UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

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In Re:	) Case No. 23-40523
	) Chapter 11
THE ROMAN CATHOLIC BISHOP OF OAKLAND	)
	) Oakland, California
	)Tuesday, September 9, 2025
Debtor.	) 10:00 AM
_____	)

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

1. STATUS CONFERENCE (CONT'D FROM 8/4/25, 8/8/25, 8/13/25).

2. MOTION FOR SALE OF PROPERTY DEBTORS MOTION FOR ENTRY OF AN ORDER AUTHORIZING (A) THE RELEASE OF THE DEBTORS INTERESTS IN CATHOLIC CHURCH SUPPORT SERVICES, INC. PURSUANT TO 11 U.S.C. 105 AND 363, AND (B) APPROVING PLEDGE AGREEMENTS FILED BY THE ROMAN CATHOLIC BISHOP OF OAKLAND (DOC 2237)

MOTION TO RECONSIDER ORDER DISMISSING FIRST AMENDED ADVERSARY COMPLAINT FILED BY THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF THE ROMAN CATHOLIC BISHOP OF OAKLAND (DOC 57)

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

APPEARANCES:

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For Office of the United States Trustee:	JASON BLUMBERG, ESQ. (VIA ZOOM) United States Department of Justice 501 I Street Suite 7-500 Sacramento, CA 95814 (916)930-2100
Also Present:	Bp. Michael C. Barber, SJ, Debtor's representative Matthew J. Kemner, Esq., Bishop's counsel Attilla Bardos, Debtor's CFO Hon. Christopher S. Sontchi, Esq. (Via Zoom), Court Appointed Mediator Timothy Gallagher, Esq. (Via Zoom) Court Appointed Mediator
Court Recorder:	ELECTRONIC RECORDING United States Bankruptcy Court 1300 Clay Street Oakland, CA 94612
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OAKLAND, CALIFORNIA, TUESDAY, SEPTEMBER 9, 2025, 10:03 AM

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(Call to order of the Court.)

THE CLERK: (Audio begins midsentence) -- 23.

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

THE COURT: Okay.

MS. UETZ: I can have -- do you want our counsel to come up, or you want me to just introduce who's here from the debtor?

THE COURT: Well, I know for now. Let's just go ahead and --

MS. UETZ: Okay. Obviously, Bp. Barber is here for the status conference, Your Honor.

THE COURT: I can see. Thank you very much. Okay.

MS. UETZ: His counsel Matthew Kemner is here as well.

THE COURT: Okay. Good morning.

MS. UETZ: From Foley, I have Shane Moses --

THE COURT: Okay.

MS. UETZ: -- Mr. Matt Lee, and Ms. Eileen Ridley are here.

THE COURT: Okay. Good morning, everybody. Okay.

MS. UETZ: And insurance conflicts counsel for the debtor Joe Breall is here as well.

THE COURT: Okay. Nice to see everybody. Okay.

MS. UETZ: We also have our chief financial officer Attila Bardos in the court today.

THE COURT: Okay. Thank you very much.

MS. UETZ: Thank you, Your Honor.

THE COURT: Okay. Thank you.

MR. MANNS: Good morning, Your Honor. Ryan Manns, Norton Rose Fulbright, on behalf of nondebtors RCC, RCWC, and Adventus.

THE COURT: Okay. Nice to see you.

MS. ALBERT: Good morning, Your Honor. Gabrielle Albert, Keller Benvenutti Kim, on behalf of the committee. With me today in court is Mr. Brent Weisenberg --

THE COURT: Okay.

MS. ALBERT: -- and Mr. Jeffrey Prol from Lowenstein Sandler.

THE COURT: Good morning. Okay.

MR. PLEVIN: Morning, Your Honor. Mark Plevin of Plevin & Turner on behalf of Continental Casualty Company.

THE COURT: Okay. Good morning.

MR. JACOBS: Morning, Your Honor. Todd Jacobs on behalf of Westport Insurance Corporation. I'm here with my cocounsel Blaise Curet.

MR. CURET: Morning, Your Honor.

THE COURT: Nice to see you again.

Anybody else in the courtroom expect to make an

appearance?

Okay. How about on the Zoom? Go ahead and get the Zoom appearances.

MR. BURNS: Tim Burns for the committee, Your Honor.

THE COURT: Okay. Good morning.

MR. BURNS: Good morning.

MR. KAPLAN: Good morning, Your Honor. Michael Kaplan for the committee.

THE COURT: Okay. Good morning. Good morning, Your Honor.

HON. SONTCHI: Christopher Sontchi, court appointed mediator.

THE COURT: Okay. Good morning.

MR. BLUMBERG: Good morning, Your Honor. Jason Blumberg for the U.S. Trustee.

THE COURT: Okay. Good morning.

A couple of other folks are showing up on the screen. Want to make appearances?

MR. SCHIAVONI: Your Honor, it's Tancred Schiavoni for Century Indemnity and the Pacific insurers. And I have Alex Potente and Steve Warren, who are also representing us today.

THE COURT: Okay. Is there one more? Somebody with a prominent Clyde & Company sign in the background there want to make an appearance?

MR. CHORLEY: Jason Chorley from Clyde & Co on behalf

of the Pacific insurers.

THE COURT: Okay. Is that everybody, Mr. Singh?

THE CLERK: All parties with their hand raised have now been admitted, Your Honor.

THE COURT: Okay. All right. Look, I think we begin with the status conference.

MS. UETZ: I would note that we -- Ann Marie Uetz of Foley on behalf of the debtor. Thank you.

THE COURT: Um-hum. Um-hum.

MS. UETZ: I would note that we had communicated with Mr. Gallagher, another mediator, and we understand he was going to try to appear. So maybe he'll raise his hand if he gets in the --

THE COURT: Okay.

MS. UETZ: -- virtual room. I'll just mention that.

THE COURT: Okay. I don't see retired Judge Newsome. Is he lurking in the shadows someplace?

MS. UETZ: Unknown.

THE COURT: Okay.

MS. UETZ: That unknown as of today, Your Honor.

THE COURT: Okay.

MS. UETZ: Your Honor, the first thing I want to do is, is apologize to the Court for the late filings. In particular, the supplemental status conference report that we filed this morning. And --

THE COURT: Um-hum. I mean, I was tempted to open up, gee, what's new but --

MS. UETZ: I can't say more than I apologize, so --

THE COURT: Um-hum.

MS. UETZ: -- I'll hopefully (indiscernible) --

THE COURT: Well, let me -- look, without fanning any flames that may not need to be fanned, we may hear from the committee that they are unhappy with the presentation. And if they want to say that, I'll let them say it. Okay.

MS. UETZ: I'll say a couple of things as a preliminary matter, Your Honor --

THE COURT: Um-hum.

MS. UETZ: -- just to sort of preface my remarks. One thing is that Mr. Prol and I continue to talk to each other. We continue to communicate with each other and.

THE COURT: Frequently and a loud voice.

MS. UETZ: No.

THE COURT: Okay.

MS. UETZ: No.

THE COURT: Good. Glad to hear it.

MS. UETZ: No. And so that's positive.

THE COURT: Okay.

MS. UETZ: I will also tell you that since last Thursday, we've had communication inbound from Judge Sontchi. And he and I have been trading and trying to find a moment to

speak, but we haven't quite connected on substance yet. But that's also a good thing.

THE COURT: Okay.

MS. UETZ: As well, we've been talking with Mr. Gallagher.

THE COURT: Okay.

MS. UETZ: So I'll just mention that at the outset. If I can just go over a couple particulars in terms of status, Your Honor.

THE COURT: Yeah.

MS. UETZ: Really, before I get to -- I'd like to cover just briefly some of the matters in the supplemental status report --

THE COURT: Um-hum.

MS. UETZ: -- that I filed this morning --

THE COURT: Um-hum.

MS. UETZ: -- so that the Court is aware of the big picture --

THE COURT: Um-hum.

MS. UETZ: -- status of the case. First, Your Honor the debtor has been working to generate cash --

THE COURT: Um-hum.

MS. UETZ: -- to help pay for this Chapter 11.

THE COURT: Um-hum.

MS. UETZ: The committee and the debtor have resolved,

to my understanding, the objection to the OCP retention of Century Urban --

THE COURT: Okay.

MS. UETZ: -- to sell real estate.

THE COURT: Okay.

MS. UETZ: Even while the objection was pending --

Excuse me. I see Mr. Gallagher has graced us, Your Honor.

THE COURT: Okay. If you're going to -- do you expect to address the Court, Mr. Gallagher, or do you know?

MR. GALLAGHER: Yes, Your Honor. Tim Gallagher, mediator with Judge Newsome and Sontchi.

THE COURT: Okay.

MR. GALLAGHER: And if the Court needs me to address --

THE COURT: Thank you.

MR. GALLAGHER: -- an issue, I will.

THE COURT: I appreciate it. Thanks very much. Okay. Nice to see you.

MR. GALLAGHER: Thank you, sir.

THE COURT: Okay. Go ahead.

MS. UETZ: So Your Honor, even while the objection was pending and being negotiated between the parties, Century Urban began its work. And steps have been underway to sell real estate.

THE COURT: Um-hum.

MS. UETZ: There's also a couple pieces of real estate outside of its engagement that the debtor has been undertaking to sell. And that's not happening overnight, but I want to give the Court that status.

THE COURT: Um-hum.

MS. UETZ: In addition, and we'll get to the divestment motion, the debtor has taken steps to bring cash into the estate through that vehicle. And I'm not going to argue the motion here. You'll hear --

THE COURT: Who is?

MS. UETZ: -- plenty about it. Mr. Lee will be opening that.

THE COURT: Okay.

MS. UETZ: So that's another step that the debtor has taken to bring cash into the estate.

THE COURT: Um-hum.

MS. UETZ: I'll give an update on the lift stay in the state court, Your Honor, generally.

THE COURT: Um-hum.

MS. UETZ: The selection process for the six cases in the state court is underway. In the debtor's opinion, it's moving, but it's not happening overnight either. Some of the cases that were originally identified by the committee appeared to not have insurance coverage to cover the debtor's defense

costs, for example. So we've had some back and forth with Mr. Simons and state court counsel regarding that. There has been the -- I think it's the CMC process in the state court. So there's been some meetings with Judge Chatterjee as well. My understanding is that Woodall has been selected for stay relief. And whether the other ones are all still under discussion or whether anything else has been selected, all six have not.

Also, Your Honor, on August 25th, counsel for certain of the insurers, Pacific Indemnity, Century Indemnity, Pacific Employers and Westchester Fire, filed an ex parte application seeking leave to intervene in the state court proceeding for the purpose of --

THE COURT: Yeah, I did read -- I did read that, so okay.

MS. UETZ: Okay. So that's being --

THE COURT: Um-hum.

MS. UETZ: -- considered by the state court, as I understand it.

THE COURT: But not on an ex parte basis? It's a contested matter, if I can use our term? Okay. I got it.

MS. UETZ: That's my understanding.

THE COURT: Okay.

MS. UETZ: Finally, Your Honor, I don't know to what degree this Court is aware of the Judge Chatterjee's recent

ruling. We included it (indiscernible) --

THE COURT: I had not been until you inform me.

MS. UETZ: On August 25th, Judge Chatterjee issued a ruling in the state court proceeding JCCP 5108, holding that California Proposition 51 applies to all of the claims that were revived under AB 218. Of course, that includes the claims that are brought in this case by the survivors. The ruling eliminates joint and several liability for noneconomic damages. It limits each defendant's exposure for damages to each defendant's proportional share of fault.

In short, Your Honor this is something that I think the diocese defendants -- just generally speaking, the diocese defendants and perhaps the insurers are pleased with this ruling. The state court plaintiffs' counsel are not.

THE COURT: Um-hum.

MS. UETZ: And I think the evidence of that would be Mr. Simons' statements in the state court with respect to that ruling and --

THE COURT: And that was -- was that a written decision that came out on the 25th?

MS. UETZ: It was. It's pretty extensive.

THE COURT: Okay. What's the appellate posture there? Do you know?

MS. UETZ: So it's not an appeal of right as, I understand it --

THE COURT: Okay.

MS. UETZ: -- although I also understand --

THE COURT: Okay.

MS. UETZ: -- that it's a pretty extensive opinion.

THE COURT: Um-hum.

MS. UETZ: And my understanding is that it came out on a Monday, as I recall. Well, as I recall, it came out the same day we issued our settlement proposal.

THE COURT: Okay.

MS. UETZ: Unbeknownst to us, actually.

THE COURT: Okay.

MS. UETZ: But my understanding is that within twenty-four hours, Mr. Simons was expressing or filing something with the state court with respect to that.

THE COURT: Okay.

MS. UETZ: I'll let committee speak to that.

THE COURT: Okay. Okay.

MS. UETZ: But I don't believe there's any appeal of right, and generally speaking --

THE COURT: Because it isn't final or --

MS. UETZ: Yeah, it's basically a motion in limine.

THE COURT: Yeah, okay.

MS. UETZ: It's in the nature of motion in limine.

THE COURT: It doesn't dispose of a claim?

MS. UETZ: Yeah.

THE COURT: Okay.

MS. UETZ: And just to be blunt, Your Honor, I mean --

THE COURT: Okay.

MS. UETZ: -- this is for defendants in these cases being relieved of joint and several liability under the circumstances of these claims --

THE COURT: Um-hum.

MS. UETZ: -- is a significant game changer in the state court exposure --

THE COURT: Um-hum. Um-hum.

MS. UETZ: -- for the defendants, in our opinion.

THE COURT: Well, for now.

MS. UETZ: For now.

THE COURT: Okay.

MS. UETZ: And Your Honor, if it please the Court, what I would do is even -- I can upload the order as part of the status conference supplemental report. It's a very long, lengthy, reasoned opinion, in our opinion.

THE COURT: Um-hum.

MS. UETZ: So that's the Prop. 51 ruling.

THE COURT: Okay.

MS. UETZ: The insurance coverage litigation continues apace.

THE COURT: Yeah.

MS. UETZ: We had a recent status conference before

Judge Corley.

THE COURT: Um-hum.

MS. UETZ: Discovery has been underway. We've reflected in our case management report the tens of thousands of pages of documents that we've produced.

THE COURT: Um-hum.

MS. UETZ: We've had meet-and-confers with the insurers regarding discovery. That case is moving forward.

THE COURT: Um-hum.

MS. UETZ: In addition, Your Honor --

THE COURT: Well, there's a discovery cut off in October for written discovery; is that right?

MS. UETZ: Yeah, the --

THE COURT: I think you told me that.

MR. SCHIAVONI: No.

MS. UETZ: She held a status conference on August 20th --

THE COURT: Uh-huh.

MS. UETZ: -- and she ordered the parties to complete written discovery by October 2nd --

THE COURT: Okay.

MS. UETZ: -- and to submit to the court a joint letter setting forth remaining discovery disputes by that date.

THE COURT: Okay. So you're not to a trial date yet or anything like that?

MS. UETZ: No.
THE COURT: Okay.
MS. UETZ: No, Your Honor.
THE COURT: Okay. Okay.
MS. UETZ: So that covers litigation. Mr. Schiavoni wants to --
MR. SCHIAVONI: Motions to compel are due on October 2nd.
MS. UETZ: -- speak about this.
MR. SCHIAVONI: It's not a cut off.
THE COURT: All right. I heard Mr. Schiavoni.
MS. UETZ: If I misstated something --
THE COURT: I heard his input. Okay.
MS. UETZ: -- I'm confident someone will correct me.
THE COURT: Okay. Or dispute you, if not correct you.
MS. UETZ: Thank you, Your Honor.
THE COURT: Okay.
MS. UETZ: Lastly, Your Honor, we addressed in our supplemental status report the professional fee applications and interim compensation.
THE COURT: Um-hum. Um-hum.
MS. UETZ: We are still, subject to the holdback, the thirty percent holdback --
THE COURT: Um-hum.
MS. UETZ: -- in the amended order, and there's a

process for that to -- for relief from that, basically, in September. The debtor is currently reviewing its cash position, and we put something in our case management report about the debtor's current cash.

THE COURT: Um-hum.

MS. UETZ: Candidly, Your Honor, it had been my plan to file another motion seeking to amend the interim compensation order in advance of today.

THE COURT: Um-hum.

MS. UETZ: However, I've not done that because we're still reviewing the cash position. We have the one motion that's up today as well, which will impact things potentially.

THE COURT: Um-hum.

MS. UETZ: Candidly, Your Honor as reflected in the statement, we're going to run out of money.

THE COURT: Um-hum.

MS. UETZ: And so we also thought, rather than file that motion today, with the uncertainty concerning things today, it would make sense to reflect on what the outcome of today and then return. I've had a conversation. I mean, we've try to be plain. Like, at some point the bills for professional fees are going, to come and we're just not going to have the money.

THE COURT: Um-hum.

MS. UETZ: And that is a reality that Ann Marie Uetz

cannot change.

THE COURT: Um-hum.

MS. UETZ: So that's coming as well.

Your Honor, I'll pivot, if I may, to the motion to dismiss, which is now on file with the Court.

THE COURT: Okay. It's a separate hearing?

MS. UETZ: We picked a date for hearing in October, Your Honor.

THE COURT: Okay.

MS. UETZ: And happy to talk to parties about that and the Court as well.

THE COURT: Okay. Just so I know --

MS. UETZ: Yeah. I think we picked --

THE COURT: -- when is it, do you know?

MS. UETZ: -- October 7th, if I'm not mistaken.

THE COURT: Okay.

MS. UETZ: So but again, we realize things are subject to change.

I do want to say a bit about what brought us here --

THE COURT: Um-hum.

MS. UETZ: -- from our perspective.

THE COURT: I've read everything.

MS. UETZ: I know, Your Honor. So I'm just going to highlight a few things.

THE COURT: Yeah.

MS. UETZ: I know the committee counsel are unhappy with me for having filed our settlement letter, and I'll just address that first.

THE COURT: Sure.

MS. UETZ: Your Honor, we --

THE COURT: By the way, I've read everything with the understanding that, as a judge, I can forget things I've read. Okay. So that's the beauty of sitting here.

MS. UETZ: Your Honor, let me just address that. We mediated this case last at my office in San Francisco, and I want to say it was February of 2025. That was the last in-person mediation. We've had subsequent communications, especially with Mr. Gallagher, working with the insurers.

THE COURT: Um-hum.

MS. UETZ: But the last formal mediation was in February. And following that mediation, and I remember because I was -- I remember where I was standing when I had this meeting. I had a meeting with the mediators.

THE COURT: Um-hum.

MS. UETZ: And I won't talk about that, but I will just tell you the debtor's belief since that time-- and the meeting was right after, within days of the mediation having concluded. Since then, the debtor has believed that we're not mediating with the committee.

Now, as the months have played out, we haven't in fact

mediated with the committee. We've continued to try to reach agreement with the insurers and try to shake some money loose, hoping that, if we did that, we could bring that into the plan and maybe get the committee on board. But nothing had happened with respect to settlement.

Your Honor, the plan that's on file, we can't afford to try to cramdown. Whether this Court might find it appropriate for confirmation or not, that is a fight that we just cannot afford right now. We have not withdrawn that plan. And the reason we haven't withdrawn it is that we have hope because we look at every other diocese case that has filed and that has resolved. We don't see another diocese case -- save for an unusual circumstance in San Diego years ago, we don't see another diocese case that has dismissed without a resolution.

So in addition to me personally being an optimist, my client is always hopeful and supportive of a resolution here. And for that reason, we have not withdrawn the plan because if we somehow reach a settlement, that plan could possibly be the vehicle for confirmation and approval of the settlement. But that's why the plan is on file.

And this is different than when I spoke with you at the last status conference in early August. You asked me then do we intend to amend the plan. And I said no. And that remains true, unless we're able to reach a consensual

resolution. But what's new and what we had not determined in early August is we can't even afford to try to cram that plan down anymore. So let me get then to settlement.

Your Honor, the debtor believes that -- first of all, it's worked a lot, especially since that last August status conference, to put itself in a position to increase its offer to the committee to try to resolve this case. The debtor has worked with schools and gotten schools to increase its offer. The debtor has increased its offer.

And the debtor communicated that offer to the committee directly. Again, haven't had mediation since February. We communicated that to the committee two weeks ago from yesterday, August 25th.

And when we did that, and I think I pretty much telegraphed something would be coming at the last status conference, we would have hoped that everyone would have dropped what they were doing. The insurers. The committee. The committee members. The state court counsel. Acted with some urgency because believe me, the debtor acted with urgency during the last month to make this offer happen.

And while there have been some communications, and it's good that Mr. Prol and I continue to speak. And it's good that we talk with Mr. Gallagher and with some of the insurers to try to get settlements. And even with Judge Sontchi, since last Thursday, when Judge Sontchi reached out to the committee

and the debtor and said, I think it's time to return to mediation.

But that's pretty much all that's happened in the last couple weeks, save for a response that we got yesterday. And as I indicated in my filing, the committee elected to send its response through the mediators. We'll respect that, and I'm not telling you what the response is. But the debtor's belief that there is not a settlement to be had here between the debtor, the committee, and the insurers under the present circumstances has only been reinforced, which is really unfortunate.

Why did we file the letter with this Court? Your Honor, our client has worked really hard to try to resolve this case. And frankly, we have stakeholders, too. We have 500,000 faithful that are served by our dioceses. And keeping a secret what the debtor is willing to do to pay the survivors in this case, this isn't right, in our opinion.

It's not about persuading Your Honor, or like today, that's not what this is about. It's we've been in bankruptcy for twenty-eight months now, and we can't cause this case to settle. But we believe that not just our faithful, our stakeholders, everyone deserves to understand, not just what we're willing to do, but what we can do and why.

And Your Honor, there's obviously several of these cases in California right now. I'm in one of them. Everyone

on my side of the room is in one of them. I'm not privy to what's going on in other cases. But I can look from the outside, and my client can look from the outside. And I'll just say my client has a sincere belief that this case is being affected by forces outside of its control that's delaying and drawing this out. And I can't control that. My client can't control that.

So what do we do? We are where we are. This is where we are. We feel strongly that the debtor's settlement proposal -- and again, I know the committee doesn't want to -- they think that other dioceses outcomes are not relevant. They are. Maybe they're not controlling. People can have different opinions on how relevant they are. But they're relevant.

And you look at, and we put the chart in our filing, cases with similar numbers of claims. Recency. Yeah, we go back. We include, for completeness, we started 2015. But objectively speaking, I think it's just wrong to say that what this debtor has put on the table, the way the committee cast the debtor's proposal is just wrong. It's just objectively wrong.

And the Bankruptcy Code allows a diocese to file Chapter 11. We've all been in lots of cases. All of us are seasoned professionals, Your Honor. And not every party has to always agree. But there is a general attempt to try to work for a successful outcome. An exit from Chapter 11. And that

just hasn't been the reality of this case.

I wouldn't change what the debtor did in terms of the transparency of production. In terms of the speed with which we produced information to the committee and cooperated with the committee. I had hoped -- we had hoped. We had hoped, I think it was expressed to this Court, that that would set a new paradigm for these cases. And by filing this motion to dismiss this morning, Your Honor, we're sticking to that.

These other cases have lasted four or five-plus years. And from what I understand, on some of them, by the time they settled, some of the parties hadn't moved much. Just the professionals got paid. Nothing's going to be different in a year or eighteen months than it is today, except maybe another case might settle and someone thinks that sets a new floor. I don't know. But there's not going to be any better readiness for a settlement in six, twelve, eighteen months than there is today.

So Your Honor, we recognize the motion to dismiss is going to take a minute for this Court to determine. Right. Just the process of briefing it. Scheduling it for hearing. Your Honor has expressed at one of the recent status conferences the possibility of setting an outside date by which parties have to settle. Recall the debtor embraced the notion of really letting this cart behind the curtain. And we respect what you said about that.

To be clear, as we stated in our papers, we will attend mediation, but we've given. And that's all we can give. The debtor has tried to work with the insurers. Has tried to work with the committee. The two parties that aren't talking are the committee and the insurers.

And so that needs to happen if there's going to be a resolution. The debtor can't team up with either side and afford the fight to try to get a plan confirmed over someone's objection. We have implored the parties, the insurers, and the committee to speak. And to our observation, there's been precious little communication.

So when we received the outreach last week regarding mediation, the debtor made clear, and the debtor makes clear to this Court, it's got to be all the parties. And in the debtor's opinion, what needs to happen is the insurers need to participate in a meaningful way, and so does the committee. If Mr. Prol isn't speaking with counsel for the insurers and Mr. Gallagher and possibly Judge Newsome and the debtor, this will never happen. I can't reach any settlement with the insurers and try to get the committee to accept it.

And so we will be at mediation, but in our opinion, it can't be a mediation between the debtor and the committee. Got to be all the parties with a sense of urgency or just tell us to dismiss the case. If the parties don't want to settle, if the committee -- then we can move to dismissal much quicker,

which is not what the debtor wanted when it filed this case. It's a lot of regret that we're here today.

But the fact of the matter is, Your Honor, the debtor has put an offer on the table to the committee that pays the -- that pays, on average per claim, 463,000 dollars. That's more than any other settlement in these dioceses cases. It's a lot more than a lot of the settlements in these diocese cases. And so in the debtor's view, there's not, like, some little hurdle we need to get over with the debtor and with its settlement position, Your Honor. It's plain.

And the insurers may well be happy. I know there's six cases that are subject to the automatic stay, but while we're in bankruptcy, the rest of them are all stayed. Committee's getting paid. The professionals. And I'm not casting aspersions. It's just that they don't have the urgency that my client is giving me to get this case resolved.

So with that, Your Honor, I just, I know you've read everything. I'm happy to answer questions.

THE COURT: Not yet. Not yet.

MS. UETZ: But this is where we are --

THE COURT: Yeah.

MS. UETZ: -- and we're just trying to find a way out.

THE COURT: Yeah. I want to hear from everybody before I --

MS. UETZ: Thank you.

THE COURT: -- give you guys any thoughts. Okay.

Is there anybody else on the debtor's side who needs to amplify anything that was said? Yeah.

MS. UETZ: I forgot one point, Your Honor. I did want to prompt Mr. Breall --

THE COURT: Um-hum.

MS. UETZ: -- who is special counsel --

THE COURT: Yeah.

MS. UETZ: -- for the debtor because he has a brief update for the Court as well.

THE COURT: Okay. Thank you.

MS. UETZ: Thank you.

THE COURT: Let's hear that now.

MR. BREALL: Thank you, Your Honor.

THE COURT: Uh-huh.

MR. BREALL: I know that you've read the status reports --

THE COURT: Um-hum.

MR. BREALL: -- and you did discuss the insurance coverage litigation.

THE COURT: Um-hum.

MR. BREALL: The only new issue is that we have given the insurers notice of our intent to amend the complaint to bring actions for bad faith. I personally sent them letters last week. And we do plan on addressing this and seeking a

motion to amend the complaint or complaints with Judge Corley. And we just wanted the Court to know that status change.

THE COURT: All right. Okay.

MR. BREALL: All right.

THE COURT: Thank you.

MR. BREALL: Thank you.

THE COURT: Okay. Okay. Who's going to speak on behalf of the committee?

MR. WEISENBERG: Brent Weisenberg of Lowenstein Sandler on behalf of the committee.

THE COURT: Um-hum.

MR. WEISENBERG: Your Honor, the debtor appears to want to mediate this case before this Court. We sent a letter yesterday to the debtor's counsel asking that it not do so. And yet here we are again, being painted as wearing the black hat. We understand Your Honor has the ability to forget. But there's an inherent unfairness in revealing privileged information and the dynamics between the parties before Your Honor. Your Honor has a discrete role --

THE COURT: Um-hum.

MR. WEISENBERG: -- as do the mediators. We have very purposely kept them compartmentalized.

THE COURT: Can I ask you a question? And I don't mean -- I'm sorry. You're just starting out, so I apologize for asking a question right away.

But I don't want to say I'm indifferent to the number. In a way, intellectually, I am. What I'm worried about is, is this process working and what can I do to help it work. So if there's 165 million available, that's lovely. Maybe 175's the magic number. Maybe it isn't. It's not so much that as it is, if we're stuck, why are we stuck, and can the Court do something to help this get unstuck.

So I appreciate that, from the debtor's perspective, they've made a better offer. I mean, maybe they could have done it in a pleading. I don't know. They didn't do that, so let's not speculate about that. But maybe they could have. They didn't. They did it in the letter. They shared the letter with me.

The fact that it's 165 million, it's obviously a lot of money. It's not enough for your purposes, and I respect both positions. But that by itself to me is not of any enormous significance. What's of greater significance to me is what do we do to get this thing, if we can, moving.

And if the -- and I'll just kind of put a couple of cards of mine on the table here. Okay. I'm a little bit worried, and I've probably hinted at this in the past, that there's just a fundamental disagreement about the case and if I can be a little bit flip, who ought to be running the case, in the sense that I think the committee just has a completely different conception of who ought to be liable for some

payments, what ought to be the assets of the estate, and why I should think of every entity related to the debtor as obligated to put something into a pot.

I don't need to read the tea leaves too much. When Judge Sontchi said people need to go litigate things, the thing that's been litigated over and over again are those issues. And if that's where we are, that's where we are. You don't have to agree or disagree.

But my concern is that it's not so much -- I don't sense that this case settles at 175 because the parties are simply at loggerheads about how to think about it. That's my sense. And if that's helpful, great. If you can disabuse me of any of that, even better. If you can otherwise direct my thinking, even better.

So I appreciate everything you're saying. I'm not making a ruling on whether -- I mean, I literally can't forget things. And again, not to be funny, it's not that the 165 isn't significant, but it's not the key to this for me because clearly, it's not the key to this for you. Does that make sense?

MR. WEISENBERG: It does.

THE COURT: Okay. I appreciate it. Thank you for listening to me.

MR. WEISENBERG: Two responses, Your Honor. First, we have a running joke between us about showing all due respect,

and I'll show you that here when saying even you --

THE COURT: Okay.

MR. WEISENBERG: -- acknowledging that 165 million is a lot of money, from our perspective, Your Honor, I hope you respect that we don't think it's a lot. We think, given what the debtor is liable for and given its assets, it is pennies on the dollar. Now, you may think we're wrong. But we're entitled to our beliefs, and we're entitled to prove it.

We're also, in some analysis, Your Honor, ignoring the debtor's largest asset, which is its real estate. We were prepared to come into this Court and have an expert testify that their real estate is worth in the hundreds of millions of dollars, 6 (sic), 700 million dollars, I don't recall.

As Your Honor well knows, if a debtor is to receive a discharge, it has to -- it has to put virtually all of its assets on the table. And so when you talk about a fundamental disagreement, there is. The committee doesn't believe that this debtor has put substantially all of its assets on the table.

As Your Honor well knows, through the plan confirmation process, they took a different approach. They said, I cannot be compelled to sell real estate, and therefore these assets are off the table. So that is one place where we have and will continue to have a very deep disagreement about the size of this case, putting aside whether nondebtor entities

are or are not part of the estate.

Number two, Your Honor, when you say that the committee has a different understanding of who should be running it, I think we had this discussion very early on in the case, when you said you were going to allow the debtor to have their shot, they were going to be able to prosecute their plan, but ultimately, they may not be the right debtor for a discharge. And you said, at some point, there may come a time when the committee can play the role of the protagonist.

When we sat there, Your Honor, and I don't mean to say this in a I-told-you-so, but we told the debtor, we said, if we go down this path, we will likely be back here in four or five, six months, having not solved some of the crucial issues in the case. And we'll be left saying, where do we go now?

And that's where we are, Your Honor. And so it's a little unfair when the debtor cries poverty and says, I'm stuck because the committee got me stuck. That's revisionist history, Your Honor. It was the debtor that decided to move forward with this plan. We begged them not to. And even when ninety-nine percent of survivors voted against that plan, the takeaway was, this is fantastic. We got two impaired classes to accept our plan. Great. We can now cramdown.

So Your Honor, I really don't want to engage in a tit-for-tat. In fact, before we came here today, I was fixated on trying to address exactly where you want us to go, which is

moving forward. But again, I hope you respect that we can't just sit here and be dragged through the mud and be blamed for every problem that's arisen in this case. Like any great debate, the truth probably lies somewhere in the middle.

So how do we move forward? I share Ms. Uetz's optimism about getting to settlement. Why? Because we've now made offers to one another. We're going back to mediation. And now, the committee could resume mediating in earnest without the threat of being crammed down.

As you might imagine, Your Honor, it's hard to have negotiations and mediations when being held over your head is a debtor saying, I know what's fair and equitable for your constituency. And that is what I decide it is. Okay. We're past that now. And now that we have mediation sessions, sessions hopefully upcoming, we are going to be fixated on trying to get a resolution. And I think we can. Okay.

I wish the debtor didn't file the motion to dismiss. Again, we view that as, yet again, something else being held over our head without allowing us to focus on the task at hand. But again, I'm an optimist, Your Honor, and I think that we are now in a great place to allow ourselves to roll-up our sleeves and have really, really hard conversations. And neither side will be happy --

THE COURT: Um-hum.

MR. WEISENBERG: -- like any great settlement. And

the debtor, candidly --

THE COURT: Well, that's not the aspiration. That's reality. Right.

MR. WEISENBERG: Exactly.

THE COURT: Okay.

MR. WEISENBERG: And the debtor will have to part with more. And my clients will have to accept less.

THE COURT: Okay.

MR. WEISENBERG: Your Honor, I really don't want to address some of the justifications for why the 165 million is or is not reasonable.

THE COURT: And you don't need to.

MR. WEISENBERG: Thank you, Your Honor.

THE COURT: I mean, that's not something that, certainly in this context, I would presume to make a judgment about, if maybe other contexts as well. Certainly not this one. Okay.

Again, my focus -- and to the extent that I was giving you a sense of my concern about the different approaches, it's not that one's right and the other's wrong. It's that there may be irreconcilable. And if they are, then there we are. Let's stop wasting money. That's all I'm saying. Okay.

MR. WEISENBERG: Yeah. And Your Honor, that is where we're approaching today from, which is we are where we are.

THE COURT: Yeah.

MR. WEISENBERG: The two of us can probably spend days going back and forth blaming each other on why we're here.

THE COURT: Um-hum.

MR. WEISENBERG: But we are where we are, and we need to move forward. And what you're hearing today is the committee is dedicated to moving forward and negotiating.

The two things I just want to -- I want to say, Your Honor, number one is the theme of the debtor's opening and even their status conference briefs are sending a kind of aura around this case that the debtor is in dire straits. It's going to have to dismiss, unless this, that, or the other thing occurs. And in a way, it's unfair in the way it's trying to position Your Honor as it thinks about other issues.

For example, today's motion, the CCSS distribution motion, Your Honor can't unhear the fact that the debtor's crying poverty. And it says, if we don't get this money, case over. The debtor's entitled to put on that evidence. And if Your Honor finds that that is true, then you can grant the motion.

But a lot of the atmospherics that the debtor is putting out are just not fair. Even this morning's filing, Your Honor, which read to me more like a reply to our objection than it did a status conference, is again, just frankly unfair. We just want both parties to play by the rules. These are complicated issues. We have what we believe to be bona fide

disputes with the debtor, and we want them litigated in the proper form.

And secondly, Your Honor, even the motion to dismiss, again, seems to send a message that all is lost. It's the committee's fault. They're looking at other cases and slow rolling this. Like Ms. Uetz, I have one constituency, this group of survivors. And our job is to get the best deal possible for this constituency in the soonest amount of time. And your professionals are -- the committee's professionals are committed to doing that.

And so we just ask Your Honor that when discrete issues come before you, we determine them based upon the facts and law before Your Honor with respect to that issue and not allow some of these atmospherics to cloud Your Honor and maybe make you more results oriented because we are not the -- we are not the party that put us here. The debtor wants to position that motion as the committee is really the impetus for this motion because if it had just behaved, we wouldn't need the money. And that's just not fair, Your Honor.

Again, we have vehement disagreements about this. But here is where I leave, and I'll leave on a positive note. For the first year and a half of this case, the professionals worked closely and very well with one another. And I think there's a deep respect between them. And I think we can reinvigorate that and try to negotiate a global settlement.

Maybe we won't be successful, but it won't be for lack of trying.

And so what you're hearing from us, Your Honor, is we are prepared to meet anywhere at any time to roll-up our sleeves and negotiate. We may not be starting with the number the debtor prefers. I can assure you we won't be starting with the number the committee prefers.

But we want to go before Judge Sontchi and the other mediators and mediate in private and not air out people's views on who is being the good child and who's not. It's not helpful. We want to be able to be transparent within the mediation, and if we have fear that what we say or what we do is going to be brought before Your Honor, it chills our ability, to just be blunt.

And so that's the takeaway, Your Honor. We are prepared to work in earnest to try to mediate this case. And again, we really do not want to get into a mudslinging contest. This is about where we are today and how to move forward.

THE COURT: Um-hum. Okay. Thank you.

Insurers, or do you want to respond:?

MS. UETZ: I'd like to just very briefly respond.

THE COURT: Yeah. Come on up.

MS. UETZ: Your Honor, the debtor hasn't breached the mediation privilege. We redacted --

THE COURT: Yeah.

MS. UETZ: -- filings with this Court, and I'm just going to leave it at that.

THE COURT: No, I think that -- I think what Mr. Weisenberg was addressing was something that, let's face it, is inherent in every bankruptcy case because it's always about a narrative. It's just, these cases are just about narratives. We're very iterative. We come back to the same points over and over again.

We begin the cases with -- when you think about it, we don't begin with a complaint. We don't begin with the following things happened. I ought to get this relief. We begin with, here's my financial condition. Here's what I care about it. Let's figure out what we do about it.

So what he's asking me is to, to the extent I can, not put some meta narrative on this that casts one party as the good and one party as the bad. I don't think you're trying to do that either.

MS. UETZ: I thought that I fairly moved past that (indiscernible) --

THE COURT: Well, I think everybody has. And I'm taking everybody's statements -- everybody's entitled to comment on we're stuck in here is why I think we're stuck. And I don't have to determine good or bad to get there. And there's a lot of things you're going to say to a mediator you're never going to say to me, and that's perfectly fine.

My job is just to -- is to let you talk. If there's something that sounds like it's a little bit finger pointing to probably ignore it and to focus, as you both are telling me, and I can't tell you how appreciative I am of the fact that you're telling me, that let's look forward.

MS. UETZ: Your Honor, I want to make two points. One is Mr. Weisenberger's (sic) statement with respect to the motion to dismiss being used as a hammer for some perceived leverage over the committee. It is not. We are serious about --

THE COURT: Um-hum.

MS. UETZ: -- ending this case --

THE COURT: Um-hum.

MS. UETZ: -- and I have been consistent

THE COURT: Yeah.

MS. UETZ: -- in my statements to this Court about the timeline for this case so --

THE COURT: Yeah.

MS. UETZ: The other thing I will say related to that --

THE COURT: Well, I mean, I also -- I mean, if I believed that there was some reason to think there was some progress here, even if one side was being a little less positive about it, I can move a hearing. Right. I mean, we don't have to hear this on October 7 or whatever. It's that's

all up -- that's for discussion, correct?

MS. UETZ: Yes, Your Honor.

THE COURT: Okay.

MS. UETZ: Relatedly, it was Mr. Weisenberger (sic) himself who said, pursuing litigation has proven time and time and again to drive consensual resolution between parties at an impasse, the survivors, the debtor, and the insurers at risk, and it is this universal risk which presents the greatest hope bridging the parties differences.

This is my last point. When we keep hearing that they've been begging us to sit down and talk about our assets and the 600 to 700-million-dollar number that Mr. Weissenberg put out, the committee spent millions of dollars pursuing a motion for substantive consolidation. Pursuing discovery. They lost the subcon adversary proceeding. I know it's still up for reconsideration.

THE COURT: Um-hum.

MS. UETZ: That doesn't seem to have changed their view on the case. Again, it's not -- I forget the word that was used. It's not optics. It is a reality that the debtor won't have money. Doesn't think a settlement can be reached presently. And the motion to dismiss was filed because of that.

THE COURT: Um-hum.

MS. UETZ: It wasn't filed as a hammer. We would have

thought there would be a shift and a reality check based on this Court's rulings. Your Honor asked, how can I -- when you were asking questions of the committee, how might we get past this, we would have hoped that some of this Court's rulings on the litigation would help us move past this. It hasn't. It's just detached from the reality of this Court's rulings.

And so the motion to dismiss is real. We are committed to a global mediation, focused on the committee and the insurers, who have barely talked in a year. And I mean that, Your Honor. Someone else can correct me, but I haven't observed it. They've got to get together, or this case will be -- I would predict that outlier case, and not in the way that Mr. Prol and I had hoped when we talked to you two years ago --

THE COURT: Um-hum.

MS. UETZ: -- it's going to be that outlier case that doesn't have a resolution.

THE COURT: Um-hum. Yeah.

MS. UETZ: Thank you, Your Honor.

THE COURT: Okay. Thanks.

All right. Somebody from the insurers want to give me their thoughts about the status?

MR. SCHIAVONI: If I could, Your --

THE COURT: Yeah, you go ahead, Mr. Schiavoni.

MR. SCHIAVONI: And I'm sorry I'm not there in person.

I have a sort of family issue that's kept me here, Your Honor.

THE COURT: Okay. I hope everybody's okay.

MR. SCHIAVONI: I appreciate that, and I appreciate you hearing me on video.

THE COURT: Um-hum.

MR. SCHIAVONI: Your Honor, let me just start with a little good news. So there is press reports running last night from more than one source that in New Orleans, where Judge Sontchi is a mediator, the objecting claimants have dropped their objections to the plan, which is now anticipated to be a consensual plan. The TCC that the committee had supported the plan there. And there was a group of objecting claimants. They're dropping that objection, according to all the news reports. And that will be announced, we believe, in court in the next hour.

THE COURT: Um-hum.

MR. SCHIAVONI: That is a plan that has a pass -- is a pass through component. To the extent parties couldn't agree on values of claims for insurers, the claims just passed through clean.

THE COURT: Um-hum.

MR. SCHIAVONI: The contracts are honored. And getting back to a point. And I know it's a basic point, but I made it before.

On some level, these cases are not really that

complicated. When Congress drafted the provisions of the Code that dealt with charitable bankruptcies, it says that the unrestricted assets of a charity are available to be distributed. Contracts are to be dealt with like in other cases. They're accepted, rejected, or they're passed through whole, as the Supreme Court has ruled. You don't pass through some provisions of them and not others.

In this case, we knew -- I think the committee knew so much about what the assets were before the exclusivity period, the time period ran, that it's remarkable. I mean, an enormous amount of money was spent on it, just like in every case, just like in New Orleans. There were, of course, some gray areas about whether particular assets could be deemed restricted or not restricted.

But as I think Your Honor may have noted at the last hearing, the dollar number of those assets, the delta on them, is not an enormous number. It's not a billion dollars. It was like forty-eight million dollars. And that an adversary was teed up on that.

And in any other kind of proceeding, the parties could handicap the outcome of that, and it would sort of move along quite quickly. And what would typically happen is if the process wasn't moving fast enough, the committee would file its own plan. And the committee would set out, we want the distribution of these assets that we say are unrestricted. And

they'd have to pass through the contracts.

What I think the courts here and other court -- you're really missing about what happens here is that in these types of proceedings, giving a veto, a hundred-percent veto to whether a plan can go forward to just one party, it ends up in a process like we have here, where if one party has all the leverage, nothing happens. You just get unilateral demands for things that are beyond what the Code provides or what a debtor can provide.

The amount of unrestricted assets here is known. If the committee could have filed a plan asking for that, and it would have confirmed it. It can deliver 99.9 percent votes, as has been made clear. The reason that has not happened in these cases is that filing a plan that puts in it please distribute. Please sell the cathedral. Please sell various other assets that are clearly restricted. That type of plan would fail.

It's like, that under 1129, those types of provisions would not be permissible, just like lots of provisions that would deal with sort of modifying in crafty ways how the coverage would work, taking away or limiting the ability to defend would all have that impact that it would make a plan propounded by a committee not confirmable.

We don't see those plans. Instead, the committee stands on its ability to veto, and the committee spends money. And it spends money. It ends up being used as, effectively, a

weapon against the debtor. In Camden, ultimately, forty-four million dollars was incurred as Lowenstein continued and continued to object to everything there. And that alone brings the diocese to their knees, which is what we're seeing here. It extracts an enormous amount out of leverage.

And then they, in a private mediation where everything's under cloak -- and to be clear, I'm excluded from it. So I'm not, like -- I'm not revealing what's happening behind that closed door. But I've been around long enough that it's pretty apparent on what goes into that room and what comes out what's going on in there. And what's going on in there is pressing for restricted assets to be sold and for the contracts to be breached. And we're really concerned about that.

We were concerned from day one here, so much so that we sat down with the diocese. We tried to come up with something here very creative. I brought up from LA our best bankruptcy strategist for how to craft plans. We tried to give them thoughts here for a plan that would pass us through right away that wouldn't incur delay. I mean, talk about risk, putting us at risk. It would have put us at risk this year before Christmas, with all cases going forward in the tort system.

That's a plan we put forward. We thought it was the right thing to do. It took out of it this sort of holding up a charity and a sort of extortion play over an extended period of

time as they were getting hit with massive amounts of fees. And we thought that was the way to proceed.

That is ultimately what has prevailed in where the where the court in New Orleans put a lot of limitations on what could be done. Put its foot down about selling the cathedral. And a plan is sort of going forward there.

So we have spoken to the committee. When I got Ms. Uetz's letter asking us to, we wrote. We said, I've made myself available all through the weekend. And we have communicated. It's not true that there's not communications. It's the problem of just leaving the veto in all in one hand and all the leverage in one hand. The result is predictable. And that's where we are, in my opinion. That's the problem about where we are.

Your Honor, so we're prepared to -- we're prepared to continue to talk. God knows I've dealt in all kinds of situations and including ones that are sort of more difficult than this. But that is a very insurmountable problem when one party has a complete veto.

And just to switch gears just for a second to this coverage action, we do have -- the pleadings are not joined yet in the coverage action. There's no answer filed to the complaint. Judge Corley did set a deadline for filing motions to compel. We're working on those. We have tried intentionally not to have that be a sink for excessive

spending. We've tried to work very hard with the diocese there. To the extent they accelerate that effort, we're going to have to do that. That the notion that they're now going to amend the pleadings and inject more and broader discovery, it does not seem to me to be a wise move. But if that's what they're going to do, that's what they're going to do. We'll deal with that.

Your Honor, otherwise, we're prepared. I've spoken to Judge Sontchi. I've spoken to Judge -- or not judge yet. Tim Gallagher. He's maybe aspires to that, but -- and Judge --

THE COURT: No. Mr. Gallagher, talk to me before you do that.

UNIDENTIFIED SPEAKER: (Indiscernible).

MR. GALLAGHER: I take your unspoken advice, Your Honor.

THE COURT: Thank you. No, it's not advice yet, but --

MR. GALLAGHER: (Indiscernible).

THE COURT: -- an air of views might help you.

MR. GALLAGHER: Yeah. Thank you.

THE COURT: Okay. Thanks.

MR. SCHIAVONI: Thank you, Your Honor. That's all I have.

THE COURT: Okay. Thank you.

Anybody else on the insurance side want to chat? And

in particular, if you want to chat about what you think we do to make this as productive and exercise as we can, I'd be especially interested in that.

MR. JACOBS: Morning, Your Honor.

THE COURT: Morning.

MR. JACOBS: Todd Jacobs for Westport. I'm going to be real brief because I have a lot to say, but I think I've got to say it in the context of the mediation.

THE COURT: Great.

MR. JACOBS: I don't think we can really air it out here in the courtroom --

THE COURT: Yeah. Okay.

MR. JACOBS: -- which is, of course, why I would invite you again to come to the mediation, Your Honor. I am relentless in that regard.

THE COURT: Okay. I appreciate it.

MR. JACOBS: A couple of things. So --

MR. GALLAGHER: Your Honor, I just -- Mr. Gallagher here. I want to give you some advice on that one, too, before you would ever agree to do that.

THE COURT: I appreciate it. Well, you may have heard my comments before.

MR. GALLAGHER: Yes.

THE COURT: Yeah. Actually, apropos of nothing. Okay. Let me pause for a second.

Montali and I had occasion yesterday both to read W.H. Auden's poem In Memory of W.B. Yeats. I won't tell you why. Somebody very near and dear to many people in this courtroom passed away some months ago, and we went to a service. And Montali picked out the line that meant the most to him was talking about Yeats' demise. He became his admirers.

So I take everything you're saying in exactly that spirit, that it's meant in good faith. I am unlikely to change my mind, but I appreciate it. Thank you.

MR. JACOBS: Okay. Appreciate it, Your Honor. As Mr. Schiavoni said, so the insurers did -- we went to the mediation and agreed on a plan --

THE COURT: Um-hum.

MR. JACOBS: -- with the diocese.

THE COURT: Um-hum.

MR. JACOBS: And so it's a little disheartening to hear Mr. Breall say today they're going to file a bad faith claim. And we got his letter, and --

THE COURT: Okay.

MR. JACOBS: -- we'll be responding to the letter. I'll just, my client would be unhappy if I didn't say it's both factually and legally incorrect for the diocese and I think really not a productive thing to be happening.

THE COURT: Okay.

MR. JACOBS: I spoke with Mr. Gallagher yesterday --

THE COURT: Um-hum.
MR. JACOBS: -- about trying to resolve this case --
THE COURT: Um-hum.
MR. JACOBS: -- and I'm not going to tell you what I told Mr. Gallagher.
THE COURT: Okay.
MR. JACOBS: And I trust Mr. Gallagher is likely not going to tell you either.
THE COURT: Okay.
MR. JACOBS: We're trying, Your Honor.
THE COURT: But you're eager to participate?
MR. JACOBS: What? I'm sorry, Your Honor.
THE COURT: You're eager to participate?
MR. JACOBS: We are eager to participate.
THE COURT: Okay.
MR. JACOBS: We have settled -- I think I've told you before, Your Honor. I mean --
THE COURT: Uh-huh.
MR. JACOBS: -- I think people see these cases as intractable.
THE COURT: Um-hum.
MR. JACOBS: And they are hard in a way.
THE COURT: Um-hum.
MR. JACOBS: But we have settled four of these cases on the East Coast now.

THE COURT: Okay.

MR. JACOBS: It is not impossible to do.

THE COURT: Okay.

MR. JACOBS: And I think people should go back to mediation and get serious about it.

THE COURT: Um-hum. Okay. I appreciate it. Thank you very much.

MR. JACOBS: Appreciate it, Your Honor. Thank you.

THE COURT: Mr. Plevin, you want to say a word or two?

MR. PLEVIN: A word or two, Your Honor. Not much more than that. I agree with Mr. Jacobs that there's things to say, but it's subject to mediation privilege.

THE COURT: Sure. Okay.

MR. PLEVIN: I know the debtor's status report says four insurers made offers. And like Mr. Jacobs, I've been in regular touch with Mr. Gallagher. And --

THE COURT: Um-hum.

MR. PLEVIN: -- I expect that will continue.

THE COURT: Okay.

MR. PLEVIN: With respect to the coverage action, I think Mr. Schiavoni made this point. The pleadings are not at issue. I forget whether there's an amended complaint that Judge Corley told us not to respond to or whether there's no amended complaint at this point. But either way, none of the insurers have answered any complaint.

THE COURT: Um-hum.

MR. PLEVIN: I think the current complaint, if there is one, and I think there may be. We were prepared to move to dismiss, and Judge Corley didn't want to go through that process. So we've been going through --

THE COURT: Okay.

MR. PLEVIN: -- document discovery without a complaint and an answer. And I think, if they're going to amend the complaint, I heard Mr. Breall say that he's given the insurer's notice. Perhaps he meant the primary insurers. My client's an excess insurer. I don't think I've received a letter from Mr. Breall.

THE COURT: Okay.

MR. PLEVIN: Maybe it's lost in the mail or in cyberspace or maybe he wants to correct his statement.

THE COURT: Um-hum.

MR. PLEVIN: But I agree with Mr. Jacobs that that would not be a --

THE COURT: Okay.

MR. PLEVIN: -- good development because it will just, if nothing else, engender far more discovery. Far more motion practice. At a time when I don't think the debtor wants to be spending the money on that kind of stuff. And we frankly don't want to be fighting with the debtor.

THE COURT: Okay.

MR. PLEVIN: We are participants in their plan. That was a negotiation.

THE COURT: Um-hum.

MR. PLEVIN: You may remember the very things debtor said at the time expressing gratitude to the insurers for working with them. And we're sticking by that, and we're sticking by the debtor.

THE COURT: Appreciate it.

MR. PLEVIN: Thank you.

THE COURT: Okay. Anybody else on the insurance side want to be heard?

Okay. Well, I'm not sure -- I'm not sure there's a conclusion to this, other than I'm encouraged by everybody's belief that further discussion is going to be helpful and that it should be as -- the constituency should be as broad as possible to get to a resolution.

So is there something anybody thinks I can do that's directive that's within my power that would not harm more than it hurts with respect to what's going to go on over the next two weeks or so?

MS. UETZ: Your Honor, I want to make a statement, and then I'll answer your question, if that's okay.

THE COURT: Okay.

MS. UETZ: The debtor is not optimistic about settlement. I just want to be clear.

THE COURT: Okay.

MS. UETZ: The debtor is committed to attending mediation to support especially the discussions between the committee and the insurers --

THE COURT: Um-hum.

MS. UETZ: -- while its motion to dismiss is pending.

THE COURT: Um-hum.

MS. UETZ: -- But I want to be clear and reaffirm the accuracy, and it's one of the reasons I have Bp. Barber here today --

THE COURT: Um-hum.

MS. UETZ: -- I want everyone to believe us when we say --

THE COURT: Um-hum.

MS. UETZ: -- we filed this motion to dismiss. We do not see a global resolution in hand. And if there's going to be one, it needs to be now. That's my statement.

THE COURT: Okay.

MS. UETZ: To answer your question, what can you do within the next two weeks, I will only say this, Your Honor. I think that I will be speaking with Judge Sontchi.

THE COURT: Um-hum.

MS. UETZ: I expect I will be then speaking with Judge Sontchi and Mr. Gallagher. But first, I need to speak with Judge Sontchi one on one. I have talked with Mr. Prol to

socialize some potential dates. I remember -- I'll say this, Your Honor. In Rockville Center, and folks here were in that case. I wasn't. So I heard about it from other people.

THE COURT: Um-hum.

MS. UETZ: But I think that was the case, at some point, the Court said, I don't care what your schedule is. I don't care that it's August and that you're on vacation. You got to be there.

THE COURT: Um-hum.

MS. UETZ: And if we run into any sorts of delays because of things like that, there needs to be an urgency. We will drop everything --

THE COURT: Um-hum.

MS. UETZ: -- on our side of the table. Everything. And we expect that there's going to be that same level of urgency on the part of all of these other professionals, many of whom have partners in deep benches --

THE COURT: Um-hum.

MS. UETZ: -- to meet. And it's not like we can set some dates in October and November and hope for the best.

THE COURT: Um-hum.

MS. UETZ: So you will hear from me within the next two weeks if the debtor perceives that the stakeholders are not dropping everything to make this a priority and try to meet and settle. I expect you'll probably hear from the mediators as

well.

THE COURT: Um-hum. Okay.

MS. UETZ: But that's what I want to impress on this Court.

THE COURT: Well, let me --

HON. SONTCHI: Your Honor, I'm --

THE COURT: Sorry.

HON. SONTCHI: I'm sorry, Your Honor. This is Chris Sontchi. Maybe I be heard just very briefly on this scheduling issue?

THE COURT: Okay. Go ahead.

HON. SONTCHI: And I'm loathe to say anything, but I will say this. I appreciate two weeks. Et cetera. The High Jewish holidays are going to eat up the last two weeks of this month. It just is. And while I'm sure the Bishop wouldn't want us to schedule something on Easter Sunday, I'm sure my Jewish fellows would not want us to schedule something on Yom Kippur or Rosh Hashanah. So I just want to make -- I want to make that clear.

I have sent dates, albeit not to the insurers.

THE COURT: Okay.

HON. SONTCHI: I'm happy to work with Mr. Gallagher on that.

THE COURT: Okay.

HON. SONTCHI: I have sent some dates, but the first

possible date I sent is just about two weeks out, just so the Court knows.

THE COURT: Okay.

HON. SONTCHI: I will work as hard as I can with --

THE COURT: Okay.

HON. SONTCHI: -- Mr. Gallagher and the parties to do what we can, but we do have some impediments based on the upcoming holidays.

THE COURT: Right. Okay. That's fine. I appreciate it. And we certainly respect everybody's --

HON. SONTCHI: Okay.

THE COURT: -- holidays around here.

MS. UETZ: Of course, Your Honor.

THE COURT: I mean, the other thing I will say is maybe just to sync myself up with you folks, I mean, I came out here today thinking that at any event, if what I heard was, we're not sure where we're going, I was prepared to memorialize what I had said before. We either have a confirmed plan by this date, I won't tell you what it was because it was way more generous than we're looking at right now, or we're dismissing because some things just don't work. And I could be a lot more eloquent about it than that if you gave me several hours, but I won't waste your time. Some things just don't work.

And if we're at the stage where it doesn't work, then we dismiss the case. And then a lot of other things happen,

including a lot of review of fees and so on and so forth. And if we get there, we get there.

But the debtor in the meantime has at least filed a motion. And I mean, I think I'm the choreographer here. I can play around with when it gets heard and when it gets responded to and all kinds of other things.

If I get the impression, certainly, that there is some dilatoriness that could have been avoided, that's an argument for me simply to hear that motion. And I'll just leave it at that. I mean, I'm not making up my mind, but that would certainly go into my thinking about when to hear the motion.

MS. UETZ: May I, Your Honor?

THE COURT: Yeah. Go ahead.

MS. UETZ: I'm going to try to move this forward because candidly, Mr. Prol and I have been communicating during the hearing.

THE COURT: Okay.

MS. UETZ: One of the dates that Judge Sontchi put out was September 30th.

THE COURT: Um-hum.

MS. UETZ: And that is a date that we seem to be coalescing around, including Mr. Gallagher potentially. So I'm just going to put that date out there.

THE COURT: Okay.

MS. UETZ: Everybody's listening to me and hears me.

But it's the debtor's belief that Judge Sontchi, Mr. Gallagher for part or most of the day, and Mr. Prol and I should be available. I'm not holding everybody to it (indiscernible) need talk to --

THE COURT: Well, that's the day to lock yourselves in a room.

MS. UETZ: I'm just saying that's the date that we're --

THE COURT: Okay.

MS. UETZ: -- trying to coalesce around, for what that's worth.

THE COURT: Well, and it's not as if, even with holidays, a lot of work couldn't be done to be ready for that day. Right.

MS. UETZ: And we'll be speaking with the mediators. And I --

THE COURT: Whatever that's going to be.

MS. UETZ: -- am hopeful for that.

THE COURT: All right. And is there anything I can do to help with the process of getting ready? I think the mediators probably know what you need to do, but --

MS. UETZ: I can't think of anything right now, Your Honor.

THE COURT: -- I don't suspect that that's my role. If anybody feels differently, tell me.

Doesn't sound like it. Okay. All right. Well, thank you to all of you.

MR. GALLAGHER: Your Honor.

THE COURT: Yeah. Go ahead.

MR. GALLAGHER: Yeah. Just real quick. Judge Sontchi, are you there?

THE COURT: Mr. Gallagher, just --

HON. SONTCHI: Yeah. I'm here, Tim. I'm here.

MR. GALLAGHER: Yeah. Do you think -- do you think --

THE COURT: Just generally, folks, when you're in a federal court, you talk to the federal judge. Okay. Mr. Gallagher.

MR. GALLAGHER: Your Honor, I'm sorry.

THE COURT: Okay.

MR. GALLAGHER: I'm sorry. I just, as far as --

THE COURT: If you have a question, go ahead and pose it.

MR. GALLAGHER: Yeah, just, the dates to lock them in, should we mention the other dates, just since we have everyone here?

THE COURT: Well --

MR. GALLAGHER: Your Honor.

THE COURT: Okay. I mean, do you have a --

MS. UETZ: If I may, Your Honor.

THE COURT: Do you have a reaction?

MS. UETZ: The reason I mentioned September 30th is that seems to be a date that Mr. Prol and I are trying to make work.

THE COURT: Okay.

MS. UETZ: Whereas October 7th and 8th seem to be dates that may -- we may have to go to the drawing board on dates. I'm sorry.

THE COURT: All right.

MS. UETZ: I'm sorry.

THE COURT: Well, let me --

MR. GALLAGHER: Thank you, Your Honor.

THE COURT: Okay. No, I appreciate it.

Well, listen. Let me ask you this, without meaning to complicate this further. If you're going to be doing whatever you need to do to be ready to have the most productive sessions you can, hopefully on September 30, what are we going to do with the briefing schedule on the dismiss motion?

MS. UETZ: And Your Honor, again, I was hoping to advance the ball toward September 30, but now I've got a note from my client that may be a problem. So we will continue --

THE COURT: Okay.

MS. UETZ: -- apace working with the mediators to try to get dates soonest.

In terms of the motion to dismiss, Your Honor, I'll just say this. We set it for hearing October 7th.

THE COURT: Um-hum.

MS. UETZ: I don't think we're going to have money to pay professional fees pretty soon. And by pretty soon, I mean after this next payment that goes out. Maybe the best thing to do would be to set a status on the motion to dismiss in a couple of weeks, by which time, we should have firm dates for mediation, which can be conducted pending this Court's hearing --

THE COURT: Okay.

MS. UETZ: -- on the motion to dismiss. In other words, we're not withdrawing it. We're not staying it.

THE COURT: Yeah. Okay.

MS. UETZ: Like, we need to move forward with it --

THE COURT: Okay.

MS. UETZ: -- but I recognize the need to caucus.

THE COURT: If it's helpful, I have available the 22nd. 23rd. The rest of the week is -- the 24th is fairly populated, and the rest of the week is a BAP week.

MS. UETZ: Um-hum.

THE COURT: So if you guys want to take advantage of the 22nd and 23rd, I'm all yours. You guys tell me.

MS. UETZ: We could do it by Zoom --

THE COURT: Yeah.

MS. UETZ: -- for the expense to the estate.

THE COURT: But I'm open to that. Okay.

MS. UETZ: I think that would give us some time to talk to the mediators.

THE COURT: That's fine.

MS. UETZ: Talk to each other.

THE COURT: Okay.

MS. UETZ: And get a fix on the motion to dismiss schedule.

THE COURT: I appreciate it.

Okay. Mr. Plevin wants to be heard about something.

MR. PLEVIN: That's Rosh Hashanah, Your Honor.

THE COURT: I'm sorry.

MR. PLEVIN: That's Rosh Hashanah, Your Honor.

S3: Oh, well, that's not going to work.

MR. PLEVIN: 22nd is sundown and all day the 23rd.

THE COURT: All right. Okay.

UNIDENTIFIED SPEAKER: But the 23rd is the --

UNIDENTIFIED SPEAKER: We just need (indiscernible) I mean --

UNIDENTIFIED SPEAKER: -- first day of Rosh Hashanah.

UNIDENTIFIED SPEAKER: Yeah.

UNIDENTIFIED SPEAKER: The 24th is the second day. Not everybody who observes --

THE COURT: Yeah.

UNIDENTIFIED SPEAKER: -- observes the second day.

THE COURT: I'll be traveling that day.

Unfortunately, that's not going to work.

UNIDENTIFIED SPEAKER: But the 22nd by Zoom would probably be best.

THE COURT: Well, okay.

UNIDENTIFIED SPEAKER: Yeah, that would -- yes.

THE COURT: Okay.

UNIDENTIFIED SPEAKER: Before sundown. Yeah.

THE COURT: Great. Okay. I don't plan staying after sundown, no matter how eloquent you guys may be. Okay.

UNIDENTIFIED SPEAKER: Sundown on the East Coast.

THE COURT: Ah, even better. Okay. All right. Thank you. So that's a schedule?

MS. UETZ: Yes, Your Honor. From the debtor's perspective, that's a wrap on our --

THE COURT: All right.

MS. UETZ: -- presentation on the status.

THE COURT: Okay.

MS. UETZ: I would ask, Your Honor, if you wouldn't mind, if Bp. Barber could be excused because I know we still have the hearing on the motion, but --

THE COURT: Yes.

MS. UETZ: -- he needs to be someplace else, if that doesn't offend the Court.

THE COURT: Very good. Okay. Thank you for attending. I appreciate it. And good luck.

BP. BARBER: Thank you, Your Honor.

THE COURT: Okay. Thank you.

MS. UETZ: And Mr. Lee will address the Court on the pending motion.

THE COURT: Well, we're going to take a break.

MS. UETZ: When you're ready, just let me know.

THE COURT: We're going to take a break.

Mr. Weisenberg has something else to tell me?

MR. WEISENBERG: Yes, Your Honor. Mr. Kaplan of Lowenstein, who's on the line, has a scheduling issue such that we'd ask Your Honor, we'd ask the debtor if we can take up the motion to reconsider first, such that Mr. Kaplan could go on with the rest of his day.

THE COURT: Sure. But I want to take five minutes. Okay. All right.

MR. WEISENBERG: Thank you, Your Honor.

THE COURT: All right. Thank you.

HON. SONTCHI: Your Honor, may we be excused?

THE COURT: You're very welcome to stay, but thank you for your wonderful contributions to the status conference discussion. Appreciate it. Thank you very much. Okay.

MR. GALLAGHER: Thank you, Your Honor.

THE COURT: See you guys in about five. Thanks.

(Recess from 11:17 a.m., until 11:24 a.m.)

THE CLERK: Rise. Court is back in session.

THE COURT: Okay. Thanks, and please be seated. And let's go ahead with the motion for reconsideration.

MR. KAPLAN: Thank you, Your Honor. Michael Kaplan from Lowenstein Sandler on behalf of the committee. I apologize for the conflict, Your Honor. My son's bar mitzvah is this Saturday, and I have and amazingly unforgiving schedule this week. And --

THE COURT: Good luck.

MR. KAPLAN: -- that's nothing to do with work.

THE COURT: Okay.

MR. KAPLAN: So I appreciate the accommodation from all.

THE COURT: Sure. Sure.

MR. KAPLAN: Your Honor, the motion we filed is a very narrow motion, insofar as it asks Your Honor to reconsider your ruling on the dismissal with prejudice.

THE COURT: Yeah.

MR. KAPLAN: We cited by example some new evidence that we learned in a deposition that occurred the day after. It by no means was meant to recontest the merits of Your Honor's ruling. That is on appeal, which may or may not be moot based on what we've heard transpire for the first hour and twenty-five minutes today or so of the hearing.

But nonetheless, Your Honor, I want to just briefly address, and then I think the papers kind of lay it out, this

notion that we know everything, and therefore there could never be facts. The reality is, Your Honor, that's just not true. We cited by example some new facts we learned about the sort of management of Adventus the day after the motion to dismiss hearing, which was well after we filed the amended complaint and well after we briefed the motion to dismiss. In fact, Your Honor, you saw in the pleadings related to the next motion you're going to hear that there are some -- there is additional new evidence which may or may not be relevant to the question of these entities being one with respect to Mr. Bardos' role in relation to the entities you're going to hear about next.

Again, we're not here to relitigate the merits of the ultimate decision to dismiss the substantive consolidation complaint. And we're certainly not here to relitigate the notion that we spent millions of dollars doing so.

We took very narrow discovery, Your Honor, in this case with respect to those entities. If you recall, we started off the case in a very cooperative manner. We issued some informal discovery to the debtor, which was handled and responded to cooperatively. Some of it undoubtedly related to those other entities. We then went into an extended period of mediation. We then went into a period where we had a contested confirmation, and the discovery we issued in respect to the contested confirmation, Your Honor, was related to those entities' role as it related to the plant.

So again, there may or may not be facts sufficient that exist in the ether that would warrant us filing a new action. I can't answer that question. But I can tell you, Your Honor, that we are learning each and every time some facts come up here that there is new discovery out there.

If you recall, Your Honor, back at the beginning of the disclosure statement process, the debtor made the statement that they had already produced all of the documents that existed, and we can go through this process very quickly. Confirmation discovery revealed that there was about 50 (sic) to 75,000 new documents that got produced.

Now, I'm not here telling you, Your Honor, that there's anything in particular in those that materially changes this outcome. But what I am saying, Your Honor, is, is that we certainly have already found some new evidence, which we think is related to this issue of whether or not the debtor and the nondebtor affiliates eventually could be substantively consolidated. We respect the appellate process, and we will go through that.

But we do ask Your Honor to reconsider the with prejudice because the with prejudice puts out there that there is never a set of facts that we could achieve. And we are learning, just as recently as yesterday's filing, Your Honor, about the interrelatedness between the debtor and the nondebtor affiliates, which could at some point, could, warrant a filing

of a new action.

The other arguments, Your Honor, contained in the debtor and the nondebtor affiliates' papers, they don't address this point. They seek to relitigate an issue they already won and which will be dealt with on appeal.

I'm happy to answer any questions you have, Your Honor, but other than that, I think our papers frame the issue pretty narrowly.

THE COURT: Okay. Okay. Let me see if I have your thrust correct, and then if I were to look at the world the way you're looking at it practically, what are the consequences of that. Okay.

So I mean, one way to -- one way to envision this would be that we began with a set of facts and a theory that I indicated I didn't think was tenable in light of 303 and the Eighth Circuit case. And what I think I heard probably you say was something like, well, there is another theory available. And the Eighth Circuit, certainly, and arguably, Law v. Siegel, doesn't foreclose a theory that's not based on some broad equitable power of the Bankruptcy Code that runs contra 303. Okay. That's fair.

I thought I heard two things. One, we can reframe this so that it addresses more directly the requirements of alter ego. And we know what we know, Judge. And either some combination of we don't think we need anything else and/or we

don't know anything else. And so in some ways, I might have taken that as this is our hand, and it's the best hand we have. Now, it may be that I wrongly so concluded, and it may be that one shouldn't so conclude in connection with the question of whether to allow amendment or not. And I'm open to those arguments. Okay.

But let's just say, I mean, if I were to be open to it, let's hypothetically say I grant your motion. What's your deadline for amending?

MR. KAPLAN: So Your Honor, I don't think this is a question of necessarily an amendment per se, as if it is the dismissal with prejudice which would prevent -- which could prevent the filing of a new action. So I don't think this is a question --

THE COURT: Okay.

MR. KAPLAN: -- of we have a deadline we're envisioning amending. We are not. It's just that --

THE COURT: Well, let me -- okay. I'm sorry. Maybe I'm getting a little confused here. Were I to grant your motion, I would remove the with prejudice, right?

MR. KAPLAN: Yes, Your Honor.

THE COURT: And when I remove the with prejudice, are you telling me there's some other litigation vehicle that you would commence that would not be another version of this complaint or something else?

MR. KAPLAN: Your Honor, candidly, presently speaking, we are not envisioning another version of this complaint. We aren't envisioning filing a different action. We've taken an appeal of the merits of it. And if --

THE COURT: Okay.

MR. KAPLAN: Right. And if that were to be overturned, then obviously, we'd pursue the litigation. But I think our concern, Your Honor, is, is the foreclosing. And I'm sure that the debtor and nondebtor affiliates would argue persuasively that to the extent we did find another theory, right, or new facts in the future, that we would be foreclosed from filing that action because you dismissed the case with prejudice. They would argue, I'm sure, something like issue preclusion or otherwise on us. And that's how we view the with prejudice.

THE COURT: Okay. That's a little bit different from what I had understood. I think in part, part of the reaction from the debtor is, well, they would amend. And here's what they're alleging, and it doesn't seem to get over the hump any better than the other facts.

And to some extent, to the extent that there's sort of a futility argument here that ties into the with prejudice, the debtor seems to be saying, amendment wouldn't really make any difference because everything they're alleging, even now, still wouldn't be sufficient under the appropriate standards for

alter ego.

But you're suggesting I do something else. You're suggesting I simply somehow reserve. Not make my determination preclusive with respect to some action that isn't yet filed that you don't yet know about. Is that the gist of it?

MR. KAPLAN: Yes, Your Honor.

THE COURT: Okay. I got it. I understand it better. I appreciate it. Okay. Anything else on your end?

MR. KAPLAN: No, Your Honor. Thank you.

THE COURT: I'll certainly let you respond.

Who's going to handle -- yeah. Okay. Come on up.

So am I the only one who didn't understand the thrust of the motion? I thought I had -- I thought I was looking at something else for a minute there.

MR. MOSES: Well, Your Honor, I mean, maybe I might also have -- Shane Moses, Foley & Lardner, for the debtor.

THE COURT: Thank you. Nice to see you again. Okay.

MR. MOSES: Nice to see you, too, Your Honor.

THE COURT: Okay.

MR. MOSES: I think this is maybe not quite how we conceived of it either. And I think the issue there, and I'll get a little more into my argument, but I think the issue is as to this specific question of whether -- versus saying, well, it's not with -- reconsidering the with prejudice and setting a deadline to amend in two weeks or three weeks or whatever.

THE COURT: It is that the way you thought your --

MR. MOSES: That's how I understood it because I think that's what the Rules can see.

THE COURT: Well, I mean, with all due respect to everybody, I think a motion is directed to something that -- an action that the Court did and the action that the Court did related to an -- related to an adversary proceeding.

MR. MOSES: Right.

THE COURT: So I did not connect Mr. Kaplan's request with an overall I may file something totally different in a month or a year or goodness knows when.

MR. MOSES: Well, I think if something he wants --

THE COURT: I don't know how a 60 -- I don't know how a Rule 59 or 60 motion could address something not yet contemplated.

MR. MOSES: I don't think it can.

THE COURT: Okay.

MR. MOSES: I think the issue there is if Mr. Kaplan wants to file something different --

THE COURT: Uh-huh.

MR. MOSES: -- than a renewed complaint at some point in the future, he can do that. And whether or not this ruling is preclusive as to that or not --

THE COURT: Yeah.

MR. MOSES: -- would depend on what exactly that is.

THE COURT: Yeah.

MR. MOSES: But I think the committee as to the dismissal and the dismissal with prejudice --

THE COURT: Um-hum.

MR. MOSES: -- the committee made a decision to file an adversary complaint when it did. When you file an adversary complaint, you have to meet a pleading standard.

THE COURT: Yes.

MR. MOSES: The Court, as it recited, found that, as a legal matter, substantive consolidation on general equitable basis wasn't --

THE COURT: Available.

MR. MOSES: -- available.

THE COURT: Um-hum.

MR. MOSES: The committee argued that its original complaint set forth alter ego. The Court found that it wasn't really alleged, alter ego wasn't really alleged in the original complaint and said --

THE COURT: But --

MR. MOSES: -- you have one -- you have a shot.

THE COURT: All right. Sure. Uh-huh.

MR. MOSES: Make your best shot.

THE COURT: Uh-huh.

MR. MOSES: The committee made its best shot.

THE COURT: Yeah.

MR. MOSES: The Court found that it still didn't meet the pleading standard. And I'll get a little more into this, but I think for this purposes, I'll just say decided that it wasn't met and that because it wasn't met on these circumstances, dismissal with prejudice was appropriate.

It is a reality of the federal litigation system that when a complaint is dismissed without prejudice, the plaintiff needs to replead and see if they can meet the standard. And when it's dismissed, ultimately, with prejudice, that's a final determination.

THE COURT: Um-hum.

MR. MOSES: It is always a reality in any complaint in any circumstances, bankruptcy or not, that additional facts might someday be discovered in the future that if they had been included in the complaint would have allowed it to meet the standard.

THE COURT: Um-hum.

MR. MOSES: That doesn't mean the need for finality in the system requires that dismissals, when it's clear that amendment isn't going to fix it, be with prejudice. And that's notwithstanding the fact that it's always possible that some fact discovered sometime in the future --

THE COURT: Um-hum.

MR. MOSES: -- might change the circumstance. So I just don't think there's a basis --

THE COURT: Yeah. That's the point of my question. When would you --

MR. MOSES: -- to leave this wide open.

THE COURT: When would you amend? Do you want to amend in six months? Do you want --

MR. MOSES: I don't think we can do that.

THE COURT: Well, but that's --

MR. MOSES: Your Honor, either the committee wants to amend now, or they don't.

THE COURT: Yeah.

MR. MOSES: And if they want to appeal, now that's a different question. They have their rights on appeal.

THE COURT: Well, they have. And that's fine.

MR. MOSES: They have their rights on appeal.

THE COURT: Yeah. I mean, and I don't -- do you understand Mr. Kaplan to be arguing that if I somehow grant this motion, the appeal is moot? I'm not hearing that.

MR. MOSES: No, but I think --

THE COURT: All right.

MR. MOSES: -- that's a fair question. I would certainly reserve our rights to argue that it is.

THE COURT: Okay.

MR. MOSES: I haven't analyzed that because I didn't realize --

THE COURT: All right. Well, I mean, that's up to him

in the first instance.

MR. MOSES: Yeah.

THE COURT: Okay. I have a question that I want to ask Mr. Kaplan, and I want his answer before yours. So if you have anything else, go ahead. Okay.

MR. MOSES: I have a fair amount else.

THE COURT: Go ahead.

MR. MOSES: But if you want to go ahead and --

THE COURT: No, no, no, no, I want to go ahead and let you finish. I interrupt people plenty around here, and I want to let you finish.

MR. MOSES: I mean, I'm going to try to keep this relatively brief. Mr. Kaplan did. And I do think --

THE COURT: Yeah.

MR. MOSES: -- it's a fairly straightforward situation.

THE COURT: Okay.

MR. MOSES: But there are a few points I want to make. Especially on the reply, the committee frames this as a question of when dismissal with prejudice is appropriate.

THE COURT: Um-hum.

MR. MOSES: I don't think that's the correct framework. The question before this Court is not whether to dismiss the complaint with prejudice. The Court already made that decision. The question is whether to reconsider under

Rule 59 or Rule 60 the prior decision.

I point out that distinction because of that focus on the standard for -- and the committee's reply on the standard for dismissal with prejudice. The committee relies specifically on the Eminence Capital decision --

THE COURT: Um-hum.

MR. MOSES: -- which was a review on appeal of a dismissal. That reliance is misplaced because Eminence Capital sets forth the review on appeal of a dismissal with prejudice. And again, the committee has its rights there. But that's not what's before the Court. The time for the committee, frankly, to have made those arguments was in its objection to the motions to dismiss.

THE COURT: Okay.

MR. MOSES: That was when whether or not -- and to be clear, Your Honor, in both the debtor's motion to dismiss, the debtor argued extensively that repeatedly the dismissal should be with prejudice.

THE COURT: Um-hum.

MR. MOSES: The committee -- did I say the committee argued? The debtor argued, if I said the committee. The debtor argued the dismissal should be with prejudice. In its opposition, the committee didn't really address that. Again, on reply, we emphasized it should be with prejudice. The Court ultimately decided. So we're past arguing what the standard

for dismissal with prejudice is. That's appropriate for appeal.

What we're looking at here is what the standard is on a motion to reconsider. And in particular, we lay it out in our papers on the motion to reconsider that's based on newly discovered evidence, which is fundamentally, no matter how we're framing what the relief is requested, that's what this is.

THE COURT: Well, I was wondering if maybe they thought there's a mistake-by-the-court argument here, which is kind of where I was going with my little narrative with Mr. Kaplan. And I would have been prepared to listen to that.

MR. MOSES: I suppose. Well, to the extent they are arguing that --

THE COURT: Um-hum.

MR. MOSES: -- I would note that they cite a provision of -- they cite Eminence Capital for the principle that --

THE COURT: Yeah.

MR. MOSES: -- a dismissal with prejudice is reversible if the Court doesn't articulate its basis for the dismissal with prejudice.

THE COURT: Um-hum.

MR. MOSES: I just would point the Court to a case called In re: Cloudera Inc. It is 121 F.4th 1180. And that's a Ninth Circuit decision from 2024. And it addresses that

point of Eminence Capital, the Ninth Circuit does in that decision and distinguishes it, finding that the basis for dismissal was with prejudice, where it was clear from a prior decision that dismissal potentially would be with prejudice if the plaintiff failed to adequately plead and further round, and that based on that, those circumstances, the court had -- the eventual dismissal with prejudice was adequately explained by the trial court.

THE COURT: Okay.

MR. MOSES: So I think in stating, Your Honor, when you dismiss with prejudice that the dialog we had last time with the committee is that they were prepared to provide everything they had by way of factual background in support in this complaint, and I'm going to take them at their word, under those circumstances, that fits slightly with that Cloudera decision I cited in terms of the mistake issue.

THE COURT: Well, that's what I thought I was doing, but people may not agree about that. So I appreciate it. Thank you. Okay.

MR. MOSES: Yeah. Regarding the newly discovered evidence and reconsideration on that basis --

THE COURT: Um-hum.

MR. MOSES: -- the factors there, and we lay it out, are whether or not there's evidence that it was subsequently discovered. Whether or not it could have been discovered with

due -- whether or not exercise of diligence would have resulted in it being discovered earlier --

THE COURT: Um-hum.

MR. MOSES: -- and whether or not it's of such magnitude that it would likely have changed the outcome.

Now, I know Mr. Kaplan mentioned, every day there's more, but I don't think it's appropriate for a court to consider on deciding a motion the possibility that there's other stuff out there somewhere, especially in reference to the other motion that's pending today regarding CCSS.

THE COURT: Um-hum.

MR. MOSES: That wasn't even a defendant. That entity wasn't a defendant --

THE COURT: Um-hum.

MR. MOSES: -- in this decision. Neither the dismissal nor this decision is relevant to that entity.

But with regard to the facts that the committee actually identified, I won't spend a lot of time because I think we addressed --

THE COURT: Yeah. Um-hum.

MR. MOSES: -- this issue in our papers, and the nondebtor defendants it as well. And Mr. Manns, I'm sure, will address these points too. But --

THE COURT: Um-hum.

MR. MOSES: -- those five factors were -- as we said

in our papers, they're either things, the nature of Adventus as a holding company, that had been disclosed for years, or they're things that could have easily come out in discovery. There were two years of informal discovery. Yes, it was informative. Yeah. Informal. Yes, it was cooperative. But it was two years. Tens of thousands of pages. Thousands of documents. It involved nondebtor entities. If there issues about the nature of the management and directors of Adventus or the operations of Adventus the committee thought was important before it pled a complaint for alter ego or substantive consolidation, it could have -- it could have obtained it, and it simply didn't.

And finally, on the magnitude that it would change the outcome, again, we address this in our papers, and I won't belabor it. But I do think it's very important, in addition to the focus on the entanglement aspect, which has been the focus throughout the Court, and the control aspects, the Court also dismissed with prejudice on the basis that there was a failure to adequately plead the fraud or injustice prong.

THE COURT: Yeah.

MR. MOSES: None of these factors go to that.

THE COURT: Yeah. Understood.

MR. MOSES: So --

THE COURT: Okay.

MR. MOSES: And one final point I want to make is just

that this motion asks for relief as to three defendants. All three non -- well, four, if you count the debtor, but all three nondebtor defendants. It only addresses one. There's not even a mention of the other two other than, do I name them in the beginning, perhaps.

THE COURT: Okay.

MR. MOSES: So I think, overall, there's no basis as to any defendant. But I do have to note --

THE COURT: Okay. Appreciate it.

MR. MOSES: -- that's not addressed so --

THE COURT: Okay. Thank you.

MR. MOSES: Thank you, Your Honor.

THE COURT: All right. Anybody else want to be heard for responding parties?

Hi.

MR. MANNS: Thank you, Your Honor. Ryan Manns, Norton Rose Fulbright, on behalf of the nondebtors --

THE COURT: Okay.

MR. MANNS: -- RCC, Adventus, and RCWC.

THE COURT: Okay.

MR. MANNS: I'll be brief and do my best not to duplicate what Mr. Moses has done.

THE COURT: Okay.

MR. MANNS: Your Honor, I go back to the Court's ruling on August 8th, where the Court delivered an extensive

ruling. And at the end of the ruling, the Court noted, we have exhausted this vehicle. That was true then, and it's true now.

THE COURT: Um-hum.

MR. MANNS: We need finality here is really the punchline.

THE COURT: Um-hum. Um-hum.

MR. MANNS: And the committee is really asking for an unlimited ability to amend its complaint if it chooses to. And that's just not supported by the case law. It's not supported by the facts. It's not supported by the Federal Rules.

THE COURT: Okay.

MR. MANNS: And so from our perspective, I just want to speak directly to the facts. And we've attached as exhibit A to our objection --

THE COURT: Um-hum.

MR. MANNS: -- some testimony from Mr. Bardos with some corresponding references to either documents that have been produced or cites from pleadings, the first day declaration, the plan --

THE COURT: Um-hum.

MR. MANNS: -- and disclosure statement, other pleadings that address instances where these facts were disclosed. And so I don't agree with the comment that these are new facts because we can point specifically to several instances where these facts were disclosed.

And just briefly, Your Honor, so just going back to the reconsideration standards, we don't have new evidence here. There's no clear error. And there's no intervening change in the controlling law. And so I don't know how they get there --

THE COURT: Okay.

MR. MANNS: -- on any reconsideration grounds.

THE COURT: Okay. Thank you.

MR. MANNS: And beyond that, Your Honor, I'm happy to answer any questions the Court might have.

THE COURT: No, I've got one for Mr. Kaplan. But no, thank you. I appreciate it.

MR. MANNS: Thank you, Your Honor.

THE COURT: And thanks for your very good papers.

Thanks to all of you for your very good papers.

Okay. Mr. Kaplan, as I now better understand the relief that you're seeking, if it's not necessarily dispositive of the issue whether you should be able to amend this complaint, I mean, put aside whether it moots the appeal. That's up to you. If you think it did, fine. If you think it didn't, fine. Judge Corley, I'm sure, will be delighted to hear all the great arguments.

But if this motion effectively isn't directed to something that would lead to an amendment of this complaint, why isn't it moot? And I guess, secondly, if what it's directed to is a concern that you may be foreclosed in the

future, why isn't it an advisory opinion on what's the preclusive effect of this with respect to facts and claims we don't yet know?

MR. KAPLAN: Thank you, Your Honor. So at the time of listening to the argument to sort of help, the with prejudice is preclusive insofar as us being able to seek leave to refile this complaint sometime within the applicable statute of limitations or in the time frame in which the committee exists. So to answer the sort of notion of when, it's not imminent. It's not two weeks from now. We're not going to come back to the Court right now and say, we have this one or two additional facts, and we're going to refile. But the with prejudice precludes our ability to seek that leave to amend at some appropriate time in the future of this complaint. Right. And (indiscernible) --

THE COURT: Okay. I had understood you differently from the opening part of the argument. Okay.

MR. KAPLAN: Right. But I think, that said, Your Honor, I was listening to Mr. Moses and Mr. Manns, both of whose arguments I appreciate and Your Honor's questions to think about that.

THE COURT: Um-hum.

MR. KAPLAN: And I don't know that I answered it exactly accurately in the beginning. So I just want to make sure that I'm --

THE COURT: Okay. I appreciate it.

MR. KAPLAN: -- (indiscernible) but I do -- but I think, beyond that, Your Honor, there is a potential preclusive effect with respect to some other action. I think the difference here that it really seems to be lost on the -- there's a couple of differences between this litigation, as everyone probably knows, and others.

Number one, the committee only exists so long as the committee exists, and the adversary proceedings only exist so long as the main case is with us. Right. And so that is not going to be -- so the notion that there is some indefinite period in the future in which this case exists is just, it's an incorrect narrative of sorts.

There's also statute of limitations. Right. So there's only so long in which you can bring certain claims and otherwise on it.

And lastly, Your Honor, there's this concept that the committee had all this discovery. Right. And so therefore, we should have been able to plead this. But as Your Honor well knows, normally in civil litigation, as my colleagues just referenced, you plead first. You do discovery next. You come before the Court on a different standard to determine whether things survive.

So I've heard time and again about we had all discovery. We had two years. We should have done X. We

should have done Y. We should have done this. And maybe that's more right for Judge Corley to hear, Your Honor (indiscernible) --

THE COURT: Well, yeah. I mean, one of your better arguments may be it was premature to dismiss. We should have gone into discovery. I absolutely hear that. That's not the way I ruled, but I hear it. Okay.

MR. KAPLAN: Yeah, absolutely. And we follow the process on that.

THE COURT: Yeah.

MR. KAPLAN: I think, Your Honor, again, the preclusive effect here is, with respect, at least to this case, and again, I fully anticipate the debtor to make very, very good arguments about how this could preclude another adversary proceeding of sorts. Right. I have no doubt that we would hear that to the extent that we filed another adversary against one of the entities seeking a release today, I'm sure we would hear that we had our opportunity and it should have been brought in this litigation and we're precluded. And Mr. Manns undoubtedly will represent them and will do great advocacy.

But with respect to this issue, Your Honor, is the notion that we did. We heard Your Honor loud and clear. And I don't want to dispute for a second that you did not tell us to come with everything we had that second time.

THE COURT: Yep. Yep.

MR. KAPLAN: Never would do that, Your Honor. You did. You told us to do that. And we did with everything we had.

But also, since that time, Your Honor, since we replead it, and certainly, since we argued it and otherwise, there has been additional discovery. There has been additional enlightenment. And all we're asking, Your Honor, is to say, hey, it's dismissed. That is finality. Whether it's dismissed with prejudice or without prejudice, it's finality. If it were dismissed without prejudice, we would still have to come before Your Honor and seek leave to reopen the case and file an amended complaint if we had the bases to do so.

And I'm sitting here today, Your Honor, telling you candidly that as we sit -- as we are today, we do not. We don't have an intention to refile that at the moment. But we do recognize that aspects of this case may be ongoing.

THE COURT: Okay.

MR. KAPLAN: And at that time, if we thought the basis existed, we would file a motion for leave to amend and ask Your Honor to consider it. And you would hear futility and timing and all those things at that time.

THE COURT: Okay. I appreciate it.

MR. KAPLAN: (Indiscernible) with prejudice.

THE COURT: Okay. Thank you very much.

Anybody else want to be heard on this?

Okay. If for no other reason than that I think I now better understand than I had understood a couple of nuances in the committee's argument, I want to think about this a little bit because it's just presenting a little bit differently than I had thought. So I'm going to take it under submission, and I'll get you guys an answer as soon as I can.

And thank you for your good arguments. And thank you, particularly, Mr. Kaplan, for articulating slightly differently what I thought the relief was. That's very helpful. Okay. So thank you very much.

Okay. So that matter's submitted. Do you guys want to go forward with the third motion, or do you want to take a break? What do you want to do? I'm good. Either way, you guys tell me.

UNIDENTIFIED SPEAKER: (Indiscernible).

THE COURT: You want to go forward? Okay. That's great.

By the way, thanks, Mr. Kaplan. And all the best on your other obligations.

MR. KAPLAN: Thank you, Your Honor. And with that, I'd ask permission if I may be excused.

THE COURT: Thank you very much. And good luck this weekend. Hope everybody performs to the best of their abilities.

MR. KAPLAN: If they don't, it's going to be a much

longer day.

THE COURT: Okay.

MR. KAPLAN: Thank you.

THE COURT: Thank you.

MR. LEE: Morning, Your Honor. Matt Lee for the debtor.

THE COURT: Yeah.

MR. LEE: Here today on the debtor's motion for entry of an order authorizing the release of the debtor's interest in Catholic Church Support Services, Inc. under Sections 105 and 363 of the Bankruptcy Code, and to approve two pledge agreements that the debtor has conditionally entered into.

THE COURT: Can I see if we can agree on what this isn't about because I think that's part of what the discussion is; is that okay?

MR. LEE: Absolutely, Your Honor.

THE COURT: Your position would be the relevant entities are not members of an association in a way that would trigger some of the concerns expressed in California law, number one. Number two, this is not the sale of a membership or rights therein.

MR. LEE: Both of those are correct.

THE COURT: Okay. It's got to be -- I mean, if by sale, we meant the disposition of all rights, okay, it's not a sale. But it's a disposition of some rights. Right. So

that's why 363 is implicated.

MR. LEE: So to be perfectly --

THE COURT: So I just want to narrow down on what that is because I think that's going to help us a lot.

MR. LEE: Sure. So to be perfectly honest, the debtor debated whether Section 363 even required us to file this motion.

THE COURT: Uh-huh.

MR. LEE: We're not selling anything. We're not leasing anything. We ultimately decided to take the broadest possible view --

THE COURT: Um-hum.

MR. LEE: -- of the word use --

THE COURT: Um-hum.

MR. LEE: -- of property of the estate because we are using this board right to in CCSS, and we're essentially, we're not trading it, but we're giving it up --

THE COURT: Um-hum.

MR. LEE: -- in exchange for one time promised pledges from not only CCSS itself --

THE COURT: Um-hum.

MR. LEE: -- but its business partner, Roman Catholic Cemeteries of the Diocese of Oakland, which I'll call RCC, for purposes of this argument.

THE COURT: So let me follow up with a couple of

things that I maybe help us narrow it even further. To the extent that what this accomplishes is some sort of a transfer with respect to rights between parties who have a legal relationship right now, and it's a fairly unique one, the marketplace concept is irrelevant. Right. I mean, it's not as if anybody else -- it's not that they don't care. They're not in a -- they're not under contractual or other relationship that would be relevant here. The only way to look at this is with respect to the relevant legal relationship, which is between the debtor on the one hand and the two entities on the other; is that fair?

MR. LEE: Completely fair. Literally --

THE COURT: Okay. So --

MR. LEE: -- the only way a transfer of these rights could be accomplished --

THE COURT: Yeah.

MR. LEE: -- is when the debtor's Chapter 11 plan becomes effective and it gets transferred to the reorganized debtor.

THE COURT: Well, and nobody else is in a position to access these rights --

MR. LEE: Right.

THE COURT: -- one way or the other, right:?

MR. LEE: Correct.

THE COURT: So now I get down to my stupid question.

Okay. If this is a sale or a use, to the extent that we have the right to arguably restrict something, and we're not going to exercise that anymore. I mean, that's the way I think I was trying to process it through my head that the relationship is such that it's -- and you're going to -- this is probably horribly simplistic so you're going to correct me. It's a relatively exclusive relationship, and there are benefits that accrue from these entities paying attention to and maximizing the opportunities to both perform very necessary services to the folks who -- the bereaved, to whom it means a lot, and to do it in the connection -- in connection with this entity and no other.

If you're basically, through the relinquishment of a board seat and the easing of that restriction, you're making it possible for the other entity to go off and do great things, is one measure of what should be paid for this -- what that entity -- what that counterparty gets in connection with that, as in they're off now, and now they can contract with five other entities, is that the way to look at it, or if not, why not?

Now, maybe you wouldn't know that. Maybe that's so speculative, you would say we could never -- we couldn't define it that way.

MR. LEE: Well, I don't think the motivation for CCSS to do this --

THE COURT: Uh-huh.

MR. LEE: -- is really very relevant. I think the question is, is this a reasonable exercise of the debtor's business judgment with the assets -- with the asset that it is giving up, if you want to call it an asset.

THE COURT: Well, but that's my worry is what kind of a finding am I going to make to get there? What's my finding? I mean, what was traded for what, and why was that reasonable?

MR. LEE: Well, there's no -- I mean, there's no market to test for this.

THE COURT: No, I'm with you there. I'm with you there. But if what there is, is somebody's walking away with a right they didn't have before or the right to exploit something they didn't have before, that's worth something. Is that the way to look at this?

MR. LEE: Well, but that's not what's happening here.

THE COURT: Okay, then correct me.

MR. LEE: Nobody's walking away from the right to exploit anything. And this is one of the things I --

THE COURT: No, no, I know. I'm sorry. The way I understand this, so you got to correct me if I'm wrong about this, is that at least CCSS now has the ability more broadly to market services that it wouldn't have had without this deal; is that fair?

MR. LEE: That's correct, and that's --

THE COURT: Okay. So that is monetizable, right? You could say, okay, maybe you'd be guessing at what that's worth, but wouldn't that be the first way to look at it?

MR. LEE: It's monetizable to CCSS.

THE COURT: Yeah.

MR. LEE: It's not monetizable at all to the debtor.

THE COURT: No, well, I understand. But if the debtor could prevent them from doing it, the benefit to CCSS is that that restriction is no longer there.

MR. LEE: Well, I mean, that's exactly why CCSS is making a pledge of five million dollars to --

THE COURT: But why is that the right number is my -- so maybe I'm totally missing the point here. But if what's happening -- I mean, I agree with you. The market is not a relevant concept. This is strictly between these parties.

But if the benefit to CCSS is now, I can go off and more broadly market my services, exploit my capabilities, whatever it is, that is what they're getting. And it's worth something over a year. Three years. Five years. So is that the right way to look at this? If you're saying it isn't, tell me why.

MR. LEE: Well, I don't think it is --

THE COURT: Okay.

MR. LEE: -- and the reason for that is that CCSS only has the business it has now. It doesn't know if it's going to

go get all the -- secure all these other accounts.

THE COURT: So would you be saying is that it would be speculative to measure this by what they might get as a release of the restrictions?

MR. LEE: Yeah, absolutely. I mean, the debtor's not --

THE COURT: Okay.

MR. LEE: -- in a position to do, like, a market study --

THE COURT: Well, you could also -- and I'm sorry to interrupt. You could also tell me what I think you were saying before is there's no contractual connection. It's not as if they get that, and they would owe it to the debtor.

MR. LEE: Oh, correct.

THE COURT: That's the fundamental point, right?

MR. LEE: DCSS owes us nothing. RCC owes us nothing --

THE COURT: Okay.

MR. LEE: -- except under its ground leases.

THE COURT: But to the extent that CCSS is better off here, one could argue that what you should have articulated is assuming that that's something that CCSS wouldn't get otherwise and now they're getting it, would that be a measure for what is paid in connection with easing that restriction.

MR. LEE: All I can tell --

THE COURT: And what you're saying is that's just too speculative.

MR. LEE: Well, I'm saying it's too speculative.

THE COURT: Yeah.

MR. LEE: I'm also saying that --

THE COURT: It's non sequitur in the sense that the debtor has no right to that one way or the other.

MR. LEE: Well, yeah. I mean, that's another point --

THE COURT: Okay.

MR. LEE: -- in favor of the motion.

THE COURT: Okay.

MR. LEE: But I think the other thing is that, look, if you look at just traditional 363 principles, this was the product of an arm's length transaction. Okay. Approved by CCSS' board offered to the diocese.

THE COURT: Um-hum.

MR. LEE: Offered to the debtor. And accepted by the debtor. All right. There's absolutely no evidence that this was anything other than that. And so if the debtor is taking this asset that is not worth -- that it cannot sell to anybody for any amount of money. Okay. Either under California law or as a matter of practicality. And given, Your Honor, as Your Honor pointed out, the speculative nature of --

THE COURT: Well, I didn't point it out. You did. I wasn't sure.

MR. LEE: The speculative -- sorry.
THE COURT: But you're telling me.
MR. LEE: The speculative, I guess you repeated what I pointed out.
THE COURT: Well, I mean, I assumed that was going to be the argument, and I'm not surprised it is but --
MR. LEE: It would take months and months and months to determine what the value of --
THE COURT: Yeah.
MR. LEE: -- independence is to CCSS.
THE COURT: Um-hum.
MR. LEE: What the debtor knows -- here's what the debtor knows. The debtor knows that it is out of money.
THE COURT: Yeah.
MR. LEE: And it may very --
THE COURT: Well --
MR. LEE: If the Court denies this motion, it may very well be out of money by the end of October.
THE COURT: Okay.
MR. LEE: Okay. That's one thing the debtor knows.
The other thing the debtor knows is that RCC, the position in whom the debtor is not altering at all.
THE COURT: Um-hum.
MR. LEE: Okay. Threw in 3.75 million dollars because RCC sees a business benefit to CCSS getting this --

THE COURT: Yeah.

MR. LEE: -- greater independence.

THE COURT: Yeah. Sure.

MR. LEE: CCSS obviously sees the benefit as well. This is 8.75 million dollars that the debtor has absolutely no right to under any contract, except for the pledge agreements, and it is in exchange for something that the debtor, in its business judgment, decided that it can give up.

The nondebtor Catholic entities in this case, there's nothing about the bylaws for CCSS or the way the debtor interacts with CCSS that's really any different than any of the other nondebtor Catholic entities in this case. They are under the thumb of the debtor only to the extent that they are required as a matter of canon law, and the bishop is required as a matter of canon law to make sure that they advance the principles, the morals --

THE COURT: Um-hum.

MR. LEE: -- the ethics, and the ideals of the Roman Catholic Church.

THE COURT: Um-hum.

MR. LEE: Okay. And the way that -- the way that functions, the way that canon law and civil law intersect on that point, is you set up the separate entity. Got its own bank accounts. Its own articles. Its own bylaws.

THE COURT: Um-hum.

MR. LEE: Its own board.

THE COURT: Um-hum.

MR. LEE: Its own existence.

THE COURT: Um-hum.

MR. LEE: Okay. And then the bishop -- this is true of -- this is true of all of the entities --

THE COURT: Um-hum.

MR. LEE: -- that the committee brought its subcon adversary on. CCSS is no different. The bishop has the right to appoint the majority of the board, and then he has essentially a veto right over anybody else that the CEO brings to him. And the reason he does that is so he can ensure that he's fulfilling his canon law obligations.

And there's absolutely nothing in the bylaws that give the debtor the right to just pull money out of CCSS. The only thing the debtor has the right to do is approve loans to CCSS so that they don't get overextended, to appoint the majority of directors, and then to approve the directors in the minority that the CEO brings.

THE COURT: Um-hum.

MR. LEE: Has the power to remove directors. It has the power to have its CFO sit ex officio on the advisory investment committee, just to make sure it doesn't make any donations to abortion providers or something like that.

THE COURT: Um-hum.

MR. LEE: And it has to grant its approval before the bylaws are amended. And so that's what this motion is about is the debtor approves the amendment of this bylaws.

And I think the debtor reasonably exercised its business judgment in entering into these transactions because in the debtors view, and this was kind of the threshold question. And we wouldn't be before you if we hadn't done this. CCSS is probably going to continue -- as the cemetery management services consultant is probably going to uphold the -- continue to uphold Catholic principles, whether these board rights are there or not.

So it was an extra -- the current edition of the bylaws create an extra layer of sort of security for the church in terms of ensuring the advancement of the Catholic mission and Catholic principles that the bishop in his business judgment --

THE COURT: Um-hum.

MR. LEE: -- determined he didn't need. And so once that decision was made, the analysis turned to, okay, what's the economic reality of this.

THE COURT: Yeah.

MR. LEE: What is this asset -- what are these board rights worth? Well, they're not worth anything. We literally cannot monetize them.

The debtor doesn't have any contractual right to these

pledges. It doesn't have any contractual right to annual donations to CCSS. It's just that, and the evidence is undisputed on this, CCSS gives -- has sort of historically the last few years -- it hasn't been around that long, but it hasn't always done this. It's given fifty percent --

THE COURT: Okay.

MR. LEE: -- of its profits. After it's paid all its expenses, because it's a nonprofit, it has to --

THE COURT: Yeah. Yeah.

MR. LEE: -- it has to give its money away. It gives half of it to RCBO, and it gives half of it to other organizations. We have no inkling. And Mr. Bardos sits on the board of CCSS --

THE COURT: Um-hum.

MR. LEE: -- as an ex officio member. As an ex officio representative of the debtor. There's absolutely no reason in Mr. Bardos' mind, and he has personal knowledge of this, that that is going to dry up. It may not be fifty percent.

THE COURT: Um-hum.

MR. LEE: May be some other number. But there's nothing suggesting that CCSS is going to stop giving the money. And that's not a condition of the pledge agreements.

And I just, my friends and I have this joke about free money. What is free money? Free money is something where --

is a situation where you get money for doing something that's such a no brainer, you not even really giving anything up. This is free money to the debtor, and the debtor really needs the money.

THE COURT: Let me play something back to you and then ask a question. What occurred to me and what I think you at least indirectly addressed in the last couple minutes is one way to look at this is, is the debtor worse off to the extent that CCSS is now able to go off and do its consulting business in other venues? And will the debtor suffer by that lack of attention?

It sounds like, number one, to the extent anybody can know that, the bishop's conclusion is the answer is no. There's no evidence that that's going to be a harm to the debtor. And two, if it were, you tell me it's not economic. And it's really, that's totally the bishop's call. Is that fair?

MR. LEE: It's completely fair. Yes.

THE COURT: Okay. I understand that. To what extent does this turn on how much you need the money? I mean, I'm not even sure I care about that that much.

MR. LEE: It is not -- it is not an independent reason to grant the motion.

THE COURT: Okay. I mean, it's another thing for me to be aware of in the course of the case, but it's not as if

you couldn't do this if you were not in dire straits economically; is that fair?

MR. LEE: Probably not.

THE COURT: Okay.

MR. LEE: But that's the situation we're in.

THE COURT: Okay. I understand.

MR. LEE: I mean, when we stood before --

THE COURT: Yeah.

MR. LEE: When we stood before you in July --

THE COURT: Yeah.

MR. LEE: -- and said, look, we've got to pause the plan confirmation process so we can go sell assets --

THE COURT: I asked you, what's the plan B, and the answer was, we don't know yet. So I mean, here's plan B, right?

MR. LEE: This is step one of plan B.

THE COURT: Got it.

MR. LEE: And I can't remember if this is in -- I know this is in the status conference. I don't remember if --

THE COURT: Yeah.

MR. LEE: -- Ms. Uetz addressed it --

THE COURT: Yeah.

MR. LEE: -- but I mean, we've engaged Century Urban to help us --

THE COURT: Yeah.

MR. LEE: -- with our real estate sales.

THE COURT: Yeah.

MR. LEE: I think there's properties listed. I don't remember the details of that.

THE COURT: Got it.

MR. LEE: That wasn't part of my --

THE COURT: Got it. Well, it's arguably responsive to my question what's plan B. That's all I need to know.

MR. LEE: Yeah. And --

THE COURT: All right.

MR. LEE: -- it also sort of encapsulates how astounding we think the objection to the motion is because --

THE COURT: Well, let me play back the central thesis and see if I have it right. Okay.

This is on some -- 363 is implicated here because this is either a sale to the extent that it's a transfer that releases a restriction that the debtor could otherwise enforce, but it's not one that could be measurable by a marketplace because not only is there no general market for these services that would be relevant here, but the only party who could enforce it -- the only party who can enforce any rights are these counterparties. Nobody else can do so. Right. So the market concept is not a relevant concept for judging whether five million's the right number or not.

Secondly, I think what you're telling me is there's

nothing else that's readily available that isn't totally speculative that would be a measure of this. And so therefore, what happened is two parties who were under no compulsion to do so got together and came up with a number. And if it's arbitrary, it's arbitrary. Is that about it?

MR. LEE: Disagree that it's arbitrary. There was some consideration.

THE COURT: Well, then what was -- well, what was the what was the back and forth then?

MR. LEE: I don't know what's in the -- sitting here today, I'm not sure what's in the record but --

THE COURT: Well, by arbitrary I mean, if you settle on five million, it's not with reference to some market factor because there isn't one.

MR. LEE: That's correct.

THE COURT: And it's not with reference to some future ability to earn more money because we don't know that.

MR. LEE: That's correct.

THE COURT: In that sense, it's arbitrary. The normal things that you would look at to measure the benefit here are not relevant concepts; is that fair?

MR. LEE: I mean, if this were a commercial case, yes.

THE COURT: Yeah.

MR. LEE: We wouldn't necessarily look at CCSS as, like, how much CCSS can contribute. I think the number was

derived from -- and don't leave out RCC. I mean, RCC is --

THE COURT: Yeah, yeah.

MR. LEE: -- contributing 3.75 million.

THE COURT: Yeah, yeah. Yeah, yeah.

MR. LEE: I think it was in part driven by okay, how much is RCC going to have. How much is CCSS going to have. Over the course of the next two years in -- two and a half years in --

THE COURT: Okay.

MR. LEE: CCSS' case and five years in RCC's case.

THE COURT: Okay.

MR. LEE: I guess --

THE COURT: So it was a financial ability issue as much as anything else; is that fair?

MR. LEE: That was one of the factors.

THE COURT: Okay.

MR. LEE: The primary factor here was CCSS' desire to gain greater independence from the debtor

THE COURT: Yeah, yeah.

MR. LEE: -- so that it can --

THE COURT: Right.

MR. LEE: -- market its services and --

THE COURT: And that's exactly why I'm approaching it from that perspective. Well, should you monetize that. And your answers are it wouldn't matter because the debtor can't

couldn't compel the payment of money from that, number one. And number two, it would be speculative. Right?

MR. LEE: Correct.

THE COURT: Okay. I'm just trying to figure out what my findings would be were I to rule in favor. Okay.

MR. LEE: Understood. So the --

THE COURT: Okay.

MR. LEE: -- I guess one, just one -- I don't know if this is a difference in word choice, but --

THE COURT: Okay.

MR. LEE: -- I think, in a cynical sense --

THE COURT: Yeah.

MR. LEE: -- the committee might get up here and argue, well, CCSS is buying its freedom, so it is a sale. We don't view it as a sale at all. We're literally not selling anything. We're just amending the bylaws. And there's a --

THE COURT: Well, you're agreeing not to exercise a right, arguably, right? I mean, if you --

MR. LEE: Actually, we are exercising a right because we have the right to -- we have the right to approve or disapprove the amendment of the bylaws. CCSS --

THE COURT: No, I --

MR. LEE: -- could have come to the debtor and said, hey, we want to do this. Debtor could have said no.

THE COURT: Yeah. Right.

MR. LEE: And this discussion has been ongoing for several years. It just so happened that it came to a head while we were --

THE COURT: Okay.

MR. LEE: -- still in Chapter 11.

THE COURT: All right. But what I think I'm agreeing with you on is if we were to look at this as a commercial transaction, and even that, you'll tell me, is a bit of a leap. But if we were, the things we would normally use as the measurement simply wouldn't be relevant here. That's fair?

MR. LEE: That's correct.

THE COURT: Okay.

MR. LEE: And I think you do still have to go back to the debtor's business judgment. And I've addressed why this is a really reasonable exercise of the debtor's business judgment.

THE COURT: Okay. Okay. Okay.

MR. LEE: If you have any other questions, I'll answer them.

THE COURT: No, I'm good. I mean, no, we've had a few back and forth here, so I appreciate it.

MR. LEE: Understand.

THE COURT: Okay.

MR. LEE: Thank you.

THE COURT: Okay.

MR. WEISENBERG: Brent Weisenberg of Lowenstein

Sandler on behalf of the committee. Your Honor, there are four independent reasons to deny the motion.

Number one, there is no evidence before this Court supporting any aspect of this transaction. The supposed arm's length of any kinds of negotiations, as Your Honor just acknowledged. The reasonableness of the compensation, as we've just discussed. May be you'll -- maybe it's speculative, but we would still need testimony to understand when these two parties were negotiating with one another how was this number arrived at.

Number three, the debtor's inability to receive the same sums without this transaction, which is an important part of our argument.

Number two, Your Honor, this argument is -- excuse me. This is a sale. To conclude otherwise is allowing form to trump substance.

Three, we disagree with the debtor. In this instance, you should not be relying on its business judgment. Whether it's a sale or not, it is a transaction with an insider. And those warrant heightened scrutiny.

Number four, Your Honor, the debtors conceded in its reply that CCSS may make donations in the future, and there's no explanation why these monies can't come to the debtor now or in the future, absent this transaction.

So let's start with the lack of evidence. We believe

that's where this discussion can begin and where it could end. The only arguable evidence you have, Your Honor, is the declaration of the debtor's CFO. And in the debtor's reply, they assert that because Mr. Bardos is a board member of CCSS, he has personal knowledge, and therefore he can competently testify as to CCSS.

Interestingly, Your Honor, when Mr. Bardos filed his declaration in support of the motion, it was only in support of -- or on behalf of the debtor. In fact, there was no mention in his declaration that he sat on the board of CCSS. We only learned this through the reply when he filed a supplemental declaration. And again, that supplemental declaration was filed on behalf of the debtor, not on behalf of CCSS.

So standing here today, there is no competent testimony as to anything on the CCSS side of the transaction. Its motivations. Why it may be entering this transaction. How the compensation was agreed upon. Without that evidence, Your Honor, you don't have a foundational basis to conclude that this is an arm's length sale, that it's reasonable compensation, or anything in between.

We're also lacking, Your Honor, in explanation from CCSS as to why it believes now is the time it needs to separate from the debtor. Historically, CCSS has worked under this arrangement for years, and it works for a number of other

dioceses. And so what we're left to quibble about or really left to ponder is why now? What has changed?

And we believe that's vital testimony because that is one of the impetus of this sale transaction is the debtor comes before Your Honor and says CCSS asked us to step aside because it has an agenda. I don't know that to be true. I need testimony. I'm entitled to understand if that's true, and if so, why.

Bottom line, Your Honor, without a foundational record, this motion cannot be approved.

Number two, Your Honor, this is a sale. The debtor has conceded that its ability, under the bylaws, to appoint or approve directors is not an asset of the estate that can be sold. So we agree on something, which is if this is a sale, the debtor concedes that the law provides that this is not an asset that can be sold. So the debtor characterizes this transaction as a "divestment" of its board position. So I want to understand what is a divestiture.

The common definition is "the action or process of selling off subsidiary business interests or investments". The debtor repeatedly in its motion refers to its interest as an asset. The debtor is being paid consideration for an asset.

So then I said, well, what's the definition of a sale? A sale is a transaction between two or more parties that involves the exchange of tangible or intangible goods,

services, or other assets for money. Your Honor, we can use the terms divestiture or transfer, but at the end of the day, this is a transaction which fits the definition of a sale because it's a divestiture of an asset.

Now, the debtor argues it has no membership interest, and therefore, this transaction doesn't have any implications on whether California applies or not. But Your Honor, that's wrong for two reasons.

Number one, the authority granted to the debtor in the bylaws is enforce with the definition of member in Section 5056 of the California Corporations Code. Member is "any person who, pursuant to a specific provision of a corporation's articles or bylaws, has the right to vote for the election of a director or directors or on a disposition of all or substantially all of the assets of a corporation or has the right to vote on changes to the articles or bylaws".

That's our situation, Your Honor. They may say they don't have a membership interest, and everything I just listed to you is a power they do have. So they can call it whatever they want. It is a membership interest that they are trying to transfer. And California has a prohibition against that.

Talk a little bit about the business judgment rule. The case law stands for the proposition that insider transactions, and I know Your Honor knows this well, warrant strict scrutiny. It's not if this is a sale or not. That is

not determinative of whether strict scrutiny applies. Whether it's a lease agreement, a CRP, or a KIP, a sale or any other agreement between a debtor and an insider, in those instances, courts hold the debtor to heightened scrutiny. Why? Because we're not entirely sure that the transaction was done at arm's length.

And so here, of all places, this is exactly the kind of transaction that merits that close scrutiny. We have Mr. Bardos sitting on the boards of both sides of this transaction. He's on the board of the debtor. He's on the board of CCSS. That example alone cries for at least some evidence that this was negotiated at arm's length and in good faith because as we stand here today, Your Honor, there is a lack of evidence in the record as to how this was negotiated. Who negotiated it. How the compensation was agreed on.

And so whether we're relying on the business judgment itself or as we believe, a heightened standard, Your Honor should hold them to that standard to prove that this is in fact an arm's length deal and that each of the factors that go into considering whether the transaction can be approved as in the best interest of this estate are, in fact, able to be established.

Last point, Your Honor. The debtor has conceded now that CCSS can continue donating to the debtor. So the crux of our argument, Your Honor, was and is the debtor need not divest

itself of this -- I'm going to use the air quotes -- "asset" in order to get this money. Let's not mistake our position.

And I appreciate the debtor's argument focusing on the facts and law. We are not trying to shut down the debtor. We are not trying to deprive it of money. But we are analyzing the proposed transaction based upon facts and law.

And as we understand it today, again, there is no evidence that CCSS can't or won't continue to provide distributions, dividends, whatever you'd like to call it, to the debtor. In fact, in 2022, CCSS made a 3.8 million dollar one-time donation to the debtor. It's done it in the past. There's no explanation as to why it won't do it now.

Again, if that is the impetus for this motion, which is CCSS may not do it. It has no contractual right to do it. And therefore, we've got to strike while the iron is hot. There needs to be evidence to that fact, Your Honor, because as it stands here today, there is nothing in the record that establishes that CCSS will not provide this kind of distribution. In fact, the debtor in their pleadings say it very well may.

So this is not an argument, Your Honor, that CCSS is a piggy bank. That is not what we're arguing. What we are arguing and what Your Honor has observed is the bylaws provide RCBO with complete control over the board. Who's hired. Who's fired. It's not hard to imagine that a director of CCSS that

doesn't look kindly upon RCBO will have a very short tenure at CCSS.

And so when the debtor argues that nothing in the bylaws give the debtor the authority to direct CC's (sic) use of available cash, it's really putting form over substance. The debtor's fingerprints are all over CCSS. As we said, it meets the very definition of membership under California law.

And so Your Honor, given those four facts, the committee would request that the motion be denied.

THE COURT: Thank you very much.

Anybody else need to be heard before I hear from Mr. Lee again?

No? Okay.

MR. LEE: Matt Lee for the debtor, Your Honor. Is there anything in particular you want me to address from Mr. Weisenberg that I --

THE COURT: Well, why don't you talk a bit about the arm's length issue and anything else about the how you believe the price was arrived at?

MR. LEE: I could read Mr. Bardos' declaration to you --

THE COURT: Um-hum.

MR. LEE: -- but my answer is, the Bardos declarations, he identifies exactly what his motion is.

THE COURT: Um-hum.

MR. LEE: He identifies exactly how the pledge agreement came about. And he identifies a -- well, he speaks directly to the fact that there's nothing preventing CCSS from continuing its pattern of donations to the debtor. What Mr. Bardos testifies to is that these pledges for this that are being made in recognition of this amendment to the bylaws, yes, this divestiture of board rights is would not be happening but for that divestiture of board rights.

And in the debtor's business judgment, it was worth giving up the board rights in order to secure these pledges from these two entities right now because even if these were -- even if these pledges were in lieu of CCSS' traditional fifty percent of its profits go to the debtor practice, which, again, it's under no obligation to continue, even if they were in lieu of, the debtor still needs the cash now. And I'm not sure why the committee cares whether it gets the cash all up front now, or at least in the next two and a half years, versus five, ten years down the line. The point is, is that they're offering us this five million dollars now in exchange for greater board independence.

The other thing that keeps getting lost in the discussion is that RCC does not have -- and this is in Mr. Bardos, I believe, supplemental declaration as well.

THE COURT: Um-hum.

MR. LEE: RCC does not have any giving history with

the debtor. The debtor and RCC have contractual relationships. RCC was going to be the debtor's -- under the plan, which is still on file, RCC's going to be the debtors exit financing --

THE COURT: Um-hum.

MR. LEE: -- lender. So it is a very arm's length -- it is a very arm's length relationship. There's no evidence that it's not arm's length. In fact, you just granted the debtor's motion to dismiss, saying that RCC should be substantively -- on the committee's claim that RCC should be substantively consolidated into the debtor on essentially the same facts that they're raising now.

I mean, I know the committee really hated that ruling. Okay. But if the debtor's fingerprints are all over CCSS, how come CCSS wasn't a defendant in that action? These bylaws got produced, I believe, in August or September of 2023 to the committee. They maybe got produced a couple of times. CCSS is mentioned prominently in the debtor's first day declaration as a nondebtor Catholic entity. Okay. None of this is a secret. Okay.

So after two and a half years, now we're saying, oh, we need more discovery into the way the debtor and the nondebtor Catholic entities interact, I think it's -- I think they've had their shot. And there's no reason to allow anything further, especially not considering that, again, this is not the sale of a membership interest. I'm going to get to

that in a second.

This is not a sale to an insider. The committee concedes that it's not a statutory insider. And I've explained why it's not -- there's no chance that it qualifies as a nonstatutory insider because the debtor and CCSS, their relationship doesn't bear the traditional hallmarks of statutory insiders. And again, there's no evidence that this wasn't an arm's length transaction.

As far as the California law issue, I mean, the committee just totally ignores the law we cited, which is straight from the Code, the California Code, about how the bylaws are controlling in terms of whether they have -- whether an entity, a nonprofit entity, has a membership. A nonprofit religious corporation has any members.

Section 9310(a) of the California Corporations Code reads that a corporation may provide in its articles or bylaws that it shall have no members. Well, section 4.1 of CCSS' bylaws say, the corporation shall have no members within the meaning of Section 5056 of the California Nonprofit Corporation Law. Any action which would otherwise require approval by a majority of all members or approval by the members shall require only approval of the board. All rights which would otherwise vest in the members shall vest in the directors.

This is exactly what Section 9310 tells a nonprofit religious organization to do when it doesn't have members. And

just because the directors are exercising powers traditionally held to members, it does not automatically convert the directors to members. If that's the case, then the directors are -- the members in the entity are Mr. Tarman. Mr. Bardos temporarily till he retires as CFO. I mean, it just doesn't make -- it makes no sense, and there's no law that supports that conclusion.

I think that's all I have in terms of the legal discussion.

I will just say that you don't have to conclude, Your Honor, that you should grant the motion because the debtor needs the money. I'm just saying, if the motion isn't -- I am going to tell you, though, if the motion isn't granted, the case has a huge, immediate problem that will include the debtor having to make a decision as to whether to pay, say, its employees or Lowenstein. Thank you.

THE COURT: You're not telling me that when you look at the logic and the policy behind the laws involving charitable organizations in California that -- I mean, a lot of the case law that was cited to me had to do with some standing issues. Would you go on to argue that the committee -- this is not, strictly speaking, an economic decision over which the committee should be able to complain? Would you argue they don't have standing, or you would not argue that?

MR. LEE: If the committee wants to challenge the

debtor's business judgment, the committee can challenge the debtor's business judgment. But this committee is trying to do so as if this were a commercial case of a publicly traded company --

THE COURT: Um-hum.

MR. LEE: Okay. Or a billion-dollar company. That is --

THE COURT: Yeah.

MR. LEE: -- not even close to what we're dealing with here.

THE COURT: Um-hum.

MR. LEE: We're dealing with -- we're dealing with board seats in a religious nonprofit that has a very specific mission.

THE COURT: Um-hum.

MR. LEE: And I mean, part of the thing we've identified in this case, Your Honor, is that the traditional definitions, they just don't apply because I mean, these aren't insiders. And the reason -- and they're not affiliates either. And the reason for that is because they're all nonprofits. And the Code, there's lots of examples where the Code treats nonprofits differently than for-profit companies. So it's not a -- it certainly isn't an inconsistent application of the Rule. I think it's entirely consistent with how the Code would traditionally treat it. Well, would typically treat a

nonprofit debtor.

THE COURT: Okay. Okay.

MR. LEE: So I mean, the only entity that the debtor has an actual traditional interest in, as that word is defined in the Code, is the Fuhrer Properties (phonetic) entity for which we submit periodic reports --

THE COURT: Um-hum.

MR. LEE: -- under Rule 2015.3.

THE COURT: Um-hum.

MR. LEE: CCSS isn't one of those.

THE COURT: Um-hum.

MR. LEE: We don't have that kind of control right. We have the same control right that, frankly, every Catholic bishop has over Catholic institutions that fall within his geographic diocese, little D. Okay. And again, it's to advance the principles of the Catholic Church and make sure nothing is done in contravention of that.

THE COURT: Um-hum.

MR. LEE: I'll end with this. Article III, section 3.2 states what the purpose of the bylaws for CCSS -- states what the purpose of CCSS is. And it reads that the general purpose of this corporation is to support the religious mission and purposes and teachings, beliefs, and activities of the Roman Catholic Church and (i) to engage generally in such other religious and activities authorized by the laws, regulations,

rules, and disciplines prescribed by the Roman Catholic Church and (ii) to engage in any other lawful activities that are incidental or reasonably necessary or convenient to fulfill any of the foregoing religious purposes.

Lawful actions. Lawful enterprises. It's not lawful to just willy nilly take money out of one entity and pass it to another, which is what the committee has accused in its entire preliminary statement and its objection the bishop of doing here. And just because the debtor has the right to control the directors of CCSS doesn't mean that the debtor has the right to tell those directors to violate their fiduciary duties to CCCS --

THE COURT: Um-hum.

MR. LEE: -- in order to enrich the debtor or in order to help the debtor pay committee professional expenses.

THE COURT: Can the debtor terminate directors?

MR. LEE: The bishop has the authority to remove directors, yes.

THE COURT: Okay. Okay.

MR. LEE: But it does not -- but the bishop does not have the authority to name any more than the -- I think it's a -- I think it's a seven-person board. He doesn't have authority to name any more than the majority of the board members.

THE COURT: Okay. Okay. Anything else?

MR. LEE: That's all I have, Your Honor.

THE COURT: Okay. I want to talk about -- well, I don't know if you guys want to take a longer break. I want to take about ten minutes to organize a couple of thoughts. Is that acceptable, or do you guys want to take a longer time to actually get some lunch and come back? What do you -- what do you guys prefer?

MR. LEE: Ten minutes is fine.

THE COURT: Okay. Let's do that. Okay. All right. Thank you.

MS. UETZ: Your Honor, excuse me. May I hear about your thoughts from my partners and go to the airport because I'm just catching a flight, and I'm not arguing this motion? So may I be excused for those last ten minutes?

THE COURT: Yes. Absolutely. You bet.

MS. UETZ: Thank you so much.

THE COURT: Okay. Thank you. All right. See you in a few.

UNIDENTIFIED SPEAKER: Your Honor, selfishly, I may have the same problem.

THE COURT: Okay.

UNIDENTIFIED SPEAKER: I'll hang out as long as I can.

THE COURT: Okay.

UNIDENTIFIED SPEAKER: But if, with your permission, I'd leave at the latest possible moment.

THE COURT: Okay. Thanks.

UNIDENTIFIED SPEAKER: Thank you.

THE COURT: Appreciate it. Thanks. Okay.

(Recess from 12:35 p.m., until 12:47 p.m.)

THE COURT: Okay. Please be seated. I want to give you guys a ruling on the divestiture motion. And I think this is something that needs to be dealt with quickly, so I'm doing it orally. And I hope I'm going to be as comprehensive as I should be, should anybody want another court to look at this. So these will constitute my oral findings and conclusions in conformance with FRBP 7052.

I want to thank everybody for the good arguments today. This is definitely -- because this is a transaction that is unique and doesn't directly fit the normal commercial selling Blackacre for a million bucks, I think it's important to think of it -- to begin in a more comprehensive way and to sort of eliminate or not things that are problematic about this.

So I guess we begin with the idea that the debtor obviously is the debtor before me. It's the Diocese of Oakland that has as its charter the continuing performance of religious and ecclesiastical services for the members of the diocese and necessarily impacts or relates to other services that are performed by other entities in connection with the delivery -- I hate to say delivery of religious services, but you know what

I mean.

There are many, many aspects of people's faith and their professions of their faith and their practices of their faith. And certainly, the ultimate resting place provided both by the cemetery and by the entity that consults with respect to the performance and continuing performance and maintenance of those duties is a very important aspect of the support and services that the members of the diocese have come to expect and they should expect.

So in the first instance, it is understandable that there are separate entities who were created to do these things. It's understandable to me that the bishop, as the person in charge of the affairs of the diocese, would have a certain amount of input and control with respect to the -- not so much the day-to-day decisions of those entities but the nomination of folks who would sit on boards that would provide those services. It would make sure that the entities are providing those services in a manner that's consistent with Catholic doctrine and other obligations at a religious organization. So I'll come back to the insider question in a minute.

So this presents us something that is maybe relatively typical for this kind of organization. And there's nothing about this that I've heard so far or have any reason to believe suggests a policy problem or the possibility of a policy

problem. That might be what the California legislature was most worried about when it was concerned about things like selling member interests.

The diocese tells me that the entities made conscious decisions to operate without members. That is their right under the applicable statute. And I think that there is no reason to question that. There are many reasons why that would be advantageous to them.

And there's nothing that I'm seeing in this transaction, and I'll certainly come back to this a couple of times as we talk about this, that suggests that the function of those directors, whoever else they are, as nonmembers is in any way problematic or would contravene any policies that I think the California legislature had in mind when they were -- when they made the decision to allow these folks to serve as something other than members.

So I find nothing problematic about that. And the fact that there may be some overlap between what the management of the entities can perform and what members would be able to perform is not dispositive for me one way or the other. So that's some background.

Further, to the extent that this is a transaction, number one, I think it is a fairly unique one. And I don't take it -- I do not believe that this is, in any sense, the sale of a membership interest for any purpose. So I don't

think that it would run afoul of the statutes that were quoted to me that find that to be problematic.

What I think this is, as I tried to articulate earlier, is a much more limited transaction. It's a transaction in which the debtor is agreeing to remove itself from the board and to relinquish some ability to restrict or control to two entities. That is something that does not by itself suggest a problematic result in light of, from everything I can tell from the record before me, the consistent performance of these important duties by the two entities involved and the relatively narrow niche of the two entities' activities.

I don't think there's any reason immediately to be concerned about anything nefarious or difficult about the fact that the debtor would absent itself from some of the management here and some of the control that would indicate that that's going to lead to a bad outcome or one that would offend the policies of the charitable organizations laws in California.

So then we look at what the transaction actually appears to be. And if you were trying to analogize it to a commercial transaction, I think the first thing one would ask is, okay, what's the ask, and what's the get. And the diocese is giving up some control and some ability to restrict the activities of CCSS. And what they're getting is a pledge of five million dollars from CCSS and another 3.75, I think it is,

from RCC.

The RCC obligation, what strikes one about this, and it's somewhat anomalous, is, as the debtor points out, none of this could fairly be compelled. There is no contractual relationship here that would require, in any way, either side to come to the table and make this deal. It simply isn't that kind of a relationship.

So one goes down next to the question of, well, how would one judge the consideration? And as I indicated before, because this is not about a right that is freely exercisable in a market, there is no market for this in the traditional sense. It's not as if some other party will come in and bid another million dollars for Blackacre. It just isn't that kind of asset. This transaction is dependent upon the particular relationship between the diocese on the one hand and the two entities on the other. So a marketplace analysis is not a relevant concept.

One might argue, and I tried to explore this with Mr. Lee, that perhaps there is a way to monetize what will be -- what will be the advantage of CCSS once the relinquishment occurs and the pledge is received. And that's a question of, well, will they actually go out and exploit this in some way? They might. They might not.

But number one, as Mr. Lee pointed out, and I agree with him, this is not -- you cannot really peg the

consideration to what's being given up here because it could -- there's no theory on which it could be compelled. There is no theory under which the diocese could compel either these entities to give it anything. They are independent for that purpose. So it's not as if the diocese could reasonably say, well, for seven million bucks, I'll do this. The transaction is maddeningly obscure in some ways, but I'll come back to why that really sort of doesn't matter, in my view.

So is there a way to monetize this by means of measuring what CCSS gets? The answer is maybe you could. It doesn't really matter because that's not consideration that would ever flow to the debtor unless CCSS said it should. So that's not something that can be compelled in any event.

And then I think the second point is, well, what would be the benefit here? I think it is speculative. And I think parties may have made a wild guess about it. If they did, they did. If they didn't, they didn't. But it is entirely speculative.

So this is a situation where what you would think of as the normal consideration and monetize an asset factors are very hard to apply. They just are. There's no market for this. There is no compulsion that can be forced by the debtor on the counterparty or the counterparty on the debtor that would have you arrive at a number that is, well, okay. It's not six. It's not five. It's five and a half. It just

doesn't work that way. There's nothing about the monetization here that suggests that answer.

So what that leaves you with is, is there some other reason to believe that this is problematic. And I'm going to conclude that there isn't. That this is simply a transaction in which two parties, who may arguably be insiders. I'm not going to determine that they're not insiders because there is a measure of control by the bishop over the boards. Now, I'm not determining insider or not.

What I am going to say is, even if they were, what would the additional scrutiny tell us? It would tell us that people got together, and they arrived at a number. Is it somewhat arbitrary? It might be in the sense that could it have been 5.1? Maybe. Could it have been 4.9? Maybe. Do either one of those results suggest something nefarious or problematic? No, they don't.

This is a voluntary transaction. It is clearly made. And I think there is evidence of that from Mr. Bardos' declaration and otherwise that it is made mindful of, if not caused by, mindful of the financial straits of the diocese.

And that, I think, is enough to suggest to me that further examination of this or discovery about this is not going to tell us anything we don't already know, which is that the number was simply arrived at. It was a number that the parties could agree to. It's a number that CCSS has some

ability to perform. It's not as if they could pay twenty million dollars for this. They don't have it. So this fits within a lane of reasonableness for all those reasons.

And because again, there's no suggestion that there's anything about this that's going to be nefarious or is going to change the purpose of these entities after the transaction or that, frankly, the debtor is losing anything that it otherwise could sell, for all those reasons, I think that it's we have to look at the business judgment in the sense of what this presents as, which is not exactly a commercial transaction, but one that is not unreasonable under the circumstances and that has the support of the willingness of the two organizations to provide needed financial support at a time when the debtor needs it.

Again, that's not the principal factor. It doesn't have to be. But it certainly informs what I think is the good faith of this. And again, because this really is a completely voluntary transaction, and the debtor, I don't think, is losing anything that it could otherwise monetize or turn into anything of any benefit to anybody here, I think that it's going to satisfy for me the business judgment rule and the appropriate exercise of the debtor's discretion here.

Again, realizing that this is not a perfect answer because I don't think there is one under these circumstances. We're doing this without the fallback on what we normally have,

which is sort of some commercial standards. This just isn't that. This just doesn't work that way.

I mean, this transaction emanates from someplace else. And what I'm basically saying is I am not concerned that there are -- that there is any nefarious purpose here, that there's anything that is contra the policy or the strictures of California laws re charitable organizations, or that suggests that the debtor is giving up something it otherwise could make use of for the benefit of creditors.

And frankly, nor am I hearing anything that suggests there's any other motivation here that would be problematic or one to be examining good faith. It's not as if one is colluding to exclude another buyer or is otherwise suppressing the value of an asset. None of those factors are evident here.

And lastly, although, again, I don't think that it is necessarily conclusive, I will say that the debtor has spoken loudly and for quite some time about the financial straits that it's facing. And I think that this is a, I would say, anodyne in terms of, of any particular deleterious effects on the debtor. It's an anodyne transaction from that standpoint and one that certainly will assist the debtor's financial prospects, at least in the short-term.

And lastly, there is again nothing to suggest that the debtor could have compelled any contribution, anything like this, from past history. The organizations voluntarily made

contributions because at the end of the day, if they have a profit, they have to give it up. So it's not as if this is something that the debtor could have compelled otherwise or that the debtor may not receive in the future. Debtor may well receive this. And if these rights are exploited in some way, maybe the debtor receives more than they had in the past.

So there's just effectively no downside to this, in my view. And there's certainly an upside to the debtor.

So for all those reasons, and just for the reasons stated on the record, don't try to synopsize my long windedness here, I'm going to approve the transaction. Okay.

MR. LEE: Thank you, Your Honor.

THE COURT: Okay. Thank you very much. I'll look forward to getting an order.

And thank you all for your good arguments today.

For what it's worth, I don't know if there will be any need for us to communicate. I'll be in Chicago most of next week. Maybe some of you will too. There's an awful lot of hurry up and wait at those kinds of events. So if anybody thinks we should talk, let me know. We can do it. I can, I'll bring the Surface Pro. We can do Zoom meetings. We can do all kinds of things to advance the cause if we need to. All right.

Okay. Thank you. It's been a long morning. Thank you very much to all of you. I appreciate it. Thanks.

(Whereupon these proceedings were concluded at 1:02 PM)

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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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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. 24−04053

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

A transcript of the proceeding held on September 9, 2025 at 10:00 AM was filed on Thursday, September 11, 2025. The following deadlines apply:

The parties have Thursday, September 18, 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 Thursday, October 2, 2025.

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Jason Gottlieb
Attn: Jason Gottlieb, Dir. of Tran. Ops.
7227 N 16th St. #207
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or you may view the document at the clerk's office public terminal.

Dated: 9/15/25

For the Court:

Edward J. Emmons
Clerk of Court
United States Bankruptcy Court

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