

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

In re:

THE ROMAN CATHOLIC DIOCESE OF
SYRACUSE, NEW YORK,

Debtor.

Chapter 11

Case No. 20-30663-5-mcr

Related to ECF No. 118

**OBJECTION TO DEBTOR'S MOTION FOR AN ORDER
ESTABLISHING A DEADLINE FOR FILING PROOFS OF CLAIM AND
APPROVING THE FORM AND MANNER OF NOTICE THEREOF**

The claim filing deadline proposed by the Debtor is certain to create confusion given (i) the State of New York's extension of the "look-back window" for New York's Child Victims Act, (ii) the recent decision of the United States Bankruptcy Court for the Western District of New York, which addresses virtually identical claim deadline issues also impacting abuse claimants within New York, and (iii) the compound impact that past trauma and ongoing stress caused by the pandemic are likely to impose on unknown members of the Committee's vulnerable constituency. The risks and consequences of this confusion thoroughly outweigh any need to hasten administration of this case.

The claim deadline established by the State of New York has already been broadcast widely to unknown numbers of potential claimants and there can be no global resolution in this case until all parties with exposure are sure that every potential claimant has come forward. Such certainty will not exist until after August 14, 2021. The Committee thus respectfully urges the Court to establish a claim filing deadline in this case that is co-extensive with the look-back window under the Child Victims Act.

In addition, the Court should honor the decision of New York's democratic institutions to allow the assertion of survivor claims through August 14, 2021. The New York legislature and the State's Governor intentionally established rights for survivors of child sexual abuse by extending their deadline to file civil claims under the Child Victims Act. As the Supreme Court has recognized repeatedly, including in an opinion issued earlier this calendar year, there is no reason to analyze rights created under State law differently simply because an interested party happens to be involved in a bankruptcy.¹

The Committee also objects on a limited basis to the form and manner of notice proposed by the Debtor and to the proof of claim form proposed. Such objections are relatively minor and they are detailed below.

FACTUAL BACKGROUND

The State of New York enacted the Child Victims Act on February 14, 2019.² This action had the effect of reopening for one year the existing statute of limitations relating to civil claims based on child sexual abuse. On May 8, 2020, Governor Andrew Cuomo issued an executive order extending the Child Victims Act's so-called “look-back window” through January 14, 2021, and on August 3, 2020, Governor Cuomo signed into law a further extension of that “window” through August 14, 2021.³ Governor Cuomo made the following, related comments:

The Child Victims Act brought a long-needed pathway to justice for people who were abused, and helps right wrongs that went unacknowledged and unpunished for far too long, and we cannot let

¹ *Rodriguez v. Fed. Deposit Ins. Corp.*, 140 S. Ct. 713, 717, 206 L. Ed. 2d 62 (2020) (“federal common law constitutes an unusual exercise of lawmaking which should be indulged ... only when there is a significant conflict between some federal policy or interest and the use of state law.”) (citing *FDIC v. AmFin Financial Corp.*, 757 F.3d 530, 535 (2014) (internal quotation marks omitted)); *Stern v. Marshall*, 564 U.S. 462, at 495 (2011) (“[P]roperty interests are created and defined by state law,’ and ‘[u]nless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding.”) (citing *Travelers Casualty & Surety Co. of America v. Pacific Gas & Elec. Co.*, 549 U.S. 443, at 451 (2007) (internal citations and quotations omitted)).

² See 2019 N.Y. Sess. Laws c. 11, § 3.

³ See 2020 N.Y. Sess. Laws c. 130, § 1.

this pandemic limit the ability for survivors to have their day in court... As New York continues to reopen and recover from a public health crisis, extending the look back window is the right thing to do and will help ensure that abusers and those who enabled them are held accountable.⁴

New York Senator Brad Hoylman, a sponsor of the Child Victims Act, stated:

The Child Victims Act has allowed more than 3,000 brave survivors to come forward to seek justice. Yet it's clear many New Yorkers who survived child sexual abuse haven't come forward — especially during the COVID-19 crisis which has upended our courts and economy. I'm extremely grateful to Governor Cuomo for signing our legislation extending the Child Victims Act for an additional year ...⁵

Senator Hoylman also stated:

Coming forward as a survivor of child sexual abuse takes courage, focus and lots of time. As the unemployment rate spikes above 14%, it's unreasonable to expect survivors of child sexual abuse to do the emotional and legal work necessary to file CVA lawsuits while simultaneously fighting to pay rent and put food on the table.⁶

On July 2, 2020, the Diocese of Buffalo, by and through the same legal counsel representing the Debtor, filed a motion in the U.S. Bankruptcy Court for the Western District of New York seeking entry of an order establishing a deadline for the filing of proofs of claim and approving the related form and manner of notice.⁷ In its motion, the Diocese of Buffalo sought to establish a claim filing deadline that preceded the window date established by the Child Victims Act at that time.⁸

⁴ CVA Claims Can Now Be Filed Until August 14, 2021, available at: <https://www.governor.ny.gov/news/governor-cuomo-signs-legislation-extending-look-back-window-child-victims-act> (emphasis added).

⁵ *Id* (emphasis added).

⁶ Senator Hoylman Responds to Announced Extension of CVA Look-Back Window, Friday May 8, 2020, ISSUE: SD 27 Child Victims Act COVID-19, available at <https://www.nysenate.gov/newsroom/press-releases/brad-hoylman/senatorhoylman-responds-announced-extension-cva-look-back> (emphasis added).

⁷ See Motion for an Order Establishing a Deadline for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof, Bankr. W.D.N.Y., Case No. 20-10322, at Dkt. No. 432.

⁸ See *id*.

On September 11, 2020, the U.S. Bankruptcy Court for the Western District of New York issued an opinion denying the Diocese of Buffalo's motion.⁹ In his Order, Judge Bucki held, among other things, that granting the Diocese of Buffalo's motion would: (i) cause confusion for survivors; (ii) fail to facilitate a more expeditious resolution of global insurance coverage issues; and (iii) fail to honor a policy decision expressed clearly by the State of New York's democratic institutions.¹⁰ The Western District also found that, while establishing a claim deadline co-terminus with the Child Victims Act would reduce creditor confusion, delaying the claim deadline until August 14, 2021, would *not* delay administration of the Diocese of Buffalo's estate.¹¹ The Court noted, among other things, that a global settlement cannot reasonably be expected to occur until all claims arising under State law have been asserted.¹²

On September 21, 2020, after brief, initial discussions with the Committee's attorneys, counsel for the Debtor filed a motion very much like the motion they filed in the Diocese of Buffalo case. Among other things, the Debtor's motion seeks to set a claim filing deadline in this case that would expire approximately five months prior to the closure of the look-back window established by the Child Victims Act.¹³ On September 25, 2020, the Diocese of Buffalo filed a motion seeking reconsideration of Judge Bucki's decision.¹⁴

I. THE PROPOSED CLAIM DEADLINE WOULD CREATE CONFUSION

New York's extension of the statewide deadline for filing claims under the Child Victims Act received a great deal of attention. It was reported upon widely by news sources and

⁹ See *Decision and Order*, Bankr. W.D.N.Y., Case No. 20-10322, at Dkt. No. 546.

¹⁰ See *id.* at 7-11.

¹¹ *Id.*

¹² See *id.* at 8.

¹³ See Dkt. No. 118.

¹⁴ See *Motion for Reconsideration of Bar Date and Mediation Order*, Bankr. W.D.N.Y., Case No. 20-10322, at Dkt. No. 574.

commentators and multiple public figures released formal statements in response to it.¹⁵ As a consequence, it is virtually certain that a substantial number of survivors of childhood sexual abuse, many of whom may hold claims against the Debtor, now believe that they have until August 14, 2021, to come to terms with their abuse, summon the fortitude to come forward, and determine how to assert their claims. The recent decision issued by the bankruptcy court in the Diocese of Buffalo case will reinforce this understanding.

A. Survivors of childhood sexual abuse are not typical creditors

Survivors did not come to hold claims against the Debtor through any voluntary act and parties cannot safely assume that survivors understand the Debtor's civil corporate structure or the legal implications of it. Parties likewise cannot assume that survivors are meaningfully aware of the Debtor's bankruptcy or the legal implications of a court-imposed bankruptcy claim deadline. It is safe to assume, based on the experience of other courts and the guidance of childhood trauma professionals, that many potential survivor claimants have not yet come to terms with their painful history or perhaps even the fact that they hold a claim at all.

Survivors of childhood sexual abuse, as creditors, are among the least likely to come forward and assert their claims.¹⁶ Young girls who are sexually abused are three times more likely to develop psychiatric disorders or alcohol and drug abuse in adulthood.¹⁷ Among male survivors,

¹⁵ See *supra* at 2-3.

¹⁶ Childhood sexual abuse in any context leaves a child “in a netherworld of isolation, shame and secrecy.” *Jack Doe I v. Corporation of the Presiding Bishop*, 2010 WL 4409286 at *8 (Or. 2010) (citing Mike Lew, *Victims No Longer* 161 (2004)); see also *id.* (““Chronic child abuse promotes avoidance behaviors,” and secrecy reinforces that desire to wall of abuse.”) (quoting John Briere, *Psychological Assessment of Child Abuse Effects in Adults*, in *Assessing Psychological Trauma and PTSD* 540–41 (Wilson and Keane eds. 2004)).

¹⁷ Day, A., Thurlow, K., & Woolliscroft, J., *Working with childhood sexual abuse: A survey of mental health professionals*, CHILD ABUSE AND NEGLECT, 27, 191-98 (2003); Kendler, K., Bulik, C., Silberg, J., Hettema, J., Myers, J., & Prescott, C., *Childhood sexual abuse and adult psychiatric and substance use disorders in women: An epidemiological and Cotwin Control Analysis*, ARCHIVES OF GENERAL PSYCHIATRY, 57, 953-59 (2000). Voeltanz, N., Wilsnack, S., Harris, R., Wilsnack, R., Wonderlich, S., Kristjanson, A., *Prevalence and risk for childhood sexual abuse in women: National survey findings*, CHILD ABUSE AND NEGLECT, 23, 579-92 (1999).

more than 70% seek psychological treatment for issues such as substance abuse, suicidal ideation, or attempted suicide.¹⁸ And, tragically, these very outcomes cause secondary shame and confusion that lasts for several years. Such secondary trauma responses are common. They prevent survivors from understanding the source of their suffering and they create a very real obstacle to the assertion of survivor claims.¹⁹

The unfortunate, but inescapable reality of this case is that *the claim process must be made as clear and simple as possible because nothing else about coming forward as a survivor of childhood sexual abuse is remotely simple or clear*. Capturing and administering as many survivor claims as possible is in the best interest of all parties and is central to the cause and purpose of this proceeding. Creating a second claim deadline, as the Debtor asks to do, will only introduce more uncertainty and confusion into a process that is already burdened with challenges for the Committee's constituency. The deadline to file claims should be August 14, 2021.

B. The pandemic has only intensified the problem

The Covid-19 pandemic has caused great emotional and economic upheaval. Members of the population who are otherwise vulnerable, including many survivors of childhood sexual abuse with potential claims in this case, are more likely than others to suffer negative psychological reactions to increased isolation and financial stress.²⁰ Many survivors will find it overwhelming to deal with more than one crisis at a time and, as a result of the pandemic, many survivors will likely experience disruptions in mental health treatments as well.

¹⁸ Walrath, C., Ybarra, M., Holden, W., Liao, Q., Santiago, R., & Leaf, R., *Children with reported histories of sexual abuse: Utilizing multiple perspectives to understand clinical and psychological profiles*, CHILD ABUSE AND NEGLECT, 27, 509-24 (2003).

¹⁹ See, e.g., Guy R. Holmes et al., *See No Evil, Hear No Evil, Speak No Evil: Why Do Relatively Few Male Victims of Childhood Sexual Abuse Receive Help for Abuse-Related Issues in Adulthood?*, CLINICAL PSYCHOLOGY REVIEW, Vol. 17, no. 1, 69-88, 75 (1997).

²⁰ See, e.g., Druss BG, *Addressing the COVID-19 Pandemic in Populations With Serious Mental Illness*, JAMA Psychiatry (April 03, 2020), <https://jamanetwork.com/journals/jamapsychiatry/article-abstract/2764227>.

News outlets continue to focus heavily on reporting and opinion relating to Covid-19. Many survivors fall within the age range most vulnerable to the disease. The near-constant reminders of vulnerability and lack of control, in conjunction with the prevalence of increased financial distress, are likely to trigger past trauma responses for survivors, increase their overall stress, and prevent many survivors from taking the actions necessary to pursue their claims timely. These issues relating to Covid-19 were, in fact, precisely the rationale cited by both Governor Cuomo and Senator Hoylman for their decision to extend the look-back window under the Child Victims Act.²¹ The Court should do likewise and take all reasonable steps to accommodate these concerns. The Committee respectfully asks that a claim filing deadline of August 14, 2021, be established in this case.

C. Vulnerable claimants should not be expected to make subtle distinctions between separately-incorporated Church entities or understand the scope and reach of competing bankruptcy court decisions

If the abbreviated claim deadline proposed by the Debtor is approved, survivors within the State of New York will have different rights based solely upon which corporate entity within the Catholic Church is deemed legally responsible for their abuse. In such a circumstance, survivors with claims against the Diocese of Buffalo would have until August 14, 2021, to assert their claims, but survivors with claims against the Diocese of Syracuse would have only until March 1, 2021. To complicate things further, under such a circumstance, survivors in this case with claims against more than one corporate entity within the Diocese would have two different deadlines to consider: while survivor claims against the Diocese of Syracuse would need to be asserted by March 1, 2021, claims by many of the same survivors against an affiliated parish or school would not need to be asserted until August 14, 2021.

²¹ *See supra* at 2-3.

Survivors are not voluntary claimants. They did not gain creditor status by engaging with entities within the Catholic Church intentionally or with knowledge of such entities' corporate organizational structures. Moreover, it is safe to assume that unknown survivors are not yet represented by legal counsel and that many will never retain an attorney at all. It would be profoundly unfair to impose on unrepresented survivor claimants the obligation to distinguish between Church entities that they have always considered to be one and the same. This is precisely the burden that the Debtor asks the Court to impose by seeking an abbreviated claim deadline. Such confusion and inequity can be avoided altogether by simply establishing a claim deadline that is co-extensive with the deadline established by the Child Victims Act.²²

II. THE MODIFICATION OF A CLEAR STATE LAW RIGHT IS NOT JUSTIFIED

By passing the Child Victims Act, democratic institutions within the State of New York spoke clearly and unequivocally about what they deemed to be the appropriate and necessary “window” for asserting otherwise time-barred claims based on child sexual abuse. The window created by the State of New York closes on August 14, 2021. The Debtor asks this Court take the extraordinary steps of (i) disregarding a deliberate legislative process that took place over a period of years, (ii) overriding the State of New York's clearly-stated intent, and (iii) materially abridging the rights of vulnerable claimants whose horrific abuse is the sole reason for the Debtor's bankruptcy filing. The Debtor's request ignores fundamental precepts of public policy and Supreme Court precedent and should be denied.²³

²² *Decision and Order*, Bankr. W.D.N.Y., Case No. 20-10322, at Dkt. No. 546, p. 11 (“Many of the claims against the Diocese involve events that might also serve as the basis for a cause of action against clergy and parishes who do not enjoy the protection of the Bankruptcy Code. A bankruptcy claims bar date of August 14, 2021, will avoid some of the confusion regarding the deadline for victims to take action. The avoidance of confusion inures to the benefit of both claimants and the Diocese.”).

²³ *Id.* (“In reopening the statute of limitations, the [Child Victims Act] expressed a policy decision that deserves the respect of this Court. Unless good cause is otherwise demonstrated, we should appropriately honor the decision of New York to allow the assertion of claims through August 14, 2021.”); *see also Rodriguez*, 140 S. Ct. at 717 (“federal common law constitutes an unusual exercise of lawmaking which should be indulged ... only when

III. THE IMPOSITION OF A SECOND CLAIM DEADLINE IS UNNECESSARY

Even if a second, earlier claim deadline were imposed in this case, it would not facilitate a more efficient administration of the Debtor's estate. The Debtor argues:

Until the Bar Date has passed and all claims have been asserted and analyzed, the Diocese will not be able to finally determine the total number of claimants, the aggregate value of their respective claims, negotiate with Insurance Carriers, or ascertain the best structure of a plan of reorganization. Additionally, knowing the universe of claims asserted against the Diocese will be critically important to its efforts to negotiate, and ultimately to resolve, most probably through mediation, its insurance coverage issues as it is essential to ascertain all claims asserted in this Chapter 11 Case.²⁴

The Debtor's analysis is entirely correct with one notable exception: it is the termination of the look-back window under the Child Victims Act, not an unrelated bar date, that will allow parties to fully “ascertain all claims asserted.” As a result, regardless of any earlier claim deadline imposed, until August 14, 2021, “the Diocese will not be able to finally determine the total number of claimants, the aggregate value of their respective claims, negotiate with Insurance Carriers, or ascertain the best structure of a plan of reorganization.”

Insurance companies, parishes, schools, and other parties in interest are focused on a thorough, final resolution of their *own* exposure through a plan of reorganization in this case. A synthetic, premature claim filing deadline, which cannot guaranty the cutting off of *all* claims against parties needed for a global resolution, simply cannot lead to thorough negotiations, let alone a settlement, prior to August 14, 2021.²⁵

there is a significant conflict between some federal policy or interest and the use of state law.”) (citing *FDIC v. AmFin Financial Corp.*, 757 F.3d 530, 535 (2014) (internal quotation marks omitted)); *Stern*, 564 U.S. at 495 (“[P]roperty interests are created and defined by state law,” and “[u]nless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding.”) (citing *Travelers Casualty & Surety Co. of America v. Pacific Gas & Elec. Co.*, 549 U.S. 443, at 451 (2007) (internal citations and quotations omitted)).

²⁴ Dkt. No. 118 at 4.

²⁵ See *Decision and Order*, Bankr. W.D.N.Y., Case No. 20-10322, at Dkt. No. 546, p. 6 (noting that “Several of the insurance companies named as defendants in the adversary proceeding oppose the use of mediation at this

Given the profound risks of confusion to vulnerable claimants, the serious constitutional and policy considerations implicated by the Debtor's request, and the lack of any sufficient justification for the extraordinary relief requested, the Committee respectfully urges the Court to deny the Debtor's motion and to establish a claim filing deadline of August 14, 2021.

IV. THE PROPOSED NOTICE PROCEDURES AND PROOF OF CLAIM FORM REQUIRE MODIFICATION

Finally, the Committee objects, on a limited basis, to the form of notice and to the claim form proposed by the Debtor on the following grounds:

1. The Debtor proposes to publish a bar date notice twice in three local newspapers – the *Syracuse Post Standard*, the *Utica Observer-Dispatch*, and the *Binghamton Press & Sun Bulletin*. Because Syracuse is situated in the middle of upstate New York, between Albany and Rochester, the Committee believes it would be prudent to add prominent newspapers in both Albany and Rochester to the Debtor's publication list. Specifically, the Committee proposes to add the *Times Union* in Albany and the *Democrat and Chronicle* in Rochester to the Debtor's list. The Committee also asks that the Debtor add the Diocese of Syracuse's newspaper, *The Catholic Sun*, to its publication list.
2. The Committee further requests that the Debtor be required to publish notice of the claim filing deadline in its parish bulletins. This practice is consistent with requirements imposed in other cases. In the Diocese of Buffalo's bankruptcy, for example, the bankruptcy court ordered that each parish distribute notice of the bar

time. They contend that mediation should be deferred until the full identification of claims and their receipt of information that they have requested from the Diocese.”).

date in its weekly bulletin for at least eight Sundays prior to the bar date, with three of the distributions to occur on major holidays.²⁶

3. The Committee requests that all of the Debtor's existing accounts on social media platforms be employed to broaden notice to potential claimants. The Debtor currently maintains a presence on multiple social networks, including Facebook and Twitter.
4. The Committee requests that the Debtor engage in a targeted online audience campaign that includes display and search programs, as well as targeted key word search programs, on Google, Bing, and Yahoo. The Committee requests that the Debtor be required to consult with the Committee with respect to the details of this effort.
5. The Committee requests that the order establishing notice and claim procedures state affirmatively (i) that attorneys for survivors may sign proofs of claim on their clients' behalf, and (ii) that no privilege or protective doctrine shall be deemed waived by doing so.
6. The Committee requests that the Debtor be required to issue press releases to newspapers, television stations, and radio stations on two occasions – once within 30 days of entry of the order establishing a claim deadline and again 30 days before such deadline expires. The Committee further asks that the Debtor be required to consult with the Committee's professionals regarding the specific media outlets to contact with its press releases.

²⁶ *Decision and Order*, Bankr. W.D.N.Y., Case No. 20-10322, at Dkt. No. 546, p. 12.

7. Language contained in paragraph 34(c)(i) of the Debtor's proposed confidentiality protocol indicates that the Debtor will be authorized to discuss the contents of survivor proofs of claim with individuals being accused of sexual abuse for the first time. In other Diocesan bankruptcy cases, certain protections were included in confidentiality protocols to address such circumstances. The Committee asks that the same or similar protections be included in the Debtor's confidentiality protocol in this case and the Committee asks that the Debtor be required to consult with the Committee to identify mutually-acceptable protective language to address these circumstances. Among other things:

- a. The following categories of individuals should be carved out of the definition of "Authorized Person" to ensure that such persons will not have direct access to survivor proofs of claim:
 - i. any person alleged in a proof of claim form to have committed sexual abuse;
 - ii. any person otherwise disclosed to the Debtor as an individual who has allegedly committed sexual abuse; and
 - iii. any person who is otherwise acknowledged by the Debtor as having committed sexual abuse.
- b. The Debtor should be allowed to discuss the contents of a relevant survivor proof of claim with the categories of persons listed above when reasonably necessary, but absent written consent from the Committee or from the survivor himself or herself, the Debtor should be prohibited from disclosing to such persons any information that could reasonably be used to personally

identify any sexual abuse claimant or any witness to sexual abuse alleged.

Such prohibited, identifying information would include, but not be limited to:

- i. Any sexual abuse claimant's current or former name(s), address(es), telephone number(s), signature, place(s) of residence, vocation, place(s) of work, social security number(s), and/or physical characteristics.
- ii. Any alleged witness to sexual abuse's current or former name(s), address(es), telephone number(s), signature, place(s) of residence, vocation, place(s) of work, social security number(s), and/or physical characteristics.

CONCLUSION

The goal of the Debtor's bankruptcy is a fresh start. An authentic fresh start is not possible without first openly and thoroughly confronting the Debtor's history, regardless of how difficult and sensitive such an exercise might be. Every survivor of childhood sexual abuse must be given a full and fair opportunity to pursue his or her claim if the goal of this case is to be achieved.

The claim deadline established by the State of New York has already been communicated to large numbers of potential claimants and there can be no global resolution of this case until all parties are certain that every potential claimant has come forward. The Committee respectfully urges the Court to avoid unjustified confusion, and defer to New York's democratic institutions with respect to issues of state law, by making the claim filing deadline co-extensive with the look-back window established by the Child Victims Act. The Committee further asks that the Debtor's proposed notice procedures and proposed claim form be modified in the ways requested above.

Date: October 8, 2020

/s/ Edwin H. Caldie

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CERTIFICATE OF SERVICE

I, Robert T. Kugler, hereby certify that on October 8, 2020, I caused a true and correct copy of the foregoing to be filed with the Clerk of Court using CM/ECF and that service was perfected on all counsel of record and interested parties through this system.

Date: October 8, 2020

/s/ Robert T. Kugler

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