UNITED STATES
BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
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In Re:

THE DIOCESE OF CAMDEN, NEW JERSEY,

Debtor.

Chapter 11

Case No. 20-21257 (JNP)

Reference Docket No. 74
Hearing Date: January 27, 2021

CENTURY'S OBJECTION TO THE TERMS OF PROPOSED BAR DATE ORDER AND FORM OF PROOF OF CLAIM

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PRELIMINARY STATEMENT[1]

Century joins the Debtor's Motion[2] to the extent that it requests that the Court establish a near-term bar date. A bar date of May 31, 2021—four months and over 120 days from the Court's hearing date on this motion—provides claimants more than sufficient time to prepare to file their claim. This Court has the authority to fix a bar date prior to the expiration of the revived statute of limitations period. Here, as discussed below, the balance of equities requires it.

In other key respects, Century objects to the terms of the proposed Bar Date Order. The plaintiff firms behind the Tort Committee have demanded all of the benefits that flow to them under Section 502, but have had the Debtor strip from its proposed Bar Date Order the protections that the statutory scheme affords to prevent over claiming. Thus, the Tort Committee demands that proofs of claim be given *prima facie* validity upon the mere filing of a form (a) without ensuring that the form elicits sufficient information to state a *prima facie* claim against the Diocese[3] and (b) while insisting that the proofs of claim be kept *entirely* secret, negating the transparency that Section 502 mandates to give all parties notice of all claims asserted and a full opportunity to investigate and challenge them. At the same time, the Tort Committee demanded that the Diocese adopt a Bar Date Order that excuses the claimants from even having to sign the

1 Unless otherwise stated, all emphasis is added and internal quotation marks and citations are omitted.

2 The "Motion" is the Debtor's Motion re: (i) establishing deadlines to file proofs of claim against the Diocese, including but not limited to all claims of setoff or recoupment and claims arising under Section 503(b)(9) of the Bankruptcy Code; (ii) approving the form and manner of notice of the Bar Dates; (iii) approving the proposed forms to be used for filing proofs of claim; (iv) approving procedures for maintaining the confidentiality of certain claims; (v) authorizing the Diocese to publish notice of the Bar Dates; and (vi) granting related relief (Oct. 14, 2020) [ECF No. 74].

3 The "Diocese" refers to the Debtor, the Diocese of Camden, New Jersey.

proofs of claim and instead invites counsel with no personal knowledge of the facts to sign the proofs of claim.

The proposed Bar Date Order violates the scheme Section 502 creates and replaces it with a Star Chamber process that employs a secret claims registry, secret assertions and the automatic grant of *prima facie* validity without the claimant even having to sign. The result is detrimental not only to the Debtor itself, but most importantly to the abuse survivors with valid claims, as it invites the filing of meritless claims.

Century urges the Court to: (1) order all claimants to sign the proof of claim forms; (2) require the transparency associated with the filing of proofs of claims in all other bankruptcies; and (3) require the proof of claim form to include sufficient detail to state a *prima facie* case against the Diocese. Alternatively, the Bar Date Order should be modified to make clear the filing of a proof of claim preserves a filer's claim but does not confer automatic *prima facie* validity.

ARGUMENT

I. THE COURT IS WELL WITHIN ITS AUTHORITY TO SET A PROMPT BAR DATE

A. The Bankruptcy Rules Authorize the Court to Set a Prompt Bar Date

A bar date of May 31, 2021—four months and over 120 days from the Court's hearing date on this motion—provides claimants more than sufficient time to prepare to file their claim. Indeed, by the time the proposed May 31, 2021 bar date occurs, claimants will have had over 17 months from the date the legislature enacted the revival statute in 2019 and over seven months since this Chapter 11 case began to contemplate pursuing their claims.

Bankruptcy courts considering this issue conclude that not only do they have the authority to fix a bar date prior to the expiration of the revived statute of limitations period but

that the balance of equities requires it. In *In re The Archdiocese of Saint Paul and Minneapolis*, Case No. 15-30125 (Bankr. D. Minn., Apr. 17, 2015) [ECF No. 161], the debtor filed for Chapter 11 bankruptcy in January 2015 and requested a bar date of August 3, 2015. Plaintiffs' counsel objected, arguing that because Minnesota's Child Victim's Act left "the legislatively-created window for asserting child sexual abuse claims open until May 25, 2016," 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," and that "[s]uch a request flies in the face of the clear intent of the Minnesota legislature"—exactly the argument the Committee advances here. *Id*. at ECF No. 175. The Minnesota bankruptcy court summarily rejected plaintiffs' argument and set a bar date for August 3, 2015—more than eight months before the statutory window closed. *Id*. at ECF No. 188.

In a similar case, the court in *In re: The Roman Catholic Diocese of Syracuse*, Case No. 20-30663 (Bankr. N.D.N.Y. Nov. 6, 2020) [ECF No. 214], granted the debtor's motion to set a bar date prior to the end of the revival window, rejecting the Committee's objection that the court must set a bar date no earlier than August 14, 2021, the date to which New York's Child Victims Act extended the statute of limitations for survivors of childhood sexual abuse. Instead, the court set a bar date for April 15, 2021, four months earlier than the close of the revival window. *Id*.

In another New York case, *In re: The Diocese of Rochester*, Case No. 19-20905-PRW (Bankr. W.D.N.Y. July 29, 2020), when Governor Cuomo extended the statute of limitations set in the Child Victims Act for COVID-19 related reasons, the Committee moved the court to extend the original bar date of August 13, 2020 to January 2021. The court denied the Committee's motion to extend the bar date, explaining,

> The Court has balanced the potential harm to unknown victims of childhood sexual abuse, if the claims bar date remains unchanged, against the harm to the Estate (by requiring additional noticing, with the additional attendant costs) and the harm to those abuse victims who have already filed proofs of claim (adding unnecessary delay to the ultimate resolution of their claims). The balancing of harms weighs in favor of not extending the claims bar date beyond August 13, 2020 at 11:59 P.M. (prevailing Eastern time).

Id.[4]

The same result is warranted here. Delay of the bar date beyond May 31, 2021 will not only jeopardize the Diocese's ability to reorganize successfully but will also stall the process of investigating claims, which will be detrimental to the claimants given the high administrative costs and the parties' need to determine the universe of claims and investigate them as soon as possible.

Establishing a prompt deadline for filing proofs of claim is of paramount importance.[5] As courts often note, "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 establishment of a filing deadline here is necessary to enable the Debtor to ascertain with certainty the universe of claims asserted by its creditors, including the total number of claimants and the aggregate value of their respective claims.[6]

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[4] In addition to sexual abuse cases, claimants in asbestos cases or other similar instances routinely face filing deadlines prior to expiration of a statute of limitations period. *See, e.g., In re G-I Holdings, Inc.*, 443 B.R. 645, 665-68 (Bankr. D.N.J. 2010) (determining that certain claims were allowable in asbestos bankruptcy case because statute of limitations had not expired, while other claims were not allowable because statute of limitations had expired).

[5] *See In re Best Products Co., Inc.*, 140 B.R. 353, 357 (Bankr. S.D.N.Y. 1992) (a claim-filing deadline is "an integral step in the reorganization process"); *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") (quoting *In re Smidth & Co.*, 413 B.R. 161 (Bankr. D. Del. 2009)).

[6] *See In re Victory Mem'l Hosp.*, 435 B.R. 1, 4 (Bankr. E.D.N.Y. 2010) ("A bar date serves the important purpose of enabling the parties to a bankruptcy case to identify with reasonable promptness

A bar date is a prerequisite step before (1) the Debtor can determine the best way to structure a plan of reorganization in this Chapter 11 case and (2) investigate the claims asserted against it.

As the Fourth Circuit observed in *Vancouver Women's Health Soc. v. A.H. Robins Co.*:

> In bankruptcy, the court has an obligation not only to the potential claimants, but also to existing claimants and the petitioner's stockholders. The court must balance the needs of notification of potential claimants with the interest of existing creditors and claimants. A bankrupt estate's resources are always limited and the bankruptcy court must use discretion in balancing these interests . . . .

820 F.2d 1359, 1364 (4th Cir. 1987).

Bankruptcy Rule 3003(c)(3) gives the Court the discretion to set a May 31, 2021 bar date. Fed. R. Bankr. P. 3003; *In re Hooker Invest., Inc.*, 122 B.R. 659, 663 (S.D.N.Y. 1991) ("The setting of a bar date pursuant to Rule 3003(c) and the grant or denial of an extension of time to file a proof of claim are matters within the discretion of the bankruptcy court.").

B. A Near Term Bar Date Is More Than Justified by the Facts

The Estate is burdened with significant administrative expenses, in large measure because the tort claimants have demonstrated little restraint on spending. Despite the Committee's argument that a few months' delay will have a *de minimis* effect compared to the emotional trauma the survivors must bear, a near-term bar date is imperative for the Debtor to be able to compensate these survivors adequately. In addition to the delay of the reorganization until the bar date passes, the Debtor will continue to incur significant Chapter 11 administrative expenses including United States Trustee fees, legal fees for its own counsel, and legal fees for counsel to the Committee, dissipating funds that might otherwise be used to satisfy abuse victims. As the

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the identity of those making claims against the bankruptcy estate, and the general amount of the claims, a necessary step in achieving the goal of successful reorganization.").

chart below demonstrates, each month this Chapter 11 case is outstanding, the Estate will incur hundreds of thousands of dollars in professional fees. In addition to the fees detailed below, the Committee's law firm has informed the Court that it intends to charge the Estate up to $1500 and $750 *per hour* for each partner and associate's time, respectively. [ECF No. 278.] Of course, such costly fees will only serve to deplete the Estate's assets until the bar date passes and this case is able to reach resolution.

OCTOBER 2020

Date	Docket Entry	Law Firm	Fees($)	Disbursements ($)	Amount Due ($)
11/16/2020	214	Cooper Levenson, P.A.	$13,520.00	$350.80	$13,870.80
11/19/2020	226	McManimon, Scotland & Baumann, LLC	$157,918.50	$5,902.47	$163,820.97
11/19/2020	227	Eisneramper LLP	$42,839.92	$0	$42,839.92
TOTALS:			**$214,278.42**	**$6,253.27**	**$220,531.69**

NOVEMBER 2020

Date	Docket Entry	Law Firm	Fees ($)	Disbursements ($)	Amount Due ($)
12/16/2020	280	McManimon, Scotland & Baumann, LLC	$107,657.55	$2,086.79	$109,744.34
12/16/2020	281	Eiseneramper, LLP	$38,182.22	$0	$38,182.22
12/16/2020	282	Cooper Levenson, P.A.	$7,185.00	$0	$7,185.00
TOTALS:			**$153,024.77**	**$2,086.79**	**$155,111.56**

The practical impact of a late November 2021 bar date is that it will lead to a protracted and expensive Chapter 11 process that may jeopardize the Diocese's ability to successfully reorganize and will result in a smaller distribution for abuse survivors. Specifically, if the bar date does not occur until November 2021, it will take at least an additional six to 12 months to gather additional information necessary to understand and evaluate the universe of abuse claims asserted against the Diocese. Thus, there will be little to no prospect of a successful reorganization plan being formulated, let alone brought to confirmation, until mid-2022.

As explained above, the November 2021 bar date proposed by the Committee would be detrimental to not only the Debtor, but also to the survivors themselves, significantly increasing the ongoing professional fees and depleting the Estate's assets needed to compensate the claimants.

II. IT IS ESSENTIAL THAT THE PROOFS OF CLAIM BE SIGNED BY CLAIMANTS

A. Sworn Statements from Claimants Are Particularly Important in Mass Tort Cases

It is particularly crucial in the context of a mass tort personal injury case that the *claimant* verify the claims under penalty of perjury.[7] Claimants have personal knowledge of the events that they are describing in the proof of claim form; their attorneys do not. Thus, the effect of sworn statements from attorneys, who have no personal knowledge, affirming that they have "examined the information in this Sexual Abuse Survivor Proof of Claim and have a reasonable belief that the information is true and correct" is much less significant than sworn statements from the claimants themselves.

The sheer number of claims makes independent verification of the information provided by claimants challenging—here, there may be significant impediments to testing claims like they would be tested in the tort system. It is an essential protection that the statements made in the proofs of claim are true, correct, and verified by the person making the claim as such. Anything less than that raises the specter that parties may not rely on the veracity of the claim forms.

[7] The Third Circuit has admonished courts to apply "careful and comprehensive scrutiny" in overseeing mass tort bankruptcies. *In re Congoleum Corp.*, 426 F.3d 675, 693–94 (3d Cir. 2005).

B. The Court Has Authority Under the Federal Rules of Bankruptcy to Order Claimants to Sign the Proofs of Claim

Although Official Form 410 provides for the possibility that a claimant's agent may sign the form, Bankruptcy Rule 3001 permits modification of the Official Form, and provides only that the parties use a form that "conform[s] substantially" to the same. The Court's authority to modify the Official Form, particularly in mass tort cases, is well-established. *In re A.H. Robins Co.*, 862 F.2d 1092 (4th Cir. 1988); *In re Eagle-Picher Indus., Inc.*, 158 B.R. 713, 716 (Bankr. S.D. Ohio 1993). Indeed, all parties here contemplate modifications to the Official Form, as has become the typical practice in abuse-based bankruptcies. In several of those cases, the Court signed a bar date order and approved a claim requiring claimant signatures. Similarly, this Court should order all claimants to sign the proof of claim forms to ensure their accuracy and to prevent the need for further discovery. *See, e.g., In re Diocese of Harrisburg*, Case No. 1:20-bk-00599 (M.D. Pa. May 6, 2020) [ECF No. 223-2] (approving bar date and abuse proof of claim form stating: "To be valid, this proof of claim must: . . . be signed by the sexual abuse claimant, except if that if the sexual abuse claimant is a minor, incapacitated, or deceased, this sexual abuse proof of claim may be signed by the sexual abuse claimant's parent, legal guardian, or executor, as applicable."); *In re Archdiocese of New Orleans*, Case No. 20-10846 (E.D. La. Oct. 1, 2020) [ECF No. 461] (approving bar date and abuse proof of claim form stating: "For this claim to be valid, the Sexual Abuse Survivor must sign this form. If the Sexual Abuse Survivor is deceased or incapacitated, the form must be signed by the Sexual Abuse Survivor's representative or the attorney for the Sexual Abuse Survivor's estate.").

III. THE PROPOSED CONFIDENTIALITY PROVISIONS ARE OVERBROAD AND CONFLICT WITH THE STATUTORY SCHEME ESTABLISHED BY SECTION 502 FOR CHALLENGING CLAIMS

The foundation for the application of the statutory process for the submission, review, and challenge of proofs of claim adopted by Section 502 is transparency. A creditor seeking to make a claim on a bankruptcy estate is required to file a proof of claim pursuant to 11 U.S.C. § 501. That the proofs of claim be subject to challenge—and hence usable as part of the investigation and adjudication of disputed claims—is an essential part of this legislative scheme.[8] Under the scheme envisioned in Section 502, the proofs of claim and the information contained in them must be usable in the investigation and adjudication of the claims. And all parties in interest must have notice of the claims asserted. This is one of the purposes of a public claims registry.

The confidentiality protocol proposed in the Debtor's Bar Date Order is so over-protective as to preclude the use of the information found in the proofs of claim to sufficiently verify or challenge them through the process mandated by Section 502. For example, under the confidentiality procedure the Diocese proposes, no party in interest may share the proofs of claim with an outside expert to analyze or evaluate the claims, and no party in interest will have the opportunity to speak to other witnesses or otherwise develop evidence that requires speaking to anyone other than "Authorized Parties" about the matter. Nor are parties in interest even

[8] The need for transparency in mass tort cases has been emphasized by the Department of Justice as recently as December 28, 2020 when it filed a Statement of Interest in an asbestos bankruptcy case in the Western District of North Carolina. The U.S. Attorney in that case explained: "In recent years, numerous courts and commentators have recognized that many asbestos claims are based on inaccurate or even fraudulent information . . . . That lack of transparency in the compensation of asbestos claims has been a significant problem." *Justice Department Files Statement of Interest Urging Transparency in the Compensation of Asbestos Claims*, Justice News (Dec. 28, 2020), available at, https://www.justice.gov/opa/pr/justice-department-files-statement-interest-urging-transparency-compensation-asbestos-claims.

given notice as to who has asserted a claim against the Debtor and for what, as the entire registry of claims is sealed.

The preclusive measures proposed are contrary to the statutory procedure for challenging claims envisioned under Section 502.[9] *See In re Brunson*, 486 B.R. 759, 771 (Bankr. N.D. Tex. 2013) ("[A] debtor seeking more information from a creditor respecting its proof of claim may take depositions orally or by written questions, serve interrogatories, requests for production, and requests for admission."); *In re Rosebud Farm, Inc.*, 619 B.R. 202, 209 (Bankr. N.D. Ill. 2020) (finding that a party to the contested matter created by an objection to a proof of claim "has had all the regular means of discovery available to him throughout this contested matter"); *In re Davenport*, 544 B.R. 245, 251 (Bankr. D.D.C. 2015) ("The filing of an objection to claim creates a 'contested matter' under Bankruptcy Rule 9014. The provisions for formal litigation discovery apply in a contested matter, unless the court directs otherwise. *See* Bankruptcy Rule 9014(c). Therefore, a debtor seeking more information from a creditor respecting its proof of claim may take depositions orally or by written questions, serve interrogatories, requests for production, and requests for admission.").

To ensure that the adjudication process in this Chapter 11 case aligns with the statutory scheme set out in Section 502, Century requests that the Bar Date Order be revised either to make clear that the filing of a proof of claim is for the limited purpose of preserving a claimant's rights but not grant presumptive validity or, alternatively, if presumptive validity is sought from the claims registrar, filings and process shall be transparent, as envisioned by Section 502. Further, the proposed bar date should be revised to include: (1) as "Authorized Parties" all

[9] *See In re Best Products Co., Inc.*, 140 B.R. 353, 357 (Bankr. S.D.N.Y. 1992) ("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 . . . .").

insurers and their counsel, experts and consultants, without conditioning this designation on the Debtor's consent; and (2) a provision that permits Authorized Parties to use the proof of claim forms to evaluate and investigate the claims.

First, it is undisputed that insurers in this case have a significant interest in evaluating the claims at issue, and Century and other insurers must have direct access to all proofs of claim. The Debtor's proposed Bar Date Order currently provides that an Authorized Party includes: "*Upon the consent of the Diocese*, any insurance company that provided insurance or reinsurance that may cover the claims described in any Abuse Proof of Claim, together with their respective successors, reinsurers and counsel." Proposed Bar Date Order ¶ 13(c)(iv) [ECF No. 74-2]. Century objects to this provision, which gives the Diocese unilateral authority to provide—or to decline to provide—the insurers with the proofs of claim necessary to determine the Diocese's liability in this case. Such a provision directly violates Century's due process rights to evaluate the claims and to determine its own liability. The Bar Date Order must include insurers and their counsel in the definition of "Authorized Parties."

Next, as the Court is aware, experts and outside consultants are vital to the evaluation of claims, especially in a mass tort case such as this with claims that will be decades old. The Bar Date Order currently does not provide for the use of experts to evaluate the claims and Century asks that the Bar Date Order include experts and outside consultants in the definition of "Authorized Parties."

In addition, as discussed above, Section 502 permits the parties to adjudicate and investigate the claims asserted against the Debtor. The proposed Confidentiality Agreement provides:

> Recipient may use Confidential Proofs of Claim, and any Confidential Information contained therein, only in connection with the evaluation, prosecution or defense

> of the claims asserted in such Confidential Proofs of Claim in the Diocese's Chapter 11 Case, any related adversary proceedings or contested matters in the Chapter 11 Case, any related insurance or reinsurance coverage demands, claims, disputes, or litigation, and settlement negotiations or mediations regarding all of the foregoing, and as otherwise required by applicable federal or state laws or regulations (each, a "Permitted Use").

See Proposed Bar Date Order, Ex. C ¶ 4 [ECF No. 74-2]. Century requests that the Bar Date Order clarify that this provision permits Authorized Parties to use the proofs of claim in the investigation of the claims, in questioning witnesses, as exhibits at depositions, and in any other manner necessary to properly evaluate and adjudicate the claims.[10]

In the alternative, Century asks that the Bar Date Order include the following provision:

> All Authorized Parties are authorized to discuss the contents of any Abuse Proof of Claim, (other than the claimant's name, address, and other information which could reasonably be used to personally identify an Abuse Claimant or any witness to the abuse disclosed in the Abuse Proof of Claim Form), with any person the Authorized Party deems necessary to evaluate and investigate the merits of the claim.

The proposed provision is substantially similar to one that the Diocese included for its own investigation of claims.[11] As a party in interest, Century should have the same opportunity to investigate the merits of the claims.

Finally, the statements in the form of proof of claim that address the availability of the proofs of claim should conform to the text of the Bar Date Order.

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[10] To this end, Century specifically objects to the prohibition in the Bar Date Order stating: "Authorized Parties may not contact a witness identified in an Abuse Proof of Claim Form based upon information obtained solely from the Abuse Proof of Claim Form." Proposed Bar Date Order ¶ 13(e) [ECF No. 74-2].

[11] The proposed Bar Date Order provides: "that the Diocese is authorized to discuss the contents of any Abuse Proof of Claim, (other than the claimant's name, address, and other information identified in Parts 1 and 2(a) of the Abuse Proof of Claim Form, the signature block and any other information which could reasonably be used to personally identify an Abuse Claimant or any witness to the abuse disclosed in the Abuse Proof of Claim Form), with a person identified as an alleged abuser who was not previously disclosed to the Diocese as an individual who had committed an act of abuse . . . ." Proposed Bar Date Order ¶ 13(c)(i) [ECF No. 74-2].

IV. THE QUESTIONS POSED IN THE PROOF OF CLAIM ARE INSUFFICIENT TO CONFER *PRIMA FACIE* VALIDITY OF THE CLAIM

The questions posed in the proposed proof of claim are insufficient to plead a *prima facie* claim. This is another reason why the Bar Date Order should include text specifying the submission of proofs of claim is adequate to preserve a claim and nothing more.

A. Presumptive Validity

Only "a claim that alleges facts *sufficient to support a legal liability to the claimant* satisfies the claimant's initial obligation to go forward." *In re Allegheny, Int'l, Inc.*, 954 F.2d 167, 173 (3d Cir. 1992); Fed. R. Bankr. P. 3001(f). The assertions in the filed claim must meet this standard of sufficiency to be considered *prima facie* valid under Section 502(a). *Allegheny*, 954 F.2d at 173*; see also* Fed. R. Bankr. P. 3001. In other words, "the allegations of the proof of claim are taken as true," and *if* those "allegations set forth all the necessary facts to establish a claim and are not self-contradictory, they *prima facie* establish the claim." *In re Holm*, 931 F.3d 620, 623 (3d Cir. 1991).

By contrast, where a proof of claim "does not adhere to the requirements of Rule 3001 by providing facts and documents necessary to support the claim, it is not entitled to the presumption of *prima facie* validity." *In re Kincaid*, 388 B.R. 610, 614 (Bankr. E.D. Pa. 2008). *See also In re Jorczak*, 314 B.R. 474, 481 (Bankr. D. Conn. 2004) ("If . . . the claimant fails to allege facts in the proof of claim that are sufficient to support the claim, *e.g.*, by failing to attach sufficient documentation to comply with Fed. R. Bankr. P. 3001(c), the claim is . . . deprived of any *prima facie* validity which it could otherwise have obtained.").

The Committee has asserted that its objective is to avoid intrusive questions. The objective may be laudable, but the result is a form that unambiguously—indeed, *indisputably*—fails to establish a *prima facie* cause of actionable abuse against the Diocese.

No claimant in any other civil litigation context—including those asserting sexual abuse claims—receives such special pleading treatment.[12] And nothing in the Bankruptcy Code justifies such an exception for the pleading standard and substantive proof of these claims or any others. To the contrary, the substantive standard is properly established solely by *state* law and cannot be supplanted by special bankruptcy standards. *See In re Lafferty*, Case No. 11-27292 (JHW), 2012 Bankr. LEXIS 5871, at *9 (Bankr. D.N.J. Dec. 19, 2012) ("The 'basic federal rule' in bankruptcy is that state law governs the substance of claims.") (quoting *Raleigh v. Illinois Dep't of Revenue*, 530 U.S. 15, 20 (2000)); *In re USG Corp.*, 290 B.R. 223, 225 (Bankr. D. Del. 2003) ("An unbroken line of authority holds that state law claims remain governed by state law, even after the debtor invokes federal bankruptcy protection.").

Because a "claim against the bankruptcy estate . . . 'will not be allowed in a bankruptcy proceeding if the same claim would not be enforceable against the debtor outside of bankruptcy,'" *In re Combustion Eng'g, Inc.*, 391 F.3d 190, 245 n.66 (3d Cir. 2005) (quoting *United States v. Sanford*, 979 F.2d 1511, 1513 (11th Cir. 1992)), sexual abuse and other tort claimants are subjected to the same proof standards they would face outside of bankruptcy, even when such proof is potentially intrusive or embarrassing (matters that can be handled through confidentiality protocols as in any other civil litigation context). Under the Code, the form can establish a presumptively valid claim *only* if it provides the information required to state a claim under applicable substantive law. *Combustion Eng'g*, 391 F.3d at 245 n.66.

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[12] *See, e.g., In re USA Gymnastics*, Case No. 18-09108 (RLM) (Bankr. S.D. Ind. Feb. 25, 2018) [ECF No. 301] (approving proof of claim form for claimants asserting claims relating to sexual misconduct that required claimants to, among other things, provide documentation and written responses to approximately thirty separate questions regarding the nature of their claims, the damages asserted, their connections to the debtors, and the procedural history of their asserted claims); *In re Nortel Networks, Inc.*, 469 B.R. 478, 497 (Bankr. D. Del. 2012) (applying Rule 12(b)(6) standards to a proof of claim involving tort claims, noting that greater specificity required).

While the Debtor's proposed form solicits information that may be sufficient for a tort claim against an actual abuser, it falls short of soliciting the type and range of information necessary to establish the *Diocese's* liability as an organization for the underlying conduct, and in turn, the insurers' potential coverage obligations. Among other things, the form fails to ask the claimant to affirm either that the Diocese knew about the abuser or that the claimant has evidence of that knowledge. Under New Jersey law, such an omission would be fatal to a claim against the Diocese. *See Davis v. Devereux Found.*, 209 N.J. 269, 292 (2012) (explaining New Jersey courts recognize the tort of negligent hiring "where the employee either knew or should have known that the employee was violent or aggressive, or that the employee might engage in injurious conduct toward third persons"); *G.A.-H. v. K.G.G.*, 238 N.J. 401, 416, *reconsideration denied*, 239 N.J. 76 (2019) (for negligent supervision or training, the claimant must prove that "(1) an employer knew or had reason to know that the failure to supervise or train an employee in a certain way would create a risk of harm and (2) that risk of harm materializes and causes the plaintiff's damages"); *Ianuale v. Borough of Keyport*, Civ. No. 16-9147 (FLW) (LHG), 2018 WL 5005005, at *13 (D.N.J. Oct. 16, 2018) (dismissing negligent hiring claim where "Plaintiffs have not presented any facts at summary judgment indicating that Defendants had reason to know of any 'particular unfitness, incompetence, or dangerous attributes' of any of the Defendants").

The centrality of a defendant organization's knowledge of or notice about a particular individual demonstrates that the Debtor's proposed proof of claim form is inadequate to support a *prima facie* claim. With this major element missing, the form fails to elicit facts sufficient to support legal liability against the Diocese.

If the Committee intends to invoke presumptive validity under Section 502 and Rule 3001, more detailed questions and documentary support would be required to satisfy the requirements of the Bankruptcy Code. The proof of claim form must elicit all of the information necessary to state all elements of liability and damages, including detailed information to establish not only the Diocese's liability and that of its co-defendants, but also when the abuse or injury took place and the extent to which the Diocese's representatives had knowledge of, or were warned about, a particular perpetrator. The Debtor's proof of claim does not do this.

Other bankruptcy courts have recognized the need for more detailed information when mass tort claims are at issue.[13] *See In re A.H. Robins Co., Inc.*, 862 F.2d 1092 (4th Cir. 1988); *In re The Delaco Co.*, No. 04-10899 (CB) [ECF No. 196]. In *A.H. Robins*, the district court (sitting in bankruptcy) established a two-step process by which claimants would first file a statement of intent to make a certain type of claim along with their name and address, and then later would be required to fill out a detailed questionnaire. *Id*. at 1093. The questionnaire requested information related to the claim, such as dates of use of the product, the type of injury alleged, and details about any medical attention sought. *Id*. The Fourth Circuit upheld the district court's decision to disallow claimants who failed to complete the questionnaire on the grounds that, without answers to the questionnaire's more detailed inquiries, the "initial statement of intention to make a claim would be insufficient as valid proof of claim." *Id*. at 1096.

The court in *In re: The Roman Catholic Diocese of Syracuse*, Case No. 20-30663 (Bankr. N.D.N.Y. Nov. 6, 2020) [ECF No. 214], took a similar approach when it allowed all claimants to submit an Official Form 410 but ordered that in addition:

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[13] *See A.H. Robins Co., Inc.*, 862 F.2d 1092, 1095 (4th Cir. 1988) (deeming detailed questionnaires in addition to a proof of claim "essential").

> Any proof of claim asserting a Sexual Abuse Claim . . . should be accompanied by a completed Confidential Sexual Abuse Claim Supplement. . . . **The failure to submit a completed Confidential Sexual Abuse Claim Supplement with any proof of claim asserting a Sexual Abuse Claim may be the basis for a valid objection to such claim.**

Id. (emphasis in original).

In resolving this issue, the Court must balance the Committee's desire to limit the rehashing of potentially traumatic events for survivors with the need to elicit sufficient information to state a *prima facie* claim under the Code. One way to manage these conflicting concerns is to include language in the Bar Date Order treating the form as a claim-preservation and information-gathering device only, rather than as a statement of a presumptively valid claim. If, however, the Committee intends for the proof of claim forms to establish *prima facie* claims against the Diocese, a more comprehensive form is needed.

B. Evaluation of Claims

In addition to separating compounded questions to ensure claimants answer all questions in an easily readable format, Century proposes adding questions to elicit the following:

- A detailed explanation of work history. This information will assist the Diocese to corroborate the allegations and will assist the Diocese and the insurers to establish the claimant's measure of damages, as abuse claimants often allege loss of income and/or loss of earning capacity.

- A standalone question asking when the abuse happened to ensure the Diocese and insurers are able to identify the year the alleged abuse occurred, a critical issue for the insurers given the separate coverage for various years.

- Information about the survivor's relationship to the abuser to assist in identifying the alleged abuser.

- Detailed information about whether and to whom the survivor reported the abuse, if at all, any investigation that was done at the time, and the contact information of any possible witnesses. This will help the Diocese and the insurers identify any corroborating evidence in support of the claimant's allegations and will indicate if the Diocese had prior notice of allegations of abuse.

- A question regarding the Diocese's knowledge of the abuse.[14] This information directly implicates the Diocese's liability because claimants often bring claims under legal theories of negligent hiring, supervision, and retention.

Without the pertinent information from the additional questions requested herein, no party in interest could reasonably assess the claims, which will lead to substantial discovery.

CONCLUSION

For the foregoing reasons, Century objects in part to the Debtor's motion.

[14] Under New Jersey law, claims of negligent hiring, supervision, and retention 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).

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Respectfully Submitted,

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