

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.

SUPERIOR COURT  
C.A. NO. HDCV2005-602

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 THE ROMAN CATHOLIC BISHOP OF \*  
 SPRINGFIELD, a corporation sole, \*  
 Plaintiff \*  
 \*  
 v. \*  
 \*  
 TRAVELERS PROPERTY CASUALTY \*  
 COMPANY, et al, \*  
 Defendants \*  
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HAMPDEN COUNTY  
 SUPERIOR COURT  
**FILED**  
 AUG - 3 2006  
  
 CLERK-MAGISTRATE

**DEFENDANTS' (JOINT) EMERGENCY MOTION TO  
 COMPEL PRODUCTION OF DOCUMENTS BY PLAINTIFF**

Defendant Travelers Casualty and Surety Company, Massachusetts Insurers  
 Insolvency Fund, North Star Reinsurance Corporation, Centennial Insurance Company,  
 Underwriters at Lloyd's, London, and Interstate Fire & Casualty Company (collectively,  
 the "Insurers") hereby jointly move *on an emergency basis*, pursuant to Mass.R.Civ.P. 37  
 (a)(2) and Mass.Super.Ct.R. 9A (e)(1), for an order compelling plaintiff The Roman  
 Catholic Bishop of Springfield, a corporation sole (the "Diocese"), to produce forthwith  
 all documents requested in Defendants' (Joint) First Set of Requests for Production of  
 Documents Propounded to Plaintiff ("First Document Request"), and for an award of  
 costs and attorneys' fees. *Nine (9) months after service of the First Document Request,*  
*the Diocese has yet to produce a single document to the Insurers.*<sup>1</sup>

As grounds for this motion, the Insurers further state as follows:

<sup>1</sup> The Diocese has served a preliminary "response" to the Insurers' First Document Request, but this "response" was so grossly deficient that the Insurers will be required to file a motion to compel a further "response" in the near future.

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(1) This coverage action was filed by the Diocese on June 14, 2005. The Insurers served the Diocese with the Insurers' First Document Request and Defendants' (Joint) First Set of Interrogatories Propounded to Plaintiff ("Interrogatories") on October 18, 2005.<sup>2</sup> The Diocese's preemptive reaction to this discovery was to announce at the October 6, 2005 status conference that it was reluctant to produce any documents or answer any interrogatories until the Court first addressed and resolved the issue of whether the law firm of Nixon Peabody, LLP, which represents the Massachusetts Insurers Insolvency Fund, should be disqualified because of a "conflict of interest". Thus, the Diocese effectively brought all discovery to a standstill.

(2) The Court ordered the Diocese to undertake discovery from Nixon Peabody, LLP, initially by means of interrogatories only, on December 7, 2005. Although Nixon Peabody, LLP provided the discovery requested by the Diocese by February 13, 2006, the Diocese did not file its motion to disqualify Nixon Peabody, LLP until May 26, 2006. The Court denied the Diocese's motion to disqualify Nixon Peabody, LLP on July 19, 2006.

(3) In the meantime, however, the Court ordered the Diocese to respond to the Insurers' outstanding discovery, *i.e.*, the Insurers' First Document Request and the Interrogatories, by June 30, 2006. *See* June 15, 2006 Order. The Diocese served its "response" to the First Document request on June 30, 2006, *without producing any documents*, and simultaneously served a motion to extend the time for actually producing

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<sup>2</sup> The Insurers have contemporaneously filed an application for default under Rule 33 (a) because the Diocese has failed to answer the Interrogatories.

any documents until July 21, 2006.<sup>3</sup> The Court has *not* ruled on that motion for additional time; in any event, the Diocese has *not produced any documents*, although another week has already passed since July 21, 2006.

(4) On July 20, 2006, the Court issued another scheduling order, which required the Insurers to complete the depositions of three (3) groups of witnesses – whom the Insurers had identified as “Lay Witness/Investigative Deponents”, “Lay Diocese Personnel Deponents” and “Clergy Deponents” – by September 29, 2006, November 30, 2006 and March 31, 2007, respectively.<sup>4</sup> The Court further ordered that the Insurers could begin such depositions by July 24, 2006, October 2, 2006 and December 4, 2006, respectively. Perhaps, the Court was under the assumption that the Diocese had already produced *all, if not at least some*, of the documents that were the subject of the Insurers’ First Document Request.

(5) The difficulty posed by the Diocese’s intransigence is significant and the likelihood of prejudice to the Insurers is immediate. According to the Diocese, there are approximately 27,000 documents that the Diocese would produce in response to the Insurers’ First Document Request, as well as a “privilege log” identifying those documents that the Diocese has indicated – in its “response” – that it “refuses” to produce. These documents must be copied, reviewed and indexed before they can actually have any utility to the Insurers; during the interim, the Insurers must begin to depose the first group of witnesses, whether or not those documents are available for use during that particular phase of the deposition process. Moreover, the longer the Diocese

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<sup>3</sup> The Diocese did not confer with the Insurers prior to serving this motion, *i.e.*, made no effort to comply with Mass.Super.R. 9C. Nevertheless, in the spirit of cooperation, the Insurers did not oppose the Diocese’s motion.

<sup>4</sup> The Court indicated that it was unlikely that any further extension of time would be allowed.

delays in producing *any* documents, it will become increasingly more difficult for the Insurers not only to use those documents during any subsequent phase of depositions, but also to identify in a timely and meaningful way those documents that the Diocese has “refused” to produce and as to which the Insurers will realistically intend to seek an order requiring future production.<sup>5</sup>

(6) Since July 21, 2006, the Insurers have unsuccessfully attempted to elicit from the Diocese when the requested discovery will be forthcoming, but have not received any reply whatsoever. On July 25, 2006, counsel for the Insurers sent (by fax and electronic mail) a letter to counsel for the Diocese stating that, pursuant to Mass.Super.Ct.R. 9C, the Insurers needed to confer with the Diocese with respect to the issue of the Diocese’s failure to respond to the Insurers’ requests for discovery and that, unless the Diocese produced the outstanding documents and answers to the Interrogatories by the close of business on July 26, 2006, the Insurers would file a motion to compel and a request for a default pursuant to Mass.Super.Ct.R. 33 (a).<sup>6</sup> *To date, the Diocese has failed to respond to this letter or to produce the documents.*

(7) It has been over nine (9) months since the Insurers first served the Diocese with the First Document Request, and *not one (1) document has been produced.* The Insurers can only speculate whether this extraordinary delay is part of some intentional “strategy” to prolong these proceedings to the prejudice of the Insurers. Given the Court’s sense of urgency in requiring the parties to complete pretrial activity promptly so that the case can be brought to a conclusion in an efficient and expeditious manner, the

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<sup>5</sup> The Court has further ordered that the parties are to file all anticipated discovery motions, *i.e.*, motions to compel, by August 31, 2006. Once those motions have been filed, the Court will then order a schedule for the parties to brief and argue the motions.

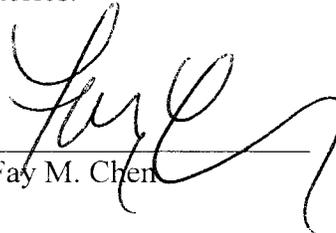
<sup>6</sup> A copy of this letter is attached hereto.

longer the Diocese delays the discovery process the more the Insurers are prejudiced. Under the circumstances, the Court should order the Diocese to produce *forthwith* all documents that are the subject of the Insurers' First Document Request. The Court should further order an award of costs and attorneys' fees associated with their bringing this motion.

WHEREFORE, the Insurers' (joint) motion to compel production of documents by the Diocese on an emergency basis should be allowed.

**CERTIFICATION**

I, Fay M. Chen, counsel herein for defendant Travelers Casualty and Surety Company, certify that I attempted to contact Kevin D. Withers, Esq., counsel for plaintiff herein, on July 11, 2006, by telephone for the purpose of discussing with him the issue of plaintiff's failure to respond to defendants' discovery requests. Mr. Withers never returned my telephone call. I then sent Mr. Withers (by fax and by electronic mail) the July 25, 2006 letter (a copy of which is attached hereto) addressing these concerns. As of the date of the filing of this motion, the Diocese has not responded to the July 25, 2006 letter, produced the documents or answered interrogatories.

  
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Fay M. Chen