

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

The Diocese of Rochester,

Debtor.

Case No. 19-20905

Chapter 11

**COMMITTEE’S MOTION TO DENY AS MOOT THE DIOCESE’S MOTION TO
APPROVE PROPOSED INSURANCE SETTLEMENT TO FUND SURVIVOR
COMPENSATION TRUST**

The Official Committee of Unsecured Creditors (the “**Committee**”) of The Diocese of Rochester (the “**Diocese**” or the “**Debtor**”) in the above-captioned case under chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”), by and through its undersigned counsel, hereby submits this motion (the “**Motion**”) for the entry of an order, substantially in the form attached hereto as **Exhibit A**, denying the *Motion to Approve Proposed Insurance Settlement to Fund Survivor Compensation Trust* [Docket No. 1538] (the “**9019 Motion**”).¹ In support of the Motion, the Committee respectfully states as follows:

BASIS FOR RELIEF REQUESTED

1. Through the 9019 Motion, the Diocese sought approval of three settlements with four of its insurers, including Continental.² However, since the 9019 Motion was filed, **all** the insurance settlements contemplated in the 9019 Motion have become moot. Notably, all insurers except Continental have reached new settlements with the Diocese and the

¹ Any capitalized terms not otherwise defined in this Motion shall have the meaning ascribed to them in the Insurance Settlement Motion.

² Specifically, the 9019 Motion sought approval of an agreement with LMI (the “**LMI Agreement**”), Underwriters (the “**Underwriters Agreement**”), Interstate (the “**Interstate Agreement**”) and Continental (the “**Continental Agreement**”).

Committee.³ In addition, the one non-settling insurer – Continental – filed its own plan that seeks approval of a settlement with Continental in an amount exceeding the amount proposed in the 9019 Motion.⁴

2. Because the settlements for which the 9019 Motion sought approval are all now moot and for the reasons stated in its Objection,⁵ the Court can adjudicate the 9019 Motion as a matter of law on the current record without the need for an evidentiary hearing, or even any hearing. As such, the Committee requests the Court deny the 9019 Motion as a matter of law, based on the current record, without an evidentiary hearing, subject only to arguments that Continental may raise in its response to this Motion.

BACKGROUND

3. Over a year ago, the Diocese negotiated settlement agreements with its principal insurers—LMI, Underwriters, Interstate and Continental—and filed the 9019 Motion seeking approval of those settlements (the “**Superseded Settlements**”). The Committee was not a party to the negotiations of the Superseded Settlements and, based on its analysis of the underlying claims and coverage available, the Committee determined the Superseded Settlements were wholly inadequate and filed an objection to the Insurance Settlement Motion.⁶

³ See *First Amended Joint Chapter 11 Plan of Reorganization for the Diocese of Rochester Dated September 13, 2023* (the “**Joint Plan**”) [Docket No. 2217] and the Diocese filed the Disclosure Statement related thereto (the “**Diocese Disclosure Statement**”) [Docket No. 2218].

⁴ See *Continental Insurance Company’s First Amended Chapter 11 Plan of Reorganization for the Diocese of Rochester* (the “**Continental Plan**”) on October 3, 2023 [Docket No. 2254] and the Disclosure Statement related thereto (the “**Continental Disclosure Statement**”) on October 2, 2023 [Docket No. 2247].

⁵ See *Official Committee of Unsecured Creditors’ Objection to Debtor’s Motion to Approve Proposed Insurance Settlements to Fund Survivor Compensation Trust* [Docket No. 1555] (the “**Objection**”). The Committee hereby incorporates the Objection herein by reference for all purposes.

⁶ Individual survivors joined in the Committee’s objection.[Docket Nos. 1559, 1561, 1564 and 1569]

4. In the sixteen months since the 9019 Motion was filed, the parties continued to negotiate towards a global resolution that at least seventy-five percent of the survivors would support.⁷ The Diocese and the Committee reached a deal that increased the compensation the Diocese and settling insurers were offering survivors and allowed the Diocese to fulfill its fiduciary obligation of maximizing recovery for its estate. The terms of the increased settlement amounts are as follows:

Insurer/Paying Entity	Amount Proposed in 9019 Motion ⁸	Amount Proposed in Plan ⁹
LMI	\$16,500,000	\$19,500,000
Underwriters	\$1,100,000	\$1,100,000
Interstate	\$26,000,000	\$50,000,000
Diocese	\$40,000,000	\$55,000,000
First State	N/A	\$750,000

5. Finally, in a further effort to avoid its contractual obligations under its policies issued to the Diocese, it filed the Continental Plan that includes a settlement that supercedes the terms of the 9019 Motion by (a) proposing a settlement that is \$11.5 million higher than the settlement proposed by Continental in the 9019 Motion and (b) seeking approval of the proposed settlement through a plan of reorganization.¹⁰

⁷ See *Purdue Pharma, L.P. v. City of Grande Prairie (In re Pharma L.P.)*, 69 F.4th 45, 78 (2d Cir. 2023), cert. granted, No. 23-124, 2023 U.S. LEXIS 2872 (Aug. 10, 2023).

⁸ See 9019 Motion at ¶ 6.

⁹ See Diocese Disclosure Statement at §§ III.O, III.R.

¹⁰ The Committee reserves all rights to object to the Continental Plan and/or the Continental Disclosure Statement on any basis.

ARGUMENT

6. The 9019 Motion should be dismissed as a matter of law. Continental superseded its previous agreement by filing its plan. Additionally, the 9019 Motion itself sought approval of a global settlement that all the other insurers have abandoned and from which the Continental Agreement cannot be excised.

A. The Continental Agreement is Moot

7. The Superseded Agreements are moot. There is no dispute that the LMI, Underwriters, and Interstate Agreements are superseded by the new settlements included in the Joint Plan. However Continental argues that its plan “constitute[s] a settlement offer the survivors can choose to accept if they wish,” but Continental is reserving its rights to enforce its settlement agreement with the Diocese.¹¹ In other words, Continental claims it has a binding contract with the Diocese for the buyback of its policies *but* it is not a repudiation of that contract to make a different offer for the sale of those same policies. Such a proposal is contrary to contract fundamentals, a party cannot sell something it is already under a binding contract to sell. Continental cannot continue on both paths. Continental must decide either to pursue (a) its plan or (b) approval and enforcement of the Superseded Settlement Agreement. But it cannot do both.

B. The 9019 Motion is Moot

8. Additionally, the 9019 Motion itself is moot. The 9019 Motion was not a motion for approval of the single agreement with Continental. It was for approval of a **global** settlement of the case, including the Diocese, its affiliates, and four insurance companies’ contributions to a survivor trust.

¹¹ *Continental’s Response to the Committee’s Request Regarding Debtor’s Rule 9019 Motion* (“**Continental Letter**”), Docket No. 2196.

9. The 9019 Motion emphasizes that the Diocese was seeking a **global** resolution through the motion. The Diocese states three times in the first seven paragraphs its proposed total amount of the proposed funding for a survivor trust.¹² Continental could have insisted on an individual motion for approval if its agreement was intended to be independent of the global deal outlined in the 9019 Motion. But it did not. Courts do not have authority to approve piecemeal proposed settlements. *In re Distefano*, No. 16-10694, 2022 Bankr. LEXIS 2450, at *18 (Bankr. N.D.N.Y. Sep. 6, 2022); *In re Breland*, Nos. 16-2272-JCO, 16-2270-JCO, 2018 Bankr. LEXIS 402, at *19 (Bankr. S.D. Ala. Feb. 14, 2018) (“[T]his Court will not bifurcate the settlement as it would result in piecemealing the settlement in violation of the spirit of Rule 9019.”); *In re Roper & Twardowsky, LLC*, 559 B.R. 375, 393 (Bankr. D.N.J. 2016). As such, the Court must deny the 9019 motion in its entirety.

10. Continental cites *Liberty Towers Realty, LLC v. Richmond Liberty LLC*, 734 F. App'x 68, 70 (2d Cir. 2018) as support for its position that the 9019 Motion should not be dismissed,¹³ but the facts in *Liberty* are not analogous. In *Liberty*, the debtor attempted to unilaterally withdraw from the deal subject to a pending 9019 motion. Here Continental is attempting to unilaterally enforce a deal that *all* of the other insurers have withdrawn from. Continental cannot force a return of all parties to the terms of the deal presented in the 9019 Motion. Moreover, *Liberty Towers* is distinguishable from this case. In *Liberty Towers*, the debtor unilaterally withdrew support for a settlement. However, in this case, the Diocese has not withdrawn the 9019 Motion or affirmatively repudiated the settlement before it became moot.

¹² 9019 Motion at 1 – 2.

¹³ See Continental Letter.

Rather, the 9019 Motion has been superceded by the new settlement terms negotiated by the Committee. As such, the 9019 Motion is moot and should be denied.

NOTICE

11. Notice of this Motion shall be provided to: (a) the Office of the United States Trustee for Region 2; (b) the Debtor; (c) Continental, and (d) all parties entitled to notice pursuant to Bankruptcy Rule 2002. Due to the nature of the relief requested herein, the Committee respectfully submits that no further notice of this Motion is required.

WHEREFORE, the Committee respectfully requests that this Court: (i) enter an order substantially in the form attached hereto as **Exhibit A**, granting the relief sought herein; and (ii) grant such other and further relief to the Committee as the Court may deem proper.

Dated: New York, New York
October 30, 2023

PACHULSKI STANG ZIEHL & JONES LLP

/s/ Ilan D. Scharf

James I. Stang, Esq.

Ilan D. Scharf, Esq.

Iain A. W. Nasatir, Esq.

Brittany M. Michael, Esq.

780 Third Avenue, 36th Floor

New York, NY 10017-2024

Telephone: 212/561-7700

Facsimile: 212/561-7777

jstang@pszjlaw.com

ischarf@pszjlaw.com

inasatir@pszjlaw.com

bmichael@pszjlaw.com

*Counsel for the Official Committee of Unsecured
Creditors*

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

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The Diocese of Rochester,

Debtor.

Case No. 19-20905

Chapter 11

**ORDER GRANTING THE COMMITTEE'S MOTION TO DENY THE 9019
MOTION**

This matter coming before the Court on the Motion of the Official Committee of Unsecured Creditors (the "Committee") of The Diocese of Rochester for entry of an order, (the "Motion"),¹ denying the *Motion to Approve Proposed Insurance Settlement to Fund Survivor Compensation Trust*, Docket No. 1538; the Court having reviewed and considered the Motion; the Court having found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and (iii) notice of the Motion as described in the Motion was proper under the circumstances; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and good and sufficient cause appearing therefor, it is hereby ORDERED that

1. The Motion is GRANTED.
2. The 9019 Motion is denied.
3. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

¹ Capitalized terms not defined herein shall have the meanings and definitions ascribed to them in the Motion.

Dated: Rochester, New York
_____, 2023

THE HONORABLE PAUL R. WARREN
UNITED STATES BANKRUPTCY JUDGE