

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re	:	
	:	Chapter 11
CATHOLIC DIOCESE OF WILMINGTON, INC.,	:	
	:	Case No. 09-13560-CSS
	:	
Debtor.	:	
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	:	

**LIMITED OBJECTION TO THE SECOND AMENDED CHAPTER 11 PLAN OF
REORGANIZATION OF CATHOLIC DIOCESE OF WILMINGTON, INC. BY
THE PREMONSTRATENSIAN FATHERS¹**

Interested Party, The Premonstratensian Fathers, through the undersigned counsel, hereby submits its Limited Objection to the *Second Amended Chapter 11 Plan of Reorganization of Catholic Diocese of Wilmington, Inc.*, and states in support thereof as follows:

Background

1. Interested Party, The Premonstratensian Fathers, (“TPF”) is a non-profit corporation organized under the laws of the State of Wisconsin and that its principal office is located at St. Norbert Abbey, 1016 N. Broadway, DePere, Wisconsin 54115-2697.
2. On June 25, 2009, a plaintiff using a pseudonym to protect her identity instituted a tort action in the Superior Court of Delaware in and for Kent County, C.A. No., 09C-06-062-RBY, styled as *Jane Stoe #1, v. The Daughters of Charity of St. Vincent De Paul, Northeast Province, et al.*, (the “Stoe Litigation”).
3. TPF and debtor Catholic Diocese Of Wilmington, Inc., (“CDOW” or the “Debtor”), were both named as defendants in the *Stoe Litigation*.²

¹ Capitalized Terms not defined herein shall have the same meaning ascribed to said terms in the Plan Documents, if any.

4. On October 18, 2009 CDOW filed its chapter 11 petition. (“the Petition Date”) (D.I. #1), thereby subjecting the case against CDOW in the *Stoe* Litigation to the automatic stay in bankruptcy, 11 USC § 362.

5. On May 23, 2011, Debtor filed its *Second Amended Chapter 11 Plan of Reorganization of Catholic Diocese of Wilmington, Inc.*, (the “Plan”), (D.I. #1321) and accompanying *Disclosure Statement Pursuant To Section 1125 Of The Bankruptcy Code With Respect To The Second Amended Chapter 11 Plan Of Reorganization Of Catholic Diocese Of Wilmington, Inc.* (D.I. #1322). (collectively, as supplemented, “the Plan Documents”).

6. TPF is defined in the Plan Documents as a Religious Order.³ A contribution claim by a Religious Order against a Protected Party in a non-bankruptcy forum such as the *Stoe* Litigation does not meet the plan definition of a Survivor Claim.⁴ Consequently, such Religious Order joint tortfeasor contribution claims against Protected Parties will be discharged rather than channeled to either the proposed Settlement Trust or the Plan Trust as the case may be.⁵

² All of the defendants named in the suit are: Daughters Of Charity Emmitsburg Province, Southeast Province; Seton Villa, Inc., a Delaware corporation; Catholic Diocese Of Wilmington, Inc., a Delaware corporation; Catholic Charities, Inc., a Delaware corporation; Archmere Academy, Inc., a Delaware corporation; The Norbertine Fathers Of Delaware, Inc., a Delaware corporation; The Premonstratensian Fathers, Inc., a Wisconsin corporation; the Norbertine Fathers, Inc., a Pennsylvania corporation,

³ Plan Exhibit “A” Definitions: (135) “Religious Order.”

⁴ Plan Exhibit “A” Definitions: (167) “Survivor Claim.”

⁵ Without limitation, *see generally*, Plan Exhibit “A” Definitions: (134) “Protected Party;” Art. XVI, §16.2. *Discharge Injunction*; Art. XVI, §16.3 *Channeling Injunction*; Art. XVI, §16.4 *Exculpation, Limitation of Liability*.

Limited Objection to Second Amended Plan

7. While taking care to preserve the Trust's rights to contribution from Religious Orders,⁶ the Plan fails to acknowledge that the extinguishment of Religious Order contribution claims against Protected Parties will not adversely affect the setoff rights of TPF under the Delaware Uniform Contribution Among Tortfeasors Law, 10 Del. C. § 6301, *et seq.*, ("UCATL") or equivalent statutory/common law.⁷

8. Yet this Court has recently recognized that the setoff provisions of the UCATL "avoid potential inequity resulting from the extinguishment of contribution rights." *In re: Semcrude, L.P., (Whyte, Litigation Trustee, v. Kivisto, et al.)*, Case No. 08-11525, Shannon J., *12 (Bankr., D. Del. November 19, 2010); *see* UCATL § 6304.

9. The Plan's failure to delineate the nature and extent of the extinguishment of Religious Order contribution rights prejudices TPF. This lack of clarification unnecessarily creates ambiguity in the *Stoe* Litigation as to the post-discharge survival of TPF's entitlement to statutory and/or common law setoff against any liability found in to *Stoe* to account for any payments by, or culpability on the part of, CDOW.

10. This defect in the Plan can be easily remedied by the inclusion of a neutrality provision expressly articulating that the Plan does not affect the contribution setoff rights of any Person deemed liable in a non-bankruptcy forum. For example, *In re: Semcrude*,

⁶ *See* SECOND AMENDED PLAN Art.V, §5.1; Art. VII, §7.4; Art. VIII, §8.3; Disclosure Statement Section V.E.1.(iii); Disclosure Statement Section V.F.2., and elsewhere in the Plan documents.

⁷ In this bankruptcy case the UCATL "provides the parameters for determining when contribution is appropriate and how it is to be decided." *In re: Carmella Gibellino-Schultz*, Chapter 7, Debtor, Case No. 10-30669, Fox J., *9 (Bankr., EDPA April 11, 2011). *See also, In re: W.R. Grace & Co., et al.*, Case No. 01-1139 (JKF). Fitzgerald J. *10 (Bankr., D. Del. February 23, 2011) (citing state law governing contribution claims against asbestos bankruptcy trust); *See In re: Semcrude, L.P., (Whyte, Litigation Trustee, v. Kivisto, et al.)*, Case No. 08-11525, Shannon J., *13 (Bankr., D. Del. November 19, 2010

L.P., the Court approved a contribution setoff right neutrality provision in a Settlement Agreement which provided in pertinent part:

The determination of whether any monetary award or judgment obtained in another action by the Trustee . . . from or against any third party resulting from the third party's liability as a joint tortfeasor with the Released Parties for claims arising from, related to, or in any way based upon or connected to any Released Claim, is subject to any reduction, credit or setoff as a result of the settlement in this action shall be made by the court issuing such award or judgment based on applicable law. *Id.* at 13.

11. In the instant case, TPF respectfully requests that the instant objection be resolved with a modest revision to the Plan including the following language or its equivalent:

Nothing in the Plan Documents or in the Confirmation Order shall preclude any Person from asserting in any proceeding, or against any award or judgment entered in such proceeding any and all rights that may be accorded under the Delaware Uniform Contribution Among Tortfeasors Law, 10 Del. C. § 6301, *et seq.*, or any other applicable statutory or common law, of reduction, credit, or setoff, arising from the settlement and resolution of the Survivor Claims..

12. Affording TPF the relief requested herein will have no affect on the operation of the proposed Trust Distribution Procedures as to the existence or amount of any Allowed Survival Claim.

WHEREFORE, Interested Party, The Premonstratensian Fathers, respectfully requests that the Court enter and Order granting the relief set forth above and such other relief as it deems necessary and just.

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Dated: June 30, 2011

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FOR THE DISTRICT OF DELAWARE**

In re	:	
	:	Chapter 11
CATHOLIC DIOCESE OF	:	
WILMINGTON, INC.,	:	Case No. 09-13560-CSS
	:	
Debtor.	:	
_____	:	

CERTIFICATE OF SERVICE

I, James S. Yoder, Esquire do hereby certify that on this 30th day of July, 2011, copies of the foregoing *Limited Objection To The Second Amended Chapter 11 Plan Of Reorganization Of Catholic Diocese Of Wilmington, Inc. By The Premonstratensian Fathers* were served electronically upon all counsel of record via the court ECF filing system.

Under penalty of perjury, I declare that the foregoing is true and correct.

/s/ James S. Yoder
James S. Yoder (#2643)