

United States Bankruptcy Court
District Of New Jersey
Caption In Compliance With D.N.J. LBR 9004-1

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In Re:

THE DIOCESE OF CAMDEN, NEW JERSEY,

Debtor.

Chapter 11
Case No. 20-21257 (JNP)

**LONDON MARKET INSURERS’ LIMITED OPPOSITION TO THE DIOCESE’S
MOTION TO ESTABLISH THE MEDIATION PROCESS**

Certain Underwriters at Lloyd’s, London and Certain London Market Companies¹ (collectively “London Market Insurers” or “LMI”), subscribing to insurance policies on behalf of the Debtor, the Roman Catholic Diocese of Camden (“Diocese”), which are therefore parties in interest in the above-captioned case, hereby file this limited opposition to the *Diocese’s Motion for Entry of an Order: (i) Establishing Mediation Process Relating to Survivor and Tort Claims; (ii) Estimating Remaining Survivor and Tort Claims Pursuant to 11 U.S.C. § 502(c)(1) and Fed. R. Bankr. P. 3018(a) for Purpose of Voting on Plan of Reorganization and Confirmation*

¹ The following London Market Companies subscribed to insurance policies on behalf of the Debtor: Catalina Worthing Insurance Ltd. (as part transferee of Excess Insurance Company Ltd and/or London & Edinburgh Insurance Company Ltd. as successor to London & Edinburgh General Insurance Company Ltd.); RiverStone Insurance (UK) Ltd. (as successor in interest to Terra Nova Insurance Company Limited); and Sompo Japan Nipponkoa Insurance Company of Europe Ltd. (f/k/a The Yasuda Fire & Marine Insurance Company of Europe Ltd.).

Process; and (iii) Granting Related Relief (“Motion”). (Docket No. 99.) The Motion seeks an order: (i) establishing a mediation process related to survivor and tort claims; and (ii) providing for an estimation process for all non-mediated survivor and tort claims for the purpose of voting on the Debtor's Plan of Reorganization and confirmation process. (*Id.*). As set forth below, LMI do not oppose the mediation, but object to the timeline for mediation and the Debtor's request for an estimation process for non-mediated claims. In support of their limited opposition, LMI respectfully state as follows:

I. INTRODUCTION

1. LMI, who subscribed to excess indemnity insurance contracts on behalf of the Diocese and its related entities from 1972 to 1986, do not oppose mediation; indeed they support it. LMI have participated in several bankruptcy proceedings involving Catholic dioceses that were resolved successfully by mediation. However, for mediation to produce a settlement efficiently, certain information must first be produced to the diocese’s insurers (“Insurers”), as discussed in detail below. This limited opposition is intended to provide general information about LMI's coverages as well as the basis for their limited opposition, in order to assist the Court with a mediation order for the bankruptcy proceeding.

II. PERTINENT FACTUAL BACKGROUND

2. Due to recent statutory amendments, claimants who allege they were sexually abused as children decades ago are now able to bring civil claims (hereinafter "Survivor Claims") that are otherwise barred by the New Jersey statute of limitations. N.J. Stat. Ann. §§ 2A:14-2a and 2A:14-2b.

3. In the Diocese's Adversary Complaint against its various Insurers, the Diocese acknowledges that these Survivor Claims “generally allege that the Diocese and/or Non-Debtor Parties are liable for conduct of certain priests and other individuals based on their alleged

actions and omissions in connection with employing and/or supervising the alleged abuse perpetrators.” (Docket No. 103, p. 12 at ¶ 60.)

4. The Diocese further asserts that the defendant Insurers are "obligated to pay, or in the alternative reimburse to the Diocese, the full expenditures made by the Diocese to defend itself against and pay the Survivor Claims, subject to any applicable self-insured retention, deductible and policy aggregate." (*Id.*, p. 13 ¶ 66.)

5. Since October 13, 2020, the Diocese has tendered thirty-one Survivor Claims to LMI. None of the claimants have filed proofs of claim for abuse (“Abuse Claim Forms”) and no bar date for asserting such claims has been established.

6. The LMI Policies contain no duty to defend. Further, the LMI coverage position letters for the Survivor Claims asserted, among other defenses, that:

- a. LMI are only obligated to indemnify their assureds for covered loss and expense excess of implicated self-insured retentions (or excess of underlying insurance) at the conclusion of a claim;
- b. the abuse must have taken place during the LMI coverage periods;
- c. there is no coverage under the policy effective from November 27, 1985 to November 27, 1986, which was endorsed with a sexual misconduct exclusion;
- d. there is no coverage if there is a determination that the assured was aware of the perpetrator’s deviant propensities or history of molesting children prior to or during the alleged abuse;
- e. the LMI policies only indemnify the assureds for sums that they are “obligated to pay by reason of the liability imposed upon the Assured by

law” and there is no coverage if a particular claimant's allegations and injuries are not credible or have not been verified, or where there would be no legal liability;

f. there was a known-claims settlement and release in 2010 that may have resolved coverage for some of the claims; and

g. LMI also reserved rights with the respect to who is an assured and with respect to conditions pertaining to notice, cooperation, voluntary payments, other insurance, and other.

III. ARGUMENT

A. A Successful Mediation Requires Full Disclosure of the Claims and Pertinent Facts

7. LMI believe that a fair and efficient resolution of the abuse claims (“Survivor Claims”) requires cooperation with the Diocese and its related entities and with the Committee to seek a global resolution of the Survivor Claims and coverage for them as part of the Diocese's plan of reorganization. However, the Motion is severely flawed.

8. As an initial matter, the hearing on the Motion is scheduled for December 23, 2020, therefore the Diocese’s proposed timeline for mediation is untenable. The Diocese proposed a November 30th deadline for Survivor Claimants and the Diocese to submit a mediator-eyes-only position paper to the mediator; and a December 18th deadline for all mediations. (Document No. 99-1, p. 8 at ¶¶ c-d).

9. Moreover, to understand the Survivor Claims, evaluate them properly, and participate meaningfully in mediation, certain information must be provided to LMI and the other Insurers. LMI have been provided with copies of Complaints and some Independent Victim Compensation Program documents for the Survivor Claims that have been tendered since

October 2020. No supporting documents or investigative material related to the Survivor Claims were provided.

10. LMI have requested, among other things: documents produced and exchanged between the Diocese and claimants; documents relevant to the alleged perpetrator; information about other claims involving the same perpetrator; information from internal investigations, internal compensation programs and/or law enforcement investigations pertaining to the claimant or the alleged perpetrator; how the Diocese first learned of a claimant's claim and when; and, whether the claimant asserted prior claims and all information pertaining thereto. The Diocese has yet to provide this information.

11. Until such information has been provided, and LMI have had the opportunity to assess liability and coverage for each Survivor Claim, mediation is premature. LMI need to determine critical matters related to coverage, such as: when the claim first became known; whether there was an investigation or response to the claim prior to the filing of the lawsuit; when the abuse occurred; whether there is evidence to corroborate the claim; the evidence and arguments for a finding (if any) that the Diocese (or other assured) is legally liable for any given claim; the nature and extent of the alleged abuse; and, the claimed damages.

12. Additionally, there are likely to be more Survivor Claims. The Diocese has represented that there are currently fifty-four Survivor Claims pending and stayed in state court by the bankruptcy. (Document No. 103, p. 11 at ¶ 50.) Moreover, the reviver window is open until November 30, 2021, and no bar date has been set in this case. The parties cannot substantively mediate until all the claims have been presented. Therefore, LMI respectfully urge that substantive settlement discussions begin some weeks after the bar date.

13. LMI communicated to the Diocese the information that should be requested from claimants on the Abuse Claim Forms in order to facilitate meaningful settlement discussions. Contemporaneously herewith, LMI filed an objection to the Diocese's proposed Abuse Claim Form, providing critical revisions to the form in order to ensure that the appropriate information is obtained so that the Insurers could make liability and coverage determinations.

14. Putting the Diocese's proposed timeline aside, it is not clear from the Motion what it believes can be accomplished by its proposed course of action. If the intent is to use the mediator as a special master for informal discovery and to exchange information, then a mediation session may be helpful.

15. However, the Diocese's plan is deficient in several respects. The Diocese recognizes that the Insurers should participate in the mediation "to attempt to achieve the most efficient settlement of the issues remaining in the case." (*Id.*, p. 8 at ¶ g.) However, if completed Abuse Claim Forms, incorporating LMI's proposed revisions, are not provided before the first session, then the Insurers will be unable to assess liability and coverage for each claim.

16. Moreover, the Motion does not indicate whether the Committee is permitted to attend and participate in the mediation. LMI recognize the Committee's involvement is necessary to resolve the claims and the bankruptcy. Nonetheless, LMI reserve all rights with respect to the scope and nature of the Committee's participation in the Adversary Proceeding. LMI also request that any Order concerning the mediation make clear the mediator's limited role in mediating the Survivor Claims.

B. Conducting an Estimation Would Undermine an Efficient Resolution of this Case

17. The Diocese proposes an estimation process pursuant to 11 U.S.C. § 502(c) for all Survivor Claims where the Survivor Claimant opted out of the mediation process.

18. This is flawed for several reasons.

19. First, every other diocesan bankruptcy case has been resolved by a global mediation that includes the diocese, its related Catholic organizations and parishes, the claimants and the insurers. While such mediations can be time-consuming, because all the parties must agree to settle, such a process is ultimately more efficient for all parties as it avoids years of protracted litigation between the diocese and the claimants, followed by years of coverage litigation.

20. Second, the Diocese asserts that the estimation process “does not seek estimation for distribution purposes, only voting purposes.” (Document No. 99-1, p. 9 at ¶ 31.) A claim to which an objection has been filed may also be temporarily allowed for voting purpose, *see* Fed. R. Bankr. P. 3018, but given that no proofs of claim have yet been filed in this case, let alone been objected to, such a motion is at best premature. A successful global mediation would obviate any need for estimation, as the claimants would support confirmation. Moreover, in LMI's experience, every other diocesan bankruptcy case resolved in global mediated settlement, therefore it is unreasonable for the Diocese to contend that estimation, even if done solely for voting purposes, should be done here.

21. Moreover, the Diocese has not yet filed a Chapter 11 plan and therefore LMI cannot assess whether the estimation process in fact affects distribution. *See In Re Roman Catholic Archbishop of Portland in Or.*, 339 B.R. 215 (Bankr. D. Or. 2006) (finding that the estimation process improperly affected distribution where the debtor's proposed plan of reorganization provided that the liability for claims would be capped based on the estimation).

22. Accordingly, the Court should deny the request to establish an estimation process, or in the alternative, specify that any estimation will have no effect whatsoever on the Insurers' obligations under their policies.

IV. CONCLUSION

23. WHEREFORE, LMI oppose the Motion on this limited bases. To ensure that mediation has the best chance to succeed and for judicial economy, LMI request that any mediation order:

- a. Order that prior to any mediation sessions that address settlement, the claimants be required to submit Abuse Claim Forms that provide complete information about: (i) the alleged abuse, (ii) claimed damages, (iii) when the claimant first informed the Diocese of the abuse and the claim, (iv) any prior communications between the Diocese (and its related entities) and claimants about the alleged abuse, claims and settlement, (v) witnesses to the abuse and the damages, (vi) reasons and supporting evidence as to why the Diocese (and any other assureds) are liable, (vii) other potentially liable defendants, and (viii) other information necessary to evaluate the claims;
- b. Order that prior to any mediation session that addresses settlement, the Diocese be required to respond, fully and completely, to the requests for information previously made by the Insurers in their responses to the tendered claims and to provide similar information for any future claims (including making available to the Insurers all documents provided to the Committee);
- c. Define the scope of the Mediator's role in mediating the Survivor Claims;
- d. Hold that the Insurers reserve all rights with respect to the scope and nature of the Committee's rights in the Adversary Proceeding;
- e. Suspend all deadlines in the Adversary Proceeding, including but not limited to, the deadlines for the Defendants' responsive pleadings in the Adversary Proceeding until further order of the Court; and,

f. Deny the request for an estimation process for all non-mediated claims.

Dated: December 2, 2020

Respectfully submitted,

/s/ Sommer L. Ross

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