

UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF THE UNITED STATES TRUSTEE
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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In re: : Chapter 11
: :
: Case No. 20-21257 (JNP)
The Diocese of Camden, New Jersey, :
: :
: Judge: Honorable Jerrold N. Poslusny, Jr.
Debtor. :
: :
: Hearing Date: January 27, 2021 @ 10:00 a.m.

OBJECTION OF THE UNITED STATES TRUSTEE TO THE DEBTOR’S MOTION FOR ENTRY OF AN ORDER ESTABLISHING A DEADLINE FOR FILING PROOFS OF CLAIM AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF

The United States Trustee (“U.S. Trustee”), by and through counsel, and in furtherance of his duties pursuant to 28 U.S.C. §§ 586(a)(3) and (5), respectfully submits this objection (“Objection”) to the Debtor’s *Motion for Entry of an Order Establishing a Deadline for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof* (Docket No. 74) (“Claims Bar Date Motion”).

1. This Court has jurisdiction to hear and determine this Objection.
2. Pursuant to 28 U.S.C. § 586(a)(3), the U.S. Trustee is charged with administrative oversight of the bankruptcy system in this District. Such oversight is part of the U.S. Trustee’s overarching responsibility to enforce the laws as written by Congress and interpreted by the courts.

See United States Trustee v. Columbia Gas Systems, Inc. (In re Columbia Gas Systems, Inc.), 33 F.3d 294, 295-96 (3d Cir. 1994) (noting that U.S. Trustee has “public interest standing” under 11 U.S.C. § 307 which goes beyond mere pecuniary interest); *Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.)*, 898 F.2d 498, 500 (6th Cir. 1990) (describing the U.S. Trustee as a “watchdog”).

3. Under 11 U.S.C. § 307, the U.S. Trustee has standing to be heard on the issues raised by this Objection.

PRELIMINARY STATEMENT

4. The U.S. Trustee objects to the Claims Bar Date Motion for the following reasons: (a) the Claims Bar Date Motion cuts short the statute of limitations enacted by New Jersey at the end of 2019; and (b) the Claims Bar Date Motion seeks to discharge the claims of “Future Claimants.” In 2019, New Jersey enacted a law that changed the statute of limitations for sexual abuse. The revision expanded key time periods for filing suit – both the time from age of majority for abuse survivors who were abused as minors to file suit, and the period from after discovery by a survivor of the causal connection between the abuse and the survivor’s injuries. The revision also provided a two-year window from December 1, 2019 to November 30, 2021, where any suit for abuse could be filed – even if it had been previously barred by the statute of limitations. The proposed claims bar date cuts short that two-year window which frustrates the will of the New Jersey legislature and may cause confusion about the legal deadline amongst abuse survivors. Further, the proposed order accompanying the Claims Bar Date Motion seeks to discharge claims of future claimants – even those who are currently minors and those who may not have connected their injuries to the abuse they survived. The U.S. Trustee asserts that these future claimants are analogous to the future claimants in other mass tort cases and should not have their claims

discharged by the order establishing a claims bar date. Bar date orders are no place for discharge language. Discharging claims should only occur upon plan confirmation.

BACKGROUND

5. On October 1, 2020 (“Petition Date”), The Diocese of Camden, New Jersey (“Debtor”) filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (“Bankruptcy Code”). *See* ECF No. 1.

6. The Diocese continues to maintain its operations to fulfill its mission and manage its affairs as a debtor-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

7. On October 14, 2020, the Debtor filed the Claims Bar Date Motion. *See* ECF No. 74.

8. On October 23, 2020, the U.S. Trustee appointed an Official Committee of Tort Claimant Creditors. *See* ECF No. 111.

9. On December 24, 2020, the U.S. Trustee appointed an Official Committee of Trade Creditors. *See* ECF No. 293.

10. The Debtor’s Schedule E/F, as originally filed, disclosed over 300 unsecured claims totaling more than \$25,000,000. *See* ECF No. 1, Schedule E/F. Many of these claims are listed as litigation plaintiffs. *Id.*

11. According to the Claims Bar Date Motion, beginning on June 15, 2019, the Roman Catholic Archdiocese of Newark and the Dioceses of Camden, Metuchen, Paterson and Trenton established the Independent Victim Compensation Program (“IVCP”) to begin accepting claims related to the abuse of minors by priests of these dioceses. *See* ECF No. 74. The IVCP purportedly was a program designed to contact potential survivors of abuse by priests of the Diocese (each a “Survivor” and collectively the “Survivors”). *See id.*

12. Pursuant to the IVCP, 107 letters were sent to potential Survivors who had not settled with the Diocese and 69 of those Survivors subsequently filed a claim with the IVCP. *See id.*

13. The IVCP was publicized through the purchase of Google search advertisements, press releases to secular and non-secular news outlets, publication in Parish bulletins, and through social media posts.¹ *See id.*

14. New Jersey passed a bill, effective December 1, 2019 (the “Effective Date”), that enlarged the statute of limitations for survivors of abuse. *See* 2019 N.J. ALS 120, 2019 N.J. Laws 120, 2019 N.J. Ch. 120, 2018 N.J. S.N. 477. The revised statute of limitations expanded the time from two years to seven years after discovery of a causal connection between the abuse and a Survivor’s injuries. *Id.* The statute of limitations now provides 37 years from the age of majority for Survivors who suffered abuse as minors to file suit. *Id.* It also provided a two-year window for any Survivor to file suit for abuse prior to December 1, 2019 even if such abuse would otherwise be barred by the statute of limitations. *Id.* This means that there is effectively a two-year window from December 1, 2019 through November 30, 2021 (the “Two-Year Window”) where no statute of limitations exists for abuse claims.

15. The Claims Bar Date Motion proposes a claims bar date for Survivors of February 26, 2021 – roughly 9 months shorter than the Two-Year Window.

16. The proposed order attached to the Claims Bar Date Motion makes it clear that the claims bar date is to be an absolute bar date for prepetition abuse claims –

Any person or entity who is required to file a proof of claim pursuant to this Order but fails to do so on or before the applicable Bar Dates (i) shall not be treated as a creditor with respect to such Claim and shall not be entitled to vote to accept or

¹ “Effective July 31, 2020, the Diocese suspended its participation in the IVCP due to the volatility of the financial markets and a sustained decline in parish revenues resulting from the COVID-19 pandemic.” *See* ECF No. 4 at ¶ 54.

reject, or to share in any distribution under, any Chapter 11 plan proposed and/or confirmed in this Chapter 11 Case; and (ii) *shall be forever barred, estopped, and enjoined from asserting such Claim against the Diocese (or filing a proof of claim with respect thereto), and the Diocese and its property shall be forever discharged from any and all indebtedness or liability with respect to such Claim.*

See Docket No. 74-2, Proposed Order at ¶ 6 (emphasis added).

17. This absolute discharge of liability creates another set of conflicts with the underlying statute of limitations. First, there could be Survivors that suffered abuse between the Effective Date (12/1/2019) and the Petition Date (10/01/2020). Survivors would have ample time within the statute of limitations to file claims that would be severely shortened by the proposed claims bar date. Further, because the statute of limitations is written in such a way where the clock does not begin to run until “the date of reasonable discovery of the injury and its causal relationship to the act [of Abuse]” – there are an inestimable number of potential “Future Claimants” that will have their ability to file suit eliminated. 2019 N.J. ALS 120, 2019 N.J. Laws 120, 2019 N.J. Ch. 120, 2018 N.J. S.N. 477.

OBJECTION

18. The U.S. Trustee objects to the Claims Bar Date Motion for the following reasons: (a) the Claims Bar Date Motion cuts short the Two-Year Window established by the New Jersey Legislature; and (b) the proposed order attached to the Claims Bar Date Motion discharges the claims of Future Claimants (current minors and those Survivors who have not yet connected their injuries to the abuse they survived).

19. The New Jersey Legislature explicitly provided the Two-Year Window for Survivors to file suit who otherwise would be barred from doing so. See 2019 N.J. ALS 120, 2019 N.J. Laws 120, 2019 N.J. Ch. 120, 2018 N.J. S.N. 477. Allowing the claims bar date to cut the

Two-Year Window short would clearly frustrate the will and intention of the New Jersey Legislature.

20. Further, setting the claims bar date for a date other than the date established by the Two-Year Window might confuse Survivors, particularly those without counsel, as to the relevant deadline. The Debtor set forth in the Bar Date Motion that there was an “extensive” pre-petition effort to notice survivors of the deadline to file suit – both by the Diocese and survivors’ attorneys. *See* ECF 74 at ¶¶ 7-13. However, notice of the bar date proposed in this bankruptcy case may not reach all individuals that already received notice of the date established by the New Jersey Legislature. If notice of the new bar date is received, it could easily cause confusion.

21. New York State passed a law with a “One-Year Window” similar to New Jersey’s Two-Year Window. When the Diocese of Rochester filed bankruptcy, the claims bar date was set for the same day as the expiration of New York’s One-Year Window. *In re Diocese of Rochester*, 618 B.R. 678, 680 (Bankr. W.D.N.Y. 2020).

22. Similarly, when the court in *In re The Diocese of Buffalo, New York* was presented with the issue, the court decided that the claims bar date should coincide with the closing of the statutory window. *In re The Diocese of Buffalo, New York*, 1:20bk10322, ECF No. 546 (Bankr. W.D.N.Y. September 11, 2020). The court reasoned that the Diocese case was different from “a typical commercial filing” because identifying and providing notice to Survivors would prove vastly more difficult than the typical case where the “debtor that can readily identify from its books and ledgers all of the actual and disputed trade creditors.” *Id.* at page 10. The difficulty in providing adequate notice to such claimants caused the Court to err on the side of caution:

By making that date [the claims bar date] coterminous with the statute of limitations, we terminate no rights that a plaintiff could otherwise have asserted outside of bankruptcy. For those creditors who may never have received notice of

the bankruptcy or its bar date, any deficiency of notice will have no consequence more adverse than what state law would already impose.

Id. at page 11.

23. The *Buffalo Diocese* court also noted that the New York Legislature’s reopening of the statute of limitations “expressed a policy decision that deserves the respect” of the court and that having the claims bar date coterminous with the statute of limitations would avoid any confusion among potential abuse claimants. *Id.*

24. In addition to concerns about the proposed claimed bar date shortening the Two-Year Window, the U.S. Trustee also objects to the discharge of the claims of the Future Claimants. The New Jersey statute explicitly allows for the fact that a Survivor may not immediately connect an injury to the abuse suffered. This statutorily recognized potential for latency necessitate that Future Claimants rights should be protected in this bankruptcy process.

25. Congress recognized that mass torts involving a latency period need to “take account of the due process implications of discharging future claims of individuals whose injuries [are] not manifest at the time of the bankruptcy petition” – and thus they added section 524(g) to the Bankruptcy Code. *In re Energy Future Holdings Corp*, 949 F.3d 806, 812 (3d Cir. 2020).

26. In this case, like many cases involving section 524(g), there is a group of Survivors of a mass tort and those Survivors may experience a long latency period where they are unaware that they have a claim. The just approach in such situations is not to discharge those future claims, but to preserve them.

27. In *In re the Roman Catholic Diocese of Syracuse, New York*, the first proposed claims bar date order included the following discharge language:

Any person or entity who is required to file a proof of claim pursuant to this Order but fails to do so on or before the Bar Date . . . shall be forever barred, estopped, and enjoined from asserting such Claim against the Diocese (or filing a proof of

claim with respect thereto), and the Diocese and its property shall be forever discharged from any and all indebtedness or liability with respect to such Claim.

In re The Roman Catholic Diocese of Syracuse, New York, 20-30663, ECF No. 118-1 (Bankr. N.D.N.Y. September 21, 2020) (emphasis added). The actual order entered by the Bankruptcy Court in *In re the Roman Catholic Diocese of Syracuse, New York* omits the above italicized language.

28. Several other Diocese bankruptcies have included a carve-out or, at a minimum, representation of Future Claimants rather than a discharge of such claimants' claims. *See In re The Catholic Bishop of Spokane*, 2:04bk08822, Docket Entry 499 (Bankr. E.D. WA, June 3, 2005) (appointing a legal representative for "unknown tort claimants and minors"); *In re The Roman Catholic Bishop of San Diego*, 3:07bk00939, Docket Entry 753 (Bankr. S.D.CA July 13, 2007) (appointing a future claims representative for unknown future claimants); *In re Diocese of Davenport*, 3:06bk02229, Docket Entries 197 and 198, (Bankr. S.D. IA November 2, 2007 and November 7, 2007) (appointing a legal representative for unknown tort claimants and minors); *In re Catholic Bishop of Norther Alaska*, 4:08bk00110, Docket Entry 179 (Bankr. AK May 30, 2008) (appointing legal representative for future tort claimants); *Wand v. Roman Catholic Archbishop of Portland*, No. CV 10-29-PK, 2010 U.S. Dist. LEXIS 141181, at *4-5 (D. Or. Dec. 1, 2010) (future claimants carved-out of discharge); *In re Roman Catholic Bishop of Helena, Montana*, 2:14-bk-60074, Docket Entry 186 (Bankr. D. MT April 9, 2014) (appointing a future claims representative); *In re The Roman Catholic Bishop of Stockton*, 2:14bk20371, Docket Entry 263 (Bankr. E.D.CA May 8, 2014) (appointing legal representative for future abuse claimants and minors); *In re the Diocese of St. Cloud*, 6:20-bk-60337, Docket Entry 23 (Bankr. MN June 18, 2020) (appointing a legal representative to represent unknown tort claimants, including minors).

29. As a result, the Debtor should not be permitted to cut short the statute of limitations established by the New Jersey Legislature and should not be permitted to include discharge language in the bar date order.

WHEREFORE, the United States Trustee respectfully requests that the Court sustain the Objection and grant other relief as it deems just and necessary.

Respectfully submitted,

ANDREW R. VARA
UNITED STATES TRUSTEE
REGIONS 3 & 9

By: /s/ Jeffrey M. Sponder
Jeffrey M. Sponder
Trial Attorney

/s/ Lauren Bielskie
Lauren Bielskie
Trial Attorney

Dated: January 13, 2021

UNITED STATES BANKRUPTCY COURT
 DISTRICT OF NEW JERSEY
 Caption in Compliance with D.N.J. LBR 9004-2(c)
 UNITED STATES DEPARTMENT OF JUSTICE
 OFFICE OF THE UNITED STATES TRUSTEE
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In Re:

 The Diocese of Camden, New Jersey,

 Debtor.

Case No.: 20-21257/JNP

 Chapter 11

 Hearing Date: January 27, 2021 @ 10:00 a.m.

 Judge: Jerrold N. Poslusny

CERTIFICATION OF SERVICE

1. I, Jeffrey M. Sponder:

- represent the US Trustee in this matter.
- am the secretary/paralegal for _____, who represents _____ in this matter.
- am the _____ in this case and am representing myself.

2. On January 13, 2021, I sent a copy of the following pleadings and/or documents to the parties listed in the chart below.

- The United States Trustee’s Objection to the Debtor’s *Motion for Entry of an Order Establishing a Deadline for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof* (Docket No. 74).

3. I certify under penalty of perjury that the above documents were sent using the mode of service indicated.

Date: 1/13/21

/s/ Jeffrey M. Sponder
 Jeffrey M. Sponder
 Trial Attorney

Name and Address of Party Served	Relationship of Party to the Case	Mode of Service
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