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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	
	Chapter 11
THE ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, NEW YORK,[1]	Case No. 20-12345 (MG)
Debtor.	

THE DEBTOR'S OBJECTION TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS' MOTION TO DISMISS THE CHAPTER 11 CASE

[1] The Debtor in this chapter 11 case is The Roman Catholic Diocese of Rockville Centre, New York, the last four digits of its federal tax identification number are 7437, and its mailing address is P.O. Box 9023, Rockville Centre, NY 11571-9023.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CASES

STATUTES AND OTHER AUTHORITIES

The Roman Catholic Diocese of Rockville Centre, New York, the debtor and debtor-in-possession (the "Debtor" or the "Diocese") in this case, respectfully submits this Objection to the Official Committee of Unsecured Creditors' (the "Committee") *Motion to Dismiss Chapter 11 Case* (the "Motion to Dismiss") [Docket. No. 1912].

INTRODUCTION

1. The Diocese filed this chapter 11 case in October 2020 and has worked with the Committee and other stakeholders toward a consensual plan of reorganization that will resolve its historical sexual abuse liabilities and allow for a rational process to provide for recoveries to the Diocese's creditors. The Diocese continues to believe that an equitable resolution in this bankruptcy case of the hundreds of personal injury claims principally at issue remains in the best interests of current and future claimants and all of the Diocese's other stakeholders.

2. The Committee has so far not agreed with the Diocese on a consensual plan of reorganization. After the Committee chose to withdraw its consent to extending the time for the Debtor to propose a plan, the Committee and then the Debtor proposed plans of reorganization. Each of course knew that the other did not consent to the proposed plan. Now, by this motion, the Committee is seeking to dismiss this chapter 11 case in favor of returning claimants to the New York state court system for claim-by-claim litigation. The Committee's ultimate "basis" for the motion is that state court counsel representing a majority of claimants will not support the Diocese's proposed plan. That much was plain enough when the parties did not agree to a consensual plan during the mediation sessions that preceded the Committee's choice to proceed down the path of dueling plans. This is not, however, a basis to dismiss a Chapter 11 case.

3. The Bankruptcy Code does not permit the Committee to dismiss the Diocese's bankruptcy case based on disputes over the terms of the Diocese's plan of reorganization. As the Bankruptcy Code and precedent makes clear, the proper arena for litigation over these issues is the

plan confirmation context, not the dismissal context. If disagreement over the terms of a plan of reorganization were a proper basis for dismissal, as the Committee urges, threats to dismiss Chapter 11 cases and litigation to resolve them would become standard practice to try to achieve leverage in negotiating the terms of consensual plans.

4. The Diocese shares the Committee's concerns about expense and delay. The Committee's choice to proceed with this motion, and the expensive pre-hearing discovery related to it, has only compounded those concerns. The Diocese, meanwhile, wants to get back to negotiating the terms of a resolution. The mediators are prepared to do that and have remained in active contact with the parties. Notwithstanding its posture for this motion, the Committee, for its part, has similarly continued to engage in the mediation process. And, indeed, with respect to state court litigation, the Committee is right where it stated to the Court it wanted to be. In urging the Court to deny the Debtor's motion to continue the preliminary injunction, the Committee repeatedly assured the Court that allowing the state court actions to proceed against certain Diocesan affiliates—as the Court ultimately and only recently allowed—would "foster progress toward a consensual plan" and "advance, rather than impede, the goals of a global settlement."[2]

5. The Court should not countenance the Committee's contradiction of those express assurances now by seeking to dismiss this bankruptcy case on the ground that, in essence, "it doesn't agree to the Diocese's terms," and thereby cause chaos by returning hundreds of claimants to state court. This chapter 11 case will provide compensation to abuse claimants in a fraction of

[2] *See Roman Catholic Diocese of Rockville Centre, N.Y. v. ARK320 Doe*, Adv. No. 20-01226 (MG) (Bankr. S.D.N.Y.) ECF Doc. No. 172 at ¶ 11 ("[A]llowing these State Court Actions to proceed may break the impasse and foster progress toward a consensual plan."); *id.* ¶ 105 (stating that "[p]rosecution of the 228 State Court Actions will advance, rather than impede, the goals of a global settlement"; "[d]iscovery in, and trials of, the State Court Actions" will "advance the settlement process"; "discovery will aid settlement negotiations"); *id.* ¶ 109 ("Allowing the litigation to proceed is the only way to incentivize insurers and the Parishes to meaningfully assess their litigation risk for purposes of any future negotiations."); *see also* April 20, 2023 Hr'g Tr. at 55:6-12 [Doc. No. 197] (urging the Court to deny the injunction against prosecuting certain state court cases on the ground that "[f]ive months after the stay was lifted, the parties achieved a restructuring agreement in Rochester," once parishes experienced "litigation pressure").

the time it would take to try hundreds of personal injury lawsuits in the New York State court system and on a more equitable and orderly basis.

6. The Diocese is committed to continuing to make progress towards the goal of confirming a plan of reorganization, and the mediators and the Committee itself continue to be engaged in that process as well. The principal issue that the Committee identified with the Diocese's proposed plan, when the Committee made this motion to dismiss, was that the co-defendant parishes had agreed to contribute $11.1 million toward a global resolution. Since then, the co-defendants have conveyed to the Committee that they are willing to contribute at least $40 million in exchange for plan releases. That is progress. The Diocese also continues to work to monetize its insurance and other assets, to expunge legally invalid claims, and to continue to engage with all relevant stakeholders to maximize value for the estate and its creditors. The dismissal remedy sought by the Committee here would render meaningless the considerable progress that has been made in this chapter 11 case, and would strip claimants of the substantial value they can expect to receive upon confirmation of a chapter 11 plan.

ARGUMENT

7. The Committee seeks to dismiss the Diocese's chapter 11 case by establishing the "cause" for dismissal required by section 1112(b)(4)(A). The Committee has not carried, and cannot carry, its heavy burden of establishing cause for dismissal under the Bankruptcy Code.

I. THERE IS NO CAUSE TO DISMISS THE CHAPTER 11 CASE.

8. The Committee seeks to dismiss this case on the ground that there is a "substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation." 11 U.S.C. § 1112(b)(4)(A). The Committee has the burden of making this showing by a preponderance of the evidence. *See Taub v. Taub (In re Taub)*, 427 B.R. 208, 231 (Bankr. E.D.N.Y. 2010). The "debtor should not have to demonstrate the nonexistence of every

conceivable cause or answer a naked assertion of the existence of a particular cause." *In re Setzer*, 47 B.R. 340, 345 (Bankr. E.D.N.Y. 1985). And the Bankruptcy Court "has wide discretion to determine if cause exists, and how to ultimately dispose of the case." *In re Coffee Cupboard, Inc.*, 119 B.R. 14, 18 (E.D.N.Y. 1990); *In re I–95 Technology–Industrial Park, L.P.*, 126 B.R. 11, 14 (Bankr. D.R.I. 1991) ("Courts are required to exercise their sound judgment in ruling on a motion to dismiss, and cannot be constrained by any particular test or pronouncement of factors which would limit their ability to determine what is in the best interest of creditors and the estate.").

A. The Committee Has Not Carried Its Burden to Prove a Substantial or Continuing Loss to or Diminution of the Estate

9. The first showing that the Committee must make on this motion is that there has been a substantial or continuing loss to or diminution of the estate. *See* 11 U.S.C. § 1112(b)(4)(A). In the Committee's view, the professional fees incurred show that the "loss to or diminution of the estate" required by statute has been "indisputably met." Motion to Dismiss ¶ 30. The Committee devotes three sentences to carrying its burden on this point. The Committee's drive-by remarks do not carry the heavy burden required by law.

10. Demonstrating loss or diminution in value alone is not enough to warrant conversion or dismissal. If it were, few chapter 11 debtors would be able to continue a reorganization against the opposition of their creditors. *See Loop Corp. v. U.S. Trustee*, 379 F.3d 511 (8th Cir. 2004) (holding that conversion was permissible only after the debtor ceased business operations, liquidated nearly all of its assets and had a negative cash flow). Some loss to or diminution of the estate "may be tolerated where reorganization is feasible, and the pattern of unprofitable operations can be reversed as a result of a successful reorganization." *In re AdBrite Corp.*, 290 B.R. 209, 215 (Bankr. S.D.N.Y. 2003). Post-petition losses are not grounds to convert or dismiss a bankruptcy case when financial viability is reasonably likely in the near future. *See,*

e.g., *In re Garland Corp.*, 6 B.R. 456, 460 (1st Cir. BAP 1980). In determining whether a substantial or continuing loss to, or diminution of, the estate exists, "a court must make a full evaluation of the present condition of the estate, not merely look at the debtor's financial statements." *AdBrite*, 290 B.R. at 215 (internal citation omitted). Further, for non-profits such as the Debtor here, "[t]he important question is whether it can operate with a positive cash flow." *In re Hyperion Found., Inc.*, 2009 WL 2477392, at *5 (Bankr. S.D. Miss. Aug. 11, 2009).

11. The Diocese has operated at an overall loss since the petition date. Expert Report of Charles M. Moore ("Moore Report") at 10.[3] This is the Committee's overly simplistic point. But, if professional fees are removed, the Diocese's operations are better than break-even. *Id*. at 11. The Diocese has also fulfilled all of its chapter 11 obligations, including paying all statutory fees, filing all required statements, schedules, and reports, and timely paying all invoices received.

12. Losses solely due to professional fees are distinguishable from operational deficits. This makes sense, because losses on account of professional fees have little bearing on the organization's operational health. *See In re TMT Procurement Corp.*, 534 B.R. 912, 920 (Bankr. S.D. Tex. 2015) (distinguishing mere accrual of professional fees from actual out-of-pocket losses and noting that litigation may bring in substantial estate assets); *In re Gabriel Technologies Corp.*, 2013 WL 4672785, at *3 (Bankr. N.D. Cal. Aug. 30, 2013) ("[T]he accrual of liabilities [such as professional fees] are not the same as the incurring of actual out-of-pocket losses, such as the dissipation of assets that diminishes the estate."). As in all litigation, "costs are incurred before

[3] Mr. Moore will testify at the hearing and the opinions he will attest to have been disclosed in accordance with the pre-hearing Order in the Moore Report. The Moore Report and all deposition transcripts referenced in this objection are attached to the accompanying *Declaration of Eric P. Stephens*. The Moore Report is attached to the Stephens Declaration as **Exhibit B**, the D'Estries Transcript is attached as **Exhibit C**, the Horowitz Transcript is attached as **Exhibit D**, the Amala Transcript is attached as **Exhibit E**, the Silvershein Transcript is attached as **Exhibit F**, the Leder Transcript is attached as **Exhibit G**, the Stoneking Transcript is attached as **Exhibit H**, and the Shields Transcript is attached as **Exhibit I**.

the plaintiff actually recovers any money." *In re Vaughan Co., Realtors*, No. 11-10-10759, 2013 WL 2244285 at *6 (Bankr. D.N.M. 2013). If the debtor ceased operations and continued to sustain losses, of course, professional fees could build up "without the prospect of recoveries that offset the losses." *Id.* But the "mere accrual of professional fees" does not establish a continuing loss to the estate. *In re TMT Procurement Corp.*, 534 B.R. at 920.

13. Here, spending on professional fees is an investment in expected proceeds from the resolution of litigation. For example, if the avoidance actions the Committee has been granted derivative standing to pursue were settled at the values included in the Debtor's plan of reorganization, the recoveries from those claims alone would result in approximately $50 million for the settlement trust, which would offset approximately 72% of the estate's incurred professional fees as of February 2023. [Docket No. 1614 at Ex. G-1 to G-3]. The values included in the Committee's plan of reorganization for such claims, by contrast, exceed $100 million and would offset *all* of the estate's incurred professional fees with room to spare. [Docket No. 1643 at Section III]. Asset sales and insurance recovery efforts should, likewise, add hundreds of millions more to the recovery figures. The professionals here, including the Committee's professionals, are incurring fees "for the purpose of building up the value of future assets for the benefit of the estate in the form of further recoveries." *In re Vaughan Co., Realtors*, 2013 WL 2244285 at *7. Thus, the Committee cannot show substantial or continuing loss to or diminution of the estate solely on account of the professional fees incurred, as it tries to do.

14. The Committee should also not be permitted to obtain dismissal of the chapter 11 case based on the accrual of professional fees when the Committee is responsible for a substantial amount of those fees. Arguing that professional fees diminish the estate "has a tang of irony to it" when the party seeking dismissal "has vehemently and aggressively opposed most relief requested

by the debtor, itself causing increased attorney's fees." *In re Swartville, LLC*, 483 B.R. 453, 459 (Bankr. E.D.N.C. 2012). Courts recognize that it is "fundamentally unfair" to convert or dismiss a case due to professional fees when the movant "seeking conversion . . . has been instrumental in causing the accumulation of professionals' fees." *In re TMT Procurement Corp.*, 534 B.R. at 921.

15. Here, the Committee "pursue[d] the litigation path" on the estate's dime but against the Debtor's will. *See Letter from J. Stang to C. Ball dated January 10, 2023*, attached to the Stephens Declaration as **Exhibit A**. The Committee initiated contested motion practice throughout the case, including with respect to derivative standing, the bar dates, the preliminary injunction, dueling plans of reorganization and disclosure statements, and over asset sales. Indeed, the parties spent months litigating the Committee's Rule 2004 requests regarding the Debtor's native accounting system and parish finances held at Unitas. This Court ultimately denied both Committee requests as improper. *See* Docket No. 503 (denying Committee's Rule 2004 motion seeking a native copy of the Diocese's accounting system); *Hr'g Tr. Aug. 19, 2021* (denying Committee's Rule 2004 motion seeking to reveal parish investment balances in Unitas). Whether through a standstill agreement or otherwise, the parties could have used a variety of methods to reduce the magnitude of the professional fees incurred here. *See In re Madison Square Boys and Girls Club, Inc.*, No. 22-10910 [Docket No. 78] (Bankr. S.D.N.Y. July 21, 2022) (entering an order directing a temporary stay of certain matters in the debtor's chapter 11 case pursuant to 11 U.S.C. § 105). The Committee, however, refused a standstill agreement when the Diocese suggested it in January 2023. *See Letter from J. Stang to C. Ball dated January 10, 2023*, attached to the Stephens Declaration as **Exhibit A**.

16. At bottom, the Committee has not carried its burden to show substantial or continuing loss to or diminution of the estate. Professional fees alone are not equivalent to

operational deficits and, in any event, the professional fees here are due in substantial part to the Committee's decision to pursue litigation as a way to try to obtain leverage over the Debtor. Further, professional fees aside, the Diocese is operating on a better than break-even basis. Having spent tens of millions of dollars of estate assets and received millions of pages of discovery in pursuit of the Committee's goals in this chapter 11 case, this Court should not permit the Committee to dismiss the case, thus declaring that the parties' efforts to bring this case to a consensual resolution have been for naught.

B. The Diocese Has a Reasonable Likelihood of Rehabilitation

17. The second showing that the Committee must make on this motion to dismiss by a preponderance of the evidence is that there is an "absence of a reasonable likelihood of rehabilitation." 11 U.S.C. § 1112(b)(4)(A).

18. Under section 1112(b)(4)(A), rehabilitation means "to put back in good condition and reestablish on a sound basis." *In re AdBrite Corp.*, 290 B.R. 209, 216 (Bankr. S.D.N.Y. 2003). A court determining cause under § 1112(b)(4)(A) therefore "looks to whether a debtor's financial situation can be corrected." *In re Wahlie*, 417 B.R. 8, 12 (Bankr. N.D. Ohio 2009). A debtor in possession should not be permitted to gamble on the enterprise at the creditors' expense when there is no hope of rehabilitation. *In re AdBrite Corp.*, 290 B.R. 209, 215 (Bankr. S.D.N.Y. 2003). "[I]n analyzing whether there is an absence of reasonable likelihood of rehabilitation, the focus is not on the technical issue of 'whether the debtor can confirm a plan, but, rather, whether the debtor's business prospects justify continuance of the reorganization effort.'" *In re Basil Street Partners, LLC*, 477 B.R. 856, 862 (Bankr. M.D. Fla. 2012) (quoting *In re Khan*, 2012 WL 2043074, at *6 (9th Cir. BAP June 6, 2012)).

19. This prong of the motion is based on the Committee's notion that it holds a blocking position against the Diocese's unsolicited plan of reorganization. Some version of that assertion

is true for certain groups of creditors in many chapter 11 cases. But this is not a basis for moving to dismiss. In any event, the Committee does not prove that it holds a blocking position against the Diocese's plan, and, even if it did, the drastic remedy of dismissal here is not warranted.

20. *First*, as courts make clear, and as the Committee ignores, "'[r]ehabilitation' is not synonymous with 'reorganization'" and "is better read as encompassing a debtor's intention to use the bankruptcy process to prevent a complete and total loss of value." *In re Honx, Inc.*, Case No. 22-90035, 2022 WL 17984313 at *3 (Bankr. S.D. Tex. Dec. 28, 2022). A debtor meets this standard when the debtor engages in actions "that [could] lead to a successful rehabilitation of the Debtor's business" and "demonstrates . . . the Debtor's commitment to the reorganization effort." *In re 221-06 Merrick Blvd. Assocs. LLC*, No. 1-10-45657-JBR, 2010 WL 5018265, at *2 (Bankr. E.D.N.Y. Dec. 3, 2010). Here, the Diocese's financial projections show that it has the hallmarks of an operationally healthy non-profit organization. Moore Report at 10-11. Leaving restructuring expenses aside, the Diocese's fixed costs and payroll are not disproportionate to its operations. *Id*. On this basis alone, the Committee fails to show that rehabilitation is not reasonably likely.

21. The Committee's one-sided assertion that state court counsel do not agree to the Diocese's terms is not a ground to dismiss a chapter 11 case. As an initial matter, the Committee simply ignores its own plan of reorganization, which the Committee filed after it terminated the parties' Standstill Agreement, as that term is defined in the *Stipulation and Order Approving Standstill Agreement* [Docket No. 1049]. The Committee's motion says *nothing* about the Committee's plan and disclosure statement, which remain on file, let alone submit any evidence that the Committee's plan has no promise of pointing toward a resolution. The Committee's own witnesses testified that they *support* the Committee plan (or have no recommendation on it).

D'Estries Dep. Tr. at 70:11-20; Silvershein Dep. Tr. at 37:5-11; Horowitz Dep. Tr. at 51:11-13; Leder Dep. Tr. at 49:13-50:6; Amala Dep. Tr. at 85:14-19; Stoneking Dep. Tr. at 29:2-5. This glaring hole in the Committee's motion is reason alone to deny it.[4]

22. In any event, even on its terms, the Committee's notion that claimants will not agree to the Diocese's proposed terms is not a basis for dismissing the case. Disputes over third-party contributions "or the Committee's willingness to agree to a channeling injunction releasing [third parties] from liability are not indicators of bad faith . . . or grounds for dismissal." *In re Honx, Inc.*, 2022 WL 17984313 at *4. Such disputes "are better preserved as inquiries for the parties' negotiations moving forward or as matters to consider at confirmation." *Id.*

23. *Second*, the Committee tries to show that it holds a blocking position against the Diocese's unsolicited plan of reorganization, and that this is purportedly a ground for dismissing the case. Here again, this is not a ground for dismissal but is "better preserved as [an] inquir[y] for the parties' negotiations moving forward or as [a] matter[] to consider at confirmation." *Id*. In any event, the Committee has not proven that it holds a blocking position against the Diocese's unsolicited plan of reorganization. The Committee's claimant witness testified to having spoken with other claimants about the motion to dismiss, but had no knowledge of how many other claimants support the motion to dismiss or would oppose the Diocese's plan. D'Estries Dep. Tr. at 96:24-97:12. Although plaintiffs' counsel representing over 50% of the claimants filed joinders to the Committee's motion to dismiss, plaintiffs' counsel's opposition to the Diocese's plan is not a perfect proxy for *claimants'* opposition. In the context of the Committee's attempt to dismiss a

[4] There are substantial problems with the confirmability of the Committee's plan and it is not at all clear that there would be enough votes for the Committee's plan. The proper context to litigate those issues is in the context of plan confirmation. But, on the wholly improper approach that the Committee has taken to this motion, the Committee has the burden to prove that *neither* of the proposed plans is confirmable and it has barely even mentioned its own plan in this motion, let alone tried to carry this burden.

case like this one with hundreds of personal injury claimants, the Court should not accept counsel's speculation about what they expect their clients would do. A motion to dismiss is not an appropriate vehicle for conducting a watered-down version of plan solicitation, which is governed by detailed procedures in the Bankruptcy Code.

24. The Committee also does not provide any *reasons* why dismissal would benefit claimants, beyond self-serving, conclusory assertions in the Committee's brief—and associated joinders—that state court counsel "do not support" the Diocese's unsolicited plan. The Committee's motion does not even try to come to grips with how hundreds of claimants will recover *less* if this Court dismisses the Diocese's chapter 11 case. *See* Moore Report at 10; *see In re Charles St. African Methodist Episcopal Church of Boston*, 499 B.R. 66, 117 (Bankr. D. Mass. 2013) (finding that although the "current plan cannot be confirmed . . . other [plans], especially of more modest ambition, could well succeed" and could provide unsecured creditors "substantially more value than each would receive from [the debtor] outside of bankruptcy."). Despite purportedly favoring dismissal, the Committee's witnesses have no analysis, other than off-the-cuff predictions, comparing recoveries available to claimants if this Court dismisses the Diocese's chapter 11 case or if it does not. D'Estries Dep. Tr. at 45:20-48:11; Silvershein Dep. Tr. at 27:14-24; Leder Dep. Tr. at 29:19-30:4; Horowitz Dep. Tr. at 40:17-23; Amala Dep. Tr. at 38:20-39:4; Stoneking Dep. Tr. at 33:18-34:24.

25. The only actual analysis that will be introduced on this point at the hearing is from the Diocese's expert witness, Mr. Moore, showing that dismissal will result in material value destruction. As described by Mr. Moore, the incremental benefit of a chapter 11 plan is estimated to be between $214 million and $244 million. Moore Report at 9. Mr. Moore's analysis will show that those amounts will *not* be available to creditors if the Diocese's bankruptcy case is dismissed.

26. The Committee's motion, meanwhile, has *zero analysis* of the alternative of state court litigation for creditors. Despite submitting a report from a financial expert with experience in at least five other diocesan bankruptcies, the Committee did not ask its expert to rebut the analysis done by the Diocese's expert or do any analysis of: (i) the Diocese's future finances or financial prospects; (ii) the duration of this case as compared to others; (iii) recoveries available to creditors inside and outside bankruptcy; or (iv) the value of the Diocese's assets. Shields Dep. Tr. 7:8-8:8, 31:15-32:1, 35:21-37:1. The Committee instead simply declares, without any supporting proof, that "[s]urvivors will be far better off pursuing their claims in state court," and then asks the Court to dismiss this bankruptcy case on the basis of that unsupported sentence. Motion to Dismiss ¶ 34. This conclusory, wholly unsupported assertion does not come remotely close to carrying the Committee's burden on this motion. A motion to dismiss is not a complaint, but must be supported by *evidence*.[5] Here, the Committee did not support its motion with anything other than a Committee lawyer's declaration, and then it belatedly identified other witnesses only *after* it made the motion. One of those witnesses, a Committee member and the only claimant witness put forward in support of the motion to dismiss, is unaware of what would happen in a dismissal scenario. In particular, the Committee member testified to being unaware of (i) whether there were any assets available to claimants through the bankruptcy process that would not be available to them in state court; (ii) whether there was any difference between insurance assets that may be available through the bankruptcy court process and through the state court process; and (iii) how recoveries under the Diocese's plan compared to other Diocesan bankruptcies. D'Estries Dep. Tr.

[5] "It is plainly improper to submit on reply evidentiary information that was available to the moving party at the time that it filed its motion and that is necessary in order for that party to meet its burden." *Revise Clothing, Inc. v. Joe's Jeans Subsidiary, Inc.*, 687 F. Supp. 2d 381, 387 (S.D.N.Y. 2010); *see also Process America, Inc. v. Cynergy Holdings, LLC*, No. 12-cv-772, 2014 WL 3844626, at *15 (E.D.N.Y. 2014) ("Because Process America denied Cynergy an opportunity to respond to its evidence, and because arguments may not be made for the first time in a reply brief, the Court will not consider this argument.") (internal quotations and citations omitted).

at 56:17-57:3, 62:23-63:7, 64:21-65:2. The Committee's witnesses were similarly unaware of how many claimants have filed a claim only in the bankruptcy court and not a state court complaint. D'Estries Dep. Tr. at 65:15-20; Horowitz Dep. Tr. at 38:12-21; Amala Dep. Tr. at 23:9-24:19; Leder Dep. Tr. at 34:13-15; Silvershein Dep. Tr. at 31:14-24.

27. The Committee's motion is also not supported by any analysis of what recoveries are available to claimants from non-debtor co-defendants in a scenario where this bankruptcy case is dismissed and claimants are left to a feeding frenzy in the state court system. Again, the Committee's notion is that claimants are simply "better off" in state court. Motion to Dismiss ¶ 34. A review of the lawsuits against 135 parishes in the Diocese contradicts this assertion and shows that claimants are not all similarly situated. The twenty-five parishes in the Diocese that are named most frequently as a defendant in a CVA lawsuit are set out below. This list, which is compiled from complaints filed on the public docket in New York state court and reflected in the parties' *Agreed Coverage Summary* [Adv. Pro. Docket No. 169] from the recently decided preliminary injunction motion, shows that parish lawsuits are heavily concentrated:

Parish	**CVA Suits**
St. Hugh of Lincoln (Huntington Station)	23
St. Agnes Cathedral (Rockville Centre)	14
St. Joseph (Babylon)	13
St. Dominic (Oyster Bay)	11
St. Barnabas the Apostle (Bellmore)	11
St. Patrick (Smithtown)	11
St. Mary (Manhasset)	10
St. Catherine of Sienna (Franklin Square)	9
St. Joseph (Kings Park)	9
St. Brigid (Westbury)	8
St. Philip Neri (Northport)	8
Holy Family (Hicksville)	8
St. Raymond (East Rockaway)	7
St. Luke (Brentwood)	7
Our Holy Redeemer (Freeport)	7
Our Lady Of Perpetual Help (Lindenhurst)	7
St. Raphael (East Meadow)	7

Parish	CVA Suits
Infant Jesus (Port Jefferson)	6
St. Aidan (Williston Park)	6
St. James (Seaford)	6
SS Philip and James (Saint James)	6
St. Mary (East Islip)	6
Good Shepherd (Holbrook)	6
St. Joseph (Ronkonkoma)	6
St. John of God (Central Islip)	6
Total:	**218**

If this bankruptcy case were to be dismissed, and the parties abandon any attempt to attain a consensual resolution of claims against the Diocese and parishes, the claimants in these lawsuits would be left in a classic race to the courthouse: the first to obtain and execute on judgments against parishes would be paid, perhaps only in part, and claimants with later judgments would receive little to no compensation. Despite being in favor of dismissal, the Committee's witnesses testified to being unaware of this dynamic, or unaware of the consequences of it, among plaintiffs and parish defendants. D'Estries Dep. Tr. at 58:8-59:12; Silvershein Dep. Tr. at 46:25-47:15; Amala Dep. Tr. at 57:6-25; Horowitz Dep. Tr. at 67:23-68:9; Leder Dep. Tr. at 67:11-68:9; Stoneking Dep. Tr. at 54:20-25.

28. By contrast, there are thirty-one parishes that are not named in *any* CVA suits. These parishes have indicated a willingness to participate in, and contribute to, a consensual plan of reorganization in exchange for a release, as the Committee is well aware from the mediation. But, now that the statute of limitations opened by the CVA is closed, if this bankruptcy case is dismissed, claimants have no means—or, at best for the claimants, extremely attenuated means—of unlocking any recovery whatsoever from these thirty-one parishes. The Committee's motion, and the factual record upon which it is based, not only fails to come to grips with any of this analysis—or even to try to engage in it—but, at a fundamental level, does not contradict the conclusion that the Diocese's pursuit of an equitable, orderly resolution of the claims in the context

of this chapter 11 case remains in the best interests of current and future claimants.

29. Despite the convenient proclamations from state court counsel that they will recommend that their clients vote against a Diocesan plan, it cannot seriously be debated that these lawyers' clients will be worse off if this case is dismissed. For example, Horowitz Law filed a joinder [Docket No. 2159] to the motion to dismiss on behalf of twenty-four claimants. But none of the Horowitz Law claimants filed an associated state court lawsuit; the CVA window has now closed; and the claimants represented by Horowitz Law have *no claims* against other defendants. If Horowitz Law gets what it is requesting in its joinder, it is entirely possible—if not assured—that their clients will receive *nothing* in that scenario. Nobody can actually believe that it makes sense for this case to be dismissed, and this joinder only shows that the motion to dismiss is a poorly executed tactic to try to obtain leverage in negotiations.

30. While it is the Committee's burden to show cause for dismissal, the motion and the joinders fail to address or even mention several important facts:

(i) The Debtor's plan and disclosure statement will be revised prior to any solicitation. Revisions to the plan and disclosure statement will center on two issues: (1) an increased contribution from parishes and co-defendants, which as the Committee knows has increased from $11.1 million to at least $40 million; and (2) the Debtor's disclosure statement will be remedied to address the Court's concerns.[6] The criticisms of the Debtor's plan made in the motion to dismiss and the joinders cannot be taken at face value, as they are directed at a plan that does not contain the current proposed terms and will not be solicited in its current form.

(ii) As noted, the parties are actively seeking to engage in mediation to seek agreement on the terms of an amended plan, and jointly sought the appointment of a co-mediator, magistrate judge in March 2023. [Docket Nos. 1748, 1916]. Indeed, the parties' most recent joint request for

[6] *See Hr'g Tr. Feb. 21, 2023*, at 29:18-23 ("[W]hile I could be persuaded at [a] later disclosure statement hearing that this disclosure, these disclosures, one or both of the disclosure statements passed muster, on my reading so far, it seems to me that neither is going to get approved and that this case as a whole is headed for tremendous freefall.").

appointment of a co-mediator [Docket No. 1916] was filed *after* the Committee filed its motion to dismiss.

(iii) The parties continue to actively mediate. The Debtor hosted mediation sessions in May 2023 and the parties have continued to participate in mediation sessions among smaller groups in June 2023. The Committee also jointly agreed to the continued involvement of Magistrate Judge Sarah Cave as a co-mediator continuing beyond May 31, 2023.

The collective silence of the Committee's motion and the joinders on these issues, *including on the Committee's own proposed plan*, undermines the notion that there is no reasonable likelihood of attaining resolution here, consensually or otherwise. Indeed, tellingly, the Committee's witnesses and the joinder firms do not consider a consensual plan impossible to achieve. Amala Dep. Tr. at 69:24-70:3; Horowitz Dep. Tr. at 66:23-67:14; Stoneking Dep. Tr. at 63:18-24.

31. *Finally*, there is no authority supporting the Committee's request to dismiss this case on the ground that it does not like the Debtor's proposed terms. As the Court is well aware, creditor opposition to a debtor's unsolicited reorganization plan is standard fare in mass tort cases. But this cannot be a ground for dismissal. The Committee's authorities are not to the contrary. The Committee does not cite any on-point authority showing that creditor opposition to a plan of reorganization in a mass tort case is grounds for dismissal. Instead, the Committee cites cases where the debtor's main asset is a single property or where there are few creditors. *See* Motion to Dismiss ¶ 35 (citing cases). Several of these cases involved classic "bad faith" grounds favoring dismissal, such as intent to improperly take advantage of the Bankruptcy Code's protections or disregard for the Bankruptcy Code's requirements.[7] There is no such basis here. The Committee

[7] *See, e.g., In re The Ledges Apartments*, 58 B.R. 84, 86–87 (Bankr. D. Vt. 1986) (finding that the debtor failed to file monthly operating reports on time and debtor's self-interested transactions to the detriment of creditors were sufficient to question the debtor's good faith); *In re Milford Conn. Assocs., L.P.*, 404 B.R. 699, 704 (2009) (holding that the debtor's general partner "had the intention of parking the debtor in bankruptcy until such time as it deems market conditions to be optimal to sell" the debtor's main asset); *In re Sal Caruso Cheeese, Inc.*, 107 B.R. 808, 818–819 (Bankr. N.D.N.Y. 1989) (debtor had "an absolute disregard of the strictures of the Bankruptcy Code" and that the debtor's sole officer and shareholder's testimony was "taint[ed]," "evasive" and "wholly unconvincing").

also cites a series of unreported cases regarding likelihood of successful reorganization from the preliminary injunction context, but these authorities say nothing about dismissal. *See In re Roman Catholic Diocese of Rochester*, No. AP 22-02075-PRW, 2022 Bankr. LEXIS 1469 at *18 (Bankr. W.D.N.Y. May 23, 2022) (finding likelihood of successful reorganization is "more difficult" in the context of a non-consensual plan when ruling on a preliminary injunction); *In re Mariner Health Cent., Inc.*, 2023 Bankr. LEXIS 95 at *32 (Bankr. N.D. Cal. Jan. 12, 2023) (finding that likelihood of proposing a confirmable plan of reorganization is "highly uncertain" given that tort claimants "may well be able to clock the confirmation of any plan that fails to pay them in full" when ruling on a preliminary injunction). If it were so simple for creditors to dismiss a chapter 11 case, one can only wonder why more creditors do not seek to do so.

32. The Committee's stated opposition to the Diocese's unsolicited plan does not, in short, show that the Diocese has no likelihood of rehabilitation. If a creditors committee could threaten to dismiss a bankruptcy case on the ground that it does not agree with the debtor's proposed terms, the tactic that the Committee here is trying to leverage here would become standard practice in chapter 11 cases. This Court has never come close to endorsing such a tactic, and there is no reason to do so here.

C. The Diocese and the Bishop Do Not Control Parishes or Non-Debtor Affiliates, and the Committee's Unsubstantiated Allegations Do Not Establish Cause to Dismiss the Chapter 11 Case

33. The sole basis for this motion to dismiss is the Committee's notion that there is a "substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation," under § 1112(b)(4)(A) of the Bankruptcy Code. Motion to Dismiss ¶¶ 1, 5. The Committee cannot carry its burden on this point and its motion should be denied.

34. The Committee's opening brief adds a gloss that there is a putative "conflict." That is not, however, a separate ground for dismissal asserted in the Committee's motion. The

Committee has made this clear in the motion itself, where it states that the supposed "conflict" "becomes untenable" only "[w]ithout any prospect of a consensual plan." Motion to Dismiss ¶ 39. In other words, the motion rests entirely on the Committee's notion that an appreciable number of claimants will not vote for the Diocese's plan. There also never was any actual *evidence* of this putative "conflict," but the Committee has made clear in pre-hearing proceedings that it has abandoned its efforts to present any witnesses on this ancillary point from its motion.

35. The Diocese nevertheless addresses the point here. The Committee argues that the Diocese is working to "advance[e] the interests of its nominally independent affiliates" through prepetition transfers and through the spectrum and cell tower sales. Motion to Dismiss ¶ 37. The Committee also argues that the Diocese has "ultimate control" over the parishes and implies that the Diocese's failure to compel the parishes to contribute additional funds to the Diocese's plan of reorganization—against their will—is grounds for dismissal. None of these arguments has any legal or factual basis. They are each based on recycled and garbled recitations of prior proceedings in this case, where the Court has already addressed the issues and, in most instances, the Committee has reached an *agreement* with the Diocese on how to resolve the issue.

1. The Diocese Identified All Relevant Potential Avoidance Claims on the Petition Date, and the Committee Was Given Derivative Standing to Pursue Such Actions

36. The mere existence of avoidance claims does not create a basis to dismiss a chapter 11 case. The Committee's cited authorities do not hold otherwise.[8] While the Committee vaguely

[8] *See 15375 Mem'l Corp. v. BEPCO, LP (In re 15375 Mem'l Corp.)*, 589 F.3d 605, 624 (3d Cir. 2009) (dismissing case for lack of good faith filing when case was filed as a litigation tactic to protect affiliates); *In re Natrl Plants & Lands Mgmt. Co.*, 68 B.R. 394, 396 (Bankr. S.D.N.Y. 1986) (converting case to chapter 7 when debtor conceded it was unable to continue in business, filed a self-liquidating plan of reorganization, was not complying with bankruptcy requirements, and there were questions about the debtor's motivation to collect amounts due from affiliates); *In re Picacho Hills Util. Co.*, 518 B.R. 75, 81-82 (Bankr. D.N.M. 2014) (converting case to chapter 7 when debtor had no operations or income, the debtor's sole owner "consistently flouted laws, regulations, [and] court orders," and debtor refused to investigate prepetition transfers). The Committee's other authorities have nothing to do with dismissal. *See Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 355 (1985) (holding that the

criticizes the prepetition transfers that the Diocese identified prepetition and hired the Independent Advisory Committee ("IAC") to review at the outset of the case, the Committee's motion makes no mention of the fact that the Committee was granted "exclusive authority, on behalf of the estate," to commence and prosecute any and all actions arising out of the Affiliate Transactions." *See Joint Stipulation and Order Concerning the Independent Advisory Committee and the Investigation and Pursuit of Certain Claims* [Docket No. 512]. Since then, the Committee entered into tolling agreements with the Seminary, Cemetery, and Department of Education [Docket Nos. 1320, 1321, and 1322], and filed a complaint against the Cemetery [Adv. Pro. Docket No. 23-01121]. The Committee determined not to pursue the fourth potentially avoidable transaction against the Catholic Foundation. Thus, as evidenced by the lack of complaints against or tolling agreements with other parties, the Committee agrees with the Diocese that there are no other actions to pursue. The Committee has done little to resolve these actions since receiving derivative standing, but their mere existence is not a basis to dismiss the case.

2. The Diocese's Proposed Settlement of CFN's Claims Through the Cell Tower Sale is an Example of the Debtor Seeking to Maximize Value

37. The Diocese's proposed settlement of CFN's claims in connection with the sale of the cell tower assets is not an example of "favoritism towards affiliates." Motion to Dismiss ¶ 36. In seeking to close the cell tower sale, the Debtor encountered a demand from CFN for consideration in exchange for its consent to the extinguishment of its rights under the cell tower leases. Certain bidders also raised CFN's rights against the Debtor as a substantial issue. The Debtor reviewed its options and concluded that each carried execution risk. The Diocese determined that settlement for a reasonable amount was preferable to litigation that could

trustee of a corporation in bankruptcy has the power to waive the corporation's attorney-client privilege with respect to prebankruptcy communications); *In re Reliant Energy Channelview LP*, 594 F.3d 200, 210 (3d Cir. 2010) (affirming the bankruptcy court's order denying authorization to pay an award of a break-up fee in a sale).

potentially derail the cell tower sale. Far from engaging in a self-dealing transaction, the Debtor concluded that a resolution of CFN's demands for a payment of $5 million was the best option available, given that: (a) such payment would unlock $8.75 million in value for the Debtor's estate, (b) $5 million was near the present value of the lease revenues (assuming a range of discount rates from 6%-10%); and (c) CFN could cause significant disruption to the Debtor's sale process if CFN sought to preserve (and enforce post-closing) its asserted rights to the lease revenues.

38. Just as with the avoidance actions, the Diocese's disagreement with the Committee about the best way to resolve litigation risk associated with the cell tower sale does not show that the chapter 11 case should be dismissed. The parties settled their dispute and the Court entered the sale order on May 3, 2023. *See Order (I) Approving the Sale of Debtor's Assets Free and Clear of Liens, Claims, and Encumbrances; (II) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection Therewith; and (III) Granting Related Relief* [Docket No. 2072]. Indeed, the parties' conflicts over settlement terms shows that the chapter 11 process is working to bring the dispute towards a favorable resolution. *See In re Dewey & LeBoeuf LLP*, 478 B.R. 627, 640 (Bankr. S.D.N.Y. 2012) ("As a general matter, settlements and compromises are favored in bankruptcy as they minimize costly litigation and further parties' interests in expediting the administration of the bankruptcy estate.") (citations omitted).

39. Similarly, the Diocese's proposal to retain a portion of the sale proceeds from the spectrum assets is not cause for dismissal. As the Diocese has consistently maintained, since it will be monetizing all of its income-producing assets and contributing substantially all of its assets for the benefit of creditors, it must retain a portion of any spectrum sale proceeds to offset the loss of recurring revenue in order to continue its post-emergence operations. [Docket No. 1459 at ¶ 8]. Moreover, no court approval for a spectrum sale has been sought, and the Committee may object

to such a transaction if and when it is proposed to close.

3. The Parishes and Non-Debtor Affiliates are Not Under the Ultimate Control of the Diocese or the Bishop

40. The Committee invokes a notion that the parishes are, in the Committee's view, under the Bishop's and the Diocese's control, and that the Bishop has "consistently sided with the parishes and related parties over the interests of the Diocesan estate and its creditors." Motion to Dismiss ¶ 39. The Bishop is not the Diocese, and the Diocese is not the parishes.

41. The Committee's legal contentions about the Diocese's putative control over parishes were litigated in connection with two Rule 2004 requests by the Committee for non-debtor-parish financial information. *See* Doc. No. 540. One of those was denied by Judge Chapman. *See* Aug. 19, 2021 Hr'g Tr. (denying Committee's Rule 2004 motion seeking to reveal parish investment balances in Unitas). On the second application, the Diocese made clear it would produce the sought-after information if directed to do so by the Court and also set out its legal argument that the Committee was wrong about the Bishop's authority over parishes under New York law. *See* Doc. No. 576. In response, the Committee did not press the point for resolution by the Court but instead ultimately *agreed* to the very resolution that it now complains about as not "cooperative" and now tries to recycle this resolved legal issue as support for the extreme remedy of dismissal. *See* Motion to Dismiss ¶ 17 & n.10 (noting the "parties agreed" on how to handle this issue and citing the stipulation that memorialized this agreement).

42. There is, in any event, no merit to this contention. The Diocese is not one and the same with the separately incorporated parishes, as the Committee would have it. The parishes are separately incorporated entities under New York law and are separately represented by counsel. The Committee also does not have any authority on point to support its notion that the Diocese has legal authority to compel the parishes to increase their contributions to the Diocese's plan of

reorganization. Instead, the Committee relies principally on two decisions that rejected challenges by parishioners to decisions made by a parish's board of trustees. *See Blaudziunas v. Egan*, 18 N.Y.3d 275 (2011); *Committee to Save St. Brigid v. Egan*, 2007 WL 7621394 (Sup. Ct. N.Y. Cty. 2007). Both of these decisions upheld the authority of a parish's board of trustees to demolish church buildings and ruled that parishioners who were not on the parish's board had no basis for challenging the board's determinations. Neither decision supports the Committee's notion that a bishop has "ultimate control" over the parishes. Motion to Dismiss ¶ 13.

43. The Committee also invokes the Religious Corporations Law itself. But the statute invoked by the Committee addresses a specific transaction that has nothing to do with the Committee's motion to dismiss or the process of negotiating a plan of reorganization: namely, where a Bishop divides a parish, leaves one part of its real property to that preexisting parish, and then transfers another part of the real property to a newly created parish. In this quite-specific situation, the Bishop is given the express statutory authority, "independently of any action or consent on the part of the trustees of the original Roman Catholic church corporation," to transfer real property to the newly created parish. *See* N.Y. Relig. Corp. Law § 92. Other than this narrowly defined situation, the statutory provisions invoked by the Committee reflect only the Bishop's authority to *approve* certain acts of a parish's board of trustees. *See also* N.Y. Relig. Corp. Law § 91 ("No act or proceeding of the trustees of any such incorporated church shall be valid without the sanction of the archbishop or bishop of the diocese to which such church belongs . . . ."). That, however, is not the sort of all-encompassing "ultimate control" that the Committee ascribes to the Diocese here to require the separately represented parishes to act and to take positions in this case.

44. The Committee also cites parish bylaws as support for the notion that the Diocese has "ultimate control" over the parishes. Motion to Dismiss ¶¶ 13–14. These bylaws are a matter

of internal governance that, as the Committee's authorities recognize, courts cannot enforce under the First Amendment to the U.S. Constitution and attendant principles of religious liberty. *See generally Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171 (2012).

45. In any event, the parish bylaws, similar to the Religious Corporations Law, provide for specified acts that require the Bishop's approval, such as the disposition or purchase of real property and making repairs to parish property that exceed a certain threshold. *See* Generic Parish Bylaws § 4.01.01 (attached as Ex. B to the Declaration of Karen B. Dine, Docket. No. 541). The bylaws also do not give the Bishop "ultimate control" over all of a parish's activities as the Committee vaguely asserts, but rather provide for the Bishop's approval of a parish decision to "commence, settle, compromise or abandon legal action." Generic Parish Bylaws § 4.01.01(d). Thus, the Committee not only overstates the scope of the parishes' bylaws, but, once again, improperly conflates provisions addressing the Bishop's approval of specified parish acts with the power to require the parishes to act as the Committee would like the parishes to act here.

II. IF THE COURT DETERMINES THAT THERE IS "CAUSE" TO CONVERT OR DISMISS, A CLAIMS EXAMINER SHOULD BE APPOINTED

46. This motion should be denied, as addressed above. There is no legal or factual basis for it, and the Committee should not be permitted to shift grounds or adduce evidence in support of it for the first time in its reply brief or at the hearing. If, however, there were determined to be any basis to grant the Committee's motion, the Court should not dismiss the case but appoint a claims examiner. A claims examiner will help the parties reach a resolution. *See* Lawrence A. Friedman, *Corporate Bankruptcy Gets a Shakedown from Mass Tort Trial Lawyers*, HARVARD JOURNAL OF LAW & PUBLIC POLICY PER CURIAM, p. 9 (Spring 2022 No. 7) (noting that appointment of claims examiners in Chapter 11 cases presenting large numbers of unsecured creditor tort claims can "increase transparency" as they are authorized to "perform an investigative

function" to, *inter alia*, determine how claims are evaluated and what representations have been made to claimants).

47. If cause to dismiss a case or convert it to a Chapter 7 proceeding is established, dismissal or conversion may be avoided where the case falls into one of the exceptions set forth in Section 1112(b)(1) and (2) of the Bankruptcy Code. Subsection (b)(1) specifies that conversion or dismissal is not mandatory if "the court determines that appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate." 11 U.S.C. § 1112(b)(1). Section 1104(c) states that the court may appoint an examiner before confirmation of a plan "to conduct such an investigation of the debtor as is appropriate . . . if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate." § 1104(c).

48. Even when there is "cause" to dismiss or convert a case, courts regularly appoint examiners as being in the interests of creditors and the estate. *See In re TMT Procurement Corp.*, 534 B.R. at 921-22 (appointing an examiner to review lawsuits against affiliates and professional fees after finding that cause existed to dismiss or convert the chapter 11 case); *In re Charles St. African Methodist Episcopal Church of Boston*, 499 B.R. at 116 (appointing an examiner with duties appropriately limited to protect the religious liberty interests of the nonprofit debtor when the proposed plan was unconfirmable, the case was administratively insolvent, and unsecured creditors stood to recover nothing under the proposed plan); *In re ProFlo Industries, LLC*, No. 17-22184, 2018 WL 615122 (Bankr. N.D. Ohio Jan. 29, 2018) (appointing an examiner under section 1104(c) for the limited purpose of investigating the legitimacy of certain prepetition claims)

49. Here, as shown in detail above, the best interest of creditors would not be served by dismissal. The state court cases are either stayed or have only recently been permitted to go forward, and all cases are far from trial-ready. Claimants' cases here stand in line behind hundreds

of other CVA cases that have proceeded through discovery during the pendency of this chapter 11 case. These cases must start the pre-trial discovery process, and then go through potential interlocutory appeals, trials, and perhaps final appeals, before claimants may recover. Additionally, the right to pursue the avoidance claims that the Debtor identified prepetition, and that the Committee has derivative standing to pursue, would revert back to hundreds of individual claimants in New York state court. By scattering the right to pursue such actions among hundreds of plaintiffs, they would become effectively incapable of consensual resolution. The defendants would be unable to coordinate settlement across hundreds of claimants proceeding towards trial on different timetables, and instead would be forced to litigate each case to conclusion and through any appellate process. The cost and delay of such litigation would further diminish the availability of any assets for claimants. *See* Moore Report at 7–8. Finally, the Debtor does not expect to be able to sell any of its spectrum assets outside the chapter 11 process, as the spectrum leases contain restrictive provisions that cannot be violated without the authority provided by the Bankruptcy Code. *See* Moore Report at 6. As noted above, the Committee's motion to dismiss is silent with respect to all such downsides of dismissal, simply declaring without analysis or evidence that "[s]urvivors will be far better off pursuing their claims in state court." Motion to Dismiss ¶ 34.

50. The Committee's motion to dismiss is simply not a thought-out, evidence-based request. If this case is dismissed, creditors would recover less, and their recoveries would likely occur later in time. Thus, even if this Court determines there is cause to dismiss, the Court should not dismiss the chapter 11 case, but should instead appoint a claims examiner who can assist the parties with evaluating the remaining claims and finding a path to a consensual resolution.

CONCLUSION

The Diocese therefore respectfully requests that the Court deny the Committee's request for an order dismissing the Debtor's chapter 11 case.

Dated: June 26, 2023

/s/ Corinne Ball

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