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The Honorable Patricia C. Williams
Chapter 11

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8 UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
9 AT SPOKANE

10 In re

Case No. 04-08822

11 THE CATHOLIC BISHOP OF SPOKANE
a/k/a The Catholic Diocese of Spokane,
12
13 Debtor.

**OBJECTION OF TORT CLAIMANTS'
COMMITTEE TO DEBTOR'S
MOTION FOR ORDER FIXING NEW
TIME FOR FILING PROOFS OF
CLAIM; APPROVING CLAIM
FORMS; AND APPROVING
MANNER AND FORM OF NOTICE**

[ECF Docket No. 446]

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17 **I.**
INTRODUCTION

18 The Tort Claimants' Committee respectfully objects to the Debtor's Motion for
19 Order Fixing New Time for Filing Proofs of Claim; Approving Claim Forms; and
20 Approving Manner and Form of Notice ("Motion"). This Objection is supported by the
21 June 10 Declaration of DeAnn Yamamoto MA¹, the June 9 Declaration of Jon R.
22 Conte, Ph.D.,² the June 15 Declaration of George E. Frasier,³ all of which have been
23 filed with this Objection, and the seven Exhibits attached hereto.

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25 ¹ Hereafter the "Yamamoto Dec."

26 ² Professor Conte's Declaration has attached as Exhibit A the Declaration of Jon R. Conte, Ph.D.,
("Conte Dec."), dated October 8, 2004, that was filed as Docket No. 613 in the case of *In re Roman
Catholic Archbishop of Portland in Oregon, and Successors, a Corporation Sole, dba the Archdiocese*

1 Debtor's proposed Published Notice is inadequate because it describes sexual
2 abuse in vague and general terms. Victims of sexual abuse often do not connect,
3 and/or repress, the fact that they were sexually abused or that the conduct to which
4 they have been subjected constitutes sexual abuse. The more concrete and specific
5 the description, the more likely it is that the victim will recall the sexual abuse or
6 realize that the conduct to which he or she has been subjected constitutes sexual
7 abuse. Debtor's proposed Published Notice also does not inform victims of the
8 availability of counseling; does not assure confidentiality, and lumps sexual abuse
9 with general creditors claims, all of which would discourage victims from filing proofs
10 of claim. The proposed Published Notice of the Tort Claimants' Committee corrects
11 these deficiencies.

12 Debtor's proposed Sexual Abuse Proof of Claim requires detailed personal
13 information not required by the general proof of claim and would discourage victims
14 from filing proofs of claim. It also does not adequately assure victims that their claims
15 will be kept confidential, does not make clear that any confidentiality will be lost if it is
16 filed with the court, and does not adequately describe the types of sexual abuse
17 covered by the form. It provides that the Debtor's Claims Agent must actually receive
18 the Proof of Claim by the Bar Date, instead of determining timeliness by the postmark
19 date. The proposed Sexual Abuse Proof of Claim of the Tort Claimants' Committee
20 corrects these deficiencies.

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23 *of Portland in Oregon*, Case Number 04 37154 elp11, United States Bankruptcy Court for the District
24 of Oregon ("*Portland Diocese Case*"); and as Exhibit B the Supplemental Declaration of Jon R. Conte
25 ("*Conte Supp. Dec.*"), dated November 16, 2004, that was filed as Docket No. 640 in the *Portland*
26 *Diocese Case*.

³ Declaration of George E. Frasier in Support of Objection of Tort Claimants' Committee to Debtor's
Motion for Order Fixing New Time for Filing Proofs of Claim; Approving Claim Forms; and Approving
Manner and Form of Notice (hereafter "*Frasier Dec.*")

1 The Debtor proposes that information which victims confide in independent
2 counselors should be confidential only if the victim does not file a claim by the bar
3 date and later files a claim. This would discourage victims from using the counselors.
4 Information which victims confide in independent counselors should be confidential
5 and not be given to the Debtor, its insurers or anyone else under any circumstances.

6 The Debtor's proposed Claims Bar Date Notice should include information
7 about the confidentiality of victims' Proofs of Claim; and only redacted claims should
8 be available to Debtor's insurers, the Committees⁴ and the Future Claims
9 Representative, and their counsel. The proposed Notice should be revised to
10 specifically describe sexual abuse, to be applicable only to Sexual Abuse Claims, to
11 specifically name the Priests and others known to have abused victims, to make
12 related and conforming changes, and to remove argumentative provisions which
13 argue Debtor's theory of the case. It also should warn victims to consult with counsel
14 before filing a Proof of Claim if it includes information about the time the victim
15 recalled the abuse or last suffered injury from the abuse, and should give victims who
16 are not represented information about qualified attorneys who will provide an initial
17 free consultation about their claims.

18 The Debtor's Proposed Media Notice Program is inadequate. Contrary to
19 Debtor's unsupported assertion that victims who have not yet been identified all live
20 in Washington, Idaho and Oregon, approximately 31.2% of persons moving from the
21 counties comprising the Spokane Diocese between 1995 and 2000 moved to
22 destinations other than Washington, Oregon and Idaho. These persons will not be
23 reached by Debtor's proposed Media Notice Program unless publication is required
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26 ⁴ The Committees are the Tort Claimants' Committee and the Tort Litigants' Committee.

1 outside Washington, Oregon and Idaho. Additional publication also should be
2 required in Western Washington, Idaho, Oregon and nationally.

3 Debtor proposes to make unilateral press releases and public service
4 announcements. These should first be approved by the Committees and the Future
5 Claims Representative, or by the Court. Also, copies of the Claims Bar Date Notice
6 and the Sexual Abuse Proof of Claim should be available in each Church and Chapel
7 in the Spokane Diocese, and their location in the Church and Chapel and the bar
8 date should be announced at each weekend Mass until the bar date.

9 Sexual abuse victims often have developed coping mechanisms that make it
10 difficult for them to confront the connection between their abuse and their damages.
11 They should be given at least 120 days, not 90 days as proposed by Debtor, to come
12 forward with their claims.

13 The Debtor has not have given attorneys for tort litigants clear notice of its
14 proposal that these attorneys be required to receive and forward the bar notice to
15 their clients. The Debtor should give a supplemental notice and an opportunity to
16 object to these attorneys.

17 The Debtor's insurers argue that victims who have not discovered and
18 reasonably should not have discovered all potential injuries arising from the sexual
19 abuse they have suffered ("Causal Link Claimants")⁵ should be required to file proofs
20 of claims, and that the Future Claims Representative should not be permitted to file
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23 ⁵ RCW 4.16.340(1)(b). See Laws of 1991, c 212 §1, in which the legislature found that:

24 (3) The victim of childhood sexual abuse may repress the memory of the abuse or be
unable to connect the abuse to any injury until after the statute of limitations has run.

25 (4) The victim of childhood sexual abuse may be unable to understand or make the
connection between childhood sexual abuse and emotional harm or damage until many years
after the abuse occurs.

26 (5) Even though victims may be aware of injuries related to the childhood sexual abuse,
more serious injuries may be discovered many years later.

claims for them. However, the insurers do not have standing and improperly seek protection of the automatic stay and the discharge injunction.

Moreover, the insurers are seeking a determination that the Causal Link Claimants hold “claims” as defined under Bankruptcy Code §101(5) without adequate notice and an opportunity to develop a factual record and fully brief the issue. Whether or not Causal Link Claimants hold claims, the Future Claims Representative should be permitted to file proofs of claim for those who do not file their own.

II. ARGUMENT

A. Debtor’s proposed Published Notice is inadequate because it does not adequately describe the sexual abuse, does not inform victims of the availability of counseling; does not assure confidentiality, and lumps sexual abuse with general creditors claims, all of which would discourage victims from filing proofs of claim.

1. Debtor’s proposed Published Notice does not adequately describe the sexual abuse.

The headline of the proposed Published Notice speaks only of potential claims. It vaguely describes the forms of sexual abuse in small type that is lumped with four other paragraphs describing general creditors’ claims. Use of the terms “sexually touched”, “sexual conduct”, “sexually abused” or “sexual misconduct” to describe what may give a person a “claim” is too general.⁶

Often, victims of childhood sexual abuse do not perceive that what happened to them was “abuse” or “misconduct.” They also do not make the connection between childhood sexual abuse and the problems they experience in adulthood like difficulties in trusting others, self-destructive behaviors, anger, low sense of self and difficulties with intimate relationships. Many childhood victims were groomed for sexual activity by their abusers and have been left with feelings of responsibility and guilt for the conduct of their abusers. They may not perceive as applicable to them a

⁶ Yamamoto Dec. at 2-3; Conte Dec. at 10-13; Conte Supp. Dec. at 2.

1 notice that generally refers to conduct, or misconduct, or abuse, without more
2 explanation. Indeed, because of the tendency of victims of childhood sexual abuse
3 to deny, minimize or have selective memory as a self-defense mechanism, a victim of
4 childhood sexual abuse may look for ways to conclude that the proposed notice does
5 not apply to him or her. The Debtor's proposed use of broad, general terms would
6 facilitate this.⁷

7 For the notice to be meaningful, it should use plain English and describe specific
8 behaviors, rather than use broad, general terms like "abuse" or "misconduct." The
9 notice should tell the reader that she or he might have a claim by specifically asking:

10 Did any priest or any other person connected with The Catholic Diocese
11 Of Spokane, its parishes, schools or other institutions:

- 12 • Do anything to you or have you do anything sexual or
inappropriate
- 13 • Touch you or have you touch him or her or yourself sexually,
whether clothed or unclothed
- 14 • Look at your sexual or intimate parts
- 15 • Show his or her sexual or intimate parts to you
- 16 • Take a photograph or video of you
- 17 • Show you anything sexual, such as photographs, magazines or
books
- 18 • Have sexual intercourse with you or you with him or her, whether
oral, anal or vaginal
- 19 • Have sexual contact with you of any kind whatsoever⁸

20 A blackline of proposed changes of the Tort Claimants' Committee to the Debtor's
21 proposed Published Notice which more specifically describes the abusive conduct,
22 and which also informs victims of the availability of counseling, assures victims of
23 confidentiality, and eliminates references to general creditors claims, is attached as
24 Exhibit 1. A clean copy of the proposed changes in publication format is attached as
25 Exhibit 2.

26 ⁷ Yamamoto Dec. at 3-4; Conte Dec. at 4-10; Conte Supp. Dec. at 2-4.

⁸ Yamamoto Dec. at 3, Conte Dec. at 10-13; Conte Supp. Dec. at 2.

1 2. Debtor's proposed Published Notice does not inform victims of the
2 availability of counseling.

3 The Debtor's proposed Published Notice does not inform victims of the
4 availability of counseling paid for by Debtor. The Published Notice proposed by the
5 Tort Claimants' Committee tells the reader that, by responding to the notice, he or
6 she can "get a referral to an independent community sexual abuse agency or
7 counselor" and "will not be charged for any counseling services and any discussions
8 between you and the counselor will be strictly confidential." Informing victims that the
9 Debtor will pay for independent counseling is likely to assist victims to recall their
10 sexual abuse or realize that the conduct to which he or she has been subjected
11 constitutes sexual abuse, and to come forward with his or her claim.⁹

12 3. Debtor's proposed Published Notice does not assure victims that their
13 claims will be confidential.

14 The Debtor's proposed Published Notice does not assure victims that their
15 claims will be kept confidential. The Tort Claimants' Committee's proposed
16 Published Notice informs victims that the Proof of Claim is a "confidential" form.

17 The issue of confidentiality is very significant since most victims will not report
18 childhood sexual abuse unless it is kept confidential. In order to encourage victims to
19 respond to the notice and file a proof of claim, it is very important that the Published
20 Notice reassure the victims that the claims process will respect their confidentiality.¹⁰

21 4. Debtor's proposed Published Notice lumps sexual abuse with general
22 creditors claims.

23 Lumping sexual abuse claims with general creditors claims in Debtor's
24 proposed Published Notice also makes it less likely that victims will respond to the
25 notice. The Tort Claimants' Committee believes that the Published Notice should

26 ⁹ Yamamoto Dec. at 3.

¹⁰ Id at 3-4.

1 eliminate references to general creditors claims. Since general creditors are known
2 to the Debtor, are few in number, and will receive actual notice of the bar date, it is
3 doubtful that a Published Notice to general creditors is necessary. If the Debtor
4 wishes to publish a notice to general creditors, it should be separate from the
5 Published Notice to sexual abuse victims.

6 **B. Debtor's proposed Sexual Abuse Proof of Claim requires detailed**
7 **personal information not required by the general proofs of claim and**
8 **would discourage victims from filing proofs of claim.**

9 The Debtor's proposed Sexual Abuse Proof of Claim would require victims to
10 provide significantly more information than is required by the general form. It would
11 require each victim's date of birth, partial Social Security number, other names used
12 now or in the past, and highly personal details about the abuse. None of this is
13 required of other creditors. Requiring this personal information in the Sexual Abuse
14 Proof of Claim almost certainly would discourage victims from filing claims.

15 Debtor's only stated reason for requiring this information is to allow it and its
16 insurers to investigate the claims. It is premature to assume that a full blown
17 investigation of claims and the Debtor's potential statute of limitations and other
18 defenses will be necessary. The Tort Claimants' Committee and the Debtor have
19 each expressed a preference for a plan that will not require such investigations or
20 subsequent litigation. If at a later date it becomes necessary to further investigate
21 claims, the information could be obtained then from the victim.¹¹

22 A blackline of the Tort Claimants' Committee's proposed changes to the
23 Debtor's proposed Sexual Abuse Proof of Claim form, including the changes

24 ¹¹ Before any such investigation is commenced, the Debtor should be required to warn the victim that
25 his or her answers to questions about his or her claim, and particularly about the time he or she
26 recalled the abuse or last suffered injury from the abuse, may seriously affect their legal rights, and
that the victim should consult with counsel before giving such information. The potential for abuse of
the rights of unrepresented victims otherwise would be too great.

1 proposed in Section II(C) below is attached as Exhibit 3. A clean copy of the
2 proposed changes is attached as Exhibit 4.

3 **C. Debtor's proposed Sexual Abuse Proof of Claim does not adequately**
4 **assure victims that their claims will be kept confidential, does not make**
5 **clear that any confidentiality will be lost if it is filed with the court, does**
6 **not adequately describe the types of sexual abuse covered by the form,**
7 **and does not provide that the postmark date will determine timeliness.**

8 The Debtor's proposed Sexual Abuse Proof of Claim does not adequately
9 assure victims that their claims will be kept confidential. The Tort Claimants'
10 Committee's Sexual Abuse Proof of Claim says repeatedly that the Proof of Claim is
11 a "confidential" form. Adequate assurances of confidentiality are necessary to
12 encourage victims to file claims.¹²

13 Although the Debtor's proposed Sexual Abuse Proof of Claim states that it
14 should be filed with the Claims Agent and not the court, it does not warn that any
15 confidentiality will be lost if it is filed with the court. Such a warning should be
16 included. It also fails to adequately describe the types of sexual abuse covered by
17 the form. For the reasons discussed at Section II(A)(1) above, it should use plain
18 English and describe specific behaviors that constitute sexual abuse.

19 The Debtor's proposed Sexual Abuse Proof of Claim, and the related
20 provisions of its Claims Bar Date Notice, provide that the Proof of Claim will be timely
21 only if actually received by the Debtor's Claims Agent. Victims should not be held
22 responsible for possible delays by the U. S. Postal System. A Proof of Claim should
23 be timely if postmarked by the Bar Date.
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26 ¹² See Section II(A)(3) above.

1 **D. Information which victims confide in independent counselors should be**
2 **confidential and not be given to the Debtor, its insurers or anyone else**
3 **under any circumstances.**

4 The Debtor proposes that information which victims confide in independent
5 counselors should be confidential unless the victim does not file a claim by the bar
6 date and later files a claim. All victims would be told that their supposedly
7 confidential communications with the counselor in fact might be available to the
8 Debtor and its insurers.

9 Any exception to confidentiality of communications with counselors would
10 discourage victims from using the counselors. The Debtor's implicit argument that it
11 should be able to breach confidentiality to find any potential inconsistent statements
12 by a victim also could be used to argue that the Debtor should be permitted to breach
13 the attorney-client, doctor-patient or priest-penitent privileges. There simply is no
14 justification for any exception to confidentiality of communications with counselors.

15 **E. The proposed Claims Bar Date Notice should include information about**
16 **the confidentiality of victims' Proofs of Claim; and only redacted claims**
17 **should be available to Debtor's insurers, the Committees and the Future**
18 **Claims Representative, and their counsel.**

19 The Debtor proposes that proofs of claim filed by sexual abuse victims will be
20 fully available to the Debtor and its insurers, who "will be free to use the information
21 contained in your Confidential Tort Proof of Claim Form for Sexual Abuse to conduct
22 their respective investigations into the facts and circumstances surrounding your
23 claim." While the Debtor puts no restriction on its insurers' access to and use of the
24 proofs of claim, it provides no access whatsoever to the Committees or the Future
25 Claims Representative.

26 The Debtor, its insurers, the Committees, the Future Claims Representative,
and their counsel all should have access to the proofs of claim, but such access

1 should be governed by a protocol to protect the identity of the claimants and the
2 confidentiality of the information.

3 The Court and the parties should look to the protocol adopted in the Tucson
4 Diocese bankruptcy case, a copy of which is attached as Exhibit 5.¹³ In brief, the
5 protocol for access to proofs of claim in this case should at a minimum provide:

6 1. The Debtor will have access to the full text of all proofs of claim, and it
7 and its claims agent will strictly protect the confidentiality of the identity of the persons
8 filing proofs of claim for sexual abuse;

9 2. Each claim will be copied and the copy will be identified only by a claim
10 number with the claimant's name, address and identifying information redacted;

11 3. The Debtor will provide its insurers, the Committees and the Future
12 Claims Representatives with copies of the redacted proofs of claim;

13 4. Access to the redacted proofs of claim will be permitted only to the
14 Debtor's insurers and their counsel; and the Committees, the Future Claims
15 Representative, and their respective court-appointed counsel;

16 5. Each person having access to the proofs of claim shall execute a
17 confidentiality agreement agreeing to hold in confidence the information on the proofs
18 of claim and not to disclose it to any third person without court approval;

19 6. To the extent possible without making an admission by a party
20 opponent, the Debtor will share with the Committees and the Future Claims
21 Representative all information it has regarding the validity of and the defenses to
22 each proof of claim.

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26 ¹³ Unites States Bankruptcy Court for the District of Arizona, Case No. 4-04-04721, Docket No. 263.

1 F. The Debtor's proposed Claims Bar Date Notice should be revised to
2 specifically describe sexual abuse, to be applicable only to Sexual
3 Abuse Claims, to specifically name the Priests and others known to have
4 abused victims, to make related and conforming changes, and to remove
5 argumentative provisions which argue Debtor's theory of the case.

6 The Debtor's proposed Claims Bar Date Notice contains the same inadequate
7 description of sexual abuse as the proposed Published Notice. For the reasons
8 discussed in detail in Section II(A)(1) above, the Claims Bar Date Notice also should
9 be revised to include the more specific description of sexual abuse proposed for the
10 Published Notice.

11 The Debtor's proposed Claims Bar Date Notice combines notice to sexual
12 abuse victims with notice to general creditors, which adds to the complexity and
13 potential confusion of the notice. This notice should be revised to make it applicable
14 only to Sexual Abuse Claims. The Debtor can easily do a separate notice to other
15 creditors.

16 The notice also should be revised to specifically name the Priests and others
17 known to have abused victims. This would make it more likely that victims who have
18 repressed memories of their abuse or have not fully connected it with their injuries
19 will file their claims.

20 The notice also should be revised to make related and conforming changes,
21 and to remove argumentative provisions which argue Debtor's theory of the case. A
22 blackline of changes to the Debtor's proposed Claims Bar Date Notice-General is
23 attached as Exhibit 6 and a clean copy is attached as Exhibit 7. Identical changes
24 also will need to be made to the Claims Bar Date Notice-Attorney.

1 **G. The proposed Claims Bar Date Notice should warn victims to consult**
2 **with counsel before filing a Proof of Claim if it includes information**
3 **about the time the victim recalled the abuse or last suffered injury from**
4 **the abuse.**

5 The proposed Claims Bar Date Notice should warn victims to consult with
6 counsel before making any statement about whether the victim repressed memories
7 of the abuse, when the victim made the connection between the abuse and the
8 victim's injuries, or about the time the victim recalled the abuse or last suffered injury
9 from the abuse. This is particularly important because these victims often have
10 difficulty recalling their abuse accurately and/or relating the abuse to their injuries.
11 Warning them to consult with counsel before discussing the time of recall of or the
12 most recent injury from the abuse simply levels the playing field for dealing with the
13 well represented Debtor and its insurers. The potential for abuse of the rights of
14 unrepresented victims otherwise would be too great.

15 **H. The proposed Claims Bar Date Notice should give victims who are not**
16 **represented information about qualified attorneys who will provide an**
17 **initial free consultation about their claims.**

18 The proposed Claims Bar Date Notice should give victims who are not
19 represented information about qualified attorneys who will provide an initial free
20 consultation about their claims. The Tort Claimants' Committee believes that the
21 parties can quickly identify a group of qualified attorneys who are willing give
22 unrepresented victims an initial free consultation. For the reasons discussed in the
23 preceding section, it is quite important that unrepresented victims have access to this
24 resource.
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1 **I. The Debtor's Proposed Media Notice Program is inadequate.**

- 2 1. Contrary to Debtor's assertion that victims who have not yet been
3 identified all live in Washington, Idaho and Oregon, approximately
4 31.2% of persons moving from the counties comprising the Spokane
5 Diocese between 1995 and 2000 moved to destinations other than
Washington, Oregon and Idaho, and will not be reached by Debtor's
proposed Media Notice Program unless publication is required outside
Washington, Oregon and Idaho.

6 Debtor's proposed Media Notice Program proposes widespread publication of
7 notice in Eastern Washington, limited publication in Western Washington, Idaho and
8 Oregon, and only a single national publication in USA Today. This program is based
9 on Debtor's statement, which is without any evidentiary support, that "The Diocese
10 believes that any presently unknown claimants are more likely than not to reside in
11 these same states [Washington, Idaho and Oregon]."¹⁴ However, data from the 2000
12 federal census demonstrates that during the five year period from 1995 to 2000
13 alone, 31,141 (or approximately 31.2%) of the persons moving from the counties
14 comprising the Spokane Diocese between 1995 and 2000 moved somewhere other
15 than Washington, Idaho and Oregon.¹⁵

16 The number of persons who moved somewhere other than Washington, Idaho
17 and Oregon is approximately 4.9% of the entire population of the counties comprising
18 the Spokane Diocese in 1995.¹⁶ It is reasonable to infer that there was similar

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20 ¹⁴ Motion at p. 19. The Motion also states at p. 19 that the Debtor intends to mail the Published Notice
21 to mailing lists for all parishes, missions, and Catholic high and grade schools in the Diocese. On
22 June 2, George E. Frasier, one of the attorneys for the Tort Claimants' Committee sent Michael
Paukert, one of the attorneys for the Debtor, an email asking for "zip code sorted lists [of alums of the
schools and parishes in the Diocese] to get an idea of the destination of people who have moved for
purposes of the bar date motion." Mr. Paukert has not answered this email. Frasier Dec. at 1.

23 ¹⁵ The 2000 federal census shows that 22,365 persons moved from one county in the Spokane
24 Diocese to another between 1995 and 2000. These moves are not counted as outmigration from the
Spokane Diocese. 14,339 persons moved from the Spokane Diocese to other county in Eastern
Washington. 31,447 moved to Western Washington, 12,746 moved to Idaho and 10,186 moved to
Oregon. 31,141, or 31.2%, moved to states from Montana to Maine to Florida to California, including
25 9,995 to California, 3,972 to Arizona, 3,510 to Texas, 3,474 to Montana, 2,441 to Colorado, 2,338 to
Nevada, 2,128 to Utah, 1,559 to Florida and 1,479 to Alaska. Frasier Dec. at 2-3, and Exhibit 1.

26 ¹⁶ In 1995, the population of counties comprising the Spokane Diocese was 638,559. Frasier Dec.

1 outmigration between 1955 and 1995, and that a large number of persons who lived
2 in the Spokane Diocese between 1995 and 2004 have moved somewhere other than
3 Washington, Idaho and Oregon.¹⁷

4 It is likely that an even greater proportion of sexual abuse victims moved away
5 from Washington, Idaho and Oregon than the 31.2% of the general population of
6 outmigrants who moved elsewhere between 1995 and 2000, because victims often
7 move away as a part of their coping mechanism.¹⁸ It is reasonable to infer that they
8 are more likely to move farther away than nearby, so it is likely that more than 31% of
9 sexual abuse victims who moved from the Spokane Diocese between 1995 and 2000
10 moved have moved outside Washington, Idaho and Oregon.

11 In spite of substantial outmigration from the Spokane Diocese to places
12 outside Washington, Idaho and Oregon, the Debtor's proposed Media Notice
13 Program provides for no local publication in the states other Washington, Oregon and
14 Idaho. Since almost as many people moved from the Spokane Diocese to California
15 as to Idaho or Oregon, publication once each week for three weeks, like that
16 proposed for the Northwest, should be required in two newspapers of general
17 circulation in each of the Northern and Central Districts and in one newspaper of
18 general circulation in each of the Eastern and Southern Districts of California. Since
19 significant numbers moved from the Spokane Diocese to Arizona, Texas, Montana,
20 Colorado, Nevada, Utah, Florida and Alaska, publication should be required once
21 each week for three weeks in one newspaper of general circulation in each of these

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23 Exhibit 2.

24 ¹⁷ Outmigration data from censuses prior to 2000 are not readily available on the Internet. Frasier
25 Dec. Although it is virtually certain that the data for the 40 years prior to 1995 will not exactly mirror
26 the current data, it is reasonable to infer that there also was significant outmigration from Eastern
Washington beyond Western Washington, Idaho and Oregon in those years too. The court also can
and should take judicial notice of the well known pattern of migration from rural areas to urban areas
around the country following World War II.

¹⁸ Conte Dec. at 15.

1 states. Since significant numbers moved from the Spokane Diocese to other states
2 throughout the nation, publication should be required once each week for three
3 weeks in one newspaper of general circulation in regional centers such as
4 Minneapolis, Kansas City or St. Louis, Mo., Atlanta, Boston, and Washington, D.C.

- 5 2. Additional publication should be required in Western Washington, Idaho
6 and Oregon.

7 Debtor's proposed Media Notice Program appears to provide adequate
8 publication of notice in 6 general circulation newspapers throughout Eastern
9 Washington. However, it proposes publication for Western Washington, the
10 destination of 31.5% of 1995-2000 outmigration, in only the Seattle Times/Post
11 Intelligencer in Seattle and the Vancouver Columbian, leaving the Olympia, Tacoma,
12 Bremerton/Kitsap County, Bellevue, Everett, and Bellingham areas without any local
13 coverage. Publication should be required once each week for three weeks in one
14 newspaper of general circulation in each of these locations.

15 Debtor's program proposes publication for Idaho, the destination of 12.8% of
16 1995-2000 outmigration, in only Boise's Idaho Statesman, the Lewiston Tribune and
17 the Couer d'Alene Press, leaving the Sandpoint/Bonnars Ferry, Twin Falls, Sun
18 Valley and Idaho Falls areas without any local coverage. Publication should be
19 required once each week for three weeks in one newspaper of general circulation in
20 each of these locations.

21 Debtor's program proposes publication for Oregon, the destination of 10.2% of
22 1995-2000 outmigration, in only the Portland Oregonian, leaving Salem, Eugene,
23 Medford, Bend and all of Eastern Oregon without any local coverage. Publication
24 should be required once each week for three weeks in one newspaper of general
25 circulation in each of these locations.
26

1 3. Additional national publication should be required.

2 Debtor's proposal to publish only once nationally in USA Today is inadequate.
3 Publication should be required once each week for three weeks in USA Today, the
4 Wall Street Journal, the Los Angeles Times and the New York Times.

5 4. Proposed unilateral press releases and public service announcements
6 by the Debtor should first be approved by the Committees and the
 Future Claims Representative, or by the Court.

7 The Debtor proposes to issue unilateral press releases and public service
8 announcements, without specifying the form or content of these releases. These first
9 should be approved by the Committees and the Future Claims Representative, or by
10 the Court.

11 5. Copies of the Claims Bar Date Notice and the Sexual Abuse Proof of
12 Claim should be available in each Church and Chapel in the Spokane
 Diocese, and their location in the Church or Chapel and the bar date
 should be announced at each weekend Mass until the bar date.

13 Copies of the Claims Bar Date Notice and the Sexual Abuse Proof of Claim
14 should be available at a clearly marked location in each Catholic Church and Chapel
15 in the Spokane Diocese near where the weekly bulletin and other materials are
16 regularly distributed. In addition, until the Bar Date, it should be announced at each
17 weekend Mass throughout the Spokane Diocese when the Bar Date will occur and
18 where the above documents are available in the Church or Chapel.

19 **J. The bar date should be at least 120 days after entry of the bar date order.**

20 The bar date should be at least 120 days after entry of the bar date order,
21 instead of 90 days as suggested by Debtor. The primary audience of the bar date
22 notice is abuse victims who know that they were sexually abused but have not yet
23 come forward with their claims. These victims often have developed coping
24 mechanisms that make it difficult for them to confront the connection between their
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1 abuse and their damages.¹⁹ They should be given at least 120 days to come forward
2 with their claims.

3 **K. The Debtor has not given attorneys for tort litigants clear notice of its**
4 **proposal that these attorneys be required to receive and forward the bar**
5 **notice to their clients.**

6 Debtor's Motion does not give attorneys for tort claimants clear notice that the
7 motion seeks to require the attorneys to receive and forward the Claims Bar Date
8 Notice to their clients. In the absence of clear notice, these attorneys and their
9 clients may not be bound by the bar order. The Debtor should give a supplemental
10 notice and an opportunity to object to the attorneys for the tort litigants.

11 **L. The Debtor's insurers do not have standing and improperly seek**
12 **protection of the automatic stay and the discharge injunction by arguing**
13 **that bar date applies to Causal Link Claimants, and that their claims**
14 **should not be filed by the Future Claims Representative.**

15 The Debtor's insurers argue that the bar date applies to Causal Link
16 Claimants, and that their claims should not be filed by the Future Claims
17 Representative. However, the insurers do not have standing to make this argument
18 and improperly seek protection of the automatic stay and the discharge injunction by
19 making this argument.

20 The insurers only conceivable interest in this case is to protect themselves
21 from having to pay what they owe the Debtor and the victims under their policies, if
22 and only after the victims' claims are established and the pending insurance
23 coverage declaratory judgment action is decided against the insurers. This does not
24 make the insurers parties in interest entitled to participate in this motion or any other
25 aspect of the case except the pending insurance coverage declaratory judgment
26 action. For example, in *Travelers Ins. Co. v. H.K. Porter Co.*, 45 F.3d 737, 742 (3d
Cir. 1995), the court held that an insurer did not have standing to appeal orders

¹⁹ Yamamoto Dec. at 2-3; Conte Dec. at 4-10; Conte Supp. Dec. 2-3.

1 vacating withdrawals of and defaults against claims for insured property damages,
2 because the possibility that the creditors might establish their claims over the
3 objections of the debtor and that the insurer might thereafter lose a pending
4 coverage dispute did not constitute a sufficient pecuniary interest to give the insurer
5 standing to appeal the vacation orders. The court stated:

6 We are satisfied that Travelers is not a "person aggrieved," as its interest is
7 too contingent to have been "directly affected" by the order reinstating the
8 claims against Porter. Travelers' potential exposure is doubly removed,
9 turning both on the success of the Claimants in their prosecution of claims
against Porter, and on a judicial determination that the policy issued by
Travelers covers the claims, a construction which Travelers strenuously
rejects.

10 Thus, the insurers are not parties in interest entitled to participate in this motion.²⁰

11 Moreover, the law is well settled that an insurer is not entitled to the benefit of
12 the automatic stay or the discharge injunction. *Patronite v. Beeney (In re Beeney)*,
13 142 B.R. 360, 362-63 (Bankr. 9th Cir. 1992) (agreeing with the "vast majority of
14 courts" that a suit against a debtor and the debtor's insurance company may proceed
15 "so long as no collection efforts would be made against the debtor").²¹ By arguing
16 that the claims of Causal Link Claimants for which the insurers would remain liable
17 after the bar date should be barred by the bar date, the insurers are improperly
18 attempting to take advantage of the Debtors' protection under the automatic stay and

20 ²⁰ *Accord., Travelers Casualty & Surety v. Corbin (In re First Cincinnati, Inc.)*, 286 B.R. 49, 52-54
(Bankr. 6th Cir. 2002) (relying substantially on *H.K. Porter Co., supra*); *In re Delta Underground*
21 *Storage Co., Inc.*, 165 B.R. 596, 598-99 (Bankr. S.D. Miss. 1994) (concluding that an insurer lacked
22 standing to object to a settlement reached between a Chapter 11 debtor and other parties which
required the debtor to pursue a lawsuit against the insurer, because the insurer did not have an
interest in a distribution in the case).

23 ²¹ *Accord, Chapman v. Bituminous Ins. Co. (In re Coho Resources, Inc.)*, 345 F.3d 338, 342-43 (5th
Cir. 2003) ("The discharge and injunction, however, are expressly designed to protect only the *debtor*,
24 and do 'not affect the liability of any other entity' for the debt. Accordingly, courts are in 'near
25 unanimous agreement' that § 524(e) 'permits a creditor to bring, and proceed in, an action nominally
directed against a discharged debtor for the sole purpose of proving liability on its part as a
prerequisite to recovering from its insurer.'"); *Green v. Welsh (In re Green)*, 956 F.2d 30, 36 (2d Cir.
1992) (concluding that the discharge injunction did not prohibit a creditor from bringing suit against a
26 debtor "to prove liability as a prerequisite to recovery from the [debtors'] liability insurer").

1 the discharge. If the insurers want protection from Casual Link Claimants, they can
2 obtain it only as part of a settlement of the pending insurance coverage declaratory
3 judgment action.²²

4 **M. The Debtor's insurers are seeking a determination that the Causal Link**
5 **Claimants hold "claims" as defined under Bankruptcy Code §101(5)**
6 **without adequate notice and an opportunity to develop a factual record**
7 **and fully brief the issue.**

8 Even if the insurers had standing, they have not made any motion to
9 determine whether the Causal Link Claimants hold "claims" as defined under
10 §101(5), and they have not made any factual record to support their argument. For
11 these reasons alone, their argument should be overruled in this motion.

12 Moreover, because the Causal Link Claimants are by definition victims who
13 have not become aware or fully aware of the causal link between their abuse and
14 their damages, it appears that they do not have claims as defined in §101(5). Under
15 *California Dept. of Health Services v. Jensen, (In re Jensen)*, 995 F.2d 925 (9th Cir.
16 1993), the fact that Causal Link Claimants know that they had pre-petition contact
17 with Debtor's agents is not sufficient. Rather, *Jensen* at 930 requires both contact
18 and that the Debtor establish that "all future . . . damages . . . based on pre-petition
19 conduct . . . can be fairly contemplated by the parties at the time of [d]ebtors'
20 bankruptcy" The court quoted with approval a law review article that stated
21 "[d]espite Congress's . . . broad definition of 'claim,' nothing in the legislative history
22 or the Code suggests that Congress intended to discharge a creditor's rights before
23 the creditor knew or should have known that its rights existed." *Id.* At a minimum,
24 this issue should not be decided in the absence of a proper motion and without

25 ²² It is far from clear that the insurers can even obtain protection in this manner. See *American*
26 *Hardwoods, Inc. v. Deutsche Credit Corp. (In re American Hardwoods, Inc.)*, 885 F.2d 621, 624- 27
(9th Cir. 1989) (holding that a bankruptcy court lacked power to permanently enjoin a creditor from
pursuing a state court judgment against nondebtor guarantors of the debtor's liabilities to the creditor).

adequate notice and an opportunity to develop a factual record of whether the victims are more like asbestos claimants who probably do not have claims as defined by §105(5) or silicone breast implant recipients who may have claims, and to fully brief the issue.

N. The Future Claims Representative should be permitted to file proofs of claim for Causal Link Claimants who do not file their own.

All parties seem to concede that the Future Claims Representative of necessity will file claims for victims with repressed memories ("Repressed Memory Claimants")²³. The Future Claims Representative also should file claims for Causal Link Claimants who do not file their own because it is doubtful that the claims of Causal Link Claimants who do not file their own claims are claims as defined in §101(5). Such claims can only be dealt with by someone like the Future Claims Representative acting on behalf of the Causal Link Claimants. This is exactly the solution selected by Judge Perris to the identical problem in the Portland Diocese case. *In re Roman Catholic Archbishop of Portland in Oregon*, 2005 WL 148775 (Bankr. D. Or. 2005).

This approach is well founded in the 9th Circuit. For example, in *Hassanally v. Republic Bank (In re Hassanally)*, 208 B.R. 46, 53, n. 9 and 54, n. 10 (Bankr. 9th Cir. 1997), the court noted:

A future claim has been defined as "a claim against a debtor for an injury or disease that has not as yet become manifest at the time the debtor has filed for bankruptcy, but is based upon the occurrence, prior to bankruptcy of one or more material events, acts, or failures to act. . . ." Future claims may be contingent claims, but the Code does not so state, and case law is

²³ Repressed Memory Claimants are defined in RCW 4.16.340(1)(c). See legislative history quoted in fn. 5. Although Debtor does not propose to set the bar date for the Future Claims Representative to file claims for Repressed Memory Claimants, the Tort Claimants' Committee believes that it should be set now for the same date as the general bar date because it will be necessary to have some bar date for such claims and it is most convenient that it be the same as the general bar date.

1 unsettled on that issue. In recent years, bankruptcy courts
2 have struggled to determine if a future claim is a claim
3 within the Code's definition, or disregarding that
4 determination, whether or not the future claim can be
5 treated as a claim, nevertheless. The courts seek to
6 balance the competing interests of the debtor's fresh start
7 with the creditor's right to compensation. Largely, the
8 issue of adequate notice to inform and bind the future
9 claimant and notions of fundamental fairness determine
10 the outcome.

11 . . .

12 It is well to note that in *Johns-Manville* and *A.H.*
13 *Robins*, the mass tort cases which applied the conduct
14 approach, the bankruptcy courts established trust funds to
15 deal with all present and future claimants who had been
16 exposed to the products:

17 The court held that the obligations to
18 the future claimants did not rise to the level
19 of "claims." However, they were entitled to
20 representation in the bankruptcy due to the
21 fact that although the injury occurred pre-
22 petition, the actual manifestation of the injury
23 had not yet occurred. By setting up a fund to
24 deal with both present and future claimants,
25 two fundamental precepts of the Bankruptcy
26 Code were satisfied: Similar creditors were
treated in a similar manner; and the debtor
was able to capture and treat within the plan
all pre-petition liabilities and obtain the
coveted "fresh start. . . ."

After the Future Claims Representative files claims for the Causal Link
Claimants who do not file their own, any party in interest who wishes to object to the
proof of claim can then file a proper motion with adequate notice and an opportunity
to develop a factual record and fully brief the issue.²⁴

²⁴ The insurers' alternative suggestion that Causal Link Claimants should be required to "register" their claims is an obvious subterfuge to get the same protection as impermissibly requiring them to file claims.

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III. CONCLUSION

For the reasons discussed above, the Published Notice, the Sexual Abuse Proof of Claim, the Claims Bar Date Notice, and the Media Notice Program should be revised, the bar date should be at least 120 days after entry of the bar date order, and information which victims confide in independent counselors should be confidential and not be given to the Debtor, its insurers or anyone else under any circumstances. The insurers should not be permitted to participate in the case, and the Future Claims Representative should be permitted to file claims for Causal Link Claimants who do not file their own.

Dated this 15th day of June, 2005.

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