UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

IN RE:	)	Chapter 11
THE DIOCESE OF ROCHESTER,	)	Case No. 19-20905 (CGM)
Debtor.	)	

OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO MOTION OF THE CONTINENTAL INSURANCE COMPANY FOR RELIEF FROM THE AUTOMATIC STAY TO FILE DECLARATORY JUDGMENT ACTION REGARDING INSURANCE COVERAGE FOR SEXUAL ABUSE CLAIMS

The Official Committee of Unsecured Creditors (the "**Committee**") of The Diocese of Rochester, the above-captioned debtor and debtor in possession, hereby submits its objection (the "**Objection**") to the *Motion of the Continental Insurance Company for Relief from the Automatic Stay to File Declaratory Judgment Action Regarding Insurance Coverage for Sexual Abuse Claims* [Docket No. 136] (the **"Motion"**).[1] In support of its Objection, the Committee respectfully states as follows:

PRELIMINARY STATEMENT

1. Continental seeks relief from the automatic stay to commence an action in state court for declaratory relief to determine the scope of its coverage obligations for claims made by sexual abuse survivors against the Debtor arising from several decades of abuse of children by Catholic clergy. As stated in the Motion and the attached complaint, Continental vigorously disputes its obligations to defend the Debtor and to pay tendered abuse claims under indemnity policies based on a variety of theories, including (a) the parties' alleged inability to locate the applicable policies, (b) alleged terms of the policies which exclude coverage based on the

[1] Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Motion.

definition of an "accident," (c) whether the abuse is not covered under the policies because it was "expected and intended" by the Debtor and (d) a broad reservation of rights as to other potential, unspecified defenses.

2. Continental gratuitously contends that commencing its declaratory relief action in state court will expeditiously clarify the availability of resources to pay abuse victims and otherwise to administer the bankruptcy case. However, Continental's interests are clearly diametrically opposed to these goals. Continental alone, rather than the Debtor's estate and sexual abuse survivors, will benefit from litigation in state court because litigation in a forum outside of the bankruptcy court creates more potential for delay and inconsistent rulings. Moreover, it is highly unlikely that Continental's declaratory relief action would be resolved more expeditiously in state court. First, litigation over Continental's obligations to cover sexual abuse claims is highly speculative before the claims are made, and no bar date has yet been established to file claims. Second, the allegations in Continental's proposed complaint require extensive discovery, which is likely to be duplicative of discovery conducted in the chapter 11 case between the Debtor, the Committee and sexual abuse survivors. In particular, discovery regarding notice, the locations and dates of abuse, the number of instances of abuse perpetrated on individual survivors are all issues that will be addressed in each of (a) the claims analysis process, (b) negotiation of a chapter 11 plan and (c) any litigation over insurance coverage. Third, the issues raised in Continental's complaint are highly duplicative of issues that are likely to be asserted by other insurers. As such, it is clearly more efficient and beneficial to the process of addressing both insurance disputes and negotiating a settlement between and among the Debtor, its insurers, and sexual abuse survivors to keep these intertwined matters in one forum -- the Bankruptcy Court.

3. Continental has also argued that this Court does not have jurisdiction to adjudicate the coverage action based on *Stern v. Marshall*. However, these arguments are misplaced in the context of a motion for stay relief. First, the *Stern* arguments go to whether this Bankruptcy Court or a District Court would enter final findings of fact and conclusions of law. Second, the question of whether the reference will be withdrawn is an issue for the District Court to decide, and assuming that the District Court will withdraw the reference is highly speculative and presumptive on Continental's part. The District Court could decline to withdraw the reference and allow this Bankruptcy Court to preside over the discovery process and render proposed findings of fact and conclusions of law with respect to any dispositive motions.

4. For the foregoing reasons, and as more fully discussed below, the *Sonnax* factors do not weigh in favor of granting stay relief and, in fact, strongly favor denial of stay relief. The estate's limited resources should not be further stretched by the commencement of a brand new action in state court. The state court would adjudicate the issues for the first time as there are no pending prepetition coverage actions there. The indisputable fact is that the issues in Continental's proposed complaint can and should be resolved in this Court, either by way of Continental filing its declaratory relief action here or by Continental raising such issues as defenses to an enforcement action commenced by the Debtor. Continental does not satisfy its burden that cause exists to lift the stay for this purpose and, thus, the Motion should be denied.

RELEVANT BACKGROUND

5. On September 12, 2019 (the "**Petition Date**"), the Debtor commenced a voluntary case (the "**Chapter 11 Case**") under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**"). The Debtor is authorized to continue to operate its business and remain in possession of its property as a debtor in possession pursuant to section 1107(a) and 1108 of

the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Case. The Debtor commenced its case primarily because of asserted and expected claims against it for sexual abuse of minors by individuals for whom the Debtor was responsible.

6. On September 24, 2019, the United States Trustee for Region 2 appointed the Committee pursuant to section 1102 of the Bankruptcy Code. The Committee consists of nine individuals who were sexually abused as minors by perpetrators for whom the Debtor was responsible. *See Appointment of Official Committee of Unsecured Creditors* [Docket No. 68].

7. On January 28, 2019, the New York State Legislature passed the Child Victims Act (the "**CVA**"). New York's Governor signed the legislation on February 14, 2019. This legislation modified the statute of limitations and created a one-year "window" during which victims of child sex abuse whose claim may have been time-barred may commence a timely civil action. In addition, the CVA extends the statute of limitations for claims that were not time-barred on its date of passage, permitting such child victims to commence timely civil actions until they reach 55 years of age.

8. Continental states that it "may have issued general liability insurance policies to the Debtor providing coverage for various periods between 1952 and 1977" (the "**Continental Policies**"). Motion ¶ 9. While the Debtor reportedly tendered claims for defense under the Continental Policies, there are disputes "over the existence or terms" of some of these policies. *Id.* Continental claims that it agreed to defend some of these claims under a reservation of rights but has denied others on the basis of various defenses, including late notice, the Debtor's voluntary payments, and that the claims do not allege bodily injury arising from an accident. *Id.*

9. The Debtor asserts that, since the mid-1980's, it has settled 44 claims related to child sexual abuse. It also asserts that from the opening of the CVA one-year window on August

14, 2019 through the Petition Date, 46 lawsuits involving 61 separate claimants seeking damages as a result of alleged abuse were commenced against the Debtor, and an additional 12 demand letters and notices were received from other claimants. *Affidavit of Lisa M. Passero Regarding the Debtor's Assets and Operations in Support of the Chapter 11 Petition and First Day Pleadings*, ¶ 21. The Committee expects that additional claims will be made before the expiration of the CVA's window.

10. The Debtor discloses in its Schedules of Assets and Liabilities that, as of the Petition Date, it had approximately $113 million in liquidated liabilities, most of which arises from sexual abuse claims [Docket No. 79-1]. However, the Committee believes that the amount of the Debtor's liability for sexual abuse claims is not quantifiable at this time. Clearly, sexual abuse survivors and the Debtor will look to insurance to provide a portion of a settlement for sexual abuse claims. Just as clearly, insurers like Continental will use every means at their disposal to avoid covering sexual abuse claims. In that vein, Continental seeks a forum it believes would favor its strategy of minimizing exposure to sexual abuse claims by seeking to decouple the coverage litigation from the Chapter 11 Case.

11. Thus, Continental moves for stay relief in order to seek declaratory relief in the Supreme Court of the State of New York, County of Monroe (the "**State Court**"), as to the coverage issues. Continental's "[Proposed] Complaint" sets forth four counts, including rulings sought on its duties to defend and to pay abuse claims, as well as a broad reservation of rights of other issues. The complaint lacks specific allegations regarding alleged coverage defenses, and thus should be viewed as Continental preparing to litigate a scorched earth defense against coverage for sexual abuse claims asserted against the Debtor. Moving forward in State Court is

clearly the first tactic in this aggressive strategy. The Court should deny stay relief and allow the matter to proceed in a more orderly manner.

THE STAY RELIEF MOTION SHOULD BE DENIED

12. Pursuant to 11 U.S.C. § 362(a), the filing of a bankruptcy petition operates as an automatic stay to give a debtor a short respite from creditors' demands, during which a debtor will "have the opportunity to develop and implement plans" to right its financial affairs. *Schneiderman v. Bogdanovich* (*In re Bogdanovich*), 292 F.3d 104, 110 (2d Cir. 2002) (citing *In re 160 Bleecker St. Assocs.*, 156 B.R. 405, 411 (S.D.N.Y. 1993)).

13. The automatic stay affords "one of the fundamental debtor protections provided by the bankruptcy laws." *Midlantic Nat'l Bank v. New Jersey Dep't of Evntl. Protection*, 474 U.S. 494, 503 (1986). The purpose of the automatic stay is to allow a debtor to focus its attention on reorganization efforts without the distraction of having to defend against outside litigation. *CAE Indus. Ltd. v. Aerospace Holdings Co.*, 116 B.R. 31, 32 (S.D.N.Y. 1990). It maintains the status quo to protect a debtor's ability to control the sale or other disposition of property of the estate. COLLIER ON BANKRUPTCY ¶ 362.03 (16th ed. rev. 2012). Additionally, the automatic stay prevents the state-law "race to the courthouse," and is intended to "allow the bankruptcy court to centralize all disputes concerning property of the debtor's estate so that reorganization can proceed efficiently, unimpeded by uncoordinated proceedings in other arenas." *SEC v. Brennan*, 230 F.3d 65, 71 (2d Cir. 2000) (internal quotation omitted). In this regard, the automatic stay "promot[es] equal creditor treatment and giv[es] the debtor a breathing spell." *In re Pioneer Commercial Funding Corp.*, 114 B.R. 45, 48 (Bankr. S.D.N.Y. 1990).

14. In general, relief from the stay may be granted after notice and a hearing, among other reasons, "for cause." 11 U.S.C. § 362(d)(1). The party seeking to lift or modify the

automatic stay, however, bears the initial burden to show cause as to why the stay should be modified or lifted and "[i]f the movant fails to make an initial showing of cause . . . the court should deny relief without requiring any showing from the debtor that it is entitled to continued protection." *Sonnax Indus., Inc. v. Tri Component Prods. Corp. (In re Sonnax Indus.)*, 907 F.2d 1280, 1285 (2d Cir. 1990). Only after the movant has shown cause, must the party opposing the motion show that it is entitled to the continuing protections of the automatic stay in order to defeat the motion. *See In re Enron*, 306 B.R. 465, 476 (Bankr. S.D.N.Y. 2004) (citing *In re M.J. & K. Co.*, 161 B.R. 586, 590 (Bankr. S.D.N.Y. 1993)); *see also In re RCM Global*, 200 B.R. 514, 526 (Bankr. S.D.N.Y. 1996). Absent such initial showing, therefore, relief from the effect of a stay will be denied. *Bogdanovich*, 292 F.3d at 110 (citing *Mazzeo v. Lenhart (In re Mazzeo)*, 167 F.3d 139, 142 (2d Cir. 1999)).

15. In *Sonnax*, the Second Circuit established a set of twelve factors that have become the standard by which courts in this Circuit consider whether to modify the automatic stay.[2] *See In re Lehman Bros. Holdings Inc.*, 435 B.R. 122, 138 (S.D.N.Y. 2010) ("*Sonnax* . . . is routinely referenced as the leading relief from stay precedent in this Circuit."), *aff'd sub nom. Suncal Cmtys. I LLC v. Lehman Commercial Paper, Inc.*, 402 F. App'x 634 (2d Cir. 2010). Although

[2] The *Sonnax* factors are:

(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 [a defense];
(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 the 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) [the] impact of the stay on the parties and the balance of harms.

Sonnax, 907 F.2d at 1286.

the Court in *Sonnax* outlined twelve factors, courts need not consider each factor, but may consider only the factors that are relevant to the particular case. Not every one of these factors will be relevant in every case. *In re Mazzeo*, 167 F.3d at 143. Notably, the *Sonnax* Court itself considered only four of the twelve factors as relevant in that case. *Sonnax*, 907 F.2d at 1286. Additionally, courts need not assign equal weight to each factor, and have discretion in weighing the factors against one another. *RCM Global*, 200 B.R. at 526 ("A court should apply these factors on a case-by-case basis . . . assigning to each factor whatever weight the court feels is appropriate.").

16. A higher level of scrutiny should be afforded where, as here, the motion seeks relief from stay in order to commence a new action after the bankruptcy petition has been filed, as opposed to continuing a pending prepetition action. While the issue appears to have been rarely litigated,[3] in one of the few reported cases involving a motion for relief from stay to commence a new action postpetition, the court cautioned that it should be "more careful" in modifying the stay in this context:

> [T]here are different considerations which enter into the analysis when an individual seeks relief merely to proceed with pending litigation than when he seeks relief to initiate and fully prosecute the same. The burden on the individual seeking relief is much greater and the burden on the debtor and the estate much less when litigation is pending prior to the commencement of the bankruptcy case. In such a situation, by the time the bankruptcy case has commenced, both the individual seeking relief and the debtor have already poured resources in prosecuting and defending against the underlying claims. In other words, both parties have already "invested" heavily into the outcome of the litigation. In the present case, however, no litigation was pending prior to the commencement of the case. Therefore, this Court should be more careful when determining whether and to what extent to modify the automatic stay.

[3] Reported cases in this context are sparse, and Continental does not cite any such cases – favorable or not.

Unnamed Citizens v. White (In re White), 410 B.R. 195, 202 (Bankr. W.D. Va. 2008); *see also In re Howrey LLP*, 492 B.R. 19, 25 (Bankr. N.D. Cal. 2013) (denying relief from stay to commence new state court action, no burden on plaintiff shown due to imposition of stay given that plaintiff had not yet filed an action and could seek relief in the bankruptcy court).

17. Here, Continental's Motion does not involve a plaintiff seeking relief from stay to pursue prepetition litigation to conclusion in the forum in which the action was already pending for the sake of efficiency, which is the typical set of circumstances faced by courts that grant relief in this context. Rather, Continental is engaging in rank forum shopping by seeking stay relief to commence a brand new state court action despite the fact that it could simply file the action in this Court. The Court should deny the Motion summarily on this basis.

18. Even assuming, *arguendo*, that the Motion is not denied outright, application of the *Sonnax* factors plainly demonstrates that the stay should remain in effect.

(i) Whether Relief Would Result in a Partial or Complete Resolution of the Issues

19. The first *Sonnax* factor does not weigh in favor of granting the Motion. While Continental contends that granting relief from stay would "allow the parties to resolve all the disputed issues regarding the availability of insurance under the Continental Policies with respect to sexual abuse claims," it is just as clear that the issues can be resolved in Federal Court. Moreover, a bar date has not been established in this case, and the CVA gives sexual abuse survivors until August 14, 2020 to file lawsuits against the Debtor and other parties who may be insured under the same Continental Policies. As such, while some matters, such as alleged lost policies, may be adjudicated more quickly, there will be a myriad of fact-intensive issues, such as whether abuse was "expected and intended" and notice, that will be informed by filed claims. Thus, the first factor does not support stay relief.

(ii) Lack of Any Connection with or Interference with the Bankruptcy Case

20. This *Sonnax* factor also weighs heavily against granting the Motion. As discussed above, Continental's proposed complaint seeks declaratory relief as to the availability and extent of coverage for certain sexual abuse claims.[4] The outcome of the coverage issues will determine the value that is available to the estate to pay survivors' claims. As Continental concedes, coverage is, therefore, central to resolution of this bankruptcy case. Motion, ¶¶ 1, 4, 14. Moreover, it has only been two months since the bankruptcy case was filed. The coverage issues are factually intensive reaching back over several decades. Under these circumstances, proceedings to adjudicate the existence, scope and triggering of insurance coverage should be conducted in coordination with other matters in the Chapter 11 Case; and not in another forum of Continental's choosing.

21. Moreover, contrary to Continental's assertion, to the extent that insurance is the primary or sole resource to pay sexual abuse survivors' claims, coverage issues may be adjudicated by this Court. *United States Lines, Inc. v. American S.S. Owners Mut. Protection & Indem. Ass'n (In re United States Lines, Inc.)*, 197 F.3d 631 (2d Cir. 1999) (adjudication of coverage issues under first pay indemnity policies where proceeds were sole asset to fund distributions to asbestos injury claimants); *Ace Am. Ins. Co. v. DPH Holdings Corp. (In re DPH Holdings Corp.)*, 448 Fed. Appx. 134, 138 (2d Cir. 2011) (as allowance of injured workers' claims against the estate turned on the existence of coverage under worker's compensation scheme, the coverage issues were core matters); *In re County Seat Stores, Inc.*, No. 01 CIV. 2966 (JGK), 2002 WL 141875 (S.D.N.Y. Jan. 31, 2002) (bankruptcy court has core jurisdiction over

[4] Moreover, as discussed above, given the passage of time, it is unclear at this juncture what additional issues may arise if and when the policies themselves have been located.

coverage under insurance policy that is sole asset of the estate).[5] As Continental's coverage action arguably implicates the Court's exclusive bankruptcy jurisdiction, the stay should not be lifted to enable proceedings to be commenced in state court.

22. The Committee anticipates that, as sexual abuse claims are filed in the Chapter 11 Case, the Debtor, the Committee, insurers and other parties will review the claims, assess the Debtor's ability to pay the claims, assess insurance policies, and connect claims to applicable policies. The sexual abuse claims will have information relevant to all of the coverage issues. And the coverage issues will be central to any negotiation to resolve the case. As such, it is simply preposterous for Continental to argue that the coverage litigation proceeding in another court is not connected to, or cannot interfere with, the Chapter 11 Case.

23. In support of Continental's argument that it should be permitted to go forward in state court, Continental relies heavily on *Continental Cas. Co. v. Pfizer, Inc. (In re Quigley Co., Inc.)*, 361 B.R. 723, 743-744 (Bankr. S.D.N.Y. 2007), for the proposition that important coverage issues may properly be adjudicated parallel to the bankruptcy-specific issues. That case, however, involved certain of the insurers' motion for relief from stay to allow an arbitration to proceed where the bankruptcy court found that it could not hear the issues since the insurance policies contained a mandatory arbitration clause and the arbitration had already been commenced as of the petition date. It is inapposite.

(iii) <u>Whether the Other Proceeding Involves the Debtor as a Fiduciary</u>

24. This *Sonnax* factor is not relevant to the Motion.

[5] Continental's contention that virtually all insurance coverage cases have been found to be non-core issues is patently incorrect in the Second Circuit.

(iv) Whether a Specialized Tribunal with the Necessary Expertise has been Established to Hear the Cause of Action

25. This *Sonnax* factor also supports denial of the Motion. The state court is not a "specialized tribunal" that has been established to resolve insurance coverage disputes. *In re Reliance Group Holdings, Inc.*, 273 B.R. 374 (Bankr. E.D. Pa. 2002), ("a determination of what is property of the estate and concurrently, of what is available for distribution to creditors of that estate, is precisely the type of proceeding over which the bankruptcy court has exclusive [i.e. "core"] jurisdiction."); *see also In re Cicale*, 2007 Bankr. LEXIS 2252, *7-8 n. 3 (Bankr. S.D.N.Y. Jun. 29, 2007) ("the state court is not a specialized tribunal; and further, no such specialized tribunal has been established to adjudicate the liability of" a mortgage); *In re Residential Capital, LLC*, 2012 Bankr. LEXIS 3624, at *15 (Bankr. S.D.N.Y. Aug. 7, 2012) ("This Court can and does interpret and apply state law to resolve claims through the bankruptcy process.") (citing *In re Bally Total Fitness of Greater N.Y., Inc.*, 402 B.R. 616, 624 (Bankr. S.D.N.Y. 2009)). Moreover, to the extent that the coverage issues involve state law issues, bankruptcy courts regularly adjudicate such issues, particularly where, as here, the availability of insurance is central to creditor recoveries and/or the formulation of a plan. *See, e.g., United States Lines, supra*; *County Seat Stores, supra*; *In re USA Gymnastics*, Case No. 18-09108-RLM-11 (Bankr. S.D. Ind.) *In re Diocese of Duluth*, 565 B.R. 914 (Bankr. D. Minn. 2017); *In re Prudential Lines, Inc.*, 170 B.R. 222 (S.D.N.Y. 1994); *Celotex Corp. v. AIU Ins. Co. (In re Celotex)*, 152 B.R. 667 (Bankr. M.D. Fla. 1993).

(v) Whether the Debtor's Insurer has Assumed Full Responsibility for a Defense

26. This *Sonnax* factor is not relevant to the Motion either.

(vi) Whether the Action Primarily Involves Third Parties

27. This *Sonnax* factor weighs against granting the Motion. The only parties to the proposed action would be Continental and the Debtor. Moreover, although sexual abuse survivors would bear the brunt of an adverse state court judgment, the survivors would not likely have a voice in a state court action, as they would in bankruptcy court. In addition, the Debtor is also insured by other insurers. As such, allowing Continental -- or any other insurer -- to commence its own declaratory relief actions in whatever forum it find most beneficial has the potential to create chaos in any settlement discussions and increases the risk of disparate rulings on similar issues across any number of courts.

28. Bankruptcy cases like the Debtor's case, by their nature, involve numerous third parties, including sexual abuse survivors, who should not be cut off from a process that can have monumental impact on their ability to recover on their claims.

(vii) Whether Litigation in Another Forum Would Prejudice the Interests of Other Creditors

29. This *Sonnax* factor also weighs against relief from the stay. As discussed above, the availability of insurance will determine the amount of compensation that is available to pay claims of sexual abuse survivors. Therefore, the abuse survivors would be impacted negatively economically if an action were to be commenced in state court, as the survivors would be forced to monitor proceedings both in that forum as well as in the bankruptcy court. Moreover, while survivors – including through the Committee – have standing to be heard on matters affecting their rights in the bankruptcy case as creditors and parties in interest, in contrast the survivors would not have the same stature as a non-party in a state court action. In addition, it is likely that similar discovery will be necessary in a variety of matters in this case, including claims analysis, insurance coverage analysis, review and analysis of the Debtor's assets and negotiations of a

settlement to provide a recovery to creditors. Thus, it would be prejudicial to the estate and all parties in interest participating in one or more of these matters to have duplicative processes in different courts. Finally, this Court will preside over the entirety of the case and is more likely to understand parties' requests to prioritize issues in pursuit of ultimate resolution of the Chapter 11 Case than state court with the limited view of only one coverage action.

(viii) Whether the Judgment Claim Arising From the Other Action Is Subject to Equitable Subordination

30. This *Sonnax* factor is not relevant to the Motion.

(ix) Whether the Movant's Success in the Other Proceeding Would Result in a Judicial Lien Avoidable by the Debtor

31. This *Sonnax* factor is not relevant to the Motion either.

(x) The Interests of Judicial Economy and the Expeditious and Economical Resolution of Litigation

32. This *Sonnax* factor weighs heavily against the relief sought in the Motion. As a threshold matter, it is undisputed that the bankruptcy court may hear these coverage issues, 28 U.S.C. §§ 1334(b), 157(a); *Celotex Corp. v. Edwards*, 514 U.S. 300, 308 (1995) (Congress intended to grant bankruptcy courts "comprehensive jurisdiction" so that they could "deal efficiently and expeditiously" with matters connected with the bankruptcy estate), and, at a minimum, it may issue proposed findings to the district court on state law issues. 28 U.S.C. § 157(c)(1). Moreover, there is no basis to start an entirely new proceeding in state court when Continental already has a centralized forum to raise these issues. *Sonnax*, 907 F.2d at 1287 ("the interests of judicial economy and the speedy and economical determination of litigation support a denial of relief from the stay. As became clear at oral argument, the litigation in state court has not progressed even to the discovery stage. We therefore agree with the district court that the bankruptcy proceeding provides a single, expeditious forum for resolution of the disputed issues

between *Sonnax* and *Tri Component*."); *Unnamed Citizens v. White* (*In re White*), 410 B.R. 195, 202 (Bankr. W.D. Va. 2008) (denying motion to file Fair Housing Act claims outside of pending adversary proceeding on the dischargeability of the claims, requiring that all issues be raised in the same proceeding).

33. Other courts presiding over bankruptcies arising from sexual abuse have properly exercised their jurisdiction over these critical matters and referred issues relating to sexual abuse claims and insurance coverage to mediation before a recalled bankruptcy judge with experience in sexual abuse cases appointed as the mediator. *See, e.g.*, *In re USA Gymnastics*, Case No. 18-09108-RLM-11, Dkt. 514 (Bankr. S.D. Ind. May 15, 2019) (referring sexual abuse claims issues to mediation and appointing the Honorable Gregg W. Zive as mediator); *In re Roman Catholic Bishop of Great Falls Montana*, Case No. 17-60271, Dkt. 159 (Bankr. D. Mont. July 26, 2017) (same); *In re The Diocese of New Ulm*, Case No. 17-30601, Dkt. 41 (Bankr. D. Minn. Mar. 23, 2017) (same); *In re Diocese of Duluth*, Case No. 15-50792, Dkt. 70 (Bankr. D. Minn. Mar. 10, 2016) (same); *In re The Roman Catholic Bishop of Stockton*, Case No. 14-20371, Dkt. 113 (Bankr. E.D. Ca. Feb. 3, 2014) (same); *In re Society of Jesus, Oregon Province*, Case No. 09-30938, Dkt. 494 (Bankr. D. Or. Oct. 13, 2009) (same); *In re The Catholic Bishop of Spokane a/k/a The Catholic Diocese of Spokane*, Case No. 04-08822, Dkt. 543 (Bankr. E.D. Wash. June 15, 2005) (same).

34. Continental's *Stern* arguments are a red herring. *First*, as discussed above, the coverage action arguably encompass core bankruptcy issues. *In re United States Lines*; *In re DPH Holdings*; *In re Celotex Corp.* *Second*, courts hold that the Court need not even reach the issue of whether the action is core or non-core in order to dispose of the Motion. *See, e.g., In re Containership Co. (TCC) A/S*, 466 B.R. 219, 233-34 (Bankr. S.D.N.Y. 2012) (declining to weigh

Stern considerations with respect to a lift stay motion). *Third*, even if the Court may only submit proposed findings of fact and conclusions of law to the district court, Continental has not made any actual showing (or cited any cases that have) that the state court would in fact be a more efficient forum to resolve the issues.[6]

(xi) Whether the Parties Are Ready for Trial in the Other Proceeding

35. As the state court action has not even been commenced, the parties are clearly not ready for trial. The claims span several decades, the coverage issues require discovery (as noted above, among other things, some policies are purportedly missing, lost, or nonexistent), and complex factual and legal issues must be addressed in order to resolve the dispute. This *Sonnax* factor clearly weighs against granting the Motion.

(xii) The Impact of the Stay on the Parties and the Balance of Harms

36. This *Sonnax* factor also weighs against granting relief from the stay. Continental has not articulated how the continued imposition of the stay will cause it any harm, only that resolution of coverage issues will facilitate administration of the bankruptcy case. The Debtor, on the other hand, will be forced to defend the state court litigation immediately instead of seeking an adjudication of the coverage issues in due course. Only two months have passed since the Petition Date. Continental could just have easily commenced the action in this Court. *See* Fed. R. Bankr. P. 7001 (2) & (9). Abuse survivors would likely have no voice in the state court proceedings. There is no actual showing that proceeding in state court would provide a more fair or expeditious resolution of the issues. Under these circumstances, the balance of harms tips in favor of denying Continental's motion. *See, e.g*, *In re Enron*, 306 B.R. at 477 (denying relief from stay to allow counterparty to swap agreement to proceed on an action for

[6] The Stern arguments will inevitably be raised by Continental if stay relief is denied. As such, the Committee reserves all rights with respect to that fascinating argument.

declaratory relief regarding the validity, termination and interpretation of swap agreements as counterparty could have had issues resolved in bankruptcy court).

CONCLUSION

WHEREFORE, the Committee respectfully requests that the Court deny the Motion in its entirety and grant such other and further relief as is just and proper.

Date: November 14, 2019

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