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.	

CONTINENTAL'S MOTION TO COMPEL CLAIMANTS' ATTORNEYS TO MAKE MANDATORY RULE 2019 DISCLOSURES

The Continental Insurance Company hereby moves the Court for entry of an order (i) compelling all law firms that represent multiple claimants in this bankruptcy case to file the disclosures required by Bankruptcy Rule 2019 within ten days after entry of the Court's order and (ii) barring non-compliant law firms from negotiating or settling on behalf of claimants, disallowing all proofs of claim filed by the law firms, and issuing other relief as authorized by Rule 2019(e).

In support of this motion, Continental states as follows:

Compliance with Rule 2019 is mandatory, and its requirements are self-effectuating. Claimants' counsel know they are required to comply with the Rule—they have been ordered to do so in other cases—and they know how to comply with the Rule, as their disclosures in other cases demonstrate. Yet, more than four years into this case, not a single claimants' law firm has deigned to comply with their legal obligations under the Rule.

The fact that compliance with Rule 2019 is mandatory is sufficient by itself to justify grant of this motion and entry of an order providing the relief requested. However, Rule 2019 exists to promote transparency where a single law firm represents multiple clients in a Chapter 11 case, and that transparency is essential here. Debtor commenced this bankruptcy by

acknowledging "its moral obligation to compensate victims of abuse fairly and equitably."[1] Equitably compensating abuse victims may result in some claimants—for example, those who suffered more severe abuse—receiving higher settlement offers from a claimant trust (assuming a plan is eventually confirmed) than other claimants. Where, as here, claimants with different interests are jointly represented by a single law firm charged with negotiating the terms of a plan for their different claimant clients to vote on, the possibility of conflicts is obvious. It is exactly for this reason that Rule 2019 exists and mandates the disclosures required therein.

Compounding the need for Rule 2019 disclosure 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. 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 up to 33% (*Diocese of Rochester* and *Diocese of Camden*). Moreover, attorneys (rather than claimants themselves) signed substantial numbers of proofs of claim forms submitted in this bankruptcy, providing no assurance that the individual claimants reviewed or approved the filings, or even knew about them. Given the economic incentives the law firms have in this case, disclosure under the Rule is a must.

At least one law firm representing hundreds of claimants in this case also has litigation financing arrangements. The firm, Jeff Anderson & Associates, P.A. (the "Anderson firm"), was ordered by the court in *In re Diocese of Rochester* to disclose "financial arrangements including, but not limited to, litigation financing" pursuant to Bankruptcy Rule 2019.[2] That

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1 Dkt. No. 8 (first-day declaration of Debtor's Vicar General, Peter J. Karalus), ¶ 64.

2 *In re Diocese of Rochester*, Case No. 19-20905, Hrg Tr. at 9:15-17 (Bankr. W.D.N.Y. Apr. 19, 2023), attached as Exhibit A. *See also id.* at 9:8-25, 10:21-11:16; Order Granting Motion by Continental under

court explained that, "to the extent there are problematic arrangements out there, if any, that needs to be disclosed under 2019."[3] The same interpretation of what the rule requires is appropriate here, and disclosure of all relevant financial arrangements should be ordered.

Jurisdiction and Venue

This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408. The predicate for the relief requested herein is Bankruptcy Rule 2019.

Relevant background

The United States Trustee appointed seven creditors to serve on the Committee of Unsecured Creditors (the "Committee").[4] The Committee itself is represented by counsel that was approved by this Court on the basis of an application disclosing information about the terms of its engagement and compensation and affirming no conflicts.[5]

Each of the six current Committee members is represented by so-called State Court Counsel. The State Court Counsel firms are: the Anderson Firm; Chiacchia & Fleming LLP; the Law Offices of Mitchell Garabedian; the Merson Law Firm; and Pfau Cochran Vertetis Amala PLLC and the Marsh Law Firm. All of these firms represent multiple non-Committee members in addition to their Committee-member clients, and some represent dozens or

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Bankruptcy Rule 2019, *In re Diocese of Rochester*, Case No. 19-20905-PRW (May 23, 20233) (annexing the agreed protocol for the production of the Anderson firm's litigation financing agreement).

3 *See* Amended Appointment of Committee of Unsecured Creditors [Docket No. 2034].

4 *See* Dkt. Nos. 92 (UST's Appointment of Committee of Unsecured Creditors), 2034 (UST's Amended Appointment of Committee of Unsecured Creditors) (omitting one of the seven original Committee members).

5 Dkt. Nos. 195 (Committee's application to employ the Pachulski firm as counsel), 359 (order appointing the Pachulski firm as counsel).

hundreds of claimants. Many other firms also represent in excess of ten claimants, including Lipsitz Green Scime Cambria LLP, Slater Slater Schulman LLP, Herman Law, Phillips & Paolicelli LLP, and Fanizzi & Barr P.C. Yet, not a single one of these law firms have filed Rule 2019 disclosures.

More than 1000 sexual abuse proofs of claim were filed in this bankruptcy case. Certain law firms, including the Anderson firm, which represents hundreds of individual claimants, signed 100 percent of the claims on behalf of its clients. Its clients signed none.

Argument

Continental seeks an order from this Court mandating compliance with Rule 2019. The Rule is self-effectuating and requires disclosure, in the interests of complete transparency.[6]

A. Rule 2019 requires broad disclosures, including disclosure of any economic interests affected by a claim's disposition.

Rule 2019 "is the Bankruptcy Code's mechanism for keeping tabs on multiple representation of creditors"[7] and, in the mass tort context, "to root out conflicts of interest."[8]

Bankruptcy Rule 2019(b)(1) states:

In a chapter 9 or 11 case, a verified statement setting forth the information

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[6] Continental unquestionably has standing to seek this relief. *See, e.g.*, *Baron & Budd, P.C. v. Unsecured Asbestos Claimants Comm.*, 321 B.R. 147, 160 (D.N.J. 2005) ("the information sought in the Rule 2019 disclosures, does indeed bear on the overall fairness of this Plan, it is clear that Insurers have standing to raise these Rule 2019 compliance issues"). Further, the orders requiring compliance with Rule 2019 that were entered in *Diocese of Camden* and *Diocese of Rochester* were entered in response to motions filed by insurers. *See generally Truck Ins. Exchange v. Kaiser Gypsum*, 602 U.S. ___ (2024) (insurers are parties in interest with standing in Chapter 11 cases involving their policies).

[7] *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).

[8] *Baron & Budd*, 321 B.R. at 168. *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").

specified in subdivision (c) of this rule ***shall be filed by*** every group or committee that consists of or represents, and ***every entity that represents, multiple creditors*** or equity security holders ***that are (A) acting in concert to advance their common interests***, and (B) not composed entirely of affiliates or insiders of one another.[9]

Rule 2019(c) dictates that the "verified statement ***shall*** include:"

(1) the ***pertinent facts and circumstances*** concerning:

(A) with respect to a group or committee, . . . the formation of the group or committee, including the name of each entity at whose instance the group or committee was formed or for whom the group or committee has agreed to act; or

(B) with respect to an entity, the employment of the entity, including the name of each creditor or equity security holder at whose instance the employment was arranged;

(2) if not disclosed under subdivision (c)(1), with respect to an entity, and with respect to each member of a group or committee:

(A) name and address;

(B) ***the nature and amount of each disclosable economic interest held in relation to the debtor*** as of the date the entity was employed or the group or committee was formed; . . .

(3) if not disclosed under subdivision (c)(1) or (c)(2), with respect to each creditor or equity security holder represented by an entity, group, or committee . . . :

(A) name and address; and

(B) the nature and amount of each disclosable economic interest held in relation to the debtor as of the date of the statement; and

(4) ***a copy of the instrument, if any, authorizing the entity, group, or committee to act on behalf of creditors or equity security holders***.[10]

The Rule is clear, unambiguous, and mandatory. Its purpose is to hold lawyers involved in Chapter 11 bankruptcies "to certain ethical standards and approach all

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9 Emphasis added.

10 Emphases added.

reorganization related matters openly and subject to the scrutiny of the court."[11] To fulfill this purpose, the scope of Rule 2019 is, "on its face, . . . extremely broad."[12] It "applies to a group of creditors or equity security holders that act in concert to advance common interests . . . even if the group does not call itself a committee."[13] Law firms that file proofs of claim on behalf of multiple claimants are subject to Rule 2019 and must file a verified statement complying with the rule.[14] As the *Collier* treatise explains:

> The need in Chapters 9 and 11 for policing creditor groups and those who act on their behalf is greater than under other relief chapters. [Rule 2019] is part of the disclosure scheme of the Bankruptcy Code and is designed to foster the goal of reorganization plans which deal fairly with creditors and which are arrived at openly.[15]

In other words, Rule 2019 is meant "to further the Bankruptcy Code's goal of complete disclosure during the business reorganization process" and "was designed to cover entities which, during the bankruptcy case, act in a fiduciary capacity to those they represent, but are not otherwise subject to control of the court."[16]

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11 *Baron & Budd*, 321 B.R. at 165 (citations omitted).

12 *City of Lafayette v. Okla. P.A.C. First Ltd. P'ship (In re Okla. P.A.C. First Ltd. P'ship)*, 122 B.R. 387, 390 (Bankr. D. Ariz. 1990).

13 Rule 2019, Committee Notes on Rules—2011 Amendment.

14 *See, e.g.*, *Baron & Budd*, 321 B.R. at 168 (law firms representing multiple tort creditors must disclose information required under Rule 2019); *In re Wash. Mut., Inc.*, 419 B.R. 271, 275 (Bankr. D. Del. 2009) (members of an ad hoc committee must make Rule 2019 disclosures because they represent "multiple creditors holding similar claims," "filed pleadings and appeared in these chapter 11 cases collectively, not individually," and retained common counsel "that has never advised this Court that it is representing less than all the Group"); *In re N. Bay Gen. Hosp., Inc.*, 404 B.R. 443, 452 (Bankr. S.D. Tex. 2009) ("Any entity seeking to represent more than one creditor in a Chapter 11 case must file an application that conforms with" these requirements); *In re CF Holding Corp.*, 145 B.R. 124, 126 (Bankr. D. Conn. 1992) (an attorney representing multiple creditors must file a copy of the document empowering the attorney to act on the creditors' behalf).

15 *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").

16 *In re CF Holdings*, 145 B.R. at 126, citing 8 COLLIER ON BANKRUPTCY ¶ 2019.03 at 2019-4 (15th ed. 1992).

The requirements of the Rule are defined broadly, consistent with its purpose. For example, the term "disclosable economic interest" means "***any*** claim, interest, pledge, lien, option, participation, derivative instrument, or any other right or derivative right granting the holder an economic interest that is affected by the value, acquisition, or disposition of a claim or interest."[17] As the advisory committee notes to the Rule indicate, the term "is intended to be sufficiently broad to cover any economic interest that could affect the legal and strategic positions a stakeholder takes in a chapter 9 or chapter 11 case."[18] Similarly, questions of professional responsibility related to fee arrangements "qualify as pertinent facts and circumstances in connection with the employment of counsel, because they may have a direct bearing on both good faith and the fairness of the plan's classification system."[19] Finally, the Rule "requires that an entity must file an instrument which empowers the entity to act on behalf of the creditors. This includes an executed power of attorney authorizing counsel to file a proof of claim in this case."[20]

B. Rule 2019 disclosures are required to guard against the potential for conflicts and to ensure all parties are fully informed when a law firm represents multiple creditors in a Chapter 11 bankruptcy.

In addition to Rule 2019 imposing mandatory requirements, compliance with the

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17 Rule 2019(a)(1) (emphasis added).

18 Rule 2019, Committee Notes on Rules—2011 Amendment.

19 *Baron & Budd*, 321 B.R. at 165 (cleaned up); *In re Okla. P.A.C. First*, 122 B.R. at 393 (Rule 2019 was designed for courts to "play a role in ensuring that lawyers adhere to certain ethical standards").

20 *In re Ionosphere Clubs, Inc.*, 101 B.R. 844, 852 (Bankr. S.D.N.Y. 1989). *See also In re N. Bay Gen. Hosp., Inc.*, 404 B.R. at 453 ("Bankruptcy Rule 2019(a) also requires that the entity provide a copy of the instrument, if any, whereby the entity, committee, or indenture trustee is empowered to act on behalf of creditors") (internal citation and quotation marks omitted); *In re Enron Corp.*, 326 B.R. 497, 499 (S.D.N.Y. 2005) (noting that an entity's "failure to submit the required disclosures under Bankruptcy Rule 2019 raises the question of whether these unidentified [claimants] in fact have consented to this agency relationship in relation to the bankruptcy").

Rule is imperative because of the need for transparency and to avoid conflicts. There are dozens of law firms that represent multiple claimants who have filed proofs of claim in this bankruptcy case. The claims vary in terms of settlement value for many reasons, including severity and duration of the alleged abuse, degree of evidentiary support, legal defenses to liability, and available insurance coverage. Depending on how or to what extent a settlement trust is funded and how awards are allocated, claimants may effectively compete with one another for compensation. More immediately, as demonstrated in Continental's contemporaneously filed joinder to the Debtor's objection to 17 claimant lift-stay motions, certain claimants are seeking to litigate their claims now and obtain judgments, thereby obtaining preferential status while other claimants remain subject to the automatic stay. The interests of all these claimants appear to be in direct conflict, yet they are represented by the same counsel.

In addition to conflicts among claimants themselves, the claimants' law firms have their own interests in how compensation is allocated, depending on their fee arrangements, which raise the potential of conflicts with some or all of their clients. This reality is the reason behind Rule 2019's requirement that law firms' economic stakes, which in this case are undoubtedly significant, be disclosed. Assuming all or most of the firms representing claimants in this case are working on contingency, the lawyers potentially could claim the right to be paid millions of dollars in fees. For example, the Anderson firm filed more than 200 proofs of claim on behalf of claimants. As the bankruptcy judge noted while granting a similar Rule 2019 motion in *In re Archdiocese of Saint Paul & Minneapolis*, because the Anderson firm represented hundreds of claimants in that case on contingency, the law firm had "a bigger economic

interest" than anyone else in the case.[21] Other firms have filed dozens of claims in this case and their respective stakes could be similarly substantial.

Finally, the instruments authorizing the law firms to act on behalf of their clients must be disclosed. Certain firms signed 100% of the proofs of claim filed on behalf of claimants, rather than each claimant signing their own submission. Nothing has been disclosed demonstrating these firms' authorization to sign proofs of claim on behalf of clients. Rule 2019(c)(4) explicitly calls for disclosure of this information. Nor is there any indication as to how each firm verified the facts of the claims, or even if any verification took place.

C. This case presents exactly the situation the Rule is designed to address.

In *In re Archdiocese of Saint Paul & Minneapolis*, another diocesan sex abuse bankruptcy, the court granted the debtor's Rule 2019 motion and ordered the law firms involved—including the Anderson firm—to comply with Rule 2019, noting that counsel should have done so voluntarily.[22] As Judge Kressel explained to the firms, "you may not have set out to create a group, but you have a group. You have a group of clients who are acting in concert through you," and "there are different interests or different motivations or just different things going on, and so we need to know that. That's something the entire body of people, the court and lawyers need to understand."[23] In sum, "the rule, ***this is exactly the situation it's designed to***" address.[24]

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

22 *Id.* at 46:20-47:5 ("I mean this is not a new issue and the rule . . . is self-effectuating. We don't need an order. The Anderson firm should have complied with it two years ago[,] and they should have complied with it a year ago and six months ago. The fact that we're here now on the motion doesn't mean they no longer have to comply with the rule, so I think they have to comply . . . with the rule").

23 *Id.* at 48:23-49:3.

24 *Id.* at 48:13-15 (emphasis added).

In the *Diocese of Camden* case, a motion to compel Rule 2019 disclosures was filed out of similar necessity because the claimants' law firms, including five of the six State Court Counsel here, had not filed any of the requisite disclosures.[25] There, the claimants' attorneys did not even oppose the relief requested, and filed their disclosures shortly after a motion was filed seeking compliance with the Rule.[26]

In the *Diocese of Rochester* case, the court expressed surprise that "we're nearly four years into this case and not one of the state court personal attorneys have complied with Rule 2019."[27] The court then ordered disclosures under Bankruptcy Rule 2019 and specifically defined the required disclosures to include "financial arrangements including, but not limited to, litigation financing."[28]

In other words, the State Court Counsel know they are required to comply with Rule 2019 is required, they know what they need to do to comply with the Rule, but they have chosen to ignore the Rule. This motion should be completely unnecessary, but it is necessary here because of State Court Counsel's utter lack of compliance.

D. The Rule 2019 disclosures are critical to ensuring compliance with New York ethical rules applicable to interdependent, aggregate settlements.

The Rules of Professional Conduct governing New York attorneys negotiating aggregate settlements on behalf of multiple clients underscore that the disclosures required by

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25 *In re Diocese of Camden, New Jersey*, Case No. 20-21257-JNP, Dkt. No. 1311, Joint Motion to Compel the Claimants' Attorneys to Submit the Disclosures Required by Rule 2019 (Bankr. D.N.J. Mar. 14, 2022).

26 *See, e.g.*, Verified Rule 2019 Disclosure of Jeff Anderson & Associates, P.A., Dkt. No. 1350, *In re Diocese of Camden, New Jersey*, Case No. 20-21257-JNP (Bankr. D.N.J. Mar. 22, 2022). *See also* Rule 2019 Disclosure of Jeff Anderson & Associates, P.A., Dkt. No. 974, *In re Archdiocese of Saint Paul & Minneapolis*, Case No. 15-30125, (Bankr. D. Minn. Feb. 17, 2017).

27 *In re Diocese of Rochester*, No. 19-20905, Hr'g Tr. 7:1-3 (Bankr. W.D.N.Y. Apr. 19, 2023).

28 *Id.* at 9:15-17.

Rule 2019 are needed here. Rule 1.8 of the Rules of Professional Conduct provides that lawyers may not represent two or more clients "in making an aggregate settlement of the claims of or against the clients, absent court approval, unless each client gives informed consent in a writing signed by the client."[29] The comments to the rules recognize that 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.[30]

Formal Opinion 2020-3 of the New York Committee on Professional and Judicial Ethics is also crystal clear that the prohibition against aggregate settlements without consent applies to negotiations, not just settlements themselves.

A lawyer may not avoid the informed consent requirement through a claim of waiver: "a client may not waive her individual right to approve the terms of a proposed aggregate settlement that would, if accepted, bind her along with other parties jointly represented by the same counsel."[31] Under Rule 2019, disclosure around client consent should be part of the "pertinent facts and circumstances" in the claimants' counsel's verified statements.

Relief requested

A. Claimants' counsel must disclose their fee arrangements, instruments authorizing them to act, and other pertinent facts and circumstances.

This Court should order claimants' counsel to comply with all of the

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

30 *Id.*, citing N.Y. Rule of Prof'l Conduct 1.8, cmt. [13].

31 New York Committee on Professional and Judicial Ethics, Formal Opinion 2009-6. *See also* ABA Comm'n on Ethics & Prof'l Responsibility, Formal Op. 06-438 (2006) ("the informed consent required by the rule generally cannot be obtained in advance of the formulation of such an offer or demand").

requirements of Rule 2019 within ten days after entry of the Court's order, including by disclosing the following information:

(i) a verified statement listing all of the counsel's clients in this case, describing the pertinent facts and circumstances of the retentions, and attaching the engagement letters between the lawyer and clients;[32]

(ii) a certification by lawyers who signed proofs of claim on behalf of clients that they are authorized to do so, and attaching bankruptcy-specific powers of attorney or other instruments providing the authorization;[33]

(iii) disclosure of the fee arrangements between the lawyer and clients and any other pertinent facts or circumstances regarding "the nature and amount of each disclosable economic interest held" by each law firm in relation to the debtor;[34]

(iv) information about fee-sharing, co-counsel, retainer, referral, or other arrangements;[35]

(v) attaching, for each claimant, a copy of the instrument authorizing the law firm to act on behalf of the claimant; and

(vi) disclosing financial arrangements, including without limitation litigation financing agreements.

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32 Rule 2019(c).

33 *In re Ionosphere Clubs*, 101 B.R. at 853.

34 Rule 2019(c); *In re Archdiocese of Saint Paul & Minneapolis*, Dkt. No. 987, Hrg Tr. at 49:25–50:5 (requiring disclosure of "fee arrangement with each of those clients, whether it's hourly or contingent, includes costs and expenses . . . so that we can know what it is for each one of those clients"); *In re Semel*, 411 F.2d at 197 ("the conditions of employment and the amount of the fee do not come within the privilege of the attorney-client relationship").

35 Rule 2019(c)(1), (4); *In re Archdiocese of Saint Paul & Minneapolis*, Dkt. No. 984, Order at 1. *See also Baron & Budd*, 321 B.R. at 167 (finding these documents and the "precise nature of these relationships falls well within the literal language of the Rule as well as the Judge's discretion to apply the rule in these circumstances").

This information is consistent with disclosures required in *Archdiocese of St. Paul & Minneapolis* and *Diocese of Rochester* and made in both of those cases and *Diocese of Camden*, and should be provided here.

B. Counsel that refuse to comply should be subject to sanctions under Rule 2019(e).

Rule 2019(e) specifies the relief that a bankruptcy court may grant if an attorney fails to comply with the disclosure requirements of Rule 2019:

> (2) If the court finds such a failure to comply, it may:
>
> (A) refuse to permit the entity, group, or committee to be heard or to intervene in the case;
>
> (B) hold invalid any authority, acceptance, rejection, or objection given, procured, or received by the entity, group, or committee; or
>
> (C) grant other appropriate relief.

Rule 2019(e) authorizes this Court to bar noncompliant law firms from participating in negotiations and settlements on behalf of their claimant clients. "If there is a failure to comply with the disclosure provisions of Bankruptcy Rule 2019, the Court may, *inter alia*, refuse to permit the entity acting on behalf of the parties from being heard further in a Chapter 11 case."[36] In addition, the Court should disallow proofs of claim filed by any attorney that fails to timely comply with Rule 2019.[37]

Conclusion

For the reasons set forth above, Continental respectfully requests that this Court

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[36] *Okla. P.A.C.*, 122 B.R. at 390. *See also CF Holdings*, 145 B.R. at 127 (requiring supplemental filing).

[37] *See In re Vestra Indus., Inc.*, 82 B.R. 21, 22 (Bankr. D.S.C. 1987) (disallowing claims filed *en masse* by a union for failure to comply with Rule 2019, unless defects were cured); *In re Elec. Theatre Rests. Corp.*, 57 B.R. at 149 (upholding a claim objection because the entity filing the claim had not shown that it was authorized to act on behalf of claimants).

enter an order compelling the all law firms that represent multiple claimants in this case to file their required Rule 2019 disclosures within ten days after entry of the Court's order, (ii) if the law firms do not comply, applying Rule 2019(e) by, *inter alia*, barring them from negotiating or settling on behalf of claimants and disallowing all proofs of claim filed by the law firms, and (iii) granting such other and further relief as is just and proper.

DATED: October 8, 2024

Respectfully submitted,

By: */s/ Jeffrey A. Dove*

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EXHIBIT A

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In Re:	Case No.:2-19-20905-PRW Chapter 11
The Diocese of Rochester aka The Roman Catholic Diocese of Rochester Debtor,	Tax ID: 16-0755765
The Diocese of Rochester, Plaintiff, vs. The Continental Insurance Company, et al., Defendants.	A.P. No.: 19-02021(PRW) Rochester, New York

Hearing Held on April 19, 2023

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

APPEARANCES: STEPHEN A. DONATO, ESQ.
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ILAN D. SCHARF, ESQ.
TIMOTHY LYSTER, ESQ.
JEFFREY ANDERSON, ESQ.
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P R O C E E D I N G S

THE COURT: It's 11:00. We'll go ahead and get started with the matters related to the Diocese of Rochester, Chapter 11, case number 19-20905 and the adversary proceeding by the Diocese against a number of insurance carriers seeking declaratory relief at ECF 19-2021.

I've heard a number of appearances this morning.

Let me just quickly tell you the order in which I intend to go through things today. And then, so the record's clear, if you'd like, I'll let you put your appearances on the record as we get to the matters in which you are appearing.

The first matter the Court will address is the motion in the Adversary proceeding at ECF 216, which is a motion by CNA to terminate the judicially imposed stay and the mediation order to which the Diocese and the Committee have objected at ECF 229 and 230.

The next matter the Court would touch on is the motion in the main case at ECF 1960. That's the motion by CNA seeking compliance with Rule 2019.

Following that, to the extent we need to talk about it, the motion at ECF 1959, which is CNA's motion to compel a 2004 exam.

And then, last, is a housekeeping matters I understand

the parties at least want to talk about the scheduling of the claim objections filed by CNA and the Committee's motion that was filed at ECF 2063, seeking to dismiss those objections.

With that, I'll go through the appearances.

I have Mr. Scharf for the Committee.

Ms. Scott for the U.S. Trustee.

Mr. Obiala on behalf of London Market.

Mr. Lyster for the parishes.

Messrs Anderson and Finnegan for the Anderson law firm.

Mr. Dove and Mr. Plevin for CNA.

And Mr. Donato for the Diocese.

I know a couple other attorneys mentioned their appearances for carriers that are involved in the Adversary proceeding but that have not filed papers.

So, with that, does anybody have a problem with the order of the day that the Court has laid out in terms of how we'll handle or address the motions before the court?

MR. WINSBERG: Your Honor, I don't have an opposition to the Order.

I just wanted to point out, your Honor, that we were the ones -- not CNA -- that filed the Motion to Lift the Stay in the Adversary proceeding.

THE COURT: Oh, I'm sorry. I'm sorry about that.

With respect to the Motion to Lift the Judicial Stay -- and, again, I stand corrected -- by Interstate Fire &

Casualty, I've read the motion papers. I've read, obviously, the motion and the objections. I don't feel the need to hear oral argument. I've read your papers and my inclination is to simply tell you I'll take this under submission and issue a written decision as quickly as possible, within the next week or two.

Does anybody wish to be heard in response to that proposal?

MR. WINSBERG: Your Honor, we were prepared a short remark, rather than file a reply, short remark to the response that were filed and the issues raised.

If your Honor wants to take it on the papers without oral argument, I don't have an issue with that. We'll defer to your Honor but if that's the case, could we put a short reply on by tomorrow?

THE COURT: I really don't need it. I think the papers -- both the motion and the responses -- frame the issues up very clearly for the Court.

You know, as I said, I've spent a considerable period of time on all these matters over the last couple weeks. So I don't think that that will help the Court's decision making one way or the other, nor do I think it will harm the parties one way or the other. I think you've all done a fine job presenting the arguments of your various constituencies and I understand what the issues are. So I'm going to politely

decline your request.

MR. WINSBERG: Thank you, your Honor.

THE COURT: You're welcome.

Turning to ECF 1960, that's the motion seeking compliance with respect to Rule 2019 of the bankruptcy rules. That motion, I think, was CNA's motion. And based on submissions to the docket this morning, it appears that there may be a proposed revised order between CNA and the Committee resolving this motion.

And this, Mr. Dove and Mr. Scharf, I probably could use your help in understanding where we are.

MR. PLEVIN: Your Honor, this is Mark Plevin for Continental, if I could take this.

THE COURT: Of course.

MR. PLEVIN: This issue. We did file the Rule 2019 motion. There were no oppositions filed and, therefore, you know, the Court issued the order that we had filed with our solument (phonetic) to the motion.

Nevertheless, Mr. Scharf and I have spoken several times this week and late last week and Mr. Scharf asked for some modifications to the Order and we agreed to those modifications. And, so, at my request, Mr. Dove this morning filed the errata sheet style with further revised proposed order which reflects the changes that Mr. Scharf and I agreed to yesterday.

I'd rather just say for the benefit of the Court that the most significant change to the Order is that we agreed to allow lawyers and law firms who have to comply with Rule 2019 to submit exemplar engagement agreements rather than individual agreements with each claimant but they do have to let us know which of their clients signed each type of exemplar.

And by way of example, in the Camden case, the Anderson law firm filed a 2019 statement where they attached four different exemplar engagement agreements that they had entered into with their clients and then they filed a list that allowed us to identify -- not us, because we're not in that case -- but a lot of parties to identify which of the clients involved signed which of the four engagement letters. And so that's what we've agreed to with respect to exemplars.

The other thing I would note is that the parties also agree that if Continental feels that there's still an information gap once the 2019 statements have been filed, then we will have the right to pursue (phonetic) additional information if we think that's necessary.

And, otherwise, I think the order speaks for itself unless the Court has any questions.

THE COURT: Well, I guess I'm just going to make an observation I guess in the form of a question to Mr. Scharf to answer on behalf of state court personal injury attorneys.

How is it that we're nearly four years into this case and not one of the state court personal attorneys have complied with rule 2019?

MR. SHARF: Your Honor, I don't have an answer (indiscernible) to that. I think that there is an argument to be made -- I will say that there's an argument to be made, your Honor, that Rule 2019 talks about parties acting in concert and it's really designed for when you have, for example, a group of bondholders who hire an attorney, a financial adviser and come into a Chapter 11 case have to disclose what their economic interest is in the debtor and who was acting in concert.

Here, your Honor, the reality is that while these clients are represented by the same party, I think there's an argument to be said that they're not acting in concert.

In addition, your Honor, aside from engagement letters, the proofs of claim identify which clients are represented by which counsel. So we understand what they are asserting. And, frankly, these are all unliquidated claims so it's not like we need to know who bought what proportion of debt and who has what voting power with respect to a particular hedge (phonetic) of securities.

So, there's an argument to be made that it's unnecessary to file these things at this stage of the case. It's unnecessary given the information comes in in the proofs of

claim. But -- and that they're not, they don't fit squarely within Rule 2019. Rather than have that cite, we conferred with state court counsel and they will file these -- the statements.

I would ask for one modification, your Honor. I did raise this with Mr. Plevin. And since the first statement has been filed this morning as the hearing was beginning by Jeff Anderson and Associates and they disclosed by claimant number rather than claimant's initials. I hope that that satisfies the CNA and the Court because it provides the information sort of rather than requiring people to file initials and claimant number, we can just use the claimant number. But they do disclose exemplars of about eight different fee agreements, the date of the agreements, and these exemplars are attached.

And the other state court counsel will comply and we'll move forward.

THE COURT: Mr. Plevin.

MR. PLEVIN: Your Honor, I saw that email from Mr. Scharf this morning. As you know, it's early out here in California so I didn't have a chance to study it or respond to him.

Our interest is in understanding the representation information required by Rule 2019. So, I guess if the claim numbers are sufficient to give us some identifying

information, then I guess we have access to the proofs of claim under the charge of the Court's protective order. That may be adequate subject to our right to seek additional information as the order already provides.

THE COURT: Okay. In paragraph 2D, it ends with the phrase "or other arrangements when talking about fee sharing cocounsel retainer referral and the like".

Before you all submitted either late last night or early this morning the, I guess, settled Order, proposed settled Order, I had already marked up the Order with my requirements and I was inclined -- and I will float this out there, I suspect Mr. Scharf's not going to like it and I suspect Mr. Plevin is going to like it -- is to put a fine point on what "other arrangements" means.

And my addition would say: Or other financial arrangements including, but not limited to, litigation financing with third-parties providing in any way for the payment of the fees or costs of the lawyers and law firms described in Paragraph 2 above, together with copies of any documents that were signed in conjunction with creating that relationship or arrangement. And that seems to be consistent with what the District Court in New Jersey affirmed the Bankruptcy Court's order in the Burns case.

Why don't we put a finer point on what other arrangements we're talking about.

MR. SHARF: Your Honor, in terms of those litigation financing agreements -- and, you know, we'll turn to what we mean by litigation financing I guess shortly -- I mean are we talking about physical lines of credit that a law firm may have with a bank or are we talking about something more direct? And there's different types of litigation finance -- this, frankly, I don't think is a very big issue in this case. I think if we're going to be asked to be able to disclose financing arrangements -- which I think probably are, arguably, outside the scope of 2019 -- we should give them an opportunity to respond to that. Anecdotally or colloquially, I really don't think that that's a major issue in this case if we're talking about, you know, hedge funds that come in and say I am loaning you a hundred dollars secured by X, Y, Z case and I'm expecting to get double my money back at the end of the case, I just don't think that's a big issue here. It was an issue in other cases. It's often an issue in more mass tort type cases.

But I think the law firm should have the right to review that and respond to it if it's going to go in the order.

THE COURT: Then that would be my suggestion is if it's not a big deal in this case, then tell me what it is. And I don't mean right now. I mean, if they want to think about it. It's been suggested to me that it might be a big deal in this case. I don't know whether it is or not because,

frankly, I mean, you all have way more experience with mass tort cases than I do. I've not run into it before. So I don't know whether it's a big deal here. I'd like to know if it's out there, if to the extent it exists, it's, it's a nonstarter or whether it's a problem.

So, I'll throw that out there for you all to think about and if you need to put definitional terms on what that means for purposes of this order, that's fine. And maybe the way to do this is, you know, to mark 1960 as settled, stipulated order to follow, and you all put in whatever parameters you think are fair and reasonable for me to consider.

But I don't know what will the -- as the Order currently exists, I don't know what the phase "other arrangements" means. And I'd like to know if there's, if there are problematic, or potentially problematic, arrangements out there, I'd like to know what they are.

So would you like me to mark 1960 as settled, order to follow and if you can't agree on an order, then you contact Ms. Folwell and ask that the matter be restored to the calendar for a further hearing?

MR. SHARF: I think that would work from the Committee's perspective.

MR. PLEVIN: Your Honor, I think that would work from our perspective as, well.

But is there some way that we can get the language that

you dictated because I wasn't able to write it down.

THE COURT: Sure. Mrs. Siriani will provide that when we get through, unless somebody wants to take a shot and I can try to read it more slowly. Is someone adept --

MR. PLEVIN: If she can send it to Mr. Dove, I think that would be adequate from our perspective.

THE COURT: Okay. So I'm going to mark 1960 as settled, stipulated order to follow, subject to restoration on request of any party in interest.

Which takes us, at least briefly, to 1959 which is the request for a 2004 exam primarily of the Anderson firm. And here's at least what I'm inclined to do today.

And in Page 4 of the motion, it indicates -- I think this is your motion, Mr. Plevin -- that this is with respect to the litigation financing, such information arguably must be disclosed by state court counsel under Bankruptcy Rule 2019. To forestall any arguments about whether disclosure of financing arrangements are or are not within the scope of the required disclosures under Rule 2019, Continental is seeking authorization under 2004 to serve each state court counsel with subpoenas for document production.

So, I guess my view of the motion at ECF 1959 is that motion seems premature to consider today. I'd like to see what gets filed under 2019 by each of the personal injury lawyers, including any litigation financing agreements that

are relevant. And then have you tell me why, based on what gets filed, a 2004 exam's necessary.

But based on where we are today, I think your motion at ECF 1959's presupposing that the only way to get at this information is through 2004. And I'm suggesting, to the extent there are problematic arrangements out there, if any, that needs to be disclosed under 2019. And that your motion should be adjourned for tracking to see what gets filed and then if additional discovery is necessary or sought, I presume you would file an amended motion narrowing the scope of what you're looking for and explaining to me why a deposition or document production is necessary, given what is actually filed after today.

MR. PLEVIN: Your Honor, I think that's fair. The language you read I guess is explaining that this motion is sort of a belt and suspenders motion and given how you're construing Rule 2019, I guess the suspenders are not needed. The belt is sufficient.

And certainly if there's any failure to comply with the language the Court suggested, we can come back to the Court. If there's any need for a deposition, whether it's to authenticate documents or ask questions about the documents that are disclosed or the financing that's disclosed, we can come back with another motion at that time. So I think that's a --

THE COURT: And you wouldn't even --

MR. PLEVIN: -- reasonable suggestion.

THE COURT: -- need another motion, Mr. Plevin.

What I'd suggest is just for tracking purposes we adjourn your motion for 30 days or so. And then subject to a further adjournment, if you need it, then you would only need to file an amended motion presumably narrowing or putting a finer focus on exactly what you need further information about in reaction to what gets filed. That would make at least my review of that motion a lot more surgically precise.

MR. PLEVIN: That's acceptable, your Honor.

THE COURT: How about for tracking purposes we adjourn that motion at ECF 1959 to 11 a.m. on May 24, if that works for everyone for tracking purposes.

MR. SHARF: Your Honor the only issues with that day is I think a lot of us are going to be in a mediation in the Diocese of Buffalo case.

THE COURT: Okay.

MR. SHARF: I suppose we can take a break and all dial in at 11 a.m., if that's appropriate. So I think I think that works.

THE COURT: I hate to do Fridays, just out of respect for your -- I know a lot of you travel and it's difficult, I think, catching planes and going where you need to go. But I've got openings on that Thursday. We don't have a motion

term so I could do the 25th at 11 or the 26th at 11 but that's the Friday before Memorial Day.

MR. DONATO: Your Honor --

MR. SHARF: Your Honor -- Sorry.

I think personally I'd prefer to keep it on the 24th. I think we'll all be, a lot of us will be in the same building that day. The 25th I think is actually going to be a travel day for people going back to Buffalo and the 26th happens to be a Jewish holiday that I'll be available.

THE COURT: Okay. Let's do this on the 24th. I'll put it on for 11 but I'll be completely flexible so if somebody touches base with chambers and says, hey, look, it's going to be more like 1:00 when we have a ten-minute break to talk, we'll be available. I'll do it at 11 for tracking and then we'll keep our calendar open and we'll adjust to your schedule so that we can accommodate you.

MR. DONATO: Thank you, your Honor.

MR. SHARF: Thank you, your Honor.

THE COURT: So it's May 24 at 11 for tracking and, again, on a sliding scale depending on what needs to happen that day, given your other commitments.

So, as far as I can tell --

MR. PLEVIN: And your Honor --

THE COURT: Yes.

MR. PLEVIN: Just so that that 30-day period works, I'm

going to work with Mr. Scharf as soon as possible to try to settle the order and so we can get these Rule 2019 statements in and that way I can do the review that you suggested I should do, you know, either narrow this or withdraw the motion if there's been compliance. So --

THE COURT: Okay.

MR. PLEVIN: -- I just wanted to note that I'll be looking forward to working with Mr. Scharf on this and getting an order into the Court on the previous matter, the Rule 2019 motion as soon as possible.

THE COURT: Thank you.

So I think that takes care of the three motions that were actually scheduled for today.

But I know that, based on what got filed, I think this morning, with respect to the claim objections by CNA, and the Committee's motion at ECF 2063 to dismiss those claim objections, I know there was a letter filed and I have it in front of me, with respect to scheduling that I think you wanted to chat about briefly today.

I looked at the motion. I looked at your letter and let me tell you what I'm inclined to do.

Your May 1st date where CNA's going to respond to the motion is fine with me.

May 4, the letter suggests that the Court will hear the motion. I'll hear the motion on the papers. We're not going

to have a hearing.

If you haven't figured this out yet, I really, for the most part, don't find oral argument at the trial court level particularly helpful. If, after reviewing the response, I need oral argument, we will immediately let you know that. That May 4 at 11 will be for my edification to ask any questions that I had in terms of amplification of what's been submitted.

The next paragraph says May 4 at 11 or as soon thereafter as the Court wishes. I just wrote "no" under May 4 at 11 and put a box around "as soon thereafter as the court wishes".

What I'm going to do is as quickly as possible after May 4th is get you a written decision on the standing issue and in that decision set a date for the status conference which would probably be very quickly or at least ordering you all to confer and suggest dates that you're available for a status conference so that we can set discovery orders and the like, assuming I find standing. Does that work for you?

MR. PLEVIN: Your Honor, it does. We want to keep this process moving. We understood the logic of the Committee's position that the standing issue is a gating issue and should be heard first. And so based on that, we were amenable to adjourning the merits of the claims objections from May 4, which is when they were scheduled, so that we could address

the standing issue first.

But if your Honor does find that we have standing -- which obviously we think you should find -- we would want to have a status conference shortly thereafter so that we can keep this thing moving.

THE COURT: Right. Assuming, assuming a decision finds there's standing -- and I haven't studied it yet -- the last sentence of the decision would say, you know, the parties should meet and confer promptly to suggest available dates for a prompt status conference.

You know, having been in front of me now for three and a half years, I think you all know when I take things under submission, you don't wait a very long time for a decision and you should expect that to be the case here. There will be a decision issued very promptly after the May 4th date comes and goes -- actually the May 1st date comes and goes.

Does that work for you?

MR. PLEVIN: Your Honor, just to clarify, then, there will not be a hearing on May 4 --

THE COURT: I don't --

MR. PLEVIN: -- unless we hear otherwise from the Court?

THE COURT: I really don't at this point. It's hard for me to imagine that I would need to hear oral argument after your papers are submitted. I've read the motion. It's very clear what the Committee's position is and I have no doubt

your papers will be very clear in what CNA's position is.

Again, you know, again, as a trial judge, my view of oral argument is really at the appellate level. And the appellate judges won't tell you this, but the reason they like oral argument is to convince their colleagues on the panel that their view of the issue is the correct view. It's to persuade the other judges. That's my view of oral argument at the appellate level.

At the trial court level, you know, I'll let you know if we need oral argument, if an issue's just not been made clear enough. But my experience with the lawyers in this case, I've yet to see an issue that hasn't been well-presented both pro and con on any issue we've seen so far. So I would be surprised if I felt the need for oral argument on this issue.

So why don't we do that. Then your May 1 date at 11 a.m., I'll expect to see CNA's response to the Committee's motion that was filed at 2063 and we'll get going on that issue.

In the meantime, the motion at ECF 216 in the Adversary proceeding is under submission and the Court will get a written decision out as quickly as humanly possible on that issue, as well.

With that, I think we've covered everything that was on today's agenda. Does someone wish to be heard on a matter that I've not yet covered or that I missed?

(No response.)

THE COURT: Okay. Well, then, I want to thank you all for participation today and for the papers that you submitted. They've been quite helpful in helping the Court at least focus on these issues.

I hope you all have a good rest of the day and, again, I'll get a decision out on the 216 motion in the Adversary as quickly as possible and look forward to seeing the papers that are filed on May 1st or before May 1st. With that I hope you all have a good day and thank you for participating, we will be in recess and off the record.

Thank you, everyone.

(Parties say thank you.)

(WHEREUPON, proceedings recessed.)

* * *

CERTIFICATE OF TRANSCRIBER

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S/ Diane S. Martens

Diane S. Martens
Transcriber

EXHIBIT B

UNITED STATES BANKRUPTCY COURT

DISTRICT OF MINNESOTA

In Re:

The Archdiocese of Saint Paul and Minneapolis,

File No. 15-30125

BEFORE THE HONORABLE

ROBERT J. KRESSEL

United States Bankruptcy Judge

* * *

TRANSCRIPT OF PROCEEDINGS

February 23, 2017

* * *

Proceedings recorded by digitally recording,

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APPEARANCES

MR. BENJAMIN E. GURSTELLE, and MR. CHARLES B. ROGERS, Attorneys at Law, Suite 2200, 80 South Eighth Street, Minneapolis, Minnesota 55402 appeared on behalf of Debtor.

MR. ROBERT T. KUGLER, Attorney at Law, Suite 2300, 150 South Fifth Street, Minneapolis, Minnesota 55402, appeared on behalf of Unsecured Creditors Committee.

MS. ELIN M. LINDSTROM, Attorney at Law, Suite 100, 366 Jackson Street, Saint Paul, Minnesota 55101, appeared on behalf of Creditors.

MR. DENNIS D. O'BRIEN, Attorney at Law, Suite 400, 401 Second Avenue North, Minneapolis, Minnesota 55401, appeared on behalf of Creditors.

APPEARANCES (Cont'd)

MS. MARY JO JENSEN CARTER, Attorney at Law, 1257 Gun Club Road, White Bear Lake, Minnesota 55110, appeared on behalf of Certain Parishes.

MR. JOSHUA WEINBERG, Attorney at Law, Suite 600, 1875 K Street NW, Washington, DC 20006, appeared via telephone on behalf of Hartford Insurance.

MR. JEFF D. KAHANE, Attorney at Law, Suite 3100, 865 Figueroa Street, Los Angeles, California 90017, appeared via telephone on behalf of London Market.

MR. JAMES A. LODOEN, Attorney at Law, Suite 4200, 80 South Eighth Street, Minneapolis, Minnesota 55402 appeared on behalf of Our Lady of Grace.

APPEARANCES (Cont'd)

MS. CONNIE A. LAHN, Attorney at Law, Suite 2800, 225 South Sixth Street, Minneapolis, Minnesota 55402, appeared on behalf of Catholic Mutual Relief Society.

MR. MARK J. KALLA, Attorney at Law, Suite 2500, 120 South Sixth Street, Minneapolis, Minnesota 55402, appeared on behalf of St. Dominic and certain other parishes.

MS. PAMELA J. TILLMAN, Attorney at Law, 19th Floor, 111 East Kilbourn Avenue, Milwaukee, Wisconsin 53202 appeared via telephone on behalf of TIG Insurance.

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P R O C E E D I N G S

THE COURT: Why is everybody sitting down there? Are we actually choosing up teams? Is that what we're doing?

There are a couple motions this morning in the case of the Archdiocese of Saint Paul and Minneapolis.

I guess I'm going to keep with my custom of rather than have you pop up and give appearances, going down my list, will the attorneys for the Debtor?

(Counsel present noted their appearance)

THE COURT: Good morning.

Creditors committee?

(Counsel present noted their appearance)

THE COURT: Personal injury creditors.

(Counsel present noted their appearance)

THE COURT: Parish committee?

Parish group.

(Counsel present noted their appearance)

THE COURT: Okay. Is anyone appearing here or on the phone for Hartford insurance?

MR. WEINBERG: Good morning, Your Honor.

Joshua Weinberg on behalf of Hartford.

THE COURT: And London Market Insurers?

MR. KAHANE: Good morning, Your Honor.

Jeff Kahane on behalf of London Market Insurers.

THE COURT: Thank you.

Is there someone appearing for the Catholic Finance Corp, Church of St. Thomas Becket?

Mr. Iannacone?

Anybody appearing for Our Lady of

Grace?

Okay. Catholic Mutual Relief Society, anybody appearing for them?

(Counsel present noted their appearance)

THE COURT: The old St. Margaret's and others?

I've got another page here.

Catholic Services Appeal? Archdiocese Medical Benefits Plan? North American Banking? Saint Charles Borromeo? Saint Patrick? Saint Dominic and Saint Stevens? De LaSalle?

Travelers? Anybody appearing for Travelers this morning?

Or for TIG Insurance?

MS. TILLMAN: On the phone, Pamela Tillman on behalf of TIG.

THE COURT: How about Liberty Mutual? Anybody appearing for Liberty Mutual?

Anybody I've missed. Anybody appearing on behalf of somebody who isn't on my list?

Okay. Let's take up first the motion by the Debtor dealing with the solicitation procedures and the ballot.

MR. GURSTELLE: Good morning, Your Honor. Ben Gurstelle on behalf of the Debtor.

We brought this motion in an effort to try to kick start the solicitation process.

A good deal of the proposed order that we attached to the motion was negotiated with the UCC and run by the clerk of court prior to filing the motion.

We filed the motion after negotiations on some of the remaining issues kind of stalled out.

We have made actually since filing the motion a couple more changes to the proposed order after further discussions with the UCC.

Those changes are --

Do you have the other copy of the order?

Paragraph seven of the order, we have deleted the first sentence which said,

counsel for holders of class six claims will converse separately with each client regarding --

THE COURT: I'm sorry. You're really mumbling and talking very fast.

MR. GURSTELLE: We have deleted the first sentence which says, counsel for holders of class six claims will confer separately with each client regarding the plans and the client's ballot.

We have deleted that. We don't think it's necessary because we believe that it's an obligation of counsel to do anyway.

Then also in Paragraph 7 we have changed the power of attorney being executed by a lawyer to being executed by any individual with capacity to execute and be a power of attorney.

So with those changes, we believe the order is agreeable to the UCC with two exceptions: Those are in paragraph two the 30-day timeline to get the solicitation packages up -- deadline rather, to get the solicitation packages out the door.

The UCC wants it to be a 20-day

deadline.

We plan, the Archdiocese plans, to do this process as quickly as possible.

We want to get the solicitation packages out the door very, very quickly so our motivation and intention is to get these out within 20 days, and hopefully even sooner, but there are certain aspects of the process that we do not control entirely.

We just don't want to set ourselves up for failure in the event that the packages get out the door on day 21 rather than day 20.

As the Court knows, this is -- the solicitation package is going to include both the Debtor's plan and the Committee's plan and so we just don't want to set ourselves up so that all plan proponents are in violation of the court order so that's why we have the 20 day -- or 30 day rather outside deadline rather than 20 days.

One of the issues that we foresee as being an issue that may require us to take more time to do it is that we haven't ordered the flash drives that we plan to put

the plan that's in the disclosure statements on yet because we haven't gotten an order from the Court to do it.

I know that at the last hearing you indicated that a flash drive would be a good idea, but this is a very large purchase. We have to buy in bulk several hundred flash drives and it's going to cost approximately $5,000 to get these flash drives and we just didn't want to make the purchase until we had a court order okaying it. We have been on shifting sand in this case before.

And also we have as a provision in the order that we're authorized to serve the disclosure statement and plans on counsel for the tort claimants just one flash drive and then that would be distributed by counsel for tort claimants to their respective clients.

If we had to do an individual flash drive for each claimant that would up our order significantly by several hundred drives and so we haven't placed the order until we have clearance from the Court in a court order.

We're going to do that order immediately upon entry, the order for the drives immediately upon entry of an order by this Court and we've taken -- we've already gotten votes and we have an express delivery with the drives being preloaded with the documents that should take approximately ten days, is what the vendor says, although, you know, we don't control that and I don't want to be caught in a situation where we're rushing and we miss something because we have a 20-day deadline and we haven't gotten the drives yet.

The second issue, probably the more pressing issue as expressed by the committee, is the inclusion of a convenience claim election on the ballot.

We think that is the only remaining issue with the ballot, is whether that convenience claim is in there.

We acknowledge that Your Honor wants the ballot to be simple and that the inclusion of this option adds something extra to the ballot, but we believe the inclusion of the convenience option makes

sense, is efficient and is important for how this case goes forward.

So why do we think it's necessary?

First we want people to know that this option for a $10,000 payment pretty much immediately after confirmation is there and that they consider that in making their decision to vote on the plans, and under the Debtor's plan, making that election now is how it would work best under our process.

The UCC plan has a different process for making a convenience election that takes place later in the process of the tort reviewing -- tort reviewer in the trust.

Second, we believe strongly that this --

THE COURT: I'm sorry. If there are two different processes, how can you put it on the ballot?

Are you going to put both processes on, yours and the committee's on the ballot?

MR. GURSTELLE: Well, Your Honor, in reviewing the committee's plan, it's unclear to us how the convenience election works for them.

Our process is that we make the election as part of your vote and then you would be entitled to that $10,000 payment after a really initial cursory review of the claim and see if there is a prima facie case.

With the UCC's plan, if they don't need to have that election made so that that process can take place and those payments can be made out, then it doesn't need to be on the ballot.

If they want to put that on the ballot as well, I suppose that would be fine and we would include both elections on the ballot and both elections would probably affect how each plan plays out through confirmation.

We do think it has an affect on confirmation because it will help in calculating the amount of money that will go into the convenience class versus the amount of money that would go into the full review part of the class six claimants.

That would affect the per claimant value.

So we think it's important and it's material and it's likely to be important to many members of the class.

We assume from the UCC --

THE COURT: Of course, this is all in the disclosure statement?

MR. GURSTELLE: That's right.

THE COURT: You just want to bring out one little bit of the disclosure statement and put it on the ballot?

MR. GURSTELLE: We do think it is a material part of how voting would work, and although it isn't electing into a separate sub class, it is electing a separate type of treatment for that claimant and we think it's important that those claimants be allowed to make that decision at the outset and we think that it is material and we assume from the UCC's opposition to it that they think it is too.

This is about fairness and openness in the process, and at a minimum we think that if that election was included, that the ballot should include at least a sentence alerting creditors to the fact they will

have the option to make that convenience election.

Ultimately we believe that the inclusion of this election makes sense. It will speed up the process in terms of both initial distribution and will help the Court assess the relative merits of the game plans.

And so why does the UCC oppose it? They say it will cause confusion and prejudice.

With respect, we believe it would be more confusing to have class six claimants make a determination on voting for the plan and have to make a second determination later.

We think that doing it in one place makes the most sense. We don't think that the language in the election is confusing and we think it will be efficient.

As to alleged prejudice, the UCC states that making an election would give insight to Debtor and other parties into the propensity for settlement in the event that one of the plans is not confirmed.

First, the Archdiocese' goal, as it has always been, is to confirm this plan, which we believe is fair and achieves a great result for creditors.

And again with respect, this case has been in settlement talks for two years and the parties are vigorously represented. The creditors want closure and are willing to elect a convenience payment to get that closure. It's exactly the type of information that would help get this case across the finish line.

That's why we want the convenience election in the ballot. We think it makes sense. It does make sense for at least the Debtor's plan. We don't think it's confusing and we don't think it's prejudicial.

Other than that, I think the proposed order has, like I said earlier, been agreed to by the committee, and if you have any questions I'll answer them.

THE COURT: Mr. Kugler?

MR. KUGLER: Thank you, Your Honor.

To the ballot issue first, I think that we all should want a clear and unambiguous ballot and I think that the inclusion of the convenience claim election has the potential to make the ballots confusing, particularly at the ballot tabulation stage.

I can envision scenarios where a party might accept both plans, not check a box regarding preference and then elect to have their claim treated as a convenience claim.

I'm not quite sure how that ballot would be interpreted. I'm sure that the Archdiocese might have an interpretation that is different than the interpretation that the committee might have and that's going to lead to further fights, further expense, further delay.

Similarly, I could envision a situation where a claimant rejects both plans and then does not execute on the box with a preference but then elects to have their convenience claim treated as a convenience claim, the claim treated as a

convenience claim.

Again, I'm not quite sure what that would mean, but I know that there would be multiple interpretations.

I think for that reason alone it ought to be left off the ballot. There will be plenty of time after confirmation for a convenience claim treatment to be afforded, folks who want to have their claim treated in that fashion, and so I think that that ought to be excluded from the ballot.

With respect to the timing, it seems like a small nit, Your Honor, but the committee wants to move forward in this case quickly.

We didn't ask for 20 days, we asked for ten days. We agreed to resolve it at the 20 days and that was rejected by the Archdiocese.

I can tell you that the counsel for the survivors has ordered 500 flash drives. They ordered them, and for an $80 charge they got them the next day.

This doesn't take weeks and weeks and weeks. They can have the flash drives

tomorrow and they can load the stuff on. It can be ready to go in ten days.

So I'm not sure why there is interest in delay. I'm kind of surprised we're here today. I thought that after the last go-round we would have had ballots out by now and I would urge the Court to require that the Archdiocese get this stuff out in the next ten days.

Thank you.

THE COURT: Anyone else that's want's to be heard on this motion?

Did you want to respond at all?

Mr. Gurstelle.

MR. GURSTELLE: Thank you, Your Honor.

Ben Gurstelle again for the Debtor.

Again, we don't think the convenience class election is confusing.

With respect to the scenario Mr. Kugler just mentioned, I don't think a convenience claim election would affect the situation where no preference is checked on the two plans.

The convenience claim election is

about treatment under the Debtor's plan, so if they had accepted the Debtor's plan, they accepted treatment as a convenience claimant, then that's sort of the end of that story. I don't think it would be confusing in tabulation.

With respect to an allegation we're trying to delay the process, it's just the opposite. We brought this motion to jump start the process and to try to get the solicitation process lined up and under way.

And again I want to stress that we do want to do this as quickly as possible.

The only reason we're asking for the 30-day outside deadline is we don't want to be in violation of the court order on some technicality.

Thank you.

THE COURT: Well, let's turn to the last one first, the ten or 20 or 30 days.

To describe it as a nit is an understatement. I can't believe you're here either, Mr. Kugler, arguing about that. You've been working at this for months and months and the case is over two years old,

and whether we lose either another ten or 20 days in this process, because after balloting it's going to go on for months besides so this little period of time, this arguing over is beyond silly.

I'll allow the 30 days.

And I understand it might not just be the drives. There is a lot of stuff that can go wrong and a lot of technicalities and a lot of things to do and I think we need to allow the Debtor plenty of time to get all those things done.

So I'll keep the 30 days in.

On the ballot, my view on the ballot is a ballot is a ballot. It's not a place to put disclosure, it's not a place to solicit. The solicitation is in the disclosure statement itself.

It is explained in the disclosure statement, but the part about the plan is explained in the plan, their opportunity to make the election.

Unlike many plans which have a convenience class, so you need to make the election as part of the balloting because

you need to know which class to count the ballot in, that is not this situation. You're all in the -- all the victims are in one class.

So putting that election at that point it has the potential for confusion and with no real upside that I can see so I'm going to deny that part of the Debtor's motion.

And you can redo the ballot and the order and submit it, but with that language taken out of the ballot.

Let's turn to the Debtor's motion, the area where compliance with bankruptcy Rule 2019.

MR. GURSTELLE: Thank you, Your Honor.

Ben Gurstelle again for the Debtor.

This is a motion to compel Jeff Anderson & Associates to comply with Rule 2019 in full.

This motion is all about fairness. Transparency equates with fairness and the rule requires it.

Rule 2019 requires that certain

disclosures are made when an entity such as a law firm --

THE COURT: You're talking louder, but you're still talking really fast. Please slow down a little bit.

MR. GURSTELLE: I'll slow down.

Rule 2019 requires that an entity such as a law firm that represents multiple non-insider creditors who are acting in concert to advance their common interest make certain disclosures.

The disclosures are laid out in the rule and our motion is to have the Anderson firm comply with that rule.

We don't think that the Anderson firm has complied with the rule and so we don't think our motion is moot.

First, the Anderson firm has argued that the rule does not apply do it because although it represents 383 tort claimants, or approximately 85 percent of the class six claimants, the firm has not represented these claimants acting in concert.

That assertion, Your Honor, frankly I think, is impossible to square with reality.

Since the very beginning of this case the Anderson firm has appeared at almost every single hearing on behalf of certain abuse survivors, never on behalf of any individual survivor, and they have also filed many, many motions in this case, responses, filed an appeal, the subcon order, all on behalf of certain abuse survivors, always acting selectively to advance their common interests.

The only thing that the Anderson firm has done on behalf of any individual claimant is file proofs of claim.

So to say that they are not acting on behalf of creditors in concert to advance their common interests is just not true. Clearly the rule applies to the Anderson firm.

Second, the Anderson firm has argued that it's met its obligations under Rule 2019 by its submission of a document last Friday purporting to be a Rule 2019 disclosure.

With respect, this document is not a proper 2019 disclosure and it doesn't comply

with the rule.

First, the disclosure does not explain the facts and circumstances concerning the formation of the abuse survivor group as required by Rule 2019(c)(1)(A), so the questions we would have are was the group as a result of solicitations by the firm, did it come together through specific referrals or did the entire group simply form organically and then seek to have the entity, the firm, represent it.

We don't know because it's not disclosed.

Second, the document does not disclose the nature or amount of the Anderson firm's own economic interest in the outcome of this bankruptcy case as required by Rule 2019(c)(2)(B).

Now, we assume, but we do not know for certain because it hasn't been disclosed, that the Anderson firm may have various contingency fee arrangements with its clients, but not all of the Anderson firm's clients are similarly situated. Some

are strong claims, some are weak claims, some have multiple claims and some are claims that are just not cognizable.

How does the Anderson firm's own economic interest in this case affect how its counsel -- how it will counsel its clients regarding voting.

Have the Anderson firm's clients been given informed consent as to possible conflicts that these differences could lead to?

We don't know because it hasn't been disclosed.

And this brings us to the third major deficiency, which is that Rule 2019 requires that the disclosure include a copy of any instruments authorizing that entity to act on behalf of its client creditors.

Or its creditor clients.

This is very important to us. It's very important to the case.

While the Archdiocese is not seeking the disclosure, we're not seeking the disclosure of any personally-identifying information of any of the clients, we don't

want their names, we don't want their addresses, we're looking for the information about the firm's economic interest and the other information required by Rule 2019.

There is no exception to the rule for any other part of the disclosure for the Anderson firm.

It's important that this grievance be public so that the Court and all parties in interest may review them in light of the competing plans and the impending votes to be passed.

Now, this is especially true because one of the plans is currently being promoted and championed by the Anderson firm.

Finally, the Anderson firm has argued that it's unfair for the Archdiocese to demand that the Anderson firm make the disclosure when it hasn't made the same demands of other firms representing multiple creditors.

First, the Archdiocese believes that the rule is the rule and it applies across the board and that anyone appearing in this case on behalf of multiple creditors ought

to comply with it. The rule is self-effecting.

So we don't believe that we should have to make any motion for disclosure in the first place, but we have made this motion with respect to the Anderson firm because, frankly, we think that the Anderson firm's disclosure is more important.

The Anderson firm has a different type of interest in this case than other firms do.

The Anderson firm has its own disclosable economic interest as defined under the rule that will be determined by the outcome of this case.

The term "disclosable economic interest" includes any other right or derivative right granting the holder an economic interest that is affected by the value, acquisition or disposition of a claim or interest.

Because its fee arrangements, or we assume its fee arrangements, the Anderson firm, unlike other firms, has that interest and that we believe that it is important to

know how that will affect the process going forward.

We think it's appropriate right now before the solicitation stage to get that disclosure.

In at least two other diocese cases that disclosure has been made at or about the solicitation stage.

And in the Delaware case, the Wilmington case in Delaware, it was specifically tied to solicitation.

Your Honor, we're not after the survivors, we're not after Jeff Anderson. We are trying to get to transparency and fairness so that the process can move forward in a way that is fair to everyone and that's why we want the disclosure.

Thank you.

THE COURT: Okay.

Ms. Lindstrom?

MS. LINDSTROM: Good morning, Your Honor.

Elin Lindstrom on behalf of Jeff Anderson & Associates.

Mr. Finnegan and Mr. Anderson are

noticeably absent today. This is an important issue to our firm and they were, unavoidably, out of the state so they apologize for their absence.

I'm not going to belabor the points raised in our response memorandum, but there are a few points raised in the Archdiocese reply brief that I would like to touch on today.

Bringing this rule up now can only be viewed as an attempt to call into question the integrity of both the voting process and of our firm's representation of these survivors.

By focusing on this 2019 disclosure now, the Archdiocese seems to be setting up for some potential argument they may have about our firm's participation in the voting process if the survivors opt to rejection the Archdiocese' plan.

The way the Archdiocese has framed their argument makes it seem like our firm is voting for our clients on their behalf, and that is simply not the case.

Our firm is not participating in the

vote.

We will, as their attorneys, advise these clients individually based on their individual circumstances of the risks and benefits of each plan, and we have a duty and obligation under the rules of ethics and under this court to do that.

Based on that advice, it will be our client who cast the vote, not us.

It is unclear what our retainer agreement or information in that agreement has to do with this voting process or what we would advise our clients about the vote and the plans.

The Archdiocese seems to even be going beyond the Rule 19 requirements under the rule by requesting our fee agreement and seemingly trying to step into the attorney/ client relationship that we have with our clients and almost possibly interfering with our privileged information and privileged conversations that we have with our clients.

There was a provision in the ballot order that was stricken by the Archdiocese regarding us having an obligation to talk to

our clients.

We know we have that obligation. We don't need to be told by the Archdiocese what to do in this voting process.

We think this is inappropriate. We are aware of the rules of ethics and will continue to comply with those rules.

Further, Your Honor, while we disagree that this rule applies to our firm, we have filed a Rule 2019 disclosure, but the Archdiocese is requesting two additional requirements under the rule that we just do not think are applicable here: First, regarding a copy of the instrument required under Rule 2019(c)(4), the type of document contemplated by this provision in this rule is not our retainer agreement.

It would be an agreement made between the claimants to coordinate their actions and act in concert.

In some cases this may be a power of attorney. In some cases it may be a power of attorney allowing the firm to cast a proxy vote on behalf of an entire group of claimants.

This just does not exist in this case.

And the Archdiocese has called the group of survivors exactly that, a group, that we formed a group of creditors.

As I said of about, each of these people and survivors is voting individually and there simply is no group here and there is no documents giving authority or giving rise to such a group.

In terms of appearing on the case on behalf of all the claimants, so far all the motions in this case, Your Honor, have applied to all of our claimants.

It simply did not make sense for us to come up here to the microphone 383 times or to file 383 pleadings.

Further, Your Honor, the Archdiocese' contention that Jeff Anderson & Associates needs to comply and provide its own economic interests under the 2019 rule is simply -- it's not a requirement under the rule.

The rule actually states that it is a disclosable economic interest as it relates to the Debtor.

Jeff Anderson & Associates has no economic interest in the Debtor. We are not a creditor in this case and we are not a claimant.

We represent individuals who are creditors and have economic interests in the Debtor.

THE COURT: You have a huge economic interest in the case, however, probably the biggest one.

No one has a bigger economic interest in the case than you.

"You" being the Anderson firm, not you personally.

MS. LINDSTROM: The Anderson firm may get paid. There are other attorneys in this room that will get paid in this case and have gotten paid.

THE COURT: Well, depending on what your fee arrangement is, which we don't know but many of us have speculated is a contingency, the firm, depending on what plan is confirmed, stands to collect 20, $30 million in fees.

MS. LINDSTROM: We would

collect fees, Your Honor. It is a contingency basis.

But the Archdiocese --

THE COURT: Well, it's a huge economic interest in the case, like I said, bigger than anyone else.

No one has a bigger interest than Anderson & Associates.

MS. LINDSTROM: I would respectfully disagree with Your Honor or with the Archdiocese that that rule requires us to disclose our economic interest because, as again, it says it's as it relates to the Debtor.

And to insinuate, or the Archdiocese' insinuation that we will somehow influence our clients votes in order to up our fees or our payment is absolutely insulting.

Your Honor, for these reasons, we would ask to find that Jeff Anderson & Associates has complied with the Rule 2019 motion.

If, however, the Court is inclined to grant the Archdiocese further request for further compliance, we would ask the Court

to allow us to do it in a way that does not disclose any of our clients' identifying information.

I know there are some asbestos cases where even when exemplars or fee agreements --

Sorry. Excuse me, not fee agreements, but where documents were filed under seal in court, those were later unsealed and the identities of those individuals made public.

So if we are to comply with this rule, that we can do so in a way that protects the identities of the survivors, and also that all the professionals in this case that fall under this rule also have to comply.

Thank you.

THE COURT: Anyone else want to be heard on the motion?

Mr. O'Brien.

MR. O'BRIEN: Thank you, Your Honor.

The parish committee did put in a response simply supporting the 2019 motion

brought by the Debtor.

I'm not going to argue what the rule requires. I have never been faced with having to deal with this rule when I was on the bench, not a single time.

I read the rule once and then I put it down and I picked it up and I read it again and I read it again and I'm still is not sure exactly what it means, but I'm sure you know what it means and I'm sure you're going to tell us all what it means.

What I want to just briefly talk about here is the unique nature of this case and perhaps the way the rule fits in to the unique nature of this case.

I was some what surprised when I read the initial response by Mr. Jeff Anderson to the motion by claiming that this was motivated by an attempt to intimidate Mr. Anderson and his firm.

I don't know Mr. Anderson very well, but in getting to know him in this case, he impresses me as somebody who is not intimidated by anything.

And then when the response, the 2019

was filed, you look at it and there is absolutely nothing in there that would intimidate anybody about anything.

So I wonder what else is going on here.

You know, this is a rather unique situation in that, as you pointed out and as has been pointed out by others here, Mr. Anderson and his firm are the -- they have a unique position in this case that no other professional has, and that is that they have a substantial personal financial interest in the outcome of this case, a substantial stake.

Now, if their compliance with the rule by filing that document that they filed, if that's the compliance with the rule, then there needs to be some other, in my view, transparency here that will satisfy the integrity of the voting process.

This is not an attempt to interfere with or to call into question the integrity of the voting process.

This is an extremely unique situation where this firm, which has a financial stake

in this case that is very substantial, is going to take control and possession of the ballots of the overwhelming number of clients that it has and the overwhelming number of people who make up the unsecured creditors class.

There is nothing wrong with that, but under those circumstances it seems to me that in order to protect, rather than call into question, the integrity of the process, there has got to be some sort of perhaps maybe extraordinary, then, if the rule has been complied with, some other extraordinary transparency.

It's not a matter of, well, we don't trust you or we think you're being evil. It's the old situation of trust but verify.

You know, there has got to be some process here that will make up for what is otherwise not a normal process in a Chapter 11 case.

I would suggest that if other financial disclosures cannot be or will not be made in this case, that the ballots of the unsecured claimants be turned over not

to Mr. Anderson but to the unsecured creditors committee.

The unsecured creditors committee represents these people, as well as Mr. Anderson does individually, and they have got a fiduciary responsibility that is much broader than Mr. Anderson's and there is no reason in my mind why they can't, why Mr. Kugler's office cannot fulfill the responsibility to the unsecured creditors through the committee by doing the same kind of handling and securing the votes of these members that could be done by Mr. Jeff Anderson.

Again, it's not a matter of disparaging Mr. Jeff Anderson. You know, it's a matter of either recognizing what are the required procedures and processes in a situation like this or to come up with some alternative that protects the integrity of the voting process.

Thank you.

THE COURT: Thank you.

Anyone else? Anybody else want to be heard on the motion?

Mr. Gurstelle.

MR. GURSTELLE: Thank you, Your Honor.

Ben Gurstelle again for the Debtors.

Just a couple of responses.

Number one, I think the rule is clear and it requires the information that we laid out in our brief.

Next, the retainer agreement is --

THE COURT: Well, let me stop you there.

Assuming that's true, is there some reason to require them to disclose how many clients they have?

I lost track of the number, 200 and --

MR. GURSTELLE: How many claimants?

THE COURT: That they represent.

MR. GURSTELLE: 383.

We think --

THE COURT: You need 383 copies of the retainer agreement?

MR. GURSTELLE: Your Honor, I

don't think we need every single retainer agreement if there is a form agreement.

We would want to see, and I think the rule would require, disclosure of any different types of retainer agreements that Mr. Anderson's firm may have.

For example, some of his clients were retained before this case started and they had ongoing litigation and some clients signed up well into the course of this case.

There may be different retainer agreements for those types of clients with different fee arrangements.

We think the retainer agreement is absolutely contemplated by the rule and has set out in the Baron & Budd case that we cited.

It's not a confidential document, it's a document that is required to be disclosed by the rule and there is a discussion of that in Baron & Budd.

And it is important for the Court to know the fee arrangement for the Anderson firm because, as the Court pointed out, the Anderson firm does have a distinct economic

interest in the outcome of the case and it is a disclosable economic interest as defined in Part A of the rule and it is dependent on how these claims turn out.

You know, I can envision a situation where the Anderson firm may believe that it can get more money for the firm in a situation where the case is dismissed or where litigation ensues and that certain claimants may do better in that situation but certain claimants may not and that gives rise to potential conflicts of interest.

Can those conflicts be waived? Perhaps. But it's important that the Court and other parties in interest who are invested in the solicitation process know that.

So we believe that it's very important that the rule be complied with.

Then as to Mr. O'Brien's comments, I don't think we have a position on that, but I do think that whether or not the ballots go to the committee or to the Anderson firm, the rule requires disclosure and it should be complied with.

Thank you.

THE COURT: Ms. Lindstrom?

Well, actually I would like you to step up. I just have a question or two to ask you.

Just generically, without talking about any individual client, how many different forms of retainer agreements would you have?

I'm guessing they are virtually identical for most of them.

MS. LINDSTROM: Most of them are virtually identical. I can't say for certain how many different examples we have to date. I think most of them are the same, though.

THE COURT: Thank you.

Well, as to the why this is here now, I mean we've nibbled around the edge of this for two years. I mean this is not a new issue and the rule, to use the word of the Debtor, is self-effectuating.

We don't need an order. The Anderson firm should have complied with it two years ago and they should have complied with it a

year ago and six months ago.

The fact that we're here now on the motion doesn't mean they no longer have to comply with the rule, so I think they have to comply, it has to comply with the rule.

If there is some sort of insult there or distrust there, it's a distrust by the Supreme Court who promulgated the rule, not by the parties here or me. The rule is the rule is the rule.

And you might speculate that there is some cynicism, if not distrust, behind the rule of disclosure.

I really dislike the current trendy word "transparency", but it's sort of applicable here.

Bankruptcy sort of operates on everybody knowing what's going on, me in particular, but everybody knowing what's going on, and this is one of those elements that people, at least the Supreme Court thought everyone should know.

So I think the Anderson firm must comply with the rule.

One, it needs to be verified. That's

easily taken care of.

It wasn't. The thing that you filed wasn't verified. The rule certainly requires that.

I'm sorry. I just give no credence to the suggestion that they are not acting in concert. Clearly you are.

I mean you may not have set out to create a group, but you have a group. You have a group of clients who are acting in concert through you, and the Anderson firm is the representative of 383 people and the rule, this is exactly the situation it's designed to -- or one of the many situations the rule is designed to tend to.

And I read the rule clearly as well, and I think one of the important points of the rule is to disclose the economic interest in the case, what does the representative have to gain. That's the point of the rule here.

So for whatever reasons we can understand that there are different interests or different motivations or just different things going on, and so we need to

know that. That's something the entire body of people, the court and lawyers need to understand.

So I'm going to order among the things that I think you --

And I think sort of one of the other things of the group and one of the unique dynamics of this case from the beginning has been the Anderson firm represents a majority of the members of the creditors committee, so it's certainly my perspective of this case that Jeff Anderson has been the creditors committee.

That's sort of the dynamic here that's at work here and so it makes it all the more important, it seems to me, that this rule be complied with.

So I think you need to go back and comply with the rule.

Obviously no one has asked for and I'm certainly not going to include the requirement to disclose any names.

I think the list that you've done with the name by claimant number is perfect, but I think you also have to disclose the

fee arrangement with each of those clients, whether it's hourly or contingent, includes costs and expenses, whatever, so that we can know what it is for each one of those clients.

And that would include --

And the reason I ask, I was hoping this wasn't going to be too onerous, but I don't want you to -- clearly don't want to file the actual retainer agreements with anybody's name in them, but somehow it seems to me you should be able to have exemplars that say here is the retainer agreement exactly in this form that was signed with claimants number one, two, three, four, 16, 18, 20, whatever, and if there is another one, these five people signed this different retainer agreement, so that at least we can look at them and figure out what the fee arrangement is and other arrangements for representation are with each one of your clients.

Did I cover what we're looking for here?

I mean you need a little bit of time.

I'll give you about maybe a week from tomorrow as the deadline to comply with the order.

[UNINTELLIGIBLE]

I can pick Friday because then you can't make your staff work on weekends.

[UNINTELLIGIBLE]

Sure. Now it's gotten longer. It's not the following Monday, it's the following Thursday?

[UNINTELLIGIBLE]

Okay. Two weeks from today.

* * *

STATE OF MINNESOTA)

ss.

COUNTY OF DAKOTA)

BE IT KNOWN, that I transcribed the digitally recorded proceedings held at the time and place set forth herein;

That the proceedings were recorded electronically and stenographically transcribed into typewriting, that the transcript is a true record of the proceedings, to the best of my ability;

That I am not related to any of the parties hereto nor interested in the outcome of the action;

IN EVIDENCE HEREOF, WITNESS MY HAND AND SEAL.

_____

NEIL K. JOHNSON

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.	

[PROPOSED] ORDER GRANTING MOTION BY CONTINENTAL UNDER BANKRUPTCY RULE 2019

The Court has considered the motion filed by the Continental Insurance Company seeking, among other things, to compel compliance with Bankruptcy Rule 2019 by the attorneys representing sexual abuse claimants in this bankruptcy case. Good cause having been established, IT IS HEREBY ORDERED as follows:

1. The motion is GRANTED.

2. All lawyers and/or law firms representing multiple creditors, including those holding sexual abuse claims against the Debtor, shall, within ten days after the entry of this Order, fully comply with the requirements of Rule 2019 and electronically file on the docket the following information:

a. a verified statement listing all of the counsel's clients, stating the pertinent facts and circumstances of the retention, and attaching the engagement letters between the lawyer and clients;

b. a certification by all lawyers who signed proofs of claim on behalf of clients that such lawyers are authorized to do so, and attaching bankruptcy-specific powers of attorney or other instruments providing the authorization;

c. disclosure of the fee arrangements between the lawyer and clients and any other pertinent facts or circumstances regarding "the nature and amount of each disclosable economic interest held" by each law firm in relation to the debtor;

d. information about fee-sharing, co-counsel, retainer, referral, or other arrangements;

e. for each claimant, a copy of the instrument authorizing the law firm to act on behalf of the claimant; and

f. disclosing financial arrangements, including without limitation litigation financing agreements.

3. Any entity filing a verified statement in accordance with this Order shall amend or supplement such statement, as necessary, every 60 days, disclosing any material changes of fact occurring since the filing of the lawyer's or law firm's most recent amended or supplemental filing.

4. If the Court finds, *sua sponte* or at the request of any party in interest in this bankruptcy case, that a lawyer or law firm has failed to comply with the requirements of Bankruptcy Rule 2019 and this Order, the Court may, in accordance with Bankruptcy Rule 2019(e): (a) refuse to permit the entity, group, or committee to be heard or to intervene in the case; (b) hold invalid any authority, acceptance, rejection, or objection given, procured, or received by the entity, group, or committee; or (c) grant other appropriate relief.

5. The Court retains jurisdiction with respect to such matters and with respect to the interpretation and enforcement of this Order. Continental may make further application to the Court to ensure compliance with this Order.

Dated: _____, 2024
Buffalo, New York

Hon. Carl L. Bucki
Chief United States Bankruptcy Judge