

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO**

In re:
ROMAN CATHOLIC CHURCH OF THE
DIOCESE OF GALLUP, a New Mexico
corporation sole,

Debtor.

Chapter 11
Case No. 13-13676
Jointly Administered

BISHOP OF THE ROMAN CATHOLIC
CHURCH OF THE DIOCESE OF
GALLUP, an Arizona corporation sole.

This pleading applies to:

- All Debtors.
- Specified Debtor.

**SUBMISSION OF CATHOLIC MUTUAL RELIEF SOCIETY
REGARDING MEDIATION**

The Catholic Mutual Relief Society of America (“Catholic Mutual”) and The Catholic Relief Insurance Company of America (“CRIC”) (Catholic Mutual and CRIC collectively referred to as “Catholic Mutual”), respectfully submit the following comments in advance of the Monday, April 20, 2015 status conference.

SUMMARY OF POSITION

Although, as far as Catholic Mutual is aware, it is the principal provider of liability protection to the Debtor (“RCCDG”), it was not until April 14 that, upon inquiry, RCCDG advised Catholic Mutual that the principal purpose of the April 20, 2015 status conference is to schedule mediation and it demanded Catholic Mutual attend.

Catholic Mutual welcomes mediation and has found mediations to be an efficient and effective way of resolving disputes -- provided certain fundamental information is timely made available to Catholic Mutual in advance of the mediation. Catholic Mutual will attend any scheduled mediation authorized by the Court whether RCCDG demands it or not and RCCDG

has been so informed on many occasions. However, in advance of a mediation scheduled to address resolution of pending claims, Catholic Mutual needs specific information relating to all tendered claims and information relevant to RCCDG's legitimate defenses to such claims. Without such information in advance of mediation, Catholic Mutual cannot be in a position to make a meaningful settlement offer. Given that Catholic Mutual is the principal provider of liability protection, it would seem obvious that RCCDG would want to cooperate with Catholic Mutual and provide all necessary information to increase the chances of a successfully mediation. The exact opposite has happened.

RCCDG has tendered 57 claims to Catholic Mutual. With extraordinary effort by Catholic Mutual, it has been able to obtain only the most rudimentary information on all but six or seven of the 57 claims. Despite a contractual obligation to do so, and the practical necessity of laying the groundwork for the most effective mediation possible, for reasons unknown to Catholic Mutual, RCCDG has placed every conceivable roadblock in the path of Catholic Mutual's quest for the vital and necessary information.

Under these circumstances, and for the reasons set forth more fully below, Catholic Mutual is simply not in a position to make a determination on claim payments and believes that a mediation directed towards individual claim settlements is premature at this time and in no one's interest. However, a mediation for the purpose of facilitating necessary information production might be very timely.

STATEMENT OF FACTS

1. Catholic Mutual¹ first issued Coverage Certificates to RCCDG effective December 1, 1977, and has continued its liability coverage of RCCDG in accordance with or under the Coverage Certificates to this date.

2. For the period December 1, 1977 through July 1, 1978, and for annual periods commencing on July 1, 1978 and ending on July 1, 1990, Catholic Mutual issued coverage certificates which, subject to all the terms and conditions of such certificates, may provide coverage to RCCDG for liability arising from acts of sexual abuse that occurred during the annual coverage period on an occurrence basis (“Occurrence-Based Certificates”).

3. Beginning in 1990 and for all subsequent annual periods, Catholic Mutual has provided Limited Sexual Misconduct Coverage to RCCDG on a claims-made basis.

4. RCCDG filed a voluntary petition for Chapter 11 bankruptcy protection on November 12, 2013 (the “Petition”).

5. Prior to the filing of the Petition, Catholic Mutual defended without a reservation of rights seven claims tendered by RCCDG that alleged sexual abuse by employees and/or agents of RCCDG in years during which one or more of the Occurrence-Based Certificates were or may have been in effect (the “Pre-Bankruptcy Claims”).

¹ Catholic Mutual was founded in 1889 as a non-profit religious corporation. It is organized and existing under the laws of the State of Nebraska, with its principal place of business in Omaha. Catholic Mutual operates as a self-insurance fund of the Catholic Church in the United States and Canada, counting 111 of the 195 North American dioceses among its members. Its Board of Trustees consists of the bishops and archbishops of 23 dioceses across the United States and Canada. Catholic Mutual issues certificates of coverage to participating members, which provide the members with coverage for certain property and casualty risks. CRIC is an insurance company organized under the laws of the State of Vermont, with its principal place of business in the State of Nebraska. It is wholly owned by Catholic Mutual.

6. On September 8, 2014, counsel for RCCDG sent a letter and attachments to Catholic Mutual purporting to tender fifty-six (56) sexual abuse claims against RCCDG. On November 25, 2014, counsel for RCCDG sent a letter and attachments to Catholic Mutual purporting to provide notice of an additional claim (collectively, the “57 Claims”).

7. Unless RCCDG voluntarily withdraws its tender of Pre-Certificate Claims, it may be necessary to secure judicial determination of this coverage dispute before settlement of any claims is a possibility.

8. The 57 Claims included the seven Pre-Bankruptcy Claims. Of the 50 new claims, an additional seven claims first noticed on September 8 and November 25, 2014 alleged sexual abuse by employees and/or agents of RCCDG in years during which one or more of the Occurrence-Based Certificates were in effect. A single claim alleges sexual abuse that occurred in July, 2014, which, subject to other terms and conditions, may raise a potential for coverage under the current Claims-Made Certificate.

9. Thus, based upon the information currently known to Catholic Mutual, only 15 claims appear to allege that acts of sexual abuse took place within Catholic Mutual’s coverage periods. Therefore, only 15 of the 57 Claimants potentially trigger coverage under any certificates issued by Catholic Mutual (the “Post Certificate Claims”).²

10. Based upon the information known to date, the remaining 42 claims allege acts of sexual abuse by employees and/or agents of RCCDG in years preceding the issuance of the first Catholic Mutual coverage certificate on December 1, 1977 (the “Pre-Certificate Claims”). In other words, none of the Pre-Certificate Claims allege sexual abuse at any time when the

² Based in part on RCCDG’s complete failure to cooperate with Catholic Mutual in the investigation and defense of the claims after it filed the Petition, Catholic Mutual agreed to defend the Post-Certificate Claims under a strict reservation of all its rights under the applicable certificates on January 23, 2015.

Occurrence-Based Certificates were in effect. Nor does any claimant asserting a Pre-Certificate Claim allege he/she was abused for the first time – or at any time – after the retroactive date provided in the Claims-Made Certificates.

11. After the 57 Claims were tendered by RCCDG on September 8, 2014, Catholic Mutual sought substantive information necessary to evaluate coverage and potential settlement values. RCCDG promised to assist Catholic Mutual in this regard, but first insisted that: (i) Catholic Mutual agree to be bound to a special protective order; and (ii) the Court entered the special protective order, which occurred in October of 2014 [D.E. 304]

12. Since the entry of the Protective Order (D. E. 304) and through March 30 2015 when it petitioned the Court for a status hearing in which to set a mediation schedule, RCCDG has provided Catholic Mutual with almost no information relative to the 57 tendered claims.

With respect to the forty-two Pre-Certificate Claimants, the entire production consists of:

- (a) A short nine page summary sheet addressing each of the claimants in two or three lines (for both Pre and Post Certificate Claims);
- (b) Six (6) transcripts of Depositions/Sworn Statements out of forty-two Pre-Certificate Claims;
- (c) Interrogatory responses for one (1) Pre-Certificate Claimant; and
- (d) Five (5) Pre-Certificate Claimant Settlement Agreements.

13. With respect to the fifteen (15) Post-Certificate Claims (i.e. Claimants alleging sexual abuse during Catholic Mutual coverage periods), the production consists of:

- (a) Six (6) transcripts of Depositions/Sworn Statements;
- (b) One (1) Settlement Agreement

14. In addition, for all 57 claims there is a filed proof claim, in many instances signed by counsel and not the Claimant and usually providing only limited information.

15. It is respectfully submitted that this information is utterly insufficient to enable Catholic Mutual to make a reasoned determination of settlement values and to make a final coverage determination.

16. Catholic Mutual then reasoned that even if RCCDG was unwilling to provide it with substantive information, perhaps it had provided that information to counsel for the underlying claimants or the Creditors Committee without consulting with Catholic Mutual (as it is required to do under the terms of the Certificates). Accordingly, in January of 2015 Catholic Mutual requested copies of correspondence between RCCDG and counsel, but received virtually no information relating to the claims or the alleged perpetrators in return. Instead, in breach of its duty to cooperate, RCCDG refused to produce some items of correspondence between its counsel and counsel for the claimants and/or Creditors Committee on the grounds of privilege! Apparently, RCCDG claims to be in some sort of privileged relationship with the creditors involving information that cannot be shared with its insurer.

17. Having received virtually no claims or substantive information from RCCDG, in late January of 2015, Catholic Mutual requested that RCCDG and the Creditors Committee agree to a targeted Rule 2004 subpoena requiring the Claimants provide certain answers to interrogatories and to be available for examination under oath.

18. RCCDG (and the Creditors Committee) strenuously opposed Catholic Mutual's proposed targeted Rule 2004 subpoena. RCCDG did, however, offer to draft a revised production request and the Creditors Committee advised Catholic Mutual that the Committee would review the questionnaire attached to the proposed 2004 subpoena and determine what additional information will be provided to Catholic Mutual. Despite these assurances, RCCDG

has never provided a revised production request and the Committee has not provided any additional information that had not already been provided by the RCCDG.

19. On January 28, 2015, apparently motivated by the proposed Rule 2004 examination, RCCDG revealed the existence of ten transcripts of Pre-Petition examinations taken by Robert Warburton. The transcripts were not in Catholic Mutual's files. Of the ten transcripts, only six were from claimants alleging abuse during the Catholic Mutual coverage periods. Since Mr. Warburton services had been entirely paid for by Catholic Mutual and were not pursuant to any reservation of rights, Catholic Mutual then promptly requested a copy of Mr. Warburton's files relating to the sex abuse claims and an ability for a Catholic Mutual claims representative to interview him without the presence of lawyers. RCCDG flatly refused to allow Mr. Warburton to be interviewed under those circumstances but on February 16 did say that Catholic Mutual could review Mr. Warburton's files. On February 20, RCCDG changed its mind and said that it was reviewing the files for privilege and would advise what documents would be available for copying.

20. On March 10, RCCDG advised Catholic Mutual that it could interview Mr. Warburton only in the presence of Diocesan counsel but made no reference to Mr. Warburton's files, the production of which are a necessary prerequisite to interviewing Mr. Warburton.

21. Finally, on March 30, RCCDG advised Catholic Mutual that it could not provide any of Mr. Warburton's files unless Catholic Mutual agreed to a new and additional protective order, even though Catholic Mutual accepted the confidentiality protective order tendered to it by RCCDG in October of 2014. In other words, eight weeks after Catholic Mutual proposed a Rule

2004 subpoena to garner claims information and six weeks after it requested Mr. Warburton's files, RCCDG invented the need for yet another protective order.³

22. On March 30, the same day it proposed its time stalling new protective order, RCCDG petitioned the Court for a status conference-- the apparent purpose of which is to set a schedule for a claims settlement mediation in which Catholic Mutual will have insufficient information to make reasoned determinations.

23. RCCCDG's delay relating to the alleged need for yet another protective order was conveniently resolved on Wednesday, April 15 and on that day the RCCDG purported to produce Mr. Warburton's files that Catholic Mutual had requested months before. The files appear to be heavily redacted and unaccompanied by any redaction log. However, by delaying production of long requested documents until days before the status hearing it requested, RCCDG is safe in the knowledge that those files cannot be reviewed before the status hearing the following Monday. Catholic Mutual has no idea whether this last minute production is in any way responsive to its need to investigate both the claims of the 57 claimants and the legitimate defenses available to the RCCDG.

REQUEST FOR RELIEF

Given the near absolute refusal of RCCDG to cooperate with Catholic Mutual in the investigation and defense of the 42 tendered Pre-Certificate Claims and 15 tendered Post-Certificate Claims, as well as the substantial outstanding coverage issues, Catholic Mutual is simply not in a position at this time to effectively participate in a mediation aimed at settling the underlying sexual abuse claims. However, perhaps mediation might lay the foundation for an

³ The Creditors Committee repeatedly offered to allow counsel for Catholic Mutual to engage in oral communications with individual counsel for the claimants, which offer Catholic Mutual intends to accept, but not until it has assembled the requisite documentation in order to properly structure such conversations.

early settlement conference if it could be utilized to insure that the primary insurer in this proceeding –Catholic Mutual—has access to the information to which it is entitled and which it needs.

WHEREFORE Catholic Mutual respectfully requests the Court to deny RCCDG's request to set a claims settlement mediation but instead order the parties to proceed to mediation for the purpose of resolving information and coverage issues or for such other relief the Court deems just.

DATED this 17th day of April, 2015.

Respectfully submitted:

MONTGOMERY & ANDREWS, P.A.

By: /s/ Victor R. Ortega

Victor R. Ortega

Sharon T, Shaheen

Montgomery and Andrews

325 Paseo de Paralta

Santa Fe, NM 87501

P.O. Box 2307 (87504-2307)

David M. Spector

Everett J Cygal

David Pi

Schiff Hardin LLP

233 S. Wacker, Suite 6600

Chicago, Il 60606

Attorneys for Catholic Mutual

CERTIFICATE OF SERVICE

Pursuant to F.R.C.P. 5(b)(3), F.R.B.P. 9036 and NM LBR 9036-1(b), I hereby certify that service of the foregoing "Submission of Catholic Mutual Relief Society Regarding Meditation" was made on April 17, 2015 via e-mail and the notice transmission facilities of the Bankruptcy Court's case management and electronic filing system on the below listed parties, and via U.S. Mail to all additional parties on the Debtors' Limited Notice List.

Ronald E. Andazola
Leonard Martinez-Metzgar
Office of the U.S. Trustee
P.O. Box 608
Albuquerque, NM 87103
ustpreion20.aq.ecf@usdoj.gov
ronald.andazola@usdoj.gov
leonard.martinez-metzgar@usdoj.gov

Thomas D. Walker
Stephanie L. Schaeffer
Walker & Associates, P.C.
500 Marquette N.W., Suite 650
Albuquerque, NM 87102
twalker@walkerlawpc.com
sschaeffer@walkerlawpc.com
Local Counsel for Debtor and Debtor-in-Possession

James I. Stang
Gillian N. Brown
Jonathan J. Kim
Pachulski Stang Ziehl & Jones
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
jstang@pszjlaw.com
gbrown@pszjlaw.com
jkim@pszjlaw.com
Counsel for the Official Committee of Unsecured Creditors

Kenneth H. Brown
Pachulski Stang Ziehl & Jones
150 California Street, 15th Floor
San Francisco, CA 94111
kbrown@pszjlaw.com
Counsel for the Official Committee of Unsecured Creditors

Robert E. Pastor
Montoya, Jimenez & Pastor, P.A.
3200 N. Central Ave., Suite 2550
Phoenix, AZ 85012
repastor@mjpattorneys.com
Counsel for Tort Claimants

John Manly
Manly & Stewart
19100 Von Karman Ave., Suite 800
Irvine, CA 92612
jmanly@manlystewart.com
Counsel for Tort Claimants

Richard T. Fass
Donald H. Kidd
Perdue & Kidd, LLP
510 Bering Dr., Suite 550
Houston, TX 77057
rfass@perdueandkidd.com
dkidd@perdueandkidd.com
Counsel for Tort Claimants

Robert M. Charles, Jr.
Susan M. Freeman
Justin J. Henderson
Lewis Roca Rothgerber LLP
201 E. Washington St., Suite 1200
Phoenix, AZ 85004
rcharles@lrrlaw.com
sfreeman@lrrlaw.com
jhenderson@lrrlaw.com
*Counsel for Catholic Peoples Foundation and
Parish Steering Committee of Roman Catholic
Church of the Diocese of Gallup*

Christopher R. Kaup
J. Daryl Dorsey
Tiffany & Bosco
Camelback Esplanade II
2525 E. Camelback Rd., Ste. 300
Phoenix, AZ 85016
crk@tblaw.com
jdd@tblaw.com
Counsel for Southwest Indian Foundation, Inc.

Charles R. Hughson
Rodey, Dickason, Sloan,
Akin & Robb, P.A.
P.O. Box 1888
Albuquerque, NM 87103
chughson@rodey.com
*Counsel for St. Bonaventure Indian Mission &
School*

Dennis Jontz
Lewis Roca Rothgerber
201 Third Street, NW, Ste. 190
Albuquerque, NM 87102
djontz@lrrlaw.com
*Local Counsel for Catholic Peoples
Foundation and Parish Steering Committee of
Roman Catholic Church of the Diocese of
Gallup*

Douglas R. Vadnais
Modrall, Sperling, Roehl,
Harris & Sisk, P.A.
P.O. Box 2168
Albuquerque, NM 87103
drv@modrall.com
*Counsel for The Bank of Colorado d/b/a
Pinnacle Bank*

George M. Moore
Bonnie B. Gandarilla
Moore Berkson & Gandarilla P.C.
3800 Osuna Rd., NE, Ste. 2
Albuquerque, NM 87109
mbglaw@swcp.com
bbg11usc@swcp.com
*Local Counsel for Southwest Indian
Foundation, Inc.*

Steven D. Jerome
Snell & Wilmer, LLP
One Arizona Center
400 E. Van Buren St., Ste. 1900
Phoenix, AZ 85004
sjerome@swlaw.com
*Counsel for The Roman Catholic Church of the
Diocese of Phoenix*

Edward A. Mazel
James A. Askew
Daniel A. White
Askew & Mazel, LLC
320 Gold Ave. S.W., Suite 300 A
Albuquerque, NM 87102
edmazel@askewmazelfirm.com
jaskew@askewmazelfirm.com
dwhite@askewmazelfirm.com
*Counsel for New Mexico Property and
Casualty Insurance Guaranty Association*

Rodney L. Schlagel
James H. Johansen
Butt Thornton & Baehr P.C.
P.O. Box 3170
Albuquerque, NM 87190
rlschlagel@btblaw.com
jhjohansen@btblaw.com
*Counsel for the Roman Catholic Diocese Of
Corpus Christi*

Susan G. Boswell
Lori L. Winkelman
Elizabeth S. Fella
QUARLES & BRADY LLP
One S. Church Ave., Suite 1700
Tucson, Arizona 85701
(520) 770-8700
Fax: (520) 623-2418
susan.boswell@quarles.com
lori.winkelman@quarles.com
elizabeth.fella@quarles.com
Counsel for the Debtors

Randy S. Bartell
Victor R. Ortega
Sharon T. Shaheen
Montgomery & Andrews, P.A.
P.O. Box 2307
Santa Fe, NM 87504
rbartell@montand.com
vortega@montand.com
sshveen@montand.com
*Counsel for Catholic Mutual Relief Society of
America*

Thomas D. Walker
WALKER & ASSOCIATES, P.C.
500 Marquette N.W., Suite 650
Albuquerque, New Mexico 87102
(505) 766-9272
Fax: (505) 722-9287
twalker@walkerlawpc.com
Counsel for the Debtors

/s/ Victor R. Ortega

Victor R. Ortega