

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

THE DIOCESE OF BUFFALO, N.Y.,

Debtor.

Chapter 11

Case No. 20-10322 (CLB)

**RESPONSE OF MOVANTS AND THE OFFICIAL
COMMITTEE OF UNSECURED CREDITORS TO:**

**(I) OMNIBUS OBJECTION BY THE DIOCESE OF
BUFFALO, N.Y. TO MOTIONS FOR RELIEF FROM
AUTOMATIC STAY FILED BY SEXUAL ABUSE
CLAIMANTS; AND**

**(II) OMNIBUS OBJECTION BY THE PARISHES IN OPPOSITION
TO MOTIONS FOR RELIEF FROM AUTOMATIC STAY
FILED BY SEXUAL ABUSE CLAIMANTS**

The Movants (collectively, the “**Movants**”)¹ for the seventeen *Motions for Relief from Automatic Stay* [Docket Nos. 3117, 3119, 3121, 3123, 3125, 3127, 3129, 3131, 3133, 3135, 3137, 3139, 3141, 3148, 3149, and 3153] (the “**Motions**”) and the Official Committee of Unsecured Creditors (the “**Committee**”) of The Diocese of Buffalo, N.Y. (the “**Diocese**”), the above-captioned debtor and debtor in possession, hereby respond to the (i) *Omnibus Objection by the Diocese of Buffalo, N.Y. to Motions for Relief from Automatic Stay Filed by Sexual Abuse Claimants* [Docket No. 3187] and (ii) *Omnibus Objection by the Parishes in Opposition to*

¹ The following survivors filed the Motion: (a) Paul M . Berns [Docket No. 3117]; (b) Robert R. Davis [Docket No. 3119]; (c) James Bottlinger [Docket No. 3121]; (d) Scott Yerger [Docket No. 3123]; (e) Brian Kirst [Docket No. 3125]; (f) Michael Whalen [Docket No. 3127]; (g) AB 8 Doe [Docket No. 3129]; (h) AB 13 Doe [Docket No. 3131]; (i) AB 45 Doe [Docket No. 3133]; (j) AB 136 Doe [Docket No. 3135]; (k) AB 299 Doe [Docket No. 3137]; (l) AB 393 Doe [Docket No. 3139]; (m) AB 3 Doe [Docket No. 3141]; (n) Howard Zwelling [Docket No. 3147]; (o) Anthony Sciolino [Docket No. 3148]; (p) John Doe [Docket No. 3149]; and (q) AB 141 Doe [Docket No. 3153].

Motions for Relief from Automatic Stay Filed by Sexual Abuse Claimants [Docket No. 3200]
(collectively, the “**Objections**”).

OBJECTION

1. The Diocese states that it “remains committed to achieving its primary goal...to efficiently and equitably resolve all survivor claims....” (Diocese Objection at p.1). This assertion rings hollow after more than four and a half years in chapter 11. The Committee has attempted to resolve this case through mediation and negotiation. The Committee negotiated a stay of litigation against non-debtor entities to facilitate those discussions. The Committee attended numerous mediations in person and remotely. There is no prospect of a settlement acceptable to the Committee while litigation is stayed. A change in the dynamic is required. The Movants’ cases must be allowed to proceed to help resolve this chapter 11 case on a global basis.

2. The seventeen cases represent a small fraction of the more than 950 Sexual Abuse Claims filed against the Diocese. However, they assert claims involving abuse by eighteen clergy who are collectively identified as perpetrators of abuse in approximately 185 claims. In addition, in order to mitigate potential depletion of Diocesan assets by incurring defense costs, the Movants’ claims are almost exclusively for abuse that occurred after 1973 when the Diocese was insured. The Movants filed their Motions for the benefit of all Survivors.

3. The Diocese’s objections focus on the selection of Movants’ claims by alluding to nefarious intentions. The Movants’ brought their cases to illuminate the Diocese’s liability to the Diocese and its insurers. They are acting selflessly and not, as the Diocese

insinuates, for personal gain. The limited number of cases, the focus on likely insured claims and the breadth of identified perpetrators (who are collectively identified in approximately 185 claims) indicates that the Movants' cases will have an impact beyond their own cases. The Movants also all stated that they would not seek to enforce judgments without further order of this Court. This is a clear indication that they are undertaking the difficult and traumatic process of litigation for the greater good rather than to jump to the front of the line for a recovery.

A. The Diocese is Not Entitled to Discovery

4. The Diocese argues that it is entitled to discovery. (Diocese Objection at pp. 11-13). It is not.

5. On October 7, 2024, the Diocese requested an adjournment by letter to the Court [Docket No. 3196] for the purpose of allowing discovery regarding the Motions. The Diocese states that it needs discovery

Relating to, *inter alia*, (i) the purported factual assertions contained in the Stay Relief Motions and the Joinder; (ii) the manner in which the Movants were selected as the proponents of stay relief; (iii) how the seventeen (17) Movants are a "representative" class of the approximately 955 abuse claimants in this Chapter 11 Case; (iv) the Movants' evidence in support of "cause" for stay relief under the Sonnax factors; (v) whether Movants have received or will receive beneficial treatment vis-à-vis other survivors if they are permitted to move forward with their claims, or if they obtain judgments on those claims; and (vi) the basis or bases for the Movants' and the Committee's unsupported representations regarding the pace at which the Test Cases will purportedly move through the state court system. Virtually every demand or request calls for production of attorney client information. Those that don't call for speculation or legal conclusions. It is doubtful that any, much less illuminating, discovery will be produced. Moreover, the demands are irrelevant to the Motions.

Diocese Objection at ¶17.

6. First, discovery regarding the factual assertions in the Motions and the

Sexual Abuse Claims is properly left to the State Court. This Court cannot adjudicate the claims and should not allow delay for discovery on the merits of the claims. The best Court to preside over discovery of the claims is the State Court. It would be wholly inefficient to require discovery regarding the merits of the claims twice: once in this Court for stay relief; and a second time in State Court. The Diocese's request for discovery on the merits of the claims is untimely four and a half years into the case and nothing more than an effort to delay adjudication of claims.

7. The reasons for selection of the Movants' claims is irrelevant and any discovery on this matter would likely be privileged and unrelated to whether the Court should grant stay relief, as the reasons for selecting a case do not matter. First, the Movants and the Committee have been clear that they are attempting to mitigate defense costs incurred by the Diocese by selecting cases where the abuse occurred after 1973 when the Diocese can clearly demonstrate it is insured. Second, Movants have an absolute right to move for relief from the stay at any time. Third, Movants and the Committee do not have to demonstrate that the cases represent a perfect sample of the more than 950 claims filed against the Diocese. They represent a significant scope of the claims, involving 18 identified perpetrators and approximately 180 claims. The purpose of stay relief is to clarify for the Diocese and its insurers the scope of the Diocese's liability; not to litigate every potential iteration of claims. The Diocese is opposed to any cases moving forward. Its objection based on questions of whether the Movants' cases are a perfect representative sample are cynical and not a basis to deny the Motions.

B. The Movants Clearly Meet Their Burden Under Sonnax

8. The Diocese relies on two decisions in the Diocese of Agana and the Archdiocese of New Orleans chapter 11 cases denying motions for relief from stay. Those cases are distinguishable. Very significantly, the motions for relief from stay in those cases were filed early in the chapter 11 process. In the Diocese of Agana's case, the motions were filed on December 5, 2019. The petition in that case was filed on January 16, 2019. (Diocese Objection, Ex A at pp. 1-2). In the Archdiocese of New Orleans, the motions for stay relief cited by the Diocese were filed on September 1, 2020. The petition date in that case was May 1, 2020.

9. Clearly, the Diocese of Buffalos case is at a very different point than the Agana or New Orleans were when the motions for stay relief were decided. Those cases were months old when the motions were filed. This case is almost five years old. Moreover, concern about depletion of assets and distraction of Diocesan personnel, which appeared persuasive in those cases are not persuasive here. In the context of its motion for a preliminary objection, the Diocese failed to prove that its personnel would be distracted by litigation proceeding.² In addition, the Movants' cases are almost entirely post-1973 insured cases, which should mitigate or eliminate cost to the Diocese as the insurance policies at issue are not wasting as to defense costs.

10. ***Sonnax* Factor 1 (whether stay relief will result in partial or complete resolution of the issues) weighs in favor of the Movants.** The Diocese argues that stay relief

² *Opposition of the Official Committee of Unsecured Creditors to Debtors' Motion for Entry of an Order Pursuant to §§ 105(a) and 362(a) Enjoining the Prosecution of Certain State Court Lawsuits* [Adv. No. 20-01016, Docket No. 395], which is incorporated herein by reference for all purposes.

will not resolve all contested insurance issues. That is a red herring. The contested insurance issues can be resolved through the insurance adversary proceeding commenced by the Diocese.³ The Diocese stayed that matter and can elect to move forward with the Complaint it filed. In addition, the issues to be resolved are the amount of liability that a Buffalo court or jury will award a CVA claimant; not the scope of insurance. Not a single insurance issue can or will be litigated in a CVA case. The Diocese's objection is absurd.

11. The Diocese argues that no party disputes the amount of a jury verdict. Yet the Diocese, related entities and the insurers have not proposed a settlement amount that will provide sufficient compensation to almost a thousand survivors of abuse within the Diocese. Clearly, there is a difference of opinion on the value of claims.

12. The fact that State Court proceedings may take a long time is not a basis to deny stay relief. The cases should move forward. Litigation should proceed. The parties can engage in a dual track process of litigation and negotiation as is done in thousands of cases every year. The parties cannot continue to be stuck in the impasse caused by lack of litigation in State Court on the merits of CVA Cases.

13. **Sonnax Factor 2 (whether lifting the stay will interfere with the bankruptcy case) weighs in favor of the Movants.** The Diocese's objections on this factor are laughable. The Court recently denied the Diocese's motion for a preliminary injunction.⁴ The

³ See *The Diocese of Buffalo, N.Y. v. The Continental Insurance Co. (In re The Diocese of Buffalo, N.Y.)*, Adv. No. 20-01009 (Bankr. W.D.N.Y.).

⁴ See *The Diocese of Buffalo, N.Y. v. JMH 100 Doe, et al. (In re The Diocese of Buffalo, N.Y.)*, Adv. No. 20-01016 (Bankr. W.D.N.Y.), *Decision & Order* dated September 30, 2024. See also, *Opposition of the Official*

Diocese made almost identical arguments that allowing litigation to proceed against related entities would interfere with its reorganizations. After a full evidentiary hearing, the Court was unpersuaded by those arguments. There is no basis, including evidence in the record, to believe that allowing seventeen cases to proceed will interfere with the Diocese's chapter 11 case.

14. **Sonnax Factor 4 (whether a specialized tribunal has been established) weighs in favor of the Movants.** Bankruptcy Courts cannot adjudicate claims for bodily injuries. As such, the best court to adjudicate such claims is the State Courts which are very well suited and familiar with adjudicating CVA Cases.

15. **Sonnax Factor 5 (whether the Diocese's insurer has assumed full responsibility for defending it) weighs in favor of the Movants.** The Diocese argues that any adverse precedent could negate the insurers' ongoing duty to defend the Diocese and that the insurers may not fund defense costs. Under New York law, an insurer's duty to defend is triggered "whenever the *allegations* of the complaint 'suggest . . . a reasonable possibility of coverage,'" and the duty remains "even though facts outside the four corners of [the] pleadings indicate that the claim may be meritless or not covered." *Automobile Ins. Co. of Hartford v. Cook*, 850 N.E.2d 1152, 1155 (N.Y. 2006) (internal citations omitted) (emphasis added); *see also Euchner-USA, Inc. v. Hartford Cas. Ins. Co.*, 754 F.3d 136, 140–41 (2d Cir. 2014) ("The duty to defend is measured against the *allegations* of the pleadings") (emphasis added); *Fitzpatrick v. Am. Honda Motor Co.*, 575 N.E.2d 90, 92 (N.Y. 1991) ([T]he courts of this State have refused to

Committee of Unsecured Creditors to Debtors' Motion for Entry of an Order Pursuant to §§ 105(a) and 362(a) Enjoining the Prosecution of Certain State Court Lawsuits [Adv. No. 20-01016, Docket No. 395, Ex A].

permit insurers to look beyond the complaint’s allegations to avoid their obligation to defend[.]”). The complaints in the Test Cases allege negligent hiring, supervision, and retention by the Diocese—claims that, based on the allegations of the complaints, constitute “occurrences” that are not barred by an “expected or intended” argument. *See RJC Realty Holdings Corp. v. Republic Franklin Ins. Co.*, 808 N.E.2d 1263, 1265–66 (N.Y. 2004); *NYAT Operating Corp. v. GAN Nat’l Ins. Co.*, 847 N.Y.S.2d 179, 180–81 (N.Y. App. Div. 2007) (“[B]ecause [policyholder’s] liability in the underlying action was based on its negligent hiring and retention of the employee, not respondeat superior, the sexual assault was a covered ‘accident’ within the meaning of the policy, and the exclusion for injuries expected or intended from the standpoint of the insured does not apply.”) (internal citations omitted). Any “precedent” resulting from the Test Cases would constitute “facts outside the four corners” of the underlying complaints and, therefore, could not provide a basis for the Insurers to disclaim their ongoing duty to defend the Diocese. *See Cook*, 850 N.E.2d at 1155. This factor does not weigh in favor of the Diocese

16. Sonnax Factor 10 (the interests of judicial economy and the expeditious and economical resolution of litigation) weighs in favor of the Movants. This case is almost five years old with no foreseeable negotiated resolution in the present procedural posture. The Movants and the Committee recognize that cases will take time to move forward. The CVA incorporates a trial preference in State Court. The Movants’ cases should be allowed to proceed in order to provide some movement that could spark discussions of an acceptable settlement. Judicial economy and expedition should be considered under the circumstances of the case at issue. This is a complex case that involves almost a thousand filed Sexual Abuse

Claims. Resolution of the case is dependent on all parties understanding the value and litigation risk of the cases. Moving cases forward will change the status quo. In this case, keeping cases stayed indefinitely will simply result in further stasis. Resolution of the case can only be expedited by allowing stay relief.

17. **Sonnax Factor 12 (the impact of the stay on the parties and the balance of harms) weighs in favor of the Movants.** The Movants have attempted to mitigate the financial impact of stay relief by moving forward with almost wholly insured claims. Thus, the Diocese will not likely incur defense costs. The Movants, as survivors of abuse, have decided to move forward for the good of all survivors even though litigation is difficult, litigation can retraumatize survivors, and litigation takes a toll on survivors.

18. The Diocese's cynical cries that it will be harmed by litigation fly in the face of logic. The Diocese is responsible for the abuse in this case. The Diocese's actions harmed survivors. The Diocese's commencement of its chapter 11 case has delayed justice. Survivors – not the Diocese—will be harmed by keeping the blanket stay in place. Simply holding cases back to allow further fruitless negotiations will harm survivors. The balance of harms in denying stay relief clearly weighs in the Movants' favor.

19. For the reasons stated above, the Court should overrule to Objections and grant the Motions.

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