

PACHULSKI STANG ZIEHL & JONES LLP
James I. Stang, Esq. (admitted *pro hac vice*)
Linda Cantor, Esq.
10100 Santa Monica, Boulevard, 11th Floor
Los Angeles, California 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Email: jstang@pszjlaw.com
lcantor@pszjlaw.com

-and-

Ilan D. Scharf, Esq.
Karen B. Dine, Esq.
Brittany M. Michael, Esq.
780 Third Avenue, 36th Floor
New York, New York 10017
Telephone: (212) 561-7700
Facsimile: (212) 561-7777
Email: ischarf@pszjlaw.com
kdine@pszjlaw.com
bmichael@pszjlaw.com

Counsel for the Official Committee
of Unsecured Creditors of The Roman Catholic Diocese
of Rockville Centre, New York

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

In re:
THE ROMAN CATHOLIC DIOCESE OF
ROCKVILLE CENTRE, NEW YORK,
Debtor.

Chapter 11
Case No. 20-12345 (SCC)

**THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS' REPLY IN SUPPORT OF THE DEBTOR'S PROPOSED SEXUAL
ABUSE PROOF OF CLAIM FORM**

The Official Committee of Unsecured Creditors (the "**Committee**") of The Roman
Catholic Diocese of Rockville Centre, New York (the "**Diocese**" or the "**Debtor**") in the above-

captioned case (the “**Case**”) under chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”), by and through its undersigned proposed counsel, hereby replies (the “**Reply**”) in support of the Sexual Abuse Proof of Claim Form proposed in the *Motion of the Debtor for an Order Establishing Deadlines for Filing Proofs of Claim and Granting Related Relief* [Docket No. 174] (the “**Motion**”) and opposes the additional questions proposed by the Debtor’s insurers. In support of this Reply, the Committee respectfully represents as follows:

BACKGROUND

1. On November 19, 2020, the Debtor filed the Motion requesting, among other relief, that the Court approve its proposed proof of claim form for holders of Sexual Abuse Claims¹ (the “**Sexual Abuse Proof of Claim Form**”).

2. The Committee objected to certain relief requested in the Motion but noted that the Committee and Debtor had engaged in productive negotiations that resulted in the Debtor’s proposed Sexual Abuse Proof of Claim Form. *See The Official Committee of Unsecured Creditors’ (A) Objection to the Motion of the Debtor for an Order Establishing Deadlines or Filing Proofs of Claim and Granting Related Relief and (B) Response to LMI’s Response to the Motion* [Docket No. 215] (the “**Objection**”).

3. Certain Underwriters at Lloyd’s, London and Certain London Market Insurance Companies (“**LMI**”) filed a response to the Motion (the “**LMI Response**”). *LMI’s Responses to Debtor’s Motion for an Order Establishing Deadlines for Filing Proofs of Claim and Granting Related Relief* [Docket No. 199]. LMI was also joined in its objection by Interstate Fire & Casualty Company and Evanston Insurance Company (successor by merger to Associate International Insurance Company). *See Interstate Fire & Casualty Company’s Joinder in LMI’s*

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

Response [Docket No. 200]; *Associated International Insurance Company's Joinder in LMI's Response* [Docket No. 213]. LMI requested four alterations to the Sexual Abuse Proof of Claim Form, including the addition of the following question (the "**LMI Additional Question**"):

Please provide all facts you are aware of that suggest that the Diocese, or any of its officers or employees, knew or should have known that the abuser was abusing you or others before or during the period of time when the abuse or other wrongful conduct took place.²

4. Arrowood Indemnity Insurance Company ("**Arrowood**") also filed a limited objection to the Motion (the "**Arrowood Objection**"). *Arrowood Indemnity Insurance Company's Limited Objection to Debtor's Motion for an Order Establishing Deadlines for Filing Proofs of Claim and Granting Related Relief* [Docket No. 214]. In the Arrowood Objection, Arrowood proposes the addition of the following question to the Sexual Abuse Proof of Claim Form (the "**Arrowood Additional Question**" and, together with the LMI Additional Question, the "**Insurer Additional Questions**"):

Have you previously filed a lawsuit, made a claim, or filed a proof of claim concerning sexual abuse you suffered that was committed by any other individual or entity, other than an abuser affiliated with a church, parish, school, or Diocesan organization? If so, please state the date(s) of abuse, abuser and his/her affiliated employer/entity.³

REPLY IN OBJECTION TO THE INSURER ADDITIONAL QUESTIONS

5. The Debtor's proposed Sexual Abuse Proof of Claim Form elicits all necessary information in connection with the filing of a proof of claim.

6. Rule 3001 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") requires that a proof of claim form "conform substantially to the appropriate official form." Fed. R. Bankr. P. 3001. It is clear that deviation from the official form is necessary in

² LMI Response, p. 4.

³ Arrowood Response, p. 2.

this case. However, the deviation is not a license for the Debtor's insurers to force the Debtor to include additional invasive, irrelevant and confusing questions requiring the disclosure of sensitive and personal information that has no relevance to the *prima facie* establishment of a substantive claim.

7. The Insurer Additional Questions go well beyond the scope of information required to submit a claim, seek intrusive details intended to elicit defenses against the claims, require legal conclusions that may be complicated or unanswerable (particularly by a *pro se* claimant), and contain questions that may deter sexual abuse survivors from filing claims. All of this extraneous information either has no nexus to the abuse claims committed under the auspices of the Debtor or goes far beyond the information appropriate for a proof of claim under the Bankruptcy Rules.

A. The Form Should Not Be Burdensome and Require Interrogatory Responses

8. The Insurer Additional Questions require detailed information well beyond that which is necessary to understand the facts regarding a Sexual Abuse Claim. The questions are akin to interrogatories served by a defendant in a tort case rather than the proof of claim form required by Bankruptcy Rule 3001. The intrusive interrogatories are especially inappropriate because such questions in an interrogatory served during litigation would be subject to objection by the witness. However, survivors do not have the option of objecting to the scope of questions on the form and risk having their claim disallowed at the outset by failure to provide the requested information.

9. Further, the questions must be considered not based on how a reasonable lawyer or even a reasonable person would understand them but how they would be understood by a

“reasonable Sexual Abuse Survivor.”⁴ Each of the Insurer Additional Questions are objectionable:

a. Questions Regarding Unrelated Abuse Are Irrelevant and Unnecessarily Invasive

10. The Arrowood Additional Question is objectionable because it requests information (i) irrelevant for purposes of the proof of claim, (ii) potentially confusing due to ambiguity regarding the term “claim,” and (iii) invasive to the survivor. The Arrowood Additional Question is clearly an interrogatory aimed at gathering defenses regarding a survivor’s claim. The information it requests is not relevant to whether the claimant has a *prima facie* claim against the Debtor. Further, it is vague and potentially confusing to abuse survivors. The term “claim” could be construed in many ways, creating a pitfall for a survivor who does not include information regarding, for example, a letter his mother sent to the neighbor after the neighbor sexual abused the survivor. Finally, as the Committee previously addressed in the Objection, coming forward to submit a sexual abuse claim is a difficult and emotional process.⁵ Requiring the survivor to disclose multiple, unrelated experiences of sexual abuse could have a chilling effect on a survivor’s willingness to assert a claim.⁶

b. Questions Regarding the Diocese’s Knowledge of Abuser’s Conduct are Inappropriate and Potentially Detering for Survivors

11. The LMI Additional Question is also inappropriate. The information would clearly be in the records of the Diocese or other institutions, as well as in the knowledge of employees or agents of the Diocese or other institutions. There is no reason to obtain such

⁴ Conte Decl., ¶ 12.

⁵ See Objection, ¶¶ 18–23.

⁶ Conte Decl., ¶ 15.

information from the survivors at all, let alone as a threshold requirement for the survivors' filing proofs of claim and participating in the Case.

12. Moreover, such a question could dissuade a survivor from asserting a claim because the question suggests the survivor should know what the Diocese knew about the abuse.⁷ The question inappropriately and unfairly places the burden on the survivor to provide the insurer with insurance defenses to the survivor's claim as a prerequisite to filing a claim. The question also implies that the survivor should have told the Diocese about the abuse and, by failing to do so, the survivor was somehow complicit in the cover-up.⁸ This may make the survivor feel inadequate and unwilling to answer the question.⁹ Because of its likely chilling effect, the LMI Additional Question should not be included in the Sexual Abuse Proof of Claim Form.

B. The Debtor's Sexual Abuse Proof of Claim Form Elicits All Necessary Information to Assess a Sexual Abuse Claim Against the Debtor Without Subjecting Survivors to a Procedurally Inappropriate Examination

13. In the Committee's Response to LMI, included in its Objection and incorporated here by reference, the Committee noted that Official Form 410 only asks for basic information about a claim, such as "personal injury" or "services performed." See Official Form 410, Question 8. In this Case, the Committee supports the use of a modified proof of claim form that requests more information than Official Form 410. The Debtor's Sexual Abuse Proof of Claim Form would provide parties with important facts regarding the claimants' abuse, including the identity of the abuser(s), the date(s) of the abuse, the nature of the abuse, the location(s) of the abuse, the frequency of the abuse, and the injuries caused by the abuse.

⁷ *Id.*, ¶ 13.

⁸ *Id.*

⁹ *Id.*

14. However the Insurer Additional Questions in effect alter the claims allowance procedure by requiring creditors to provide more information than necessary as a precondition to have their claims deemed properly filed under Bankruptcy Rule 3001. This is an inappropriate abrogation of the Bankruptcy Rules. Child sexual abuse survivors, some of whom may be *pro se*, risk exposing themselves to motions to disallow if they fail to provide some or all of the requested additional information.

15. The additional information that would be required under the Insurer Additional Questions appears to be a mechanism designed to discourage survivors from filing valid claims, to obtain preliminary discovery for use in future objections to abuse survivors' claims, or to enable parties to move to disallow a claim as "not properly filed" if the survivor does not have the capacity to complete the questions in their entirety. The claims process should be fair and equitable to survivors and should not contain unnecessary barriers to their participation in this Case.

CONCLUSION

WHEREFORE, the Committee respectfully requests that the Court approve the Sexual Abuse Proof of Claim Form proposed by the Debtor and grant such other and further relief as the Court deems just and proper.

Dated: New York, New York
December 4, 2020

PACHULSKI STANG ZIEHL & JONES LLP

/s/ James I. Stang

James I. Stang, Esq. (admitted *pro hac vice*)

Linda Cantor, Esq.

10100 Santa Monica, Boulevard, 11th Floor

Los Angeles, California 90067

Telephone: (310) 277-6910

Facsimile: (310) 201-0760

Email: jstang@pszjlaw.com
lcantor@pszjlaw.com

-and-

Ilan D. Scharf, Esq.
Karen B. Dine, Esq.
Brittany M. Michael, Esq.
780 Third Avenue, 36th Floor
New York, New York 10017
Telephone: (212) 561-7700
Facsimile: (212) 561-7777
Email: kdine@pszjlaw.com
ischarf@pszjlaw.com
bmichael@pszjlaw.com

Counsel for the Official Committee
of Unsecured Creditors of The Roman Catholic
Diocese of Rockville Centre, New York

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

In re:	:	Chapter 11
	:	
THE ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, NEW YORK, ¹	:	Case No. 20-12345 (SCC)
	:	
Debtor.	:	

DECLARATION OF JON R. CONTE, Ph.D.

I, Jon R. Conte, Ph.D., submit the following declaration as my testimony in this matter and state, under penalty of perjury, the following:

1. I am an individual over the age of 21 years and suffer no disability that would interfere with my ability to testify truthfully to the matters set forth herein.
2. I am a Professor Emeritus in the School of Social Work at the University of Washington in Seattle, Washington and Director of the Joshua Center on Child Sexual Abuse Prevention at the University. My academic Curriculum Vitae is attached to this declaration.
3. I have almost four decades in the study of childhood sexual abuse, am published in that area and have trained multidisciplinary audiences on various aspects of childhood sexual abuse, including issues in forensic practice nationally and internationally.
4. Over the course of my career, I have served on a Panel on Child Abuse and Neglect at the National Academy of Sciences; on a research review committee at the National Institute of Mental Health; was the founding President of the American Professional Society on the Abuse of Children; was on the Board of Councilors of the International Society for the

¹ The Debtor in this chapter 11 case is The Roman Catholic Diocese of Rockville Centre, New York, the last four digits of its federal tax identification number are 7437, and its mailing address is 50 North Park Avenue P.O. Box 9023, Rockville Centre, NY 11571-9023.

Prevention of Child Abuse and Neglect; and served on State and local committees in Illinois, Washington, and Kentucky.

5. I maintained a small private clinical practice specializing in the treatment of children, youth, and adults with histories of child sexual abuse first in Chicago and then in Seattle after returning to Seattle in 1990. I have evaluated literally thousands of child, youth and adult victims of childhood sexual abuse who allege harms and damages resulting from childhood sexual abuse from the mid-1980s to the present.

6. I have testified as an expert over one hundred and sixty times in Washington, Oregon, California, Arizona, Colorado, Nebraska, New Hampshire, Florida, South Carolina, and British Columbia Canada. I have previously served as an expert to Creditors' Committees in the Bankruptcies of the Archdioceses of Portland and Milwaukee, the Boy Scouts of America and the Roman Catholic Church of the Archdiocese of New Orleans. A partial list of my expert testimony is attached as Appendix 1 to my Curriculum Vitae.

7. I am the Editor of the Journal of Interpersonal Violence and the journal Trauma, Violence, and Abuse. I am generally aware of the research on various aspects of childhood sexual abuse. I have coauthored four manuscripts in the last 12 months. All manuscripts have been based on a review of extensive research on various issues surrounding childhood sexual abuse.

8. I have been retained by the Official Committee of Unsecured Creditors (the "Committee"), subject to Court approval, in this matter to provide expert testimony of various aspects of the current matter.

9. I have reviewed *LMI's Responses to the Motion of the Debtor for an Order Establishing Deadlines for Filing Proofs of Claim and Granting Related Relief* (the "LMI

Response”) filed on November 25, 2020 by Certain Underwrites at Lloyd’s, London and Certain London Market Insurance Companies (“LMI”) and the *Arrowood Indemnity Insurance Company’s Limited Objection to Debtor’s Motion for an Order Establishing Deadlines for Filing Proofs of Claim and Granting Related Relief* (the “Arrowood Objection”) filed on December 1, 2020 by Arrowood Indemnity Insurance Company (“Arrowood”).

10. The opinions I have reached regarding the additional Sexual Abuse Proof of Claim questions proposed by the insurers summarized below are based on well-established facts about the nature of childhood sexual abuse and its impact on child victims when they become adults.

11. It is difficult to explain to those who never experienced sexual abuse in childhood what the experience is like for the child. Words do a poor job of communicating the isolation, betrayal, stigma, fear, guilt, shame, and other negative and powerful motions that a child feels when sexually abused by a more powerful and often trusted adult and which adults abused in childhood continue to carry with them.

12. As a professional I have appreciated the standard I understand the law often applies of a “reasonable person.” Further it is my understanding that the law recognizes that some experiences are so extreme that they alter the capacities of the individual. So for example, the Battered Person Syndrome asks not what would a “reasonable person” do or think in a situation but rather what would a battered person reasonably believe or do? Sexual abuse is akin to battering (i.e. physical violence) albeit often more severely negatively impacting the victims’ functioning; including the capacity to understand their experience as abuse, increasing a false sense of responsibility for their own abuse, and creating negative cognitions and emotions which work against understanding that they were abused or taking action to protect themselves. In my

opinion the standard to apply in this matter on issues such as understanding legal questions is a “reasonable Sexual Abuse Survivor.”

13. LMI requests that the following question be added to the sexual abuse proof of claim in this case:

Please provide all facts you are aware of that suggest that the Diocese, or any of its officers or employees, knew or should have known that the abuser was abusing you or others before or during the period of time when the abuse or other wrongful conduct took place.

In my opinion, this question may be relevant in the context of discovery but is wholly irrelevant to completing a Proof of Claim. More critically, it may discourage disclosures by suggesting that the survivor should know what the Diocese knew about the abuse. It implies that the survivor should have told the Diocese about the abuse and by failing to do so, the survivor was somehow complicit in the cover-up. This may make the survivor feel inadequate and unwilling to answer the question. Because of its likely chilling effect it should not be included in the Proof of Claim form.

14. The question that Arrowood seeks to add will also serve to discourage survivors from completing the Proof of Claim, and is wholly unnecessary. Arrowood asks that the following question be answered:

Have you previously filed a lawsuit, made a claim, or filed a proof of claim concerning sexual abuse you suffered that was committed by any other individual or entity, other than an abuser affiliated with a church, parish, school, or Diocesan organization? If so, please state the date(s) of abuse, abuser and his/her affiliated employer/entity

Whether or not the survivor suffered other sexual abuse has no relevance to the claims of the survivor against the Diocese. Moreover, some survivors may see the question as a potential attack on their credibility, implying more than one action has any relevance to a potential claim

against the Diocese. This is putting too much burden on the survivor and by doing so, may discourage survivors to fill out a proof of claim.

15. As I explained in my prior declaration in support of the Committee's objection to the bar date motion,² it is an extremely difficult process for a survivor to make the decision to file a claim and acknowledge the abuse that s/he suffered as a child. Asking individuals to disclose multiple, unrelated incidences of abuse could pose too difficult of a task for some survivors to undertake, having a chilling effect on the survivor's willingness to complete the claim form. I would strongly urge against abusing survivors further by including the LMI and Arrowood questions.

Pursuant to 28 U.S.C. sec. 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of knowledge and belief. I executed this Declaration on December 4, 2020 at Whidbey Island, WA.

/s/ Jon R. Conte
Jon R. Conte, Ph.D.

² See Docket No. 215.