

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

In re:

Case No. 11-20059-svk

ARCHDIOCESE OF MILWAUKEE,

Chapter 11

Debtor.

Hon. Susan V. Kelley

**MOTION FOR ORDER AUTHORIZING SPECIAL CONFIDENTIALITY
PROCEDURES TO PROTECT VICTIMS/SURVIVORS**

Archdiocese of Milwaukee, debtor and debtor-in-possession (the “Debtor” or the “Archdiocese”), hereby submits this Motion (the “Motion”) for the entry of an order authorizing special confidentiality procedures to protect victims/survivors and related relief. In support of this Motion, the Debtor respectfully states as follows:

Jurisdiction

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this proceeding is proper in this District and before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief sought herein are §§ 105, 107 and 157(b)(2) of Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”) and Rules 9007 and 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

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Background

3. On January 4, 2011 (the "Petition Date"), the Debtor commenced its reorganization case (the "Reorganization Case") by filing a voluntary petition for relief under the Bankruptcy Code.

4. The Debtor is continuing in possession of its property and is operating and managing its business, as a debtor in possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or an examiner.

5. On January 24, 2011, the Office of the United States Trustee (the "U.S. Trustee") appointed an official committee of unsecured creditors comprised entirely of victims/survivors (the "Committee").

6. In preparing this Motion, the Debtor's counsel has consulted on multiple occasions with the U.S. Trustee and with counsel to the Committee. While final agreement on all of the details of this Motion was not reached, this Motion represents the Debtor's attempt to distill and include as many common procedural requests as practical.

7. For a description of the Archdiocese and its operations, the Debtor respectfully refers the Court and the parties in interest to the *Description of Debtor and Pre-filing History Affidavit of John J. Marek* (the "Marek History Affidavit"), filed in the Reorganization Case as Docket No. 6, and incorporated herein by reference.

8. The Archdiocese, recognizing the need for a process outside the archdiocesan structure to address claims against the Archdiocese by victims/survivors (the "Victims/Survivors"), introduced an independent voluntary mediation program in January 2004 (the "Mediation Program"). The Mediation Program was created in collaboration with Professor Eva M. Soeka, Director of Marquette University's Center for Dispute Resolution.

9. The Mediation Program was designed to offer dignity, flexibility, and a wide range of options to Victims/Survivors; Victims/Survivors participate voluntarily in the Mediation Program, they work with the Archdiocese to select a mutually agreeable independent mediator, and there is no obligation on the part of any Victim/Survivor to agree to a mediated settlement after participating in the Mediation Program. The Victims/Survivors control their level of participation in the Mediation Program.

10. Approximately one hundred and ninety-two (192) Victims/Survivors settled their claims (the "Victim/Survivor Claims") against the Archdiocese (each agreement a "Settlement", or collectively, the "Settlements") through the Mediation Program.

11. One of the main principles of the Mediation Program is its adherence to strict Victim/Survivor confidentiality. During the mediation process the archdiocesan representative explicitly agreed to hold the identity of the Victim/Survivor, the fact of the existence and terms of the Settlements confidential, and not to divulge any aspect of the mediation to any third party without the express written consent of the Victim/Survivor that is a party to the Settlement. However, none of the Settlements prohibit or restrict the Victim/Survivor from divulging the existence of the Settlements or the terms of the Settlements to any third party. In other words, the Victim/Survivor is provided exclusive control over the decision whether to publicly reveal his or her identity and claim.

12. Approximately one hundred and seventy (170) Victims'/Survivors' Settlements have been substantially completed (the "Settled Victims/Survivors"). The Debtor fully paid all known financial obligations to the Settled Victims/Survivors under the terms of the Settlements. Because some of the Settlements contain obligations to pay for additional therapy if needed, some of the Settled Victims/Survivors may have future claims. While only a portion of the

Settlements contain explicit terms prohibiting disclosure of Victims/Survivors' identities, the Archdiocese believes that section 107(b) of the Bankruptcy Code authorizes this Court to protect the confidentiality of Victims/Survivors.

13. Pursuant to the terms of certain Settlement Agreements, the Archdiocese owes approximately \$702,000 to twenty-two (22) Victims/Survivors (the "In-Settlement Victims/Survivors"). While the terms of the Settlement Agreements vary, the Archdiocese is scheduled to make approximately \$311,000 in installment payments to In-Settlement Victims/Survivors in 2011. The remaining \$391,000 is scheduled to be paid in installments concluding by December 31, 2015. Some In-Settlement Victims/Survivors are also receiving therapy paid for by the Archdiocese.

14. Today, the Debtor intends to also file a motion pursuant to section 363(b) of the Bankruptcy Code requesting Court approval to continue making payments to the In-Settlement Victims/Survivors in accordance with the terms of their Settlements, and the Debtor intends to take all reasonable efforts during the Reorganization Case to prevent impairment of the settlement claims of the In-Settlement Victims/Survivors.

15. Not all putative Victims/Survivors have settled with the Archdiocese. The Archdiocese is currently a defendant in twelve (12) lawsuits brought by a total of seventeen (17) claimants (the "State Court Litigation"). The Archdiocese also received a demand from the plaintiffs' attorney in the State Court Litigation, Jeff Anderson (Jeff Anderson and Associates, P.A.), on behalf of seven (7) additional individuals (collectively the "Anderson Claimants"). The Archdiocese has been made aware that two other attorneys, one of which states that he represents four (4) potential claimants and one that represents an undetermined number of claimants, intend to pursue claims on behalf of their clients, and other attorneys may come forward as

representatives of additional Victims/Survivors (the "Other Represented Claimants", and collectively with the Anderson Claimants, the "Represented Claimants"). Many of the Represented Claimants filed their lawsuits anonymously or have otherwise indicated through their attorneys that they desire to keep their identities confidential. The attorney representing an undetermined number of claimants has stressed to Debtor's counsel the importance of confidentiality to at least one of his clients.

16. Recently two Victims/Survivors requested assistance from the Archdiocese or have indicated a desire to enter into the Mediation Program. One additional claimant's documents are subject to a seal order by the Court and the claimant at the claimant's request is working with the Archdiocese and its counsel on a confidential basis (collectively, the "Unrepresented Claimants").

Victim/Survivor Concerns

17. The Archdiocese is committed to administering this case and the notice process in a manner that is designed to prevent, to the extent practicable, any psychological, emotional or other damage or embarrassment to any Victims/Survivors or their families, and which guards against the disclosure of information that Victims/Survivors might consider to be scandalous or defamatory. In this regard, Victims/Survivors inside and outside of the Archdiocese's Mediation Program have separately requested, and received, confidential treatment, claims resolution and support services.

18. A significant number of Victims/Survivors have availed and are expected to continue to avail themselves of psychological counseling and therapy services paid for by the Archdiocese and some have worked and continue to work through issues of faith with clergy, including Archbishops during their respective tenures. Through this therapy, counseling, and

religious process, many Victims/Survivors have emotionally dealt with being Victims/Survivors, resolved their relationship with the church, and improved their lives. The Debtor fears that public identification of specific Victims/Survivors who participated in Settlement Agreements or otherwise could reverse the Victims'/Survivors' gains, reopen old traumas, and cause new damage to the Victims/Survivors.

19. While some Victims/Survivors made their claims and situations public, the vast majority wish to remain anonymous. To this end, some Settlements were structured through intermediaries to protect confidences and identities. In some cases, Victims/Survivors are concerned that members of their families will learn that they are Victims/Survivors. The public disclosure of Victims'/Survivors' identities and Settlements could cause harm to the Victims/Survivors.

20. The Debtor anticipates that Victims/Survivors, known and unknown, may be concerned about the effect of the Chapter 11 case on their privacy and confidentiality. Consequently, the Debtor seeks this Court's approval of a protocol that affords confidentiality so that the Debtor may affirmatively assure any Victims/Survivors who inquire that the Debtor will continue its efforts to protect the confidentiality of Settlement Agreements and Victims'/Survivors' identities.

**Confidentiality Procedures and Types of Notice Requested with Respect to All
Victims/Survivors**

21. The Debtor seeks Court approval to omit all Victims/Survivors from the Master Mailing List (the "Matrix") and Schedule F.

22. Upon written request from any Victim/Survivor the Debtor will add that individual to the Matrix and Schedule F and direct Kurtzman Carson Consultants, LLC ("KCC"),

the Court-appointed noticing agent, to send notices in the same manner as notices are sent to other creditors in accordance with the Bankruptcy Rules, the Local Rules, and the Case Management Order.

23. If the Debtor or Debtor's counsel does not receive written notice requesting more notices, the Debtor will follow a limited notice procedure. All Victims/Survivors or their designated representatives will automatically receive the following notices in this Reorganization Case (the "Critical Notices"):

- a. notice of the commencement of the Reorganization Case (the "Notice of Filing") in substantially the form attached hereto as Exhibit A;
- b. notice of any motions to dismiss the Reorganization Case;
- c. notice of the claims bar dates;
- d. notice of hearing on adequacy of disclosure statement;
- e. the plan of reorganization and disclosure statement solicitation package (including ballots);
- f. notice of any special § 341 type meeting of Victims/Survivors scheduled by the U.S. Trustee in this Reorganization Case;
- g. notices of motions under section 363 of the Bankruptcy Code relating to property worth more than \$1 million or any motion related to the buyback of insurance; and
- h. notice of final applications for compensation by professionals.

The Victims/Survivors will also receive notices of any other pleadings for which the Court so orders. Instead of serving the Victims/Survivors with the same notices received by other parties in the Reorganization Case (the "General Notices"), the Debtor may serve Victims/Survivors with summary notices (the "Summary Notices") that focuses on likely Victims'/Survivors' concerns, but each Summary Notice shall contain the caption of the corresponding General

Notice and a link or website address where the Victim/Survivor can without cost view the General Notice.

24. Any Victim/Survivors that does not wish to receive the Critical Notices and who in writing requests that the Critical Notices not be served, will have its request honored by the Debtor, except that the following Critical Notices must be served on all Victims/Survivors (the "Mandatory Notices"):

- a. Notice of Filing;
- b. notice of any motions to dismiss the reorganization case;
- c. notice of the claims bar dates; and
- d. the plan of reorganization and disclosure statement solicitation package (including ballots).

25. Any Victims/Survivor that wishes to receive all filings in the Debtor's Reorganization Case but wants to have his/her identity remain confidential can contact counsel for the Debtor (or have his/her counsel do so) and arrange for notice in any manner that is acceptable to the Victim/Survivor and the Debtor.

26. Unless a Victim/Survivor requests to be added to the Matrix or Schedule F, the Debtor will not add a Victim/Survivor to the Matrix or Schedule F.

27. The Notice of Filing summarizes for the Victims/Survivors their options with regard to receipt of notices in this Reorganization Case, and provides other information that is likely important to Victims/Survivors. If this Motion is approved by the Court, the Debtor will, in addition to mailing the Notice of Filing to the Victims/Survivors, post the Notice of Filing (or a link to the Notice of Filing) on the Archdiocese's website and the website maintained by KCC (KCCLLC.net/archmil).

Service/Delivery Procedures and Reporting Procedures Requested with Respect to Settled Victims/Survivors and In-Settlement Victims/Survivors

28. The Debtor seeks permission to deliver notices to Settled Victims/Survivors and In-Settlement Victims/Survivors in the manner, and with the same protection procedures as documents are delivered to the Settled Victims/Survivors and In-Settlement Victims/Survivors in connection with the Archdiocese's out of court Mediation Program. This means notices will be served on Settled Victims/Survivors and In-Settlement Victims/Survivors through Professor Soeka or Dr. Barbara Anne Cusack, Chancellor for the Archdiocese, or Dr. Cusack's designee (collectively the "Proxies").

29. Prior to providing notices to the Settled Victims/Survivors and In-Settlement Victims/Survivors the Proxies must agree in writing to provide notices to Settled Victims/Survivors and In-Settlement Victims/Survivors, to keep the identities of the Victims/Survivors Confidential, and to provide an affidavit or certificate of service to the Debtor for documents served on the Settled Victims/Survivors and In-Settlement Victims/Survivors. For the avoidance of doubt, affidavits or certificates of service provided by the Proxies to the Debtor will not be filed in the Reorganization Case.

30. The Debtor also requests relief from the requirements to fully complete section 3b of the Statement of Financial Affairs, which obligates a debtor to identify each transfer of more than \$5,850 made to a creditor within ninety (90) days immediately preceding the Petition Date. Three (3) In-Settlement Victims/Survivors received payments in excess of \$5,850 in the ninety (90) days prior to the Petition Date and those payments were for a total of approximately \$44,000. Accordingly, the Debtor requests the Court to allow the Archdiocese to list only the number of Victims/Survivors who have received payments in the ninety (90) days prior to the

Petition Date in excess of \$5,850, and the aggregate amount of payments made to these In-Settlement Victims/Survivors, instead of listing the name of each Victim/Survivor that received such a payment and the amount of each payment.

Service/Delivery Procedures Requested with Respect to Represented Claimants

31. In an effort to protect the Represented Claimants' identities, the Debtor seeks permission to serve all notices which the Debtor would otherwise serve on the Represented Claimants by serving their attorneys. The Debtor requests that the Court direct the attorneys for the Represented Claimants to provide the Represented Claimants they represent with all Critical Notices, or the Mandatory Notices if the Represented Claimant has informed the Debtor he/she does not wish to receive all of the Critical Notices, as well as any other pleadings that the Represented Claimants request from their attorneys, or that their attorneys believe they should review.

32. Prior to providing notices to the Represented Claimants they represent, attorneys must agree in writing to provide an affidavit or certificate of service to the Debtor for documents served on the Represented Claimants. For the avoidance of doubt, affidavits or certificates of service provided to the Debtor by attorneys for the Represented Claimants will not be filed in the Reorganization Case.

33. If the attorney for any Represented Claimant fails to agree in writing to provide an affidavit or certificate of service to the Debtor for documents served on Represented Claimants, the Debtor will serve the Represented Claimants directly by mail and will file an affidavit or certificate of service with the names of the Represented Claimants redacted.

Service/Delivery Requested with Respect to the Unrepresented Claimants

34. In an effort to protect the Unrepresented Claimants' identities, the Debtor seeks Court approval to serve all notices which the Debtor would otherwise serve on the Unrepresented Claimants, instead through the Proxies, with the same requirements for confidentiality and affidavits or certificates of service as found in paragraphs 28 and 29 above.

Affidavits or Certificates of Service to Be Filed With the Court

35. The Debtor is responsible for filing an affidavit or certificate of service for all pleadings served on Victims/Survivors in the Reorganization Case and to keep a log of which pleadings have been served on Victims/Survivors in accordance with this Motion. The Debtor may rely on the affidavits or certificates of service provided by the Proxies and attorneys for any Represented Claimants, in preparing any affidavits or certificates of service it files in this Reorganization Case. The affidavits or certificates of service filed by the Debtor will indicate whether the Proxies and attorneys for any Represented Claimants informed the Debtor that service of a notice was accomplished, but the affidavits or certificates of service will not list the names of any Victims/Survivors served.

Basis for Relief

36. Section 107(b) of the Bankruptcy Code provides that “[o]n request of a party in interest, the bankruptcy court shall, and on the bankruptcy court’s own motion, the bankruptcy court may . . . protect a person with respect to scandalous or defamatory matter contained in a paper filed in a case under this title.” 11 U.S.C. § 107.

37. Fed. R. Bankr. P. 9018 defines the procedures by which a party may move for relief under 11 U.S.C. § 107(b) and provides in relevant part:

On motion or on its own initiative, with or without notice, the court may make any order which justice requires . . . to protect any entity

against scandalous or defamatory matter contained in any paper filed in a case under the Code[.]

38. Section 105(a) of the Bankruptcy Code provides that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.”

39. Further, to the extent the relief requested herein conflicts with the Local Rules, Local Rule 9029.1 allows this Court to “waive or modify any of [the] Local Rules.”

40. In other diocesan Chapter 11 cases, courts granted motions approving the filing of sealed pleadings to protect the privacy of Victims/Survivors. *See, e.g., In re Catholic Bishop of Northern Alaska, an Alaska religious corporation*, Case No. F08-00110 (DMD) (Bankr. D. Alaska. March 6, 2008 (order authorizing the filing of portions of Schedule F, the Master Mailing List and other pleadings and documents under seal); *In re Diocese of Davenport*, Case No. 06-02229 (LMJ) (Bankr. S.D. Iowa. October 26, 2006) (same); *In re Roman Catholic Church of the Diocese of Tucson aka The Diocese of Tucson, an Arizona corporation sole*, Case No. 4-04-04721 (JMM) (Bankr. D. Arizona. September 27, 2004) (same); *In re The Catholic Bishop of Spokane a/k/a The Catholic Diocese of Spokane, a Washington corporation sole*, Case No. 04-08822 (PCW) (Bankr. E.D. Wash. December 6, 2004) (same).

41. In this case, the Archdiocese has a duty of confidentiality as to certain Victims/Survivors under the Settlements. In every circumstance, the Archdiocese desires to honor the Victims'/Survivors' wishes for privacy, which makes filing under seal unsatisfactory. Confidentiality was and remains important to Victims/Survivors as illustrated by the fact that many of the Represented Claimants protected their identities by filing their complaints against the Archdiocese under pseudonyms. Additionally, Unrepresented Claimants often disclosed their

names to the Debtor with the understanding that their identities would be held in confidence by the Archdiocese. As a result, neither law nor equity should force such Victims/Survivors to make their identities public in order to participate in this Reorganization Case.

42. Any Victim/Survivor that in writing requests his or her name to appear on the Matrix and/or Schedule F will have his/her request honored by the Debtor. However, the Debtor believes that decision should be left to each individual Victim/Survivor.

43. There is no prejudice to the Debtor's other creditors or parties in interest from not learning the names of Victims/Survivors or the specific amounts of payments each Victim/Survivor received in the ninety (90) days prior to the Petition Date.

44. Only three (3) Victims/Survivors received payments in excess of \$5,850 in the ninety (90) days prior to the Petition Date and those payments were for a total of approximately \$44,000.

45. The Debtor intends to file a motion pursuant to section 363(b) of the Bankruptcy Code to honor its settlement agreements with the In-Settlement Victims. If that motion is approved, there will be no potential preference action against any In-Settlement Victims/Survivors. In the event that the motion is denied and any party with standing desires to bring a preference action against the In-Settlement Victims that received payments within ninety (90) days prior to the Petition Date, the Court can determine what procedures should be employed to allow a preference action to proceed while protecting to the greatest extent possible the confidentiality of affected In-Settlement Victims.

46. This Motion effectively balances the Debtor's desire to provide appropriate notice to all creditors and other parties in interest while not breaching its duty of confidentiality or harming Victims/Survivors by disclosing their identities.

47. The Debtor has delayed filing this Motion to give the U.S. Trustee and Committee time to review it and provide comments. Much of the input provided by the U.S. Trustee and the Committee has been incorporated into the Motion. While the Debtor has yet to garner the support of the U.S. Trustee or the Committee for the entirety of this Motion, the Debtor did not want to further delay this Motion's filing, and is hopeful the U.S. Trustee and the Committee will support the relief sought herein.

48. Given the lack of prejudice to the Debtor's creditors or other parties in interest, the Debtor moves the Court to approve this Motion.

Notice

49. The Debtor will serve notice of this Motion on the Service List.¹ The Debtor submits that in light of the nature of the relief requested herein, no other or further notice need be given.

No Prior Request

50. No prior motion for the relief requested herein has been made to this or any other Court.

WHEREFORE, the Debtor respectfully requests that the Court (1) grant the relief requested herein, and (2) authorize such other and further relief as it deems appropriate.

¹ The term "Service List" shall have the same meaning ascribed to it in the Case Management Order [Docket No. 30].

Dated this 14th day of March, 2011.

ARCHDIOCESE OF MILWAUKEE
Debtor and Debtor-in-Possession
by its counsel,
Whyte Hirschboeck Dudek S.C.

By: /s/ Daryl L. Diesing

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