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
Friday, June 13, 2025
1:30 PM

ADV#: 24-04051
THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF THE ROMAN CATHOLIC BISHOP OF OAKLAND v. THE ROMAN CATHOLIC BISHOP OF OAKLAND, THE OAKLAND PAROCHIAL FUND, INC., AND JOHN DOE CHURCHES 1 to 82

1. SCHEDULING CONFERENCE. CONTD. FROM 1/29/25, 2/26/25, 4/23/25, 6/4/25
2. MOTION TO DISMISS ADVERSARY PROCEEDING. MOTION TO DISMISS THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS' FIRST AMENDED COMPLAINT FILED BY THE OAKLAND PAROCHIAL FUND, INC. (DOC 40) CONTD. FROM 6/4/25
3. MOTION TO DISMISS ADVERSARY PROCEEDING. DEBTOR'S MOTION TO DISMISS FIRST AMENDED ADVERSARY COMPLAINT FOR DECLARATORY RELIEF FILED BY THE ROMAN CATHOLIC BISHOP OF OAKLAND (DOC 44) CONTD. FROM 6/4/25

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

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OAKLAND, CALIFORNIA, FRIDAY, JUNE 13, 2025, 1:30 PM

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(Call to order of the Court.)

THE CLERK: The Official Committee of Unsecured Creditors v. The Roman Catholic Bishop of Oakland, case number 24-04051.

Transferring over parties now, Your Honor.

THE COURT: Okay. Thanks.

(Pause.)

THE CLERK: All parties with their hands raised are now admitted.

THE COURT: Oh, okay. Well, I'll tell you what. Why don't we begin with the discovery issues that were the subject of the hearing last week and as to which I've had some helpful briefing this week. Why don't we start with that? So go ahead, let's have appearances on that.

MR. THOMAS: Good afternoon, Your Honor. Michael Thomas on behalf of the debtor, RCBO.

THE COURT: Okay. Thank you.

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

THE COURT: Okay. The reason why I was pausing there for a second is because I had indicated -- and I realize I probably should have followed up more expressly. I had in mind to give you some thoughts about one of the adversary

proceedings that was argued last week. We're taking a little bit more time to work our way through the '53 matter, so I'm not ready to give you thoughts about that today. But if we have the right people present here, I can give you some thoughts about '51. So we'll circle back to that when we finish our discovery discussion, if that's okay. Okay?

MR. THOMAS: Yes, Your Honor.

THE COURT: And if today isn't a good day, we can do it someday next week. And I might be ready to do both by then, okay?

MR. KAPLAN: Your Honor, just for the record, I thought I saw Mr. Leito earlier making a --

THE COURT: Okay.

MR. KAPLAN: -- in the waiting room, so if we have everybody --

THE COURT: Well, maybe we can do that. We'll see. Okay.

All right. Mr. Moses, are you also appearing on the discovery issue?

MR. MOSES: I suppose I should appear. Mr. Thomas is handling it.

THE COURT: Okay.

MR. MOSES: This is Shane Moses with Foley & Lardner --

THE COURT: Okay.

MR. MOSES: -- for the debtor.

THE COURT: Okay. Well, I appreciate the heads up, because we are at a stage of this where we don't want to be wasting any time certainly. So the fact that I shouldn't -- maybe I shouldn't (12)(b)(1) this controversy, the way some of the parties in the adversary proceeding would like me to do for OPF.

So let me do this. I've read the papers. I have a better understanding of where folks are coming from now than I had before, so thank you for that. And let me allow both the debtor and the committee to give me any further thoughts about the discovery issues and going forward.

MR. THOMAS: Well, Your Honor, I'm not sure that there's much more to add.

THE COURT: There may not be. Okay.

MR. THOMAS: I mean, I'm happy to address any questions the Court may have.

THE COURT: I don't really --

MR. THOMAS: I don't want to waste your time either.

THE COURT: No, I don't want to cut you off. If there's something else that I should take -- I mean, especially given the, kind of, rolling nature of this, it's not -- you know, we're talking about things that are yet to happen. And part of my remarks will reflect that, okay? So if there's anything -- I don't want to put anybody off. If there's any

other brilliant ideas, I'm ready to hear them.

MR. THOMAS: I'm rarely accused of having brilliant ideas, Your Honor.

THE COURT: Well, then take this as a first, okay? Welcome to the Northern District, Mr. Thomas. You have brilliant ideas, all right?

MR. THOMAS: I appreciate that, Your Honor. I don't think I have anything additional to add. I'm happy to address any questions the Court may have.

THE COURT: Okay. Thank you.

MR. KAPLAN: Thank you, Your Honor. Michael Kaplan from Lowenstein, on behalf of the committee.

I think I want to start with this premise, which is we have taken some time over the last week, including as we finished a very productive deposition session this morning with the debtor's team, over the last couple of days. Your Honor, we are not necessarily wed to -- particularly with the accommodation on time -- the designation of Mr. Weisenberg. I think, on a purely legal perspective, I don't think there's anything that prevents us from doing it. But I'm not here to put --

THE COURT: Okay.

MR. KAPLAN: I'm not here to put form over substance in that regard, Your Honor. I think where we continue to have a bit of a -- the issue is there seems to be a fundamental

disagreement that we have to take or do certain things in order to prepare our witness. And irrespective of if that witness is Mr. Weisenberg or, for instance, the committee chairman, for instance, our issue remains the same, which is that our fundamental belief that the inner workings and thinkings of the committee should not be disclosed and ultimately really are not of relevance to what Your Honor has to consider.

I don't think it really matters whether or not people have been noticed or otherwise. I mean, we don't necessarily agree on those factors. But I will say just the one piece that's not in our papers, Your Honor, is that, if it does make everybody more comfortable that the designee be somebody different, I think that's a position the committee is willing to consider.

We continue to believe that the deposition is going to reveal almost nothing outside of what the experts are going to do and don't agree with the debtor in terms of the utility for it, the need of it, the obligation, why discovery seems to be very one sided in this case, et cetera. I think all of those facts are very clear to Your Honor. The committee didn't file a plan. The committee didn't file for bankruptcy. And it only exists because of the actions the debtor has done.

So we're open to Your Honor's, sort of, perspective to allow it to guide us. But I did want to state, which is not in our papers, the fact that we aren't -- that to the extent --

THE COURT: Okay.

MR. KAPLAN: -- changing the designee provides comfort, that's something we're open to.

THE COURT: Well, I mean, let me ask you, since it's a hypothetical request, I'll give you a hypothetical question. I mean, would that mean the chairperson of the committee, or do you know yet?

MR. KAPLAN: I don't -- well, I think, Your Honor, given the limitations in terms of bankruptcy, we would have to come to Your Honor for permission to hire some completely outside individual to do it, who's not an attorney or otherwise. If I had to --

THE COURT: Okay.

MR. KAPLAN: If I had to posit, I suspect it would be the chairperson of the committee. There certainly was a time when Mr. Thomas aptly noted that in his papers in which the committee had thought about putting two fact witnesses up. We have we since amended that to take it back. I have to think, Your Honor, that the designee would be one of the two of them. I haven't --

THE COURT: Okay.

MR. KAPLAN: -- exactly broken it down --

THE COURT: Okay.

MR. KAPLAN: But yes, that's who it would -- that's most likely who it would be.

THE COURT: Okay. All right. Okay. Mr. Thomas, do you want to add anything yourself, now that you've heard those remarks?

MR. THOMAS: Yes, Your Honor. I mean, we do apparently disagree on the utility of the deposition. While the committee didn't file a plan, they're certainly anticipated to object to the plan that has been filed. And I think that, as part of preparation for an ultimate plan confirmation, we're entitled to kind of vet the committee's position on their objections, which is, as we articulated in our papers, the fundamental purpose of the deposition.

THE COURT: Okay.

MR. THOMAS: And the attorney-client privilege being what it is, the whole point of raising it with Your Honor was to just kind of forewarn that, if we go down this path, there may be issues that can't be unwound. And so if the committee has decided to pivot and designate someone else, then those issues will probably be alleviated, and we won't have to worry about that. We still will insist that the witness is properly prepared to testify about the topics noticed and can testify about them. But those are issues that certainly can be addressed at another time if and when the witness is properly --

THE COURT: Well, okay. Thank you for that. Let me just confirm a couple of things. And one of them doesn't

surprise me. I just heard Mr. Kaplan say that, to the extent at one point they had designated a couple of fact witnesses, they are no longer doing so. Is that fair, Mr. Kaplan?

MR. KAPLAN: Yes, Your Honor, that's accurate. We amended our witness --

THE COURT: All right. And let me ask you this then. And this will kind of help me, kind of, tell you what the central purpose of my thinking is here. Without a fact witness, is there something in the committee's, for lack of a better word, arsenal, with respect to how it will approach the plan, that is fact based, that was derived for this purpose, that is not work product, and that is not going to be the product of strategic conversations between the committee and its lawyers? Is there such a thing?

MR. KAPLAN: Your Honor, this exercise has forced us to think about that, and I don't see that there is.

THE COURT: Okay.

MR. KAPLAN: We don't have a witness to -- we have, obviously -- I wanted to separate this for fairness -- experts.

THE COURT: Oh, sure. But those folks are being deposed, right?

MR. KAPLAN: No, absolutely.

THE COURT: Okay.

MR. KAPLAN: There's going to be depositions for everybody.

THE COURT: Okay. All right. Okay. Then can I give you guys some thoughts? And this is not so much a ruling as I hope this helps. If it doesn't, I'm sure you'll tell me.

Mr. Thomas, believe me, people have told me throughout this case when I have something a little bit wrong, okay? So don't be shy.

Bankruptcy really is a different world. Congress created this Bankruptcy Code, and it -- let me take a step back. In connection with a discussion of multidistrict litigation versus Chapter 11, I once heard a very esteemed district judge say, in effect, look, I just decide liability, no liability, who wins this dispute.

All these other factors that you folks seem to take into account in bankruptcy are a complete mystery to me, to which my response would be, respectfully, well, read the Bankruptcy Code, because it gives us a different task. It gives us a task that depends upon the outcome of a number of different disputes.

And in a consumer case, it's usually one: can the poor debtor keep the house? In a case like this, it's scores or hundreds. And the fact is we do our best to meld the tools we have, which are litigation based, into a format that is litigation like, but different at the same time, in the following sense. Without meaning to be arch, official committee of unsecured creditors do not exist in nature. They

are creations of the Bankruptcy Code, and they come to this process, somewhat paradoxically, with a bunch of representatives who do have a history, because they have claims, and they have grievances, and they'd like to see some damages paid.

They park all that at the door when they become a committee. And those individual personal considerations, and what motivates them, have to be separated from the role of the committee, which is to act as a representative body which does not come to this practice and come to this process with any sort of historical context itself.

The committee's job is really -- unless they're going to propose a plan and we're not to that yet -- is almost entirely reactive in exactly the way Mr. Kaplan suggests. So the notion that one would ask a committee to designate someone on a 30(b)(6) basis, I mean, certainly the rules don't say you can't do it. It's not the most accurate fit between the way a 30(b)(6) vehicle is typically used, when a party does come to a dispute with a lot of history, and a lot of positions, and a lot of beliefs, and a lot of things that it wants to convince the Court of.

There's a huge difference between a debtor, for example, suing a servicer, and taking a 30(b)(6) deposition of the servicer, and making inquiry of a committee. So a lot of what you would ordinarily expect to flow from a 30(b)(6)

deposition doesn't make as much sense in the context of a committee.

So this is not to say you can't do it; of course you can. But you may find that there's much less ground to be covered there, as a practical matter. And I will leave it to the two wonderful lawyers I'm talking to go down that road and see where you end up.

Having said that, let me make a couple of other comments. It may strike you as a little -- excuse the flipness of the word -- a little gimmicky that the committee initially designated Mr. Weisenberg. Well, I mean, they may turn around and say, well, it's a little gimmicky to take their 30(b)(6) deposition. So I think that I understand both sides' skepticism of the other. That's fine.

I do not take the proffer of Mr. Weisenberg as necessarily imperiling the attorney-client privilege. Now, if we get to a point where you think that is posed in a way that I can appreciate differently, rather than the hypothetical you've given me, I will listen to you. But as a hypothetical matter, I'm not with you on that right now, okay?

And the distinction that I would make is, if it turns out that the committee has undertaken some kind of factual investigation, or some kind of research, or something like that, that would arguably not be work product, and the inquiry about which would not be subject to attorney-client privilege,

Mr. Weisenberg can talk about that, and there's probably nobody better to do it.

If it is attorney-client privilege, you're going to get an objection, and you're going to come to me and tell me that it's ill taken, and I'm going to decide it. If there's a question about what is or isn't work product, you'll come to me and I will decide it, because that can get a little murky. But my guess is that the committee has been very careful in hiring its experts, and in having its conversations to, in its mind, create a work product umbrella over which all this extends, is my guess. So that will be the argument, if and when we get there.

Now, if there is something that is otherwise a fact or a factually-based matter, as to which the debtor can inquire, I'll just tell you, hypothetically, the fact that Mr. Weisenberg or others may have discussed it in some fashion with the committee does not shield the fact from the debtor, okay? That's absolutely correct, and I don't think Mr. Kaplan would disagree about that. But there may not be any great utility in finding that out. If there is, great. If there isn't, we'll talk about whether Kaplan is correct, or Weisenberg is correctly citing to a privilege or a work product doctrine protection, okay?

So I think that's about the best I can do for you right now. I am not prepared to say that, as a blanket matter,

the proffer of Mr. Weisenberg, as the witness, is going to necessarily immediately invoke a waiver of the privilege. But clever lawyers may push this in directions that I'm not seeing right now. And if that happens, I am happy to hear you guys. And I am one of those judges who will hear you in the middle of a deposition. So I don't know when you have it scheduled, but whenever that is, if I'm here, I'm happy to help you guys on the spot, okay?

MR. THOMAS: It has been taken off calendar, Your Honor, so that we could have this conversation with you. And I think we're going to look to a date in July to get it rescheduled --

THE COURT: Oh, okay.

MR. THOMAS: -- when it will be convenient for everybody. But --

THE COURT: Yeah, and I mean I'm assuming it'll be early July because, again, my availability the second two weeks is really not great.

MR. THOMAS: That's my assumption as well, Your Honor. We've got to get it on calendar.

THE COURT: Okay.

MR. THOMAS: And I understand the Court's ruling. I think --

THE COURT: Well, I hope it's not --

MR. THOMAS: The Court --

THE COURT: I'm not trying to give you a sense of -- yeah, a sense of where I'm coming from so that, when you come back to me, you'll know where I'm likely to start, okay? I may not end there because you may have great arguments I haven't heard yet, right? But you know where I'm going to start, okay?

MR. THOMAS: Well, if I may, Your Honor, I think there's just one kind of nuance that I think that maybe it gets lost, maybe it doesn't. Maybe it doesn't matter.

THE COURT: Okay.

MR. THOMAS: But I would say -- I would draw -- I understand the committee is a creature of the Bankruptcy Code.

THE COURT: Yeah.

MR. THOMAS: But I would draw this to more of an analogy towards, like, contention interrogatories, right? We routinely would serve interrogatories to better understand a party's contentions and what the bases are for these objections. And that really is how this 30(b)(6) deposition is teed up --

THE COURT: Yes.

MR. THOMAS: -- is to better understand where the committee is coming from with their anticipated objection.

THE COURT: Okay.

MR. THOMAS: And like we said last week, maybe they can thread the needle. I remain skeptical, but --

THE COURT: Okay.

MR. THOMAS: -- maybe you're right, Your Honor, and we won't be back in front of you. And if we are, we are.

THE COURT: Okay. Thank you very much. All right. If that's helpful, great. Otherwise, if things pop up during the deposition, let me know. Okay. If you don't mind letting chambers know what day you're going to schedule it, then I can try to plan accordingly, okay?

MR. THOMAS: Thank you, Your Honor. We do appreciate it.

THE COURT: Okay. No problem.

Do we have folks here -- I mean, would it make sense to address the (b)(1) -- I'm sorry, the '51 adversary proceeding now?

MR. KAPLAN: Your Honor, from the committee's perspective, I think we have everyone. I see Mr. Leito on screen.

THE COURT: Okay.

MR. KAPLAN: Any of the Your Honor's feedback with respect to the adversary would be helpful from the committee's perspective.

THE COURT: Okay. Is there anybody else who would like to be on screen for this exercise?

THE CLERK: No parties raised their hands, Your Honor.

THE COURT: Okay. Mr. Moses, you had a colleague here arguing on behalf of the debtor. And if that person is here,

that's fine. If you're going to be the stand-in, that's fine too.

MR. MOSES: We can go ahead. He is, I believe, on vacation currently.

THE COURT: Okay.

MR. MOSES: So I'm standing in.

THE COURT: Oh, we don't want to take a five-minute break and find him on the beach? No?

MR. MOSES: As enjoyable as that would be, Your Honor --

THE COURT: Look, I shouldn't say this. I am delighted to know that people are taking vacations in the midst of all this. You guys need a break every now and then, right? So that's good.

Okay. Let me give you my thoughts about '51, okay? And this is Official Committee of Unsecured Creditors v. Roman Catholic Bishop of Oakland and the Oakland Parochial Fund, Inc. And it's adversary proceeding number 24-04051.

We've been around the bend a bit on this matter. Initially, the initial complaint was subject to a motion to dismiss, that I granted with leave to amend, really focusing in, again, in something that's going to mirror the discussion for this version of the complaint, focusing in on what the very helpful discussion was in connection with the first motion to dismiss.

It was relatively clear to me, and I think became clear to everybody, that the real thrust of this adversary proceeding, to the extent it was going to be helpful, was going to get into the question of what is and what is not restricted funds.

So the committee did file an amended complaint on April 30, and that's number 36 or number 37, depending on whether you're talking about the redacted or unredacted version. Obviously, I've read both, and thank you for that.

And they now allege five causes of action, declaratory relief that certain campaign assets are not held in charitable trust, under Section 17510 et seq. of the California Business and Professions Code; declaratory relief that certain individual donor assets are not held in charitable trusts, under Section 17510 et seq. of the CBPC; declaratory relief that certain shielded assets are not held in trust, pursuant to Section 9142(c) of the California Corporations Code; and declaratory relief that the shielded assets are commingled and not properly accounted for or identified; and then five, declaratory relief that the shielded assets are unrestricted property of the estate under 11 U.S.C. Section 541(a)(1).

I think it's very important to begin this inquiry with some context. This is an issue that is of enormous importance to everybody on this screen and a lot of people who aren't. This is hardly the first time the question of what is and what

is not a restricted asset has been quite material in a diocese case. I'm sure the issue has been resolved in any number of different ways.

In this case, it has come up as a litigation exercise with some initial pleading objections. A lot of what I'm going to say reflects my understanding, which I don't think is either a surprise to anybody, or really terribly controversial, that this is an issue that, one way or the other, is of central importance to the integrity of the plan, to the objections to the plan, and to the way the creditors are entitled to both view the plan themselves and urge the Court to view the plan.

I want to come back to one point that I'll bring up again, that Mr. Kaplan made, that I thought was really extraordinarily profound and helpful to me, which is that the point of this exercise is not to direct the debtor to throw some assets into the plan. That's up to the debtor. The debtor is the author of its plan, and it will do whatever it wants to do to try to satisfy its creditors, and also the fair and equitable and feasibility standards.

The point of this exercise is to determine, to the extent we can, what is and what is not a restricted asset for the purpose of simply illuminating that. And if we're able to do it, the debtor will decide. If it turns out certain assets are not restricted, the debtor can decide to make an amendment to the plan, but they don't have to. It's up to them.

But what we will know then is what disposition the debtor is making of assets that, it turns out, may not be restricted. And that is itself a worthy task here, and a material task, and something that could well influence people's reaction to the plan, the arguments they will make about the plan, and the Court's determination about the fairness and equity of the plan, and maybe even feasibility.

So I think it's important to keep that distinction in mind, and it's something that I have to say I probably had not thoroughly appreciated until Mr. Kaplan made the point. And I think he's right. That's really what the thrust of this is, okay?

So with that, the Oakland Parochial Fund submitted a motion to dismiss the adversary proceeding, pursuant to Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6). And 12(b)(1) would have me determine that there's no justiciable controversy between the parties.

Let me pause on that for a second. For what it is worth, there is nothing about that formulation that -- and there's nothing about the complaint that suggests that this is a claim for damages against OPF or anybody else. This is for me to determine the nature and availability and proper characterization of certain assets.

So I'm not trying to make light of the 12(b)(1) designation. I would say they are fairly rare animals in the

defendants' arsenal. It's not as if they shouldn't be deployed. But let's remember that we're not talking about a damages claim here. We're talking about simply what parties are necessary to figure out if there really is a dispute here or not. And I'll get into some of the background there.

The Roman Catholic Bishop of Oakland submitted a motion to dismiss the adversary complaint pursuant to Rule 12(b)(7), which is a rule that states that, if certain parties have not been joined, and they are necessary under that rule, that the Court may dismiss the complaint and may allow amendment to allow those parties to be named.

So a little bit of background. Again, the debtor filed their amended complaint on April 30. I'm sorry, the -- excuse me, the committee filed the amended complaint on April 30; my mistake. The debtor maintains, generally, that roughly thirty-eight million dollars of assets are shielded assets that cannot be used to pay operational expenses or creditors, because said assets are held in charitable trusts, or something like a charitable trust, under California Business and Professions Code, Section 17510, or other applicable means to shield those assets. And that position is set forth in the disclosure statement. And that's just fine. The debtor is entitled to make that argument.

The committee argues that portions of those assets are acquired through individual donations, individual donor assets,

or through solicitations and campaigns. The campaign assets did not specify any restrictions for the donations and therefore are not properly held in charitable trusts. And that's set forth, generally, at page 6, line 7, through page 7, line 7 of the amended complaint.

The committee argues that the shielded assets were commingled with unrestricted assets and others, subject to different charitable restrictions and designations. And the committee believes that the shielded assets are held in accounts at OPF and various banking institutions.

So again, OPF seeks dismissal of the complaint under Rules 12(b)(1) and 12(b)(6). OPF argues that there's no justiciable controversy and thus no subject matter jurisdiction, between themselves and the committee, because there's no allegation that OPF has control over the shielded assets. That's OPF's motion to dismiss at 405.

OPF further argues that the committee has failed to plead factual allegations that sufficiently state a claim for debt relief, as the complaint does not identify nor tailor its allegations to specific assets or accounts and doesn't plead a plausible commingling theory.

The debtor seeks dismissal under 12(b)(7), arguing that the donors of the restricted funds have a significant vested interest in the outcome of this adversary proceeding, as they made contributions with the expectation that their monies

would be used solely for specific charitable purposes. Debtor maintains that the donors have a legally protected right and interest in the subject matter of the action, and that their absence would impair the ability to protect those interests.

So starting with 12(b)(1), the Federal Rule of Civil Procedure 12(b)(1) authorizes dismissal of a complaint for lack of subject matter jurisdiction, and that is a threshold inquiry. Steel Company v. Citizens for a Better Environment, 523 U.S. 83, 94, 95, U.S. Supreme Court, 1998. The burden of establishing subject matter jurisdiction rests with the party asserting it. Among other citations, In re Jackson 2023 WL 7548049, at *3 (B.A.P. 9th Cir. 2023).

A motion under 12(b)(1) may present either a facial or factual challenge. A facial attack argues that the allegations in the complaint are legally insufficient to establish subject matter jurisdiction. In resolving a facial challenge, courts accept all well-pleaded factual allegations as true and draw reasonable inferences in favor of the nonmoving party. And that's Safe Air For Everyone v. Meyer, 373 F. 3d 1035, 1039 (9th Cir. 2004).

To invoke federal jurisdiction, a plaintiff must show an independent source of federal jurisdiction and the existence of an actual controversy within the meaning of Article 3. And that's MedImmune, Inc. v. Genentech, Inc., 549 U.S. 118, 126-127 (2007).

So a declaratory judgment action must present an actual controversy between parties having adverse legal interests of sufficient immediacy to warrant a declaratory judgment. And that's the same Supreme Court case that stands for that proposition.

If the complaint fails to allege both an independent jurisdictional basis and an actual controversy, the Court lacks subject matter jurisdiction, and dismissal under Rule 12(b)(1) is appropriate.

So let's get into the 12(b)(1) issue here. As a fundamental underlying issue, does the Court otherwise have federal subject matter jurisdiction? I don't think that's really in dispute here. This is a proceeding and an action within a bankruptcy case. Bankruptcy courts, through their relationship with the district courts, have original and exclusive jurisdiction in bankruptcy cases, and usually have original and, frequently, exclusive jurisdiction of proceedings.

I don't think that's really in dispute here. This is a suit to determine the nature of an asset, whether it's property of the estate or not. So I think, but for the 12(b)(1), no controversy between these parties argument, there's no question but that there is subject matter jurisdiction for this Court to determine the issue.

OPF argues that the committee and OPF do not have

adverse legal interests and that federal bankruptcy law doesn't confer a substantive right of action against OPF upon the committee.

With respect to the second issue, I think, to the extent that there is any dispute with respect to restricted access versus unrestricted assets, and whether something falls within 541 state or not, I think that's enough to satisfy the second half of the standard.

OPF asserts there's no allegation that it can or intends to exercise control over the shielded assets to the committee's detriment, and therefore there's no allegation of any actual controversy.

The committee points, in its motion, and its response to the motion to dismiss, to what they believe to be inconsistent positions taken by the debtor and OPF with respect to whether certain funds are restricted or not. And there's an allegation by the committee, which I think, for today's purposes, we're taking at face value, that while the assets are now determined to be shielded in the possession of OPF, when they were not in the possession of OPF, there was an allegation they were not shielded. And that, by itself, creates some uncertainty that ought to be delved into.

There's also this overhanging issue of where these funds have been parked from time to time and whether the disposition of these assets created or didn't create a claim in

favor of OPF. I know we've been down this road before. I know the debtor basically removed this controversy, in some ways, from the Court's view by conceding that OPF did not really have a claim and the money is just at that account. And that's perfectly fine for that purpose.

While these allegations back and forth may not indicate that OPF is necessarily, at the moment, taking a position of ownership with regard to the assets, I think they do reveal an inconsistency in OPF's position, on the actual ownership of the money and who may control the money, that I think is worthy of further review in this case.

And again, let me come back to the notion that, if I am to keep OPF in this case, which is my inclination, and I'll get to that in a minute, it's not as if this is going to result in a damages claim against OPF. It's going to result, in my view, in simply a better ability to plumb the issues that have got to be determined in connection with restricted assets or not, whether an asset is restricted or not.

I will point to the fact that, even were I to release OPF from this litigation on a 12(b)(1) theory, it's not as if they wouldn't have to be responsive to various types of discovery that the committee would propound on them with respect to this question of restricted assets or nonrestricted assets. They certainly may well have some background information about that.

So even granting their motion to dismiss, I don't think would really effectively have much practical difference here. There still would be questions about their relationship to the debtor, and their relationship to these funds, that would have to be answered in order to get to the bottom of this question.

And as I say, again, this is an absolutely central issue to the disputes between the debtor and the committee. And I will come back to the exercise that we went into when counsel for OPF was making the presentation to me. And I suggested, well, if you really think you're not a party here, all you need to do is come up with a suitable form of stipulation, for Mr. Kaplan to review, that simply removes any kind of controversy along these lines, in its entirety, and obligates you further to respond to discovery.

And for whatever reason, the OPF folks did not decide that was a good idea at the time. They may decide it's a good idea going forward. And there may be a way to streamline this if there is an agreement between the parties that there is simply no controversy here. And if parties agree that they can get around that and make this a simpler exercise, that's perfectly fine with me.

But the OPF folks are taking the position that we're basically like a bank and we just don't have any disputes here. That may be. That's more a defense than it is, it seems to me,

a 12(b)(1) basis to let them out of this lawsuit.

And I would point out that, as all the bankruptcy lawyers on this call know, that even a bank, even when it asserts it's a conduit, for example, 549 purposes, it's not really a transferee. That's a defense. That's not something on which a 12(b)(1) matter would be decided.

So for all those reasons, and also because the cases that OPF primarily cited, Bornhauser v. Jacksonville Post Closing, and In re Old Carco LLC, they certainly stand for the proposition that the parties in those cases did not satisfy a 12(b)(1) threshold.

That notwithstanding, those are situations in which the party either no longer served as the petitioning creditor or no longer existed. So it's not -- there are some factual disputes here that can be gone into. And again, if the parties want to streamline this, they're free to. But at the moment at least, I see enough of a factual inconsistency, and enough of a potential dispute, not to resolve this on 12(b)(1) grounds. If it's resolvable shortly thereafter, on some other grounds, that's perfectly fine with me.

Failure to state a claim under 12(b)(6). 12(b)(6), which is incorporated within the Federal Bankruptcy Rules by 7012(b)(6), states that a complaint must be dismissed if it fails to state a claim upon which relief can be granted. To avoid dismissal, a complaint must contain a short and plain

statement of the claim showing that the pleader is entitled to relief. And the complaint must contain sufficient facts to state a claim that relief is facially plausible. This requires the plaintiff to allege facts that are more than mere labels and conclusions and a formulaic recitation of the elements of a cause of action. And that's a case you all know very well, Ashcroft v. Iqbal, 556 U.S. 662, 663 (2009).

In determining whether a plaintiff has met this standard, and sufficiently stated a claim upon which relief can be granted, the Court must assume the plaintiff's allegations are true and must draw all reasonable inferences in favor of the nonmoving party.

Here the real problem, I think, from the defendants' point of view, is what they view to be a lack of specificity about the accounts and the monies that are at issue here. I don't think there's any doubt about what the committee's arguments are in terms of upon what grounds we will decide whether these matters are restricted -- these funds are restricted or not.

And the complaint, I think, does a perfectly serviceable, for pleading purposes, basis of laying out what the possible theories would be under which the amounts would be restricted, and alleging that those are either inapplicable or otherwise not satisfied. I'm not going to go over all those. I think that's done, in some great detail by the committee, in

the amended complaint. But that's not really the issue. The issue is whether there's some uncertainty about exactly what funds we're talking about.

To the extent that's the case, I think that that is fairly laid at the debtor's door as much as anybody. I think that the committee's position is they are still searching for and they will continue to search, through the vehicle of this adversary proceeding, for specificity, and for detail, and for precision with respect to exactly what funds are where, and exactly what funds the debtor would say are subject to restrictions or not.

So I think, to the extent that that is a current complaint about the complaint, I think that is something that is not going to lead to a 12(b)(6) disposition here. If, through discovery, it leads to some other disposition, on a summary judgment basis, or otherwise, or an agreement between the parties, that's perfectly fine.

So on these bases, I'm going to deny the OPF motion to dismiss the complaint.

And I will turn to the debtor's motion, which is 12(b)(7) which, again, alleges that some or all of the donors have a right to be heard with respect to the proper characterization of the funds, and that the failure to include them should result in my dismissing the case with leave to amend and for those folks to be named.

The debtor's position is those donors have an interest in ensuring that their donations are used according to their desired charitable purposes. Let me pause for a second here. I don't doubt for a moment that there might be some emotional consternation that would result, were the donors to learn that, despite their best efforts, in their minds, or what they may believe to be their sufficient direction with respect to the funds, the funds are in fact unrestricted rather than restricted.

But I don't believe that I have from the debtor, right now, case law that suggests to me, either that that is an interest that would rise to a particular level of urgency or materiality that I could find that it satisfies a Rule 19 standard. I don't think that I have any case law that suggests, in reasonably similar circumstances, that the kind of concerns those donors would bring to bear here are the kinds of interests that ought to be protected under these circumstances.

And even more fundamentally, I think -- again, remembering Mr. Kaplan's admonition that this is not a matter of putting money into a pot, necessarily; it's a matter of determining the nature of the restriction or the nonrestriction. I think that there is no reason to think that the donor's contribution here is necessary, and that their interests, such as they are, cannot be thoroughly protected by the debtor here, who has exactly the same incentive as the

donors do to have a determination that the funds are restricted and not unrestricted.

And again, because that is simply a matter of not where the money's going to go, but how the money should be conceived, and what that means in terms of the good faith of the plan and the feasibility of the plan. I don't think there's anything the donors are likely to offer that will be either factually dispositive here, or legally dispositive, that is not available to the debtors, and that the debtors would not be able to argue, and would not urge the Court to adopt as the correct answer in terms of the restricted/unrestricted nature of these assets.

So for all of those reasons, I simply don't think that this is a matter on which I should be dismissing a complaint under 12(b)(7), failure to join. If a party wants to petition to be added, at some point in the future, I would suggest that I will entertain that when it comes up.

But I'm simply not going to dismiss this action, on 12(b)(7), for the reasons that I've stated. And again, largely because I think, given the limited nature of the committee's relief here, it's not as if a ruling in favor of the committee is going to dictate where any money has to go. And if a donor would be particularly concerned about that, that simply isn't going to be what's happening at the end of this lawsuit.

So for all of those reasons, and because I think that

the debtor will do a thoroughly rigorous job of defending that position, I'm going to deny the debtor's 12(b)(7) motion as well. So I'm denying both these motions.

Mr. Kaplan, you're the prevailing party here. If you want to present simple orders, do not try to replicate my fairly long-winded reasoning here, but just for the reasons stated on the record.

MR. KAPLAN: Yes, Your Honor.

THE COURT: And we'll go forward from there, okay?

MR. KAPLAN: Yes.

THE COURT: We're giving a little bit more thought, for reasons that will be clearer when I'm able to address you folks on the 053 matter, and I'm hopeful to be able to address that sometime next week, okay?

MR. KAPLAN: Excellent, Your Honor. There is one other item I would like to raise, for the good of the order, when Your Honor is ready.

THE COURT: Sure. Go ahead.

MR. KAPLAN: And I did speak to Mr. Moses about this, this morning, as I'm currently still in his office, which is very accommodating. Thank you.

We wanted to raise for Your Honor, to give you some time to think about, as we approach August 25th, just sort of a logistical question --

THE COURT: Sure.

MR. KAPLAN: -- which is the sheer magnitude of the number of people, and electronics, and exhibits, and otherwise, that are going to potentially be funneled into Your Honor's courtroom, and present a very significant burden for the security team out front who does a phenomenal job every time we're there.

Also, just from the standpoint of pure logistics, it is conceivable that we will have more people, on a routine basis, out there for four to six days than we've probably ever had at any aspect of this case. And we wanted to raise, just from a purely logistical standpoint, the security and the, sort of, time that we have to get in, get set up, and otherwise, and truly blindly inquire of Your Honor whether or not there is some mechanism the Court is able to establish that will relieve the burden on security and also help expedite the, sort of, necessary in and out that's going to occur on a routine basis with the counsel, and exhibits, and electronics, and those types of things.

I mean, we feel bad every time we come. The last time I think they had the screen nine people for the hearing. We were there last week. And I think that, when we're talking about confirmation, that will be multiplied by a factor I could not even imagine at the moment, Your Honor.

THE COURT: Okay.

MR. KAPLAN: And so I don't know if there's a

mechanism that we can do. I don't know if counsel is able to submit through with the --

THE COURT: Well, can I ask you, kind of, a gating question?

MR. KAPLAN: Yes.

THE COURT: Were we to talk about this -- and I mean this sincerely as an open possibility. Were we to talk about this, should it be on the record, or would you guys like to come and have a session that I will preside -- small p -- over, and we have our clerk here, and we have the head of the security team here, and we just talk. Is that --

MR. KAPLAN: Yes.

THE COURT: -- reasonable to do? If anybody thinks it should be on the record, we can do that. That's okay. If people don't think we need to do that, then we'll be at your disposal, and you just contact chambers for when you agree it would be a good time to have that conversation. And I'll have the people here who need to be here.

MR. KAPLAN: Thank you, Your Honor.

THE COURT: Is that helpful?

MR. KAPLAN: That's perfect.

THE COURT: Okay.

MR. KAPLAN: That's perfect.

THE COURT: All right. Okay.

MR. KAPLAN: That would be point one. The second

point for Your Honor, just briefly to mention, is we're trying to best start to consider what Your Honor would like to see, potentially, pre- and post-confirmation. Again, this could be a conference type thing; it doesn't necessarily need to be on the record. But I wanted to present it to you, Your Honor, in this opportunity, as there are objection and filing deadlines coming up, and we are envisioning six actual trial days, et cetera.

And so just maybe at the same conference, Your Honor, we might be able to raise what it is you'd like to see from us before confirmation, keeping in mind our position that, until Your Honor says there aren't any facts, you are the decider of facts, and you have to hear the evidence in order, and take the exhibits, et cetera, rule on experts, and the like.

We want to just raise for you to get a sense of what is most helpful to the Court before, and what Your Honor would anticipate submitting after, once you have heard -- once the evidence is closed.

THE COURT: Okay. To what extent is that tied up in what might be a motion in limine procedure that might be far more extensive and elaborate than what I ordinarily do? Is this about that or something else?

MR. KAPLAN: No, Your Honor. It's got nothing to do with the motions in limine --

THE COURT: Okay.

MR. KAPLAN: -- that are going to come in.

THE COURT: Okay.

MR. KAPLAN: This is strictly about the -- based on the premise of -- there is a standard pre-filing of things that happened, but all of those pre-filings don't know what evidence Your Honor will ultimately accept into the record.

THE COURT: Okay.

MR. KAPLAN: And a consideration of what evidence --

THE COURT: Well --

MR. KAPLAN: -- the potential for post-trial filings --

THE COURT: Okay. Well, can you remind me of something I'm embarrassed to say I've forgotten. And anybody who remembers can remind me. We have a pre-trial set for this, right? Can this be accomplished through the pre-trial? If that were literally, here are the witnesses we expect, here's the subject matter of their testimony, here's the evidence, here are the documents we expect them to refer to; is this helped through that process, or is this a little different?

MR. KAPLAN: I think this is a little different, Your Honor --

THE COURT: Okay.

MR. KAPLAN: -- insofar as we are formally, I think, required, at least, although it is likely the most obvious thing I'm going to say today, that the committee is objecting

to confirmation. We actually haven't formally filed an objection to confirmation, only to the disclosure statement.

THE COURT: Right.

MR. KAPLAN: Everything that flows thereafter will be evidence and otherwise. And so --

THE COURT: Well, does this --

MR. KAPLAN: -- we --

THE COURT: I mean, should you file the objection and then we have a status conference?

MR. KAPLAN: I think so, Your Honor.

THE COURT: Okay.

MR. KAPLAN: I mean, that would be fine. We're trying to understand if there is particular -- for instance -- and I just posed this out there, and I'm happy to do this in a status conference -- is do you want to see the parties' positions on the law, pre-trial --

THE COURT: Yeah.

MR. KAPLAN: -- keeping in mind that there are not yet facts, right? You won't have heard any testimony, no declarations will have been submitted, no cross-examination exhibits or the like. And so we just wanted to raise it just for the thought. And we did mention this to the debtor just early today, so no one's really had time to react.

THE COURT: All right.

MR. KAPLAN: We want to only present to you what's

going to be helpful to the Court.

THE COURT: Okay.

MR. KAPLAN: And we take Your Honor's guidance as to whatever is most helpful, as you are the finder of fact and law here.

THE COURT: All right. Well, let me ask you this. Is it -- and I'm asking this not to be coy, okay? Is it your concern that a trial brief, that is normally very helpful in the context of a much simpler trial, where people know what all the disputes are, and they're fairly discrete and small in number, is it your concern that a trial brief, in that sense, is really going to be kind of a waste of time here? Is it the cart before the horse, in some sense?

MR. KAPLAN: That is our view from the committee's perspective, Your Honor --

THE COURT: Okay.

MR. KAPLAN: -- that the most helpful trial brief that Your Honor would get would be post-trial, in which we would potentially do something like proposed findings of fact conclusions.

THE COURT: Yeah, yeah. Okay.

Mr. Moses, do you want to be heard about this?

MR. MOSES: I think, I mean, that would be fine. I don't have strong feelings about it right now.

THE COURT: Okay.

MR. MOSES: We just had a brief discussion this morning. If we want to have a status conference at some point to discuss it further --

THE COURT: Yeah, that's a good idea. I mean, thank you for raising it, because it'll give me a chance to think about what I think I'm going to need. And if my thinking is going to -- if my thinking necessarily has to be a little bit different about this, because it's just a different kind of proceeding, I'm open to that. And I'm happy to hear you folks, okay?

So I mean, Is you probably have intuited or know, I have a status conference at the drop of a hat. The minute it looks like we're either not all on the same page, or there's some confusion, or there's something about what you need to know the Court's procedural desires, we can have a status conference.

And if it makes sense to do that relatively soon after you filed your objections, that's fine. We've got the better part of August to get ready for this. I regret that I'm not as available the last two weeks of July, but my chambers is aware of when I am unofficially unavailable -- I mean, officially unavailable, unofficially may be available. And you guys will have access to that info, okay?

But no, I really appreciate you bringing this up. I mean, the more forethought we can give this, the less likely

that we're scrambling after the fact to try to do something that either should have been done before or should have expected to see later. That's fine. Okay? All right.

Okay. Are we scheduled -- we don't have anything set in this case next week, right? All right. If I'm in a position to give you my thoughts on '53, and I suspect I will be next week, we'll reach out to you folks and see what works mutually for you, okay? Make sense?

MR. THOMAS: Thank you, Your Honor.

THE COURT: All right. Thank you. Have a nice weekend, everybody.

MR. KAPLAN: You as well, Your Honor.

THE COURT: Okay. Thank you. Happy Father's Day to everybody.

MR. MOSES: Same to you, Your Honor.

THE COURT: Okay. You bet. Thanks.

MR. MOSES: Thank you, Your Honor.

THE COURT: Thank you.

(Whereupon these proceedings were concluded at 2:23 PM)

I N D E X

RULINGS:	PAGE	LINE
OPF motion to dismiss the complaint is denied.	32	18
Debtor's 12(b)(7) motion is denied.	34	25

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

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



/s/ SHARONA SHAPIRO, CET-492

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Date: June 17, 2025

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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 June 13, 2025 at 1:30 PM was filed on Tuesday, June 17, 2025. The following deadlines apply:

The parties have Tuesday, June 24, 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 Tuesday, July 8, 2025.

If a request for redaction is filed, the redacted transcript is due Friday, July 18, 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 Monday, September 15, 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: 6/20/25

For the Court:

Edward J. Emmons
Clerk of Court
United States Bankruptcy Court

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