

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
HARRISBURG DIVISION**

In re:

ROMAN CATHOLIC DIOCESE OF
HARRISBURG,

Debtors.

Case No. 1:20-bk-00599 (HWV)

Chapter 11

**JOINT REPLY TO THE OFFICIAL COMMITTEE OF TORT CLAIMANTS' LIMITED
RESPONSE TO THE JOINT MOTION TO COMPEL THE ATTORNEYS
REPRESENTING THE TORT CLAIMANTS TO SUBMIT THE
DISCLOSURES REQUIRED BY FEDERAL RULE OF
BANKRUPTCY PROCEDURE 2019**

Certain Underwriters at Lloyd's, London, Catalina Worthing Insurance Ltd., RiverStone Insurance (UK) Limited, and Sompo Japan Nipponkoa Insurance Company of Europe Limited; Interstate Fire & Casualty Company; Zurich American Insurance Company, as successor by merger to Maryland Casualty Company; The National Catholic Risk Retention Group, Inc.; and Travelers Indemnity Company and Certain of its Affiliates (collectively, "Movants"), by and through their undersigned counsel, hereby reply to The Official Committee of Tort Claimants' ("Committee") Limited Response to the Joint Motion ("Motion") to Compel the Attorneys Representing the Tort Claimants to Submit the Disclosures Required by Federal Rule of Bankruptcy Procedure 2019 ("Committee's Response"), filed May 11, 2022, at ECF. No. 1329. To address the arguments raised in the Committee's Response, and in support of the Motion, the Movants respectfully state as follows:

REPLY

I. The Committee Has Waived its Right to Contest Certain Arguments.

In the Committee's Response, the Committee failed to address the Movants' arguments that Bankruptcy Rule 2019 disclosures are mandatory ("Motion", at 3-4) and that these disclosures are essential to the integrity of the bankruptcy process (Motion at 5-7). Where an opposition brief fails to respond to an argument, the right to oppose that argument is waived or abandoned. *See Lee v. Padilla*, 2011 WL 3475480, at *3 (D.N.J. Aug. 9, 2011); *Dreibelbis v. Scholton*, 274 F. App'x 183, 185 (3d Cir. 2008) (finding that argument was waived where plaintiff "had ample opportunity to make this argument in response to defendants' motion to dismiss and failed to do so").

Therefore, the Committee has waived its right to contest these arguments.

II. The Insurers Have Standing to File the Motion.

The Movants have standing to bring the Motion¹.

In this case, it is clear that Insurers had constitutional standing to bring the Rule 2019 Motion. They alleged an injury in fact: It is the unfairness of a plan which binds them contractually and which directly impacts their financial interests, unfairness which is traceable to conflicts of interest among Creditors' counsel, allegedly arising from fee sharing and co-counsel relationships and their bearing on the Plan's classification system. The alleged injury is redressable by the bankruptcy court through a favorable decision, such as amendment of the Plan or denial of confirmation, which would be made possible after review of the Rule 2019 disclosure sought. Insurers have thus met the requirements for Article III standing to raise the issues covered in the Rule 2019 Compliance Order before the bankruptcy court.

Baron & Budd, P.C. v. Unsecured Asbestos Claimants Comm., 321 B.R. 147, 161 (D.N.J. 2005).

¹ All capitalized terms not defined herein shall take the meaning ascribed in the *Joint Motion to Compel the Attorneys Representing the Tort Claimants to Submit the Disclosures Required by Federal Rule of Bankruptcy Procedure 2019*, ECF No. 1324

Moreover, Federal Rule of Bankruptcy Procedure 2019 (“Rule 2019”) is one of several disclosure provisions included in the Federal Rules of Bankruptcy Procedure.

Bankruptcy Rule 2019 is a disclosure provision, which must necessarily be enforced as any other disclosure provision concerning attorneys or professionals, such as Bankruptcy Rules 2014 and 2016. Moreover, the Court should also play a role in ensuring that lawyers adhere to certain ethical standards. Bankruptcy Rule 2019 was designed for such a purpose.

In re Okla. P.A.C. First Ltd. P’ship, 122 B.R. 387, 392-93 (Bankr. D. Ariz. 1990).

The disclosures required under the Federal Rules of Bankruptcy Procedure are essential to the integrity of the bankruptcy process. *In re Mazzei*, 2015 Bankr. LEXIS 2160, at *32 (Bankr. W.D. Pa. July 1, 2015). As Rule 2019 is one of the Bankruptcy Rules requiring disclosures, its enforcement is essential to the integrity of the bankruptcy process. Controlling authority dictates that where issues implicate the integrity of the bankruptcy process, insurers have standing to be heard. *Century Indem. Co. v. Congoleum Corp. (In re Congoleum Corp.)*, 426 F.3d 675, 685 (3d Cir. 2005).

Therefore, Movants have standing to file the 2019 Motion.

III. The Committee Does Not Have Authority to File a Response

The Committee does not have the authority to file a response to the Motion.

The Committee owes a fiduciary duty to unsecured creditors (tort claimants) as a whole, not the interests of lawyers for individual creditors. *See In re Garden Ridge Corp.*, 2005 WL 523129, at *4 (Bankr. D. Del. Mar. 2, 2005) (“[...] the chief purpose of the Official Committee is to represent all general unsecured creditors. [...] The Official Committee is simply not intended to represent individual creditor interests.”).

While it is true that the Unsecured Creditors Committee in Owens Corning represented Kensington’s interests in the Owens Corning bankruptcy, it is established that a Creditors Committee owes a fiduciary duty to the unsecured creditors as a whole, not to the individual members. *See Drexel Burnham Lambert Group*, 138 B.R. 717, 722 (Bankr. S.D.N.Y. 1992) (“The duty [of the committee

and its counsel] extends to the class as a whole, not to its individual members.”); *In re Levy*, 54 B.R. 805, 807 (Bankr. S.D.N.Y. 1985) (“Counsel for the creditors’ committee do not represent any individual creditor’s interest in this case; they [are] retained to represent the entire unsecured creditor class.”). So while the Committee had a duty to represent the collective interests of the unsecured creditors, it did not have the authority to bind each individual creditor.

In re Kensington Int’l Ltd., 368 F.3d 289, 315 (3d Cir. 2004).

The Motion was only directed at certain of the claimants’ *lawyers*, not to the group of claimants of which the Committee is comprised, nor even any particular claimant. Specifically, the Motion was directed at the law firms of Janet, Janet & Suggs LLC; Horowitz Law; Andreozzi + Foote; The Braslow Firm; Matthews & Associates; Law Offices of Mitchell Garabedian; and Merson Law PLLC (collectively, “Claimants Lawyers”). The Committee does not, and cannot, represent the interests of those individual Claimants’ Lawyers.

Even if, under some theory, the Motion directed at the Claimants’ Lawyers could be deemed to be directed at the individual claimants, the Committee does not, and cannot, represent the interest of the individual creditors and cannot act for them. Here, the Committee has improperly filed the Response on behalf of certain claimants, not the claimant class as a whole. Therefore, the Committee’s opposition should be summarily overruled.

IV. Claimants’ Lawyers Are Bound by Rule 2019

The Committee does not challenge the argument that Rule 2019 is mandatory. By its terms, Rule 2019 applies to entities who represent more than one creditor acting in concert. Fed. R. Bankr. P. 2019(b)(1) (“In a chapter 9 or 11 case, a verified statement setting forth the information specified in subdivision (c) of this rule shall be filed by every group or committee that consists of or represents, and every entity that represents, multiple creditors or equity security holders that are (A) acting in concert to advance their common interests, and (B) not composed entirely of affiliates or insiders of one another.”).

Although the Committee does not dispute that Rule 2019 is mandatory, it makes the unsupported assertion that the Claimants' Lawyers are not bound by Rule 2019. To the contrary, the Claimants' Lawyers are bound by Rule 2019 because they are entities, representing multiple creditors, acting in concert. As discussed in the Motion, each of the Claimants' Lawyers has appeared on behalf of numerous claimants to advance their interests. *See* Motion at 2-3 (stating each of the filings made by Claimants' lawyers on behalf of multiple claimants).

V. Any Distinction from the *In re Archdiocese of Saint Paul and Minneapolis* is Irrelevant

The Committee's attempts to distinguish this case from *In re Archdiocese of Saint Paul and Minneapolis* are irrelevant. The Movants are unaware of any case – nor does the Committee cite any case - where a Rule 2019 motion was filed and a bankruptcy court did not enter an order requiring counsel to comply with its terms. *See e.g. In re Motions Seeking Access to 2019 Statements*, 585 B.R. 733 (D. Del. 2018), *aff'd sub nom. In re A C & S Inc*, 775 F. App'x 78 (3d Cir. 2019).

VI. The Claimants' Due Process Rights Will Not Be Violated Because Claimants' Counsel Has an Opportunity to Comply

Requiring compliance with Rule 2019 does not violate any claimant's due process rights.

The Movants seek sanctions and to prohibit any of the Claimants' Lawyers to which the Motion is directed from participating in the bankruptcy case, only *if* the Claimants' Lawyers do not comply with Rule 2019. If the Claimants' Lawyers fail to comply and their clients are harmed thereby, that is a matter for the Claimants' Lawyers and their insurance carriers to deal with. It is not cause to excuse compliance with a mandatory rule.

Therefore, the claimant's due process rights will not be violated.

CONCLUSION

WHEREFORE, the Movants respectfully request that the Court enter an order requiring Claimants' lawyers to comply with Federal Rule of Bankruptcy Procedure 2019, and granting such further relief as is just and proper.

Dated: June 15, 2022

Respectfully submitted,

By: /s/ Russell W. Roten
Russell W. Roten
Jeff D. Kahane
Andrew Mina
Duane Morris LLP
865 S. Figueroa Street, Suite 3100
Los Angeles, CA 90017-5450
Telephone: (213) 689-7400
Facsimile: (213) 689-7401
Email: RWRoten@duanemorris.com

And

Catalina J. Sugayan
James Moffitt
Clyde & Co US LLP
55 West Monroe Street, Suite 3000
Chicago, IL 60603
Telephone: (312) 635-7000
Facsimile: (312) 635-6950
Email: catalina.sugayan@clydeco.us

*Attorneys for Certain Underwriters at
Lloyd's, London and Certain London
Market Companies*

-AND-

By: /s/ Ralph M. Monico
Ralph M. Monico, Esquire
PA I.D. No. 69633 (admitted PHV)
BURNS WHITE LLC
Burns White Center

48 26th Street Pittsburgh, PA 15222
Telephone: (412) 995.3000
rmmonico@burnswwhite.com

*Attorneys for Interstate Fire & Casualty
Company*

-AND-

WHITE AND WILLIAMS LLP
By: /s/ Frank J. Perch, III
Frank J. Perch, III
(PA Bar No. 39908)
1650 Market Street, Suite 1800
Philadelphia, PA 19103
Phone: (215) 864-6273
Fax: (215) 789-7626
perchf@whiteandwilliams.com

*Attorneys for Zurich American Insurance
Company, as successor by merger to
Maryland Casualty Company*

-AND-

By: /s/ Glenn F. Fencel
Glenn F. Fencel (pro hac vice)
Il. I.D. No. 3126086
Johnson & Bell, Ltd.
33 W. Monroe Street
Suite 2700
Chicago, IL 60603
312.372.0770
fencelg@jbltd.com

*Attorneys for The National Catholic Risk
Retention Group, Inc.*

-AND-

DENTONS US LLP

By: /s/ Patrick C. Maxcy
Patrick C. Maxcy
233 South Wacker Drive
Suite 5900

Chicago, IL 60606-6361
Telephone: (312) 876-2810
patrick.maxcy@dentons.com

*Attorneys for Travelers Indemnity Company
and certain of its affiliates*