

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

CROSIER FATHERS AND BROTHERS
PROVINCE, INC., a Minnesota non-profit
corporation,

Debtor.

Chapter 11

Case No. 17-41681

In re:

CROSIER FATHERS OF ONAMIA, a
Minnesota non-profit corporation,

Debtor.

Case No. 17-41682

In re:

THE CROSIER COMMUNITY OF
PHOENIX, an Arizona non-profit corporation,

Debtor.

Case No. 17-41683

**VERIFIED OBJECTION OF THE ARCHDIOCESE OF SAINT PAUL AND
MINNEAPOLIS TO CONFIRMATION OF DEBTORS' JOINT PLAN OF
REORGANIZATION**

INTRODUCTION

The Archdiocese of Saint Paul and Minneapolis (the "Archdiocese"), acting through its undersigned counsel, respectfully submits this objection to confirmation of the Crosiers' joint plan of reorganization, as modified (the "Plan") [Case No. 17-41681, ECF No. 136; Case No. 17-41682, ECF No. 126, Case No. 17-41683, ECF No. 123]. The court has scheduled a confirmation hearing for March 22, 2018 at 10:30 AM. Capitalized terms not otherwise defined in this objection shall be defined in accordance with the Plan.

BACKGROUND

As the Court is aware, the Archdiocese is currently working toward a negotiated settlement and preparation of a revised plan of reorganization. Mediation is well under way. A number of mediation sessions have already been held before the current mediator and additional sessions have been scheduled for April 2, 3, 4, 5 and 6. The Archdiocese and other parties in interest have also engaged in other and ongoing conversations with the mediator.

At least 444 persons filed claims in the Archdiocese case based on alleged sexual abuse. The Archdiocese estimates that at least 23 of these abuse claims involve alleged abuse by priests or other personnel associated with the Crosiers.¹ For this reason, the Archdiocese filed separate and identical unliquidated contingent claims for indemnity and contribution in each of the Crosier cases. [Case No. 17-41681, Claim No. 52 , Case No. 17-41582, Claim No. 58 and Case No. 17-41483, Claim No 48.] As indicated in the Exhibit A attached to each of those claims:

Tort claims have been or may be asserted against the Archdiocese and the Debtor based on the same alleged misconduct or damages, and the Archdiocese has a contingent claim for contribution, indemnification, allocation of fault and for possible damages against the Debtor, none of which are yet matured or liquidated. Therefore, this Proof of Claim constitutes a contingent, unliquidated claim against the Debtor for the contribution, indemnification, allocation of fault or damages arising from contingent, known or unknown tort claims involving the Debtor and the Archdiocese.

[Case No. 17-41681, Claim No. 52, Case No. 17-41582, Claim No. 58, and Case No. 17-41483, Claim No 48.]

¹ A number of the abuse claims filed in the Archdiocese case that implicate the Crosiers were amended to include a copy of the claims filed in the Crosiers cases. The caption for these claims include the name and case number for each of the three Crosier entity debtors. Most, if not all of these claims, included a check mark for each of the Crosier entities as a potential responsible party. For this reason, the Archdiocese was compelled to file its contingent indemnity and contribution proof of claim in each of the Crosier cases.

The Archdiocese's goal in filing claims in the Crosier cases was to create a mechanism for the right to recover from the Crosiers any amounts that the Archdiocese is required to pay to any tort claimant for legal fault attributed to the Crosiers because the alleged abuse was perpetrated by a Crosier clergy member or personnel.² Should the Archdiocese pay such amounts, it may be entitled to contribution from the Crosiers. Likewise, should its insurance carriers pay such amounts, they may be subrogated to the Archdiocese's contribution claims against the Crosiers.

The Archdiocese filed these claims in the Crosiers cases to preserve its rights against the Crosiers and thereby meet its obligations to its estate and its carriers, and filed this objection after consultation with its carriers. In so doing, the Archdiocese wishes to preserve its available rights in connection with the claims. The Archdiocese also expects to apply any guidance it may obtain in this case to the plan process in the Archdiocese case.

PLAN PROVISIONS

The Plan provides as follows:

15.1 Distribution. All Class 10 Claims will be Disallowed Claims and there will be no distribution to the holders of any Class 10 Claims.

Joint Plan of Reorganization § 15.1.

By the terms of the plan, Class 10 Claims include all Co-Defendant, Diocese and Parish Claims. *Id.* § 5.2. The other relevant definitions are as follows:

“Diocese” means a territory established by the Holy See under the trust of the duly appointed bishop and for purposes of the Plan, the civil entity which conducts the civil business of a diocese. The definition of “Diocese” also includes the civil entity which conducts the civil business of an Archdiocese.

² Minnesota law provides that in certain circumstances one joint tortfeasor can be required to pay another tortfeasor's share of fault. *See, e.g.,* Minn. Stat. § 604.02

Id. § 2.45.

“Co-Defendant” means an Entity that is (i) named as a defendant in a lawsuit in which one or more of the Debtors is also named as a defendant, (ii) initiated a third-party claim against one or more of the Debtors in a lawsuit, (iii) initiated a cross-claim against one or more of the Debtors in a lawsuit, and/or (iv) alleged to be fully or partially responsible for a Tort Claim, including an Unknown Tort Claim asserted, or which may be asserted in the future, against such Entity, including co-debtors as described in Bankruptcy Code § 509.

Id. § 2.31.

“Parish” means a particular church established within the territory of a Diocese and, for the purposes of the Plan, the civil entity that conducts the civil business of a parish.

Id. § 2.88.

The Archdiocese has not been given an opportunity to vote on the Plan due to the disallowance provisions cited above. However, it is clear that the Plan, if confirmed in its present form, will result in the disallowance of the Archdiocese claims and the similar indemnity or contribution claims filed by certain individual parishes within the Archdiocese’s region. The Archdiocese anticipates that certain of those parishes will file one or more separate objections to confirmation.

ARGUMENT

Section 502(e)(1) of the Bankruptcy Code provides:

(1) Notwithstanding subsections (a), (b), and (c) of this section and paragraph (2) of this subsection, the court shall disallow any claim for reimbursement or contribution of an entity that is liable with the debtor on or has secured the claim of a creditor, to the extent that—

(A) such creditor’s claim against the estate is disallowed;

(B) such claim for reimbursement or contribution is contingent as of the time of allowance or disallowance of such claim for reimbursement or contribution; or

(C) such entity asserts a right of subrogation to the rights of such creditor under section 509 of this title.

11 U.S.C. § 502(e)(1).

Section 502(e)(2), in turn, provides:

(2) A claim for reimbursement or contribution of such an entity that becomes fixed after the commencement of the case shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section, or disallowed under subsection (d) of this section, the same as if such claim had become fixed before the date of the filing of the petition.

Id. § 502(e)(2).

These provisions were considered by the Court in its order denying confirmation of plan filed by Official Committee of Unsecured Creditors in the Archdiocese's bankruptcy case (the "UCC Plan"). The Court's order distinguished between discharge and the separate concepts of claim allowance and plan treatment and included the following summary with respect to allowance:

...section 502(e) also provides that a claim for reimbursement or contribution that becomes fixed after the commencement of the case shall be determined, and shall be allowed or disallowed the same as if such claim had become fixed before the date of the filing of the petition. 11 U.S.C. § 502(e)(2). Although I agree with the creditors' committee that the parishes' indemnification and contribution claims are subject to discharge, to the extent that the parishes eventually make payments to the tort creditors, their claims may be allowed. Therefore, if the tort creditors sue the parishes for the sexual abuse claims and are successful, the parishes' claims against the debtor will mature and the parishes will have the right to have their contribution claims allowed. The objections of the parishes are sustained. The committee's plan fails to provide for these claims and cannot be confirmed.

[Bankr. D. Minn. Case No. 15-30125, ECF No. 1177-1.]

The Court's reasoning in sustaining the parishes' objection to the UCC Plan in the Archdiocese bankruptcy case applies with equal force to the Archdiocese's objection to the Crosiers plan. There is nothing in the language of Section 502(e) or this Court's prior order in the Archdiocese case to establish a deadline for fixing a claim for reimbursement or contribution "after the commencement of the case." The Crosiers have not provided the basis for establishing a deadline for fixing contribution and indemnity claims in the Crosier case at some date prior to confirmation (or, alternatively, at a date shortly after confirmation).

At best, the Crosiers have attempted to distinguish the Crosier plan from the UCC Plan by asserting that a discharge in the Crosier case will be granted upon confirmation, as opposed to the delayed discharge contemplated under the UCC Plan. The Archdiocese objection, however, goes to plan treatment, as opposed to discharge. Simply put, there is nothing in Section 502(e) to prevent the Crosiers from modifying the Plan to address contribution and indemnity claims. Although no commitments have been made to date, certain of the parties in this proceeding have discussed the establishment of a reserve or a post-confirmation indemnity provision involving the trust. Other mechanisms may be appropriate to protect the interests of all parties. Any such mechanism would presumably resolve the objections on file, would serve to protect the interests of all parties, and would obviate the need for this Court to consider the claim objections filed by the Crosiers on March 5. [*See, e.g.*, Case No. 17-41681, ECF Nos. 137 through 140.]

Unfortunately, as presently drafted the Crosiers' Joint Plan is unconfirmable as a matter of law because of provisions that permit one class of unsecured creditors (tort claimants) to receive a larger proportionate share of the "pot" than other unsecured creditors (holders of indemnity and contribution claims) without the consent of the affected unsecured creditors, all in

violation of Sections 1122, 1123 and 1125 of the Bankruptcy Code. Because the Plan does not comport with these Code sections, it fails to comply with section 1129(a)(1).

It is important to note, finally, that the Crosier Fathers and Brothers also filed a claim in the Archdiocese case [Case No. 15-30125, Claim No. 436] and, along with the Crosier Fathers of Onamia, objections to confirmation of the Archdiocese's second amended plan. [Case No. 15-30125, ECF Nos. 1081, 1120.] As indicated in the Crosier objections, the Archdiocese has been in discussion with the Crosiers during the pendency of both cases. The Archdiocese remains hopeful that these discussions will result in a resolution of this issue and lead to confirmation of a consensual plan in the both the Crosiers cases and the Archdiocese case.

CONCLUSION

The Archdiocese of Saint Paul and Minneapolis respectfully requests that that the Court deny confirmation of the Crosiers' Joint Plan unless modified in accordance with the foregoing and that the Court grant the Archdiocese such other and further relief as the Court may deem just and equitable. The Archdiocese respectfully reserves the right to amend or further modify this objection at any time prior to the confirmation hearing.

Dated: March 14, 2018

Respectfully submitted,

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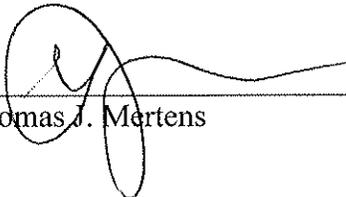
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VERIFICATION OF THOMAS J. MERTENS

I, Thomas J. Mertens, Treasurer / Chief Financial Officer of the Archdiocese of Saint Paul and Minneapolis, do hereby certify and declare under the penalty of perjury that the facts contained in the above objection to confirmation of debtors' joint plan of reorganization are true and correct to the best of my knowledge, information, and belief.



Thomas J. Mertens