

## Judge Nixes Cryptic Ch. 11 Disclosures For NY Diocese

By Clara Geoghegan

*Law360 (January 30, 2024, 8:05 PM EST)* -- A New York bankruptcy judge shot down proposed disclosure statements in two competing Chapter 11 plans for the Diocese of Rochester on Tuesday, saying that since they were both unclear to him, they would likely be indecipherable for hundreds of sexual abuse survivors who need to vote on the reorganization plans.

The two Chapter 11 plans, filed in 2023 by the bankrupt Diocese of Rochester and its former insurer The Continental Insurance Co., would both create compensation trusts and a process for victims to apply for money, but U.S. Bankruptcy Judge Paul R. Warren at the in-person hearing in Rochester said the disclosure statements leave out or bury key information and are not written in plain language, which he asked the parties to adopt after an initial hearing in December.

"I've been a lawyer for nearly 45 years," Judge Warren said at the hearing, adding that he's spent hours reviewing the disclosure statements for the two competing plans. "I confess, I don't really understand how they work at all."

Judge Warren said he wouldn't approve the statements unless a list of changes were made and ordered the diocese and Continental to file revised versions by mid-March.

The judge said that in evaluating the disclosures he was trying to put himself in the shoes of the hundreds of plaintiffs who have filed litigation against the diocese claiming they were abused as children by its priests, employees or employees of related entities.

The Diocese of Rochester, which serves 86 parishes across 12 counties in western New York, filed for Chapter 11 bankruptcy in September 2019 after the state's Child Victims Act opened a lookback window for survivors of childhood sexual abuse to bring civil litigation. Rochester was the first of New York's eight Catholic dioceses to file for bankruptcy following the CVA and by the time its claims bar date in August 2020 closed, 471 sex abuse claims were filed against it.

In 2023, the diocese filed a proposed Chapter 11 plan to create a \$126 million trust to compensate sexual abuse survivors. The plan set out a process for payment and would be funded using contributions from the diocese and the majority of its insurers who signed settlement agreements. The plan would allow the trust to pursue claims against Continental — the only insurer that did not sign a settlement agreement.

Continental filed a competing Chapter 11 plan in 2023 that would add its own contribution of \$75

million to the settlement trust, bringing the total trust to \$201.35 million. The insurer said it filed a competing plan after settlement talks with the official committee of unsecured creditors stalled.

In December, the Office of the U.S. Trustee objected to the disclosure statements for both plans, arguing that they left out critical information and were not written in plain language, preventing abuse victims from fully understanding the plans in order to vote on them. After an initial disclosure statement hearing on Dec. 19, the court asked the parties to rework the disclosure statements and incorporate the trustee's feedback.

"Rather than doing that, the parties have filed submissions that don't get the job done," Judge Warren said Tuesday. "These disclosure statements should not be released today."

The judge gave both parties a nonexhaustive list of things he said needed to change before he would approve either disclosure statement.

Judge Warren said both plans need to be in plain English and give survivors a clear idea of how much they would be paid under the claim assessment criteria. He added that neither plan explains how much of the total settlement trusts will be leftover after trust expenses or carve outs for claimants who haven't come forward or may pursue state litigation. On top of a list of specific edits for each statement, Judge Warren said the revised versions should adequately address issues raised by the trustee in December.

"I understand why you can't tell each victim what their likely score will be, but you certainly must have some track record of what a low, a medium and a high recovery will be under that allocation protocol," Judge Warren said.

In another bankruptcy involving sexual abuse mass torts, hundreds of survivors told a Delaware bankruptcy judge in November that they had mistakenly checked a box on the ballot for the Boy Scouts of America's Chapter 11 plan to receive an expedited \$3,500 payment rather than go through the standard claims process and potentially receive more compensation. The case raised questions about the plain language of Chapter 11 plan solicitation in mass torts.

Judge Warren on Tuesday set a mid-April hearing date for the revised plans.

Counsel for the diocese and the official committee of unsecured creditors, which supports the diocese's plan, told the court that they had done their best to revise the statements since December.

"I don't want any more delays, I want to get payments to survivors," said Stephen A. Donato of Bond Schoeneck & King PLLC for the diocese, urging the court to approve both disclosure statements so the competing plans can be sent out for a vote. "Let the survivors do the talking."

Donato said the case has already been delayed and added that oversimplifying the disclosure statements for the sake of plain language could risk cutting out crucial information or misleading creditors.

Ilan D. Scharf of Pachulski Stang Ziehl & Jones LLP for the creditors committee told the court that 96% of the abuse claimants are represented by lawyers who can help them understand the plans and argued the revised statements provide enough information.

Attorneys for Continental asked the court to reject the diocese's statement, but green light its competing version.

Mark D. Plevin of Crowell & Moring LLP said Continental's statement is digestible and offers a big picture view of the plan. "I think our disclosure statement does that. We do not simply paste the terms of our plan," Plevin said.

Mark Bruh, for the Office of the U.S. Trustee, told the court that neither plan adequately addressed the trustee's concerns from December and lacked critical information, like what would happen if the U.S. Supreme Court reverses nondebtor third party releases in Chapter 11 plans in the pending appeal *Harrington v. Purdue Pharma*.

"I don't believe we're there," Bruh said. "The disclosure statements do not have enough information to go forward today."

Judge Warren told the parties that while he understood the need to pay out survivors, he wasn't willing to approve statements and potentially impact other bankruptcies where sexual abuse survivors are the main creditors.

"I know you want me to hit the gas pedal," the judge said. "Now the concern from my point of view seems to be that the ripple effects in one case will cause problems or advantages."

The judge also took under advisement arguments from Continental and the diocese over an adversary action the insurer filed in 2023, which accuses the debtor of breaking a contract by walking back its support for a settlement agreement with Continental after the committee rejected it. Continental and the diocese had originally agreed upon a \$63.5 million contribution to the settlement trust.

The diocese asked the court to dismiss the complaint and Continental asked the court to order the estate to reimburse it for the cost of litigation as an administrative expense.

The Diocese of Rochester is represented by Stephen A. Donato, Charles J. Sullivan and Grayson T. Walter of Bond Schoeneck & King PLLC and James R. Murray and James Carter of Blank Rome LLP.

The official Committee of unsecured creditors is represented by James I. Stang, Ilan D. Scharf, Iain A. W. Nasatir and Brittany M. Michael of Pachulski Stang Ziehl & Jones LLP and Timothy W. Burns and Jesse J. Bair of Burns Bair LLP.

Continental Insurance Company is represented by Jeffrey A. Dove of Barclay Damon LLP, Mark D. Plevin and Miranda H. Turner of Crowell & Moring LLP and David Christian of David Christian Attorneys LLC.

The Office of the U.S. Trustee is represented by Mark Bruh and Richard C. Morrissey.

The case is *In re: The Diocese of Rochester*, case number 2:19-bk-20905, in the U.S. Bankruptcy Court for the Western District of New York.

The adversary action is *The Continental Insurance Company v. The Diocese of Rochester*, case number 23-ap-02014, in the same district.

--Additional reporting by Hannah Albarazi, Rick Archer, Vince Sullivan and Hilary Russ. Editing by Alex Hubbard.

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