HONORABLE PATRICIA C. WILLIAMS

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON AT SPOKANE

In re THE CATHOLIC BISHOP OF SPOKANE a/k/a THE CATHOLIC DIOCESE OF SPOKANE, a Washington corporation sole, Debtor.	No. 04-08822-PCW-11 FCR'S MEMORANDUM OPPOSING EVIDENTIARY HEARING

INTRODUCTION

COMES NOW the Future Tort Claimants Representative ("FCR") in the above-captioned action and submits this Memorandum in support of its contention that an evidentiary hearing is not required on the claims bar date issue.

BACKGROUND

This issue arises in the context of the Debtor's request for a bar date on certain tort claims and the procedures attendant thereto. The Debtor is currently seeking to bar claims held by "causal link" victims who do not file a Proof of Claim with the

BUSH STROUT & KORNFELD
LAW OFFICES
5500 Two Union Square
601 Union Street
Seattle, Washington 98101-2373
Telephone (206) 292-2110
Facsimile (206) 292-2104

bankruptcy court by a certain date. The FCR objected to bar of future claims held by causal link claimants based upon due process considerations, Washington state law, the Portland Archdiocese bankruptcy case, and general policy reasons. Stated simply, it is the position of the FCR that knowledge of an act of abuse does not trigger knowledge or awareness of entitlement to recourse against the Diocese. It is wrong as a matter of law to bar claims under these circumstances.

In response to the FCR's objection to the proposed claims bar date, the Debtor has scheduled an "in-court" hearing which it has verbally informed others that it intends to be an evidentiary hearing. The Debtor has not disclosed to the undersigned (either through formal or informal channels) what evidence it intends to adduce at the hearing other than that it intends to call an expert witness, Dr. Jeffrey Younggren. The FCR has not been provided with a resume, summary of testimony, or any other information regarding Dr. Younggren in any format – written, verbal or otherwise. However, the undersigned cannot understand what evidence would be relevant after a review of the law as applied in this case and the undisputed evidence provided by the FCR on this issue.

ARGUMENT

A. No Evidentiary Hearing is Needed

BUSH STROUT & KORNFELD
LAW OFFICES
5500 Two Union Square
601 Union Street
Seattle, Washington 98101-2373
Telephone (206) 292-2110
Facsimile (206) 292-2104

In its Motion to Restrict Testimony to Declarations (the "Motion"), filed on July 26, 2005, the FCR laid out in detail its opposition to the "in court hearing" sought by the Debtor. The bases of its opposition to such a hearing are as follows:

- The Debtor has offered no support for its contention that an evidentiary hearing is necessary;
- The Debtor has had more than two months to file declarations supportive of its position on the bar date and has not done so;
- The Debtor has not provided the FCR and other parties with any meaningful information about the testimony it plans to present if a hearing is granted;
- Judge Elizabeth Perris found no need for live testimony in the Archbishop of Portland bankruptcy under almost identical circumstances;
- All the pleadings and evidence provided to the Court in this case indicates that an evidentiary hearing is not necessary; and
- The FCR is aware of no other case in which an evidentiary hearing was held on the issue of a claims bar date.

The Debtor has not disputed to any of these contentions; indeed, is has not even replied to the FCR's Motion.

Furthermore, the issue of how to handle causal link claims has been addressed quite recently by Judge Perris in the Archbishop of Portland bankruptcy, as discussed in more detail below. The FCR is unaware of any facts which would alter the outcome of Judge Perris' decision. Given a victim's inability to form a causal link between the abuse and the resultant injury, it is not possible for a claimant to know of a right to

BUSH STROUT & KORNFELD
LAW OFFICES
5500 Two Union Square
601 Union Street
Seattle, Washington 98101-2373
Telephone (206) 292-2110
Facsimile (206) 292-2104

entitlement, and accordingly, as a matter of law, a claim cannot be barred through the claims bar date procedure sought by the Debtor.

B. The FCR Should File Claims on Behalf of Future Claimants

1. The Purpose of the FCR

The Debtor sought the appointment of an FCR in this case because

> it is necessary for the diocese to be able to confirm a Plan of Reorganization that deals with current claims (disclosed or not), and any claims that might legitimately arise in the future. Therefore, it is necessary that all constituencies who assert or might assert claims against the diocese arising out of sexual abuse by clergy or other workers associated with the diocese have the opportunity to be heard in the reorganization case.

See Motion for Order Appointing a Legal Representative for Unknown Tort Claimants, page 3, lines 3-9.

Similarly, in the Archbishop of Portland bankruptcy, Judge Elizabeth Perris addressed the appointment of a future claims representative to protect the interests of certain victims of child sex abuse. There, the Court took up the issue in a concise legal memorandum. That memorandum is attached hereto as Exhibit A. In that case, Judge Perris held that the most appropriate procedure for dealing with causal link claimants was through an FCR, who was appointed and authorized to file claims on behalf of future claimants. The FCR believes that to be the most appropriate procedure in this case, and the Debtor has not offered any evidence as to why this procedure should not be adopted here..

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5500 Two Union Square
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As Judge Perris noted, absent the appointment of a future claims representative in the Portland case, " . . . it was questionable whether it could accomplish through this bankruptcy a global resolution and discharge of the abuse claims." In re Roman Catholic Archbishop of Portland, 2005 WL 148775 at 2. This is precisely the goal that the Debtor purports to achieve.

2. Mass Tort Bankruptcy Cases

As Judge Perris notes in her decision, the Johns Manville case is a model for mass tort bankruptcy cases. See Archbishop of Portland, 2005 WL 148775 at 3. In Johns Manville, a future claims representative was appointed because "these claimants may be unaware of their entitlement to recourse against Manville due to the latency period of many years characterizing manifestation of all asbestos-related diseases." See In re Johns Manville Corp., 36 B.R. 743, 745 (Bankr., S.D.N.Y. 1984).

Here, the Debtor offers no rationale as to why future claimants are treated differently from those in Johns Manville. We can only speculate that at some time the Debtor will take the same position as the Portland Diocese that under the Dow Corning case, referred to in Judge Perris' decision, that future claimants should be required to file claims because they know of the abuse giving rise to the claim.

3. Long Latency Period Recognized in Case Law and by Statute

Under Washington State law, actions based on childhood sexual abuse are granted an extended period in which to commence an action. See RCW 4.16.340. This statute is supported by specific findings of the state legislature in the State of Washington. The legislature made the following first five findings in connection with the statute:

BUSH STROUT & KORNFELD
LAW OFFICES
5500 Two Union Square
601 Union Street
Seattle, Washington 98101-2373
Telephone (206) 292-2110
Facsimile (206) 292-2104

> (1) Childhood sexual abuse is a pervasive problem that affects the safety and well-being of many of our citizens.
>
> (2) Childhood sexual abuse is a traumatic experience for the victim causing long-lasting damage.
>
> (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.
>
> (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.
>
> (5) Even though victims may be aware of injuries related to the childhood sexual abuse, more serious injuries may be discovered many years later.

Laws of 1991, c 212.

It is not known whether the Debtor wishes to retry these findings of the legislature or not, but this Court should give effect to these findings and not expect a retrial of these issues.

Judge Perris noted that Oregon (like Washington) recognizes the unique nature of the potential damages caused by childhood sexual abuse and further noted that Oregon case law acknowledges that decades may pass between the childhood sexual abuse and the date the victim manifests the injury. See Archbishop of Portland, 2005 WL 148775 at 1.

Judge Perris further noted "the possibility of a long latency period before which injury becomes manifest is an important factual similarity between this case and the asbestos cases." Id at 3. The fact that a claimant may know of some level of abuse does not translate into knowledge by that claimant of entitlement to recourse against the diocese. Thus, barring a claimant who holds a valid claim but who does not know of an

BUSH STROUT & KORNFELD
LAW OFFICES
5500 Two Union Square
601 Union Street
Seattle, Washington 98101-2373
Telephone (206) 292-2110
Facsimile (206) 292-2104

entitlement to recourse because that claimant does not know of an injury is patently unfair and the diocese's request should be rejected as a matter of law.

The simple way to assure fair treatment for all is to follow the lead of so many other bankruptcy courts and to authorize a claim to be filed by the Future Claimants Representative on behalf of all causal link victims who have not yet made the connection between an act of abuse and an injury resulting therefrom.

CONCLUSION

Based upon the foregoing, the FCR respectfully requests that this Court refuse to hold an evidentiary hearing on the claims bar date issue.

DATED this 8th day of August, 2005.

BUSH STROUT & KORNFELD

By /s/ Devra D. Featheringill
Gayle E. Bush, WSBA #07318
Devra D. Featheringill, WSBA #32182
Attorneys for Future Claims Representative

BUSH STROUT & KORNFELD
LAW OFFICES
5500 Two Union Square
601 Union Street
Seattle, Washington 98101-2373
Telephone (206) 292-2110
Facsimile (206) 292-2104