a)	Case Number: 2024-21326 Filed: 3/7/2025 Doc # 1153
1	FOR PUBLICATION MAR - 7 2025
. 2	UNITED STATES BANKRUPTCY COURT UNITED STATES BANKRUPTCY COUR EASTERN DISTRICT OF CALIFORNIA
3	EASTERN DISTRICT OF CALIFORNIA MGRS
4	In re: THE ROMAN CATHOLIC BISHOP) Chapter 11
5	OF SACRAMENTO, ) ) Case No. 24-21326-C-11
6	Debtor. ) ) Dkt. Control STI-6
. 7	
8	MEMORANDUM ORDER ON MOTION TO AUTHORIZE PRESENTATION OF SURVIVOR
9	STATEMENTS
10	CHRISTOPHER M. KLEIN, Bankruptcy Judge
	The Creditors' Committee, with acquiescence by the Debtor-
11	in-Possession, has asked this Court to honor its promise made at
12	the outset of the case to afford sex abuse victim-claimants the
13	option of personally telling the Bishop, in the Court's presence,
14	how the various abuses have affected their lives.
15	Some of the insurers object that such a session is not
16	authorized by the Bankruptcy Code and say that a bankruptcy judge
17	has no other authority to conduct such a session. The opposition
18	evinces stunning ignorance of basic judicial powers. Moreover,
19	why the insurers object is a puzzle.
20	This order granting the motion is published to explain why
21	the opposition by the insurers is wrong.
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24	The promise to hear victim statements in the presence of the
25	Court and the Bishop follows from this Court's experience in 2014
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27	presiding over a similar session concurrent with the disclosure
28	statement hearing in the chapter 11 case of The Roman Catholic
20	Bishop of Stockton, California.

1 The emotions expressed by those few victims who mustered 2 the courage to come forward seemed to foster some degree of 3 closure and peace to them. That experience (perhaps the most poignant day in this judge's 37 years in office) illustrated the 4 5 inadequacy of the chapter 11 process in bringing closure to victims without having such an opportunity. Considerations of 6 basic human dignity require that they know that they have been 7 heard by the Church and by the Court. Mere promises to pay 8 personal injury tort claims and to reform practices did little to 9 10 assuage the trauma that was being expressed.

The reality is that profound human, psychological, and 11 spiritual aspects of church sex abuse cases transcend tort 12 damages. The bankruptcy reorganization process may be proficient 13 in the hard-headed business of marshaling diocesan resources and 14 insurance coverage available to fund tort damage payments, but it 15 does little to heal festering psychological wounds. 16

Anything that promotes reconciliation, catharsis, and solace 17 for sex abuse victims in a chapter 11 case serves the interests 18 of justice and is a worthy task for a bankruptcy judge. 19

Procedurally, the victims statement session qualifies as a 20 form of conference that is neither a trial nor a hearing. If one 21 needs a label and a justification, it is in the nature of a 22 confidential settlement conference that is an exercise of 23 inherent judicial authority. 24

ТΤ

The insurers in their opposition say that such a session is 27 not authorized and not within the discretion of the Court. 28

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Specifically, they object that such a session is: (1) 1 2 "unauthorized under the Bankruptcy Code;" (2) this Court "cannot act without statutory authority otherwise found in the Bankruptcy 3 4 Code;" (3) "equity cannot serve as a justification for the 5 requested relief;" (4) victim statements would constitute "testimony;" and (5) "the proposed testimony is not offered in 6 support of any form of relief before the court." Dkt. 994. 7 8 The insurers construct and demolish a straw man on a 9 platform of false premises.

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

The dramatis personae:

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- Individual tort plaintiffs in pending state-court litigation suing Church on theories sounding in sexual abuse.
- Bishop of Sacramento representing, under principles of apostolic succession, the institutional church diocese of Sacramento, defendant in tort lawsuits, and person seeking chapter 11 reorganization on behalf of diocese.

- Attorneys for Bishop.

- Creditors' Committee, official chapter 11 representative of collective individual tort plaintiffs for purposes 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.

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

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

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

В

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

С

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

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on the automatic stay.

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

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

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

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

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

D

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

the trier of fact.

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

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

TIT

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

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The victim statements are not being made to the trier of 14 fact. They are not being made under oath or penalty of perjury. 15 In the procedural posture of the case, any statements made 16 are no more than allegations which standard Rule 12 pretrial 17 motion practice treats as true only for purposes of analysis. 18 Hence, the alleged sex abuses are treated as presumed to have 19 occurred for interim pretrial procedural purposes. Ultimately, of 20 course, the plaintiffs must prove their respective cases by 21 preponderance of evidence in trial by jury. At this stage, 22 23 credibility is not an issue.

The insurers' next false premise is that a Bankruptcy Court can do nothing that is not on the record in open court. That premise is belied by Civil Rules 16 and 77 and its

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

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

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

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

#### TV

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

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

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

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

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

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

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The Creditors' Committee motion is GRANTED.

SO ORDERED.

Dated: March 06, 2025

United States Bankruptcy Judge

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#### 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:

4 Paul J. Pascuzzi 500 Capitol Mall, Suite 2250 5 Sacramento, CA 95814

The Official Committee of Unsecured Creditors 6 c/o Robert T. Kugler 7 50 S 6th Street, Suite 2600 Minneapolis, Minnesota 55402 8

Jeff Kahane 9 Duane Morris LLP 865 S. Figueroa Street, Suite 3100 Los Angeles, CA 90017 10

11 Catalina J. Sugayan Clyde & Co US LLP 30 S. Wacker Drive, Suite 2600 12 Chicago, IL 60606

13 Office of the US Trustee 14 501 I Street, Suite 7-500 Sacramento, CA 95814 15

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