No, I'm not relying on Eight Circuit.

THE COURT: Okay. I got it. I got it. I got it.

MR. GOODMAN: This is my argument.

THE COURT: I got it. Okay.

MR. GOODMAN: And I believe it's correct, obviously.

THE COURT: Yeah.

MR. GOODMAN: Wouldn't be making it.

THE COURT: Yep.

MR. GOODMAN: Is that Law v. -- if you're just saying it's a substantive consolidation claim with alter-ego-like allegations --

THE COURT: Um-hum.

MR. GOODMAN: -- you're still relying on 105 --

THE COURT: Um-hum.

MR. GOODMAN: -- and you can't do it.

THE COURT: Okay.

MR. GOODMAN: So you'd have to plead a separate alter ego claim. You might be able to do that. You might be able to do that. But they didn't do that here. They didn't plead a separate -- they're still under -- they're under subcon. They're trying to say alter-ego-like allegations --

THE COURT: Um-hum.

MR. GOODMAN: -- under a subcon claim are enough. We don't believe --

THE COURT: Um-hum.

MR. GOODMAN: If you're still relying on 105, you're still stuck in Law v. Siegel.

THE COURT: Um-hum.

MR. GOODMAN: Now, there are separate issues of who can bring it and standing in that, but I'm going to -- I'm going to leave that, Your Honor, unless Your Honor has questions. So --

THE COURT: Um-hum.

MR. GOODMAN: -- about alter ego.

THE COURT: No, they're very (indiscernible) --

MR. GOODMAN: So I think that's enough to dismiss it, by the way.

THE COURT: Okay.

MR. GOODMAN: That alone --

THE COURT: Okay.

MR. GOODMAN: -- is enough to dismiss the complaint, the count, as it is --

THE COURT: Okay.

MR. GOODMAN: -- because that's all they pled was a substantive consolidation claim.

THE COURT: Okay.

MR. GOODMAN: But even if Your Honor were to say I think -- and we disagree that you should do this. But I think I can look at whether their alter ego allegations and the -- that would save the claim.

THE COURT: Um-hum.

MR. GOODMAN: I don't think they pled it. So even if that is the standard, we don't think it is, I don't think they pled enough on alter ego.

THE COURT: Okay.

MR. GOODMAN: Under California law, alter ego, again, some would say it's extreme remedy.

THE COURT: Um-hum.

MR. GOODMAN: It's a very high bar.

THE COURT: Um-hum.

MR. GOODMAN: It's a high pleading bar. It's not something that happens every day. The presumption is that corporate separateness is respected.

THE COURT: Um-hum.

MR. GOODMAN: And you have to plead two things. Ultimately prove it, but plead it at this stage in terms of the motion to dismiss.

THE COURT: Um-hum.

MR. GOODMAN: You need to have what they call the fraud or injustice prong.

THE COURT: Um-hum.

MR. GOODMAN: You need to have misconduct by the debtor --

THE COURT: Um-hum.

MR. GOODMAN: -- or injustice flowing from separate existence.

THE COURT: Um-hum.

MR. GOODMAN: And then you need the unity of interest prong. So I want to --

THE COURT: Um-hum.

MR. GOODMAN: -- hit those one by one.

On the fraud or injustice, and this is the Sonora

(phonetic) case. The Ranza case. The Mu (phonetic) case. The committee doesn't even really attempt to plead this element. Again, I'm not casting aspersions on their pleading. They were pleading a subcon claim.

THE COURT: Um-hum.

MR. GOODMAN: They may need to try again --

THE COURT: Um-hum.

MR. GOODMAN: -- at best. Okay. They didn't attempt to plead this element. Their allegations were of control. And again, there are multiple cases that say, again, all the cases I mentioned. The Mu case, for example, and it could be Mu. I don't know if I'm --

THE COURT: Um-hum.

MR. GOODMAN: -- pronouncing that correctly. Mu. Allegations that the parent controlled -- and again, this isn't even a parent sub because OPF isn't even -- there's not that relationship. But even in a parent sub situation, allegations that the parent controlled the sub as part of a single business unified enterprise for purpose of "lining their pockets with money" wasn't enough. The Ranza case. Not enough. Unocal case. Not enough.

Allegations of controlled don't get you the fraud or injustice prong. We can talk about it a bit. I don't think they even did it on the unity of interest prong, but certainly not under the fraud or injustice prong. There's just not those

allegations. So even if Your Honor --

THE COURT: Um-hum.

MR. GOODMAN: -- were to not accept my argument that subcon is out because of -- even repackages alter ego because of 105. 303. Law v. Siegel. Even if you get to I'm going to look at the allegations of alter ego and see if they kind of sort of pet an alter ego claim, even though they haven't called it that --

THE COURT: Um-hum.

MR. GOODMAN: -- they have to plead fraud or injustice. They haven't pled it.

THE COURT: Um-hum.

MR. GOODMAN: They haven't pled it. You also need the unity of interest -- I'll hit that too -- such that essentially there's no corporate separateness. A disregard of legal formalities. Concealment of financial interest and ownership.

THE COURT: Um-hum.

MR. GOODMAN: And what they argue is that, well, the OPF, certain OPF actions needed the debtor's consent. There's some overlap in the board and generalized allegations of control. Again, that wasn't enough. Ranza said that it requires a showing that a parent controls the subsidiary -- again, not a parent sub here, but you understand the concept -- to such a degree has to remember that the latter, the mere instrumentality of the former. You need to quote -- I'm

quoting here -- and I apologize for the quote, but it's important -- "dictate every facet of the subsidiary's business, from broad policy decisions to routine matters of day-to-day operation". That is not pled. You can't have ownership, and shared management personnel is not enough.

So the fact that that the UCC believes that there's control, and it has made allegations of control, is just not enough. They haven't made the -- it's such a high bar under alter ego. They weren't pleading an alter ego, and they were trying to plead a subsequent claim. But they simply don't meet the unity of interest prong.

Your Honor, I mean, I briefly hit this, which is that -- and that covers the alter ego. They just haven't pled an alter ego claim, even a quasi-alter ego claim. So even if Your Honor were to give -- were to give them the benefit of treating it as an alter ego claim, which we don't believe you should because it was called subcon, they haven't hit -- they haven't done enough, at least at this stage.

Briefly, on subcon alone, again, I don't even know if we -- I'm going to be very brief with this because I think Law v. Siegel and the Eighth Circuit case are so clear, but they didn't even have to allege a subcon claim in terms of they have to allege entanglement, comingling of assets, ignorance of corporate formalities, and they don't. They just allege control. Control. Control. Control. That's not enough. And

there's also no allegations of credit or reliance with respect to OPF. And if anything, about accounting for transactions, they make it clear they can account for the transactions.

So I don't want to spend much more, unless Your Honor has questions, on that because I just think that Law v. Siegel made (indiscernible) so clear.

THE COURT: Yeah, I'm going to come back to a basic point and see where we agree and where we don't. What I think you're telling me is, although the Eighth Circuit might not explicitly have said it, that the logic of it is if you're going from we don't think Law v. Siegel and 303 and 105 allow you to do a subcon, we're talking about alter egos if it's a totally different thing. There's no you can't sort of backdoor your way into subcon by what we're thinking of is an expansion of Law v. Siegel or something else. Is that fair?

MR. GOODMAN: That is correct, Your Honor.

THE COURT: And I mean, it's a little -- let me put it to you this way. A lot of the subcon cases are nefarious, and that makes them really easy. But I mean, there are Ponzi schemes or something else --

MR. GOODMAN: Yes.

THE COURT: -- where it's just clear that a debtor's been acting terribly, and you really need to bring the whole thing into a bankruptcy. That's fine. Okay.

But you don't necessarily -- in fairness, if someone

subcon's otherwise available, you don't necessarily have to have all those intentionally bad actions, right? I mean, what you need is something that is entanglement and a demonstration that the benefits of subconning are going to overcome the burdens or the detriments and that it's otherwise administratively appropriate.

So I mean, it is generally a lower standard, right, if it were available?

MR. GOODMAN: Agree with that.

THE COURT: Okay. All right. So what you're saying is what the logic of the Eighth Circuit case is if you take Law v. Siegel the way you think they did and 105 and 303, you really have to be in the factual -- the God-awful factual scenarios areas of what you're describing as alter ego.

MR. GOODMAN: Yeah, and you have to plead that separately.

THE COURT: You have to get -- you have to hit all those, right?

MR. GOODMAN: Correct. I agree.

THE COURT: So there's no overlap there that would sort of let you back-door subcon, correct?

MR. GOODMAN: Correct.

THE COURT: I'm putting that badly, but we're on --

MR. GOODMAN: Yes.

THE COURT: Okay. All right.

MR. GOODMAN: (Indiscernible) --

THE COURT: I mean, I really need to hear from both of you as to how you think that -- how the analysis goes on that and where it starts and where it stops. But I've got your sense of it now. Okay. All right. Is there anything else on the --

MR. GOODMAN: If it please the Court, I'll move to the next adversary, and I won't repeat myself with stuff that's --

THE COURT: That's fine. That's fine.

MR. GOODMAN: -- except for in a few places.

THE COURT: Yeah.

MR. GOODMAN: So RCWC adversary or the nondebtor Catholic entities is their -- okay. This is the -- let me get my number right -- 04053 adversary.

THE COURT: Um-hum. Um-hum.

MR. GOODMAN: The subcon analysis is exactly the same. So with respect to why you have to get to alter ego for the reasons you just mentioned, no difference on that issue.

THE COURT: Um-hum.

MR. GOODMAN: I would say that they've even fallen farther short, if that's even possible, with respect to trying to plead out -- I mean, here's where one difference is. I would say that they're even further afield for not pleading the benefit of alter ego in the nondebtor Catholic entity case. They didn't plead fraud or injustice prong either case.

THE COURT: Um-hum.

MR. GOODMAN: But with the nondebtor Catholic entities, I think they pled themselves out of court in that the only thing they pled is that this back in 1962 or the 1960s, this was all -- these separations were -- entities were set up sixty some years ago, when this issue of abuse and this ultimate terrible things that happened to survivors wasn't even the apple of the eye. It was not even an issue. No one even knew about it. I mean, maybe it was a going of con. I don't know. I don't have the timeline.

THE COURT: Um-hum.

MR. GOODMAN: But that was not being done. They pled that this was done for purposes -- at the direction of the Pope, I believe, sixty-some years ago. I don't have the specifics. But it has nothing to do with pre-bankruptcy planning or any of these things, these differences in who was owning what properties and all that came, the separates was done at a long time ago. I think that pleads you out of court on fraud or injustice. I think that pleads you -- it's even worse than the OPF because they didn't plead it in either case, but here, they essentially pled the opposite, that this was done --

THE COURT: Um-hum.

MR. GOODMAN: -- sixty years ago for proper purposes.

THE COURT: Okay.

MR. GOODMAN: You can disagree with why they did X or Y, but it wasn't done for any nefarious purpose.

THE COURT: Um-hum.

MR. GOODMAN: Again, you have similar issues in that basically the whole general point of their analysis on why they can backdoor into alter ego is control, and control is simply not enough.

THE COURT: Um-hum.

MR. GOODMAN: And whether it's even rights to appoint board members, Unocal said not enough. So they're still stuck with we think that the debtor through the bishop controls everything. That's not enough to get you certainly to alter ego at a minimum, not even subcon, but certainly not alter ego, as far as that's concerned.

So again, we don't believe you can get to the issue of pleading alter ego through the back door. But even if you can, they haven't done it, certainly not under the fraud and injustice prong, at a minimum.

Missed anything, Mr. Blanchard'll probably cover me on that.

THE COURT: Okay. I've got a --

MR. GOODMAN: I'm trying not to repeat myself on this issue.

THE COURT: Yeah, I've got a couple of sort of procedural questions for you.

MR. GOODMAN: Yeah, I was going to -- would you like to hit that before I hit the count -- I do have on Count I, I do want to address Count --

THE COURT: Go ahead.

MR. GOODMAN: So briefly, so Count I -- that was Count II, this is the substantive consolidation count against the nondebtor Catholic entities.

THE COURT: Um-hum.

MR. GOODMAN: Count I is the issue that they would look for a declaration that the property owned by these entities is property of the estate. There's really no basis for this claim under any law. They cite Section 541 and Bankruptcy Rule 7001, and yes, 541 addresses the property state. And 7001, as Your Honor knows, provides procedural mechanisms. But those aren't substantive basis for saying separate entities that own property -- and no one's saying that the debtor actually has title to this property. There's no allegation of that. You have to allege ownership. That's governed by state law under Butner v. United States. Supreme Court decision. They don't make any allegations of ownership.

Now, I know, again, we know their theory that they're alter egos or whatever the case may be, but that's not a 541 ownership issue. Count I goes to ownership, and there's no question they own. If they want to try to bring them in, they can try. We can get to the alter ego issue. But there's no

debate that these entities don't separately have title of their property, and they certainly haven't pled otherwise.

So this is essentially backing into -- and you can tell it in their brief. They back into arguing the alter ego claim again. And again, if they want to try to make an alter ego claim, we can talk about how and why and what they have to do on alter ego. We don't think they've done it yet. But it's not through a declaration that the debtor owns the stuff. You actually have to make the proof. So that is the issue with respect to Count I.

THE COURT: Okay.

MR. GOODMAN: With that --

THE COURT: I've got --

MR. GOODMAN: -- I may check with my colleagues, but Your Honor had some questions.

THE COURT: Yeah, I had a couple questions. Let's just say -- and I've not made up my mind at all, okay, so nobody have a heart attack. Let's just say that I were to agree with you that this is what the committee is alleging here, either because of the Law v. Siegel and Eight Circuit case or whatever other basis, that this needs to be sort of recast as something more alter-ego-ish. I know there were at least glancing mentions in I forget whose brief, maybe both of yours, that there's a standing issue re alter ego as to whether individual creditors bring it or whether a representative of

the estate could bring it, number one.

And number two, there's this whole question whether it's really a cause of action or a remedy, such that if they were to repeat it as such, one -- if your response was going to be, look, this isn't really ripe, I mean, you don't get to alter ego until you have established a whole bunch of other things, and it's more a remedy if all those other things are established. I mean, I guess this gets to the question of how did they rethink of this as debt relief and where alter ego fits in that.

And if your position would be, look, we'd be right back here on a 12(b)(6) argument that alter ego is not an appropriate vehicle, I just would appreciate knowing that. Am I making sense?

MR. GOODMAN: I think you are, Your Honor. To be fair, Your Honor, we briefly in light of -- we had a week on that response brief to look at the and deal with it. The issue are -- I knew it was an issue because I dealt with it in other cases --

THE COURT: Yeah.

MR. GOODMAN: -- who has standing to bring. I've done a lot of derivative standing stuff.

THE COURT: Yeah.

MR. GOODMAN: Who is direct versus derivative. So --

THE COURT: Uh-huh.

MR. GOODMAN: -- we looked into the issue. But we only did it because we had to deal with something at a fairly quick level that -- and we put it in the footnote. We think this is an issue.

THE COURT: Yeah.

MR. GOODMAN: But I can't give you, today, standing here today --

THE COURT: Okay. That's fine. That's fine.

MR. GOODMAN: -- a final position on.

THE COURT: Okay. That's fine. That's fine.

MR. GOODMAN: I'd be happy to do it in a week.

THE COURT: That's okay. No, no, I mean --

MR. GOODMAN: But I don't think I can do it today.

THE COURT: -- if you were going to tell me today that look, don't let him amend because alter ego just isn't going to bear the freight, or however you put it.

MR. GOODMAN: I do believe they would have to go one way or the other, and --

THE COURT: Okay. All right.

MR. GOODMAN: -- I will say one thing. And we put this in the footnote. I don't know how they're going to plead the alter ego claim, so I don't know if they're going to be able to plead it. There are certain places that say it's direct --

THE COURT: Um-hum.

MR. GOODMAN: -- and there might be a possibility of derivative. I'm not positive on that --

THE COURT: Yeah.

MR. GOODMAN: -- if you do it a certain way. They're going to -- they're going to be -- I think they're going to be stuck going derivative if they want to do something because the committee is --

THE COURT: Um-hum.

MR. GOODMAN: -- and maybe their clients could try direct. But the committee would have to go derivative. So I think if --

THE COURT: Um-hum.

MR. GOODMAN: -- they're going to do alter ego, they would have to ask for standing --

THE COURT: Um-hum.

MR. GOODMAN: -- because it would be a -- they would have to show that it's a derivative claim.

THE COURT: Um-hum. And all this is -- respectfully all this is taking your perspective on the claims they have pled. And they're going to tell me that dec relief is way more expansive and broader vehicle than you and I are talking about here. And they could replead this. I mean, if they had to replete it, it's just another version of a dec relief action, in their minds. And then we will get into whether you can do that. Whether you have to do that with respect to particular

assets or particular entities, that'll be the conversation or a version of the conversation we'll have with them in a minute.

But I'm just saying, I'm hearing what you're saying. They're going to have a different view about how to proceed under dec relief, I'm sure. Okay. And we'll go from there. Make sense?

MR. GOODMAN: Makes sense, Your Honor. May I have a --

THE COURT: All right.

MR. GOODMAN: -- one-minute just to make sure I didn't (indiscernible) --

THE COURT: Yeah. Absoluely.

MR. GOODMAN: -- and I may be done.

THE COURT: Absolutely. Okay.

MR. GOODMAN: Nothing further right now, Your Honor. Thank you.

THE COURT: Okay. Your full counsel.

MR. BLANCHARD: Thank you, Your Honor. For the record, Jason Blanchard on behalf of RCC, RCWC, Aventis, and OPF.

THE COURT: Okay.

MR. BLANCHARD: Your Honor, we join in the arguments that debtor's counsel made this morning. We'd just like to make a few additional points.

Now, in the complaints, the committee makes several

allegations against my clients regarding alleged control and power to control their assets that are contradicted by the language in the documents on which they quote or on which they would rely. So for example, in the complaint against RCC, RCWC, and Aventis, the committee quotes extensively from the from the debtors bond offering memorandum --

THE COURT: Um-hum.

MR. BLANCHARD: -- for the proposition that the Bishop has the authority to control assets of juridic persons within the diocese to pay debt service on the bonds. And on this basis, they base their creditor reliance theory for substantive consolidation. But in the appendix itself, which we attach as exhibit 8 to the declaration of Mr. Manns that was filed with our motion --

THE COURT: Um-hum.

MR. BLANCHARD: -- the quoted language refers to a paragraph with the title, "financial assets and parishes". It doesn't refer to my clients. And specifically, the sentences before the quoted language and after it refer to separate juridic persons and ownership by parishes of their assets under canon law. There is no reference to my clients. So we would submit that they're not entitled to the presumption of truth that these allegations with respect to juridical persons refer to my clients.

THE COURT: Um-hum.

MR. BLANCHARD: There are several other examples of this. So for example, there's also language about the ability to increase customary rate of cathedraticum on juridic persons. Well, if you look at the appendix, the appendix explains that a cathedraticum is an annual tax or fee on parishes, not my clients.

The committee also generally refers to language about the bishop's authority to sell property and assets and tries to tie that to my clients with respect to quoted language in the bond offering memo. Now, again, this language is taken from the section called "parish collections". And immediately preceding this language, again, the debtor in representing this information in the bond offering memo specifically refer to the cathedraticum and the debtor's ability to use parish collections to pay debt service. The plausible inference here, Your Honor, is that the debtor was referring to the bishop's power over parishes, and not my clients.

Committee takes a similar approach in its complaint against OPF. So for example, the committee misquotes OPF's articles of incorporation to allege that OPF was created for the purpose of servicing the debtor's needs, the debtor's financial needs, and its property was irrevocably dedicated to the debtor. Now, the articles of incorporation, which are also attached in an exhibit to -- exhibit 1 to OPF's motion to dismiss, describe OPF's purpose as supporting the religious

mission of the Catholic Church at large, not with respect to the debtor specifically, and that OPF's property is irrevocably dedicated to that specific purpose.

Now, also throughout the complaint, the committee conflates the debtor with -- in the OPF complaint complaints the debtor with the diocese by using the same definition for the two. But defining the same -- defining the two as the same doesn't mean the Court has to treat them the same way without any supporting allegations explaining why the two are the same. In fact, in the RCC, RCWC, and Aventist complaint, they acknowledge the distinction.

Now, like the debtor, we ask the Court to dismiss the substantive consolidation claims against my clients as a matter of law based on Saint Paul. My clients can't be effectively forced into bankruptcy against their will through this process. And there's no dispute that my clients are nonprofit organizations organized under California law. And there's no allegations that they, for some reason or not, should not be treated that way.

Now, we acknowledge that there may be some technical differences between involuntary bankruptcies and substantive consolidation, but at the end of the day, the result is the same.

Now, Mr. Goodman touched on several issues with respect to substantive consolidation that I won't belabor, but

there are a few additional points I just wanted to flag. First, as Your Honor noted a short while ago, that substantive consolidation is an extreme remedy. In almost every circumstance, there is some evidence of fraud, or especially with respect to entanglement, there is allegations with respect to comingling of assets or failure to observe corporate formalities. And those allegations aren't made here.

So the committee relies on the Bonham decision. There, there was a Ponzi scheme and specific findings of that the target entities had used their funds to make fraudulent transfers.

THE COURT: Um-hum.

MR. BLANCHARD: Committee also relies on the BAP's decision and I'm going to butcher the name -- Arun Sukhul (phonetic) and in SK Foods. And now, in both decisions, the courts found instances of fraudulent transfers by the target entities, comingling of assets, failure to observe corporate formalities, and those allegations just haven't been made here.

One issue that the committee -- or one allegation that the committee relies on for reliance is the PNC credit agreement fact that the bishop allegedly represented in a covenant that he had the authority, in certain instances, to avoid a default. To use the assets of specific juridic persons to sell their property and come up with the money to stave off a default. But there's no reference to juridic -- there's no

tie to juridic persons to my clients, first. And then second, the credit agreement also required my clients to provide separate financial statements, certificates of organization, and other certificates that are ordinarily associated with a guarantee.

In Owens Corning, the Third Circuit held that the presence of corporate guarantees and financial reporting that the guarantors provided, the lenders demonstrated that lenders understood that these were separate assets in connection with making their credit decision. We would ask that the same inference be drawn here, that PNC understood that the assets of the debtor and my clients were separate and that it wasn't misled into believing that the entities were one and the same.

Now, one issue that we raised that I don't believe that the debtors raised in their alter ego and on reply with respect to alter ego is this ownership concept. Now, in SEC v. Hickey, the Ninth Circuit held that at least with respect to the shareholder context, there must be some allegations of ownership. And applying that standard, several courts in this district at the district court level have held that for an enterprise theory of liability for alter ego, which we understand the committee is asserting, that there must be some allegations that some of the entities had an ownership interest in here. And we would submit that that's fatal here because there are no ownership interests that have been asserted.

Whether they are equitable or legal, none have been alleged.

And just one last point with respect to the declaratory relief claim against RCC, RCWC, and Aventist. The claim doesn't actually describe what property interests are controverted. There's just a blanket statement that all of their property should somehow be determined to be property of the estate, but they don't actually identify it.

So for example, with respect to RCC, they don't allege that RCC owns any property. There's an allegation that it provides burial and interment services from land leased from the debtor. That they, at one point in time, liquidated funds that they owned to provide a loan to the debtor. But there's no allegations of what property interests are actually controverted. And then like Mr. Goodman referenced, there are no allegations that the debtor had some form of ownership interest in those assets.

So we would submit that Rule 8 requires more. My client has to be able to prepare a defense. We have to understand what property interests specifically are controverted.

With that said, unless Your Honor has any questions, I'd cede the podium.

THE COURT: Thank you.

Anybody want to take a break, or you want to just go?

MR. KAPLAN: Thank you, Your Honor.

THE COURT: Who is this? Go. Go ahead.

MR. KAPLAN: Oh, it is.

THE COURT: Okay.

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

THE COURT: Nice to see you again.

MR. KAPLAN: Good to see you, sir. So I want to just take a step back and start with something that we haven't really discussed today, which is, is this notion that the committee failed to prove anything with respect to OPF.

Your Honor signed a stipulation yesterday dismissing or getting rid of a thirty-five-million-dollar fraud that the debtor had tried to perpetrate on the Court and everybody else. The debtor stood before you at this very podium multiple times and told you about this thirty-five-million-dollar loan that was funding this case. One stroke of a pen, Your Honor. Well, you know why? Because it was all their money to begin with. All of it.

So the notion of OPF not being part of the debtor, they've proved it themselves. Why else would they just walk away from a thirty-five-million-dollar claim? Your Honor, it appeared in the liquidation analysis they filed last Tuesday. It was still there. And by Friday, it disappeared.

So I find it a little bit rich to be criticized that the committee is this ultra litigious, simply wants to

litigate, instead of progress, when thirty-five-million dollars is a lot of progress, Your Honor. That's thirty-five-million dollars less that's not being paid to someone who never had the money because it was always the debtor.

But I digress from that fact. I want to talk about the church adversary first because we don't want there to be a controversy over the what-is-separate-and-isn't-separate issue. Really, we don't. Is there going to be a controversy over what is restricted and not restricted? Yes. No question about that. Certainly not going to get into -- Mr. Lee very graciously acknowledged that in the course of mediation, information was provided. But for me, that's kind of like attorney-client privilege. In my mind, it doesn't exist. So not going to -- not going to get into it.

But this is the essential issue, Your Honor. We've heard the debtor come up before and they've written and they've said that the churches are not separate from the debtor. They're one and the same. That concession is fine. I'm not really interested in the notion of estoppel. I'd rather it be in the form of a stipulation or a consent judgment, so that we're finished with that issue.

But the real issue here, Your Honor, is, is that there's always a qualification. Even in their reply brief, Your Honor, there was a qualification, which is that they're one and the same, except for some of the restricted assets,

where there's a trust relationship. You can't have a trust relationship, Your Honor, if it's one and the same entity. Right. The debtor can't hold a property in trust for the churches if the churches don't separately exist. That would make the trustee and the beneficiary the same person. It's not permissible.

So we would like some type of either stipulation, declaration from the Court, consent judgment, or otherwise that puts this issue to bed without any of the reservations. Without any of the poison pills about not being able to object to other things. We don't think -- the OPF claim objections are going to be withdrawn now that that issue has been resolved. I know that was something that was mentioned yesterday.

But we don't understand why this is an issue based on the debtor's statements that they're one and the same. No separate property. No separate property interest. No trust. And whether something is or isn't restricted is an issue that's going to be dealt with separately. And I want to get to that now.

But Your Honor, I will tell you, they won't make that representation about the trusts or the other pieces. We've tried. We can't get there. What we can get is the very basic statement that they're not separate, with qualifications.

As for the restricted assets, Your Honor, we've

obviously acknowledged that we need to replead -- we need to plead that claim. Now, we think from a procedural standpoint, we can do --

THE COURT: But your sense is that could be done -- it would be efficient to do that here in the context of this litigation, as opposed to some other way?

MR. KAPLAN: It would be -- it would have to be -- we agree, would have to be an adversary complaint.

THE COURT: Okay.

MR. KAPLAN: We're happy to make it part of this adversary complaint. Amend and just going.

THE COURT: Um-hum.

MR. KAPLAN: I'm going to guess, Your Honor. I'm just going to use my slight powers of prediction here. We're going to be back on another motion to dismiss on that, though.

THE COURT: Yeah.

MR. KAPLAN: But --

THE COURT: See, and that's kind of where -- I mean, I'm not trying to get over my skis here, but take taking your view of things, you've gotten some sense in a mediation context, which you're quite properly not divulging further, that, well, here's our conception of what's restricted and what isn't, right? I mean, the only thing I know so far is if they're making something available for distribution under a plan, I assume it's not restricted. That's all I know.

And the basis of any other restrictions, I mean, I'm coming at it from the same place --

MR. KAPLAN: Right.

THE COURT: -- as you might have before you had seen whatever you saw in the mediation, which is, well, okay, tell us what's restricted and why. And I'm almost wondering if something has to happen before you even -- if you're going to file that complaint, if something has to happen before then so that you know what you're shooting at here.

MR. KAPLAN: It might be, Your Honor, but I want to just -- to answer your question, to take a step back here, which is we know that the debtor has elected to go down a path of filing a plan and seeking to have that plan voted on and approved. And I'm not here to argue the disclosure statement, and maybe I'll be invited back on April 1st or not. Don't know. See how I do today.

But the reality here is, is that creditors, all creditors, including the survivors, have a right to know what is and isn't actually the debtor's property. The debtor chose to come to bankruptcy. We had some very eloquent arguments about the fact that they couldn't be involuntarily put in here. I'm not going to argue with what the Bankruptcy Code says. I know what --

THE COURT: Um-hum.

MR. KAPLAN: -- 303 says. But they chose. They

elected. They volunteered to come in. We need to know and the Court needs to know what is and isn't property of the estate because that's going to tell creditors whether they're being fairly and equitably treated, and that's --

THE COURT: Um-hum.

MR. KAPLAN: -- going to allow the Court to determine whether the plan is fair and equitable to creditors --

THE COURT: Um-hum.

MR. KAPLAN: -- when you're considering it. So we have to know on the merits. Not on procedure. Not on arguments about lack of standing. Not about arguments about what happened in 1962 or 1963. On the merits. You came to bankruptcy court. You need to bare all. And the Court has to determine what is and isn't property. Only then can creditors, including survivors, vote, and only then can the Court determine whether something is fair and equitable. And Your Honor has touched on some of these issues when you've been considering the liquidation --

THE COURT: Yeah.

MR. KAPLAN: -- analysis and otherwise.

THE COURT: Yeah.

MR. KAPLAN: And these aren't small amounts of money, Your Honor. These aren't small amounts. I mean, I think it's safe to say -- I'm not going to try to quote it here -- but the stuff related to the bond obligated group is hundreds of

millions of dollars of property and otherwise. This isn't like we're arguing over who's going to pay for lunch at Subway and whether we can get two sandwiches or one. We're talking about whether or not we can buy the Subway franchise here.

So these are really important issues, and we need to get them decided. And I just find it interesting that when considering the arguments -- I read the transcript of my colleague Mr. Goodman's argument when you were considering the standing motion. And he talked about, if you recall, back in January, it's not a fraudulent transfer issue. It's a property of the estate issue. It is a property of the estate issue. All of this is a property of the estate issue.

So the churches, we should be able to put that issue aside. We should be -- the Court can either rule. We can get to a stipulation. We can have a consent judgment. But it's got to deal with everything. It's got to deal with no separate real property. No separate personal property. No trust relation. They're not held in trust. And what's restricted and not restricted will be dealt with in a separate day. We can knock that one right out.

THE COURT: That's internal, right?

MR. KAPLAN: It's all the debtor.

THE COURT: That's all the debtor.

MR. KAPLAN: That's all the debtor.

THE COURT: The debtor.

MR. KAPLAN: But we need to make clear that there's no --

THE COURT: Um-hum.

MR. KAPLAN: We're not going to hear about trusts. We're not going to hear about it's someone else's.

THE COURT: I hate to be -- I hate to ask a stupid question, but how much of this -- I mean, I don't know how much of this is definitional. What I tried to ask, and I think I got agreement from the debtor was they agree there's nothing in the bishop-diocese-church-parish relationship that is trust-like by itself. And I think they agree with that.

Now, I don't know if they conflate restricted and trust in some other way. I don't know. And if it's just a definitional language question, we ought to be able to figure it out.

MR. KAPLAN: Your Honor, I'm always hesitant to get into the back and forth amongst counsel because I respect that process, and I think --

THE COURT: And I'm not trying to do that.

MR. KAPLAN: Yeah. No, I know you're not -- I know you're --

THE COURT: Yeah, I'm sorry.

MR. KAPLAN: -- not asking me to.

THE COURT: Yeah.

MR. KAPLAN: But we've certainly, and everyone's been

trying. I mean, I'm not --

THE COURT: Yeah.

MR. KAPLAN: I don't cast aspersions on adversaries in that way. Everyone has legitimately been trying. I think Mr. Goodman was probably writing emails in the car on the way over here. I'm just not that good at walking and writing emails at the same time so -- but we should be able to resolve those issues. You're right.

THE COURT: Um-hum.

MR. KAPLAN: We should be able to.

THE COURT: Um-hum.

MR. KAPLAN: The substantive consolidation of OPF, I don't know how much that's really -- I heard counsel for OPF get up and talk about subcon related to OPF's property. OPF doesn't have any property. It's the debtor's money that's there. Right. The parochial fund has the debtor's money. Because if it's -- so I'm not sure what where that issue comes in here. But we should be able to deal with that. And then we should get to the restricted assets.

Now, I don't know, Your Honor. I have to go back and look, truthfully speaking, standing here, to see how much information we have.

THE COURT: Um-hum.

MR. KAPLAN: Maybe we need to do some type of expedited Rule 2004 to get them to produce to us what we have

otherwise seemed to understand. We certainly think it's something they should be disclosing in the disclosure statement so that creditors understand how much of the property they're claiming is restricted. And we can deal with it that way.

But there's no question about it, Your Honor, we have a live, justiciable controversy. The debtor, I'm certain, will stand up and say certain property is restricted. We will stand up -- I'm already standing. I don't need to stand up. And say, we don't think you've got the requisite proof of that.

THE COURT: Um-hum.

MR. KAPLAN: The hope note handshake doesn't do it. And we should be able to go through -- we should be able to do that. I don't --

THE COURT: Um-hum.

MR. KAPLAN: Yeah. So those (indiscernible) there.

THE COURT: I never know to what extent issues are actually driven through to conclusion on these cases. This has got to be the eighty-fifth case where this has come up, right? I mean, this is not a unique issue.

MR. KAPLAN: This is not a unique issue, Your Honor.

THE COURT: At all, right? Yeah.

MR. KAPLAN: It's not a unique issue --

THE COURT: I mean, at some point, maybe people will stop fighting about it because you otherwise reach an accommodation. But this is not the first time this has

happened.

MR. KAPLAN: Oh, see, and Your Honor, that's exactly -- I think that's the other sort of -- I don't make a practice of talking about how decisions will impact settlements, but in this case, I think it is actually particularly ripe. All of these determinations, Your Honor, that we're asking you to make.

THE COURT: Yeah.

MR. KAPLAN: Churches. Bond obligated group. Restricted versus --

THE COURT: Yeah.

MR. KAPLAN: -- not restricted. That in and of itself has the ability to create the playing field for both sides --

THE COURT: Um-hum.

MR. KAPLAN: -- to understand what is in game --

THE COURT: Yeah.

MR. KAPLAN: -- what's in play, and what's not in play.

THE COURT: Um-hum.

MR. KAPLAN: And so you're absolutely right, Your Honor. In cases that we've been involved in, you will see that you may say, you know what, I'm going to let this complaint go forward.

THE COURT: Um-hum.

MR. KAPLAN: The debtor needs to disclose this stuff.

And they say, no, we don't want to disclose it. So our offer got better or vice versa or vice versa, in all fairness.

THE COURT: Yeah.

MR. KAPLAN: You may say committee, no, no, you're not getting that.

THE COURT: Um-hum.

MR. KAPLAN: And we say, okay, got to do something.

THE COURT: Um-hum.

MR. KAPLAN: Right. So all of this impacts the global. But the --

THE COURT: Yeah.

MR. KAPLAN: -- restricted versus unrestricted comes up in all of these cases.

THE COURT: Sure.

MR. KAPLAN: And if the debtor wants to proceed with this plan, which is up to Your Honor to decide whether it's going to go out or not, then we have to have a determination what's restricted versus not restricted so that the creditors and the Court can make the determination as to whether or not they're being treated fairly and equitably under the plan --

THE COURT: Um-hum.

MR. KAPLAN: -- and so Your Honor can make the ultimate determination you have to make.

So we think, we're happy to amend and include that here. Obviously, Mr. Goodman referenced Count V. That is an

amendment issue. We need to change it for the debtor because the debtor is still claiming that -- and here's the restricted assets -- 8.3 million of the 35 million is restricted.

THE COURT: Okay.

MR. KAPLAN: How it went from an unrestricted fund to an unrestricted fund and then became restricted somehow --

THE COURT: We'll all learn that.

MR. KAPLAN: We'll learn it at some point, I'm sure --

THE COURT: Yeah. Um-hum.

MR. KAPLAN: -- in another motion to dismiss in which --

THE COURT: Um-hum.

MR. KAPLAN: -- we learn that's not an issue, and then the 8.3 million's back, too. So we'll be up --

THE COURT: Okay.

MR. KAPLAN: -- we'll be doing great there. But let me turn now to the sort of larger issue. And if I could --

THE COURT: Um-hum.

MR. KAPLAN: -- Your Honor, I want to talk about the bond obligated group piece first. And I'll get into --

THE COURT: Okay.

MR. KAPLAN: -- the subcon here, which is the committee finds itself kind of between a rock and a hard place.

THE COURT: Um-hum.

MR. KAPLAN: Okay. Which is we have California law.

Alter ego is not a standalone claim. Of course, if the debtor would like to consent that alter ego is now a standalone claim, certainly we could, I'm sure, work that out.

THE COURT: Um-hum.

MR. KAPLAN: But alter ego is not a standalone claim. The debtor has already opposed every attempt of ours to get derivative standing, and Your Honor agreed with the debtor that we couldn't have derivative standing on any number of claims. What we have here is the bond obligated group.

Now, counsel briefly touched on the representations that were made by the debtor about the control and otherwise. But what we have is, is we have the -- we have the debtor's documents. Okay.

THE COURT: Um-hum.

MR. KAPLAN: Which we got in discovery. Not mediation, in discovery. And they say RCBO and/or the bishop owns and controls for the benefit of the diocese all of the financial assets administered by the chancery. And goes on. And you heard about during the 2007 bond offering. We can use those assets. We can use all the assets we need. I can control everything in the diocese to get it. Used it again in 2017. Right. So first off, that's creditors relying on those representations.

And what we have here is a situation where we have the bishop has complete control, which we've alleged.

THE COURT: Um-hum.

MR. KAPLAN: And there's these -- I heard an argument about inferences, that you should draw the inferences from the documents in their favor. That's just, procedurally, we're wrong stage. This stage, motion to dismiss, all the facts in the complaint are alleged as true -- are taken as true, and all inferences get drawn in our favor. Normally, in cases, I'm on that side. I don't like it. But in this case -- so all the inferences, if there's a dispute about what the documents say and we say it says one thing and they say it says another thing, at this stage, the inferences are drawn in our favor.

So we can't draw inferences in fact. We can't look to facts at what PNC did or didn't do or Bank of America did, or this group did or that group. That's all outside the complaint, Your Honor. So none of that is relevant for this stage.

But what we have here, Your Honor, is a board, boards of these things. Take RCWC, for instance. It's a board of seven. The debtor appoints --

THE COURT: Four, right?

MR. KAPLAN: -- four, and --

THE COURT: Um-hum.

MR. KAPLAN: -- those four appoint three.

THE COURT: Um-hum.

MR. KAPLAN: That's seven out of seven, in my book --

THE COURT: Um-hum.

MR. KAPLAN: -- are appointed by that. And the notion, Your Honor -- and we did. I'm not going to belabor every single point about how we've alleged control or otherwise, but we have alleged control.

And the fraud here, Your Honor, I think the fraud is implicit from the documents itself. Again, I don't like to throw fraud around as an allegation of sorts, but the fraud here is, is you come to bankruptcy court because you want to -- you have to deal with liabilities associated with decades of child sex abuse.

THE COURT: Um-hum.

MR. KAPLAN: You want to tell creditors based on the most recent plan -- and I'm just going to use the numbers in the most recent plan -- we can only pay you 103-million dollars. Can't pay you any more. But yet, we're sitting on somewhere close to a billion dollars' worth of assets.

THE COURT: Um-hum.

MR. KAPLAN: That's fraud, Your Honor. That's injustice, Your Honor. Okay.

So in the bankruptcy context that we are in, we've pled it. That's where we find ourselves. We find ourselves in a scenario where we would like the Court and making declarations about what is and isn't property of the estate and what equitable or legal or otherwise interests someone has in

in other property is there.

The debtor has freely used this property, at least with respect to the bond obligated group complaint. They have freely used that property when it is convenient for them to deal with obligations and debts and deal with covenant defaults and otherwise. And what we're not saying, Your Honor, I just want to be clear, is we're not saying that all that money has to come into the estate and be divided up. Okay. It may be held for other purposes.

But again, when Your Honor is making a determination about what's fair and equitable, you have to consider the entirety of the debtor's estate. And if the debtor is going to represent to creditors in 2007 and 2017, when it's convenient for them, that this is all our property that we control, then they should have to come into bankruptcy court and say, yes, we control all this property. There may be another reason we can't divide it up or distribute it or otherwise, but that's a separate issue in and of itself.

That brings us, I think, to the sub --

THE COURT: Well, if that -- I mean, sorry to stop --

MR. KAPLAN: No, but --

THE COURT: -- but where does that go procedurally? Let me back up for a second. And because this is the -- this is a central question I want to -- I want to ask you.

If there are arguably some problems with using

substantive consolidation coming out of the Eighth Circuit case, if that case leaves more open, in your view, than it does in your worthy adversaries, where the alternatives are, because I mean, the only thing that -- the only thing that the Eighth Circuit talked about was alter ego is kind of another end of the spectrum, which is may require all kinds of further nefarious allegations you haven't made yet but you may think you are entitled to make. I don't know.

Is there something else in the middle that under state law -- I mean, if you've been talking about -- if we've been circling around this, just give it to me more precisely. Is there something else sort of between the extreme of alter ego and maybe the less-extreme allegations for substantive consolidation that you can plead under California law and get where you need to go?

MR. KAPLAN: I think, if there was, Your Honor, we would have pled it.

THE COURT: Okay. So I appreciate that. Okay.

MR. KAPLAN: Yeah.

THE COURT: I appreciate that.

MR. KAPLAN: If there was. And I think this --

THE COURT: And if we're talking about dec relief -- and again, if this is -- this may be so simplistic a question that I shouldn't ask it. The two obvious bases for that are the entities really are the same --

MR. KAPLAN: Um-hum.

THE COURT: -- and that you're headed in that direction now, or there's another reason why this asset really doesn't belong to this entity. Right. And I don't know if you can -- I don't know if you can plead dec relief both of those ways. But if you can, I'd like to hear you describe it.

MR. KAPLAN: Well, I don't know that, Your Honor. I think we can, under the bankruptcy -- under the Code -- excuse me. Under the Code, the Court is able because ultimately, you are a court of equity --

THE COURT: Um-hum.

MR. KAPLAN: -- to determine that the debtor does have an equitable interest in this property. Right. That is one of the bases the Court can determine in a dec relief action, I think under 7001.

THE COURT: Yeah. That just tells me, yeah, you're going to do it through an AP.

MR. KAPLAN: Right. Exactly.

THE COURT: Okay.

MR. KAPLAN: So we think here, that, first off, we definitely do not agree about the fact that alter ego, where we stand on the alter ego spectrum here. And I'll talk about that in a second.

THE COURT: Yeah.

MR. KAPLAN: But other than that, Your Honor, is, is

again, we have a debtor that came to bankruptcy --

THE COURT: Um-hum.

MR. KAPLAN: -- voluntarily and has said wants to go through the process. And as we know most recently in -- and I think the Supreme Court said it again in Kaiser, when it talked about the process of everyone's open and everyone comes in --

THE COURT: Yeah.

MR. KAPLAN: -- and everyone's this. Well, that's what's supposed to be happening. So we should have to -- we should be able to know what is and isn't property. And again, if just eight years ago, this was property they could control or property that is owned because it's part of the chancery, then it should be property now. And we should have that issue on the merits, not on procedure. We should have the Court to determine what evidence we have of that.

Again, we're using the best pleadings we have at this stage, Your Honor --

THE COURT: Um-hum. Um-hum.

MR. KAPLAN: -- to do it. And I don't think we can overlook that point here, which is, is the debtor says we should plead more. We should plead more. We should plead more. Counsel for the other entity said his client should know what the property is.

First off, let me help with the property. As far as we understand, it's all of it --

THE COURT: Um-hum.

MR. KAPLAN: -- because there's no facts to show otherwise. There was no distinction in the documents we've seen so far.

THE COURT: Um-hum.

MR. KAPLAN: What will discovery show about what other property is there or may not be there, I'm not sure, Your Honor. But the reality here is the notion that the parties don't understand what we're here pleading about, I don't believe that for one second. We think that all of these -- all of the property that is titled under these entities is really the debtor's property. And we've already seen that, Your Honor, with OPF. So we already saw that that issue --

THE COURT: Um-hum.

MR. KAPLAN: -- like I said, last March, standing right here, thirty-five-million-dollar OPF loan. We took a loan from OPF to pay for the estate. No more. Thirty-five-million dollars is really our money. Right. The 106-million dollars for the churches, you heard counsel say the churches aren't separate. So really, the debtor's money.

THE COURT: So if I -- again, let me repeat my stupid question. One way to get there is to say the entities are basically the same.

MR. KAPLAN: Yeah.

THE COURT: Right. The other way is to say -- well,

another possible way to get there is to say the property has been treated as if it really belonged to somebody else. Right. That's your theory?

MR. KAPLAN: Yes.

THE COURT: Okay.

MR. KAPLAN: Right. And on the alter ego piece, Your Honor, I just want to touch on that briefly because again, I'm not going to repeat my federal courts class from law school, but --

THE COURT: Well, why not? I mean, if not here, where?

MR. KAPLAN: Well, right. Exactly. Well --

THE COURT: Try that with my colleagues sometime. Ask --

MR. KAPLAN: Yeah. Exactly. Right.

THE COURT: I'm kidding.

MR. KAPLAN: Among the lessons that I try to teach the summer associates and new associates when they come to the firm is, is that --

THE COURT: Yeah.

MR. KAPLAN: -- there are these things called circuits for a reason.

THE COURT: Yeah.

MR. KAPLAN: And the Eighth isn't the Ninth. So again, I understand it could be persuasive authority, but it's

certainly not binding, and particularly when the Eighth Circuit specifically left open the question. Because remember, they were looking under Minnesota law. It was 200 entities there in which aren't structured -- which are structured differently under Minnesota law, actually similar to the way they're structured under New Jersey law.

THE COURT: Okay.

MR. KAPLAN: But not the way they're structured under California law.

THE COURT: Um-hum.

MR. KAPLAN: And which it said we leave for another day whether or not you can substantively consolidate something that really is an alter ego.

THE COURT: Um-hum.

MR. KAPLAN: We know alter ego is not a standalone claim. Okay. we that part, I didn't write California law, but we know it's not. And so we think it is those facts here, Your Honor.

Again, the way in which this is controlled, the way in which this operates, the way in which its missions are all aligned, they're not operating separately. Right. Everything is being operated in furtherance of the diocese's ultimate mission. These things don't operate separately. They don't have a separate business line. They don't have a separate media rights deal or otherwise.

THE COURT: Um-hum.

MR. KAPLAN: They're not hosting the Oakland Athletics for the next three seasons while the stadium is being built.

THE COURT: Um-hum.

MR. KAPLAN: This is all part of one enterprise. Okay. And it was structured this way, Your Honor, in our view, and I think it's pretty obvious, so that the debtor can stand up and say, no, no, no, you can't get to this real property. No, no, no, you can't get to this real property. No, you can't get to this hundred million. No, you can't get to that hundred million. That's why it was structured this way, Your Honor.

So if it's a matter of semantics that you want us to stand up and say we think you're defrauding creditors by doing it, sure. We can say it because ultimately we're here. Whether we decide this issue in an adversary, whether we decide this issue in the context of confirmation, whether we decide this issue in the mix of both, the debtor chose a path to come to bankruptcy. The debtor chose a path to file a plan. We have to determine what is and isn't property of the estate.

THE COURT: Um-hum.

MR. KAPLAN: Let me just make sure I don't have anything else. I think I've hit those points.

Oh, the derivative standing piece, Your Honor, I'm certain that if this is a question of derivative standing, we've already seen that objection. We'll be back on that one.

And so again --

THE COURT: Um-hum.

MR. KAPLAN: -- we want to move this along, Your Honor, on the path the debtor has elected, which is we're going to have a disclosure statement hearing on April 1st. I'm sure they're -- under their most recent plan, they asked for confirmation some sixty days thereafter. Obviously, we have a view that that's a little bit aggressive of a schedule that's not going to work.

But the point is, is they've chosen a path. They said, that's the path we want to go down. And we've said, fine. But we've got to deal with these issues, all of these issues related to the property that bond obligated that they've used related to the churches, the trusts, the restricted assets, and otherwise. The adversary proceeding in our mind is the right way to do it. Happy to answer anything else you have.

THE COURT: All set. Thank you so much.

MR. KAPLAN: Thanks.

THE COURT: I appreciate it. Okay. Okay.

MR. GOODMAN: Your Honor, I think, again, we'll try to not overlap. We'll split our --

THE COURT: Sure. Okay.

MR. GOODMAN: -- replies like we did last time.

THE COURT: Okay.

MR. GOODMAN: But I'll take it. Thanks. Geoff Goodman on behalf of the debtor, for the record.

THE COURT: Uh-huh.

MR. GOODMAN: So a lot of things here. I'll try to hit major points.

Holistically, it seems like the committee wants to plead a dispute over restricted funds, and we'll get to that. But they didn't plead that.

THE COURT: Um-hum.

MR. GOODMAN: They want to kind of recast it. The committee now wants to plead kind of an alter ego claim after being hit with our motion to dismiss and Law v. Siegel in the Eighth Circuit, but they didn't do that. So maybe they can do that. Maybe they can't. As I said, we (indiscernible).

But they certainly haven't done it. And what's in front of Your Honor is a complaint that doesn't do the job and under the law, in our view, needs to be dismissed. Now, maybe they can do something else. Maybe they can't. But they certainly haven't done it with the pleading they have now.

I will mention one thing, just for the record, even though they didn't really put it at issue. The issue of what is and isn't restricted and should notice that first is we've given that information in discovery back in January 2024. I had tens of thousands of pages of documents. But and we've had multiple disclosure statements. And I don't believe -- this is

my colleagues telling me. This isn't firsthand knowledge. So if you have a question, they're going to have to respond to it.

THE COURT: Okay.

MR. GOODMAN: They haven't objected to the disclosure statement on that basis. Now, would that be an objection? I suppose it could be. But it hasn't been, that we haven't -- that there wasn't enough information for creditors on the restricted information. I suppose they could raise that issue now on the current document, if that time hasn't passed.

THE COURT: Or maybe even I could.

MR. GOODMAN: Of course Your Honor could.

THE COURT: Yeah. Okay.

MR. GOODMAN: Your Honor always could. But the information has been there for, I guess, fourteen months. And we've had multiple disclosure statements, and that hasn't been there. But a lot of things they've raised, and that hasn't been a focus of the issue in terms of restricted funds. And again, that's not the -- that's not the count they've pled.

THE COURT: Okay.

MR. GOODMAN: I do want to, just briefly, because there was a -- I usually don't deal with this, but there were an allegation that the debtor was perpetuating a fraud with the OPF claim, something further from the truth. That was a stipulation done. Sometimes things are done in bankruptcy because it's just not worth the effort and assets and your

counterparty, ultimately, it was agreed to do it and sign on it. Right. But it's not a perpetuating fraud.

It's actually done at the committee's request. It's a little odd to do what the committee asked us to do and then to be accused of perpetuating fraud. That's certainly not accurate. I don't want to go into more from that, but when you're accused of perpetuating a fraud, you have to at least respond to it.

I would say, Mr. Kaplan said he's not arguing with, what 303 says. We're going to subcon. He can't. Law v. Siegel, 105, the binding person, and the Supreme Court, so subcon dies, as far as that's concerned. So I don't think that can be seriously disputed.

There was a lot of -- and I apologize. There was a lot of discussion about the property of the estate issue. We've provided a stipulation. We think, Your Honor, Your Honor can look at that. We're happy to continue to sign that. We believe that says all the things they claim they want. It says ultimately, in the end, churches aren't separate from the debtor. They don't have a separate right to interest in property under California law.

But there needs to be a qualification on the issue of restricted funds because those were provided to the churches, which are part of the debtor. And there's an issue about whether those are held in trust. If they want to file a

complaint on that and your order gives them the right to do that, they can do that. But that's what the stipulation attempts to do. Do I think my language is perfect? Nothing's perfect. But I attempted to do that in this language.

THE COURT: SO the only issue that you're preserving, is what we would call a restricted asset. That's it?

MR. GOODMAN: That's right. You're right, Your Honor.

THE COURT: All right. And is it also real estate?

MR. GOODMAN: The reason why --

THE COURT: Are there real estate assets that can't be disposed of?

MR. GOODMAN: No. The real estate assets are all property of the estate. So there's no issue --

THE COURT: Okay.

MR. GOODMAN: -- as far as that's concerned. There's an issue about 1120(a)(7) on that, but that's in the --

THE COURT: Yeah.

MR. GOODMAN: -- that's in the reservation --

THE COURT: We have talked about that.

MR. GOODMAN: -- but not about property of the estate.

THE COURT: We've talked about that.

MR. GOODMAN: Okay. Actually, I want to -- I want to do one thing. I'm going to grab -- Mr. Weisenberg filed a declaration, and we didn't really get a chance to look at it in detail. And he attached -- I didn't attach emails because I

wasn't sure that was appropriate. I'm not going to cast aspersions on Mr. Weissenberg doing it, but it wasn't an attempt to -- but it was interesting.

Your Honor, on this issue, and then I'm going to move on, he attached a prior email form me. I'd like to read it, Your Honor, because I think it really castellates our position, which is no different in court than it is when we're sending it. All. This is January 8th. Attaches a markup of the property of the estate stipulation. "As you will see, the markup continues to provide that the church real property is property of the estate", as Your Honor just mentioned.

THE COURT: Um-hum.

MR. GOODMAN: "We have also marked up the list of church real property attached but need to confirm this is in sync with the debtor's schedules. With respect to church personal property, as noted in our derivative standing response, we cannot stipulate that all church property is property of the estate because some of it is restricted to church donations and trust under California law. Any unrestricted church cash (or other personal property) is property of the estate, as noted in our response."

And then I said, "This remains subject to final client approval, as well as double-checking the real property schedule as noted above. We are happy to discuss."

That was our position in the email he attached. It's the position in the stipulation. That issue is there's no controversy. It's dead, as far as that's concerned. Those counts should be dismissed. Again, we continue to be happy to sign that stipulation.

A couple other points, and then I'll leave it for Mr. Blanchard.

THE COURT: Okay.

MR. GOODMAN: Next, about alter ego and the Eighth Circuit. And I neglected to mention this in my original email -- in my argument. The bankruptcy court in Saint Paul actually found that they didn't plead alter ego and said that was insufficient, actually on a complaint that was a lot more robust here because I think they actually tried to pled alter ego, whereas here, they pled subcon. And they said that wasn't good enough. Now, the Eighth Circuit didn't reach that issue, but they didn't plead it there. Again, there wasn't even a pled claim of alter ego in that case.

And lastly, there was a lot of allegations about what the debtor did or didn't do there and things. A lot of that stuff isn't in the complaint. There's a lot of allegations that that the committee's counsel made. And maybe they can support them in the complaint, and I think in many cases they can't. But that has to be in a complaint. It can't be at statements of counsel about fraud and injustice and other

things standing at a podium. That's a little different from complaint. A complaint have certain standards. You got to do it. And if they're going to do it, they should do it, if Your Honor gives them an opportunity.

But again, in conclusion, we believe that the property the estate stuff is, is either not entitled to relief or is moot. The subcon complaint cannot stand under Law v. Siegel and the Eighth Circuit's decision. And Your Honor should dismiss.

THE COURT: Thank you very much.

MR. BLANCHARD: For the record, Jason Blanchard. I'll be very brief, Your Honor. I just have two points.

THE COURT: Um-hum.

MR. BLANCHARD: First, with respect to OPF, I heard counsel say that OPF has no property. First of all, that's not what was alleged in the complaint. And secondarily, if they don't have any assets, what's the purpose of substantive consolidation here?

Second, with respect to the chancery, I'd like to read from the bond offering memo, which provides that chancery financial assets, RCBO and the Bishop owns and controls for the benefit of the diocese all the financial assets administered by the chancery. Those assets include proceeds of the cathedraticum, which I explained were parish tax assessments and extraordinary exaction or tax on a juridic person located

within the boundaries of the diocese, as well as repayment by parishes of internal loans. Those assets also include proceeds of special diocesan fundraising drives and certain diocesan special funds. There's no allegations that any of that property belongs to RCC, RCWC, or Aventist. And then, in fact, several pages later in the bond offering memo, it describes exactly what assets my clients own.

That's all I have.

THE COURT: Okay. Thank you.

Are you signaling you're saying something else, Mr. Kaplan, or --

MR. KAPLAN: Your Honor, I just, I want to just highlight that last point, though, about the sort of just internal inconsistency here. You just heard counsel talk about the property of the parishes.

THE COURT: Yeah. Okay.

MR. KAPLAN: There's no parishes.

THE COURT: Okay. I gotcha.

MR. KAPLAN: Right.

THE COURT: Thank you.

MR. KAPLAN: But I do --

THE COURT: Okay.

MR. KAPLAN: -- want to just highlight this issue of trust because we just heard trust again --

THE COURT: Yeah.

MR. KAPLAN: -- from Mr. Goodman. No trusts. No parishes. No trusts. I'm going to sit down on that.

THE COURT: Okay. Appreciate it.

Can you guys give us about three minutes for me to talk to --

UNIDENTIFIED SPEAKER: Yeah.

THE COURT: -- my beloved colleagues here? Thanks. Back in a minute. Thank you.

(Recess from 10:04 a.m., until 10:05 a.m.)

THE CLERK: Come back to attention. The court has resumed.

THE COURT: Thank you, and please be seated.

That was a wonderful argument by all of you. And I will tell you, we came in here with a lot of questions. Some of them you heard from me. A lot of them, you guys anticipated and knew exactly what I was going to be worried about here.

I want to think about this. I do think that, at a minimum, we're looking at some amendments. But how many is what we're trying to figure out, and where they fit is what we're trying to get a handle on here.

I'm very thankful that, to the extent you were able to answer my questions, you did very directly, as always. That's always extremely helpful to me. And there's some things that are always -- I'm not trying to make a pun based on the religious nature of this entity. There are some things that

are unknowable sometimes, or they're knowable later, but not now. And without meaning to be cryptic, I get that. Okay.

So thank you very much. The matter is submitted, unless there's some other housekeeping issue. And I think, I haven't written much in this case. We're going to write on this one. Okay. So we will get you something in writing as soon as we practically can.

Anything else for the good of the order today?

Okay. Thank you very much. I really appreciate it. Great arguments, guys.

UNIDENTIFIED SPEAKER: Thank you, Your Honor.

THE COURT: Thanks. Okay. Thank you.

(Whereupon these proceedings were concluded at 10:06 AM)

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

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



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A

ability (3)
46:2,14;61:13
able (15)
28:11,11;42:23;
50:18;53:10;57:13;
58:14;59:7,10,18;
60:12,12;69:9;70:10;
84:21
above (1)
80:25
Absoluely (1)
44:12
Absolutely (2)
44:14;61:20
abuse (2)
37:6;66:11
accept (1)
32:3
accessible (1)
19:16
accommodation (1)
60:25
account (1)
34:3
accounting (1)
34:2
accurate (1)
78:6
accused (2)
78:5,7
acknowledge (2)
47:11,20
acknowledged (3)
16:8;52:11;54:1
acting (1)
34:23
action (4)
14:3;41:3;43:23;
69:14
actions (3)
20:5;32:19;35:2
actual (1)
16:10
actually (16)
21:20;22:21;39:17;
40:9;50:4,7,13;55:19;
60:17;61:5;73:5;78:3;
79:22;81:12,13,14
adding (1)
27:7
additional (2)
44:24;48:1
address (4)
5:25;8:24;24:10;
39:3
addresses (1)
39:13
administered (2)
64:18;82:22
administratively (1)
35:6
admission (1)
9:13
admissions (1)
9:2
admit (1)
21:1
admitted (1)
14:23
adversaries (3)
7:1;59:3;68:3
adversary (15)
6:1;7:21,22;8:1;
9:25;10:1;13:18;36:8,
12,14;52:6;54:8,11;
74:15;75:15
affirmed (1)
23:11
afield (1)
36:23
aftermath (1)
23:14
afterward (1)
7:11
Again (47)
7:15;10:9,25;12:10;
15:3;16:12;17:21;
19:3,5;20:18;21:1;
29:24;31:3,6,10,10,
15;32:21,23;33:19;
38:4,15;39:21;40:5,5;
46:10,12;51:6;64:21;
66:7;67:10;68:23;
70:1,5,10,16;71:21;
72:7,25;73:19;75:1,
21;77:18;81:4,17;
82:5;83:24
against (9)
8:22;21:14;39:6;
45:1,4;46:19;47:13,
15;50:3
aggressive (1)
75:8
ago (6)
37:6,14,18,24;48:2;
70:11
agree (11)
13:4,5;14:24;34:8;
35:9,19;40:19;54:8;
58:9,11;69:21
agreed (2)
64:7;78:1
agreement (6)
10:17;12:22;18:16;
48:21;49:2;58:9
agrees (1)
8:17
ahead (2)
39:4;51:1
ALBERT (2)
5:7,8
alienate (1)
19:19
aligned (1)
73:21
allegation (5)
39:18;48:19;50:9;
66:8;77:22
allegations (31)
26:19;27:8;28:4,14;
29:17;31:9,15,17,22;
32:1,6,20;33:7;34:1;
39:20;45:1,23;47:9,
18;48:5,7,18;49:18,
23;50:13,15;68:7,13;
81:19,21;83:4
allege (6)
33:22,23,24;39:18;
46:20;50:8
alleged (7)
45:1;50:1;64:25;
65:6;66:4,5;82:16
allegedly (2)
16:4;48:21
alleging (1)
40:19
allow (3)
22:7;34:11;56:6
allowed (1)
22:8
almost (2)
48:3;55:6
alone (2)
29:7;33:19
along (1)
75:3
alter (64)
24:25;25:8,14,24;
26:3,5,9,19,21;27:1,8,
12,12;28:10;29:2,17,
22,24;32:4,6,7;33:9,9,
13,14,16;34:12;
35:14;36:17,24;38:6,
12,13,16;39:22,25;
40:4,5,7,24;41:6,9,12;
42:15,22;43:13;
49:15,16,21;64:1,2,5;
68:5,12;69:21,22;
72:6;73:13,15;76:11;
81:9,12,14,18
alter- (1)
27:7
alter-ego-ish (1)
40:22
alter-ego-like (2)
28:3,14
alternatives (1)
68:3
although (1)
34:9
always (9)
11:18;12:11;52:4,
23;58:16;77:13;
84:22,23,24
amend (3)
42:15;54:11;62:24
amendment (1)
63:1
amendments (1)
84:18
America (1)
65:13
Among (1)
72:17
amongst (1)
58:17
amounts (3)
11:4;56:22,23
analysis (9)
11:22;12:25;13:11;
14:7;36:3,16;38:5;
51:22;56:20
and/or (1)
64:16
annual (1)
46:5
Anthony's (1)
12:18
anticipated (1)
84:15
anymore (1)
9:10
AP (1)
69:17
apologize (4)
10:10;12:10;33:1;
78:14
apology (1)
11:16
appearances (2)
4:10;5:12
appeared (1)
51:22
appearing (1)
4:13
appellate (1)
23:10
appendix (3)
45:12;46:4,4
apple (1)
37:8
applicable (1)
12:24
apply (1)
10:7
applying (1)
49:19
appoint (2)
38:9;65:23
appointed (1)
66:2
appoints (1)
65:19
Appreciate (7)
19:1;41:13;68:18,
20;75:20;84:3;85:9
approach (1)
46:18
appropriate (4)
22:8;35:6;41:13;
80:1
approval (1)
80:24
approved (1)
55:14
April (2)
55:15;75:5
APs (1)
7:3
areas (1)
35:14
arguably (1)
67:25
argue (3)
32:18;55:14,22
arguing (3)
40:4;57:2;78:9
argument (10)
4:19;24:9;27:17,21;
32:3;41:12;57:8;65:2;
81:11;84:13
arguments (6)
44:22;55:20;56:11,
11;57:7;85:10
around (5)
21:20;23:4;25:20;
66:8;68:11
articles (2)
46:20,23
Arun (1)
48:14
aside (2)
8:18;57:14
aspersions (4)
21:24;31:3;59:3;
80:2
asserted (1)
49:25
asserting (1)
49:22
assessments (1)
82:24
asset (2)
69:3;79:6
asset-by-asset (1)
12:25
assets (37)
12:8,9;13:18;17:12;
18:1;19:16;33:23;
44:1;45:2,9,17,20;
46:8;48:6,17,23;49:9,
11;50:16;52:25;
53:25;59:19;63:3;
64:18,20,20;66:17;
75:15;77:25;79:10,
12;82:17,21,22,23;
83:2,7
associated (2)
49:4;66:10
associates (2)
72:18,18
assume (1)

Case: 24-04051 Doc# 32 Filed: 03/07/25 Entered: 03/07/25 11:34:35 Page 87 of 100

54:25
Assuming (1)
9:8
Athletics (1)
74:2
attach (2)
45:12;79:25
attached (6)
20:21;46:24;79:25;
80:5,14;81:1
Attaches (1)
80:8
attack (1)
40:18
attempt (4)
31:2,8;64:6;80:3
attempted (1)
79:4
attempts (1)
79:3
attention (1)
84:10
attorney-client (1)
52:13
authority (5)
19:18;45:9;46:8;
48:22;72:25
authorize (1)
23:21
available (4)
21:14;35:1,8;54:24
Aventis (3)
5:2;44:19;45:5
Aventist (3)
47:10;50:3;83:5
avoid (2)
6:5;48:23
aware (1)
10:10
away (1)
51:21

B

back (21)
6:8;9:10;17:19;
34:7;37:4;38:16;40:4;
41:12;51:8;54:15;
55:11,15;57:9;58:17;
59:20;63:14;67:23;
74:25;76:23;84:8,10
backdoor (2)
34:13;38:6
back-door (1)
35:21
backing (1)
40:3
bad (2)
23:22;35:2
badly (1)
35:23
Bank (1)
65:13
bankruptcies (1)
47:21
bankruptcy (23)
15:15;19:21,23;
20:1;22:11;23:1,5,11;
24:19;34:24;39:13;
47:15;55:20,22;
56:13;66:9,21;67:15;
69:8;70:1;74:18;
77:24;81:11
BAP's (1)
48:13
bar (3)
30:2,4;33:8
bare (1)
56:13
barrier (1)
26:15
base (1)
45:11
based (6)
13:18;14:7;47:14;
53:15;66:13;84:24
bases (3)
12:21;68:24;69:14
basic (2)
34:7;53:23
basically (4)
13:4;24:1;38:5;
71:23
basis (6)
39:11,15;40:21;
45:11;55:1;77:5
bear (2)
25:15;42:16
became (1)
63:6
bed (1)
53:9
began (1)
23:10
begin (3)
6:24;10:16;51:17
beginning (1)
14:14
behalf (6)
5:8;6:3;7:16;44:19;
51:5;76:2
belabor (2)
47:25;66:3
believes (3)
11:25;12:1;33:6
believing (1)
49:13
belong (1)
69:4
belonged (1)
72:2
belongs (1)
83:5
beloved (1)
84:7
beneficiary (1)
53:5
benefit (4)
33:15;36:24;64:17;
82:22
benefits (1)
35:4
Benvenutti (1)
5:8
best (2)
31:8;70:16
better (3)
7:2;19:17;62:2
billion (1)
66:17
binding (3)
21:14;73:1;78:11
Bishop (8)
4:6,9;38:11;45:8;
48:21;64:16,25;82:21
bishop-diocese-church-parish (1)
58:10
bishop's (2)
46:8,16
bit (4)
16:21;31:23;51:24;
75:8
Blanchard (16)
5:2,3;6:18;7:4,7;
44:18,19,22;45:8,16;
46:1;48:13;81:7;
82:11,11,14
Blanchard'll (1)
38:19
blanket (2)
17:3;50:5
board (4)
32:20;38:10;65:17,
18
boards (1)
65:17
bond (12)
45:6;46:10,13;
56:25;61:9;63:20;
64:9,19;67:3;75:13;
82:20;83:6
bonds (1)
45:10
Bonham (2)
21:18;48:8
book (1)
65:25
both (7)
18:24;36:2;40:23;
48:15;61:13;69:5;
74:17
boundaries (1)
83:1
brackets (1)
15:8
break (1)
50:24
brief (7)
14:17;33:20;40:4,
23;41:17;52:23;82:12
briefly (7)
33:12,19;39:5;
41:16;64:10;72:7;
77:20
briefs (1)
14:18
bring (6)
28:23;34:23;39:24;
40:25;41:1,21
brings (1)
67:19
broad (2)
17:4;33:3
broader (1)
43:21
built (1)
74:3
bunch (1)
41:6
burdens (1)
35:5
burial (1)
50:10
business (3)
31:18;33:2;73:24
butcher (1)
48:14
Butner (1)
39:19
buy (1)
57:4

C

calendar (1)
5:16
CALIFORNIA (14)
4:1;10:7,18;12:23;
15:7;23:21;29:24;
47:17;63:25;68:14;
73:9,16;78:21;80:20
Call (5)
4:3;7:22;8:19;
30:12;79:6
called (5)
7:10;32:7;33:17;
46:11;72:21
Calling (1)
4:4
came (5)
21:22;37:17;56:12;
70:1;84:14
can (64)
7:10,10;8:9,18;
9:22;11:20;13:13;
14:24;17:15,19;
24:10,21;25:8,11;
26:11;28:23;29:17;
31:23;34:3;38:1,6,15,
16;39:25,25;40:3,6;
42:13;43:24;53:23;
54:3;56:14,15;57:3,4,
14,14,15,20;60:4;
62:19,22;64:19,20,20;
66:15;68:14;69:5,5,6,
8,14;70:19;73:12;
74:7,14;76:13,18;
78:13,17;79:2;81:22;
84:4;85:7
canon (4)
12:23;17:8;20:3;
45:21
car (1)
59:5
care (1)
5:16
career (1)
23:10
case (29)
4:7,9;10:8;15:23;
21:19;22:17,21;
23:18;31:1,1,1,11,20,
21;33:21;35:11;
36:24,25;37:20;
39:22;40:21;51:16;
60:18;61:5;65:8;68:2,
2;81:18;85:5
cases (11)
6:11;9:1;31:10,10;
34:18;41:19;60:17;
61:21;62:13;65:7;
81:23
cash (1)
80:20
cast (3)
21:24;59:3;80:1
castellates (1)
80:6
casting (1)
31:3
cathedraticum (4)
46:3,5,14;82:24
Catholic (7)
4:6,8;36:13,24;
37:2;39:7;47:1
cause (1)
41:3
cede (1)
50:22
cemeteries (1)
22:19
central (1)
67:24
centralized (1)
13:7
certain (12)
6:13;10:14;11:3;
32:19;42:23;43:4;
48:22;60:6,7;74:24;
82:2;83:3
certainly (15)
11:5;23:15;31:24;
38:12,13,17;40:2;
52:10;58:25;60:1;
64:3;73:1;76:15,19;

Case: 24-04051 Doc# 32 Filed: 03/07/25 Entered: 03/07/25 11:34:35 Page 88 of 100

78:5
certificates (2)
49:3,4
challenge (1)
9:24
chance (1)
79:24
chancery (5)
64:18;70:12;82:19, 20,23
change (3)
17:25;26:24;63:1
chatting (1)
10:12
check (1)
40:14
child (1)
66:11
chose (4)
55:19,25;74:17,18
chosen (1)
75:10
church (12)
8:19;12:18;18:12; 20:15;47:1;52:6; 80:10,14,16,18,19,20
church-debtor (2)
18:15,21
churches (25)
14:1,22;15:8,9; 16:3,7,7;17:8,23; 18:5;19:5,6,17,25; 22:21;52:17;53:4,4; 57:13;61:9;71:19,19; 75:14;78:19,23
church's (1)
10:14
circling (1)
68:11
Circuit (21)
21:15,19,21,25; 22:7;23:2,25;27:10, 19;33:21;34:9;35:11; 40:20;49:6,17;68:1,5; 73:1;76:13;81:10,16
circuits (1)
72:21
Circuit's (1)
82:8
circumstance (1)
48:4
circumstances (1)
22:9
circumvent (1)
22:10
cite (1)
39:12
civil (1)
17:14
claim (38)
8:21;13:18;21:9; 25:24;26:21,22;27:2, 8;28:3,11,16;29:13, 18;31:4;32:7;33:10, 14,14,16,22;39:12; 40:5,6;42:22;43:17; 50:3,4;51:21;53:11; 54:2;64:1,2,5;73:16; 76:11;77:23;78:18; 81:18
claiming (2)
60:4;63:2
claims (3)
43:19;47:13;64:8
class (1)
72:8
clear (7)
19:15;33:21;34:3,6, 22;58:1;67:7
CLERK (3)
4:4;5:13;84:10
client (3)
50:18;70:22;80:23
clients (15)
43:9;45:1,18,21,24; 46:6,9,17;47:13,14, 16;49:1,2,12;83:7
close (1)
66:17
closer (1)
18:20
CNO (1)
5:21
Code (7)
19:23;20:1;22:11; 23:5;55:22;69:8,9
colleague (2)
5:1;57:8
colleagues (4)
40:14;72:13;77:1; 84:7
collections (2)
46:11,15
comfortable (1)
7:2
coming (2)
55:2;68:1
comingling (3)
33:23;48:6,17
Committee (32)
4:6,8;5:8;8:17; 9:22;12:3;22:14,15; 25:21;31:2;40:19; 43:7,10;44:25;45:5; 46:7,18,19;47:4;48:8, 13,19,20;49:22;51:5, 10,25;62:4;63:23; 76:6,11;78:4
committee's (4)
17:5;24:9;78:3; 81:22
complaint (26)
8:16;15:25;23:5; 29:9;45:4;46:18;47:4, 5,10;54:8,11;55:8; 61:22;65:6,15;67:3; 76:16;79:1;81:13,21, 23,24;82:2,2,7,16
complaints (2)
44:25;47:5
complete (2)
5:24;64:25
completely (2)
6:10;14:2
components (2)
25:16;26:19
con (1)
37:9
Concealment (1)
32:16
conceding (1)
12:17
concept (2)
32:23;49:16
conception (1)
54:22
concern (1)
17:5
concerned (4)
38:14;78:12;79:15; 81:3
concession (1)
52:18
conclude (1)
6:25
concluded (1)
85:13
conclusion (2)
60:17;82:5
conduct (1)
23:22
confirm (1)
80:14
confirmation (2)
74:16;75:7
conflate (1)
58:12
conflates (1)
47:5
confused (1)
16:21
connection (1)
49:9
consent (5)
32:19;52:20;53:8; 57:15;64:2
consider (1)
67:11
considered (1)
22:25
considering (4)
56:9,18;57:7,8
consistent (1)
21:19
consolidate (6)
19:6,9;21:21;22:2; 24:2;73:12
consolidated (1)
26:11
consolidation (22)
6:14;8:21;19:4; 21:9,13;22:18;25:3; 26:21;27:1,5;28:3; 29:13;39:6;45:12; 47:13,22,25;48:3; 59:12;68:1,14;82:18
context (6)
12:4;49:18;54:5,21; 66:21;74:16
continue (2)
78:17;81:4
continues (1)
80:10
contradicted (1)
45:2
contrary (1)
16:18
control (21)
31:9;32:21;33:7,7, 25,25,25,25;38:6,6; 45:1,2,9;64:11,21,25; 66:4,5;67:14,16; 70:11
controlled (4)
31:15,18,22;73:19
controls (4)
32:22;38:11;64:17; 82:21
controversy (10)
9:3;15:25;16:11,12, 15;17:21;52:7,8;60:6; 81:3
controverted (3)
50:5,14,20
convenient (2)
67:4,13
conversation (2)
44:1,2
Corning (1)
49:6
corporate (6)
30:6;32:15;33:24; 48:6,17;49:7
corporation (1)
21:17
correctly (1)
31:14
counsel (11)
44:17,23;58:17; 59:13;64:10;70:22; 71:19;81:22,25; 82:15;83:14
Count (33)
8:16,21;9:4;13:20; 14:2,20;15:3,20;16:1, 2,3,6,13,19,24;18:19; 20:18;21:1,4,12; 25:22;29:10;39:2,2,3, 5,5,6,9,23;40:10; 62:25;77:18
counterparty (1)
78:1
country (1)
21:20
counts (7)
8:16,20;12:14; 13:15,22,23;81:4
couple (3)
38:24;40:16;81:6
course (3)
52:11;64:1;77:11
Court (370)
4:3,10,15,17,20,22, 24;5:4,6,11,15,20,22, 24;6:4,6,12,16,19,21, 24;7:6,8,14,17,19,20, 23;8:2,5,7,11,14,23; 9:5,8;10:3,9,21,25; 11:6,8,11,15,18,21, 24;12:2,5,7,10;13:1,3, 13,16,21,24;14:4,6,8, 10,13,19;15:6,14,19, 21;16:21,23;17:6,10, 15,17,19;18:4,7,9,11, 16,18,23;19:1,8,11, 15,21,24;20:2,5,7,10, 13,16,19,23,25;21:3, 7,10,15,22;22:1,5,16, 20,24,25;23:1,2,7,11, 20;24:7,11,17,20,22; 25:1,5,7,9,11,17,20, 23,25;26:7,12,14,17, 23;27:3,6,11,16,18, 20,22,24;28:1,5,7,9, 15,18,21;29:1,3,6,8, 11,14,19,23;30:1,3,7, 11,14,17,20,23;31:5, 7,13;32:2,9,12,17; 34:7,17,22;35:10,17, 20,23,25;36:2,7,9,11, 15,19;37:1,3,11,18, 23,25;38:3,8,21,24; 39:4,8,20;40:11,13, 16;41:20,23,25;42:5, 8,10,12,14,19,25; 43:3,8,12,15,18;44:9, 12,14,17,21;45:7,15, 25;47:8,12;48:12; 49:20;50:23;51:1,3,6, 13;53:8;54:4,9,12,16, 18;55:4,24;56:2,5,6,8, 13,13,15,19,21;57:14, 21,23,25;58:3,6,19, 22,24;59:2,9,11,23; 60:10,14,16,21,23; 61:8,11,14,16,19,24; 62:3,6,8,11,14,19,21; 63:4,7,9,12,15,18,21, 24;64:4,14;65:1,20, 22,24;66:1,9,12,18, 23;67:15,20,22;68:18, 20,22;69:2,9,10,11, 14,16,19,24;70:2,5,7, 14,18;71:1,5,14,21, 25;72:5,10,13,16,20,

Case: 24-04051 Doc# 32 Filed: 03/07/25 Entered: 03/07/25 11:34:35 Page 89 of 100

23;73:7,10,14;74:1,4,20;75:2,18,20,23,25;76:3,9;77:3,10,12,19;78:11;79:5,8,10,14,17,19,21;80:7,12;81:8,11;82:10,13;83:9,16,18,20,22,25;84:3,7,10,12;85:12
courtroom (1)
4:11
courts (5)
22:6,8;48:16;49:19;72:8
court's (2)
19:22;22:3
covenant (2)
48:22;67:5
cover (1)
38:19
covers (1)
33:13
create (3)
17:24;18:13;61:13
created (1)
46:20
credit (4)
34:1;48:20;49:2,10
creditor (1)
45:11
Creditors (15)
4:6,8;40:25;55:17,18;56:3,7,14;60:3;62:18;64:22;66:13;67:13;74:13;77:7
criticized (1)
51:24
cryptic (1)
85:2
current (1)
77:9
customary (1)
46:3

D

day (5)
26:8;30:5;47:22;57:19;73:12
days (1)
75:7
day-to-day (1)
33:3
dead (1)
81:3
deal (12)
41:17;42:2;57:16,16;59:18;60:4;66:10;67:5,5;73:25;75:12;77:21
dealt (3)
41:18;53:19;57:19
debate (1)
40:1
debt (3)
41:9;45:10;46:15
debtor (77)
4:13;6:3;7:16;9:3;11:22;14:1;15:9,11;16:8,8,10;17:7,11,23;18:12;19:5,6,13,24;21:11,17;22:3,7;26:10;30:16;38:11;39:17;40:8;46:12,16,23;47:2,5,6,12;49:12;50:11,12,15;51:13,14,19;52:4,16,17;53:3;55:12,19;57:22,23,24,25;58:9;60:6;61:25;62:15;63:1,2;64:1,6,7,11;65:19;67:2,12;69:12;70:1,20;74:7,17,18;75:4;76:2;77:22;78:20,24;81:20
debtors (2)
45:6;49:15
debtor's (16)
15:16;32:19;34:22;44:23;46:14,21,21;53:16;55:19;59:15,16;64:12;67:12;71:12,20;80:15
debts (1)
67:5
dec (6)
43:20,23;44:5;68:22;69:5,14
decades (1)
66:10
decide (8)
26:5;27:10,11,15;62:16;74:15,15,16
decided (1)
57:6
decision (6)
23:25;39:20;48:8,14;49:10;82:8
decisions (3)
33:3;48:15;61:4
declaration (8)
14:21;16:2,4;39:10;40:8;45:13;53:8;79:24
declarations (1)
66:24
declaratory (1)
50:3
declined (1)
5:14
dedicated (2)
46:22;47:3
default (2)
48:23,25
defaults (1)
67:5
defense (1)
50:18
defer (2)
11:9;13:2
defining (2)
47:7,7
definitely (1)
69:21
definition (1)
47:6
definitional (2)
58:8,14
defrauding (1)
74:13
degree (1)
32:24
demonstrated (1)
49:8
demonstration (1)
35:3
derivative (11)
41:22,24;43:2,6,10,17;64:7,8;74:23,24;80:17
describe (3)
46:25;50:4;69:6
describes (1)
83:6
describing (1)
35:14
detail (1)
79:25
detailed (1)
10:15
determination (4)
62:17,19,23;67:10
determinations (1)
61:6
determine (7)
56:6,14,16;69:12,14;70:15;74:19
determined (1)
50:6
detriments (1)
35:5
dictate (1)
33:2
dies (1)
78:12
difference (2)
36:18,22
differences (2)
37:16;47:21
different (8)
6:1;21:2;24:5;27:13;34:13;44:4;80:7;82:1
differently (2)
19:24;73:4
digress (1)
52:5
diocesan (2)
83:3,3
diocese (8)
17:23;22:17;45:10;47:6;64:17,21;82:22;83:1
dioceses (1)
17:22
diocese's (1)
73:22
direct (3)
41:24;42:24;43:10
direction (2)
37:13;69:3
directly (1)
84:22
disagree (2)
29:16;38:1
disappeared (1)
51:23
disclose (2)
61:25;62:1
disclosing (1)
60:2
disclosure (11)
10:11,13;15:4,16;16:9;55:14;60:2;75:5;76:25;77:4,15
discovery (4)
64:15,16;71:6;76:23
discuss (1)
80:25
discussed (1)
51:9
discussion (4)
23:15,17,20;78:15
dismiss (12)
4:19;13:14;29:4,9;30:10;46:25;47:12;54:15;63:10;65:5;76:12;82:9
dismissed (6)
8:25,25,25;23:5;76:17;81:4
dismissing (1)
51:11
disposed (1)
79:11
dispute (15)
9:10,21,22,23;14:2;15:1;16:25;17:2,16;18:20;21:16,18;47:16;65:9;76:7
disputed (1)
78:13
disregard (1)
32:15
distinction (3)
20:14;47:11;71:3
distribute (1)
67:17
distribution (1)
54:24
district (2)
49:20,20
divide (1)
67:17
divided (1)
67:8
divulging (1)
54:21
document (1)
77:9
documents (7)
45:3;64:13;65:4,9;66:7;71:3;76:24
dollars (6)
52:1,3;57:1;66:16;71:18,19
dollars' (1)
66:17
donation (8)
16:14;17:3,18;18:3,15,21,21;20:15
donations (3)
16:20;20:14;80:19
done (16)
33:18;37:12,13,18,22;38:2,17;40:7;41:21;44:13;54:4;76:15,19;77:24,24;78:3
door (1)
38:16
double-checking (1)
80:24
down (3)
55:12;75:11;84:2
draw (2)
65:3,12
drawn (3)
49:11;65:7,11
driven (1)
60:17
drives (1)
83:3
during (1)
64:19

E

easy (2)
22:13;34:19
effect (1)
23:23
effectively (2)
23:15;47:14
efficient (1)
54:5
effort (1)
77:25
ego (62)
24:25;25:8,14,24;26:3,6,9,19,22;27:1,8,12;28:11;29:2,17,22,24;32:4,6,7;33:9,9,13,14,14,16;35:14;36:17,24;38:6,13,13,16;39:25;40:4,6,7,24;

Case: 24-04051 Doc# 32 Filed: 03/07/25 Entered: 03/07/25 11:34:35 Page 90 of 100

41:6,9,12;42:15,22; 43:13;49:15,16,21; 64:1,2,5;68:5,12; 69:21,22;72:6;73:13, 15;76:11;81:9,12,15, 18
ego-like (1)
27:8
egos (2)
34:12;39:22
ego's (1)
27:12
Eight (3)
27:19;40:20;70:11
Eighth (15)
21:15;23:2,25; 27:10;33:21;34:9; 35:11;68:1,5;72:24; 73:1;76:13;81:9,16; 82:8
eighty (1)
15:17
eighty-fifth (1)
60:18
either (7)
6:22;36:25;37:20; 40:20;53:7;57:14; 82:6
elected (3)
55:12;56:1;75:4
element (2)
31:2,9
eloquent (1)
55:20
else (17)
11:14;15:2;24:2,25; 34:15,20;36:5;51:13, 20;68:9,12;72:2; 74:22;75:16;76:18; 83:10;85:8
else's (1)
58:5
email (3)
80:5;81:1,11
emails (3)
59:5,6;79:25
encompassed (1)
9:16
end (6)
6:9;12:11;26:25; 47:22;68:6;78:19
enough (18)
14:11;28:16;29:4,9, 22;31:20,20,21; 32:21;33:5,8,18,25; 38:7,10,12;77:7; 81:16
entanglement (3)
33:23;35:3;48:5
enter (1)
20:20
entered (1)
5:19
enterprise (3)
31:19;49:21;74:5
entirety (1)
67:12
entities (17)
14:22;36:13;37:3,5; 39:7,11,16;40:1;44:1; 48:10,17;49:13,23; 68:25;71:11,22;73:3
entitled (3)
45:22;68:8;82:6
entity (8)
22:18;24:3,4;36:24; 53:2;69:4;70:22; 84:25
equal (1)
24:2
equitable (8)
15:10;19:14;50:1; 56:7,16;66:25;67:11; 69:13
equitably (2)
56:4;62:20
equity (1)
69:10
escape (1)
25:14
especially (1)
48:4
essential (1)
52:15
essentially (6)
8:15,18;9:2;32:14; 37:21;40:3
established (2)
41:6,8
estate (28)
8:19;10:5;13:19; 16:3;17:12;39:11; 41:1;50:7;56:2;57:11, 11,12;66:24;67:8,12; 71:17;74:19;78:15; 79:8,10,12,13,20; 80:9,11,18,22;82:6
estop (2)
15:22,24
estopped (1)
15:17
estoppel (1)
52:19
even (32)
10:11;21:20;29:15, 20;31:2,16,16,17,24; 32:1,4,5,7;33:14,14, 19,22;36:20,21,23; 37:7,8,8,19;38:9,13, 16;52:23;55:7;76:20; 77:10;81:17
everybody (1)
51:13
everyone (3)
7:4;59:4;70:6
everyone's (3)
58:25;70:6,8
evidence (2)
48:4;70:15
exact (3)
14:24;22:12,13
exaction (1)
82:25
Exactly (9)
24:20,22;36:16; 61:3;69:18;72:12,15; 83:7;84:16
example (6)
23:16;31:11;45:4; 46:2,19;50:8
examples (1)
46:1
except (2)
36:10;52:25
exception (1)
26:3
excuse (1)
69:8
exemption (2)
23:22,22
exemptions (1)
23:18
exhibit (3)
45:13;46:24,24
exist (2)
52:13;53:4
existence (2)
19:25;30:19
exists (1)
16:5
expansion (1)
34:14
expansive (1)
43:21
expect (1)
15:23
expedited (1)
59:25
explain (1)
15:12
explained (1)
82:24
explaining (1)
47:9
explains (1)
46:4
explicitly (1)
34:10
explore (1)
23:25
extending (1)
5:17
extensively (1)
45:5
extent (4)
16:24;17:4;60:16; 84:21
extraordinary (1)
82:25
extreme (3)
29:25;48:3;68:12
extremely (1)
84:23
eye (1)
37:8

F

facet (1)
33:2
fact (9)
27:7;33:6;47:10; 48:21;52:5;55:21; 65:12;69:21;83:5
facts (4)
65:5,13;71:2;73:17
factual (2)
35:13,13
failed (1)
51:10
fails (1)
21:12
failure (2)
48:6,17
fair (6)
18:1;34:15;41:16; 56:7,16;67:11
fairly (4)
26:15;42:2;56:4; 62:20
fairness (2)
34:25;62:2
fallen (1)
36:20
far (7)
38:14;54:23;70:24; 71:4;78:12;79:15; 81:3
farther (1)
36:21
fatal (1)
49:24
favor (4)
6:25;65:4,7,11
federal (1)
72:8
fee (1)
46:5
few (3)
36:10;44:24;48:1
field (1)
61:13
fight (1)
13:8
fighting (1)
60:24
figure (2)
58:14;84:19
file (5)
10:1;14:3;55:8; 74:18;78:25
filed (3)
45:13;51:22;79:23
filing (1)
55:13
final (2)
42:9;80:23
financial (8)
32:16;45:17;46:22; 49:3,7;64:18;82:21, 22
find (6)
23:12;24:3;51:24; 57:6;66:22,22
findings (1)
48:9
finds (1)
63:23
fine (13)
7:8;21:24;25:10,11; 34:24;36:9,9;42:8,8, 10,10;52:18;75:12
finished (1)
52:21
firm (1)
72:18
firmly (1)
12:19
first (14)
4:5;9:20;26:2;48:2; 49:1;52:6;60:25; 63:20;64:22;69:20; 70:24;76:22;82:14,15
firsthand (1)
77:1
fit (1)
84:19
fits (2)
23:8;41:10
flag (1)
48:1
flowing (1)
30:18
focus (1)
77:17
Foley (2)
4:13,16
follow (1)
6:20
following (2)
10:16,17
font (1)
24:13
Foods (1)
48:15
footnote (2)
42:3,21
forced (1)
47:15
forget (1)
40:23
forgive (1)
17:22
forgotten (1)
23:13

Case: 24-04051 Doc# 32 Filed: 03/07/25 Entered: 03/07/25 11:34:35 Page 91 of 100

form (3)
50:15;52:20;80:5
formalities (4)
32:16;33:24;48:7, 18
formally (1)
9:9
formed (1)
26:10
former (1)
32:25
forth (2)
9:11;58:17
forward (1)
61:23
found (2)
48:16;81:12
Four (3)
65:20,21,23
fourteen (1)
77:14
fourth (1)
19:4
franchise (1)
57:4
fraud (20)
30:13,25;31:22,25; 32:10;36:25;37:19; 38:17;48:4;51:12; 66:6,6,8,8,19;77:22; 78:2,5,7;81:25
fraudulent (4)
26:11;48:10,16; 57:10
freely (2)
67:2,4
freight (1)
42:16
Friday (1)
51:23
front (1)
76:16
Fulbright (1)
5:1
full (1)
44:17
fund (3)
59:16;63:5,6
fundamental (1)
15:15
funding (1)
51:16
fundraising (1)
83:3
funds (8)
11:23,25;48:10; 50:11;76:7;77:17; 78:23;83:4
funny (1)
16:23
further (5)
36:23;44:15;54:21; 68:6;77:23
furtherance (1)
73:22

G

Gabrielle (1)
5:7
game (1)
61:15
general (1)
38:5
generalized (1)
32:20
generally (2)
35:7;46:7
Geoff (4)
4:13;6:2;7:15;76:1
gets (2)
24:9;41:8
given (2)
5:25;76:23
gives (2)
79:1;82:4
glancing (1)
40:23
global (1)
62:10
God-awful (1)
35:13
goes (5)
14:20;16:24;36:3; 39:23;64:18
Good (11)
4:12,17,25;5:7;6:2; 13:10;51:4,7;59:6; 81:16;85:8
Goodman (210)
4:14,18;6:2,2,5,7, 13,17,20,22;7:13,15, 15,18,21,24;8:3,6,8, 13,15,24;9:7,19;10:4, 20,23;11:2,7,9;13:2, 14,17,22,25;14:5,7,9, 12,15,20;15:7,15,20, 22;16:22;17:2,7,11, 16,18;18:2,5,8,10,14, 17,19,25;19:3,9,12, 20,23,25;20:3,6,8,11, 14,18,21,24;21:1,4,8, 11,23;22:2,6,17,21, 25;23:19;24:6,8,15, 18,21,23;25:2,6,8,10, 13,19,21,24;26:1,8, 13,16,18,24;27:4,7, 14,17,19,21,23,25; 28:2,6,8,10,16,19,22; 29:2,4,7,9,12,15,20, 24;30:2,4,8,12,15,18, 21,24;31:6,8,14;32:3, 10,13,18;34:16,21; 35:9,15,19,22,24; 36:1,7,10,12,16,20; 37:2,12,24;38:1,4,9, 22;39:1,5,9;40:12,14; 41:15,21,24;42:1,6,9, 11,13,17,20;43:1,4,9, 13,16;44:7,10,13,15; 47:24;50:14;59:5; 62:25;75:21,24;76:1, 2,4,10;77:4,11,13,20; 79:7,9,12,15,18,20, 22;80:13;81:9;84:1
Goodman's (1)
57:8
gotcha (3)
25:12,12;83:18
governed (1)
39:19
grab (1)
79:23
graciously (1)
52:11
Great (5)
5:4,11;9:19;63:16; 85:10
group (7)
56:25;61:9;63:20; 64:9;65:14,14;67:3
guarantee (1)
49:5
guarantees (1)
49:7
guarantors (1)
49:8
guess (3)
41:8;54:13;77:14
guts (1)
13:4
guys (5)
6:24;23:9;84:4,15; 85:10

H

handle (2)
9:17;84:20
handling (1)
4:18
handshake (1)
60:11
happen (3)
22:8;55:7,8
happened (3)
37:7;56:12;61:1
happening (1)
70:9
happens (1)
30:5
happy (8)
7:7;42:11;54:10; 62:24;75:16;78:17; 80:25;81:4
hard (1)
63:23
hatch (1)
25:14
hate (2)
58:6,6
headed (1)
69:2
hear (5)
18:24;36:2;58:4,5; 69:6
heard (9)
52:16;59:13;64:19; 65:2;71:19;82:14; 83:14,24;84:15
hearing (2)
44:3;75:5
heart (1)
40:18
held (9)
16:4,17,25;49:6,17, 20;57:18;67:9;78:25
help (1)
70:24
helpful (1)
84:23
here's (4)
11:4;36:22;54:22; 63:2
hesitant (1)
58:16
Hickey (1)
49:17
high (4)
26:15;30:2,4;33:8
highlight (3)
15:5;83:13,23
hit (13)
8:3,4;21:5;30:24; 32:14;33:12,17; 35:17;39:2,2;74:22; 76:5,12
hitting (1)
18:24
hold (3)
15:10;19:13;53:3
Holistically (1)
76:6
Honor (115)
4:4,12,25;5:7,13, 18;6:2,15;7:5,13,18, 25;8:8,9,13;9:7,19; 10:1,24;11:2,10,14; 13:10,11;14:12,15,21; 15:22;16:22;19:3; 24:6,8,10;25:15; 28:24,24;29:15;32:1; 33:12,15;34:4,16; 39:14;40:15;41:15, 16;44:7,15,18,22; 46:16;48:2;50:21,25; 51:4,11,16,21;52:2, 15,22,24;53:2,21,25; 54:13;55:10;56:17, 23;58:16;59:20;60:5, 20;61:2,6,21;62:16, 22;63:19;64:7;65:15, 17;66:3,6,19,20;67:6, 10;68:16;69:7,25; 70:17;71:8,13;72:7; 73:18;74:6,11,23; 75:4,21;76:16;77:11, 13;78:16,16;79:7; 80:4,6,11;82:4,8,12; 83:12;85:11
hope (1)
60:11
hosting (1)
74:2
housekeeping (1)
85:4
hundred (2)
74:10,10
hundreds (1)
56:25
hypothetically (1)
9:12

I

identify (1)
50:7
idly (1)
10:12
ignorance (1)
33:23
II (2)
16:2;39:6
III (2)
16:3;18:19
immediately (1)
46:11
impact (1)
61:4
impacts (1)
62:9
implicit (1)
66:7
important (3)
14:16;33:2;57:5
improved (1)
10:12
include (3)
62:24;82:23;83:2
including (4)
16:9;26:19;55:18; 56:15
inconsistency (1)
83:14
incorporated (1)
14:22
incorporation (2)
46:20,23
increase (1)
46:3
independent (2)
24:3,4
indiscernible (13)
8:9;10:24;11:10; 18:9,10;20:4;25:8;

Case: 24-04051 Doc# 32 Filed: 03/07/25 Entered: 03/07/25 11:34:35 Page 92 of 100

29:3;34:6;36:1;44:11;
60:15;76:14
individual (1)
40:25
inevitable (1)
11:11
inference (2)
46:15;49:11
inferences (6)
65:3,3,7,9,11,12
information (7)
46:13;52:12;59:22;
76:23;77:7,8,14
inherent (1)
17:24
inherently (2)
17:20;18:11
injustice (11)
30:13,18,25;31:23,
25;32:11;36:25;
37:19;38:18;66:20;
81:25
instance (1)
65:18
instances (3)
9:15;48:16,22
instead (1)
52:1
instrumentality (1)
32:25
insufficient (1)
81:13
intended (1)
15:19
intention (1)
6:17
intentionally (1)
35:2
interest (12)
15:10;19:14;30:21;
31:24;32:14,16;
33:11;49:23;50:16;
53:17;69:13;78:20
interested (1)
52:19
interesting (2)
57:6;80:3
interests (5)
49:25;50:4,13,19;
66:25
interment (1)
50:10
intermingling (1)
7:2
internal (3)
57:21;83:2,14
interpreted (1)
21:15
interrupted (1)
14:13
into (18)
20:20;24:9;34:14,
24;38:6;40:3,4;42:1;
43:24;47:15;49:13;
52:10,14;58:17;
63:20;67:8,15;78:6
invited (1)
55:15
involuntarily (1)
55:21
involuntary (2)
21:17;47:21
involved (1)
61:21
involvement (1)
23:9
irrevocably (2)
46:22;47:2
issue (78)
10:6;12:19,19;
13:25;15:1,3;16:14,
16;18:2,20,21,22;
20:15,15;22:12,13,25;
24:19,21;26:9,13;
36:18;37:6,8;38:15,
23;39:9,23,25;40:9,
24;41:17,18;42:1,4;
48:19;49:14;52:7,15,
21,22;53:9,12,15,18;
57:10,11,11,12,13;
59:17;60:19,20,22;
63:1,13,17;67:18;
70:13;71:13;74:15,
16,17;76:21,21;77:8,
17;78:15,22,24;79:5,
13,16;80:4;81:2,16;
83:23;85:4
issues (12)
8:19;21:5;26:6;
28:22;38:4;47:24;
56:17;57:5;59:8;
60:16;75:12,13
item (2)
4:5,7
items (2)
4:4;11:5
IV (4)
8:20;12:14;13:15;
20:8

J

January (3)
57:10;76:23;80:8
Jason (3)
5:1;44:19;82:11
Jeffrey (1)
5:9
Jersey (1)
73:6
job (1)
76:16
join (1)
44:22
joined (1)
5:1
jointly (1)
4:5
judges (1)
15:23
judgment (3)
52:20;53:8;57:15
juridic (8)
17:9;45:9,20;46:3;
48:23,25;49:1;82:25
juridical (1)
45:23
jurisprudence (1)
21:25
justiciable (1)
60:6

K

Kaiser (1)
70:5
Kaplan (103)
5:9;50:25;51:2,4,4,
7;54:7,10,13,17;55:3,
10,25;56:6,9,20,22;
57:22,24;58:1,4,16,
20,23,25;59:3,10,12,
24;60:11,15,20,22;
61:2,9,12,15,17,20,
25;62:4,7,9,12,15,22;
63:5,8,10,13,16,19,22,
25;64:5,15;65:2,21,
23,25;66:2,13,19;
67:21;68:16,19,21;
69:1,7,12,18,20,25;
70:3,8,19;71:2,6,15,
24;72:4,6,12,15,17,
21,24;73:8,11,15;
74:2,5,21;75:3,19;
78:9;83:11,12,17,19,
21,23;84:1
keep (1)
13:17
keeping (2)
12:14;13:6
Keller (1)
5:8
kidding (1)
72:16
Kim (1)
5:8
kind (11)
8:22;14:20;22:13;
25:15;32:6;52:12;
54:18;63:23;68:5;
76:10,11
kinds (1)
68:6
knew (3)
37:9;41:18;84:16
knock (1)
57:20
knowable (1)
85:1
knowing (1)
41:13
knowledge (1)
77:1
known (1)
8:11
knows (2)
18:16;39:14

L

lack (3)
7:2;19:16;56:11
land (1)
50:10
language (13)
14:25;15:1;45:3,16,
19;46:2,7,9,10,12;
58:14;79:3,4
Lardner (2)
4:13,16
large (2)
17:13;47:1
larger (1)
63:17
last (6)
10:13;50:2;51:22;
71:15;75:24;83:13
lastly (1)
81:19
later (3)
21:6;83:6;85:1
latest (1)
10:11
latter (1)
32:24
laughing (1)
11:18
law (54)
10:7,18;12:23,23;
15:8;17:8,14;20:3;
21:14,20;22:9,12;
23:3,8,9,11,14,21,23;
24:3,12,14;25:4;
26:10;28:2,20;29:24;
32:5;33:20;34:5,11,
15;35:11;39:12,19;
40:20;45:21;47:14,
17;63:25;68:10,14;
72:8;73:3,5,6,9,16;
76:12,17;78:10,21;
80:20;82:7
lawsuit (1)
9:16
learn (3)
63:7,8,13
leased (1)
50:10
least (8)
9:9,21;23:23;33:18;
40:23;49:17;67:2;
78:7
leave (4)
26:8;28:24;73:11;
81:6
leaves (1)
68:2
Lee (16)
4:16;11:9,11,13,16,
20,22,25;12:3,6,8,25;
13:2,10;14:9;52:10
left (1)
73:2
legal (8)
14:22;15:10;17:25;
19:14;20:5;32:15;
50:1;66:25
legitimately (1)
59:4
lenders (2)
49:8,8
less (1)
52:3
less-extreme (1)
68:13
lessons (1)
72:17
level (2)
42:3;49:20
liabilities (1)
66:10
liability (1)
49:21
light (1)
41:16
limit (1)
23:22
limiter (1)
24:13
line (4)
4:4,5,7;73:24
lining (1)
31:19
liquidated (1)
50:11
liquidation (2)
51:22;56:18
list (2)
11:4;80:13
listen (2)
7:10;11:14
litigate (1)
52:1
litigation (1)
54:6
litigious (1)
51:25
little (6)
16:21;34:17;51:24;
75:8;78:4;82:1
live (1)
60:6
loan (4)
50:12;51:15;71:16,
17
loans (1)

Case: 24-04051 Doc# 32 Filed: 03/07/25 Entered: 03/07/25 11:34:35 Page 93 of 100

83:2
located (1)
82:25
logic (2)
34:10;35:11
long (1)
37:18
look (14)
12:17;23:25;29:17;
32:6;39:10;41:5,11,
17;42:15;46:4;59:21;
65:12;78:17;79:24
looked (2)
24:12;42:1
looking (2)
73:3;84:18
lot (14)
14:17;34:18;41:22;
52:2;76:4;77:16;
78:14,15;81:13,19,20,
21;84:14,15
Lowenstein (2)
5:10;51:5
lower (1)
35:7
lunch (1)
57:2

M

major (1)
76:5
makes (4)
7:8;34:19;44:7,25
making (10)
5:12;14:21;17:4;
24:9;27:25;41:14;
49:10;54:24;66:23;
67:10
management (1)
33:5
Manns (4)
4:25,25;5:5;45:13
many (5)
6:11;9:1;12:21;
81:23;84:18
MARCH (2)
4:1;71:15
marked (1)
80:13
markup (2)
80:8,10
material (1)
15:2
Matt (1)
4:16
matter (7)
5:15;12:11;15:7,7;
47:13;74:12;85:3
matters (2)
4:20;33:3
may (28)
6:7,10;9:22,23;
10:8;12:21;16:14,14,
17;17:2,16;18:23;
20:12;24:14;31:6;
39:22;40:14;44:7,13;
47:20;61:22;62:4;
67:8,16;68:6,7,23;
71:7
maybe (15)
13:12;24:24;37:9;
40:23;43:9;55:15;
59:24;60:23;68:13;
76:13,14,17,18;77:10;
81:22
mean (35)
9:10;11:3;14:24;
15:4,11;17:21;20:19;
22:12;23:24;24:13;
33:12;34:17,19;35:2,
7;36:2,22;37:9;41:5,
8;42:12;43:22;47:8;
54:18,23;55:1;56:23;
58:7;59:1;60:19,23;
67:20;68:4,10;72:10
meaning (1)
85:2
mechanisms (1)
39:15
media (1)
73:25
mediation (5)
12:4;52:11;54:20;
55:5;64:16
meet (1)
33:10
members (1)
38:10
memo (4)
46:10,13;82:20;
83:6
memorandum (1)
45:6
mention (2)
76:20;81:10
mentioned (4)
31:11;36:18;53:13;
80:11
mentions (1)
40:23
mere (1)
32:24
merits (3)
56:10,12;70:14
Michael (2)
5:9;51:4
middle (2)
12:11;68:9
might (11)
12:22,22,23;14:11;
27:2;28:11,11;34:9;
43:1;55:4,10
million (5)
63:3,3;71:18;74:10,
11
millions (1)
57:1
million's (1)
63:14
mind (5)
10:23;14:25;40:17;
52:13;75:15
minds (1)
43:24
minimum (3)
38:13,18;84:18
Minnesota (3)
22:14;73:3,5
minute (5)
10:21;24:25;26:20;
44:2;84:8
minutes (1)
84:4
misconduct (1)
30:15
misled (1)
49:13
misquotes (1)
46:19
Missed (1)
38:19
mission (2)
47:1;73:23
missions (1)
73:20
mix (1)
74:17
moment (1)
9:8
money (10)
31:20;48:24;51:17;
52:4;56:22;59:15,16;
67:7;71:18,20
months (1)
77:14
moot (2)
21:2;82:7
mooted (1)
13:4
more (17)
10:15;15:11,13;
34:4;40:22;41:7;
43:20;50:17;66:16;
68:2,11;70:21,21,22;
71:17;78:6;81:13
morning (6)
4:12,25;5:7;6:2;
44:23;51:4
Moses (9)
4:12,12,16,18,21,
23;5:18,21,23
most (5)
21:12;66:14,15;
70:4;75:6
motion (11)
5:17;6:25;23:1;
30:10;45:14;46:24;
54:15;57:9;63:10;
65:5;76:12
motions (1)
4:19
mouth (1)
17:5
move (3)
36:7;75:3;80:4
Mu (4)
31:1,11,11,14
much (16)
9:9,22;11:4;20:16;
24:12;34:4;58:7,7;
59:13,21;60:3;75:18;
82:10;85:3,5,9
multiple (6)
16:9;26:1;31:10;
51:14;76:25;77:15
must (2)
49:18,22
myself (3)
21:6;36:8;38:22

N

name (1)
48:14
nature (4)
18:5,14,15;84:25
necessarily (2)
34:25;35:1
necessary (1)
11:17
need (25)
15:25;19:6,9,21;
30:12,15,21;31:6;
32:13,25;34:23;35:3;
36:2;54:1,1;56:1,13;
57:5;58:1;59:24;60:8;
63:1;64:20;68:15;
80:14
needed (1)
32:19
needs (7)
40:21;46:21,22;
56:2;61:25;76:17;
78:22
nefarious (3)
34:18;38:2;68:7
negating (1)
23:21
neglected (1)
81:10
new (6)
13:19;14:2;16:13,
18;72:18;73:6
next (5)
25:7,9;36:8;74:3;
81:9
nice (2)
11:19;51:6
nine (1)
23:12
Ninth (6)
21:18,21,24;22:7;
49:17;72:24
nobody (1)
40:18
nondebtor (8)
22:2,7,18;26:9;
36:12,24;37:2;39:7
none (2)
50:1;65:15
nonprofit (4)
21:16;22:18;26:9;
47:16
Normally (1)
65:7
Norton (1)
5:1
note (1)
60:11
noted (4)
48:2;80:16,22,25
Nothing's (1)
79:3
notice (1)
76:22
notion (5)
51:9,19;52:19;66:3;
71:8
number (9)
4:5,7,7,9;15:4;
36:14;41:1,2;64:8
numbers (1)
66:14

O

OAKLAND (4)
4:1,7,9;74:2
object (1)
53:10
objected (1)
77:4
objection (2)
74:25;77:5
objections (1)
53:11
obligated (6)
56:25;61:9;63:20;
64:9;67:3;75:13
obligations (1)
67:5
observe (2)
48:6,17
obvious (2)
68:24;74:7
obviously (4)
27:23;54:1;62:25;
75:7
occasions (1)
16:9
odd (1)
78:4
off (5)
9:5;48:24;64:22;

Case: 24-04051 Doc# 32 Filed: 03/07/25 Entered: 03/07/25 11:34:35 Page 94 of 100

69:20;70:24
offer (1)
62:1
offering (6)
45:6;46:10,13;
64:19;82:20;83:6
Official (2)
4:5,8
one (44)
6:8,9;7:10;8:19,22,
22;10:13;12:21;14:1;
15:5;21:12,13;23:16;
24:11;30:24,24;
36:22;37:8;41:1,4;
42:17,20;48:19,19;
49:13,14;50:2,11;
51:16;52:18,25;53:2,
16;57:3,20;65:10;
69:13;71:10,22;74:5,
25;76:20;79:23;85:6
one-minute (1)
44:10
ones (2)
8:6;21:5
one's (1)
39:16
only (12)
16:12,16;23:11;
37:4;42:2;54:23;
56:14,15;66:15;68:4,
4;79:5
oOo- (1)
4:2
open (4)
13:18;68:2;70:6;
73:2
operate (1)
73:23
operated (1)
73:22
operates (1)
73:20
operating (1)
73:21
operation (1)
33:4
OPF (27)
5:2;7:22;8:22;
21:11,14,16;31:16;
32:19,19;34:2;37:20;
44:20;46:19,20;47:5;
51:10,19;53:11;
59:12,13,14;71:13,16,
17;77:23;82:14,15
OPF's (5)
46:19,24,25;47:2;
59:14
opportunity (1)
82:4
opposed (2)
54:6;64:6
opposite (1)
37:21
orally (1)
14:23
order (4)
4:3;5:19;79:1;85:8
ordinarily (1)
49:4
organization (1)
49:3
organizations (1)
47:17
organized (1)
47:17
original (1)
81:10
otherwise (18)
15:18,24;35:1,5;
40:2;53:8;56:20;57:1;
60:1,24;64:11;66:5,
25;67:6,17;71:3;
73:25;75:15
ought (1)
58:14
ours (1)
64:6
ourselves (5)
6:9,11,22;66:22,22
out (16)
7:10;10:18;16:13;
21:22;23:12;32:4;
36:22;37:3,18;57:20;
58:15;62:17;64:3;
65:25;68:1;84:19
outside (1)
65:14
over (9)
5:14;11:10;46:17;
52:7,8;54:19;57:2;
59:5;76:7
overcome (1)
35:4
overlap (6)
5:24;8:4;21:5;
32:20;35:20;75:22
overlook (1)
70:20
Owens (1)
49:6
own (6)
11:22;15:10;16:10;
39:16,24;83:7
owned (3)
39:10;50:12;70:12
ownership (12)
32:16;33:4;39:18,
20,23,23;45:20;49:16,
19,23,25;50:15
owning (1)
37:17
owns (5)
12:18;40:8;50:9;
64:17;82:21

P

Page (1)
15:5
pages (2)
76:24;83:6
paid (1)
52:3
panel (1)
23:10
panelists (1)
5:14
paragraph (1)
45:17
parent (6)
31:15,16,17,18;
32:22,23
parish (3)
46:11,14;82:24
parishes (8)
45:17,20;46:5,17;
83:2,15,17;84:2
parochial (1)
59:16
part (9)
19:6;26:10;31:18;
51:19;54:10;70:12;
73:16;74:5;78:24
particular (5)
6:14;9:15;10:23;
43:25;44:1
particularly (3)
6:13;61:6;73:1
parties (2)
5:13;71:8
parts (2)
8:16;11:3
passed (1)
77:9
path (6)
55:12;74:17,18;
75:4,10,11
Paul (5)
22:14;26:5,5;47:14;
81:11
pay (6)
45:10;46:15;57:2;
66:15,16;71:17
pen (1)
51:16
people (2)
24:12;60:23
per (1)
17:24
perfect (3)
6:14;79:3,4
permissible (1)
53:6
perpetrate (1)
51:13
perpetuating (4)
77:22;78:2,5,7
person (3)
53:5;78:11;82:25
personal (3)
57:17;80:16,21
personnel (1)
33:5
persons (7)
17:9;45:9,20,23;
46:3;48:23;49:1
perspective (1)
43:19
persuasive (1)
72:25
pet (1)
32:7
pews (1)
12:18
phonetic (3)
31:1,1;48:15
piece (3)
63:20;72:6;74:23
pieces (1)
53:22
pills (1)
53:10
pitched (1)
26:15
place (2)
55:2;63:23
places (3)
15:4;36:10;42:23
plaintiff (1)
22:15
plan (12)
15:12,12;54:25;
55:13,13;56:7;62:16,
20;66:14,15;74:18;
75:6
planning (1)
37:16
plausible (1)
46:15
play (3)
17:19;61:17,18
playing (1)
61:13
plead (27)
16:15,18;28:10,12;
30:8,9;31:2,9;32:10;
33:10;35:15;36:22,
25;37:20;42:21,23;
54:2;68:14;69:5;
70:21,21,21;76:7,8,
11;81:12,17
pleading (11)
13:18;27:1,8;30:4;
31:3,4;33:9;36:23;
38:16;71:9;76:19
pleadings (1)
70:16
pleads (2)
37:18,19
please (3)
7:19;36:7;84:12
pled (24)
8:17;18:6;20:12;
21:2,13;29:12,20,22;
32:11,13;33:4,13;
37:3,4,12,21;40:2;
43:20;66:22;68:17;
77:18;81:14,15,18
PNC (3)
48:20;49:11;65:13
pockets (1)
31:19
podium (3)
50:22;51:14;82:1
point (12)
14:24;26:18;34:8;
38:5;50:2,11;60:23;
63:8;66:4;70:20;
75:10;83:13
points (10)
6:14;7:24,25;14:21;
44:24;48:1;74:22;
76:5;81:6;82:12
poison (1)
53:10
policy (1)
33:3
Ponzi (2)
34:19;48:9
Pope (1)
37:14
position (9)
10:14;15:16;17:8,
14;41:11;42:9;80:6;
81:1,2
positive (1)
43:2
possibility (1)
43:1
possible (3)
27:2;36:21;72:1
power (9)
21:19,21;22:2,3,6;
25:3;27:5;45:2;46:17
powers (4)
22:10;23:3;24:19;
54:14
practically (1)
85:7
practice (1)
61:4
pre-bankruptcy (1)
37:15
precedent (1)
21:15
preceding (1)
46:12
precisely (1)
68:11
precludes (1)
23:16
predicates (1)
23:16

Case: 24-04051 Doc# 32 Filed: 03/07/25 Entered: 03/07/25 11:34:35 Page 95 of 100

prediction (1)
54:14
prejudice (1)
13:17
prepare (1)
50:18
presence (1)
49:7
presentation (1)
6:25
preserving (1)
79:5
presumption (2)
30:5;45:22
pretty (2)
15:24;74:7
prior (1)
80:5
privilege (1)
52:13
pro (1)
23:10
probably (3)
26:14;38:19;59:5
problems (1)
67:25
procedural (3)
38:25;39:14;54:2
procedurally (2)
65:4;67:22
procedure (2)
56:10;70:14
proceed (3)
7:12;44:4;62:15
proceeding (1)
75:15
proceedings (2)
6:1;85:13
proceeds (2)
82:23;83:2
process (4)
47:15;58:18;70:4,6
produce (1)
59:25
progress (2)
52:1,2
prohibitions (1)
23:4
Prol (1)
5:9
promoted (2)
5:13,14
prong (8)
30:13,22;31:23,24,
25;33:11;36:25;38:18
pronouncing (1)
31:14
proof (2)
40:9;60:9
proper (1)
37:24
properly (3)
8:17;21:2;54:21
properties (1)
37:17
property (87)
8:19;9:15,23;10:5,
5,6;13:19;15:10;16:2,
3,4,10;17:12,13;
19:14,19;39:10,11,13,
16,17;40:2;46:8,22;
47:2;48:24;50:4,6,6,9,
13,19;53:3,17,17;
55:19;56:2,14;57:1,
10,11,12,17,17;59:14,
15;60:3,7;66:24;67:1,
2,4,14,16;69:13;
70:10,11,12,13,23,24;
71:7,11,12;72:1;74:8,
9,19;75:13;78:15,21;
79:13,20;80:9,10,11,
14,16,18,18,21,21,24;
82:5,15;83:5,15
proposition (1)
45:8
prove (2)
30:9;51:10
proved (1)
51:20
provide (3)
49:2;50:12;80:10
provided (4)
49:8;52:12;78:16,
23
provides (4)
10:18;39:14;50:10;
82:20
provision (1)
23:4
provisions (1)
22:10
publicly (1)
12:6
pun (2)
15:19;84:24
punted (1)
26:13
purpose (6)
31:19;38:2;46:21,
25;47:3;82:17
purposes (3)
37:13,24;67:9
pushed (1)
19:7
put (9)
15:3;17:4;34:17;
42:3,16,20;55:21;
57:13;76:21
puts (1)
53:9
putting (1)
35:23

Q

qualification (3)
52:23,24;78:22
qualifications (1)
53:24
quasi-alter (1)
33:14
quick (1)
42:3
quite (1)
54:21
quote (5)
22:22;32:25;33:1;
45:3;56:24
quoted (3)
45:16,19;46:9
quotes (1)
45:5
quoting (1)
33:1

R

raise (1)
77:8
raised (3)
49:14,15;77:16
Ranza (3)
31:1,20;32:21
rare (1)
22:12
rate (1)
46:3
rather (2)
6:7;52:19
RCBO (2)
64:16;82:21
RCC (8)
5:2;44:19;45:4;
47:10;50:3,8,9;83:5
RCWC (8)
5:2;36:12;44:19;
45:5;47:10;50:3;
65:18;83:5
re (2)
5:17;40:24
reach (2)
60:24;81:16
react (1)
10:19
read (4)
10:10;57:7;80:5;
82:19
ready (1)
7:12
real (11)
12:19;52:22;57:17;
74:8,9;79:8,10,12;
80:10,14,24
reality (2)
55:17;71:8
really (33)
7:9;9:9;12:12,15,
15;13:7;16:23;19:15;
24:12;31:2;34:19,23;
35:13;36:2;39:11;
41:3,5;51:9;52:8,19;
57:5;59:13;68:25;
69:3;71:11,18,20;
72:2;73:13;76:21;
79:24;80:6;85:9
reason (7)
13:3;21:2;47:18;
67:16;69:3;72:22;
79:9
reasons (6)
10:5;16:5,6;21:12;
26:2;36:18
recall (1)
57:9
recast (2)
40:22;76:10
recent (3)
66:14,15;75:6
recently (1)
70:4
Recess (1)
84:9
record (6)
7:15;21:24;44:19;
76:2,20;82:11
recording (1)
7:11
refer (4)
45:18,19,23;46:13
reference (3)
21:8;45:21;48:25
referenced (3)
16:13;50:14;62:25
references (1)
10:13
referencing (1)
15:8
referring (1)
46:16
refers (2)
45:16;46:7
regarding (1)
45:1
regardless (1)
14:24
related (5)
25:17;56:25;59:14;
75:13,14
relates (1)
10:6
relation (1)
57:18
relationship (10)
17:20,24,25;18:12,
13,15;31:17;53:1,2;
58:10
relevant (1)
65:15
reliance (3)
34:1;45:11;48:20
relief (13)
9:1;15:18;20:11;
23:16;41:9;43:20,23;
44:5;50:3;68:22;69:5,
14;82:6
relies (3)
48:8,13,20
religious (3)
21:16;46:25;84:25
rely (2)
27:4;45:4
relying (6)
26:24;27:9,19;28:6,
19;64:22
remaining (1)
8:15
remains (1)
80:23
remedy (4)
29:25;41:3,7;48:3
remember (2)
32:24;73:2
removal (1)
5:17
repackages (1)
32:4
repackaging (1)
25:22
repayment (1)
83:1
repeat (8)
6:11,22;21:6;36:8;
38:22;41:4;71:21;
72:8
repeating (1)
6:9
repetition (1)
6:5
replead (3)
13:19;43:22;54:1
replete (1)
43:23
replies (1)
75:24
reply (2)
49:15;52:23
reporting (1)
49:7
represent (2)
5:2;67:13
representation (1)
53:22
representations (2)
64:10,23
representative (1)
40:25
represented (1)
48:21
representing (1)
46:12
request (1)
78:3
require (1)
68:6
required (1)

Case: 24-04051 Doc# 32 Filed: 03/07/25 Entered: 03/07/25 11:34:35 Page 96 of 100

49:2
requires (2)
32:22;50:17
requisite (1)
60:9
rescue (1)
11:12
reservation (1)
79:18
reservations (1)
53:9
resolve (1)
59:7
resolved (1)
53:13
respect (24)
4:20;12:21;17:25;34:1;36:17,21;40:10;43:25;45:23;46:9;47:1,25;48:5,5;49:16,17;50:2,8;51:10;58:17;67:3;80:15;82:14,19
respected (1)
30:6
respectfully (1)
43:18
respond (2)
77:2;78:8
response (4)
41:4,17;80:17,22
restricted (49)
9:15,23;10:6,15,16,18;11:5,25;12:1,15;13:9,18;16:14,19;17:3,13,18;18:3,21;52:9,9,25;53:18,25;54:22,25;55:6;57:18,19;58:12;59:19;60:4,7;61:10,12;62:12,18,18;63:2,3,6;75:14;76:7,22;77:8,17;78:23;79:6;80:19
restriction (2)
12:20;15:2
restrictions (1)
55:1
result (1)
47:22
resumed (1)
84:11
rethink (1)
41:9
rich (1)
51:24
rid (1)
51:12
riding (1)
11:12
Right (67)
4:15;5:16,22;7:6,12;8:9;9:14;12:12;13:12;14:13,14;17:9,20;18:2,8,10;19:1,18,20;20:6;23:18;24:20;26:5;35:2,7,10,18,25;36:5,14;41:11;42:19;44:9,15;53:3;54:23;55:3,18;57:20,21;59:8,16;60:18,21;61:20;62:9;64:22;65:20;69:4,13,18;71:16,18,25;72:2,6,12,15;73:21;75:16;78:2,20;79:1,7,7,8;83:19
rights (3)
17:25;38:9;73:25
ripe (2)
41:5;61:6
robust (1)
81:14
rock (1)
63:23
Roman (2)
4:6,8
Rose (1)
5:1
routine (1)
33:3
Rule (4)
39:13;50:17;57:14;59:25
ruled (1)
23:3
Ryan (1)
4:25

S

safe (1)
56:24
Saint (6)
12:18;22:14;26:5,5;47:14;81:11
same (23)
7:2;14:1;16:5,6;24:1;36:16;47:6,7,7,8,9,23;49:10,13;52:18,25;53:2,5,16;55:2;59:7;68:25;71:23
Sandler (2)
5:10;51:5
sandwiches (1)
57:3
save (2)
25:21;29:18
saw (4)
5:18;10:14;55:5;71:13
saying (16)
14:5;15:18;17:22;24:1,18;26:4,25;28:2;35:10;39:15,16;44:3,3;67:6,7;83:10
scenario (1)
66:23
scenarios (1)
35:14
schedule (2)
75:8;80:24
schedules (1)
80:15
scheme (2)
26:11;48:9
schemes (1)
34:20
school (1)
72:8
Schools (1)
22:19
screen (1)
5:12
se (1)
17:24
seasons (1)
74:3
seated (1)
84:12
SEC (1)
49:16
second (7)
18:24;23:7;49:1;67:23;69:23;71:10;82:19
secondarily (1)
82:16
section (4)
8:18;22:3;39:12;46:11
seeking (2)
9:2;55:13
seem (1)
12:17
seemed (1)
60:1
seems (1)
76:6
sell (2)
46:8;48:24
semantics (1)
74:12
sending (1)
80:7
sense (9)
6:7,10;7:9;36:5;41:14;44:6,7;54:4,20
sentences (1)
45:18
separate (34)
9:17,25;15:9,11;16:8;17:9;19:12,13,25;22:22;26:21;27:1;28:10,13,22;30:18;39:16;45:19;49:3,9,12;52:17;53:17,17,24;57:16,17,19;67:18;71:20;73:24,24;78:19,20
separately (7)
14:22;35:16;40:1;53:4,19;73:21,23
separateness (2)
30:6;32:15
separates (1)
37:17
separations (1)
37:5
seriously (1)
78:13
service (2)
45:10;46:15
services (1)
50:10
servicing (1)
46:21
set (3)
8:18;37:5;75:18
settlements (1)
61:5
seven (3)
65:19,25,25
several (6)
21:12;44:25;46:1;47:24;49:19;83:6
sex (1)
66:11
Shane (1)
4:12
shared (3)
11:22;12:3;33:5
shareholder (1)
49:18
shooting (1)
55:9
short (2)
36:21;48:2
show (3)
43:17;71:2,6
showing (1)
32:22
shy (1)
8:10
side (2)
6:17;65:8
sides (1)
61:13
Siegel (20)
22:9;23:3,8,9,11,14,23;24:12;25:4;28:20;32:5;33:21;34:5,11,15;35:12;40:20;76:12;78:11;82:7
sign (4)
20:24;78:1,17;81:5
signaling (1)
83:10
signed (1)
51:11
significant (1)
21:12
similar (4)
22:14;38:4;46:18;73:5
simplistic (1)
68:23
simply (4)
21:14;33:10;38:6;51:25
single (2)
31:18;66:4
sit (2)
10:11;84:2
sitting (1)
66:16
situation (2)
31:17;64:24
six (1)
8:16
sixty (3)
37:6,24;75:7
sixty-some (1)
37:14
SK (1)
48:15
skis (1)
54:19
slight (1)
54:14
small (2)
56:22,23
somebody (3)
10:19;11:14;72:2
somehow (2)
50:6;63:6
someone (4)
34:25;52:3;58:5;66:25
something's (1)
16:24
sometime (1)
72:13
Sometimes (2)
77:24;85:1
somewhere (2)
10:16;66:17
Sonora (1)
30:25
soon (1)
85:7
sorry (4)
11:15;14:13;58:22;67:20
sort (10)
23:17;32:7;34:13;35:21;38:24;40:21;61:3;63:17;68:12;83:13
sorts (1)
66:8
sounds (1)
16:25
SPEAKER (2)
84:6;85:11
speaking (1)

Case: 24-04051 Doc# 32 Filed: 03/07/25 Entered: 03/07/25 11:34:35 Page 97 of 100

59:21
special (2)
83:3,4
specific (5)
11:4;22:10;47:3;
48:9,23
specifically (5)
45:18;46:13;47:2;
50:19;73:2
specifics (3)
8:20;9:24;37:15
spectrum (2)
68:6;69:22
spend (2)
14:17;34:4
split (1)
75:22
stadium (1)
74:3
stage (7)
30:9;33:18;65:5,5,
11,16;70:17
stand (9)
20:19,21;60:7,7,8;
69:22;74:7,13;82:7
standalone (4)
64:1,2,5;73:15
standard (3)
29:21;35:7;49:19
standards (1)
82:2
standing (17)
28:23;40:24;41:21,
22;42:6;43:14;56:11;
57:9;59:21;60:8;64:7,
8;71:15;74:23,24;
80:17;82:1
standpoint (2)
9:13;54:2
start (8)
4:10;6:18;7:18,24,
25;9:4,5;51:8
started (1)
16:13
starts (1)
36:4
state (5)
24:3;26:10;39:14,
19;68:9
stated (1)
12:6
statement (14)
10:11,13,15;15:4,
16,16;16:9;17:3;50:5;
53:24;55:14;60:2;
75:5;77:5
statements (5)
49:3;53:16;76:25;
77:15;81:25
States (1)
39:19
staunchly (1)
23:11
stave (1)
48:24
step (2)
51:8;55:11
still (15)
9:14;12:13,13;13:6,
6;20:20;27:9,9;28:6,
13,19,20;38:10;
51:23;63:2
stip (3)
20:19,20,21
stipulate (1)
80:17
stipulation (14)
9:11,12;14:25,25;
51:11;52:20;53:7;
57:15;77:24;78:16;
79:2;80:9;81:2,5
stood (1)
51:14
stop (4)
10:9;23:7;60:24;
67:20
stops (1)
36:4
stroke (1)
51:16
structured (6)
73:4,4,6,8;74:6,11
stuck (3)
28:20;38:10;43:6
stuff (8)
8:3;36:8;40:8;
41:22;56:25;61:25;
81:21;82:6
stupid (2)
58:6;71:21
sub (5)
31:16,17,18;32:23;
67:19
subcon (21)
24:24;26:3;28:13,
16;31:4;32:4;33:17,
19,22;34:12,14,18;
35:21;36:16;38:13;
59:14;63:22;78:10,
12;81:15;82:7
subconning (1)
35:4
subcon's (1)
35:1
subject (1)
80:23
submit (3)
45:22;49:24;50:17
submitted (1)
85:3
subsequent (2)
19:4;33:10
subset (1)
17:16
subsidiary (1)
32:22
subsidiary's (1)
33:2
substantially (1)
6:10
substantive (21)
8:21;21:9,13;22:18;
25:2;26:21,25;27:5;
28:3;29:13;39:6,15;
45:11;47:13,21,25;
48:2;59:12;68:1,13;
82:17
substantively (2)
24:2;73:12
Subway (2)
57:2,4
Sukhul (1)
48:14
summer (1)
72:18
Sunday (1)
15:18
supervision (1)
19:22
support (1)
81:23
supporting (3)
6:25;46:25;47:9
suppose (2)
77:6,8
supposed (1)
70:9
Supreme (4)
21:15;39:19;70:5;
78:11
Sure (16)
8:7,13;15:24;22:24;
44:5,10;59:17;62:14;
63:8;64:3;71:7;74:14,
21;75:5,23;80:1
survivors (3)
37:7;55:18;56:15
sync (1)
80:15

T

talk (9)
23:8;31:23;40:6;
52:5;59:14;63:19;
69:22;83:14;84:5
talked (6)
11:13;57:9;68:5;
70:5;79:19,21
talking (6)
34:12;43:21;57:3;
61:4;68:10,22
target (2)
48:10,16
tax (3)
46:5;82:24,25
teach (1)
72:17
technical (1)
47:20
telling (3)
12:18;34:9;77:1
tells (1)
69:16
tem (1)
23:10
tens (1)
76:24
terms (4)
6:23;30:9;33:22;
77:17
terrible (1)
37:7
terribly (1)
34:23
thankful (1)
84:21
Thanks (4)
75:19;76:1;84:7;
85:12
that'll (1)
44:1
theory (7)
10:6;12:14;16:18;
39:21;45:11;49:21;
72:3
thereafter (2)
23:17;75:7
therefore (1)
17:12
thinking (2)
11:13;34:14
third (2)
16:24;49:6
Thirty-five- (1)
71:17
thirty-five-million (2)
52:1,2
thirty-five-million-dollar (4)
51:12,15,21;71:16
though (5)
21:20;32:7;54:15;
76:21;83:13
thought (2)
5:25;27:18
thousands (1)
76:24
three (3)
65:23;74:3;84:4
throughout (1)
47:4
throw (1)
66:8
tie (2)
46:9;49:1
timeline (1)
37:10
times (2)
15:17;51:14
title (3)
39:17;40:1;45:17
titled (1)
71:11
today (12)
5:9,16;11:13;14:11;
20:24;42:6,7,13,14;
51:9;55:16;85:8
together (2)
16:6;19:7
told (1)
51:15
took (3)
5:16;9:12;71:16
totally (2)
9:17;34:13
touch (1)
72:7
touched (3)
47:24;56:17;64:10
transactions (2)
34:2,3
transcript (1)
57:7
transfer (1)
57:10
transfers (2)
48:11,16
treat (1)
47:8
treated (4)
47:19;56:4;62:20;
72:2
treating (1)
33:16
tried (5)
15:24;51:13;53:23;
58:8;81:14
tries (2)
25:21;46:8
true (2)
65:6,6
truly (2)
24:2,4
trust (18)
16:4,5,17,25;17:12,
24;18:13;53:1,1,3,17;
57:17,18;58:13;
78:25;80:19;83:24,24
trust- (1)
58:10
trustee (1)
53:5
trusts (5)
53:22;58:4;75:14;
84:1,2
truth (2)
45:22;77:23
truthfully (1)
59:21
try (15)
6:11,22;14:17;21:5,
6;31:6;39:24,25;40:5;
43:9;56:24;72:13,17;
75:21;76:4
trying (15)

Case: 24-04051 Doc# 32 Filed: 03/07/25 Entered: 03/07/25 11:34:35 Page 98 of 100

22:17;23:24;24:24; 25:2;28:14;33:10; 36:21;38:22;54:19; 58:19;59:1,4;84:19, 20,24
TUESDAY (2)
4:1;51:22
turn (2)
7:1;63:17
two (14)
6:1;7:3;8:11,15; 25:16;26:19;30:8; 41:2;47:7,7,9;57:3; 68:24;82:12
type (2)
53:7;59:24

U

UCC (1)
33:6
ultimate (3)
37:7;62:23;73:22
ultimately (6)
23:2;30:9;69:9; 74:14;78:1,19
ultra (1)
51:25
Um-hum (111)
6:4,6,19;7:20,23; 8:2,23;10:3;14:19; 15:6,21;17:6,10;19:8, 11;21:3,7,10;22:16, 20;23:19;26:7,12,23; 27:3,6;28:5,7,15,18, 21;29:1,19;30:1,3,7, 11,14,17,20,23;31:5, 7,13;32:2,9,12,17; 36:15,15,19;37:1,11, 23;38:3,8;39:8;42:25; 43:8,12,15,18;45:7, 15,25;48:12;54:12; 55:24;56:5,8;58:3; 59:9,11,23;60:10,14; 61:14,19,24;62:6,8, 21;63:9,12,18,24; 64:4,14;65:1,22,24; 66:1,12,18;69:1,11; 70:2,18,18;71:1,5,14; 73:10,14;74:1,4,20; 75:2;76:9;80:12; 82:13
under (49)
10:7;17:8,14;19:21, 23;20:1,3,3;21:14,14, 18;22:3,8;23:3;24:3; 25:6;26:3,4,10;28:13, 13,16;29:24;31:25; 33:8;38:17;39:12,19; 44:5;45:20;47:17; 54:24;62:20;68:9,14; 69:8,8,9,15;71:11; 73:3,5,6,8;75:6; 76:17;78:21;80:20; 82:7
Understood (3)
18:25;49:9,11
unfortunate (1)
23:9
UNIDENTIFIED (2)
84:6;85:11
unified (1)
31:19
unique (6)
7:9,25;8:6;60:19, 20,22
United (1)
39:19
unity (4)
30:21;31:24;32:14; 33:11
unknowable (1)
85:1
unless (4)
28:24;34:4;50:21; 85:4
Unocal (2)
31:20;38:10
unrestricted (6)
12:8;17:13;62:12; 63:5,6;80:20
Unsecured (2)
4:6,8
up (21)
6:9;12:11;23:2; 37:5;40:17;48:24; 52:16;59:14;60:7,8,8, 18;62:13,16;63:14; 67:8,17,23;74:8,13; 80:13
use (10)
22:10,18;23:3; 24:24;46:14;48:23; 54:14;64:19,20;66:14
used (5)
48:10;64:21;67:2,4; 75:14
using (4)
17:22;47:6;67:25; 70:16
usually (3)
15:12,23;77:21
utility (3)
12:13;13:6,11

V

valid (1)
16:5
vehicle (4)
13:7,12;41:13; 43:21
versa (2)
62:2,2
version (3)
10:11;43:23;44:2
versus (4)
41:24;61:10;62:12, 18
VI (3)
8:21;21:4;25:22
vice (2)
62:2,2
view (7)
9:16;44:4;54:20; 68:2;74:6;75:8;76:17
voluntarily (1)
70:3
volunteered (1)
56:1
vote (1)
56:15
voted (1)
55:13

W

walk (1)
51:20
walking (1)
59:6
wants (6)
7:4;51:25;62:15; 70:3;76:6,11
way (36)
6:8,8,14;8:9,19; 9:18;13:7;23:2,8; 24:1;25:20;29:5; 34:14,18;35:12; 42:18;43:4,20;47:8, 19;54:6;58:13;59:4,5; 60:4;71:22,25;72:1; 73:5,8,19,19,20;74:6, 11;75:16
ways (2)
24:11;69:6
week (2)
41:16;42:11
Weisenberg (1)
79:23
Weissenberg (1)
80:2
weren't (3)
17:12;24:4;33:9
what-is-separate-and-isn't-separate (1)
52:7
what's (13)
13:7,9;27:18;54:22; 55:6;57:18;61:17,17; 62:18;67:11;70:9; 76:15;82:17
whereas (1)
81:15
Whereupon (1)
85:13
whole (4)
34:23;38:5;41:2,6
wholly (1)
27:12
who's (1)
57:2
whose (1)
40:23
withdrawn (1)
53:12
within (2)
45:9;83:1
without (6)
13:17;27:8;47:8; 53:9,10;85:2
won (1)
9:2
wonderful (1)
84:13
wondering (1)
55:6
word (4)
7:3;15:1;17:22; 19:17
words (1)
17:4
work (2)
64:3;75:9
worked (1)
26:1
worried (1)
84:16
worse (1)
37:20
worth (2)
66:17;77:25
worthy (2)
7:1;68:3
writ (1)
17:13
write (2)
73:16;85:5
writing (4)
14:23;59:5,6;85:6
written (3)
12:22;52:16;85:5
wrong (4)
17:1;21:22;23:12; 65:5

Y

years (4)
37:6,14,24;70:11
Yep (1)
28:1
yesterday (5)
5:16,19;11:13; 51:11;53:14

0

04053 (1)
36:14

1

1 (2)
4:5;46:24
10:04 (1)
84:9
10:05 (1)
84:9
10:06 (1)
85:13
103-million (1)
66:15
105 (11)
22:10;23:3,3;26:25; 27:9;28:6,19;32:5; 34:11;35:12;78:11
105a (2)
22:3,6
105-specific (1)
25:3
106-million (1)
71:18
1120a7 (1)
79:16
12b6 (1)
41:12
1960s (1)
37:4
1962 (2)
37:4;56:12
1963 (1)
56:12
1st (2)
55:15;75:5

2

2 (2)
4:5,7
200 (1)
73:3
2004 (1)
59:25
2007 (2)
64:19;67:13
2017 (2)
64:22;67:13
2024 (1)
76:23
2025 (1)
4:1
24-04051 (2)
4:7;7:22
24-04053 (1)
4:9

3

303 (8)
24:14,16;25:6;32:5; 34:11;35:12;55:25; 78:10
303a (3)
21:18;22:11;23:5
32 (1)

Case: 24-04051 Doc# 32 Filed: 03/07/25 Entered: 03/07/25 11:34:35 Page 99 of 100

15:5
35 (1)
63:3

4

4 (1)
4:1

5

541 (3)
39:12,13,22

7

7001 (3)
39:13,14;69:15

8

8 (2)
45:13;50:17
8.3 (2)
63:3,14
8:43 (1)
4:1
8th (1)
80:8

Case: 24-04051 Doc# 32 Filed: 03/07/25 Entered: 03/07/25 11:34:35 Page 100 of 100

Form TRANSAP

UNITED STATES BANKRUPTCY COURT
California Northern Bankruptcy Court

In Re: The Roman Catholic Bishop of Oakland Debtor(s)	Case No.: 23−40523 Chapter: 11
Plaintiff(s) The Official Committee of Unsecured Creditors of the Roman Catholic Bishop of Oakland vs. The Roman Catholic Bishop of Oakland et al. Defendant(s)	Adversary Proceeding No. 24−04051

NOTICE OF FILING OF TRANSCRIPT AND OF DEADLINES RELATED TO RESTRICTION AND REDACTION

A transcript of the proceeding held on March 4, 2025 was filed on Friday, March 7, 2025. The following deadlines apply:

The parties have Friday, March 14, 2025 to file with the court a Notice of Intent to Request Redaction of this transcript. The deadline for filing a request for redaction is Friday, March 28, 2025.

If a request for redaction is filed, the redacted transcript is due Monday, April 7, 2025.

If no such notice is filed, the transcript may be made available for remote electronic access upon expiration of the restriction period, which is Thursday, June 5, 2025, unless extended by court order.

To review the transcript for redaction purposes, you may purchase a copy from the transcriber,

Jason Gottlieb
Attn: Jason Gottlieb, Dir. of Tran. Ops.
7227 N 16th St. #207
Phoenix, AZ 85020

or you may view the document at the clerk's office public terminal.

Dated: 3/10/25

For the Court:

Edward J. Emmons
Clerk of Court
United States Bankruptcy Court

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