

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

In re: Bankruptcy Case No. 20-30663-5-mcr
The Roman Catholic Diocese of Syracuse, Chapter 11
New York Judge Margaret Cangilos-Ruiz
Debtor.

**REQUEST TO INCLUDE ADDITIONAL QUESTIONS IN THE FORM SUGGESTED
BY THE COURT**

Certain Underwriters at Lloyd's, London and solvent London Market Companies (together "London Market Insurers" or "LMI")¹, subscribing to insurance policies issued to the Debtor Roman Catholic Diocese of Syracuse, hereby request additional questions be included in the Court's suggested form for the Supplemental Confidential Sexual Abuse Form ("Victim Claim Form"), filed by the Debtor on October 27, 2020, ECF No. 193, and in support thereof, state respectfully as follows:

1. Due to the Child Victims Act (cite) ("CVA"), claimants who alleged they were sexually abused as children decades ago are now able to bring civil claims that are otherwise barred by the statute of limitations. *See* S.B.S. 2440, 2019-2020 Reg. Sess. (N.Y. 2019); New York Child Victims Act: N.Y. C.P.L.R. 214-g

2. LMI and the other Insurers are now, for the first time, learning about these claims and the only information they have to assess liability and coverage are (a) the Complaints filed in lawsuits brought prior to the bankruptcy; and (b) the Victim Claim Forms. Generally, Insurers have the opportunity to conduct investigation and discovery to assess the credibility of a claimant

¹ LMI do not include any insolvent London Market Companies, including CX Re, which recently entered Administration, including any that may be listed in Footnote number 1 on page 3 of the Diocese's Motion.

who brings a civil action, to seek corroborating evidence, and to evaluate liability as well as damages, based on the evidence and the legal theories asserted. These opportunities are curtailed severely where, as here, stale claims are allowed to be brought, the parties are placed on tight deadlines to assess and respond to claims, and limited information is made available.

3. LMI insured a number of dioceses around the country. Many of the insured dioceses have already filed bankruptcy, and without exception, each of those bankruptcy cases was resolved by global mediation and settlement of the abuse victims' claims against the diocese and its related parishes and organizations (collectively, "Catholic Organizations"). The primary motivation for the parties to seek a global settlement, rather than only a settlement of the claims against the diocese, is that neither the claimants nor the insured entities wished to conclude the bankruptcy case by initiating a coverage action; the claimants are seeking recompense, not additional litigation.

4. To achieve those settlements, the abuse victims had to supply sufficient information to the Catholic Organizations, and their insurers (collectively with the Catholic Organizations, "Parties in Interest"), for the Parties in Interest to assess adequately whether the Catholic Organizations had liability for each abuse claim, and the amount of such liability. In addition, the Parties in Interest had to obtain sufficient information to determine whether the diocese's insurers had liability to the Catholic Organizations for the abuse claims for which the Catholic Organizations were liable.

5. The proposed Victim Claim Form is inadequate and LMI respectfully seek additional information. Without the additional information required to assess liability and coverage, a mediated settlement cannot be achieved without written and deposition discovery of each claimant sufficient to obtain the missing information. There is little doubt that such

discovery would be contentious, expensive, and delay any settlement of this case. While LMI cannot guarantee that additional discovery may not be required in some cases, obtaining additional information now will certainly minimize the need for additional discovery and enhance all parties' abilities to work towards a global mediated settlement.

6. As the Diocese stated 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 (“Claim Motion”), filed September 21, 2020, Doc. No. 118,

The Diocese respectfully submits that the uniquely personal and unliquidated nature of Sexual Abuse Claims requires the collection of additional information not normally included on Official Bankruptcy Form 410 in order to properly evaluate such claims, and to determine whether there may be insurance coverage available to satisfy such claims, at least in part. The Victim Claim Form is designed to obtain critical claim information covering each claim. For example, the date of the alleged abuse is essential as the Insurance Carriers consist of approximately forty-seven (47) separate entities who issued different policies over more than fifty (50) years covering from the 1950’s through the Petition Date. The Victim Claim Form is the least intrusive way to obtain necessary information to move the Chapter 11 Case forward and to seek a consensual plan of reorganization that fairly compensates all creditors. Further, by collecting this information from the Victim Claim Form, it will avoid the need for post-claim filing, intrusive, costly and time-consuming discovery directed at victims of sexual abuse by the Diocese, the Committee, and the Insurance Carriers seeking the required additional claim information.

Claim Motion at 12. Similar procedures, including the requirement that victims of sexual abuse prepare a separate proof of claim form that requires more specific information about the claim have been approved in twenty-four Catholic entity bankruptcy cases.

7. Attached hereto as **Exhibit A** is a redline of the draft Victim Claim Form suggested by the Court. It includes the minimum changes LMI believe necessary to proceed meaningfully with a mediation. Including such additional questions does not eliminate any possible need for additional discovery, but, if the additional information requested herein is provided, it will likely reduce it significantly.

8. To obtain the minimum information necessary to evaluate each claim, the Victim Claim Form should include, at minimum, the following:

9. Question e. should be amended, as follows, to seek additional useful detail:

e. When did the Sexual Abuse take place? 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, **or school year and grade**)

This will assist with determining the dates of the alleged abuse.

10. Question f. should be amended as follows, to seek additional useful detail:

f. Do you know how old you were when the Sexual Abuse began and ended? If you do not recall the exact date, please try to provide as much information as possible, such as the year and season (fall, winter, spring, or summer, **or school year and grade**).

This will assist with determining the dates of the alleged abuse.

11. Moreover, the following questions should be added;

h. If you were sexually abused on more than one occasion, please state when the abuse started, when it stopped, and how many times it occurred.

This will assist with determining the extent and dates of the alleged abuse.

i. Did you tell anyone about the sexual abuse (this would include parents, relatives, friends, anybody affiliated with the Diocese, attorneys, counselors, and law enforcement authorities? If "Yes":

Who did you tell?

What did that person say or do in response, if anything

These questions will (i) show the Diocese and its insurers if there is corroborating evidence to support the claimant's allegations; and (ii) indicate if the Diocese had prior notice of allegations of abuse.

k. Do you personally know or have 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:

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

How did such person(s) at the Diocese learn this information?

When did such person(s) at the Diocese learn this information?

What exactly was the person(s) from the Diocese told or what exactly did they observe?

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

These questions go directly to the Diocese's liability. A common legal theory that claimants bring in these matters is negligent hiring, retention, and supervision. To state such a claim against the Diocese, the claimant must show the "standard elements of negligence" as well as "(1) that the tort-feasor and the defendant were in an employee-employer relationship; (2) that the employer 'knew or should have known of the employee's propensity for the conduct which caused the injury' prior to the injury's occurrence; and (3) that the tort was committed on the employer's premises or with the employer's chattels." *Ehrens v. Lutheran Church*, 385 F.3d 232, 235 (2d. Cir. 2004); *see also Kenneth R. v Roman Catholic Diocese of Brooklyn*, 229 A.D.2d 159, 161 (N.Y.A.D. 2 Dept., 1997).

12. Claims for vicarious liability against the Diocese, including assault, battery, intentional infliction of emotional distress, and other claims premised on alleged intentional misconduct by perpetrators, will largely fail, if claimants cannot show that the alleged acts are committed in the scope of the alleged perpetrator's employment. *See, e.g. Kenneth R.*, 229 A.D. 2d at 161 ("that conduct did not fall within the scope of his employment and therefore the (employer) is not vicariously liable."); *see also N.X. v. Cabrini Med. Ctr.*, 97 N.Y.2d 247, 251 (N.Y. 2002) (sexual assault is "a clear departure from the scope of employment, having been committed for wholly personal motives" and "not in furtherance of [an employer's] business"); *Poppel v. Dr. Archibald and the Rockefeller Institute*, 2020 WL 2749 (S.D.N.Y.) (ruling "because Archibald was not acting within the scope of his employment when he sexually abused his patients, Defendant Rockefeller cannot be held vicariously liable for his intentional torts").

13. Without, at a minimum, the pertinent information from the additional questions requested herein, LMI could not reasonably assess the Diocese's liability and coverage, which will prevent LMI from meaningfully participating in settlement discussions. Thus, if such questions are not added to the Victim Claim Form, LMI will have to conduct discovery that will be onerous, expensive, and time-consuming for all the parties.

WHEREFORE, LMI seek to have the Court approve a Victim Claim Form that requests enough information to enable them and other Insurers to evaluate adequately the Diocese's and their own liability, and in no way, even by implication, limit LMI's right to conduct necessary post-claims discovery.

Dated: October 27, 2020

Respectfully submitted,
/s/ Jeff D. Kahane
Russell W. Roten (*pro hac vice*)
Jeff D. Kahane (*pro hac vice*)
Duane Morris LLP
865 S. Figueroa Street, Suite 311
Los Angeles, California 90017-5450
Telephone: (213) 689-7400
Facsimile: (213) 689-7401
Email: RWRoten@duanemorris.com
JKahane@duanemorris.com

Catalina J. Sugayan (*pro hac vice*)
Peter Garthwaite (*pro hac vice*)
Clyde & Co US LLP
55 West Monroe Street, Suite 3000
Chicago, IL 60603
Telephone: (312) 635-7000
Facsimile: (312) 635-6950
Email: catalina.sugayan@clydeco.us
peter.garthwaite@clydeco.us

CERTIFICATE OF SERVICE

I, Jeff D. Kahane, hereby certify that on October 27, 2020, I caused a true and correct copy of the foregoing to be filed with the Clerk of the Court using CM/ECF and that service was perfected on all counsel of record and interested parties through this system.

Dated: October 27, 2020

/s/ Jeff D. Kahane

Jeff D. Kahane
Duane Morris LLP
30 South 17th Street
Philadelphia, PA 19103
Tel: (215) 979-1000
Fax: (215) 979-1020
E-Mail: BLMessinger@duanemorris.com

United States Bankruptcy Court
Northern District of New York
Chief Judge Margaret Cangilos-Ruiz
In re Roman Catholic Diocese of Syracuse
Case Number 20-30663

Supplemental Confidential Sexual Abuse Form

When submitting your Proof of Claim in this case, the court strongly encourages you to complete this supplemental form, which the court has approved, and include it as an attachment to your claim. Submitting this supplemental form at the outset will help streamline the process of identifying claims and all applicable insurance coverage and expedite a distribution to creditors.

Please read all questions and instructions carefully, and answer to the best of your ability. If you do not complete and include this supplemental form as an attachment to your filed claim, your failure to do so may be the basis for a valid objection to your claim.

If you have an attorney, you should complete this form with the assistance of counsel.

Knowingly and fraudulently submitting false information to a court is a crime punishable by \$500,000, imprisonment for up to five years, or both. 18 U.S.C. §§ 152, 157.

(Form begins on the next page)

PART 1: CONFIDENTIALITY

The information you share will be kept strictly confidential. You may indicate below that you waive this confidentiality.

However, this form and the information in it may be provided, pursuant to confidentiality procedures approved by the Bankruptcy Court, to the Diocese, certain insurers of the Diocese, the Official Committee of Unsecured Creditors (the “Committee”), their respective counsel, the United States Trustee, and to such other persons as the Bankruptcy Court may authorize.

Please be assured that these parties have agreed to keep your information strictly confidential.

Check **only one** below:

- I wish to keep my identity and this proof of claim CONFIDENTIAL.
- I authorize my name, identity and this proof of claim (together with any exhibits and attachments) to be made PUBLICLY AVAILABLE AND PART OF THE PUBLIC RECORD.

Print Name: _____

Sign Name: _____

Print Date: _____

If you do not check either box, if you check both boxes, or if you do not provide your name and signature, your claim and this form will remain confidential.

(Form continues on the next page)

PART 2: IDENTIFYING INFORMATION

Sexual Abuse Claimant

First Name Middle Initial Last Name Suffix (if any)

Mailing Address

City State/Province Zip Code (Postal Code)

(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, list your current address).

Telephone No(s):

Home: _____

Work: _____

Cell: _____

(If you are represented by counsel, you may provide your attorney's work phone number instead of your own.)

Email address: _____

(If you are represented by counsel, you may provide your attorney's email instead of your own.)

Social Security Number (last four digits only): _____

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

May the Diocese, the Committee, and their respective counsel of record in this chapter 11 case leave voicemails for you regarding your claim? Yes No

May the Diocese, the Committee, and their respective counsel of record in this chapter 11 case send confidential information to your email? Yes No

Birth Date: _____

Have you been known by any other names (including maiden name, if applicable)?

(Form continues on the next page)

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

Attorney & Law Firm Name:

Address:

Telephone & Fax Numbers:

(Form continues on the next page)

PART 3: NATURE OF COMPLAINT

(Attach additional separate sheets if necessary)

NOTE: *If you have previously filed a lawsuit against the Diocese in State or Federal Court, please attach the complaint and respond to the questions below.*

a. Who committed the acts of Sexual Abuse 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. Please provide the complete name(s) of each abuser to the best of your recollection. If you do not know the name(s) of each abuser, please identify them by title, position or other description.

b. How did you know the abuser? For example, was the abuser at your church, school or part of another group with which you were involved? Was the abuser a relative or family friend?

c. If the abuser was affiliated with a church, parish, school, or Diocesan organization, please identify such church, parish, school or organization.

d. Where did the Sexual Abuse take place? Please be specific and complete all relevant information to the best of your recollection, including the names of locations and addresses, if known.

e. When did the Sexual Abuse take place? 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, [or school year and grade](#)).

f. Do you know how old you were when the Sexual Abuse began and ended? If you do not recall the exact date, please try to provide as much information as possible, such as the year and season (fall, winter, spring, or summer, [or school year and grade](#)).

g. Please describe the nature of the abuse. If you are able, please specify what happened (e.g., the circumstances, frequency, and type(s) of Sexual Abuse):

g. If you were sexually abused on more than one occasion, please state when the abuse started, when it stopped, and how many times it occurred.

h. Have you experienced injury and/or damages because of the act or acts of Sexual Abuse described above? Please provide as much detail as possible. For example, describe any injuries or damages, as well as any effect on your emotions, education, employment, personal relationships, health, or faith.

i. Did you tell anyone about the sexual abuse (this would include parents, relatives, friends, anybody affiliated with the Diocese, attorneys, counselors, ~~m~~ law and law enforcement authorities? If "Yes":

- (i) Who did you tell?
 - (ii) What did that person say or do in response, if anything?
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j. Do you personally know or have 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 exactly was the person(s) from the Diocese told or what exactly did they observe?
 - (v) How did you come to have the information you provided in response to the questions above?
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k. Have you ever asserted a claim against the Diocese, or against any entity

or individual other than the Diocese (including, but not limited to, any parish, church, school, or other organization) relating to the Sexual Abuse described in this claim? If you have, please state when you asserted the claim, against whom the claim was asserted, the manner in which the claim was asserted (for example, a complaint made to law enforcement, a lawsuit or demand letter, participation in the Diocese's Independent Reconciliation and Compensation Program (IRCP) or a similar program sponsored by an entity other than the Diocese, an informal request for compensation, etc.), and the result of such claim (including, for example, whether such claim resulted in a settlement or was adjudicated and, if so, the terms of any non-confidential settlement or the outcome of such adjudication).

(Form continues on the next page)

PART 4: CERTIFICATION

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

Print Name: _____

Sign Name: _____

Print Date: _____

If you are signing the claim on behalf of a minor, decedent or incapacitated person, please state your relationship to the Sexual Abuse Claimant below:
