

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

<p>In re: ROMAN CATHOLIC CHURCH OF THE DIOCESE OF GALLUP, a New Mexico corporation sole, Debtor.</p>	<p>Chapter 11 Case No. 13-13676 Jointly Administered with</p>
<p>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.</p>	<p>Case No. 13-13677-t11</p>

**LIMITED OBJECTION OF CATHOLIC MUTUAL RELIEF SOCIETY
OF AMERICA AND THE CATHOLIC RELIEF INSURANCE COMPANY OF
AMERICA TO DEBTORS' PROPOSED ORDER FOR 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 Limited Objection to the Debtors' proposed Order for Mediation filed on April 22, 2015 (Dkt. No. 362) (the "Debtors' Proposed Mediation Order") in advance of the Monday, April 27, 2015 status conference.¹

¹ Counsel for Catholic Mutual attempted to contact counsel to the Debtors by telephone to resolve Catholic Mutual's concerns with the Debtors' Proposed Mediation Order prior to filing this Limited Objection. Unfortunately, counsel to the Debtors did not respond and Catholic Mutual was left with no alternative but to file this Limited Objection.

1. While Catholic Mutual is pleased to participate in the proposed mediation, it respectfully submits that the Debtors' Proposed Mediation Order contains two inappropriate provisions. The interests of all parties would be better served if the mediation order entered by the Court more closely mirrored the Court's recommended form Mediation Order. A copy of Catholic Mutual's proposed form of mediation order, essentially mirroring the Court's recommended Mediation Order, is attached hereto as Exhibit A. Catholic Mutual requests that the Court enter that draft as its Order herein.

Alternatively, if the Court determines to base its Order on the Debtors' Proposed Mediation Order, that draft should be modified to: (i) strike paragraphs 9 and 11 contained therein and replace such paragraphs with the language contained in paragraph 2(a) of the Court's recommended form mediation order; and (ii) provide in paragraph 1 that the Mediator shall fix a reasonable date, time and place for the Mediation after having consulted with counsel for the parties.

2. First and most importantly, the Court should strike paragraph 11 of the Debtors' Proposed Mediation Order, which provides that "[t]he Mediator shall have the ability and authority to issue any orders to the Parties in order to facilitate the mediation, and the parties shall be required to comply with any such order." (emphasis added). There is no basis in law to confer such extraordinary powers on the mediator and it would convert what is intended to be a non-binding mediation (Debtors' Proposed Mediation Order, at ¶5) to a mandatory and unconsented to proceeding. It is unequivocally neither the intent of the parties nor appropriate under applicable law for the Mediator to issue any binding "orders" in these cases. *See, e.g., Stern v. Marshall*, 546 U.S. 2, 131 S.Ct. 2594 (2011). Moreover, the matters being addressed by the Mediator in these cases involve, *inter alia*, claims arising out of alleged personal injury,

which neither this Court nor the Mediator have the jurisdictional authority to adjudicate with finality. 28 U.S.C. § 157(b)(2)(B).

3. Paragraph 2(c) of the Court's recommended form mediation order contains far more appropriate language. It provides: "[t]he Mediator shall have authority to control all procedural aspects of the Mediation, including when the Mediation Parties will meet jointly and/or separately with the Mediator." While it is undisputed that the Mediator should have the procedural authority to control the Mediation, the Debtor offers no legal or policy justification for conferring on the Mediator the unlimited power to issue any order. The Debtors' proposal contravenes applicable law and would, in a very real sense, subvert the whole purpose of a non-binding mediation.

4. Catholic Mutual would suggest the mediation order adopted by the Court provide that the Mediator shall fix a reasonable time, date and place of the Mediation after having consulted with counsel to the parties. Such a provision is included in paragraph 2(a) of Catholic Mutual's proposed order. The Debtors' Proposed Mediation Order does not address the issue.

5. If the Court decides to pattern its order after the Debtors' Proposed Mediation Order, Catholic Mutual requests that paragraph 9 of that draft, which provides that "[t]he Mediator shall be authorized to report to the Court on the good faith of any or all of the Parties," be stricken and replaced with the Court's form language that "[t]he Mediator may report to the Court any willful failure to attend or participate in good faith in the mediation process or mediation conference." Placing a mandatory requirement on the Mediator before the Mediation has begun seems wholly unnecessary and premature. Rather, the Court's standard form language appropriately grants the Mediator authority to report to the Court should the Mediator determine that the parties are not engaging in good faith.

WHEREFORE Catholic Mutual respectfully requests that the Court enter a Mediation Order consistent with the relief sought herein and award such other and further relief as the Court deems just and proper.

DATED this 24th day of April, 2015.

Respectfully submitted,

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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 Limited Objection of Catholic Mutual Relief Society of America and the Catholic Relief Insurance Company of America to Debtors' Proposed Order for Mediation was made on April 24, 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.

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EXHIBIT A

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

<p>In re: ROMAN CATHOLIC CHURCH OF THE DIOCESE OF GALLUP, a New Mexico corporation sole, Debtor.</p>	<p>Chapter 11 Case No. 13-13676 Jointly Administered</p>
<p>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.</p>	

MEDIATION ORDER

This matter came before the Court at the status conference on April 20, 2015 at 10:30 a.m. MDT, which was held pursuant to the “Debtors’ Request for Status Hearing” [Dkt. No. 354] (the “Status Hearing”) filed by the above-referenced Debtors. Based upon the Status Conference concerning the court-directed mediation (the “Mediation”) and the record before this Court, and having determined that the entry of this Order is appropriate, the Court **HEREBY ORDERS:**

1. Mediation Parties. The above-referenced Debtors, Official Committee of Unsecured Creditors, New Mexico Property and Casualty Insurance Guaranty Association, the Catholic Mutual Relief Society of America, The Catholic Relief Insurance Company of America, Province of St. John the Baptist of the Order of Friars Minor, Sacred Heart Cathedral in Gallup, New Mexico, St. John the Baptist in St. Johns, Arizona, Catholic Peoples Foundation, and St. Bonaventure Indian Mission & School (the “Mediation Parties,” and each a “Mediation Party”)

are hereby ordered to attend and participate in the Mediation involving certain alleged personal injury claims filed against the Debtors (the "Dispute"). Any other interested party may participate in the Mediation, subject to the approval of the Mediator.

2. Mediation Procedures.

(a) Time and Place of Mediation, and Confidential Mediation Statement.

Upon consultation with counsel to the Mediation Parties, the Honorable Randall J. Newsome (Ret.) of JAMS, serving as mediator (the "Mediator"), shall fix a reasonable date, time and place for the Mediation. The Mediator shall have the authority to establish the time for all mediation activities, including joint and private meetings between the Mediator and Mediation Parties during the course of the Mediation. The Mediator may require the Mediation Parties to submit a confidential mediation statement to the Mediator upon such schedule and in such form as the Mediator may set. The confidential mediation statement may also include such other documents and information the Mediation Party wishes to include and/or as may be requested by the Mediator.

(b) Attendance by Persons with Settlement Authority. In addition to counsel, a representative of each of the Mediation Parties shall attend the mediation conference in person.

(c) The Mediation Procedure, and Good Faith Participation. The Mediator shall have authority to control all procedural aspects of the Mediation, including when the Mediation Parties will meet jointly and/or separately with the Mediator. The Mediator may report to the Court any willful failure to attend or participate in good faith in the mediation process or mediation conference. Such failure may result in the imposition of sanctions by the Court.

3. Report of Result of the Mediation. After the Mediation concludes, the Mediator will report to chambers staff whether the Mediation resulted in a settlement.

4. Confidentiality. Any oral or written statements or submissions made by the Mediator, any of the Mediation Parties, or others during the mediation process shall not be divulged by any of the participants in the Mediation (or their agents) or by the Mediator to the Court or to any third party. Except for an executed settlement agreement, all records, reports, or other documents received or made by a Mediator while serving such capacity shall be confidential and shall not be provided to the Court. The Mediator shall not be compelled to divulge such records, reports, or other documents or to testify in regard to the Mediation in connection with any arbitral, judicial or other proceeding, including any hearing held by this Court. Notwithstanding anything in Federal Rule of Evidence 408 to the contrary, no person may rely on or introduce as evidence in connection with any arbitral, judicial or other proceeding, including any hearing held by this Court, any aspect of the mediation effort, including but not limited to (a) views expressed or suggestions made by any of the Mediation Parties with respect to a possible settlement of the Dispute; (b) admissions made by any of the Mediation Parties in the course of the Mediation and (c) proposals made or views expressed by the Mediator. Nothing in this paragraph, however, precludes a report of (i) whether a settlement was reached or the Mediator from reporting to the Court any failure on the part of one or more of the Mediation Parties to comply with such Mediation Party's obligations under this order; or (ii) if the Mediator concurs that a Mediation Party has failed to comply with obligations under this order, the presentation of information to the Court in connection with a determination of such compliance or noncompliance. Further, nothing in this paragraph makes a document or other information confidential that was received or developed by a Mediation Party without an

obligation of confidentiality that relates to the Mediation.

6. Immunity. The Mediator, as a court appointed mediator, shall be immune from claims arising out of acts or omissions incident to the Mediator's services rendered in connection with the Mediation.

7. Compliance With Bankruptcy Code and Rules. Nothing in this Order shall relieve any of the Mediation Parties or any other party in interest from complying with applicable requirements of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure, such as requirements for obtaining court approval of any compromises of controversies, stipulated stay relief or adequate protection, or sales of property outside the ordinary course of business.

8. Termination of the Mediation Process. Any of the Mediation Parties may at any time file a motion with the Court to withdraw from the mediation for cause.

9. Non-Binding Mediation. Unless the Mediation Parties otherwise agree to in writing, the results of the Mediation shall be non-binding.

United States Bankruptcy Judge

Entered on Docket: _____

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