

UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY	
ARTHUR J. ABRAMOWITZ (AA3724) SHERMAN, SILVERSTEIN, KOHL, ROSE & PODOLSKY, P.A. 308 Harper Drive Suite 200 Moorestown, New Jersey 08057 (856) 662-0700 Attorneys for certain Parishes, a Mission and certain Schools	
In re:	Chapter: 11
THE DIOCESE OF CAMDEN, NEW JERSEY	Case No. 20-21257 (JNP)
Debtor.	

CORRECTED REPLY BRIEF TO THE OBJECTION OF THE OFFICIAL COMMITTEE OF TORT CLAIMANT CREDITORS TO DEBTOR’S MOTION TO SET BAR DATE BY PARISHES, CERTAIN SCHOOLS AND A MISSION

This brief is submitted on behalf of the non-party parishes, certain schools and a mission (“collectively referred to as “Parishes”) (as identified in Notice of Appearance [DOC-134]) in support of the motion filed by the Diocese of Camden (“Diocese” or “Debtor”) to fix the bar date for the filing of proofs of claims as May 31, 2021 (“Motion”) and in response to the Objection of the Official Committee of Tort Claimant Creditors (“Tort Claimants Committee” or “TCC”) [Doc 327] and the Objection of the United States Trustee [Doc 336] insofar as they relate to the bar date. Debtor’s Motion establishes that a May 31, 2021 bar date is appropriate because it affords the claimants an ample 124 days (a little over four months) to file claims. On the other hand, TCC’s Opposition argues for a bar date of November 30, 2021, which would create an excessive and wholly unnecessary 307 days (a little over ten months) to file claims. There is no reasonable legal basis for such a lengthy period.

Argument and Legal Analysis

This Court has the discretion pursuant to Bankruptcy Rule 3003(c)(3) to set a May 31, 2021 bar date, and the circumstances of this case fully support an exercise of that discretion. *In re Hooker Invest., Inc.*, 122 B.R. 659, 663 (S.D.N.Y. 1991). Courts have frequently noted, “the setting of a bar date for filing claims . . . furthers the policy of finality designed to protect the interests of a debtor and his diligent creditors and the expeditious administration of the bankruptcy case.” *In re Peters*, 90 B.R. 588, 597 (Bankr. N.D.N.Y. 1988). The setting of a bar date is a critical step in determining the universe of claims, evaluating those claims and addressing those claims in a plan of reorganization.

As the Court stated in *In re New Century TRS Holdings, Inc.*, 465 B.R. 38, 46 (Bankr. D. Del. 2012) a bar date “contributes to one of the main purposes of bankruptcy law, securing, within a limited time, the prompt and effectual administration and settlement of the Debtor’s Estate.”. The Tort Claimants Committee assert that the trauma survivors endure in filing a claim cannot be ignored and justifies a bar date of November 30, 2021. That issue is but one factor that this court must consider when it sets a bar date. “A personal injury claimant is given no special dispensation. The Claimant must comply with the Code, the Federal Rules of Bankruptcy Procedure, and court orders for claims handling procedure before there is a valid bankruptcy claim.” *In re Best Products Co., Inc.*, 140 B.R. 353, 357 (Bankr. S.D.N.Y. 1992).

The Parishes support a bar date of May 31, 2021. That bar date provides an extended and legally sufficient advertising and claim submission period to reluctant or unknown claim victims

to file claims. That bar date also provides timely relief and avoids impeded delays for the over 50 known victims who will be prejudiced by any substantial delay in the case.

The Diocese as well as the Parishes, insurance companies and other parties in interest are hamstrung by this delay and extending the bar date to November 30, 2021 would impede any meaningful discussions relating to the establishment of a consensual settlement fund to address the claims of victims. Indeed, a November 30, 2021 would certainly push this case well into 2022.

A review of the recent holdings in other Diocese bankruptcies is relevant. Attached as **Exhibit A** is a compendium (“Survey”) of thirteen Diocese cases that were filed after 2017. The Survey reflects the number of days between the respective bar date orders and the bar date. The average for all the Diocese cases is 142 days. If the Diocese of Buffalo is excluded from the survey (and should be, as an outlier, as discussed *infra*.) **Exhibit B** reflects that the average number of days is 125 days. The request by the Diocese for a May 31, 2021 bar date provides for claim submissions for a period of 124 days (which excluding the Diocese of Buffalo case) is entirely consistent with (one day shy) the 125-day average for the other Diocese cases. The Tort Claimants Committee is requesting a bar date of November 30, 2021 which is 303 days from the hearing date on the Diocese’s motion. That request is almost 2.5 times the average of the similar proceedings that were surveyed.

The supplemental submission by the Tort Creditors Committee [Doc 348] acknowledges that no bar date order was entered in the Diocese of Rockville as the date of their submission. For that reason, the bar date in the Diocese of Rockville is not included in the surveys. If, however the bar date in Diocese of Rockville had been included, **Exhibit A** would reflect a 151-day average and **Exhibit B** would reflect a 138-day average. The Tort Claimants Committee’s

request of 303 days would still be over twice the average. Such a delay will result in a substantial cost to the Estate in terms of administrative fees, which will directly reduce survivor compensation and threaten the ability of the Diocese to continue its mission. The Parishes will also pay a substantial price for a 303-day period. The TCC has served each of the 67 Parishes, school and mission with subpoenas for depositions and the production of documents, in many cases going back ten years or more. The subpoenas are improper and will result in discovery litigation before this Court. It does not take much of an imagination to predict substantial professional fees will be incurred as a result of 67 motions to quash and protective orders. the TCC's scorched earth discovery strategy underscores the substantial fees and costs that will be incurred between now and the bar date.

Most important, the COVID-19 pandemic and resulting economic conditions have had a severe effect on church attendance, which also translates to a reduction in revenues for the Parishes and in turn, the Diocese. In the exercise of its discretion, this Court should take into consideration costs absorbed by the Parishes at this vulnerable period when revenues are substantially reduced.

The Tort Claimants Committee opposes the Motion on several grounds. In support of its positions, it has submitted the Declaration of Ms. Hamilton, as a purported expert. However, even though Ms. Hamilton does not have a degree in psychology, her opinions concern victims and the psychological implications of abuse. What Ms. Hamilton does have is a law degree, and from a review of her resume, she is an advocate as well as a lobbyist in this field. As such, Ms. Hamilton does not qualify as an expert under FRE 702 and her Declaration should be excluded. Quite simply, Ms. Hamilton is attorney advocate presenting legal arguments in the guise of an

expert report. She would not survive a *Daubert* challenge and the “report” should be disregarded as mere attorney argument.¹

Another Tort Claimants Committee argument is that the New Jersey Legislature has fixed a state statute of limitations of November 30, 2021 and, the TCC argues, that date requires deference from this Court. This Court should bear in mind that the New Jersey Legislature has revised the state statute of limitations as to a November 30, 2021 date only for claimants who are 55 years or older. Therefore, a claimant will have to ascertain whether the state statute of limitations would affect his or her claim when and if filed. That in and of itself may be confusing. This Court’s establishment of a bar date would put any confusion to rest because all claimants, regardless of age, would be required to file by the bar date.

In support of its position, the Torts Claimants Committee relies upon the case of *In re The Diocese of Buffalo, N.Y.*, Case No. 20-10322 (CLB) (Bankr. W.D.N.Y., Sept. 11, 2020) *Decision and Order* [DOC No. 546] in which a bar date of August 14, 2021 was set coextensively with the New York’s re-opened statute of limitations. The Tort Claimants Committee asserts that this case stands for the proposition that the Bankruptcy Court’s decision serves as a precedent that a bankruptcy judge should defer to a state’s determination of an appropriate statute of limitation for abuse claims when determining a bar date. The judge’s suggestion in the *Buffalo* case that bankruptcy courts should, whenever possible, follow state law and policy decisions is *dicta*.

The Tort Claimants Committee has also submitted supplemental briefs that address The *Roman Catholic Diocese of Rockville Centre, New York*, Case 1:20-BK-12345 (Bankr. S.D.N.Y.). That court’s rationale, however, does not support the Tort Claimants Committee’s request for a

¹ If trauma is a factor in deciding whether to assert a claim and or file a proof of claim, it will be a factor regardless of when and where a claim is filed. The Bankruptcy Code requires the filing of a proof of claim as a prerequisite for the receipt of any distribution.

lengthy November 30, 2021 bar date. In *Rockville*, Judge Chapman noted that the Committee requested an August 14, 2021 date, which was 215 days from the hearing. [Transcript at p. 19]. While Judge Chapman did rule that the bar date would be coincident with the New York CVA deadline, she also issued a caveat:

But let me be clear that to the extent that there is an additional extension [of the CVA] -- and I have no special insight into that -- the bar date will be the bar date. It will not be tied to additional extensions of the CVA. [Transcript at p. 36].

Judge Chapman's admonition undercuts TCC's contention. Contrary to the arguments of the TCC and the United States Trustee, Judge Chapman did not relinquish control of the bar date to the state legislature. Instead, in her discretion, she chose an appropriate and final bar date consistent with all factors in the bankruptcy proceeding. Judge Chapman also recognized that the legislature in New York in extending the deadline, was "admittedly looking at the issue from a number of perspectives, and one of which was the ability of the State Courts to function. And that's not the issue here." [Transcript at p. 17, lines 20-24]. (Respectfully, this Court needs to "look at the issue" from the "perspective" of the costs to the Debtor and the Parishes and the impact of an extended bar date on the actual funds later available to the creditors and claimants.)

Judge Chapman set the bar date of August 14, 2021, which was approximately ten weeks longer than the Diocese's request. The Committee in this case is seeking 307 days which is four and a half months after the Diocese's May 31 request. Simply put, Judge Chapman's holding does not support the TCC's or the United States Trustee's contention.

As a side-note, the fact that Judge Chapman allowed the testimony of expert witnesses, while perhaps interesting, should be of no consequence in this case. It does not appear that Ms. Hamilton was a witness in *Rockville* and one can only speculate if that court would have allowed her to testify and what if any weight would have been given to her testimony.

In *In re: The Roman Catholic Diocese of Syracuse*, Case No. 20-30663 (Bankr. N.D.N.Y. Nov. 6, 2020) [DOC No. 214], that court was presented with an almost identical issue. In that case the Committee argued that the bankruptcy court should set the bar date no earlier than the date on which New York had extended the statute of limitations for survivors. The court overruled the Committee's objection and determined that 160 days was appropriate instead of the 281 days that the Committee had requested.

In a Decision and Order rendered in the *Diocese of Rochester*, Case No. 29-20905 -PRW [Doc. 700] (2020 WL 5814203) the Committee moved for an order extending the current claims bar date for victims of childhood sexual abuse from August 13, 2020 to January 14, 2021. The Committee argued that potential abuse victims might become confused about whether Governor Cuomo's Executive order changing the CVA statute of limitations for state court actions to January 14, 2021 also changed the bar date in that Diocese case. The Committee also argued, "that the COVID-19 pandemic may have caused childhood abuse victims, many of whom are now elderly, to lose focus on the need to file a proof of claim." Judge Warren determined that the request for a blanket extension of the claims bar date was unwarranted. The Court prefaced its denial of the Committee's request explaining, "The Court must balance the equities, after assessing the underlying facts, in deciding whether an extension of the deadline for abuse victims to file a proof of claim is appropriate in this case." The Court considered the blanket request for an extension of the bar date as well as the implications of COVID-19 as well as the alleged confusion that extended the CVA deadline by five months. The Court was not persuaded by those arguments when they were balanced against potential harms to the Estate and to those abuse victims who had already filed proofs of claim, adding unnecessary delay to the ultimate resolution of their claims.

The decisions in *Syracuse* and *Rochester* are not isolated or outlier cases. In *In re The Archdiocese of Saint Paul and Minneapolis*, Case No. 15-30125 (Bankr. D. Minn., April 17, 2015) [DOC No. 188] the Diocese sought a bar date of August 3, 2015. The Committee objected to that date and asserted that the Minnesota Child Victim’s Act designated May 25, 2016 as the deadline for asserting child abuse claims. The Committee argued in that case (as the Tort Claimants Committee argues before this court) that the debtor’s “request for a claims bar date earlier than May 25, 2016 effectively asks this Court to disregard the recent legislation and prematurely ‘close the window’ on sexual abuse claims against the Archdiocese.” [DOC 175 at p. 2]. The Committee further asserted that “[s]uch a request flies in the face of the clear intent of the Minnesota legislature.” [Id.] The bankruptcy court rejected the Committee’s arguments and set August 3, 2015 as the bar date. (Not surprisingly, the Tort Claimants Committee did not refer to the bar date decisions of *Rochester*, *Syracuse* or *Saint Paul and Minneapolis* in their submissions).

Bankruptcy courts frequently set bar dates far shorter than the period available for the filing of a case under applicable statute of limitations. And for good reason – suppose the New Jersey Legislature determined that the state statute of limitations would be April 30, 2022 or decided to later again extend the deadline? Following the Tort Claimants Committee’s argument bankruptcy courts would somehow be barred from setting bar dates shorter than whatever the state legislature chose as the applicable statute of limitations. (In *Rochester*, Judge Chapman anticipated and rejected such a result.) Although a Bankruptcy Court could consider a legislature’s determinations, a state’s determination of an appropriate statute of limitations should not preempt the discretion provided to bankruptcy judges under Rule 3003(c)(3), nor should it afford a deference that writes Rule 3003(c)(3) out of the bankruptcy code and the rule.. This is

particularly true because this Court's considers factors different from a state legislature. That is, the state legislature decision on extending the deadline does not implicate the Code, nor the competing interests of the Estate, creditors, interested parties such as the Parishes, and of course the Claimants.

The Diocese of Camden is not a wealthy Diocese. Many of the Parishes are in difficult financial straits. Hundreds of thousands of dollars have been spent to date and multiples of hundreds of thousands of dollars will be spent each month that this case continues. The Court has reviewed and approved counsel fees for the Diocese and a preview of coming attractions was provided to the Court when counsel for the Torts Claimants Committee advised the Court that it plans to charge the Estate's assets between \$750 - \$1,500 per hour for each of their respective times. [DOC 278.] One can only imagine the fees that counsel for the Torts Claimants Committee will seek when on numerous occasions, three or more of its attorneys have participated at hearings and mediations. The threat of 62 Parish depositions (and the associated discovery litigation) alone will drastically cut into financial resources of all concerned. In addition, quarterly fees for the United States Trustees office are running \$250,000 and fees will now be incurred for the Trade Creditors Committee, investment banker and multiple experts. To the extent, if any, the traumas of victims are ameliorated by setting of a bar date of November 30, 2021, on balance, those ameliorations must be counter-balanced to the extent there is a depletion of funds that could otherwise have been available to those victims.

The Tort Claimants Committee and the United States Trustee propose that the bar date should be more than ten months from the date of the bar date hearing and 420 days from the filing date. The bar date is a critical predicate for the resolution of claims. One can only reasonably presume that a November 30 bar date would mean that this case would continue for months after

November, thus further depleting the assets of the Estate. An anomaly is that the victims who have made claims are being prejudiced by the delay and concomitant dissipation of the Estate's assets for the interests of other traumatized victims who may or may not present themselves.

Each month the Diocese remains in bankruptcy it diminishes the recovery for victims and negatively impacts the ability of the Diocese and the Parishes to carry out their ministries of the Catholic Church in Southern New Jersey. Moreover, there is an uncertainty among parishioners and employees about the short term and long-term implications of the bankruptcy proceedings. The Court must also consider that the COVID-19 pandemic and its effect upon economic conditions. Church attendance is down, and many of the parishioners are victims of adverse economic conditions. The Diocese's and Parishes' ability to reach out and provide economic assistance and critical social programs is seriously jeopardized by a prolonged bankruptcy proceeding.

Conclusion

The Parishes strongly urge this court to set a bar date of May 31, 2021. The reasons include:

1. It will identify the universe of claims that have to be addressed;
2. It will maximize and accelerate the recovery for victims whose recoveries may be diminished by a prolonged case;
3. It will accelerate the ability of the Diocese to attempt to negotiate a consensual Plan of Reorganization; and
4. It will enable the Parishes (a well as the Diocese) to afford to carry out their missions during the COVID19 and economic crisis and tend to the needs of the community.

This Court has discretion in setting the bar date. The establishment of a bar date, however, does not signal the end of a case; instead it a starting point for a comprehensive analysis of each claim. That process may take months to complete.

The Parishes are not minimizing the suffering that many victims have endured. The Parishes, like the Diocese, believe that a May 31, 2021 bar date will maximize recoveries for claimants. The traumas suffered by survivors as well as possible confusion asserted by the Torts Creditors Committee are but two factors that this court must consider. Other considerations include the viability of and impact on the Diocese and the Parishes, the impact a delay may have on survivor claims, the ability of the Diocese and Parishes to continue their ministries, and the impact it may have upon a community that is dealing with a COVID epidemic and economic hardship. Although a state legislature may have addressed the claims of victims of clergy abuse with the revival or extension of a statute of limitations, that does not bind a bankruptcy judge to the legislated date. State legislatures and the bankruptcy courts operate from different playbooks and with different standards.

Based upon all the considerations, on balance, it is appropriate for this court to set May 31, 2021 as the bar date.

Dated: January 22, 2021

Respectfully submitted,

By: s/ Arthur J. Abramowitz
Arthur J. Abramowitz, Esquire
Sherman, Silverstein, Kohl, Rose &
Podolsky, P.A.
308 Harper Drive, Suite 200
Moorestown, NJ 08057
Telephone: (856) 662-0700
Facsimile: (856) 662-0165
aabramowitz@shermansilverstein.com

Exhibit “A”

Debtor	Jurisdiction	Date of Bar Date Order	Bar Date	Claim Submission Period
The Diocese of New Ulm	Bankr. D. Minn. 17-bk-30601	03/08/2017	7/10/2017	124 Days
Roman Catholic Bishop of Great Falls Montana	Bankr. D. Mont. 17-bk-60271	06/07/2017	7/31/2017	54 Days
Crosier Fathers and Brothers	Bankr. D. Minn. 17-bk-41681	08/25/2017	12/15/2017	112 Days
Diocese of Winona-Rochester	Bankr. D. Minn. 18-33707	12/07/2018	04/08/2019	122 Days
USA Gymnastics	Bankr. S.D. Ind. 18-09108	2/25/19	4/29/2019	63 Days
Roman Catholic Church of the Archdiocese of Santa Fe	Bankr. D. N.M. 18-13027	03/08/2019	06/17/2019	101 Days
Archbishop of Agana	D. Guam 19-00010	05/01/2019	08/15/2019	106 Days
Diocese of Buffalo	MDNY 20-10322	9/11/20	8/14/21	337 Days
Roman Catholic Diocese of Syracuse, New York	Bankr NDNY 20-30663	11/6/2020	4/15/2021	160 Days
The Diocese of Rochester	Bankr. W.D.N.Y. 19- 20905	02/25/2020	8/13/2020	170 Days
Roman Catholic Diocese of Harrisburg	Bankr. M.D. Pa. 20-00599	05/06/2020	11/13/2020	191 Days
Boy Scouts of America and Delaware BSA	Bankr. D. Del. 20-10343	5/26/2020	11/16/2020	174 Days
Diocese of St. Cloud	Bankr. D. Minn. 20-60337	06/16/2020	10/21/2020	127 Days

AVERAGE 141.6 Days

Exhibit “B”

Debtor	Jurisdiction	Date of Bar Date Order	Bar Date	Claim Submission Period
The Diocese of New Ulm	Bankr. D. Minn. 17-bk-30601	03/08/2017	7/10/2017	124 Days
Roman Catholic Bishop of Great Falls Montana	Bankr. D. Mont. 17-bk-60271	06/07/2017	7/31/2017	54 Days
Crosier Fathers and Brothers	Bankr. D. Minn. 17-bk-41681	08/25/2017	12/15/2017	112 Days
Diocese of Winona-Rochester	Bankr. D. Minn. 18-33707	12/07/2018	04/08/2019	122 Days
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Boy Scouts of America and Delaware BSA	Bankr. D. Del. 20-10343	5/26/2020	11/16/2020	174 Days
Diocese of St. Cloud	Bankr. D. Minn. 20-60337	06/16/2020	10/21/2020	127 Days

AVERAGE 125.33 Days