UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:	Chapter 11
The Diocese of Buffalo, N.Y.,	Case No. 1-20-10322-CLB
Debtor.	

INSURERS' JOINDER TO THE DIOCESE OF BUFFALO'S OBJECTION TO MOTIONS FOR RELIEF FROM AUTOMATIC STAY FILED BY SEXUAL ABUSE CLAIMANTS

The Continental Insurance Company, successor by merger to Commercial Insurance Company of Newark, New Jersey, and Firemen's Insurance Company of Newark, New Jersey; Selective Insurance Company of New York f/k/a Exchange Mutual Insurance Company; Employers Insurance Company of Wausau (f/k/a Employers Insurance of Wausau A Mutual Company f/k/a Employers Mutual Liability Insurance Company of Wisconsin) and Wausau Underwriters Insurance Company; Catholic Mutual Relief Society of America; and U.S. Fire Insurance Company (collectively, "Insurers") hereby join in Debtor's opposition (Dkt. No. 3187) to both (i) the 17 individual motions to lift the automatic stay and allow "test cases" to proceed against the Debtor and (ii) the Committee's joinder and memorandum of law in support thereof. In support of the Joinder, the Insurers respectfully state as follows.

Preliminary statement

The concept of "test cases" is foreign to the Bankruptcy Code and anathema to the central purpose of any bankruptcy, which is to fairly and equitably allocate finite resources among similarly situated claimants. Test cases would prefer a select few privileged claimants for accelerated treatment and a permanent edge over all other contingent creditors. Moreover, "test cases" are ***not*** equivalent to a mass-tort bellwether process in an MDL case. The selection process

proposed here is one-sided and would have no possibility of resulting in representative outcomes that would be informative for settlement purposes. But that is not all. The larger problem is that bankruptcy claims are not civil suits, and a case that proceeds through public trial to judgment is not analogous to a claim paid through the bankruptcy proof of claim process, because many, if not most, bankruptcy claims would never be brought as suits in the tort system.

Separate and apart from these reasons for denying the lift stay motions, the law firms that filed the lift stay motions have not made the mandatory disclosures required by Rule 2019 to seek relief from this court. Since the lift stay motions pit the interests of their moving clients against their other clients, strict compliance with Rule 2019 vitally important. Absent compliance with Rule 2019 dictates that a movant's motions not be heard.

If the Court does not deny the motions outright, it should defer adjudication of the motions until after discovery, including the discovery served by the Debtor, has been completed. In particular, the statements that proceeding with "test cases" (1) will provide useful information to the parties, (2) will be resolved within a reasonable amount of time, and (3) will not prejudice the other claimants whose cases have not been given preferential status, are all demonstrably false. At minimum, these claims all need to be tested in discovery. First, information that the "test cases" provide will be specific to those cases, given the intensely fact-specific nature of abuse and damages and the fact that the cases were not selected with input from all interested parties to ensure that they are representative of all claims but, instead, were unilaterally chosen the Committee and state court counsel in a misguided theory that proceeding on only their hand-picked cases, would drive up settlement values. Second, most of the CVA cases currently proceeding in state court may take ***longer*** than typical civil litigation to resolve, putting any resolution of this bankruptcy case on ice for years. Third, claimants who obtain judgments may

seek to enforce them immediately and may be incentivized to demand preferential treatment under any potential plan that pays their judgments in full. Finally, allowing facts to be developed in litigating certain cases may prejudice the availability of insurance coverage for other claimants if those facts undercut claims for coverage.

Because these motions are contested matters, discovery is appropriate under Bankruptcy Rule 9014. Discovery is also essential to explore what appear to be serious potential conflicts of interest among the claimants, the state court counsel representing the claimants, and the Committee. In particular, the requested relief would confer preferred status on 17 claimants over hundreds of others, including many claimants represented by the same counsel that represents a preferred claimant. Whether clients whose claims are not being preferred have agreed that their lawyer can push forward claims of other claimants, potentially conferring significant advantages on those preferred claimants, is presently unknown but highly relevant to the Committee's assertions that all claimants will benefit and none will be prejudiced.

Only a handful of law firms are advancing the "test case" strategy: a single law firm, Jeff Anderson & Associates, P.A. (the "Anderson firm") represents two of six Committee members and has filed 11 of the 17 lift-stay motions. The remaining six motions were filed by other firms who, together with the Anderson firm, represent five of six Committee members, a majority. It appears that the lawyers who represent clients on the Committee are pursuing a strategy that benefits certain of their clients, and the firms themselves, to the exclusion of other claimants and law firms. This seems to be a misuse of the committee process.

The law firms driving this process may have further undisclosed incentives as well.

At least one, the Anderson firm, has entered into a litigation financing agreement.[1] The firm's need to repay its loan is potentially another factor influencing pursuit of this strategy that needs to be disclosed and vetted. Research indicates the presence of litigation financing in a case may deter settlement and increase the duration and cost of litigation.[2] Given the costs and delay "test cases" will introduce, the issue of the influence of litigation financing in this case needs to be explored.

On the other side of the coin are hundreds of claimants represented by law firms that do not represent Committee members. The Committee's counsel has previously explained that Committee members' counsel also represent 65 percent of the overall claimant body. Whether those non-Committee member clients and the other 35 percent of claimants support this strategy after full disclosure of its impact and the additional delay to resolution of their claims is uncertain. Discovery is appropriate to explore the degree to which the "test case" strategy prefers a privileged few claimants and law firms to the exclusion of others, thereby delaying a global resolution that benefits all.

Finally, authorizing "test cases" to proceed is highly likely to accelerate insurance coverage disputes and will necessarily lead to resumption of litigation in the previously-stayed insurance coverage adversary proceeding.

Joinder

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[1] *See* Order Granting Motion by Continental under Bankruptcy Rule 2019, *In re Diocese of Rochester*, No. 19-20905-PRW (May 23, 20233) (annexing the agreed protocol for the production of the Jeff Anderson firm's litigation financing agreement); *see also* UCC Financing Statement No. 123348900042, dated April 30, 2021 and as amended on December 7, 2021, on which "Jeff Anderson & Associates, P.A." is named as the debtor, attached hereto as Exhibit A.

[2] Third-Party Litigation Financing, U.S. Government Accountability Office Report to Congressional Requesters (Dec. 2022) at 20-21.

I. "Test cases" are not equivalent to a tort-system bellwether process.

There are two fundamental flaws with the asserted rationale for the "test case" strategy. First, the strategy implicitly rests on the proposition that "test case" verdicts will influence the insurers to pay more. However, because the "test cases" are not representative of all cases, and were not selected through a process designed to identity representative cases, the insurers will not treat any plaintiff's verdicts are representative of the whole universe of claims against Debtor. The insurers know that some claims may garner large verdicts but there are literally hundreds of claims that will not, whether because they are dismissed during motion practice, a jury fails to find for the claimant or fails to award a large amount, or responsibility for the verdict is allocated mostly to the perpetrator. Any tort-system bellwether process recognizes that reality, which is why the selection process typically allows each side to select cases to proceed. The Committee's proposal is that only cases selected by the Committee (or by some other undisclosed person or entity) will be tried. The one-sided process proposed here will provide no usable information and, as a result, will be ignored by Debtor and its insurers.[3]

Second, the "test case" strategy incorrectly assumes that tort-system verdict values can be fairly extrapolated to claims asserted in the bankruptcy case, even though the bankruptcy claims process features much lower barriers to entry and less vetting than a complaint filed in court. In civil litigation, a successful plaintiff supports his or her case with specific, credible allegations that assert a viable cause of action, adduces evidence in discovery, and proves the elements of the claim at public trial. In a bankruptcy case, a claimant submits only a short proof

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[3] *See* Federal Judicial Center Manual for Complex Litigation, Fourth (2004) § 22.315 ("If individual trials, sometimes referred to as bellwether trials or test cases, are to produce reliable information about other mass tort cases, the specific plaintiffs and their claims should be representative of the range of cases.").

of claim form in a confidential, protected setting. As has been found in other mass tort bankruptcies, "[a]buse claims will not be brought in the tort system unless the value is sufficiently high for law firms to make a reasonable return on investment and claimants to overcome their privacy concerns."[4] A "mass tort bankruptcy case with TDP that reduce the cost to present claims and at the same time assure relative confidentiality" is a forum that permits the filing of certain types of claims that "would not have been filed in the tort system."[5]

In this case, there are proofs of claim that were submitted but would be deficient if filed as complaints and pursued in a state court. For example, some do not name an abuser or provide no information as to the nature of the alleged abuse. Some name an abuser not identified by any other claimant or church records, leading to questions of whether the tort law element of foreseeability can be established. Discrepancies exist with respect to the allegations and documentary evidence such as where particular priests were assigned and when. Further, hundreds of proofs of claim were signed by attorneys rather than claimants themselves, raising issues as to whether the claim can be proven, and some were not signed by anyone at all. It is unclear whether any attorney would be willing to pursue certain of the claims on a contingency fee basis, given the challenges to prevailing. "Test case" verdicts provide no useful information regarding the purported value of such claims, which might never even get out of the gate in the tort system. For this reason, even a "balanced" process that allows a more evenhanded selection of cases is inappropriate because it disregards the reality that huge numbers of claims—upwards of 85%, according to the *Boy Scouts* confirmation ruling—would not have been pursued to

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4 *In re Boy Scouts of Am. & Delaware BSA, LLC*, 642 B.R. 504, 556 (Bankr. D. Del. 2022), *aff'd*, 650 B.R. 87 (D. Del. 2023), on appeal (3d Cir.).

5 *Id.* at 557.

judgment in the tort system.[6]

II. Alternatively, Discovery is essential.

The 17 claimants present their requested relief in short motions, supported only by attorney affidavits averring as to the status of the particular underlying suit and the claim that mediation has failed. The motions otherwise rely exclusively on the joinder and memorandum of law put forth by the Committee, which relies on unsupported assertions about the utility of "test cases," the supposed lack of prejudice to claimants generally, and the insurers' alleged obligations. Discovery into these areas, to vet the accuracy of the Committee's statements and the weight they should be accorded, is essential.

A. Selection of the so-called "test cases"

The Committee asserts that a consensual resolution has not yet been reached, and suggests that allowing 17 "test cases" to go forward will provide a "meaningful change in the dynamics of this case."[7] However, there is no explanation offered for ***how*** such change will be effectuated by litigating 17 individual, highly specific claims of alleged sexual abuse, out of an overall universe of over 900 other individual, highly specific abuse claims. The Committee argues that test cases will inform the parties as to "the amount of damages a jury will award Sexual Abuse Claimants in the State Court Actions."[8] In order for that to be true, there must be some reason to think that the 17 cases are in some way representative of the overall body of 900+ claims. The Insurers are entitled to test that assertion in discovery. If the Committee cannot adduce evidence to demonstrate why trials of the claims of these 17 claimants can be expected to provide

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6 *Id.* at 557 n.255.

7 ECF 3161 ¶ 1.

8 *Id.* ¶ 32.

information that pertains to the rest of the claims, then the motion should be denied.

B. Prejudice to other claimants

The Committee argues that there is no prejudice to the other claimants by allowing the preferred 17 to move forward now. However, the Committee offers no support for this argument. Although each of the 17 movants dutifully recites that he "will not seek to enforce [his] judgment subject to further order of the Court," a creditor who obtains a judgment before 98% of the rest of the creditor body plainly has an advantage. At a minimum, if and when the other claimants are permitted to litigate their claims, they will face years of discovery and trial before obtaining their own judgments, while the 17 preferred claimants will demand immediate payment. Even if a trust is eventually established for the payment of claims, jury verdicts may influence the trustee or claim reviewer in setting a trust award because the claim will appear more credible, more fully vetted, and, possibly, more valuable. It is also possible, if not probable, that any holders of large judgments would negotiate preferential treatment of their judgments in exchange for votes. Post-*Purdue*, for a debtor seeking to obtain third-party releases, a fully consensual plan is required, giving these claimants additional leverage in negotiations. To the extent judgment holders receive favorable treatment, that would, at a minimum, dilute trust assets to the detriment of the other claimants.

More generally, the assertion that no prejudice flows from giving preferential treatment to 17 claimants over the hundreds of other claimants also asserting claims against the Debtor flies in the face of the principle that the automatic stay "benefits creditors ***as a group*** by preventing individual creditors from pursuing their own interests to the detriment of the others."[9]

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[9] *City of Chicago, Illinois v. Fulton*, 592 U.S. 154, 157 (2021) (emphasis added).

Discovery into whether other claimants will be prejudiced by authorizing a small number to seek judgments, or whether there are other possible ways in which they could be prejudiced, is essential for a full and fair evaluation of the likely impacts on all claimants.

[redacted] That is potentially prejudicial to many of the other claimants in the bankruptcy case.

C. Tort system realities

The Committee intimates that the 17 preferred claimants' cases will proceed efficiently in state court, and on a reasonable timetable. Evidence must be presented to support

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10 *City of Johnstown, N.Y. v. Bankers Standard Ins. Co.*, 877 F.2d 1146, 1150 (2d Cir. 1989).

11 *Hartford Roman Catholic Diocesan Corp. v. Interstate Fire & Cas. Co.*, 905 F.3d 84, 91 (2d Cir. 2018) (evaluating specific details on dates of abuse, timing of the reporting, and whether notice to certain persons could be imputed to the diocese. *See also Diocese of Winona v. Interstate Fire & Cas. Co.*, 89 F.3d 1386 (8th Cir. 1996) (similarly evaluating an expected-or-intended defense by reviewing, in detail, facts concerning the knowledge of a diocese and an archdiocese about the abuses committed by a particular priest before he began abusing the plaintiff in the underlying action).

the assertion that prepetition suits will be on an expedited schedule or that the parties can move through discovery efficiently. Similarly, it is important to explore in discovery what the Committee's expectations are with respect to timetable. The unsworn speculation of a state court lawyer, Steve Boyd, at the September 24, 2024 hearing suggested that cases likely will take at least two years. A practicing Buffalo-based attorney who has handled approximately 100 CVA cases recently testified at trial in *In re Diocese of Rochester* that discovery in CVA cases is actually "more complicated" and "takes longer" than in a typical civil abuse case, that independent medical evaluations alone can take up to one year to schedule and complete, and that in general the goal of "fast tracking" CVA cases has not been borne out in practice.[12] These are important facts to have in the record when evaluating the requested relief, and only discovery can provide them.

D. Conflicts

Discovery is needed for the additional reason that the lift-stay motions present troubling potential conflicts of interest that must be explored and made public.

The Committee purporting to speak on behalf of all claimants consists of six creditors appointed by the U.S. Trustee. Each committee member is represented by his or her own attorneys specializing in personal injury litigation, who are often referred to as "state court counsel." Committee counsel has explained that it relies on the views of the "state court counsel who represent our six Committee members [and also] represent about 65 percent of the survivors out there."[13]

The state court counsel representing Committee members are: the Anderson firm;

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12 *In re Diocese of Rochester*, Case No. 19-20905, Trial Tr. at 226-32 (Bankr. W.D.N.Y. July 30, 2024), attached as Exhibit B.

13 *In re Diocese of Buffalo*, Hr'g Tr. at 49:24 (Nov. 28, 2023), attached as Exhibit C.

Chiacchia & Fleming LLP; the Law Offices of Mitchell Garabedian; the Merson Law Firm; and Pfau Cochran Vertetis Amala PLLC and the Marsh Law Firm. Each of the state court counsel also represents claimants in this case who are not Committee members—in some instances, dozens or hundreds of such other claimants. As a preliminary matter, none of these state court counsel have filed the mandatory disclosures required by Bankruptcy Rule 2019. Bankruptcy Rule 2019 exists to promote transparency where a single law firm represents multiple clients in a Chapter 11 case. It "is the Bankruptcy Code's mechanism for keeping tabs on multiple representation of creditors"[14] and, in the mass tort context, "to root out conflicts of interest."[15] The rule "is designed to foster the goal of reorganization plans which deal fairly with creditors and which are arrived at openly."[16] As such, it is mandatory in every case. Yet, here, not a single firm in this case has complied.[17] At a minimum, the Court should not hear the lift-stay motions until the law firms filing the motions have complied with the Rule.

The concern with joint and overlapping representations is that the lawyer will owe competing obligations to differently situated clients. Rule 1.8 of the New York Rules of Professional Conduct articulates the problem in the context of aggregate settlements, which prohibits lawyers from representing multiple clients "in making an aggregate settlement of the

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14 *See* Nancy B. Rapoport, *Turning and Turning in the Widening Gyre: The Problem of Potential Conflicts of Interest in Bankruptcy*, 26 CONN. L. REV. 913, 939-40 (1994).

15 *Baron & Budd, P.C. v. Unsecured Asbestos Claimants Comm.*, 321 B.R. 147, 168 (D.N.J. 2005). *See also In re F&C Int'l, Inc.*, 1994 Bankr. LEXIS 274, at *8 (Bankr. S.D. Ohio Feb. 18, 1994) (failure to comply with Rule 2019 creates a danger that "parties purporting to act on another's behalf may not be authorized to do so and may receive distributions to which they are not entitled").

16 *Baron & Budd*, 321 B.R. at 165, quoting 9 COLLIER ON BANKRUPTCY ¶ 2019.01 (emphasis added). *See also In re Northwest Airlines Corp.*, 363 B.R. 701, 704 (Bankr. S.D.N.Y. 2007) ("The Rule is long-standing, and there is no basis for failure to apply it as written").

17 Concurrently herewith, Continental is filing a motion asking the Court to order all state court counsel to immediately comply with Rule 2019.

claims of or against the clients, absent court approval, unless each client gives informed consent in a writing signed by the client," because aggregate settlements

> inherently creat[e] conflicts for lawyers and prevent[ ] lawyers from obtaining settlements covering multiple clients without receiving the approval of each client. If a group settlement is to be achieved by compromising one client's claim for a lesser amount than would have been possible had that client's claim been settled separately, the lawyer has a conflict in deciding which client to favor and the client who may be making this sacrifice should know and consent.[18]

Although there is no settlement here, the "test case" strategy is ostensibly in service of pursuing one. Formal Opinion 2020-3 of the New York Committee on Professional and Judicial Ethics is crystal clear that the prohibition against aggregate settlements without consent applies to negotiations, not just settlements.[19] The proposed "test case" strategy overtly provides that certain state court counsel will favor one client over other clients, seemingly in derogation of what ethics would require. At a minimum, there would need to be disclosure and consent to all clients before state court counsel could ethically advance such a strategy.

The Committee's brief underscores another significant way in which claimants represented by the same counsel have conflicting interests: some allege abuse during periods of time for which the Debtor has insurance coverage, while others allege abuse during periods of time for which there is no insurance. Depending on how this bankruptcy case is resolved, this is a clear conflict of interest among claimants. Claimants who may eventually be able to recover against insurance may prefer to seek and enforce judgments, while claimants who can only obtain compensation from the Debtor's limited funds are likely to be far more interested in preserving estate resources to maximize a settlement fund. Perhaps unsurprisingly, all of the claimants

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[18] New York Rule of Prof'l Conduct 1.8(g). *See also* Model Rule of Prof'l Conduct 1.8(g).

[19] New York Committee on Professional and Judicial Ethics, Formal Opinion 2020-3.

seeking to pursue a "test case" allege abuse that appears to trigger at least one solvent insurance policy. This is also another respect in which the "test cases" are not representative, given the large number of claims that are not insured because Debtor has no pre-1973 coverage.

Compounding the ethical challenges presented by this case and the requested relief are the likely fee arrangements between claimants and counsel, which would give the lawyers a direct economic stake in the outcome of this bankruptcy case.[20] Assuming these lawyers are working on contingency fees, they potentially could claim the right to be paid millions of dollars in fees. Indeed, the Anderson firm filed hundreds of proofs of claim on behalf of claimants and filed 11 of the 17 lift-stay motions. The bankruptcy judge in *In re Archdiocese of Saint Paul & Minneapolis* recognized that the Anderson firm had "a bigger economic interest" in that case than anyone else.[21] The Anderson firm, and all other state court counsel, are obligated to disclose all of their representations under Rule 2019, but they have not done so here—and they cannot claim ignorance of the requirements of Rule 2019 because they have been expressly ordered to comply with the Rule in other cases, including *Diocese of Rochester* and *Diocese of Camden*.

The Anderson firm is also party to a litigation financing agreement. Other state court counsel might also be parties to litigation financing. It has been recognized that such outside financing by third parties can distort the incentives of counsel. A recent Government Accountability Office report identified concerns with third-party litigation funding that may be relevant here, including that litigation financing may deter settlement and increase the duration

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[20] In other diocesan bankruptcies, firms who also represent claimants in this case filed Rule 2019 disclosures revealing contingency fee percentages of 35% (*Archdiocese of Saint Paul & Minneapolis*) and 33 1/3% (*Diocese of Rochester* and *Diocese of Camden*).

[21] *In re Archdiocese of Saint Paul & Minneapolis*, No. 15-30125, Dkt. 987, Hr'g Tr. 36:8-12 (Bankr. D. Minn. Feb. 23, 2017).

and cost of litigation.[22] Because third-party litigation funding is expensive, the funded entity "may seek extra money to make up the amount that has to be repaid."[23] The Anderson firm is such a funded entity that may be seeking "extra money" to repay its litigation financers, the firm almost certainly has considerable influence over its clients, and it represents two of the six Committee members. Discovery into the incentives that may be driving Anderson, and any other state court counsel who are party to financing arrangements, is an important piece of the overall picture.

The Court cannot just take the Committee's word that there are no conflicts and that all creditors support its strategy, because it is unclear to what extent the Committee can speak on behalf of the creditor body as a whole. "[S]tatutory unsecured creditors committees owe a fiduciary duty to the entire class of creditors represented by such committee and are required to place the collective interest of the class they represent above their own personal stake in the bankruptcy case."[24] However, here, all 17 lift-stay motions were filed on behalf of state court counsel representing Committee members, and those state court counsel represent a majority of the Committee members (five of six members). Two of the lift-stay movants are themselves Committee members. There is no word on whether the remaining 35 percent of claimants have any say in this strategy, or whether they even know it is being deployed.

For all of these reasons, discovery into the assertions in the Committee's brief, including that the claims selected are representative, that there is no prejudice to other claimants, and that the "test case" strategy supports the entire creditor body, is needed. At a minimum, the parties need time to explore the selection process for the 17 claims being put forward, and the

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22 Third-Party Litigation Financing, U.S. Government Accountability Office Report to Congressional Requesters (Dec. 2022) at 20-21.

23 *Id.*

24 *In re Residential Cap., LLC*, 480 B.R. 550, 559 (Bankr. S.D.N.Y. 2012).

potential conflicts of interest between those claimants and other creditors represented by the same attorneys.

III. Allowing "test cases" to proceed would require insurance coverage litigation now.

The Committee asserts that the insurers must defend the 17 claims "without reservation." As a matter of New York insurance law, insurers are not obligated to defend "without reservation." An insurer's defense obligation is triggered by the *potential* for coverage based on allegations at the beginning of a suit or claim. The insurers have also disclaimed any coverage for some of the claims. Moreover, as facts are uncovered during discovery, it may become clear that there is no coverage for any number of reasons, including that the alleged injury did not actually occur during the policy period, that there was no bodily injury within the meaning of the policy, that there was late notice of the claim, that the liable entity does not qualify as an insured under the policy, or that the injury was not caused by accidental conduct within the meaning of the policy. An insurer does not have to continue to defend once it is clear the potential for coverage no longer exists.

In addition, multiple claims held by the movants allege abuse during periods where the coverage is either insolvent or unknown. Under New York law, insurers may pay only their *pro rata* share of defense costs.[25] However, as a practical matter, the defense must be fully funded because no defense counsel would agree to work for only partial payment. Accordingly, for some of the claims, the Debtor could be required to fund a portion of the defense costs. Alternatively, an insurer who funds the entire defense even though it is obligated to pay only a pro rata share

[25] *Am. Precision Indus., Inc. v. Fed. Ins. Co.*, 2023 WL 8014382, at *6 (W.D.N.Y. Nov. 20, 2023) (finding conflicting New York authority regarding pro rata allocation of defense and certifying the question).

would have an administrative expense claim against the estate for Debtor's share of the defense costs. Either way, defending these claims will consume Debtor's available assets, reducing the assets available for all claimants to share.

The foregoing examples are all reasons why, to protect its rights, the court may be asked to allow the insurance coverage adversary proceeding to be restarted if the "test cases" proceed.[26] That presents risk to all of the claimants because any finding of no coverage (or limited coverage) will diminish the available funding to pay claims—particularly since Debtor has dwindling resources and no insurance prior to 1973. There is no dispute that some claimants may be awarded significant sums by a jury if they proceed through trial, but there is substantial doubt as to whether anyone will be obligated to pay those amounts in part or in full, in particular if the insurance coverage adversary proceeding is litigated to conclusion and no or only limited coverage is found. For this reason, global settlement is a far better outcome for the claimants than litigation.

Conclusion

The Insurers join the Debtor's objection and reserve the right to be heard at the hearing to consider the lift-stay motions.

Dated: October 8, 2024

Respectfully submitted,

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[26] *See* Decision and Order Dissolving Judicial Stay of Deadlines in Adversary Proceeding and Terminating Mediation Order, *In re Diocese of Rochester v. The Continental Insurance Company, et al.*, No. AP 19-2021-PRW (Dkt. No. 233) at 4 (Apr. 25, 2023) ("The harm to [the insurers] by continuation of the Court's stay of litigation in the Adversary Proceeding now substantially and manifestly outweighs any harm to . . . the abuse victims who, through their attorneys, have announced their intention to accept the considerable risks of litigation.").

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EXHIBIT A

[redacted]

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1a. ORGANIZATION'S NAME
Jeff Anderson & Associates, P.A.

OR

1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
366 Jackson Street, Suite 100	**St. Paul**	**MN**	**55101**	**USA**

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME
Kensal Green LLC

OR

3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
Corporation Trust Center, 1209 Orange St.	**Wilmington**	**DE**	**19801**	**USA**

4. COLLATERAL: This financing statement covers the following collateral:

All of the Debtor's right, title and interest in the Net Proceeds (as defined in Exhibit I) received or to be received in connection with certain lawsuits against the Church (as such terms is defined in the Loan Agreement), Boy Scouts of America and affiliated entities, and/or other defendants in respect of certain lawsuits, claims and proceedings regarding sexual abuse allegations, as set forth in that certain Loan and Security Agreement, dated as of November 30, 2020, by and among the Secured Party and the Debtor listed in this Financing Statement (as the same may be amended from time to time, the "Loan Agreement").

Please see Exhibit I to this Financing Statement for the definition of the Net Proceeds and related terms.

5. Check only if applicable and check only one box: Collateral is ☐ held in a Trust (see UCC1Ad, item 17 and Instructions) ☐ being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box: ☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box: ☐ Agricultural Lien ☐ Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:
File in MN; Debtor: Jeff Anderson & Associates, P.A.; Secured Party: Kensal Green LLC

EXHIBIT I

"Net Proceeds" means all amounts, including amounts of Proceeds, payable to the Borrower by a Claim Owner or any other Person (as defined in the Loan Agreement) under or in connection with any Retention Agreement or otherwise in connection with any Claim, including any payment for Claim-Related Expenses payable to the Borrower by a Claim Owner or any other Person. "Net Proceeds" shall also include any and all amounts received or to be received by the Borrower from any Defendant or its Affiliates (as defined in the Loan Agreement) in connection with the pursuit by the Borrower of any Claim, whether or not such amount was paid or received for or on behalf of a Claim Owner, and including if such amount was paid or received in connection with a lawsuit or bankruptcy or other legal proceedings that is similar to, or pertains to the general subject matter of, any Claim (even if not itself a Claim), including any amounts received by Borrower as a "common benefit".

"Proceeds" means any and all gross, pre-Tax monetary recoveries, payments, amounts, properties, rights, reimbursements, damages, awards, interest, and the value of any other consideration of any type, received or to be received, directly or indirectly, by or on behalf of a Claim Owner, any of its Affiliates, related Persons, agents, estate, heirs, trustees, representatives, or any of their respective successors or assigns (or that otherwise are owed or inure to the benefit of any of the foregoing), in connection with activities covered by each Retention Agreement with each respective Claim Owner, including directly or indirectly from the Defendants, other entities contributing to a settlement, or the Claims, or otherwise in connection with any Claim.

"Claim" or "Claims" means the meritorious lawsuits, bankruptcy claims and other bankruptcy proceedings, or other legal proceedings by Claim Owners against the Church, Boy Scouts of America and affiliated entities, and/or any other Defendant, including those contemplated by the Retention Agreements, all other lawsuits, claims and proceedings by clients of the Borrower based on sexual abuse allegations, and all New Claims, and all efforts or actions by the Borrower on behalf of a Claim Owner or its Affiliates to pursue legal claims in litigation or arbitration, including threatened or actual legal claims, actions, suits, causes of action, or proceedings before any arbitration panel, tribunal or any supranational, national, state, municipal, or local entity or governmental authority, whether located within or outside the United States.

"Claim Owner" means a client of the Borrower and such client's Affiliates that are parties to a Claim, including as set forth on Exhibit B (Claims and Fees) to the Loan Agreement and including a client and such client's Affiliates with respect to a New Claim. The definition of Claim Owner includes any additional or successor Person that is subject to any Retention Agreement or from which the Borrower is entitled to receive Proceeds, either directly or indirectly through another law firm with which the Borrower has an agreement related to such Person's Claim.

"Claim-Related Expenses" means costs and expenses incurred by the Borrower related to the Claims, including fees, costs and expenses of outside counsel and any other costs and expenses, including those to be reimbursed to the Borrower under the Retention Agreements.

"New Claim" means a meritorious lawsuit, bankruptcy claim or other bankruptcy proceeding, or other legal proceeding by a new client of the Borrower (which client shall be deemed a Claim Owner hereunder with respect to such New Claim) in connection with the same general subject matter of the Claims, and with respect to which the Borrower enters into a retention agreement whereby the Borrower will conduct legal proceedings in relation thereto on behalf of such Claim Owners in return for a share in any recovery in such proceedings.

"Defendants" means, individually and collectively, the defendants named in each Claim, as set forth on Exhibit B (Claims and Fees) to the Loan Agreement and in each New Claim, including the Church, Boy Scouts of America, any affiliated debtor or non-debtor entity, local councils, any trust or other entity set up in connection with bankruptcy proceedings (including after the completion of such proceedings), and all of

their respective predecessors, successors, subsidiaries, joint ventures, partnerships, Affiliates, insurers, assigns, and all additional persons against whom (i) legal claims or lawsuits are threatened, alleged, or asserted by the Borrower on behalf of any Claim Owner, or from whom the Borrower receives on behalf of any Claim Owner, directly or indirectly, Proceeds or (ii) against whom any portion of the proceeds of any Advance (as defined in the Loan Agreement) is used. The fact that a legal name has not been included under Exhibit B (Claims and Fees) to the Loan Agreement shall not exclude a Person from being a Defendant under this Agreement.

"Church" means the Catholic Church, any dioceses and archdioceses thereof, and any entities affiliated therewith.

"Referral Firm" means a lawyer or law firm that is not the Borrower, that referred a Claim Owner to the Borrower and is entitled to any share of Proceeds, Net Proceeds or other compensation under a Retention Agreement or other agreement.

"Retention Agreements" means the retention agreements the Borrower has entered into with the Claim Owners that are its clients in respect of each of their respective Claims, whereby the Borrower will conduct legal proceedings in relation to such Claims on behalf of such Claim Owners in return for a share of 30%-40% in any recovery in such proceedings. Upon the entering into a retention agreement with respect to a New Claim, such retention agreement shall also be deemed a Retention Agreement hereunder.

[redacted]

12762692

Filing Number: 1276269200036
Date: 12/07/2021
Time: 5:00 PM
STATE OF MINNESOTA
Office: Office of the Minnesota Secretary of State

UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. E-MAIL CONTACT AT FILER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

MN Public Record Specialists, LLC
PO Box 273
Cottage Grove, Minnesota 55016
www.mprsllc.net

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE NUMBER
1233438900042

1b. ☐ This FINANCING STATEMENT AMENDMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS
Filer: attach Amendment Addendum (Form UCC3Ad) and provide Debtor's name in item 13

2. ☐ TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to the security interest(s) of Secured Party authorizing this Termination Statement

3. ☐ ASSIGNMENT (full or partial): Provide name of Assignee in item 7a or 7b, and address of Assignee in item 7c and name of Assignor in item 9
For partial assignment, complete items 7 and 9 and also indicate affected collateral in item 8

4. ☐ CONTINUATION: Effectiveness of the Financing Statement identified above with respect to the security interest(s) of Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law

5. ☐ PARTY INFORMATION CHANGE:
Check one of these two boxes: AND Check one of these three boxes to:
This Change affects ☐ Debtor or ☐ Secured Party of record
☐ CHANGE name and/or address: Complete item 6a or 6b; and item 7a or 7b and item 7c
☐ ADD name: Complete item 7a or 7b, and item 7c
☐ DELETE name: Give record name to be deleted in item 6a or 6b

6. CURRENT RECORD INFORMATION: Complete for Party Information Change - provide only one name (6a or 6b)

6a. ORGANIZATION'S NAME

OR

6b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

7. CHANGED OR ADDED INFORMATION: Complete for Assignment or Party Information Change - provide only one name (7a or 7b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name)

7a. ORGANIZATION'S NAME

OR

7b. INDIVIDUAL'S SURNAME

INDIVIDUAL'S FIRST PERSONAL NAME

INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

7c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

8. ☑ COLLATERAL CHANGE: Also check one of these four boxes: ☐ ADD collateral ☐ DELETE collateral ☑ RESTATE covered collateral ☐ ASSIGN collateral

Indicate collateral:

All of the Debtor's right, title and interest in the Net Proceeds (as defined in Exhibit I) received or to be received in connection with certain lawsuits against the Church (as such term is defined in the Loan Agreement), Boy Scouts of America and affiliated entities, and/or other defendants in respect of certain lawsuits, claims and proceedings regarding sexual abuse allegations, as set forth in that certain Loan and Security Agreement, dated as of November 30, 2020, by and among the Secured Party and the Debtor listed in this Financing Statement, as amended as of December 3, 2021, and as may be further amended. See attached Exhibit I for a description of Net Proceeds and related terms.

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT: Provide only one name (9a or 9b) (name of Assignor, if this is an Assignment)
If this is an Amendment authorized by a DEBTOR, check here ☐ and provide name of authorizing Debtor

9a. ORGANIZATION'S NAME
Kensal Green LLC

OR

9b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

10. OPTIONAL FILER REFERENCE DATA:
File in MN; Debtor: Jeff Anderson & Associates, P.A.; Secured Party: Kensal Green LLC

EXHIBIT I

Collateral: All of the Debtor's right, title and interest in the Net Proceeds (as defined below) received or to be received in connection with certain lawsuits against the Church (as such term is defined in the Loan Agreement), Boy Scouts of America and affiliated entities, and/or other defendants in respect of certain lawsuits, claims and proceedings regarding sexual abuse allegations, as set forth in that certain Loan and Security Agreement, dated as of November 30, 2020, by and among the Secured Party and the Debtor listed in this Financing Statement, as amended in Amendment No. 1 to Loan and Security Agreement between such parties dated December 3, 2021, and as may be further amended from time to time (the "Loan Agreement").

"Net Proceeds" means all amounts, including amounts of Proceeds, payable to the Borrower by a Claim Owner or any other Person (as defined in the Loan Agreement) under or in connection with any Retention Agreement or otherwise in connection with any Claim, including any payment for Claim-Related Expenses payable to the Borrower by a Claim Owner or any other Person. "Net Proceeds" shall also include any and all amounts received or to be received by the Borrower from any Defendant or its Affiliates (as defined in the Loan Agreement) in connection with the pursuit by the Borrower of any Claim, whether or not such amount was paid or received for or on behalf of a Claim Owner, and including if such amount was paid or received in connection with a lawsuit or bankruptcy or other legal proceedings that is similar to, or pertains to the general subject matter of, any Claim (even if not itself a Claim), including any amounts received by Borrower as a "common benefit".

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"Claim" or "Claims" means the meritorious lawsuits, bankruptcy claims and other bankruptcy proceedings, or other legal proceedings by Claim Owners against the Church, Boy Scouts of America and affiliated entities, and/or any other Defendant, including those contemplated by the Retention Agreements, all other lawsuits, claims and proceedings by clients of the Borrower based on sexual abuse allegations, and all New Claims, and all efforts or actions by the Borrower on behalf of a Claim Owner or its Affiliates to pursue legal claims in litigation or arbitration, including threatened or actual legal claims, actions, suits, causes of action, or proceedings before any arbitration panel, tribunal or any supranational, national, state, municipal, or local entity or governmental authority, whether located within or outside the United States.

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"New Claim" means a meritorious lawsuit, bankruptcy claim or other bankruptcy proceeding, or other legal proceeding by a new client of the Borrower (which client shall be deemed a Claim Owner hereunder with

respect to such New Claim) in connection with the same general subject matter of the Claims, and with respect to which the Borrower enters into a retention agreement whereby the Borrower will conduct legal proceedings in relation thereto on behalf of such Claim Owners in return for a share in any recovery in such proceedings.

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EXHIBIT B

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW YORK

----------x

In Re: **Case No.:2-19-20905-PRW**

The Diocese of Rochester
aka The Roman Catholic Diocese of Rochester,

Debtor.

----------x

THE CONTINENTAL INSURANCE COMPANY,
successor by merger to Commercial Insurance Company of Newark, New Jersey, and Fireman's Insurance Company of Newark, New Jersey,

Plaintiff,

v. **A.P. No.:2-23-02014-PRW**

THE DIOCESE OF ROCHESTER,

Defendant.

----------x

BENCH TRIAL **Rochester, New York**
VOLUME II **July 30, 2024**

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE PAUL R. WARREN
UNITED STATES BANKRUPTCY JUDGE

TRANSCRIBER: Diane S. Martens
dmartensreporter@gmail.com

(Proceedings recorded by electronic audio recording, transcript produced by computer.)

A P P E A R A N C E S

FOR PLAINTIFF:	PLEVIN & TURNER LLP BY: MARK D. PLEVIN, ESQ. San Franciso, California 94104 BY: MIRANDA TURNER, ESQ. Washington, D.C. 20006 -and- DAVID CHRISTIAN ATTORNEYS LLC BY: DAVID C. CHRISTIAN, II, ESQ. 105 W. Madison Street Suite 2300 Chicago, Illinois 60602
FOR DEBTOR:	BOND, SCHOENECK & KING, PLLC BY: GREGORY J. McDONALD, ESQ. BY: STEPHEN A. DONATO, ESQ. BY: CHARLES J. SULLIVAN, ESQ. BY: GRAYSON T. WALTER, ESQ. One Lincoln Center Syracuse, New York 13202
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SPECIAL INSURANCE COUNSEL:	BURNS BAIR LLP BY: JESSE J. BAIR, ESQ. BY: NATHAN KUENZI, ESQ. 10 E. Doty Street, Suite 600 Madison, Wisconsin 53703-3392

P R O C E E D I N G S

* * *

(Open court:)

THE CLERK: United States Bankruptcy Court is now in session.

The Honorable Paul R. Warren presiding.

JUDGE WARREN: Good morning, please be seated.

Are we ready to proceed again?

UNIDENTIFIED SPEAKER: We are your Honor.

JUDGE WARREN: Before we get started, I just would ask if you have your cell phones in here, if you could be a little bit courteous and discreet. If you need to check your email, kind of keep it down in your lap. There were people, particularly late in the afternoon yesterday, holding their cell phones up in front of their face and it's distracting to me, and I know it's discourteous to the witnesses who are looking that way so, you know, just be cool with it, Mr. Plevin.

MS. TURNER: CNA calls Julia Hilliker.

JUDGE WARREN: Okay.

JULIA HILLIKER, ESQ., called as a witness, being duly sworn, testified as follows:

THE CLERK: Thank you. You can have a seat.

JUDGE WARREN: Good morning, Ms. Hilliker. How are you today?

THE WITNESS: Good morning.

How are you, your Honor?

JUDGE WARREN: Good. It's nice to meet you.

Counsel.

MS. TURNER: Thank you.

DIRECT EXAMINATION BY MS. TURNER:

Q Good morning, Ms. Hilliker, where are you employed?

A Hodgson Russ.

Q And are you a practicing lawyer?

A I am.

Q What is your title?

A Partner.

Q Can you describe your practice, please?

A Yes. I have been a later for 19 years. I do a mix of business litigation, environmental toxic torts and then sexual harassment or CVA claims.

Q Where did you go to law school?

A Notre Dame.

Q When did you graduate?

A 2005.

Q Can you describe in a little bit more detail your experience litigating child sexual abuse claims, please?

A Yes. Since I started practicing, my practice has

consisted of a variety of claims of sexual abuse involving children involving different institutional defendants whether that be churches, schools, foster care agencies, that type of thing. In those cases, many are current day or they were brought at the time that the minor achieved the age of majority, 18 to 21, somewhere in that timeframe more relatively recent.

With the passage of the CVA, that changed and obviously opened the window for older claims. When that transpired, we had a huge influx of cases and so for a while probably 80, 90 percent of my practice consisted of those claims.

Q Are you a litigator?

A I am.

Q Do you have clients who are public school systems?

A Yes.

Q Do you have clients who are Catholic churches?

A No.

Q Do you have clients who are other religious entities, other churches?

A Yes.

Q Other categories of clients?

A Foster care agencies, child youth organizations, clubs.

Q And can you describe your experience specifically

with the New York Child Victims Act, please?

A I started following the legislation before it was passed, as did most litigators in the area. When it was passed, we saw a tremendous influx of cases within the first year. We probably had 75 or 80 cases that I was actively working on and a few more that others in my firm were actively working on. The window was extended for a year due to the pandemic and there was another influx of cases in that upcoming year. And I've litigated from beginning to end, I think approximately 66, maybe 67 now, and I have another 25 still open.

Q So your 66 to 67, have those cases resolved?

A They have in one form or another, yes.

Q Were some resolved by settlement?

A Yes.

Q And some resolved in other ways?

A Yes, some were resolved on motion practice.

Q And you mentioned active cases now. About how many?

A Approximately 25 at the moment.

Q Okay. And what aspects of the cases do you handle?

A I have handled them from beginning to end. When it started because when we were in the throws of the pandemic, I was doing essentially everything myself. As we sort of adapted, I was able to push more to associates and paralegals

but I've handled everything from answers to discovery to court appearances, depositions, motions and preparation for trial.

Q What about appeals?

A Yes. We handled the appeals, as well.

Q Were you retained in this case by CNA?

A I was.

Q What was your assignment?

A To discuss overall the CVA litigation, how it's handled, what defenses, if any, are available.

Q Did you prepare a report?

A I did.

Q And did you select the issues and conclusions that you included --

A I did.

Q -- in that report?

A I did.

Q Ms. Hilliker, you mentioned the CVA a couple of times but when was the law actually passed?

A I believe the legislation was passed in February of 2019 with the window to open in August of 2019.

Q And is that the window opened in August of 2019?

A Yes.

Q What was the initial expectation for how CVA suits would proceed in the state court system?

A The initial expectation is that they would be put on sort of an expedited program, if you will, following sort of the asbestos model that they had.

So the idea was that they would assign one judge in each judicial district, or two depending on how many the district was, to handle all of those cases and that that would be that judge's entire docket. The judges were then trying -- they had a schedule where they were trying to put everyone on sort of a 30-, 60-, 90-day clocks to get the cases up and running and the goal was to conclude them with a trial within 18 months to 2 years.

Q And how did that wind out playing out?

A That did not work out, both because the pandemic interfered but also because the sheer volume of cases were more than I think the courts could handle and there were issues presented in the cases such as, you know, looking for old documents, identifying older witnesses that made it I am possible to stick to sort of the fast track schedule they had originally laid out.

Q Have there been delays as a result?

A Yes.

Q Do you know approximately how many CVA suits have been filed?

A I believe close to 11,000 statewide.

Q Do you know how many have proceeded to trial

against institutional defendants?

A I don't know an exact number but, based on my conversations and knowledge across the state, less than ten.

Q Turning to discovery and the process of litigating an actual CVA suit, when one is initiated and proceeds to litigation, does it proceed to discovery, as with any other civil case?

A It does.

Q Are there any special discovery or procedural rules that are applicable?

A In these cases, the judges in most districts have allowed interrogatories which are not part of the typical course in state litigation for a negligence-based cause of action. Typically it would be just a Bill of Particulars -- which are much less involved -- and then a deposition. In these instances, they have allowed for interrogatories, in addition to document demands. And the interrogatories are more comprehensive and require more work to respond to than a Bill of Particulars would.

Q Are there other ways in which discovery in a CVA case differs from a typical claim?

A I would say it's more complicated and it takes longer, just by virtue of the passage of time. So in a typical present-day sexual abuse claim, you generally know the universe of witnesses. It's a relatively recent event.

You have all of the documents because normal record retention policies keep documents for 7 to 10 years, or in the case of minors, often keep them until the minor's of age.

By contrast, in these cases they're so old that normal document retention policies, many of what would have been relevant documents, have been discarded, and, so, you're often looking in places you wouldn't typically have to look. For example, I had a case where plaintiff's counsel got a yearbook off eBay because the school no longer had it because it was so old.

So, in general, I would say that looking for and locating documents takes significantly longer and the same is true with witnesses often because they've moved to other parts of the country, they're employed by somebody else, or they're deceased.

Q What about with respect to depositions?

A Depositions, there tend to be, I would say, two things: One, there tend to be more of them and, two, we tend to push for them more in a present-day case. There tend to be more of them because in present-day cases, we might interview six people and then choose the witness with the most amount of knowledge to be deposed and that typically answers all of the other side's questions and we can move on to the next issue.

In these cases, because they're so old, we often

find witnesses who only have piecemeal knowledge, if you will, so they can speak to maybe one of nine issues but then I need eight other witnesses who maybe remember pieces and parts of those other issues in order to testify to those. So, the depositions tend to be more expensive in terms of tracking down and locating witnesses.

The other thing I would say is because of the age of most of the witnesses in these cases, there's a concern about using affidavits the way we would in a traditional case. We often tend to push for the deposition, both sides plaintiff and defendant, to preserve their testimony so that by the time the matter makes it to trial, if the witness is no longer living or no longer has capacity to testify, we've preserved their testimony in a way that's admissible.

Q Do discovery disputes occur in these cases?

A Yes.

Q And in your work can parties appeal from an adverse discovery ruling?

A They can. In New York State court, parties have the right to interlocutory appeals. So they can appeal from initial motions to dismiss, they can appeal from interlocutory discovery issues, all the way up through summary judgment and trial.

Q Can you tell me, Ms. Hilliker, what an independent medical evaluation is?

A Yes. Independent medical evaluations are commonly referred to, as shorthand, IMEs. But pursuant to the New York CPLR, a defendant is entitled to an independent medical evaluation where a plaintiff has made a claim of some type of injury, whether that's physical or emotional.

In these cases, it often involves hiring a neuropsychologist to evaluate the plaintiff's history, testimony, medical records, school records and to look at, for example, whether plaintiff has treated with other therapists, what those records reflect, whether the plaintiff has been subject to other types of abuse which, unfortunately, is common in these types of cases and how that other type of abuse has impacted them as opposed to the abuse that's the subject of the lawsuit.

Ultimately, after all the records have been collected, they're provided to the independent medical provider who's selected by the defendant. An appointment is scheduled. Plaintiff attends the appointment. Typically they will administer tests for half of the day, a batch of neuropsychological tests that are standard in the industry. And then there will be an interview for the second portion of the day.

The test results are sent out to be verified by another neuropsychologist. Once those are received back and verified, then the IME physician proceeds with a written

report that's ultimately provided to plaintiff's counsel.

Q About how long can this process take?

A From the time -- let me give it to you in steps, if that's okay.

First, we have to collect all of the medical records. So, typically we do that in the first round before we get to plaintiff's deposition. And that can take six to nine months, in and of itself, to collect the records to get ready for plaintiff's deposition. Depending on what's learned at plaintiff's deposition, they may identify other providers or different issues we weren't aware of that have other providers associated with them and then there's a whole second round of collection, if you will, that can take another three to six months.

In that timeframe, a defendant may elect to do an IME, in which case they send out the notice with a date. The providers in this area are limited and because of the influx and volume of cases, they tend to be booked a fair ways out. So it may be six or nine months before we can even get a date for the independent medical exam and then once that's conducted, the report is typically rendered within another 45 days. So it can be a year long process.

Q I think you mentioned the defendant selects the neuropsychologist. Who pays?

A The defendant.

EXHIBIT C

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In Re:	1-20-10322(CLB) Chapter 11
The Diocese of Buffalo, NY Debtor	November 28, 2023 Buffalo, New York
The Diocese of Buffalo, N.Y., Plaintiff, v. JMH 100 Doe, et al., Defendant.	A.P. 1-20-01016(CLB)

HEARING

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE CARL L. BUCKI
UNITED STATES BANKRUPTCY JUDGE

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(Proceedings recorded by electronic audio recording, transcript produced by computer.)

here is seeking a motion for stay relief right now to do --

THE COURT: So I'm --

MR. SCHARF: -- anything else.

THE COURT: -- interpreting your papers correctly --

MR. SCHARF: Yes.

THE COURT: -- that you're not looking for either a lifting of the stay --

MR. SCHARF: No.

THE COURT: Or a, or a declaration as to what is or is not covered by the stay?

MR. SCHARF: Correct. Correct. So, with respect to *Fogerty* if somebody wants to proceed in one of those cases and do something, they do that at their own peril.

THE COURT: Okay. Let me just break in for a moment to make this time available. And I know many of you are here in town any way on Wednesday and Thursday for mediation, but to do that, I had to adjourn a matter that was scheduled for 11:00. And I'll call it.

(**WHEREUPON,** there was a pause in proceedings.)

THE COURT: Just continue with your arguments if I haven't disrupted your train of thought.

MR. SCHARF: So we're back on the record in the Diocese of Buffalo case?

THE COURT: Yes.

MR. SCHARF: Okay, great.

So, then there's the second group which is this -- the question of what is joint insurance? What are the limits of the insurance? What's not going to be disputed with respect to the '73 to '86 policies highlighted on this wonderful chart is that defense costs do not deplete these policies. So payment of defense cost is not going to deplete the funds available to pay settlements or judgments. And the Committee's proposed a number of guardrails with respect to these cases.

One of the guardrails is nobody gets to enforce on a judgment without coming back to you. That's what Judge Glenn did in Rockville Centre. That's what Judge Warren did in the Diocese of Rochester. And Judge Glenn said, you know, the enforcement, the proceeds, when you're trying to get out the proceeds that may be joint proceeds or may be jointly owned by the Diocese and the Parish, you need to come back to the Bankruptcy Court to try and enforce that judgment and address that issue on a case-by-case basis based on all the facts in the case.

There are 800 some odd complaints. There's probably 500 some odd that would proceed without -- that don't name the Diocese. They're having this, this process where you can reduce the -- you can get a judgment to reduce it to a monetary amount but not enforce against an insurance policy or against the Parish will avoid the depletion of assets and

will avoid the risk that a property of the Diocese is going to be affected in terms of the insurance proceeds available to settle the fund.

So we need to make that very clear in terms of what we think is appropriate. And anybody proceeding should -- we would ask that any Order denying the Diocese's motion include a restriction on that enforcement. And Ms. Keller may have a different path but she can make her own argument.

And then there's the pre-'73 cases where there's no joint insurance -- that chart ends -- or begins '73. There's no joint insurance that we are aware of that the Diocese has produced. There is evidence of Parish by Parish insurance, different carriers with different Parishes. No centralized program. And pre-'73, there's no joint property that would be affected. So, letting the Diocese -- so there's no -- no reason to keep those cases pending.

I'm going to address some of the issues that Mr. Donato raised. We're three and a half years into this case, your Honor -- over three and a half. I think it's just a month over three and a half years. The Diocese filed its motion just about the three and a half year anniversary of the case.

Survivors represented through the Committee and the state court counsel who represent our six Committee members represent about 65 percent of the survivors out there. They have supported a stay in order to try to mediate -- to reach

a mediated settlement for three and a half years. We continue to agree and to move forward with mediation in good faith. There's a session scheduled for the next two days. Mediation and litigation are not mutually exclusive. We can walk and chew gum at the same time. So we remain committed to appearing in mediation. Every case in the world that is highly contentious -- many cases, every bankruptcy case I've been involved in, commercial, religious, based on sexual abuse -- the most contentious cases continue mediation until there's a settlement, even if there is ongoing litigation. And so we wanted -- we waited three and a half years to give survivors and the Diocese and its insurers a chance to negotiate a fair settlement that provides some measure of justice for survivors who were horrifically abused by clergy and other individuals from this Diocese, as well as its related entities are responsible.

The parties are not near a settlement at this time. If we were an inch away from the finish line, we would not be here asking for litigation to go forward. We would be trying to finalize a settlement.

The Diocese has referenced that it made substantial progress -- meaningful progress, whatever term they used -- with its carrier at a mediation session that did not include the Committee. We have no idea what that settlement is. We have no idea what that meaning of progress was and it's