

# Pratt's Journal of Bankruptcy Law

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# Legislation Opening Up the Statute of Limitations on Sexual Abuse Claims Will Likely Lead to More Bankruptcies

*By Mark D. Plevin and Brendan V. Mullan\**

*The new “reviver” statutes allowing otherwise time-barred claims for childhood sexual abuse to proceed seem likely to lead to a wave of additional bankruptcy filings in the states that have recently enacted such statutes. This article explains the statutes, associated bankruptcies, and the insurance coverage and other issues arising from these claims.*

States across the country have enacted so-called “reviver” statutes allowing otherwise time-barred claims for childhood sexual abuse to proceed. The statutes vary by jurisdiction, but generally do one of three things:

- (1) Eliminate the statute of limitations for such claims;
- (2) Extend the statute of limitations for such claims; or
- (3) Create a window (e.g., a period of a few years) in which otherwise time-barred claims can be filed.

The enactment of such statutes has led to both a wave of new lawsuits across the country against institutions that employed the alleged abusers and to bankruptcy filings by many of those institutions. The new reviver statutes seem likely to lead to a wave of additional bankruptcy filings in the states that have recently enacted such statutes.

## REVIVER STATUTES

The movement towards enacting reviver statutes has gained traction. In 2019, 41 statute of limitations reform bills were introduced and 24 were passed into law. For example, the New York Child Victims Act, signed into law on February 14, 2019, provides a one-year window for victims to file claims against their alleged abusers and institutions.<sup>1</sup> A similar law providing a two-year window recently went into effect in New Jersey,<sup>2</sup> and a three-year window will

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<sup>1</sup> See N.Y. C.P.L.R. § 214-g.

<sup>2</sup> See N.J. Stat. § 2A:14-2b.

open in California in 2020.<sup>3</sup> This will be the second time California has enacted a reviver statute; the first time was in 2002.

Consistent with the purpose of reviver statutes, the number of childhood sexual abuse claims filed in the jurisdictions that have enacted such statutes has increased. For example, 350 claims had been filed by noon on the first day New York's new Child Victims Act was in effect. Since the statute went into effect earlier this year, almost 1,200 claims have been filed in New York. New York is not alone. The Associated Press projects that potentially 5,000 new cases could be filed in New York, New Jersey, and California alone, resulting in payouts topping \$4 billion. The alleged abusers were formerly trusted individuals working for schools, school districts, and religious institutions.

### **ASSOCIATED BANKRUPTCY FILINGS**

History has shown that bankruptcy filings by targeted institutions are a natural by-product of reviver statutes and laws tolling the applicable statute of limitations for sexual abuse claims. Perhaps the best example is Minnesota, which enacted a reviver statute in 2013 that opened a three-year window for otherwise time barred claims.<sup>4</sup> After the Minnesota statute went into effect, several Roman Catholic institutions in the state filed for bankruptcy under the weight of newly-filed claims:

- The Archdiocese of St. Paul and Minneapolis;
- The Diocese of Duluth;
- The Diocese of New Ulm; and
- Crosier Fathers & Brothers.

Likewise, in 2009, the Diocese of Wilmington filed for Chapter 11 bankruptcy following enactment of a reviver statute in Delaware.<sup>5</sup>

In 2004, the Diocese of Tucson filed for Chapter 11 bankruptcy after the Arizona Supreme Court opened the statute of limitations for childhood sexual abuse claims.

Also in 2004, the Archdiocese of Portland filed for Chapter 11 bankruptcy after it was determined that the extended statute of limitations for civil claims involving child abuse under ORS § 12.117 applied to the principal/employer as well as the agent/employee who actually was accused of the misconduct.

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<sup>3</sup> See Cal. Code of Civil Proc. § 340.1(q).

<sup>4</sup> See Minn. Stat. Ann. § 541.073.

<sup>5</sup> *In re Catholic Diocese of Wilmington, Inc.*, Case No. 09-13560 (Bankr. D. Del.).

In 2006, the Diocese of Davenport filed for Chapter 11 bankruptcy, noting that although the usual statute of limitations in a civil suit is two years, Iowa law “allows sex abuse claims to be filed later, in some cases decades later.”

New York has already seen its first sex abuse-related bankruptcy since the enactment of the Child Victims Act: in September 2019, the Diocese of Rochester became the first New York diocese, and 20th nationally, to seek bankruptcy protection, filing for Chapter 11 reorganization.

Additional bankruptcies are likely to be filed in the wake of the revival statutes and new waves of sexual abuse claims.

### **WHY FILE FOR BANKRUPTCY?**

Institutions facing sex abuse claims do not file for bankruptcy to evade paying claimants. Indeed, filing for bankruptcy does not relieve a debtor institution from liability for sexual abuse claims. Survivors will still be entitled to compensation, from the assets available to the debtor institutions.

For example, the confirmed plan of reorganization for the Archdiocese of St. Paul and Minneapolis created a fund of approximately \$210 million to compensate survivors of sexual abuse, while the Diocese of Duluth's confirmed plan provides survivors with about \$40 million.

The Diocese of New Ulm recently filed a plan that would establish a trust in the amount of approximately \$34 million. The Archdiocese of Portland's plan of reorganization established a fund of approximately \$75 million.

Rather than evading payment, many religious institutions that have filed for bankruptcy say they did so because it is the most equitable way of sharing their limited assets among all victims, avoiding disproportionate payouts to early claimants that can quickly exhaust available assets.

### **INSURANCE COVERAGE**

While the debtor institutions themselves typically contribute millions to bankruptcy trusts established to pay qualifying sexual abuse claims, claimants and debtors also look to insurance carriers for contributions to the trusts. But the coverage issues presented can be complex.

Because the coverage claims involve numerous carriers whose policies were in effect over a period of decades, corresponding to the time when the alleged abuses took place, there are issues concerning which policies, if any, are potentially responsible to pay claims.

Typically issues range from whether there is no coverage because the abuse



was expected or intended, to issues involving application of policy limits, since the parties may dispute number of occurrences where abusers victimized numerous persons. As in asbestos bankruptcies, there may be issues concerning future claimants and what provision, if any, a bankruptcy plan should make for such persons. The sheer number of claimants, carriers, and policies at issue adds another layer of complexity.

### **MYRIAD ISSUES**

Finally, to confirm a plan, debtors facing sex abuse claims must navigate myriad bankruptcy issues. Claimants will have an official committee demanding that the debtor contribute all of its available assets to the plan. The committee may dispute the debtor's claim that it lacks any right to call on the assets of affiliated non-debtor entities. There may be disputes over whether future claimants deserve their own representation in the case, through a future claims representative. And the committee may disagree with the debtor on the mechanism for liquidating and paying claims.

### **LOOKING AHEAD**

Many of the relevant legal issues have not yet been resolved. With the increasing numbers of bankruptcies expected over the next few years, it can be expected that courts will issue decisions giving debtors, claimants, and insurers increasing clarity over the legal rules that govern sex abuse-related bankruptcies.