UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

The Diocese of Rochester,

Debtor.

Case No. 19-20905

Chapter 11

MEMORANDUM OF LAW OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS IN SUPPORT OF JOINDER AND MOTIONS FOR RELIEF FROM THE AUTOMATIC STAY

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This Memorandum of Law is respectfully submitted by the Official Committee of Unsecured Creditors (the "**Committee**") in support of (a) the *Motions for Relief from Automatic Stay* [Docket Nos. 1037 – 1075] (the "**Motions**") filed by twenty (20) Sexual Abuse Claimants (collectively, the "**Movants**") and (b) the *Joinder of the Official Committee of Unsecured Creditors to Motions for Relief from Automatic Stay* (the "**Joinder**") [Docket No. 1079].[1] In support of the Motions and the Joinder, the Committee respectfully states as follows:

INTRODUCTION

The Movants and the Committee seek stay relief in order to clarify the appropriate amount of compensation by the Diocese for sexual abuse survivors in this case. The Diocese is liable to approximately 475 Sexual Abuse Claimants on account of childhood sexual abuse by clergy and other individuals for whom the Diocese was responsible. The Diocese's parishes and other Roman Catholic entities that operated within the Diocese (collectively, the "**Additional Roman Catholic Entities**") are also liable. The Diocese and the Additional Roman Catholic Entities have substantial assets, including insurance, that are sufficient to fairly compensate survivors.

The Committee has attempted to mediate a reasonable and appropriate settlement with the Diocese and its insurers. However, to date, the mediation has not been successful. The Committee is prohibited by the mediation privilege from disclosing specifics of the mediation, including potential defenses raised by the Diocese and its insurers, as well as amounts of offers or counteroffers. However, the Diocese and two its insurers recently requested the Court's approval of a settlement agreement that only requires the insurers to contribute an average of

[1] Capitalized terms used but not defined herein shall be as defined in the Joinder.

$220,000 per claim for a subset of claims.[2] The Diocese and its insurers have not offered an amount remotely acceptable as fair compensation to Sexual Abuse Claimants. Therefore, the Committee has concluded that the logjams of the mediation can best be addressed through litigation of a sample group of cases in the state courts that are best suited to adjudicate sexual abuse claims in the State of New York.

There has been virtually no formal discovery or litigation of Sexual Abuse Claims against the Diocese. Prior to the passage of New York's Child Victims Act (the "**CVA**"), the statute of limitations in New York was so restrictive that only the rarest child sexual abuse claims could survive a motion to dismiss based on timeliness of the claim. The CVA reversed this trend and allowed Sexual Abuse Survivors to begin filing previously time-barred claims on August 14, 2019. Rather than let survivors have their long-delayed day in state courts, the Diocese filed for bankruptcy a mere four weeks after the CVA window opened. Typically, Roman Catholic dioceses have filed chapter 11 cases only after years, if not decades, of litigation of sexual abuse claims. Those dioceses have a history of motion practice, fact discovery (including third-party discovery and depositions), expert discovery, settlement, and occasional jury verdicts. As a result, mediations are informed by litigation results and formal discovery. In this case, there has been limited discovery and no motion practice on substantive issues in CVA cases.

The Committee believes that this is a significant factor in the parties' failure to date to negotiate a settlement through the mediation process. Without breaching the mediation privilege, the Committee believes that litigation of a representative sample of claims will help the parties understand the scope of the sexual abuse liability of the Diocese and the Additional

[2] *See Motion for Entry of an Order Approving Settlement Agreement with Certain Underwriters at Lloyd's, London, Certain London Market Companies, Interstate Fire & Casualty Company and National Surety Corporation* [Adv. Pro. Docket No. 99]. The Committee intends to oppose this motion, and will do so at the appropriate time.

Roman Catholic Entities and the amount of compensation appropriate in this case. As such, the Movants seek relief from the automatic stay in order to obtain monetary judgments on sexual abuse claims against the Debtor in the State of New York. The Movants will not seek to enforce any judgments (subject to further order of the Court). This limitation on the scope of stay relief sought by the Movants and the Committee evidences the their desire to utilize the stay relief process to inform all parties to the mediation process of the results of CVA litigation, rather than merely to seek stay relief for their individual cases.

Targeted stay relief of a sample group of twenty (20) cases will help the parties understand the scope and amount of the Diocese's liability for sexual abuse claims. The Motions seek stay relief for claims that involve sexual abuse by twelve (12) perpetrators; who abused survivors in a variety of ways (including over and under the clothing fondling; oral copulation; digital penetration; attempted rape; and multiple rapes); in different settings (including at parish schools, a high school operated by a religious order, a camp and parishes); with different frequencies (ranging from one occurrence to more than a hundred acts of abuse against a single victim). The Movants were abused at different periods between 1961 and 1985, and therefore the abuse is illustrative of abuse that occurred at different time periods and that is insured by different insurers. Finally, the Movants are collectively represented by six groups of state court counsel, all of whom are among the most experienced trial attorneys specializing in representing survivors of sexual abuse claims. Those attorneys also collectively represent approximately 339 (or 72%) of sexual abuse claimants in this case. Therefore, the Movants' cases represent a sample of the Sexual Abuse Claims asserted against the Diocese and Additional Roman Catholic Entities, and should inform all parties of the strengths and weaknesses of cases tested through the

gauntlet of litigation. The approach of targeting stay relief through sample cases should provide a manageable litigation process for the state court and all litigants.

The Committee remains amenable to mediation and continuing negotiations while litigation proceeds. The Committee supports the Motions in order to move the settlement discussions forward. To enable progress in this case and facilitate a settlement of the child sexual abuse cases, which were the acknowledged cause of the Debtor's chapter 11 filing, the Movants respectfully request that the Court grant relief from the automatic stay now.

FACTS

The facts pertinent to this Memorandum of Law are fully set forth in the Joinder, the Motions, and the Declarations, all of which are incorporated herein by reference for all purposes.

ARGUMENT

Ample cause exists to grant stay relief to allow the Movants to try their State Court Actions to final judgment. The claims are insured and thus the Debtor will not have to use estate funds to pay defense costs. Moreover, the objective of stay relief for these claims is to break the mediation logjam regarding valuation of Sexual Abuse Claims. Stay relief is the most effective and efficient means of moving discussions forward given the sharply differing views of the parties.

The chapter 11 case of the Diocese of Wilmington (Delaware) illustrates that trials of sexual abuse claims are a constructive way to move bankruptcy settlement discussions forward.[3] In that case, the debtor had obtained a bankruptcy stay of abuse litigation against non-debtor affiliates (such as parishes). While the stay was in effect, the committee obtained a ruling that

[3] *See Generally, In re Catholic Diocese of Wilmington, Inc.*, Case No. 09-13560(CSS)(Bankr. D. Del.).

$120 million of pooled investment funds was property of the estate.[4] Nonetheless, the parties still could not settle. In the summer of 2010, the Delaware bankruptcy court refused to renew an extension of the stay to third parties for certain cases, and they proceeded to litigation against the applicable non-debtor defendants. The first case to proceed to trial resulted in a multi-million dollar state court verdict against a parish.[5] Settlement of the entire chapter 11 case came quickly on the heels of that verdict.

The Committee is aware that the Movants' cases are not "trial ready," and expects the Diocese and its insurers to assert this issue as a reason to deny stay relief. However, the Movants are prepared to move expeditiously to prepare for trial, including coordinating discovery and litigating motions where necessary. Given that the Movants' cases are a representative group of cases affecting more than 450 other cases, the Committee and Movants expect to seek expedited scheduling from the state court for the Movants' cases. In addition, the Diocese's insurers are asserting coverage defenses to the insurance policies that the Committee expects will require judicial intervention. The insurance litigation in this Court should be pursued in tandem with the CVA cases before the state court.

Fair treatment of unsecured creditors requires stay relief to permit the Movants' State Court Actions to proceed to judgment because stay relief will facilitate settlement of this Chapter 11 case. Mediation efforts on the Sexual Abuse Claims against the Debtor have thus far failed.

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[4] *See Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code with Respect to the Second Amended Chapter 11 Plan of Reorganization of Catholic Diocese of Wilmington, Inc., In re Catholic Diocese of Wilmington, Inc.*, Case No. 09-13560(CSS)(Bankr. D. Del., May 23, 2011) [Docket No. 1322] (the "**Wilmington DS**") at p. 41.

[5] Wilmington DS, at 40.

The parties remain far apart in settlement discussions. "Cause" therefore exists for the automatic bankruptcy stay to be lifted to permit trial of the State Court Actions.[6]

A. Cause Exists to Lift the Stay to Permit the Movants' Claims to be Liquidated in State Court

Bankruptcy Code section 362(d)(1) requires the court to grant relief from the automatic stay "for cause, including lack of adequate protection of an interest in property of such party in interest." 11 U.S.C. § 362(d)(1). The movant has the "initial burden of proof of demonstrating cause to lift the stay." *In re Rochester Drug Coop., Inc.*, 2020 Bankr. LEXIS 1935, *5, 2020 WL 4248726 (Bankr. W.D.N.Y. July 22, 2020) (citing *In re Project Orange Assocs., LLC*, 432 B.R. 89, 103 (Bankr. S.D.N.Y. 2010)). After the movant has made an initial showing of cause, the debtor then has the burden to prove it is entitled to continued protection. *Rochester Drug Coop.*, 2020 Bankr. LEXIS 1935, *5 (citing *Sonnax Indus.*, 907 F.2d 1280, 1285 (2d Cir. 1990)).

"Cause" has no clear definition and must be determined on a case-by-case basis. *Sonnax Indus.*, 907 F.2d at 1285; *Project Orange*, 432 B.R. at 103; *In re Touloumis*, 170 B.R. 825, 828 (Bankr. S.D.N.Y. 1994). The legislative history of section 362(d)(1) provides:

> The lack of adequate protection of an interest in the property of the party requesting relief from the automatic stay is one cause for relief, but it is not the only cause. As noted above, a desire to permit an action to proceed to completion in another tribunal may provide another cause. Other causes might include any lack of any connection with or interference with the pending bankruptcy case.

H.R. Rep. No. 95-595, 95th Cong., 1st Sess., 343-344 (1977); S.Rep. No. 95–989, 95th Cong., 2d Sess. 52-53 (1978) (emphasis added); *see also Sonnax Indus.*, 907 F.2d at 1285–86.

[6] While the stay should be lifted to permit judgments to be obtained in the state court cases, the Movants do not seek relief from the stay to enforce a judgment or monetary award from the state courts against the Debtor, the assets of the Debtor, or any of the Insurers with respect to the Debtor's liability, without obtaining further relief from the Bankruptcy Court. Additionally, Movants retain the right to amend their proofs of claims under 11 U.S.C. § 501.

Bankruptcy courts have discretion in determining whether lifting the automatic stay is appropriate. *Sonnax*, 907 F.2d at 1286. The Second Circuit identified a non-exhaustive list of twelve factors for bankruptcy courts to utilize in making such a determination:

> (1) whether relief would result in a partial or complete resolution of the issues;
>
> (2) lack of any connection with or interference with the bankruptcy case;
>
> (3) whether the other proceeding involves the debtor as a fiduciary;
>
> (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action;
>
> (5) whether the debtor's insurer has assumed full responsibility for defending it;
>
> (6) whether the action primarily involves third parties;
>
> (7) whether litigation in another forum would prejudice the interests of other creditors;
>
> (8) whether the judgment claim arising from the other action is subject to equitable subordination;
>
> (9) whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor;
>
> (10) the interests of judicial economy and the expeditious and economical resolution of litigation;
>
> (11) whether the parties are ready for trial in the other proceeding; and
>
> (12) impact of the stay on the parties and the balance of harms.

Id. The Second Circuit does not require consideration of each factor nor must the factors be given equal weight. *Id.* (considering only four factors); *see also Burger Boys, Inc. v. S. St. Seaport Ltd. P'ship*, 183 B.R. 682, 688 (S.D.N.Y. 1994).

B. All Relevant *Sonnax* Factors Support Lifting the Automatic Stay[7]

Here, cause exists to grant relief from stay, both including and independent of the *Sonnax* factors. First, stay relief is necessary to definitively resolve the amount of the Debtor's liability for Sexual Abuse Claims, an important data point for facilitating resolution to the benefit of all creditors. Second, the balance of harms for the parties and society weighs in favor of granting stay relief. Third, relief will have a minimal impact on the Debtor's estate due to the Insurers' obligation to pay defense costs. Finally, New York State's courts are the appropriate forum for litigating the Sexual Abuse Claims and judicial efficiency is served by trying the State Court Actions there.

1. Relief Will Fully Resolve the Question of Sexual Abuse Claim Value—the Central Issue of this Bankruptcy—Without Prejudicing Other Creditors (*Sonnax* Factors 1, 2, and 7)

The central issue in this case is how much the Debtor and its insurers must pay to compensate Sexual Abuse Claimants. As long as the parties disagree about the amount of damages that a jury will award Sexual Abuse Claimants in Rochester and an appropriate settlement amount, this case cannot be resolved.[8] Allowing the Movants to try their State Court Actions will fully resolve the question of value. Notably, the ultimate question of damages is intertwined with decisions that the trial court will likely make as litigation progresses, such as discovery disputes, applicable legal standards, motions to dismiss, motions for summary judgment, motions in limine and jury instructions. Decisions on these issues will inform the parties as they are made by the trial court. Therefore, while "connected to the bankruptcy,"

[7] The following *Sonnax* factors do not apply to the Movants' Motions: (3) whether the other proceeding involves the debtor as a fiduciary; (6) whether the action primarily involves third parties; (8) whether the judgment claim arising from the other action is subject to equitable subordination; (9) whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor.

[8] The Committee acknowledges that settlements are typically less than the amount of a jury verdict. However, it is clear that jury verdict amounts inform all parties about an appropriate settlement amount.

pursuing the State Court Actions "will not interfere with the bankruptcy case." *In re PG&E Corp.*, No. 19-30088-DM, 2019 Bankr. LEXIS 2593, at *5-7 (Bankr. N.D. Cal. Aug. 16, 2019) (holding that state court litigation "may proceed on a parallel track" to the bankruptcy case). To the contrary, pursuing the State Court Actions will aid resolution of this bankruptcy case.

Moreover, the interests of other creditors and the estate would be furthered, not prejudiced, by granting stay relief because it is necessary to determine the amount of liability for Sexual Abuse Claims in order to move mediation forward. Allowing the State Court Actions to proceed will further creditors' interests by educating the parties on monetary damages likely to be awarded to similar Sexual Abuse Claims. Importantly, the Movants seek to proceed to trial only to fix the amount of their claims. *See In re Mildred Deli Grocery, Inc.*, No. 18-10077 (MG), 2018 Bankr. LEXIS 546, at *11–12 (Bankr. S.D.N.Y. Feb. 28, 2018) (holding that stay relief does not prejudice other creditors' interests if only sought to determine the *amount* of the claim); *Carter v. Larkham (In re Larkham)*, 31 B.R. 273, 276 (Bankr. D. Vt. 1983) ("Where neither prejudice to the bankruptcy estate nor interference with the bankruptcy proceeding is demonstrated, the desire of a stayed party to proceed in another forum is sufficient cause to warrant lifting the automatic stay.").

Finally, the State Court Actions will not interfere with the day-to-day operations of the Debtor; nor will they be an *undue* burden on the Debtor's management and personnel. The Committee anticipates the Debtor or its insurers will contend that the defense of the claims will cause increased administrative expenses and distract the Debtor from its efforts to reorganize. When a claim "will have to be liquidated either in state court or the bankruptcy court . . . [i]t is unreasonable to presume" that litigation of the state law claims in state court instead of bankruptcy court "would subject the debtor's estate to a greater expense." *In re Rabin*, 53 B.R.

529, 531–32 (Bankr. D.N.J. 1985). The "distraction issue" is a red herring because this bankruptcy case is entirely about the value of the Sexual Abuse Claims. The Debtor cannot fashion a reorganization strategy for a confirmable plan until the valuation of the claims is settled. The costs would be similar in either forum. The claims are insured and therefore trying them in state court should decrease, not increase, the Debtor's administrative costs. The Committee will not incur costs in the litigation of the State Court Actions because it is not a party to those actions. In fact, a judgment by the state court will lessen administrative expenses by providing a path to resolution of the case. The automatic stay should be lifted because the Movants' State Court Actions will not interfere with the Chapter 11 Case. Rather, they are vital to its resolution.

2. The Interests of Child Sexual Abuse Survivors and Society At-Large Weigh Heavily in Favor of Granting Relief (*Sonnax* Factor 12)

The balance of harm tips decidedly in favor of lifting the stay on the Movants' State Court Actions. The State Court Actions present a unique balance of harm from both societal and personal perspectives that favor relief from the stay. As the U.S. Supreme Court has explained, the "sexual abuse of a child is a most serious crime and an act repugnant to the moral instincts of a decent people." *Ashcroft v. Free Speech Coal*, 535 U.S. 234, 244-45 (2002).[9] Specific to the childhood sexual abuse context, "there can be no real dispute that the controversy over the misconduct of priests, as well as the Church's responsibility for the misconduct and its alleged cover-up, is a public controversy." *New Life Center, Inc. v. Fessio*, 229 F.3d 1143, (4th Cir. 2000). As the New Jersey Supreme Court has explained, "the sexual abuse of children not only

[9] *See Coy. v. Iowa*, 487 U.S. 1012, 1022 (1988) ("Child abuse is a problem of disturbing proportions in today's society."); *Fortin v. Roman Catholic Bishop of Portland*, 871 A.2d 1208, 1230 (Me. 2005) ("In matters concerning the protection of children from physical and sexual abuse, societal interests are at their zenith."); *J.S. v. R.T.H.*, 714 A.2d 924, 931 (N.J. 1998) (noting "the enormous public interest in protecting society from the threat of potential molestation, rape, or murder of women and children.").

traumatizes the victims, but also exacts a heavy toll on society." *J.S. v. R.T.H.*, 714 A.2d at 932–33. As numerous courts have explained, "apart from the substantial personal trauma caused to the victims of such crimes, sexual crimes against children exact heavy social costs as well." *Doe v. Poritz*, 662 A.2d 367, 375 (N.J. 1995); *Owens v. State*, 724 A.2d 43, 53 (Md. 1999); *U.S. v. Banks*, 556 F.3d 967, 989 (9th Cir. 2009) (emphasis added).

The New York legislature, by passing the CVA, recognized the *public* importance of compensation for survivors of child sexual abuse and accountability for perpetrators and the institutions that protected them. Unfortunately, the Diocese filed for bankruptcy a mere one month after the window for accountability opened. The four hundred and seventy-five (475) survivors waiting for resolution of this case will benefit from stay relief, but so will society at-large. Society also suffered significant harm by the Diocese's actions and will also benefit from allowing survivors the opportunity to prove the value of their claims and receive fair compensation through this bankruptcy case.

3. The Debtor's Insurers Have Full Responsibility for Defending the State Court Actions (*Sonnax* Factor 5)

All of the Movants' claims arose during time periods covered by the Insurers. Therefore, it is the Committee's understanding that the Insurers have an obligation to pay the defense costs and indemnify the claims. The source of funding defense costs is important because "the existence of insurance adequate to cover the costs of suit" is a relevant factor in considering the "financial impact of lifting the stay." *In re Krank*, 84 B.R. 372, 375 (Bankr. E.D. Pa. 1988). Thus, bankruptcy courts "have routinely granted relief" from an automatic stay in order "to permit . . . plaintiffs to prosecute their claims in state court" when the collection will be against an insurance policy held by the debtor and the plaintiff agrees to limit "their collection efforts" to the policy. *In re Glunk*, 342 B.R. 717, 740 (Bankr. E.D. Pa. 2006). "The rationale for granting

relief from the automatic stay for this purpose is that the prejudice to the debtor, who may suffer modest or even no adverse financial consequences but may only have to expend some time and effort in cooperating with his insurer in the defense of the litigation, is outweighed by the prejudice to the creditor whose ability to prosecute the action and reach the insurance benefits may be undermined by the aging of evidence, loss of witnesses, and crowded court dockets." *Id.* (internal cites and quotations omitted).

The Insurers have full responsibility for defending and indemnifying the Movants' Sexual Abuse Claims without reservation. The costs of defending these claims do not negatively impact coverage limits or aggregates available to cover other claims. The automatic stay should be lifted because the defense costs will be paid by the Insurers and the claims are insured.

4. New York State Court is the Appropriate Forum for Sexual Abuse Claims, and Relief Furthers the Interests of Judicial Economy and the Expeditious and Economical Determination of Litigation for the Parties (*Sonnax* Factors 4, 10 and 11)

The State Court Actions involve matters of purely state law. Even though state court is a "court of general jurisdiction rather than a specialized tribunal," bankruptcy courts have found this factor weighs in favor of lifting the automatic stay when the action involves state law and the state court has greater familiarity with that law. *In re 950 Meat & Grocery Corp.*, 617 B.R. 224, 229 (Bankr. S.D.N.Y. 2020); *PG&E*, 2019 Bankr. LEXIS 2593, at *5–6; *Partee v. White (In re White), 2004 Bankr. LEXIS 478* (Bankr. D. Colo. Mar. 12, 2004). In addition, as a matter of comity, state courts have a particularized interest in determining disputes and issues within their jurisdiction. *Id.*; s*ee also Walsh v. Brush (In re Walsh),* 79 B.R. 28, 29 (D. Nev. 1987) ("This case includes only state law claims. Therefore, the state court is particularly well suited to handle the issues raised."); *Allen Cty Bank & Tr. Co. v. Valvmatic Int'l Corp.*, 51 B.R. 578, 582

(N.D. Ind. 1985) ("The state court has expertise in the resolution of this type of case, presenting state law questions and is better able to adjudicate this action.").

Additionally, "[a] clear congressional policy exists to give state law claimants a right to have claims heard in state court." *In re Castlerock Props.*, 781 F.2d 159, 163 (9th Cir. 1986); *see also Project Orange*, 432 B.R. at 103; *Murray Indus., Inc. v. Aristech Chem. Corp. (In re Murray Indus., Inc.),* 121 B.R. 635 (Bankr. M.D. Fla. 1990); S. Rep. No. 989, 95th Cong., 2d Sess. 50, *reprinted in* 1978 U.S. Code Cong. & Admin. News 5780, 5836 ("[I]t will often be more appropriate to permit proceedings to continue in their place of origin, when no great prejudice to the bankruptcy estate would result, in order to leave the parties to their chosen forum and to relieve the bankruptcy court from any duties that may be handled elsewhere."). A grant of relief from stay in favor of a state court action is proper if "only state law is involved," the state court is "the more appropriate forum" and "the result reached [by the state court] will more likely be consistent with other state law decisions." *O'Rourke v. Cairns*, 129 B.R. 87, 91 (E.D. La. 1991) (citing, as examples, *Gorse v. Long Neck, Ltd.*, 107 B.R. 479, 483 (D. Del. 1989); *Cook v. Griffin*, 102 B.R. 875, 877 (N.D. Ga. 1989)).

Here, although state courts are courts of general jurisdiction, certain state court judges have developed specialized knowledge for addressing cases under the CVA. Prior to the legislation's effective date, New York State Courts implemented new procedures for the efficient and expedient handling of claims revived under the CVA, including: the assignment of all CVA cases to "dedicated part(s) of Supreme Court in each Judicial District"; mandated training in "subjects related to sexual assault and the sexual abuse of minors" for these justices, judicial hearing officers, referees, and ADR neutrals overseeing CVA cases; and a recommended pre-trial schedule for each CVA case. NY CLS Unif Rules, Civil Cts § 202.72 (1)–(3). The

schedule proposes an accelerated timetable at every phase of the cases: one year to complete discovery, ninety days to file dispositive motions after the completion of discovery, and trial within sixty days of note of issue or decision on dispositive motions. *Id.* Thus the judges assigned to the State Court Actions have received special training related to the actions and have been designated as specialized parts of the Supreme Court for handling such cases. Further, given the significant number of lawsuits filed under the CVA over the past year and half, those designated judges are also now highly familiar with the relevant legal issues likely to arise in the State Court Actions.

Moreover, the Bankruptcy Court cannot preside over a trial of the Movants' personal injury claims. *See* 28 U.S.C. § 157(b)(5); 28 U.S.C. § 157(b)(2)(B) (core proceedings do not include the "liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11"). The trial and adjudication of the Movants' claims must occur in another court, therefore judicial economy will be not served by keeping the automatic stay in place. *Packerland Packing Co. v. Griffith Brokerage Co.* (*In re Kemble),* 776 F.2d 802 (9th Cir. 1985); *Barber v. Arnott (In re Arnott),* 512 B.R. 744, 754-55 (Bankr. S.D.N.Y. 2014) (granting relief from stay when complete resolution of personal injury action could not be adjudicated in bankruptcy court); *see also In re Castlerock Properties*, 781 F.2d at 163 (affirming court's decision to lift stay for abstention reasons, finding that state claims and imminent trial justified the decision). Courts have lifted the stay for "cause" to permit claims in the bankruptcy case to be liquidated through prosecution and completion of pending prepetition non-bankruptcy actions. *Murray v. On-Line Business Systems, Inc. (In re Revco D.S., Inc.),* 99 B.R. 768 (Bankr. N.D. Ohio 1989); and *May v. Wheeler*

Group, Inc. (In re Wheeler Group, Inc.), 75 B.R. 200 (Bankr. S.D. Ohio 1987). It would be far more efficient for these cases to be adjudicated by the state court.

Finally, the expertise of the state court as well as the mandate for fast-tracked adjudication means the parties should be able to complete discovery and move to trial efficiently. 2019 N.Y. Laws 11, 2019 N.Y. SB 2440 ("The chief administrator of the courts shall promulgate rules for the timely adjudication of revived actions. . . ."); *see also PG&E*, 2019 Bankr. LEXIS 2593, at *6 (ruling that the factors weigh in favor of relief from stay when the plaintiffs qualify for priority adjudication in state court). The Movants submitted detailed proofs of claim disclosing details of their sexual abuse. Additionally, the Movants' counsel have already had the opportunity to review the significant document production provided by the Diocese in this bankruptcy case. As such, the parties can move through discovery regarding notice issues efficiently.

New York state court is the appropriate forum for the State Court Actions, given its specialization in state law generally and CVA claims specifically, considering the bankruptcy court cannot adjudicate the State Court Actions, and based on the preference for state law matters to be resolved in state court. Further, while they are not ready for trial, the parties filed this action prior to the bankruptcy and will be on an expedited schedule in state court. Conversely, because the State Court Actions cannot be determined by the bankruptcy court, no judicial economy is served by continuing the protection of the stay. The fourth, tenth, and eleventh *Sonnax* factors therefore all weigh in favor of granting relief from stay to pursue the State Court Actions in state court.

CONCLUSION

After decades of suffering in silence, the Movants found the inner strength to face the terrors of their childhoods and confront those whose despicable actions and cover-up allowed them to be sexually abused at so tender an age. Faced with an unsuccessful mediation, healing can be accomplished by stay relief and not by an open-ended process currently without prospect of consensual resolution. The New York legislature recognized the importance of swift resolution of CVA cases. As the bankruptcy court in another mass tort case, faced with a similar relief from stay request, ruled:

> Finally, cause exists to grant relief from stay to advance these cases towards the necessary and stated goals of all the parties: a just resolution of the claims of victims of the wildfires that have ravaged Northern California in recent years. The pressure to adjudicate these claims in a prompt fashion comes from bankruptcy considerations, moral duties, and even legislative deadlines. The statutorily ensured commencement of a trial on the Tubbs fire moves toward liquidating these tort claims and helps with the imperfect method of estimating claims as must be done here in the bankruptcy court. In sum, although a handful of plaintiffs proceeding to trial does not resolve many claims in this case, it advances the goals of this bankruptcy far better than stayed, stagnant proceedings. All arguments to the contrary ignore the urgent need for resolution, the inherent suitability of the state court to bring about that resolution, and the importance of that resolution to the future conduct of these bankruptcy cases.

PG&E, 2019 Bankr. LEXIS 2593, at *6–7. The Sexual Abuse Survivors deserve fair resolution of their claims and will be harmed if they are not allowed to prove the value of their claims in state court. Even the Debtor will suffer if the bankruptcy case continues to stagnate, while proceeding with the State Court Actions will have minimal impact on the Debtor's estate. Finally, society has a vested interest in the State Court Actions proceeding and receiving fair value in this bankruptcy case.

For all of the foregoing reasons, consensual resolution of the Chapter 11 case requires stay relief for the Movants' State Court Actions to proceed to judgment. The Committee supports stay relief as the best method to break the stalemate in the efforts to negotiate a plan.

Dated: June 8, 2021

Respectfully submitted,

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