





1 Specifically, they object that such a session is: (1)  
2 "unauthorized under the Bankruptcy Code;" (2) this Court "cannot  
3 act without statutory authority otherwise found in the Bankruptcy  
4 Code;" (3) "equity cannot serve as a justification for the  
5 requested relief;" (4) victim statements would constitute  
6 "testimony;" and (5) "the proposed testimony is not offered in  
7 support of any form of relief before the court." Dkt. 994.

8 The insurers construct and demolish a straw man on a  
9 platform of false premises.

10  
11 A

12 Essential background to understanding the insurers'  
13 opposition necessitates a focus on the role played by the  
14 insurers in this tragedy.

15  
16 1

17 The dramatis personae:

- 18 - Individual tort plaintiffs in pending state-court  
19 litigation suing Church on theories sounding in sexual  
20 abuse.
- 21 - Bishop of Sacramento representing, under principles of  
22 apostolic succession, the institutional church diocese  
23 of Sacramento, defendant in tort lawsuits, and person  
24 seeking chapter 11 reorganization on behalf of diocese.
- 25 - Attorneys for Bishop.
- 26 - Creditors' Committee, official chapter 11 representative  
27 of collective individual tort plaintiffs for purposes  
28 of negotiations intended to achieve global resolution  
of the state-court tort claims based on diocesan assets  
and available insurance.
- Attorneys for Creditor's Committee.
- Bankruptcy Court Judge, presiding over chapter 11 process.

- 1 - Superior Court Trial Judge, presiding over the pending  
2 lawsuits filed by the individual tort plaintiffs but  
3 presently stayed by virtue of bankruptcy automatic  
4 stay.
- 5 - Insurers putatively obligated to defend Bishop in pending  
6 state-court tort litigation suspended by bankruptcy  
7 automatic stay, and participants in negotiations  
8 regarding insurer contribution to potential group  
9 settlement. Obligated to proceed with state-court  
10 defense if automatic stay terminates.

11 2

12 The question arises, what business is it of the insurers if  
13 some of the tort plaintiff victims want to tell the Bishop in the  
14 presence of the Chapter 11 Bankruptcy Judge how they feel? Why  
15 should the insurers care? How are they harmed?

16 Isn't it to the advantage of the insurers that all possible  
17 claims be asserted in this collective proceeding, so that there  
18 is no residuum of stragglers who might have to be dealt with  
19 after the chapter 11 case ends?

20 B

21 The first relevant point regarding the insurers is that they  
22 are now basking in the shelter of the automatic stay, without  
23 which, they would be paying for legions of defense counsel to  
24 conduct discovery in the pending state-court litigation pursuant  
25 to their duty to defend.

26 C

27 The second relevant point is that the insurers during this  
28 case have sought to cadge as much information as possible about  
the individual plaintiffs while they are enjoying their free ride

1 on the automatic stay.

2 They made a strong effort to have the chapter 11 claims form  
3 contain unnecessarily detailed information (who, what, where,  
4 when) that ordinarily is ferreted out by defendants as part of  
5 their discovery in tort litigation.

6 This Court rebuffed that attempt to raise the bar at the  
7 threshold, reasoning that to do so at the initial claim stage  
8 would chill claims in a scenario in which the chapter 11 goal is  
9 to encourage all possible claimants to come forward.

10 This Court reasoned further that, after the claims are  
11 filed, the specific discovery-type information the insurers  
12 desire necessarily will have to be shared with them by the  
13 Committee in connection with the mediation negotiations that  
14 commonly resolve successful diocese cases. It is not realistic  
15 to expect insurers to make uninformed investment decisions when  
16 settling liability exposures.

17 This Court even has the power to modify the automatic stay  
18 so as to permit some state-court discovery during the pendency of  
19 this chapter 11 case, which it may do if negotiations languish.

20 Of course, if no deal is agreed upon, the insurers will have  
21 full opportunity to conduct and to pay for individualized (who,  
22 what, where, when) discovery in the state-court litigation after  
23 the shelter of the automatic stay is lifted.

24

25

D

26 The key relevant point regarding this Court is that it is  
27 not the trier of fact in the sex abuse personal injury tort  
28 actions. Nor, in light of 28 U.S.C. § 157(b)(5), could it ever be

1 the trier of fact.

2 Rather, as these are all state-court tort cases, that duty  
3 falls upon the state superior court judge to whom the various  
4 cases are, or will be, assigned for trial.

5

6 III

7 The assertion that a Bankruptcy Court lacks authority to  
8 permit survivor statements to be made to the Court and to the  
9 Bishop in a confidential setting is nonsense.

10

11 A

12 The proposition that any words that cross the lips of the  
13 complaining victims constitutes "testimony" makes no sense.

14 The victim statements are not being made to the trier of  
15 fact. They are not being made under oath or penalty of perjury.

16 In the procedural posture of the case, any statements made  
17 are no more than allegations which standard Rule 12 pretrial  
18 motion practice treats as true only for purposes of analysis.  
19 Hence, the alleged sex abuses are treated as presumed to have  
20 occurred for interim pretrial procedural purposes. Ultimately, of  
21 course, the plaintiffs must prove their respective cases by  
22 preponderance of evidence in trial by jury. At this stage,  
23 credibility is not an issue.

24

25 B

26 The insurers' next false premise is that a Bankruptcy Court  
27 can do nothing that is not on the record in open court.

28 That premise is belied by Civil Rules 16 and 77 and its

1 bankruptcy counterparts Rules 7016 and 5001(b), which permit  
2 various conferences and similar sessions that are neither trials  
3 nor hearings to be done in chambers or elsewhere on or off the  
4 record.

5 Rule 77(b) provides in relevant part: Any act other than a  
6 trial on the merits "may be done or conducted by a judge in  
7 chambers, without the attendance of the clerk or other court  
8 official, and anywhere inside or outside the district." Fed. R.  
9 Civ. P. 77(b); Fed. R. Bankr. P. 5001(b).

10 As the Moore's Treatise explains, Rule 77(b)'s permission  
11 for private conferences for non-trial matters "articulates the  
12 traditional authority of a judge to speak privately with the  
13 parties to a suit, whether in bench conferences or in chambers."  
14 14 Moore's Federal Practice § 77.03 (3d ed. 2024) ("Moore's"),  
15 quoting B.H. v. McDonald, 49 F.3d 294, 297-98 (7th Cir. 1995).

16 Similarly, Rule 16 permits a wide variety of pretrial  
17 conferences during the pre-trial stage, including scheduling  
18 conferences, settlement conferences, and case management  
19 conferences. As Moore's explains, "Rule 16 does not mandate any  
20 particular procedures for initial case management conferences ...  
21 some judges conduct these kind of conferences much less formally,  
22 with counsel in chambers, with appearances by telephone or  
23 videoconferencing, or even off the record." Fed. R. Civ. P. 16,  
24 Fed. R. Bankr. P. 7016; 14 Moore's § 16.35[1][a].

25  
26 IV

27 In view of the sensitivity of the statements and the privacy  
28 interest of victims, the victim statement session will not be on

1 the record. It will occur in an appropriate private setting. Nor  
2 will there be electronic recording.

3 The session on Monday, March 31, 2025, at 11:00 a.m., will  
4 not exceed two and one-half hours. It is fundamentally a  
5 listening session. There will be no responses entertained. No  
6 other subjects will be discussed.

7 The invitees are limited to the victims who wish to make  
8 statements, Victims Committee counsel, the Bishop, and his  
9 chapter 11 counsel.


10 Although this Court initially stated that a representative  
11 of the insurers could attend the confidential settlement  
12 conference, their opposition papers persuade this Court  
13 otherwise. The insurers point out that statements made at a  
14 similar session in another diocese case in a different judicial  
15 district were soon reported in a newspaper. Thus, they stress  
16 that confidentiality is a prime concern. This Court agrees and  
17 believes that limiting access is important to preventing  
18 disclosure. Hence, the insurers are no longer invited.

19 The insurers will have to trust in this Court's adherence to  
20 its instructions stated above and to its fidelity to Judicial  
21 Canons, including avoiding an appearance of impropriety.

22 The Creditors' Committee motion is GRANTED.

23 SO ORDERED.

24 Dated: March 06, 2025

25  
26  
27   
28 United States Bankruptcy Judge



**INSTRUCTIONS TO CLERK OF COURT  
SERVICE LIST**

The Clerk of Court is instructed to send the attached document, via the BNC, to the following parties:

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