

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

DUANE MORRIS LLP
A Delaware Limited Liability Partnership
Sommer L. Ross, Esq.
222 Delaware Avenue, Suite 1600
Wilmington, DE 19801
Telephone: (302) 657-4951
Email: SLRoss@duanemorris.com

*Counsel for Certain Underwriters at Lloyd’s,
London and Certain London Market Companies*

In Re:

THE DIOCESE OF CAMDEN, NEW JERSEY,

Debtor.

Chapter 11
Case No. 20-21257 (JNP)

LONDON MARKET INSURERS’ RESPONSE TO THE DIOCESE’S MOTION TO ESTABLISH THE DEADLINE AND FORM FOR FILING PROOFS OF CLAIM AND REQUEST TO MODIFY THE PROPOSED ABUSE PROOF OF CLAIM FORM

Certain Underwriters at Lloyd’s, London and Certain London Market Companies¹ (“London Market Insurers” or “LMI”), subscribing to insurance policies on behalf of the Debtor, the Roman Catholic Diocese of Camden, which are therefore parties in interest in the above-captioned case, hereby respond to the *Diocese’s Motion for Entry of an Order Establishing a Deadline for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof* (ECF 74), and request the below amendments to the proposed Abuse Proof of Claim Form (“Victim Claim Form”). In support thereof, LMI respectfully state as follows:

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.).

1. Due to recent statutory amendments, claimants who allege they were sexually abused as children decades ago are now able to bring civil claims that are otherwise barred by the statute of limitations. N.J. Stat. Ann. §§ 2A:14-2a and 2A:14-2b. LMI and the other Insurers are now, for the first time, learning about these claims and the only information they have to assess liability and coverage are (a) the Complaints filed in lawsuits brought prior to the bankruptcy; and in some cases, (b) documents related to the Archdiocese of Newark and the Diocese of Camden, Metuchen, Trenton and Paterson Independent Victim Compensation Program. Generally, Insurers have the opportunity to conduct investigation and discovery to assess the credibility of a claimant who brings a civil action, to seek corroborating evidence, and to evaluate liability as well as damages, based on the evidence and the legal theories asserted. These opportunities are curtailed significantly where, as here, revived claims are allowed to be brought, the parties are placed on tight deadlines to assess and respond to claims, and limited information is made available. LMI insured a number of dioceses around the country. Many of the insured dioceses have already filed bankruptcy, and without exception, each of those bankruptcy cases was resolved by global mediation and settlement of the abuse victims' claims against the diocese and its related parishes and organizations (collectively "Catholic Organizations"). The primary motivation for the parties to seek a global settlement, rather than only a settlement of the claims against the diocese, is that neither the claimants nor the insured entities wished to conclude the bankruptcy case by initiating a coverage action. In other words, the claimants sought recompense, not additional litigation.

2. To achieve those settlements, the abuse victims had to supply sufficient information to the Catholic Organizations, and their insurers (collectively with the Catholic Organizations, "Parties in Interest"), for the Parties in Interest to adequately assess: (a) the Catholic Organizations' liability for each abuse claim and the amount of such liability; and in turn (b) the Insurers' liability. In an effort to replicate these prior successful global mediated

settlements, LMI propose critical revisions to the Victim Claim Form that will facilitate liability and coverage evaluation of each abuse claim. Without the additional information, the Parties in Interest could not achieve a mediated settlement unless the Insurers were to conduct substantial written and deposition discovery of each claimant sufficient to obtain the missing information. There is little doubt that such discovery would be contentious, expensive, and delay any settlement of this case. While LMI cannot guarantee that additional discovery may not be required in some cases, LMI's proposed modifications to the Victim Claim Form will certainly minimize such need and enhance all Parties' abilities to work towards a global mediated settlement.²

3. LMI propose the following modification to the third question in the section labeled "Part 3: Background Information":

Are you currently employed? To the best of your recollection, please describe **your work** history ~~for the last ten (10) years in which you worked~~, including the name(s) of your current and past employers, the dates you were employed, the locations of your employment, and your job(s)/title(s).

This information will assist the Diocese and the Insurers in establishing the claimant's measure of damages, as abuse claimants often allege loss of income and/or loss of earning capacity.

4. LMI further propose the following amendments to the section labeled "Part 4: Nature of Complaint" (hereinafter referred to as "Part 4"). LMI propose modifying the first question under Part 4 as follows:

Who committed the acts of Abuse against you? Individuals identified in this section will be referred to as the "abuser" in questions below. If applicable, you may identify more than one abuser. Please provide the complete name(s) of each abuser to the best of your recollection. If you do not know the name(s) of each abuser, please identify them by title, position, **relationship to you and/or** other description.

² Attached hereto as **Exhibit A** is a redline version of the Victim Claim Form proposed by the Diocese. It includes the minimum changes LMI believe are necessary to proceed meaningfully with mediation, as set forth herein.

This will assist in determining the identity of the alleged abuser.

5. LMI propose modifying the second to last question in Part 4 as follows:

Did you tell anyone about the Abuse and, if so, whom did you tell (this would include parents, relatives, friends, representatives of the Diocese, counselors, therapists, doctors, and law enforcement authorities). If you did tell anyone, what did you tell them, ~~and~~-when **did you tell them and what did the individual say or do in response (if anything)**? You do not need to disclose any communications you may have had with an attorney.

This modification will: (a) help the Diocese and the Insurers identify corroborating evidence to support the claimant's allegations; and (b) indicate if the Diocese had prior notice of allegations of abuse.

6. Additionally for Part 4, LMI propose the inclusion of the following question:

Do you personally know or have reason to believe that the Diocese knew that your abuser was abusing you or others before or during the period when such abuse occurred? If "Yes", please provide all information that supports your conclusion, including but not limited to: (a) the name of the individual at the Diocese who knew that your abuser was abusing you or others; (b) how and when such individual learned of this information; (c) describe what the individual was told or observed; and (d) how you came to have the information provided in response to this question.

These questions directly implicate the Diocese's liability, as common legal theories advanced by claimants are negligent hiring, supervision and retention. Under New Jersey law, these claims require proof that: (a) the Diocese "knew or had reason to know of the particular unfitness, incompetence or dangerous attributes of the employee and could reasonably have foreseen that such qualities created a risk of harm to other persons"; and (b) as a result of the Diocese's negligence, the employee's "incompetence, unfitness or dangerous characteristics proximately caused the injury." *See G.A.-H. v. K.G.G.*, 238 N.J. 401, 416 (2019).

7. Finally, LMI propose the following amendment to the last question in Part 4:

Were there any witnesses to the Abuse? If there were any witnesses, please list their name(s) and any contact information you have, including addresses.

This will aid the Diocese and the Insurers to identify any corroborating witnesses to the alleged abuse.

8. Without the pertinent information from the additional questions requested herein, LMI could not reasonably assess the Diocese's liability and coverage, which will prevent LMI from meaningfully participating in settlement discussions absent substantial discovery. LMI's proposed modifications are intended to avoid the need for substantial additional discovery that would likely be onerous, expensive, and time-consuming for all Parties.

WHEREFORE, LMI seek to have the Court approve LMI's modification to the Diocese's proposed Victim Claim Form in order to ensure that sufficient information is available to LMI and other Insurers for purposes of evaluating the Diocese's liability and coverage for the claims, and preserve LMI's right to conduct post-claim discovery where necessary.

Dated: December 2, 2020

Respectfully submitted,

/s/ Sommer L. Ross

DUANE MORRIS LLP

Sommer L. Ross, Esq. (NJ Bar No. 004112005)

222 Delaware Avenue, Suite 1600

Wilmington, DE 19801-1659

Telephone: (302) 657-4900

Facsimile: (302) 657-4901

E-mail: slross@duanemorris.com

And

Russell W. Rotten, Esq.

Admitted *Pro Hac Vice*

Jeff D. Kahane, Esq.

Admitted *Pro Hac Vice*

Andrew E. Mina, Esq.

Admitted *Pro Hac Vice*

865 South Figueroa Street, Suite 3100

Los Angeles, CA 90017-5450

Telephone: (213) 689-7400

Facsimile: (213) 402-7079

E-mail: rwroten@duanemorris.com

E-mail: jkahane@duanemorris.com

E-mail: amina@duanemorris.com

*Counsel for Certain Underwriters at Lloyd's,
London and Certain London Market Companies*

And

CLYDE & CO US LLP

Catalina J. Sugayan, Esq.

Admitted Pro Hac Vice

Preetha Jayakumar, Esq.

Admitted Pro Hac Vice

55 West Monroe Street, Suite 3000

Chicago, IL 60603

Telephone: (312) 635-7000

E-mail: catalina.sugayan@clydeco.us

E-mail: preetha.jayakumar@clydeco.us

*Counsel for Certain Underwriters at Lloyd's,
London and Certain London Market Companies*

EXHIBIT A

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY**

In re:

THE DIOCESE OF CAMDEN, NEW JERSEY,

Debtor.

Chapter 11

Case No. 20-21257 (JNP)

CONFIDENTIAL ABUSE PROOF OF CLAIM

THIS FORM MUST BE ACTUALLY RECEIVED NO LATER THAN FEBRUARY 26, 2021 AT 11:59 P.M. (PREVAILING EASTERN TIME) (THE "BAR DATE").

Carefully read the instructions that are included with this **CONFIDENTIAL ABUSE PROOF OF CLAIM** and complete all applicable questions.

For purposes of this Proof of Claim, an "Abuse Claim" is any claim (as defined in section 101(5) of the Bankruptcy Code) against The Diocese of Camden, New Jersey (the "Diocese") resulting or arising in whole or in part, directly or indirectly from any actual or alleged sexual conduct or misconduct, sexual abuse or molestation, indecent assault and/or battery, rape, pedophilia, ephobophilia, or sexually-related physical, sexually-related psychological, or sexually-related emotional harm, or contacts, or interactions of a sexual nature between a child and an adult, or an adult and another adult regardless of whether consensual or nonconsensual, sexual assault, sexual battery, sexual psychological or emotional abuse, humiliation, or intimidation, or any other conduct constituting a sexual offense of any type, kind, nature or description, incest, or use of a child in a sexual performance, and seeking monetary damages or any other relief, under any theory of liability, including vicarious liability, any negligence-based theory, contribution, indemnity, or any other theory based on any acts or failures to act by the Diocese or any other person or entity for whose acts or failures to act the Diocese is or was allegedly responsible. An "Abuse Claimant" is the person asserting an Abuse Claim against the Diocese. If the Abuse Claimant is a minor, a parent or legal guardian may complete this Abuse Proof of Claim on the minor's behalf. If the Abuse Claimant is deceased or incapacitated, the Abuse Claimants' legal representative or executor of the decedent's estate may complete this Abuse Proof of Claim on their behalf.

THIS PROOF OF CLAIM IS FOR ABUSE CLAIMS ONLY.

TO BE VALID, THIS ABUSE PROOF OF CLAIM MUST:

- a. Be written in English or include a translation if responses are in a language other than English;
- b. Provide responses that are complete and accurate to the best of your knowledge;

- c. Be signed by the Abuse Claimant, except that if the Abuse Claimant is a minor, incapacitated or deceased, this Abuse Proof of Claim may be signed by the Abuse Claimant's parent, legal guardian, or executor, as applicable; and
- d. Be actually received by Prime Clerk, the Diocese's claims and noticing agent, on or prior to the Bar Date, either:
 - i. electronically using the interface available at:
<https://cases.primeclerk.com/camdendiocese/EPOC-Index>; or
 - ii. mail, overnight courier, or hand delivery to Prime Clerk at: The Diocese of Camden, New Jersey Claims Processing Center, c/o Prime Clerk LLC, 850 3rd Avenue, Suite 412, Brooklyn, NY 11232

PROOFS OF CLAIM SENT BY FACSIMILE, TELECOPY, OR E-MAIL WILL NOT BE ACCEPTED.

YOU MAY WISH TO CONSULT AN ATTORNEY REGARDING THIS MATTER.

You may also obtain information from the Official Committee of Unsecured Creditors by calling toll free at [- ___ - ____].

FAILURE TO COMPLETE AND RETURN THIS FORM IN A TIMELY MANNER MAY RESULT IN YOUR INABILITY TO VOTE ON A PLAN OF REORGANIZATION AND INELIGIBILITY TO RECEIVE A DISTRIBUTION IN THE ABOVE-CAPTIONED CHAPTER 11 CASE.

THIS PROOF OF CLAIM FORM IS NOT SUFFICIENT TO ASSERT AN ABUSE CLAIM AGAINST ANY ENTITY OTHER THAN THE DIOCESE.

ANSWER THESE QUESTIONS TO THE BEST OF YOUR KNOWLEDGE AND ABILITY AT THE TIME YOU COMPLETE THIS FORM.

A PERSON WHO FILES A FRAUDULENT CLAIM COULD BE FINED UP TO \$500,000, IMPRISONED FOR UP TO 5 YEARS, OR BOTH PURSUANT TO 18 U.S.C. §§ 152, 157, and 3571.

PART 1: CONFIDENTIALITY

Unless the Abuse Claimant indicates below that the Abuse Claimant wants this document to be part of the public record, the Abuse Claimant’s identity will be kept strictly confidential, under seal, and outside the public record pursuant to an Order of the United States Bankruptcy Court for the District of New Jersey (the “Bankruptcy Court”). However, this Abuse Proof of Claim and the information in this Abuse Proof of Claim may be provided, pursuant to confidentiality procedures approved by the Bankruptcy Court, to the Diocese, certain insurers of the Diocese, any committee formed under the Bankruptcy Code, their respective counsel, the United States Trustee, and to such other persons as the Bankruptcy Court may authorize.

ONLY THE ABUSE CLAIMANT MAY WAIVE THE CONFIDENTIALITY OF THIS PROOF OF CLAIM.

Please select only one option below:	
[1 I wish to keep my identity and this proof of claim CONFIDENTIAL.	[1 I authorize my name, identity and this proof of claim (together with any exhibits and attachments) to be made PUBLICLY AVAILABLE AND PART OF THE PUBLIC RECORD.
Signature:	
Print Name:	

IF YOU DO NOT CHECK EITHER BOX, IF YOU CHECK BOTH BOXES, OR IF YOU DO NOT PROVIDE YOUR NAME AND SIGNATURE ABOVE, YOUR CLAIM WILL REMAIN CONFIDENTIAL.

PART 2: IDENTIFYING INFORMATION

a. Abuse Claimant

First Name Middle Initial Last Name Suffix (if any)

Mailing Address (If party is incapacitated, is a minor or is deceased, please provide the address of the legal representative submitting the claim. If you are in jail or prison, your current address).

City State/Prov. Zip Code (Postal Code)

Telephone No(s):
Home: _____ Work: _____ Cell: _____

If you are represented by counsel, you may provide your attorney’s work phone number instead of your own.

Email address: _____
If you are represented by counsel, you may provide your attorney’s email address instead of your own.

Social Security Number (last four digits only): _____

If you are in jail or prison, your identification number and location of incarceration:

May the Diocese, the committee (if any), and their respective counsel of record in this chapter

11 case leave voicemails for you regarding your claim? Yes No

May the Diocese, the committee (if any), and their respective counsel of record in this chapter

11 case send confidential information to your email? Yes No

Birth Date: _____
 Month Day Year

Any other name, or names, by which the Abuse Claimant has been known (including maiden name, if applicable):

b. Abuse Claimant's Attorney (if any):

Law Firm Name

Attorney's	First Name	Middle Initial	Last Name
------------	------------	----------------	-----------

Street Address

City (if other than U.S.A.)	State/Prov.	Zip Code (Postal Code)	Country
--------------------------------	-------------	------------------------	---------

Telephone No.	Fax No.	E-mail address
---------------	---------	----------------

PART 3: BACKGROUND INFORMATION

Please describe your marital history, including the date(s) you were married, and provide your current marital status. You do not need to identify the name(s) of your spouse(s) unless you want to.

What schools have you attended? For each school, please identify the months and years of your attendance. If you cannot recall the exact months when you began or ended each school year, please identify the season (fall, winter, spring, summer).

Are you currently employed? To the best of your recollection, please describe **your work** history ~~for the last ten (10) years in which you worked~~, including the name(s) of your current and past employers, the dates you were employed, the locations of your employment, and your job (s)/title(s).

PART 4: NATURE OF COMPLAINT
(Attach additional separate sheets if necessary)

NOTE: IF YOU HAVE PREVIOUSLY FILED A LAWSUIT AGAINST THE DIOCESE IN STATE OR FEDERAL COURT, PLEASE ATTACH THE COMPLAINT AND RESPOND TO THE QUESTIONS BELOW.

Who committed the acts of Abuse against you? Individuals identified in this section will be referred to as the “abuser” in questions below. If applicable, you may identify more than one abuser. Please provide the complete name(s) of each abuser to the best of your recollection. If you do not know the name(s) of each abuser, please identify them by title, position, **relationship to you and/or** other description.

How did you know the abuser? For example, was the abuser at your church, school or part of another group with which you were involved? Was the abuser a relative or family friend?

If the abuser was affiliated with a church, parish, school, or Diocesan organization, please identify such church, parish, school or organization.

Where did the Abuse take place? Please be specific and complete all relevant information to the best of your recollection, including the names of locations and addresses, if known.

When did the Abuse take place? Please be as specific as possible. If you do not recall the exact date, provide as much information as possible, including the year and season (fall, winter, spring, or summer).

How old were you at the time the Abuse began? Please be as specific as possible. If you do not recall the exact date, provide as much information as possible, including the year and season (fall, winter, spring, or summer).

How old were you at the time the Abuse ended? Please be as specific as possible. If you do not recall the exact date, provide as much information as possible, including the year and season (fall, winter, spring, or summer).

What happened (describe the nature of the Abuse against you, including the circumstances, frequency, and type(s) of Abuse):

Did you tell anyone about the Abuse and, if so, whom did you tell (this would include parents, relatives, friends, representatives of the Diocese, counselors, therapists, doctors, and law enforcement authorities). If you did tell anyone, what did you tell them, **and when did you tell them and what did the individual say or do in response (if anything)?** You do not need to disclose any communications you may have had with an attorney.

Do you personally know or have reason to believe that the Diocese knew that your abuser was abusing you or others before or during the period when such abuse occurred? If "Yes", please provide all information that supports your conclusion, including but not limited to: (a) the name of the individual at the Diocese who knew that your abuser was abusing you or others; (b) how and when such individual(s) learned of this information; (c) describe what the individual was told or observed; and (d) how you came to have the information provided in response to this question.

Were there any witnesses to the Abuse? If there were any witnesses, please list their name(s) **and any contact information you have, including addresses.**

PART 5: IMPACT OF COMPLAINT
(Attach additional separate sheets if necessary)

What injuries and/or damages have you experienced because of the act or acts of Abuse described above? Please provide as much detail as possible. For example, describe any injuries or damages, as well as any effect on your education, employment, personal relationships, health, or faith.

Have you sought counseling or other medical or mental health treatment for your injuries? If so, with whom and when?

PART 6: ADDITIONAL INFORMATION

Prior Claims: Have you ever asserted a claim against the Diocese, or against any entity or individual other than the Diocese (including, but not limited to, any parish, church, school, or other organization) relating to the Abuse described in this claim? If you have, please state when you asserted the claim, against whom the claim was asserted, the manner in which the claim was asserted (for example, a complaint made to law enforcement, a lawsuit or demand letter, participation in the Diocese’s Independent Victim Compensation Program (IVCP) or a similar program sponsored by an entity other than the Diocese, an informal request for compensation, etc.), and the result of such claim (including, for example, whether such claim resulted in a settlement or was adjudicated and, if so, the terms of any non-confidential settlement or the outcome of such adjudication).

Bankruptcy: Have you ever filed bankruptcy?

Yes

No

Sign and print your name. If you are signing the claim on behalf of a minor, decedent or incapacitated person, state your relationship to the Abuse Claimant.

Under penalty of perjury, I declare the foregoing statements to be true and correct.

Date: _____

Signature: _____

Print Name: _____

Relationship to the Abuse Claimant: _____