

**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-t11  <b>Jointly Administered with:</b>
Jointly Administered with:  BISHOP OF THE ROMAN CATHOLIC CHURCH OF THE DIOCESE OF GALLUP, an Arizona corporation sole.  This pleading applies to:  <input checked="" type="checkbox"/> All Debtors. <input type="checkbox"/> Specified Debtor.	Case No. 13-13677-t11  <b>Hearing Date: April 20, 2015</b> <b>Hearing Time: 10:30 a.m. MDT</b> <b>Location: Hearing Room 13102</b> <b>Dennis Chavez Federal Building</b> <b>United States Courthouse</b> <b>500 Gold Ave. S.W., 13th Floor</b> <b>Albuquerque, NM 87102</b>

**RESPONSE OF RCCDG TO SUBMISSION OF CATHOLIC MUTUAL  
RELIEF SOCIETY REGARDING MEDIATION**

This Response is filed by the Roman Catholic Church of the Diocese of Gallup (“**RCCDG**”) and the Bishop of the Roman Catholic Church of the Diocese of Gallup (the “**Arizona Entity**,” and together with RCCDG, the “**Debtors**”) in the above-captioned, jointly-administered reorganization cases to address the “*Submission Of Catholic Mutual Relief Society Regarding Mediation*” (the “**Submission**”), which was filed by The Catholic Mutual Relief Society Of America and The Catholic Relief Insurance Company Of America (collectively, “**Catholic Mutual**”), insurers of the Debtors.

The Submission filed by Catholic Mutual presents an incomplete story of how the Debtors have interacted and cooperated with their insurers throughout this case. RCCDG has been, and continues to work diligently to provide Catholic Mutual the extensive amount of information they have requested and is merely attempting to move this case to conclusion.

Unfortunately, Catholic Mutual responds to each group of documents it receives, with a request for more information and documents, failing to realize the limited resources of RCCDG.<sup>1</sup> No one disputes that this case has to move toward conclusion and the best way for that to happen is for the Court to send all interested parties to mediation. Despite all of Catholic Mutual’s protestations and allegations, they agree. Contrary to Catholic Mutual’s allegations about lack of information, they have sufficient information to be able to participate meaningfully in a mediation.

To illustrate how incomplete Catholic Mutual’s allegations are, RCCDG responds as follows:<sup>2</sup>

<i><b>Allegation by Catholic Mutual</b></i>	<i><b>RCCDG Response</b></i>
It was not until April 14th that RCCDG informed Catholic Mutual that the purpose of the Status Hearing was to schedule a mediation.	RCCDG specifically set forth in the Notice that “the Debtors will request an Order directing necessary parties . . . including the insurers . . .to attend and participate in a mediation”. See Dkt. No. 355, filed April 3, 2015.
RCCDG has placed every conceivable roadblock in the path of Catholic Mutual’s request for information.	The bar date for filing claims in these reorganization cases was August 11, 2014. On August 20, 2014, Catholic Mutual had not yet entered into a confidentiality agreement, but RCCDG agreed to prepare (and provide to Catholic Mutual), a spreadsheet of the claims which excluded claimant names, but included a significant amount of additional information.  Because the claims were confidential and subject to an Order to Seal, Catholic Mutual was asked to sign a confidentiality agreement. RCCDG sent a form confidentiality order to Catholic Mutual, but they wanted to use their own form. RCCDG agreed to that form and

<sup>1</sup> RCCDG has provided two different charts to Catholic Mutual with information on the claims and background related thereto. In addition, RCCDG has provided numerous sworn statements, discovery responses from the state court litigation, and information on the mediator. This information has been provided on an ongoing basis beginning in August, 2014.

<sup>2</sup> RCCDG has not attempted to respond to every allegation but the following is sufficient to make RCCDG’s point.

<i>Allegation by Catholic Mutual</i>	<i>RCCDG Response</i>
	<p>provided the confidential claims on October 30, 2014, after Catholic Mutual signed the required appendix on October 28, 2014.</p> <p>With respect to the second confidentiality order, that was necessary because the first order <u>only</u> applied to the claims and not anything else. So RCCDG asked Catholic Mutual and New Mexico Guaranty Fund to sign an additional confidentiality agreement that covered the additional documents. In fact, in order to facilitate a quick resolution, RCCDG used the same form that Catholic Mutual had required on the first agreement. Nevertheless, Catholic Mutual did not sign the form, did not provide written comments and ultimately would only agree to send an email that acknowledged that the additional documents would be subject to the confidentiality provisions of the first order. Once Catholic Mutual agreed to the confidentiality of the documents, RCCDG provided the documents the same day.</p>
<p>RCCDG has not provided the documents to Catholic Mutual so that they can evaluate claims.</p>	<p>RCCDG has now provided over 40,000 pages of documents to Catholic Mutual, not including the actual copies of the claims. In addition, RCCDG has continued to provide extensive information and documents to Catholic Mutual, as they have requested it. In addition, Catholic Mutual presumably has more information on valuing claims than any debtor might because of their involvement in other Diocesan cases.</p>
<p>Proofs of claim contain limited information.</p>	<p>The claims, as the Court is aware, contain a significant amount of information. In addition, RCCDG provided Catholic Mutual with a chart of additional information regarding the confidential claims.</p>
<p>Catholic Mutual asked for correspondence with the Official Committee of Unsecured Creditors (the “<b>Committee</b>”) to see if they had anything Catholic Mutual did not.</p>	<p>This is the first time that Catholic Mutual said that the reason was to see if the Committee had anything Catholic Mutual did not. Catholic Mutual could simply have asked the Debtors that question. They did not.</p>

<b><i>Allegation by Catholic Mutual</i></b>	<b><i>RCCDG Response</i></b>
<p>RCCDG withheld documents between the Committee and the Debtors on grounds of a joint interest privilege.</p>	<p>The attorney-client privilege in New Mexico is expressly provided for and governed by New Mexico Rules of Evidence Rule 11-503: “A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication made for the purpose of facilitating or providing professional legal services to that client . . . (3) between the client or client’s lawyer and another lawyer representing another in a matter of common interest . . . .”</p> <p>The bankruptcy case <i>In re Leslie Controls, Inc.</i> provides that “[t]he common interest privilege does not require a complete unity of interest among the participants, but it is limited by the scope of the parties’ common interest.” 437 B.R. 493, 500 (Bankr. D. Del. 2010) (The bankruptcy court explained that “the doctrine is not limited to communications among co-defendants to ongoing litigation” but rather applies “whenever the communication is made in order to facilitate the rendition of legal services to each of the clients involved in the conference.”) <i>Id.</i> at 496.</p>
<p>Catholic Mutual asked for a 2004 subpoena and RCCDG and the Committee “strenuously opposed” the request.</p>	<p>In late January, 2015, Catholic Mutual circulated a proposed 2004 motion and order to examine and request documents and information from the confidential claimants. The information requested was (in part) duplicative of what was in the claims, and in many instances was offensive and overly-invasive. Also, many of the claimants are unrepresented parties so there were obviously serious concerns about the burden on those claimants.</p> <p>The Debtors offered to suggest a more user friendly form that could provide additional information to Catholic Mutual that was not otherwise included in the proof of claim forms. It is the Debtors’ understanding that the Committee and State Court counsel offered to work with Catholic Mutual to provide additional information.</p>

<i>Allegation by Catholic Mutual</i>	<i>RCCDG Response</i>
RCCDG wanted their bankruptcy counsel at any meeting with Bob Warburton, state court counsel for RCCDG.	That is correct. Quarles & Brady is presently counsel for RCCDG and RCCDG asked that Quarles & Brady be present, along with Mr. Warburton. Despite repeated requests for dates so counsel could schedule a meeting, Catholic Mutual has not responded.
RCCDG withheld documents based on privilege.	That is correct. Mr. Warburton not only represented RCCDG prepetition with respect to the tort claims, he was also employment counsel and general counsel for RCCDG. See Employment Application, Dkt. No. 27, ¶2. Therefore, Mr. Warburton's files contained information that is otherwise subject to a privilege. In addition, Catholic Mutual has reserved its rights in connection with the claims. Catholic Mutual has provided no legal basis to support any claim that an insured under the circumstances asserting its legal privileges constitutes a failure to cooperate.

Catholic Mutual is correct on one thing in its Submission. As explained in the chart above, RCCDG did provide documents to Catholic Mutual this week (in addition to the numerous documents already previously provided), after Catholic Mutual agreed to the confidentiality of the additional documents. RCCDG has no objection to allowing Catholic Mutual an opportunity to review those documents prior to the mediation. Given Judge Newsome's schedule, RCCDG and the Committee will be asking the Court to set the mediation for the first two weeks in June, and that gives Catholic Mutual more than ample time to review the documents that have been provided.

In sum, RCCDG has provided thousands and thousands of pages of documents to the insurers, the Committee, and other parties in these reorganization cases in order to facilitate what it hopes is a successful mediation. RCCDG plans to provide updates to the Court and the parties at the Status Hearing, and ask the Court to allow the mediation to go forward in June, 2015.

RESPECTFULLY SUBMITTED this 19th day of April, 2015.

/s/ Lori L. Winkelman

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## 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 “RESPONSE OF RCCDG TO SUBMISSION OF CATHOLIC MUTUAL RELIEF SOCIETY REGARDING MEDIATION” was made on April 19, 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:

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