

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

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**In re:**

**ARCHDIOCESE OF MILWAUKEE,**

**Debtor.**

**Case No. 11-20059-svk**

**Chapter 11**

**Hon. Susan V. Kelley**

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**RESPONSE OF THE DEBTOR TO THE OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS' PARTIAL OPPOSITION TO DEBTOR'S MOTION FOR AN ORDER  
AUTHORIZING CONFIDENTIALITY PROCEDURES TO PROTECT  
VICTIMS/SURVIVORS**

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The Archdiocese of Milwaukee, Debtor and Debtor-in-Possession (“Debtor” or “Archdiocese”), hereby submits this response (the “Response”) to the Partial Opposition of the Official Committee of Unsecured Creditors (the “Committee”) to Debtor’s Motion for an Order Authorizing Confidentiality Procedures to Protect Victims/Survivors (the “Opposition”), and states as follows:

**Background**

1. On March 14, 2011, the Debtor filed a motion for the entry of an order authorizing the Debtor to special confidentiality procedures to protect Victims/Survivors (the “Confidentiality Motion”).<sup>1</sup>
2. The primary relief sought in the Confidentiality Motion was to approve (i) limited notice procedures for Victims/Survivors, (ii) the omission of Victims/Survivors from the Matrix,

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<sup>1</sup> Capitalized terms not defined herein shall have the same meaning as ascribed to them in the Confidentiality Motion.

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Schedule F, and Section 3b of the Statement of Financial Affairs (the “SOFA”),<sup>2</sup> and (iii) service of critical notices in the Reorganization Case to Victims/Survivors by proxy, all to protect Victim/Survivor confidentiality.

3. On April 1, 2011, the Committee filed its Opposition in which it approved of the limited notice procedures proposed by the Debtor but objected to the other relief sought in the Confidentiality Motion.

### Argument

#### **I. The Debtor Should Not be Required to File Documents that Include the Names and Contact Information for Victims/Survivors**

4. The Debtor requested permission from the Court to omit the names of Victims/Survivors from its Matrix, Schedule F, and the SOFA; it has asked for this relief because it has pledged to all participants in the voluntary Mediation Program, as well as other Victims/Survivors, that the Archdiocese would keep their identities entirely confidential. The Confidentiality Motion attempts to give Victims/Survivors exclusive control over the decision of whether to have their identities revealed.

5. The Committee argues that the failure to reveal the identity of the Victims/Survivors to the Committee, the U.S. Trustee, the Court, and potentially others, somehow undermines transparency and accountability. The Committee’s counterintuitive position actually stands transparency and accountability on its head. The Archdiocese’s goal in this case is to provide compensation for the unresolved claims of Victims/Survivors in a way that allows the claims to be *transparent* while preserving the right to the privacy of personal identity. The Archdiocese desires to accomplish this goal in a way that is *accountable* to the

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<sup>2</sup> More specifically, the Debtor requested permission to only list on the SOFA the number of Victims/Survivors who have received payments in the ninety (90) days prior to the Petition date in excess of \$5850, and the aggregate amount of payments made to these Victims/Survivors.

Archdiocese's promise to preserve the confidentiality sought by Victims/Survivors. Assurance of privacy will make it easier for Victims/Survivors to make claims.

6. Thus, the Committee is correct when it says that the Archdiocese proposes a protocol in which all Victims/Survivors, whether or not represented by counsel, receive a level of unprecedented protection. The relief is unprecedented, but in a good way.

7. The Committee contends that any confidentiality procedures must be designed in the least intrusive way, and points to the filing under seal of the Matrix, Schedules, and certain other documents in other diocesan bankruptcies as proof that a less intrusive but equally effective alternative exists to the relief sought in the Confidentiality Motion. The Debtor is not unmindful of the confidentiality protocols that have been employed in other judicial districts, and the Debtor's decision to seek the heightened protections sought by the Confidentiality Motion is neither a criticism of nor a commentary on the other approaches.

8. However, unlike the other diocesan Chapter 11 proceedings, the confidentiality protections suggested here are grounded in the voluntary Mediation Program the Archdiocese established in January 2004 where confidentiality was discussed and promised to the Victims/Survivors as a part of the program. Consequently, the Debtor, while very willing to set up procedures to tell the Committee the details of Victim/Survivor claims and settlements on an anonymous basis, feels it would be harmful to Victims/Survivors if they believed third parties were gaining knowledge about their situations or that a simple mistake in the "seal" process could reveal their identities. The Debtor respectfully asks this Court to consider offering a very high level of protection. The question before the Court is not whether filing under seal, which necessarily exposes Victims/Survivors' identities to numerous parties, is appropriate, but rather whether the Debtor should be permitted to offer additional privacy protection.

9. The Committee's true purpose in objecting to the Motion is detailed in paragraph 17 of the Opposition. The Committee wants direct contact with Victims/Survivors, and if that potentially compromises the confidentiality of Victims/Survivors, the Committee does not seem concerned. This is especially surprising because the Committee is comprised exclusively of Victims/Survivors, and Victims/Survivors generally have been very supportive, and in fact urged, the Debtor to adopt stringent confidentiality procedures.

10. The Committee alleges that if it is not given direct contact with Victims/Survivors, it cannot effectively represent them or solicit and receive comments as required by the Bankruptcy Code. This is simply not true. As the Committee is aware from discussions with Debtor in advance of the filing of the Confidentiality Motion, the Debtor will serve notices on behalf of the Committee on Victims/Survivors in the same fashion as other pleadings are served on Victims/Survivors.<sup>3</sup>

11. Finally, if the Committee or Victims/Survivors are aware of individuals unknown to the Debtor that should receive notices, as suggested in paragraph 18 of the Opposition, the Debtor will gladly serve notices on those individuals in the same fashion as other Victims/Survivors.

## **II. Service by Proxy is the Best Way to Protect Victims/Survivors' Confidentiality While Providing Notice That Complies With Due Process**

12. The Debtor seeks permission to serve Settled Victims/Survivors, In-Settlement Victims/Survivors, and Unrepresented Claimants in the manner, and with the same protection procedures as documents are delivered to the Settled Victims/Survivors and In-Settlement Victims/Survivors in connection with the Archdiocese's out of court voluntary Mediation

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<sup>3</sup> If the Committee requests the Debtor send a notice to Victims/Survivors that the Debtor believes is improper, the Debtor reserves the right to file a copy of the proposed notice with the Court and ask for a determination of whether the notice should be served.

Program. Special service procedures were developed in the voluntary Mediation Program to accommodate these Victims/Survivors who were so worried about disclosure of their identities, that they sometimes did not want envelopes bearing the Debtor's letterhead to come to their homes where other household members might notice. This means notices will be served on Settled Victims/Survivors and In-Settlement Victims/Survivors through Professor Soeka or Dr. Barbara Anne Cusack, Chancellor for the Archdiocese, or Dr. Cusack's designee (collectively the "Proxies"). The Debtor proposes using this process because it is a method of communicating that was designed by an independent party, and approved by Victims/Survivors. The Proxies, whose reputations are impeccable, will provide the Debtor with certificates or affidavits of service confirming service has been accomplished. The Debtor will file certificates or affidavits of service with the Court.

13. For Represented Claimants (i.e., the Anderson Claimants), the Debtor seeks permission to serve all notices which the Debtor would otherwise serve on the Represented Claimants by serving their attorneys. The Debtor requests that the Court direct the attorneys for the Represented Claimants to provide the Represented Claimants with all Critical Notices, or the Mandatory Notices if the Represented Claimant informs the Debtor he/she does not wish to receive all the Critical Notices, as well as any other pleadings that the Represented Claimants request from their attorneys, or that their attorneys believe they should review. The counsel for the Represented Claimants will provide the Debtor with certificates or affidavits of service confirming service has been accomplished. The Debtor will file certificates or affidavits of service with the Court.

14. This system of service by proxy leverages existing relationships, and minimizes disclosure while providing effective service to Victims/Survivors. While this relief is unusual,

this is not a typical Chapter 11 case. Mindful of that, the Debtor developed a system for service by proxy in this case and in conformity with procedures proposed by the United States Trustee.

WHEREFORE, the Debtor respectfully request that the Court grant the relief sought in the Confidentiality Motion and grant any additional relief it deems proper.

Dated this 15th day of April, 2011.

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

By: /s/ Michael E. Gosman

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