

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK**

In re:

The Diocese of Rochester,

Case No.: 19-20905

Chapter 11 Case

Debtor,

**CONTINENTAL INSURANCE COMPANY'S STATEMENT RESPECTING DEBTOR'S
MOTION TO SET A BAR DATE AND TO APPROVE A PROOF OF CLAIM FORM**

The Continental Insurance Company, successor by merger to Commercial Insurance Company of Newark, New Jersey and Firemen's Insurance Company of Newark, New Jersey ("Continental"), hereby responds to the Motion (the "Motion") of the Debtor Establishing A Deadline For Filing Proofs Of Claim And Approving the Form and Manner Of Notice Thereof [Dkt. # 376].

ARGUMENT

Continental agrees with the Debtor that it is appropriate for this Court to establish a bar date for the filing of proofs of claim in this bankruptcy case, and for the Court to approve a specialized proof of claim form.

It is customary for courts in mass tort cases, including cases involving claims arising out of sexual abuse, to authorize specially tailored proof of claim forms designed to elicit information that would otherwise be necessary to obtain in order to determine whether a claim should be allowed. *See, e.g., In re Archdiocese of Milwaukee*, Case No. 11-20059 (SVK) (Bankr. E.D. Wisc. July 14, 2011) [Docket No. 331] (approving special proof of claim for claimants asserting sexual misconduct claims requiring claimants to submit supporting documentation and answer a series of questions relating to the nature of the claim, whether they

had filed previously commenced a lawsuit, the impact of the abuse and damages, and other additional information);); *In re USA Gymnastics*, Case No. 18-09108 (RLM) (Bankr. S.D. Ind. Feb. 25, 2018) [Docket No. 301] (approving special proof of claim form for claimants asserting claims relating to sexual misconduct, which form required claimants to, among other things, provide documentation and written responses to approximately thirty (30) separate questions regarding the nature of their claims, the damages asserted, their connections to the debtors, and the procedural history of their asserted claims); *In re TK Holdings Inc.*, Case No. 17-11375 (Bankr. D. Del. Oct. 4, 2017) [Dkt No. 959] (approving special proof of claim form for potential claimants that had suffered personal injury or economic loss damages relating to their ownership or operation of vehicles with recalled airbag inflators, which form required claimants to identify, among other things, (i) the manufacturer, make, model, and vehicle identification number of their vehicle, (ii) whether they owned or leased said vehicle, (iii) the period in which they owned or leased said vehicle, and (iv) the basis of the asserted claim (loss of economic value, personal injury or litigation, other) and to submit supporting documentation explaining or detailing the type and date of injury; *In re Energy Future Holdings Corp.*, Case No. 14-10979 (Bankr. D. Del. July 30, 2015) [Docket No. 5171] (approving proof of claim for claimants asserting unmanifested asbestos related injuries which required claimants to, among other things, identify the plant in which they or their family members worked, the location of said plant, the type of asbestos exposure, and the estimated exposure dates, if known); *In re PG&E Corp.*, Case No. 19-30088 (Bankr. N.D. Calif. July 1, 2019) [Docket No. 2806] (approving detailed specialized proof of claim form for claimants asserting injuries arising out of wildfires).

In this case, the Debtor has made clear that that its successful emergence from bankruptcy depends not only on resolving the various disputes regarding the validity of the

claims that may be asserted against it by alleged abuse victims, but also on obtaining a resolution of various disputes regarding the availability of insurance coverage for such claims. Under these circumstances, it is appropriate for the claims allowance process to seek information that bears not only on allowance, but also on issues of insurance coverage.

To that end, while the proof of claim form proposed by the Debtor seeks some information that may be helpful, it would be appropriate for the proof of claim form also to seek the following additional information:

- The form should include a question asking if the claimant alleges abuse by someone other than a representative of the Diocese.
- The form should include an instruction making clear that the claimant must provide the information sought and cannot merely attach a complaint that does not include the requested information.
- The form should ask the claimant to identify the dates of alleged abuse, as opposed to merely asking the claimant's age at the time of the alleged abuse.
- The form should contain a question seeking any documentation regarding notice the claimant provided to any other person about the alleged abuse.
- The form should ask the claimant whether the claimant had reason to believe that the Diocese was aware of the alleged abuser's conduct.
- The form should ask the claimant about any public statements, including statements to the media, that the claimant may have made about the allegations of abuse.
- The form should ask whether the claimant has previously asserted a claim relating to the alleged abuse against the Diocese.

If this or similar information is not obtained in the proof of claim process, the only alternative will be to require insurers to seek it via formal discovery (including third-party discovery of claimants) in the adversary proceeding. Continental's experience in other diocesan bankruptcy cases in which such discovery was required has been that the process is more expensive, and more burdensome on the claimants, than if this information were sought in the proof of claim form. A redline of the proposed proof of claim form, showing the revisions necessary to implement these suggestions is attached hereto as Exhibit A.

In addition, while Continental certainly appreciates the need to respect the confidentiality of the information provided by claimants, a resolution of the matters related to the claims of insurance coverage will not be possible without providing the insurers with the information necessary to assess the Debtor's claims to insurance coverage. For this reason, it has become customary in diocesan bankruptcy cases for insurers to be provided with copies of the proofs of claim. Continental is certainly prepared to maintain the confidentiality of the information it receives and to be bound by an appropriate protective order that ensures that the information is not used for any purpose other than in connection with the bankruptcy case, and that all confidential information contained in any pleadings be filed under seal. There is no reason, however, that the insurers ought to be subject to greater restrictions than those imposed on the Diocese itself, the entity that is alleged to be legally responsible for the alleged abuse.

CONCLUSION

WHEREFORE, Continental respectfully requests that the Court grant the Diocese's Motion, with the revisions to the applicable proof of claim for set forth herein.

Dated: February 6, 2020

Respectfully submitted,

BARCLAY DAMON LLP

/s/ Jeffrey A. Dove

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EXHIBIT A

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK**

In re:

The Diocese of Rochester,

Case No.: 19-20905

Chapter 11 Case

Debtor,

CONFIDENTIAL ABUSE PROOF OF CLAIM

**THIS FORM MUST BE *RECEIVED* NO LATER THAN AUGUST 13, 2020
AT 4:00 P.M. (PREVAILING EASTERN TIME) (THE "BAR DATE")**

Carefully read the instructions that are included with this **CONFIDENTIAL ABUSE PROOF OF CLAIM** and complete all applicable questions.

IN ORDER TO BE CONSIDERED VALID, THIS ABUSE PROOF OF CLAIM MUST: (A) BE WRITTEN IN ENGLISH, (B) CONTAIN GOOD FAITH SUBSTANTIVE RESPONSES TO THE BEST OF YOUR KNOWLEDGE TO ALL REQUESTS FOR INFORMATION SET FORTH HEREIN, AND (C) BE ACTUALLY RECEIVED BY STRETTO, THE DEBTOR'S CLAIMS AND NOTICING AGENT, ON OR PRIOR TO THE BAR DATE EITHER (I) ELECTRONICALLY USING THE INTERFACE AVAILABLE AT [HTTPS://CASE.STRETTO.COM/ROCHESTERDIOCESE](https://case.stretto.com/rochesterdiocese) OR (II) BY DELIVERING AN ORIGINAL COPY BY HAND MAIL OR OVERNIGHT COURIER TO THE DIOCESE OF ROCHESTER, CLAIMS PROCESSING C/O STRETTO, 410 EXCHANGE, SUITE 100, IRVINE, CALIFORNIA 92602. PROOFS OF CLAIM SENT BY FACSIMILE, TELECOPY, OR E-MAIL WILL NOT BE ACCEPTED.

YOU MAY WISH TO CONSULT AN ATTORNEY REGARDING THIS MATTER.

YOU MAY ALSO OBTAIN INFORMATION FROM THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS BY CALLING TOLL FREE AT [_____].]

FAILURE TO COMPLETE AND RETURN THIS FORM IN A TIMELY MANNER MAY RESULT IN YOUR INABILITY TO VOTE ON A PLAN OF REORGANIZATION AND INELIGIBILITY TO RECEIVE A DISTRIBUTION IN THE ABOVE-CAPTIONED CHAPTER 11 CASE.

UNLESS YOU INDICATE IN PART 1 BELOW THAT YOU WANT THIS DOCUMENT TO BE PART OF THE PUBLIC RECORD, YOUR IDENTITY WILL BE KEPT STRICTLY CONFIDENTIAL, UNDER SEAL, AND OUTSIDE THE PUBLIC RECORD OF THE BANKRUPTCY COURT. HOWEVER, THIS PROOF OF CLAIM AND THE

INFORMATION IN THIS PROOF OF CLAIM WILL BE PROVIDED PURSUANT TO COURT-APPROVED CONFIDENTIALITY GUIDELINES TO THE DIOCESE OF ROCHESTER (THE “DIOCESE” OR “DEBTOR”), THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, THEIR RESPECTIVE COUNSEL, THE UNITED STATES TRUSTEE, AND TO SUCH OTHER PERSONS AS THE BANKRUPTCY COURT DETERMINES NEED THE INFORMATION IN ORDER TO EVALUATE YOUR CLAIM.

THIS PROOF OF CLAIM IS FOR ABUSE CLAIMANTS ONLY.

For purposes of this Proof of Claim, an “Abuse Claim” is any claim (as defined in section 101(5) of the Bankruptcy Code) against the Diocese resulting or arising in whole or in part, directly or indirectly from any actual or alleged sexual conduct or misconduct, sexual abuse or molestation, indecent assault and/or battery, rape, pedophilia, ephebophilia, or sexually-related physical, psychological, or emotional harm, or contacts, or interactions of a sexual nature between a child and an adult, or a nonconsenting adult and another adult, sexual assault, sexual battery, sexual psychological or emotional abuse, humiliation, or intimidation, or any other conduct constituting a sexual offense, incest, or use of a child in a sexual performance (as such terms are defined in the New York Penal Law), and seeking monetary damages or any other relief, under any theory of liability, including vicarious liability, any negligence-based theory, contribution, indemnity, or any other theory based on any acts or failures to act by the Diocese or any other person or entity for whose acts or failures to act the Diocese is or was allegedly responsible.

For purposes of this Proof of Claim, an “Abuse Claimant” is defined as the person asserting an Abuse Claim against the Diocese. If the Abuse Claimant is a minor, a parent or legal guardian may complete this Abuse Proof of Claim on the minor’s behalf.

TO BE VALID, THE ABUSE CLAIMANT MUST SIGN THIS PROOF OF CLAIM. IF THE ABUSE CLAIMANT IS DECEASED OR INCAPACITATED, THE FORM MAY BE SIGNED BY THE ABUSE CLAIMANT’S LEGAL REPRESENTATIVE OR THE EXECUTOR OF THE ESTATE. IF THE ABUSE CLAIMANT IS A MINOR, THE FORM MAY BE SIGNED BY THE ABUSE CLAIMANT’S PARENT OR LEGAL GUARDIAN.

A PERSON WHO FILES A FRAUDULENT CLAIM COULD BE FINED UP TO \$500,000, IMPRISONED FOR UP TO 5 YEARS, OR BOTH. 18 U.S.C. §§ 152, 157, AND 3571.

PART 1: CONFIDENTIALITY

THIS ABUSE PROOF OF CLAIM (ALONG WITH ANY ACCOMPANYING EXHIBITS AND ATTACHMENTS) WILL BE MAINTAINED AS CONFIDENTIAL PURSUANT TO COURT-APPROVED GUIDELINES UNLESS YOU EXPRESSLY REQUEST THAT IT BE PART OF THE PUBLIC RECORD BY CHECKING THE APPROPRIATE BOX AND SIGNING THE ATTESTATION BELOW – IF YOU DO NOT CHECK EITHER BOX, IF YOU CHECK BOTH BOXES, OR IF YOU DO NOT PROVIDE YOUR NAME AND SIGNATURE BELOW, YOUR CLAIM WILL REMAIN CONFIDENTIAL.

ONLY THE ABUSE CLAIMANT MAY WAIVE THE CONFIDENTIALITY OF THIS PROOF OF CLAIM.

Please select only one option below:	
<input type="checkbox"/> I wish to keep my identity and this proof of claim CONFIDENTIAL.	<input type="checkbox"/> I want my identity and this proof of claim (together with any exhibits and attachments) to be made PUBLICLY AVAILABLE AND PART OF THE PUBLIC RECORD.
Signature:	
Print Name:	

PART 2: IDENTIFYING INFORMATION

a. Abuse Claimant

First Name	Middle Initial	Last Name	Suffix (if any)
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Mailing Address (If party is incapacitated, is a minor or is deceased, please provide the address of the legal representative submitting the claim. If you are in jail or prison, your current address).

City	State/Prov.	Zip Code (Postal Code)	Country (if other than U.S.A.)
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Telephone No(s):
Home: _____ Work: _____ Cell: _____

Email address: _____

Social Security Number (last four digits only): _____

If you are in jail or prison, your identification number and location of incarceration:

May the Diocese or its representatives leave voicemails for you regarding your claim?

Yes No

May the Diocese or its representatives send confidential information to your email:

Yes No

Birth Date: _____
 Month Day Year

Any other name, or names, by which the Abuse Claimant has been known (including maiden name, if applicable):

b. Abuse Claimant's Attorney (if any):

Law Firm Name

Attorney's First Name Middle Initial Last Name

Street Address

City State/Prov. Zip Code (Postal Code) Country
(if other than U.S.A.)

Telephone No. Fax No. E-mail address

PART 3: BACKGROUND INFORMATION

a. Are you currently married?

Yes No (If "Yes", please state how long you have been married [identify the name of your spouse and marriage date](#)).

b. Have you previously been married?

Yes No (If "Yes", please identify, as applicable, the date(s) or approximate date(s) of any dissolution, divorce separation or widowhood).

c. Do you have children?

Yes No (If "Yes", please identify their current age(s)).

- d. What schools have you attended? For each school, please identify the months and years of your attendance. If you cannot recall the exact months when you began or ended each school year, please identify the season (fall, winter, spring, summer).

- e. Have you received a diploma or degree from any of the schools listed above?

Yes No (If “Yes”, please identify each diploma or degree that you received and the year you received it).

- f. Have you served in the armed forces?

Yes No (If “Yes”, please identify the branch of service, the dates you served and, if you have been discharged, the type of discharge you received).

- g. Are you currently employed?

Yes No (If “Yes”, please identify the name of the organization where you are employed, the date that your employment began and your job title).

- h. What is your employment history? Please provide the following information about each place where you have previously been employed: (i) the name of the organization where you were employed; (ii) the dates of employment; (iii) your job title(s); and (iv) your reason for leaving the place of employment.

- i. Have you ever been self-employed?

Yes No (If “Yes”, please provide your job responsibilities and any business name you used. Please also provide the approximate dates for which you were self-employed).

- j. Are you retired?

Yes No (If “Yes”, when did you retire?) _____

- k. [Part 4 below will ask you about the nature of your complaint against the Diocese. Other than the incident\(s\) of sexual abuse described in Part 4, have you ever been sexually](#)

abused by anyone else? If “Yes”, please describe this abuse, including the date of the abuse and the identity of the abuser.

PART 4: NATURE OF COMPLAINT
(Attach additional separate sheets if necessary)

NOTE: YOU MUST PROVIDE THE INFORMATION REQUESTED BELOW. IN ADDITION, IF YOU HAVE PREVIOUSLY FILED A LAWSUIT AGAINST THE DIOCESE IN STATE OR FEDERAL COURT, PLEASE ALSO ATTACH THE COMPLAINT.

- a. Who committed the acts of abuse or other wrongful conduct against you? Individuals identified in this section will be referred to as the “abuser” in questions below. If applicable, you may identify more than one abuser.

- b. What was the position, title or relationship to you (if known) of the abuser? How did you first come to know the abuser?

- c. Where did the abuse or other wrongful conduct take place? Please be specific and complete all relevant information that you know, including the City and State, name of the school or church (if applicable) and/or the name of any other location.

- d. When did the abuse or other wrongful conduct take place?

1. ~~How old were you at the time~~ If the abuse or other wrongful conduct ~~began?~~ Please be as specific as possible took place over a period of time (months or years), please state when it started, when it stopped, and how many times it

occurred. If you do not recall the exact ~~date~~ dates, provide as much information as possible, including the year and season (fall, winter, spring, or summer).

2. How old were you at the time the abuse or other wrongful conduct began? Please be as specific as possible. ~~If you do not recall the exact date, provide as much information as possible, including the year and season (fall, winter, spring, or summer).~~

3. Please also state your grade(s) in school (if applicable) at the time the abuse or other wrongful conduct took place.

e. What happened (describe the nature of the abuse or other wrongful conduct against you, including the circumstances and type(s) of abuse):

f. Did you tell anyone about the abuse or other wrongful conduct and, if so, whom did you tell (this would include parents; relatives; friends; representatives of the Diocese; attorneys; counselors, therapists, doctors; and law enforcement authorities). If you

did tell anyone, what did you tell them, and when? Please provide any written documentation or correspondence (letters, etc.) related to these communications.

g. Were there any witnesses to the abuse? If there were any witnesses, please list their name(s) and any contact information you have.

h. Do you personally know or have any reason to believe that the Diocese knew that your abuser was abusing you or others before or during the period when such abuse occurred? If "Yes", please provide all information that supports your conclusion, including all information requested in items h(1) through h(5) below.

1. Who at the Diocese knew that your abuser was abusing you or others?

2. How did such person or persons at the Diocese learn this information? For example, did you report the abuse to someone at the Diocese? Did someone else tell you they reported it to someone at the Diocese? Did someone at the Diocese witness the abuse?

3. When did such person or persons at the Diocese learn this information?

4. What exactly was the person or persons at the Diocese told or what exactly did they observe?

5. How did you come to have the information provided in response to the questions above?

i. Did you or your representative make any public statement(s), including statements to the press or any other journalist or media member, relating to the abuse or other wrongful conduct described in this claim? If "Yes", please provide a copy of the statement(s).

PART 5: IMPACT OF COMPLAINT

(Attach additional separate sheets if necessary)

a. What injuries have you experienced because of the act or acts of abuse or other wrongful conduct described above (for example, describe any physical injuries, as well as any effect on your education, employment, personal relationships, health, or faith)?

- b. Are you seeking compensation for loss of income or unpaid medical expenses? If so, please explain:

- c. Have you sought counseling or other medical or mental health treatment for your injuries? If so, with whom and when? What diagnoses, if any, resulted from your treatment?

PART 6: ADDITIONAL INFORMATION

- a. Prior Claims: Have you previously asserted any claim against any ~~entity or individual other than the Diocese party~~ (including, but not limited to, the Diocese or any parish, church, school or individual) relating to the abuse or other wrongful conduct described in this claim?

Yes (If “Yes,” please answer the questions below)

No

1. Where and when did you assert the claim(s)?

2. Against whom did you assert the claim(s)?

3. What claim(s) did you assert?

4. Was a lawsuit ever filed with respect to the claim(s)? When and where was it filed? Who were the parties to the lawsuit? What was the case number?

5. Was your claim and/or lawsuit resolved? If so, how?

b. Pending Claims: Have you asserted any currently pending claims against any entity or individual other than the Diocese relating to the abuse or other wrongful conduct described in this claim?

Yes (If “Yes,” please answer the questions below).

No

1. Where and when was this claim asserted?

2. Against whom did you assert the claim(s)?

3. What claim(s) have been asserted?

4. Has a lawsuit been filed with respect to the claim(s)? When and where was it filed? Who are the parties to the lawsuit? What is the case number?

5. What is the current status of this pending claim?

c. Reconciliation / Compensation Program: Have you ever participated in any Reconciliation / Compensation program with the Diocese or any other entity relating to the abuse or other wrongful conduct described in this claim?

Yes (If “Yes,” please answer the questions below).

No

1. Where and when did you participate in the program?

2. Against whom did you allege misconduct?

3. What misconduct did you allege?

4. Was a lawsuit ever filed with respect to the alleged misconduct? When and where was it filed? Who were the parties to the lawsuit? What was the case number?

5. What was the result of that lawsuit?

d. Settlements: Regardless of whether a complaint was ever filed against any party because of the abuse or other wrongful conduct, have you settled any claim relating to the abuse or other wrongful conduct described in this claim?

Yes

No

If "Yes," please describe, including parties to the settlement and attach a copy of any written settlement agreement.

e. Bankruptcy: Have you ever filed bankruptcy?

Yes

No

If "Yes," please provide the following information:

Name of Case: _____ Court: _____

Date filed: _____ Case No. _____

Chapter: 7 11 12 13 Name of Trustee: _____

Did you receive a discharge in such bankruptcy case? Yes No

Sign and print your name. If you are signing the claim on behalf of another person (including a minor, decedent or incapacitated person) state your relationship to the Abuse Claimant.

Under penalty of perjury, I declare the foregoing statements to be true and correct.

Date: _____

Signature: _____

Print Name: _____

Relationship to Abuse Claimant: _____

PLEASE SUBMIT A COMPLETED COPY OF THIS PROOF OF CLAIM FORM TO STRETTO, THE DEBTOR'S CLAIMS AND NOTICING AGENT, ON OR PRIOR TO THE BAR DATE EITHER (I) ELECTRONICALLY USING THE INTERFACE AVAILABLE AT [HTTPS://CASE.STRETTO.COM/ROCHESTERDIOCESE](https://case.stretto.com/rochesterdiocese) OR (II) BY DELIVERING AN ORIGINAL COPY BY HAND MAIL OR OVERNIGHT COURIER TO THE DIOCESE OF ROCHESTER, CLAIMS PROCESSING C/O STRETTO, 410 EXCHANGE, SUITE 100, IRVINE, CALIFORNIA 92602. PROOFS OF CLAIM SENT BY FACSIMILE, TELECOPY, OR E-MAIL WILL NOT BE ACCEPTED.

Summary report:	
Litera® Change-Pro for Word 10.7.0.7 Document comparison done on 2/6/2020 12:09:05 PM	
Style name: WH-Default Style	
Intelligent Table Comparison: Active	
Original filename: SYRNY1-#3480235-v3-DOR_- Abuse_Proof_of_Claim_Form.DOCX	
Modified filename: Abuse_Proof_of_Claim_Form_CNA Revisions_2020.02.03.docx	
Changes:	
<u>Add</u>	48
Delete	9
<u>Move From</u>	3
<u>Move To</u>	3
<u>Table Insert</u>	0
Table Delete	0
<u>Table moves to</u>	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	63

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK**

In re:

Case No. 2-19-20905-PRW

The Diocese of Rochester,

Chapter 11

Debtor.

**LONDON MARKET INSURERS' AND UNDERWRITERS' LIMITED OPPOSITION TO
THE MOTION OF THE DEBTOR FOR ENTRY OF AN ORDER APPROVING THE
FORM AND MANNER OF FILING PROOFS OF CLAIM**

The London Market Insurers¹ (“LMI”) and Underwriters², hereby oppose, on a limited basis, the Motion of the Debtor for Entry of an Order Establishing a Deadline for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof [ECF No. 376] (“Motion”) filed by the debtor, the Diocese of Rochester (“Debtor”) on January 17, 2020. As explained below, the form proof of claim (“Form POC”) proposed by the Debtor fails to provide information necessary for LMI, and Underwriters, to estimate the scope of their insurance coverage with the Debtor.

¹ The term “London Market Insurers” refers, collectively to Certain Underwriters at Lloyd’s, London, subscribing to Policy Nos. SL 3209, SL 3675 (unconfirmed), ISL 3090, SL 3556, SL 3693, SL 3830 and ISL 3092, Catalina Worthing Insurance Ltd f/k/a HFPI (as Part VII transferee of Excess Insurance Company Ltd), RiverStone Insurance (UK) Limited (as successor in interest to Terra Nova Insurance Company Ltd), RiverStone Insurance (UK) Limited (as successor in interest to Sphere Drake Insurance Ltd), Sampo Japan Nipponkoa Insurance Company of Europe Limited (formerly known as The Yasuda Fire & Marine Insurance Company), Dominion Insurance Company Ltd., and CX Reinsurance Company Ltd (formerly known as CNA Reinsurance of London Ltd).

² The term “Underwriters”, refers, collectively, to Certain Underwriters at Lloyd's, London subscribing to Certificate Nos. 18W2012, 18XS133, 19W2012 and 19XS133 and HDI Global Specialty SE (formerly known as International Insurance Company of Hannover SE).

ARGUMENT

I. Distribution of Proof of Claim Forms

1. The Motion seeks to limit the distribution of Proofs of Claims to those insurers the Debtor reasonably believes to be liable on the claims and subject to redactions. Given how liability in the tort system, and an insurer's liability therefor, is determined, such limited distribution would be inadequate. All proofs of claim should be distributed, without redactions, to each entity whose representatives have signed a confidentiality agreement. On January 29, 2020, counsel for the Debtors consented to LMI receiving all the proofs of claim without redactions.

II. Information Contained in the Proof of Claim

2. The Debtor's reorganization hinges on a consensual resolution of the abuse claims and any insurance covering such claims. LMI and Underwriters cannot estimate their liability and cannot resolve their insurance coverage issues without knowing the full scope of the Debtor's liability and the insurers' responsibility for such liability. The Debtor acknowledges these facts:

[K]nowing the universe of claims asserted against the Debtor will be critically important to the Debtor's efforts to mediate, and ultimately to resolve, its insurance coverage issues as the Debtor's insurance carriers will likely require as a condition to any settlement some assurance that they will not have continuing exposure to additional claims.

Mot. ¶ 8.

3. The purpose of the Form POC should be to "facilitate the collection of information necessary to evaluate the claims asserted against it and the availability of insurance coverage to pay the claims[.]" *Id.* at ¶ 9. The proposed Form POC falls short of its purpose.

4. LMI and Underwriters comprise two groups of insurers subscribing policies issued to the Diocese of Rochester, New York, and certain of its related entities, such as parishes

and schools (collectively "Insured Entities"). LMI subscribed excess indemnity contracts of insurance from June 1, 1977 to July 1, 1986, which provided liability coverage for personal injuries arising out of an occurrence happening during the policy period. Underwriters subscribed separate contracts of insurance from July 1, 2018 to July 1, 2020, which provided claims made and reported sexual misconduct coverage. Both groups of policies require the Insured Entities to be legally liable. Both have definitions, exclusions and conditions that: (a) impose notice and cooperation conditions; (b) provide no coverage if the Insured was aware of an alleged perpetrator's deviant propensities or history of misconduct prior to or during the alleged abuse (and in the case of Underwriters, prior to the inception of their policies); (c) provide no coverage if there was a claim prior to the inception of coverage; and other requirements.

5. As LMI and Underwriters stated in their Response to the Diocese's Motion for an Order Referring the Adversary Proceeding to Mediation, they rely on information from both the Diocese and the claimants to evaluate the Debtor's liability and the insurance coverage therefor. Adversary Proceeding No.19-02021-PRW, ECF No. 23, ¶10.

6. The Diocese has information about: (a) the alleged perpetrator's assignments; (b) if there were prior or other complaints or concerns about the alleged perpetrator; (c) if it met with a claimant (or family member or counsel) to address a complaint or concern; (d) if it conducted an internal investigation involving a claimant or an alleged perpetrator (e) if there was a law enforcement investigation or proceeding involving a particular claimant or alleged perpetrator (f) if it has information about a claimant or an alleged perpetrator from a voluntary compensation program; (g) if it has information about a claimant's parish or Catholic school activities; and (h) if a claimant previously asserted a claim and if that claim was reported to an insurer. LMI and

Underwriters have asked for this and other information from the Diocese. The Diocese acknowledged during the January 14, 2020 hearing before this court that it would provide this information. *See* Transcript of Hearing Held on January 14, 2020 at 10:24-11:7, *In re Diocese of Rochester* (No. 2-19-20905-PRW).

7. However, the claimants must also provide pertinent information. The claimants have information about (a) the alleged abuse, including who the perpetrator is; (b) what happened; (c) where it happened; (d) when it happened; and (e) the claimed damages. The claimants also have information on why they believe the Diocese is liable.³ They know if they previously reported the alleged abuse to the Diocese and/or others and if there was follow-up, including offers of counselling, involvement of law enforcement, a settlement or other. They can explain how they became acquainted with the alleged perpetrator and their involvement with any Diocesan entities prior to and during the alleged abuse. In addition, they can identify witnesses. While LMI and Underwriters reserve all rights to seek any necessary discovery, the below proposed changes are designed to obtain some of this information from claimants in the POCs.

8. The proposed POC form submitted by the Debtor in its Motion for Entry of an Order Establishing a Deadline for Filing Proofs of Claim and Approving the Form and manner of Notice Thereof ("Bar Date Motion") does not seek sufficient information from which LMI and Underwriters can evaluate liability and coverage for the claims in order to participate

³ Some of the legal theories and defenses to CVA claims are set forth in the Memorandum of Law in Support of Motion to Dismiss filed in the CVA lawsuit titled *Encizo v Diocese of Rockville Centre*, Index No. 615733/2019, Supreme Court of the State of New York, County of Suffolk. This memorandum was attached to the LMI and Underwriters' Response to the Diocese's Motion for an Order Referring the Adversary Proceeding to Mediation, Adversary Proceeding No. 19-02021-PRW, ECF No. 23.

meaningfully in the court-ordered mediation.⁴ Counsel for LMI and Underwriters have had meetings and discussions with counsel for the Diocese and for the Creditors' Committee and asked to have the following additional questions added to the proposed POC Form submitted to this Court:

- a. Did you ever write to or contact the Diocese, your parish, your school or anyone else about the abuse? If so, and you have copies of any correspondence; please attach copies of the correspondence.
 - b. Identify any church or religious organization to which you have belonged or with which you have been affiliated. With respect to each church or religious organization, please also provide the dates when you were a member of such church or religious organization.
 - c. Were you an altar server or involved in other parish / church / school activities?
 - d. Do you know personally or have any reason to believe that the Diocese knew that your abuser was abusing you or others before or during the period when such abuse occurred? If “Yes”, please provide all information that supports your conclusion, including:
 - i. Who at the Diocese knew that your abuser was abusing you or others?
 - ii. How did such person(s) at the Diocese learn this information?
 - iii. When did such person(s) at the Diocese learn this information?
 - iv. What was the person(s) from the Diocese told or observe?
 - v. How did you come to have the information provided in response to the questions above?
9. The Debtor’s insurers cannot resolve their coverage issues without such information. Hence, in addition to inserting the above-questions into the Form POC, the Debtor must distribute all proofs of claims to the insurer representatives and counsel who execute Confidentiality Agreements, and without redactions.

⁴ The information sought from LMI and Underwriters is consistent with the information sought from parties in other CVA cases. *See In re Ninth and Tenth Judicial Districts Child Victims Act Litigation*, Case Management Order No. 1, Index No. 900011/2019, Supreme Court of the State of New York, County of Nassau (filed Nov. 21, 2019) (with attached standard discovery requests used for cases filed under CPLR 214-g where the Diocese of Rockville Centre is a Defendant).

CONCLUSION

For the foregoing reasons, LMI and Underwriters respectfully oppose the Motion.

Dated: February 6, 2020

Respectfully submitted,

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**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK**

In re:

Case No. 2-19-20905-PRW

The Diocese of Rochester,

Chapter 11

Debtor.

**LONDON MARKET INSURERS' AND UNDERWRITERS' LIMITED OPPOSITION TO
THE MOTION OF THE DEBTOR FOR ENTRY OF AN ORDER APPROVING THE
FORM AND MANNER OF FILING PROOFS OF CLAIM**

I, Jeff D. Kahane, declare that on February 6, 2020, I caused the above-referenced document to be served upon the following by U.S. Mail:

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On behalf of Creditor Committee Official Committee of Unsecured Creditors
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Dated: February 6, 2020

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