

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
)
CATHOLIC DIOCESE OF WILMINGTON, INC.,) Case No. 09-13560 (CSS)
A DELAWARE CORPORATION,)
) **Re Docket No. 582**
Debtor.)
)
)
Objection Deadline: JULY 28, 2010 at 4:00 p.m.
Hearing Date: AUGUST 30, 2010 at 2:00 p.m.

**OBJECTION TO DEBTOR'S MOTION FOR ORDER FURTHER
EXTENDING THE PERIOD WITHIN WHICH THE DEBTOR
MAY REMOVE ACTIONS PURSUANT TO 28 U.S.C. 1452 AND
FEDERAL RULES OF BANKRUPTCY PROCEDURE 9006 AND 9027**

INTRODUCTION

The Official Committee of Unsecured Creditors of the Catholic Diocese of Wilmington, Inc. (the "Committee") hereby objects to the Debtor's Motion for Order Further Extending the Period Within Which the Debtor May Remove Actions Pursuant to 28 U.S.C. 1452 and Federal Rules of Bankruptcy Procedure 9006 and 9027 (the "Motion"). The Committee objects because another extension of the removal deadline (the Debtor has sought and the Court has granted two prior extensions) will permit the non-debtor defendants to easily vacate upcoming trial dates on the eve of trial enabling the non-debtor defendants and their insurance carriers to avoid the risk of trial verdicts. In the absence of hard trial dates, the insurance carriers will not make meaningful settlement offers and the global mediation will not progress. Lack of progress in the

global mediation prejudices the creditors' ability to obtain a timely resolution of the chapter 11 case.

FACTUAL BACKGROUND

1. The Debtor is a co-defendant with parishes and religious orders in pending state court actions. Seven of the Debtor/parish cases involve Francis DeLuca and trials of the cases are scheduled to commence on October 25, 2010. Judge Vaughn has reserved approximately two months of trial time for the cases. The seven cases involve the Debtor and St. Elizabeth's Parish (2 cases); St. Matthew Parish (one case) and St. John the Beloved Parish (4 cases). St. Elizabeth Parish and St. Matthew Parish have pre-1977 Lloyd's insurance coverage for the three cases. The claim against St. Matthew Parish implicates certain of the Debtor's excess carriers. The Committee believes that the Debtor is a co-insured under the three parishes' policies.

2. An extension of the removal deadline from July 30, 2010 to October 28, 2010 jeopardizes the October 25 trial dates. If the extension is granted, any party to the state court actions, including the Debtor and the non-debtor parishes, can remove the state court actions to the District Court on the eve of the state court trials effectively vacating the trial dates. The state court actions are at least facially removable as the District Court has original jurisdiction over the claims against the Debtor and under 28 U.S.C. §1367(a), and can exercise supplementary jurisdiction over the claims against the non-debtor defendants, especially since the parishes filed contribution/indemnity claims against the Debtor as part of their responses to the state court abuse complaints.

Given the timeline for a hearing on a motion to remand and the mechanics of files moving between the Superior Court and the District Court, another extension of the removal deadline will allow the three parishes to continue to evade their Superior Court trial dates and their insurers to continue avoid any meaningful pressure to contribute to settling these claims in the global mediation.

3. If the removal deadline is extended for the third time as sought by the Motion, the parishes (or the Debtor) can avoid their scheduled October 25 trials by filing notices of removal on the eve of trial. This tactic allows them **and the implicated insurance carriers** to evade the burdens and risks of trial. Until the parishes and carriers actually are faced with the expense of trial (the litigation fees and expenses do not reduce the carriers' indemnity exposure) and the risk of significant verdicts, the non-debtors and the carriers (who the Committee believes also are the Debtor's carriers) will not make meaningful settlement offers in the global mediation.

4. The Debtor and the non-debtor defendants should not be afforded more time to make the removal decision under the guise of possible success in the global mediation. The Debtor's decision to schedule the hearing on the Motion on August 30 (a full month after the deadline for the opposition and the expiration of the removal deadline) by design or otherwise, accomplishes delay and enhances the ability of the Debtor and the parishes to deny the plaintiffs the ability to proceed to trial against the parishes on October 25. Even if the Court denies the relief sought by the Motion (which would extend the removal deadline to October, 28) the fact that the Debtor scheduled the

hearing on the Motion a month after the removal deadline expires indicates that the Debtor expects the Court will afford the parties at least a short extension beyond the August 30 hearing date to assemble the notices to remove approximately 150 cases. The Committee anticipates that some or all of the plaintiffs in the removed cases will seek to remand the 150 cases and the Committee will support the remand. While the plaintiffs will expeditiously file the remand motions, the Committee is certain that the removing party(ies) will insist on the regular fourteen (14) days to oppose the motions and the parties seeking remand will be entitled to a reply seven (7) days thereafter. Assuming the Court's calendar is clear, the remand hearing probably would not be scheduled until early October. This projected timeline does not account for the additional delay that can be inflicted by the Debtor or the parishes by filing a motion in the District Court to withdraw the reference for the determination of the remand motion.¹ 28 U.S.C. §157(d).

Meanwhile, subsequent to the removal, the Superior Court is without jurisdiction to address pretrial matters leading up to the October 25 trials against the non-debtor defendants. Additionally, this imposes paralyzing uncertainty on the Superior Court regarding its own trial calendar which in and of itself could result in the loss of trial dates and is inconsistent with comity between the courts.

5. The Committee has considered whether the removal deadline can be extended to give the mediation one more chance. However, the next global mediation session currently is scheduled for August 31 and September 1. Thus, the foregoing

¹ In the chapter 11 case of the San Diego Diocese, the Debtor unsuccessfully moved for the District Court to withdraw the reference for the plaintiffs' and Committee's remand motions.

analysis does not change and any extension of the removal deadline subsequent to this date puts the existing trial dates in serious jeopardy.

6. The Committee realizes that the estate will incur the costs of remand motions if the Debtor or the other non-debtor defendants remove the state court actions to the District Court. The Debtor certainly will argue that the costs are unwarranted if the chapter 11 case settles in mediation. When these costs are balanced against the huge benefits of hard trial dates in advancing the global mediation, the costs are justifiable. Common sense compels the conclusion that the mediation will not progress until the parishes and their insurance carriers are facing the risk and pressure of trial dates that cannot be easily vacated by the filing of a notice of removal. The Committee recognizes that it is possible the non-debtor parties and the carriers may simply defend the actions and not settle but the likelihood of meaningful participation by the carriers is greatly enhanced if the October 25 trial dates cannot be evaded. Moreover, even if a global settlement is not achieved in the mediation, the parties at least will have the benefit of a jury's valuation of some of the sex abuse cases. If the trials are delayed, the resolution of chapter 11 case is delayed.

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For all of the foregoing reasons, the Committee opposes the extension of
the removal deadline .

Dated: July 26, 2010

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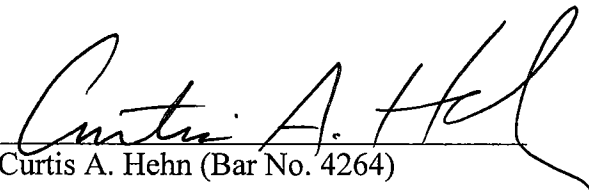
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CERTIFICATE OF SERVICE

I, Curtis A. Hehn, hereby certify that on the 26th day of July, 2010, I caused a copy of the following document(s) to be served on the individuals on the attached service list(s) in the manner indicated:

Objection to Debtor's Motion for Order Further Extending the Period Within Which the Debtor May Remove Actions Pursuant to 28 U.S.C. 1452 and Federal Rules of Bankruptcy Procedure 9006 and 9027


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