

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT
HARTFORD DIVISION**

In Re:

THE NORWICH ROMAN CATHOLIC
DIOCESAN CORPORATION,

Debtor.

Chapter 11

Case No. 21-20687 (JJT)

**LIMITED OBJECTION OF THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS TO THE DEBTOR’S MOTION FOR ORDER
ESTABLISHING DEADLINE OF FEBRUARY 10, 2022 FOR FILING
PROOFS OF CLAIM AND APPROVING (A) THE FORM OF PROOFS
OF CLAIM FORMS; (B) PROCEDURES FOR CONFIDENTIALITY OF
CERTAIN CLAIMS; (C) THE FORM AND MANNER OF NOTICE OF
PROOF OF CLAIM DEADLINE; AND (D) RELATED RELIEF**

The Official Committee of Unsecured Creditors (the “Committee”) in the above captioned bankruptcy case, by and through its undersigned counsel, Zeisler & Zeisler, P.C., hereby submits its limited objection to the Motion for Order Establishing Deadline of February 10, 2022 for Filing Proofs of Claim and Approving (A) the Form of Proofs of Claim Forms; (B) Procedures for Confidentiality of Certain Claims; (C) the Form And Manner Of Notice Of Proof Of Claim Deadline; and (D) Related Relief (the “Bar Date Motion”), filed by the debtor and debtor-in-possession, The Norwich Roman Catholic Diocesan Corporation (“Debtor”). In support thereof, the Committee respectfully represents as follows:

I. PRELIMINARY STATEMENT

While prior to filing the Bar Date Motion, the Debtor incorporated the majority of requests made by the Committee to facilitate a fair and equitable claims process, the Debtor continues to insist upon certain aspects which the Committee respectfully submits (i) impose unreasonable and unnecessary disclosure obligations upon potential claimants as a precondition for the submission

of their claim, (ii) fail to provide a reasonable opportunity for known and unknown claimants to participate in the claims process in this bankruptcy case, or (iii) are otherwise inappropriate. The Committee fully recognizes that a specialized claims process is warranted and fully supports the Debtor's proposed claims process once revised to address the following objections.

II. ARGUMENT

A. Potential claimants should be provided with 120 days' notice of the bar date.

The Committee fully appreciates the potential benefits of expediting the bankruptcy process. However, potential claimants—almost all of whom will be survivors of sexual abuse suffered when they were minors—should be provided with a reasonable opportunity to learn about the claim submission process (including, most importantly, the corresponding bar date), and then complete and timely submit their proof of claim. Balancing the various interests and the practical realities involved, the Committee proposes that this Court set a bar date for 120 days after the entry of its order.

Federal Rule of Bankruptcy Procedure 3003(c)(3) provides that “[t]he court shall fix and for cause shown may extend the time within which proofs of claim or interest may be filed.” This “bar date” is established to protect and advance the interests not only of the debtor but its creditors as well. *See In re Nutri*Bevco, Inc.*, 117 B.R. 771, 781 (Bankr. S.D.N.Y. 1990). Rule 2002(a)(7) requires “at least” 21-days’ notice of the “time fixed for filing proofs of claim pursuant to Rule 3003(c).” In this District, the custom and practice in a case filed under Chapter 11 is for this Court to set automatically a “bar date” 90 days from the entry of the order for relief. By further comparison, Rule 3002(c) provides that, “[i]n a voluntary chapter 7 case, chapter 12 case, or chapter 13 case, a proof of claim is timely filed if it is filed not later than 70 days after the order for relief under that chapter.” Fed. R. Bankr. P. 3002(c).

Some additional time in excess of these periods is appropriate in this case. Sexual abuse survivors' claims are vastly different from claims held by commercial creditors or other claimants asserting tort claims in Chapter 11 cases. The nature of the abuse and societal and personal stigma associated with sexual acts—especially of the nature involved in this case—make disclosure of abuse extremely difficult for survivors. As such, a deadline to file sexual abuse claims must provide a reasonable time for survivors to process their abuse in a manner that allows them to disclose the details of their claims.

The significantly expanded proof of claim form also warrants an extension of the typical bar date time frame. While as explained below, the Committee opposes the full extent of questions proposed by the Debtor, the Committee agrees that some specific additional questions should be included in the proof of claim form to establish a *prima facie* claim for sexual abuse. The multiple questions requiring essentially the disclosure of the who, what, when and where as well as the extent of harm caused will simply and fairly take significant time for each survivor to recall, comprehend and articulate in writing.

A survey comparing the amount of time afforded to claimants to file proofs of claim in other recent Chapter 11 cases involving large numbers of sex abuse claims is attached hereto as **Exhibit A**. Among the 19 cases surveyed going back to 2015, sex abuse claimants were afforded between 54 days and 246 days from the date of the bankruptcy court entered its order setting a bar date to prepare and submit specialized proofs of claims forms, with the average claim submission period being 142 days. Admittedly, some bankruptcy courts set a longer bar date to correspond to a fixed deadline imposed by state law extending the statute of limitations, to address pandemic-related issues, and/or in response to a partial government shutdown. *See, e.g., In re: The Roman Catholic Diocese of Rockville Centre, New York*, Case No. 20-12345 (Bankr. S.D.N.Y.); *In re:*

The Diocese of Buffalo, N.Y., Case No. 20-10322 (Bankr. W.D.N.Y.); *In re: Arquidiocesis De San Juan De Puerto Rico*, Case No. 18-04911 (Bankr. D.P.R.). Even still, the Committee's proposed 120 days' notice period is less than the average. The Debtor's proposal of approximately 92 days¹ is far below the average and, the Committee submits, insufficient.

The Committee recognizes that the Debtor's professionals have incurred an extraordinary amount of fees and expenses to date and that having a slightly extended bar date than proposed by the Debtor compounds the risk of further substantial fees and expenses in this case. But the Debtor's choice of counsel and the manner in which they have elected to manage the bankruptcy case and the corresponding fees and expenses incurred should not justify prejudicing the survivors by imposing an unreasonable time limitation for them to participate in the claims process. The challenges caused by the Debtor's professionals' fees and expenses needs to be and should be addressed separately.

Thus, the Committee respectfully submits that this Court establish a bar date for 120 days after the entry of its order.

B. The proposed disclosures included within "Other Information" is sought to limit damages rather than to establish the validity of the corresponding claim and, therefore, is entirely inappropriate.

Bankruptcy Rule 3001 requires that a proof of claim form "conform substantially to the appropriate official form." Fed. R. Bankr. P. 3001. The Official Form 410 asks the claimant to state the most basic information concerning the claim itself: how much is the claim, what is the basis of the claim, is all or part of the claim secured or entitled to priority, is the claim based on a lease and is the claim subject to a right of setoff? It is clear to the Committee that a deviation from the official form is necessary in this case to facilitate the survivors establishing the *bona fides* of

¹ This is based upon the assumption that this Court enters the proposed order within a few days of the presently scheduled hearing, November 9, 2021.

their claims. However, this limited expansion to the official form should not provide the Debtor with a license to obtain discovery of the survivors' subsequent personal life events—apparently, for the purpose of developing arguments to limit the extent of their damages. Requiring such disclosures as a condition to the *prima facie* establishment of their substantive claims in this bankruptcy case is repugnant to the proof of claim process, completely unfair to the survivors who may not understand the legal consequences involved and almost certainly will serve to discourage survivors from submitting claims altogether.

The Debtor proposed² a proof of claim form that requires the survivors to explain the following under the caption “Other Information”:

- Their marital status, and whether they were previously married or never married;
- Whether they have children;
- What schools they attended and any diploma or degree received;
- Whether they served in the armed forces;
- Whether they are currently employed;
- Their entire former employment history;
- Their current and former affiliation with any church or religious organization; and
- Incidents of sexual abuse other than those alleged in this case.

(Bar Date Motion, Propose Order, Sch. 1 Proof of Claim Form at 5-6.) None of these questions relate to the underlying claim of sexual abuse as a minor. Notwithstanding, the proposed proof of claim form repeatedly warns that the “[f]ailure to complete and return this form ... may result in

² As recited in the Bar Date Motion ¶ 8, the Debtor originally proposed the form of the proof of claim to the Committee on August 24, 2021, and then on September 13, 2021, provided the form to Catholic Mutual Relief Society of America (“Catholic Mutual”) to solicit its comments. The original proof of claim form proposed to the Committee on August 24th included these questions.

your inability to vote on a plan of reorganization and/or to receive compensation from this bankruptcy case for sexual abuse related to the Diocese.” (*Id.* at 2 & 3.)

In attempting to defend the inclusion of these questions on the proof of claim form, the Debtor argued as follows:

The dispute is focused on the scope of information sought from potential sexual abuse claimants needed to assess the damages and amount of such claims, with the Committee asserting an interest in narrowing the scope of those inquiries. Based on its claim valuation experience in many other cases, Catholic Mutual has expressed a need for such information, which it believes will assist those attempting to compensate Survivors who assert claims.

(Bar Date Motion. ¶ 9.) In seeking discovery “to assess the damages and amount of such claim,” the Committee submits that what the Debtor and Catholic Mutual really seek is to gather evidence either to minimize the adverse consequences of the sexual abuse as reflected in the lives ultimately led by the survivors or, as to the last question, to identify an alternative cause of the damages asserted. Either way, the Debtor and Catholic Mutual seek to obtain disclosures to then argue that the survivors should be entitled to *less* compensation in this bankruptcy case.

The Committee adamantly disputes the appropriateness of these inferences. The compensation due a survivor of sexual abuse as a minor while in the care of a clergy member should not be reduced based upon whether he, later in life, attended school, served in the armed forces, obtained employment, got married or had children, or whether he separately had been subjected to sexual abuse. The Debtor and Catholic Mutual have not offered any legal support establishing the relevance of these matters on the issue of damages.

Regardless, the purpose of the proof of claim process is to establish the validity of the claim, not to enable the Debtor and a third-party to conduct discovery. While the amount of the claim is ordinarily included in the proof of claim, the Committee requested and the Debtor agreed not to include this question, and Catholic Mutual has not insisted upon survivors attempting to

place a dollar amount on their claims. The reason is obvious. The amount of the claim is not subject to a simple calculation and significant additional investigation and analysis (perhaps even with the assistance of a specialized professional) will need to be performed in order to attempt to quantify the harm suffered and compensation sought.

But it is not at all clear that this will need to be conducted prior to the Committee's negotiations with the Debtor and the various other parties-in-interest in this case, including Catholic Mutual, or even prior to confirmation of a plan of reorganization in this case. The Debtor's counsel has repeatedly represented that there is no additional insurance coverage available for the survivors' claims. While the Debtor's counsel's conclusion in this regard appears to have been focused on the survivors of sexual abuse which took place at Mount Saint John Academy, the Debtor has not disclosed (in its schedules or otherwise) any other survivor of sexual abuse for which the Debtor may be liable. Therefore, there may not be any insurance coverage issue. Furthermore, to the extent that any reasonable calculation of damages in total—even the calculation most favorable to the Debtor and its related parties—far exceeds the aggregate recoverable value from these sources, the issue of damages in any particular case would not matter for settlement negotiations or confirmation of a plan.

When and if it matters, only then should the possibility of interrogatories be explored. They should not be imposed now as a condition to the submission of a claim in the first instance. This is especially the case when survivors may not have the assistance of counsel and may not fully understand the legal consequences of their answers. The additional questions—which seek the disclosure of very personal information that may be extremely troubling for the survivors to complete—also pose the very real risk of discouraging survivors from submitting claims

altogether. For all of these reasons, the questions captioned “Other Information” proposed by the Debtor should not be included in the proof of claim form for the survivors of sexual abuse.

C. The proposed disclosure of subsequent communications and contact with others is sought to limit insurance coverage rather than to establish the validity of the corresponding claim and, therefore, is entirely inappropriate.

Similarly, the Debtor and Catholic Mutual should not be permitted to interject into the proof of claim form interrogatories concerning who a survivor told about the sexual abuse or his subsequent contact with the abuser or “anyone from the church or school after the abuse.” (*See* Bar Date Motion, Proposed Order, Sch 1 Proof of Claim Form, at 7 & 8.) The survivor will already be asked to explain through multiple questions many of the details concerning the sexual abuse. There needs to be some limit and the Committee draws the line here because it perceives Catholic Mutual as seeking, through the Debtor, these particular questions in order to obtain evidence to deny coverage. Presumably, there will be no coverage if there is a determination that the Debtor was aware of the perpetrator’s deviant propensities or history of molesting children prior to or during the abuse. *See, e.g., Diocese of Winona v. Interstate Fire & Cas. Co.*, 89 F.3d 1386 (8th Cir. 1996).

Of course, the policies at issue here may not contain the same exclusions as typically presented in other coverage litigation involving sexual abuse. But they may. The Committee and its counsel simply do not know at this point.

The Committee, through its counsel, originally requested on August 24, 2021, the voluntary production by the Debtor of documents including the following:

24. Any and all insurance policies pursuant to which the Diocese is an insured (or otherwise entitled to any form of insurance coverage whatsoever) and providing general liability insurance, business liability insurance, employment practices liability insurance, management liability insurance, commercial umbrella insurance, reinsurance and/or any other type insurance coverage which may insure

against the claims asserted by the Survivors or any other person who has made allegations of sexual abuse as a minor by clergy or any other person serving within the Diocese (including, but not limited to, cost of defense) (collectively, the “Policies”).

25. Any and all insurance policies pursuant to which any Parish is an insured (or otherwise entitled to any form of insurance coverage whatsoever) and providing general liability insurance, business liability insurance, employment practices liability insurance, management liability insurance, commercial umbrella insurance, reinsurance and/or any other type insurance coverage which may insure against the claims asserted by the Survivors or any other person who has made allegations of sexual abuse as a minor by clergy or any other person serving within such Parish (including, but not limited to, cost of defense) (collectively, the “Parish Policies”).
26. Any and all Communications between the Diocese, on one hand, and any insurance carrier and/or insurance broker, on the other hand, Concerning the claims asserted by the Survivors or any other person who has made allegations of sexual abuse as a minor by clergy or any other person serving within the Diocese.
27. Any and all Communications between any Parish, on one hand, and any insurance carrier and/or insurance broker, on the other hand, Concerning the claims asserted by the Survivors or any other person who has made allegations of sexual abuse as a minor by clergy or any other person serving within such Parish.
28. Any and all Documents Concerning any denial, limitation, exclusion and/or reservation made in connection with the Policies.
29. Any and all Documents Concerning any denial, limitation, exclusion and/or reservation made in connection with the Parish Policies.
30. Any and all Documents Concerning any rights, obligations and/or interests of the Diocese in relation to the Catholic Mutual Relief Society.

Frustrated by the lack of a firm commitment by the Debtor to produce the requested documents by a date certain, the Committee, on September 14, 2021, filed its Motion for Order Authorizing Examination of the Debtor, The Norwich Roman Catholic Diocesan Corporation, Pursuant to Fed. R. Bankr. P. 2004. (“Rule 2004 Motion”) (ECF No. 241.)

The Debtor and Committee reached an agreement for the Debtor not to object to the Rule 2004 Motion in exchange for the Committee serving a subpoena compelling production no sooner

than 45 days after service. The Committee reached this compromise also in reliance upon the Debtor's representation that documents would be produced on a "rolling basis." On September 24, 2021, this Court entered its order authorizing the Committee's examination of the Debtor. (ECF No. 290.) The Committee's then served Subpoena for Rule 2004 Examination on September 24, 2021, which compelled the production of the identical set of documents request on August 24th (including those set forth above). As agreed, compliance was required 45 days thereafter, November 8, 2021. It is now November 4th and no documents have been produced in accordance therewith other than the set of documents the Debtor had already provided to the Office of the United States Trustee—which did not include any documents related to the prior insurance policies and insurance coverage.

Notwithstanding, the Committee's counsel knows enough to recognize why Catholic Mutual seeks to have these questions imposed upon the survivors and it is not to benefit them. Thus, in the absence of a clear understanding of the coverage issues, questions that apparently seek information to support the denial or diminishment of insurance coverage should not be imposed upon unknowing potential claimants as a very condition to their assertion of a claim in this case. This is especially true when, once again, these additional questions seeking the disclosure of particular details of extremely sensitive matters may serve to discourage survivors from submitting claims altogether.

D. The scope of publication notice should be expanded.

While the Debtor correctly sets forth the applicable legal standards, the Committee submits that the Debtor's noticing program is insufficient. The Committee proposes the following modifications to ensure that the entire notice program is reasonably calculated to provide notice to unidentified potential creditors of the Debtor.

First, the list of publications should include The Four County Catholic and The Providence Journal. The Four County Catholic is described as “The Official Newspaper of the Diocese of Norwich, CT,” and, accordingly, should be included in the notice program. The Providence Journal’s circulation area is close enough to the Debtor’s region to be included.

Second, publication of the Publication Notice only twice, “with the first publication no later than 45 days prior to the Bar Date and the second publication no later than 30 days prior to the Bar Date” is woefully inadequate. The entire purpose of the bar date period (either approximately 92 days as proposed by the Debtor, 120 days as proposed by the Committee or some period in between (the “Bar Date Period”)) would be significantly undermined for unknown potential creditors if the actual publication did not *first* occur until 45 days prior to the Bar Date. Furthermore, only two instances of publication are simply insufficient and not reasonably calculated to reach potential claimants. Publication should occur weekly, preferably on the weekends, over the course of the Bar Date Period.

Third, the Debtor should “require” rather than simply “request” that its parishes display the Publication Notice prominently and publish the Publication Notice in their own newsletters or bulletins continuously throughout the Bar Date Period.

Fourth, considering the prevalence of Spanish-speaking parishioners within the diocese over the past decades, and Spanish speaking children who attended the Mount Saint John Academy, the Publication Notice should be translated into Spanish and the notice program should include its publication and circulation in appropriate media.

Finally, the press release regarding the claims process and Bar Date should be provided to all local radio and television stations within Debtor’s geographical area. Doing so will cost the

estate only a nominal sum while almost certainly expanding significantly to a wider population notice of the claims process and Bar Date.

E. Claimants' attorney should be permitted to sign the proof of claim on their behalf.

The proposed proof of claim form should be revised to make clear that it may be signed by a claimant's attorney on behalf of the claimant. The Official Bankruptcy Form 410 does not preclude an attorney from signing the form. Indeed, under both federal and Connecticut law, a claimant's attorney may commence an action without the need for a verified complaint. *See* Fed. R. Civ. P. 11 ("Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name—or by a party personally if the party is unrepresented. The paper must state the signer's address, e-mail address, and telephone number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit."); Conn. Prac. Bk. §§ 4-2 & 10-1. Requiring all claimants to complete, sign and file their own claims form would only serve to discourage survivors from filing claims or to do so without the assistance of an attorney. There is no legal basis for this requirement and it should not be imposed by this Court.

F. Parishes should not be excused from submitting proofs of claim and should only obtain a copy of a survivor's proof of claim if implicate by the survivor

The Debtor proposes to excuse its parishes from submitting proofs of claim purportedly because "[a]ny such claim by a parish may be contingent and administratively burdensome for the Debtor's estate." (Bar Date Motion, Proposed Order at 3 n.4.) The Committee does not perceive any significant expense upon the estate in merely compelling the parishes to timely assert whatever claims they may hold. On the other hand, the Committee is concerned that postponing the submission of such claims may needlessly delay the case. The sooner all parties-in-interest can

understand the parishes' claims, whatever they may be, the sooner they can be addressed through analysis, negotiations and ultimately the confirmation process. The Committee submits that requiring the parishes—like all other creditors—to submit their claims by the conclusion of the Bar Date Period will facilitate the proper and expeditious administration of this bankruptcy case.

Finally, the Debtor proposes that counsel for the *ad hoc* committee representing the parishes should receive a copy of all survivors' proofs of claim. (Id. at 7.) The Committee objects to this request since it perceives such ability as permitting the disclosure of extremely personal and sensitive confidential information to persons who have no justifiable basis for obtaining it. Counsel for the *ad hoc* committee for the parishes should only receive those survivors' proofs of claim that implicate a particular parish as part of the allegations made in the proof of claim. This limitation will further ensure that disclosures are made only to those parties who have a reasonable and legitimate need to acquire the confidential information.

WHEREFORE, the Committee respectfully requests that this Court sustain its objections as set forth herein, grant the Bar Date Motion only to the extent consistent with such sustained objections, and grant such other and further relief as this Court deems just and proper.

Dated this 4th day of November, 2021.

THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS FOR THE
NORWICH ROMAN CATHOLIC DIOCESAN
CORPORATION

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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of November, 2021, a copy of foregoing was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/ Stephen M. Kindseth
Stephen M. Kindseth (ct14640)

EXHIBIT A

Debtor	Jurisdiction and Case Number	Date of Bar Date Order	Bar Date for Sexual Abuse Claims	Claim Submission Period (days)
Archdiocese of Saint Paul and Minneapolis	Bankr. D. Minn. 15-30125	4/17/2015	8/3/2015	108
Diocese of Duluth	Bankr. D. Minn. 15-50792	1/7/2016	5/25/2016	139
Diocese of New Ulm	Bankr. D. Minn. 17-30601	3/8/2017	7/10/2017	124
Roman Catholic Bishop of Great Falls Montana	Bankr. D. Mont. 17-60271	6/7/2017	7/31/2017	54
Crosier Fathers and Brothers	Bankr. D. Minn. 17-41681	8/25/2017	12/15/2017	112
Archdiocese of San Juan	Bankr. D. P.R. 18-04911	8/30/2018	4/5/2019	218
Diocese of Winona-Rochester	Bankr. D. Minn. 18-33707	12/7/2018	4/8/2019	122
USA Gymnastics	Bankr. S.D. Ind. 18-09108	2/25/2019	4/29/2019	63
Archdiocese of Santa Fe	Bankr. D.N.M. 18-13027	3/8/2019	6/17/2019	101
Archbishop of Agana	D. Guam 19-00010	5/1/2019	8/15/2019	106
Diocese of Rochester	Bankr. W.D.N.Y. 19-20905	2/25/2020	8/13/2020	170
Diocese of Harrisburg	Bankr. M.D. Pa. 20-00599	5/6/2020	11/13/2020	191
Boy Scouts of America and Delaware BSA	Bankr. D. Del. 20-10343	5/26/2020	11/16/2020	174
Diocese of St. Cloud	Bankr. D. Minn. 20-60337	6/16/2020	10/21/2020	127
Roman Catholic Church of the Archdiocese of New Orleans	Bankr. E.D. La. 20-10846	10/1/2020	3/1/2021	151
Diocese of Syracuse	Bankr. N.D.N.Y. 20-30663	11/6/2020	4/15/2021	160
Diocese of Buffalo	Bankr. W.D.N.Y. 20-10322	12/11/2020	8/14/2021	246
Diocese of Rockville Center	Bankr. S.D.N.Y. 20-12345	1/27/2021	8/14/2021	199
Diocese of Camden	Bankr. N.J. 20-21257	2/11/2021	6/30/2021	139
			Average	142