



WHITE PAPER

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Diocese of Rockville Centre Pioneers a Global Resolution for Itself, Its 136 Parishes, and its Settling Insurers Post-*Purdue*

In order to resolve hundreds of Child Victims Act lawsuits alleging sexual abuse, the Diocese of Rockville Centre commenced chapter 11 to seek protection for itself, its parishes, and schools, as well as providing equitable compensation for the hundreds of claimants, while maximizing their substantial insurance assets. In 2024, the Supreme Court decisions in *Purdue*¹ and *Truck*² materially complicated such resolutions, presenting substantial hurdles to the dual objectives of getting parishes releases and maximizing insurance assets.

The Diocese, through innovation, met both challenges: It protected itself, its parishes, schools, and ministry and delivered “total peace” to their shared insurers for a cash settlement premised upon the surrender and release of their insurance protection. The key features were: (i) relying on a “hybrid” bankruptcy process that combined a traditional chapter 11 bankruptcy for the Diocese with rapid prepackaged bankruptcies for its parishes, thereby obtaining for all the protection of a discharge in bankruptcy and comfort sufficient to surrender their insurance protection; (ii) gaining for its settling insurers the protection of a channeling injunction against all derivative claims and a mechanic for obtaining consensual releases of direct claims from all affected abuse claimants; and (iii) relying upon a thorough understanding of derivative claims to protect its schools and others.

Through the hybrid process, the Diocese alone sustained the burdens of chapter 11 bankruptcy, including negotiating with claimants and insurers and creating a joint disclosure statement and plan, which anticipated parishes commencing chapter 11 cases only if there was overwhelming support for the joint plan. Once the Diocese obtained a clear mandate favoring the joint plan, all parishes filed rapid prepackaged bankruptcies, became co-proponents of the joint plan and exited bankruptcy within 36 hours of filing their cases with the protection of a discharge in bankruptcy against all historical abuse claims, whenever asserted.

INTRODUCTION

Resolutions of diocesan chapter 11 bankruptcy cases are difficult, as the nature of the claims is emotional and often involves decades-old allegations against deceased perpetrators. Historically, the resolution of Diocesan cases relied upon parishes receiving releases as non-debtors from all abuse claimants with settling insurers getting the protection of a broad channeling injunction in exchange for buying back their policies and, at times, further insisting on releases from all abuse claimants as a predicate for any distributions from the settlement trust created under the bankruptcy plan. In those sex abuse bankruptcy cases where there was not a resolution with insurers, such as the *Boy Scouts* case, the cases relied upon the doctrine of insurance neutrality to transfer the Diocesan interest in insurance policies to the settlement trust created under the plan for abuse claimants. As part of the protocol governing distributions from the settlement trusts created under these plans, claimants were generally required to execute a release and undertaking to protect the settlement trust and its trustee (e.g., against Medicare, tax liens, and other claims). Following the U.S. Supreme Court's *Purdue* decision, the historical approach to third-party releases was no longer viable for parishes, and the broad injunctions, at least according to the United States Trustee, are no longer available to the settling insurers. The *Truck* decision also complicated recovering from insurers via a transfer of interest in insurance policies.

In the reorganization of the Diocese of Rockville Centre and its parishes and schools, a "hybrid" approach to mass tort reorganizations was used, utilizing both traditional and "rapid" prepackaged bankruptcy processes to obtain discharges for all the Diocese's parishes and schools while providing equitable compensation to claimants. This approach, combined with the use of insurance "buy backs" and new "*Purdue* compliant" injunctions and releases for the insurers resulted in the global resolution of the Diocese cases.

Given the specific challenges post-*Purdue*, the hybrid bankruptcy approach provides a model for achieving resolutions to future mass tort reorganizations relying upon discharge of related co-defendants and a format for consensual releases of third parties by affected claimholders.

BACKGROUND

In 2019, Child Victims Act ("CVA") legislation enacted in New York eliminated the statute of limitations for a two-year period, allowing plaintiffs to bring otherwise time-barred lawsuits alleging that they were sexually abused as children. The Diocese of Rockville Centre, together with its parishes and schools, faced hundreds of CVA lawsuits alleging sexual abuse. The Diocese and its parishes shared substantial insurance assets. The Diocese commenced chapter 11 on October 1, 2020, to seek protection for itself, its parishes, and schools and maximize the value of its insurance assets with the objective of providing equitable compensation for the hundreds of claimants. The solvent third-party insurers of the Diocese and parishes also wanted total peace and a release of all insurance policies by the Diocese and parishes as the sine qua non for any insurance settlement.

Fortunately, earlier in 2024, the U.S. Bankruptcy Court for the Southern District of New York revised its guidelines for prepackaged bankruptcy cases and, among other things, included provisions to allow for a "rapid" prepackaged case. This revision presented an opportunity for the global resolution sought by the Diocese to protect itself, its parishes, and schools, and maximize its insurance assets. With a discharge in bankruptcy, the Diocese and the parishes could comfortably surrender their insurance protection. Initially, the insurers essentially sought the same relief that they enjoyed prior to *Purdue*, a channeling injunction protecting the insurers against all claims and requiring a release from each abuse claimant as a predicate for any distribution from the settlement trust created under the plan. This position met strong objections from the United States Trustee, which argued that such relief was prohibited by the Supreme Court in *Purdue*. The Diocese successfully resolved those objections.

On December 5, 2024, the Diocese achieved an exit for itself and its parishes and schools from hundreds of claims alleging sexual abuse, as well as a discharge for these affiliates from all such historical abuse claims, whenever asserted, even in the face of a potential future opening of the statute of limitations. The Diocese, in reliance on the recently amended prepackaged case guidelines, pursued a hybrid process, under which

it prosecuted a chapter 11 plan for itself that anticipated future chapter 11 filings by all of its parishes joining in the same plan, but if and only if the joint plan received overwhelming support from abuse claimants.

Upon approval of the disclosure statement for this joint chapter 11 plan, the Diocese solicited votes from all the abuse claimants, including those bringing suits against the parishes and schools, asserting that, upon a successful vote by such claimants, the parishes would seek relief under chapter 11 and then, together with the Diocese, pursue confirmation of a joint plan the next day. More than 98% of abuse claimants voted to accept the joint plan. The joint plan was confirmed within 19 hours of the parishes commencing their chapter 11 cases, and the parishes exited bankruptcy in less than 36 hours.

The Southern District's rapid prepackaged case guidelines provided a ready template for the parishes, but it is noteworthy that there had been rapid prepackaged cases in the Southern District and other districts prior to the adoption of the rapid prepackaged provisions in the guidelines. It was not only the guidelines, but also the hybrid nature of the process, which had continuous court supervision over the Diocesan case, including the joint disclosure statement, the voting and the confirmation process that provided strong support for the result.

Given the hybrid approach, which effected a discharge in bankruptcy for the Diocese and its parishes, the Diocese and its parishes were comfortable releasing their insurance protection. Hence, on a parallel path, the Diocese pursued a settlement with, and a section 363(f) "free and clear" sale to, its solvent third-party insurers of their insurance policies. Initially, the sale motion sought to extend the protection of a supplemental sale injunction to the settling insurers against all claims and presaged a joint plan requiring abuse claimants to release all claims against such settling insurers, as well as providing for an injunction channeling all such claims into the settlement trust created under the plan. The United States Trustee analogized the proposed channeling injunction to the permanent injunction that he argued was prohibited by *Purdue* and further challenged that requiring abuse claimants to sign releases for the settling insurers as a predicate to any distribution from the settlement trust was coercive, not consensual. In light of the limitations on bankruptcy court jurisdiction over direct claims that might be asserted by abuse claimants against the

settling insurers,³ the Diocese focused on working with the settling insurers to confine the scope of the supplemental sale and channeling injunctions to claims within the bankruptcy court's jurisdiction (i.e., to derivative claims). In addition, the Diocese created a format for releases of the settling insurers which provided abuse claimants with the ability to elect to release all claims against the settling insurers in exchange for an enhanced distribution from the insurance sale proceeds. The settling insurers benefited from a reserve and indemnity created within the settlement trust pending receipt of such releases from the abuse claimants.

The Diocese was the first diocesan case to emerge from bankruptcy following the *Purdue* decision and the first to protect not only itself but also its parishes against pending and potential future lawsuits based upon allegations predating their bankruptcy petitions.

The hybrid process designed and used by the Diocese provided a *Purdue*-compliant resolution for the parishes without burdening or enmeshing the parishes in uncertain or prolonged bankruptcies, yet gaining for them a discharge from all abuse claims accruing before their petition date, whenever asserted. To meet the insurers' demand that parishes release their insurance, a discharge became a critical protection given the potential for a "second" window to be opened by future legislation, as happened in California.

The path taken by the Diocese of Rockville Centre here can serve as a model for other mass-tort situations asserting claims against a primary defendant and related co-defendants. The fact that the statute of limitations had already passed greatly eased the execution of the hybrid model for the Diocese because the claims against both the Diocese and the parishes had already been asserted and the window for asserting them was closed. Even though a bar date for abuse claims against the parishes was sought, few, if any, additional valid claims are expected to be filed. To the extent that there is an open statute of limitations in other cases, obtaining an effective bar date may mean that the related parties spend more time in chapter 11. But a key in this approach is that no bankruptcy cases are commenced for the related co-defendant parties unless and until there is an approved disclosure statement for the primary defendant and an "overwhelming" acceptance of the joint plan anticipating bankruptcy filings by the related co-defendant parties.

The Diocese of Rockville Centre case also provides a model for maximizing insurance assets following the *Purdue* and *Truck* decisions. Insurers want a surrender and release of all insurance policies. Absent a discharge in bankruptcy, non-debtors are vulnerable to later asserted historical claims. The hybrid process provided the discharge to facilitate the surrender and release of insurance policies by the Diocese and parishes, but the Diocese also had to create a path forward to achieve the additional protections demanded by settling insurers. The Diocese developed an approach to resolve the objections made to the injunctive protections and release demanded by the settling insurers and yet satisfy the settling insurers.

ADDRESSING MASSIVE LITIGATION OF HISTORIC CLAIMS WHILE PRESERVING THE CURRENT ENTERPRISE

The objective of most diocesan chapter 11 cases is to compensate survivors of sexual abuse and, thereafter, allow for the Diocese, its parishes, and their affiliates to focus on the mission of the Church, free from historic abuse litigation. The nature of the claims is not only adversarial but emotional, in light of the underlying allegations. A resolution is made even more complex because the overwhelming majority of these claims allege abuse occurring 50 or more years ago by perpetrators who are often deceased. This characteristic suggests, and the Diocese benefitted from, effective mediators.

After passage of the CVA and Adult Survivors Act in New York, the eight dioceses in New York and the many parishes within these dioceses faced a flood of litigation regarding alleged sexual abuse. The Diocese, and five other dioceses in New York State, commenced a chapter 11 case after the enactment of the CVA in order to obtain relief from this wave of unliquidated liabilities and safeguard its ministry and the ministry of its parishes and schools. The *Purdue* ruling presented all six of these debtor dioceses with a dual challenge: (i) protecting their parishes and schools; and (ii) delivering “total peace” to the insurers for a cash settlement, which would require the Diocese and all its co-insureds, including its parishes and schools, to surrender and release their insurance protection.

With groundbreaking innovation, the Diocese succeeded in meeting both challenges. The key features were the hybrid process, relying on rapid prepackaged cases, and the approach taken to injunctions protecting the settling insurers, as well as a workable mechanic for obtaining consensual releases from abuse claimants for all claims for the benefit of settling insurers.

UNDERSTANDING THE HYBRID PROCESS

In light of the *Purdue* decision, to effectively protect the 136 parishes within the Diocese, those entities also needed to file for bankruptcy. This was necessary in order to obtain a discharge from all the abuse claims, not only pending lawsuits but also any potential future claims in the event that the state opened another statutory “window” or even entirely eliminated the limitations period in the future. However, the bankruptcy process carries inherent risks: the process is prohibitively expensive and highly disruptive for many organizations, and the outcome is uncertain. In the Diocese’s case, parish bankruptcies could also distress parishioners, who rely on their parishes for worship, community, and support.

To overcome this obstacle, the use of a novel “hybrid” bankruptcy structure, combining the Diocese’s traditional chapter 11 bankruptcy with the parishes’ “rapid” prepackaged reorganizations, gained the advantages of both processes while getting the parishes in and out of bankruptcy within a matter of days. Under the hybrid process, the Diocese undertook the burdens of chapter 11 bankruptcy, including negotiating with claimants, engineering settlements with insurers, creating a disclosure statement and soliciting and tabulating votes for the joint plan that anticipated parishes commencing chapter 11 cases. Once the debtor obtained sufficient support for the joint plan in a traditional court-supervised process, the parishes filed “rapid” prepackaged bankruptcies the afternoon before the scheduled confirmation hearing and became co-proponents of the joint plan.

A “prepackaged” bankruptcy is a short-term reorganization in which the debtor’s plan is negotiated and resolved among the debtor and its key creditors before the filing of the petition. In

a “rapid” prepackaged bankruptcy process, a debtor can file and exit bankruptcy in a few days. Prepackaged bankruptcies have been used for decades to reduce the costs and burdens of chapter 11 bankruptcies. The unique circumstances of the Diocese’s case led to the use of an old bankruptcy tool in a new, creative way.

Utilizing the amended Prepackaged Chapter 11 procedural guidelines recently adopted by the S.D.N.Y. Bankruptcy Court (the “rapid prepack guidelines”), the 136 parishes that sit within the Diocese’s geographical territory filed prepackaged bankruptcies in tandem on December 3, 2024, the day before the scheduled confirmation hearing. The rapid prepack guidelines instill structure and certainty into the prepackaged bankruptcy process, and they provided the Diocese and its parishes with assurance that a hybrid bankruptcy process would be successful before they commenced their cases.

Since the Diocese had already obtained support for the plan and had proceeded under bankruptcy court supervision, the parishes benefitted from the Diocese’s pre-confirmation process and approvals and could enter bankruptcy confident that their joint plan was overwhelmingly accepted and would be approved shortly after they filed their petitions. This structure minimized the parishes’ bankruptcy expenses and time in bankruptcy and significantly reduced the risk that the 136 parishes would be stuck in restructuring proceedings with no certainty of imminent resolution. As “additional debtors” and co-proponents of the plan, the parishes obtained a discharge comporting with the *Purdue* decision, with all abuse claims asserted against them and the Diocese permanently channeled to the settlement trust created under the plan.

INSURER ISSUES AND AFFILIATE SETTLEMENTS: THE ROLE OF RELEASES

A key component of the Diocese’s plan was a settlement with four of its solvent third-party insurers. The settling insurers demanded total peace and a release of all insurance coverage, which was effectuated by a free-and-clear, section 363(f) purchase or “buy back” of all of their insurance policies from the Diocese for an aggregate purchase price of \$85.525 million in cash, to be contributed to the settlement trust created for sexual abuse claimants, and a joint surrender and release of all insurance by all co-insureds, including the Diocese and

the parishes. The discharges to be obtained using the hybrid process provided sufficient comfort for the parishes to surrender and release their insurance coverage. But the Diocese also had to address the additional protections required by the settling insurers and the objections to those protections made by the United States Trustee. Ultimately, the supplemental sale injunction and the channeling injunction were carefully constructed to respect the limitation on the bankruptcy court’s jurisdiction over the direct claims, if any, of abuse claimants against the settling insurers. For that reason, the settling insurers received injunctive protection against all derivative abuse claims.

In addition, working with the Diocese, the settling insurers obtained not only the possibility, but likely the probability, of a consensual release of all claims by each abuse claimant receiving a distribution from the settlement trust and interim protections pending the submission of such releases. As in most cases with a settlement trust, there was a release required by the settlement trust for the trustee from every abuse claimant in order to protect the trustee. Submission of this release and undertaking was a predicate for any distribution from the settlement trust. For that reason, there is an expectation that such release and undertaking will be read by or on behalf every abuse claimant because the execution of such release and undertaking is a requirement for getting a distribution from the settlement trust. The Diocese modified the form of this release and undertaking to include a “check the box” release in favor of the settling insurers, which, if such box were checked, would result in an enhanced distribution from the insurance sale proceeds. To protect the settling insurers, the plan provided for an indemnity by and reserve in the settlement trust of \$32 million for potential direct claims against the settling insurers. The reserve was to be released for distribution by the settlement trust as abuse claimants submitted releases of their direct claims.

The Diocese also had to navigate several settlements between its estate and its affiliates, including some affiliates that were litigation defendants as successors to the Diocese or parishes. An independent advisory committee appointed by the Diocese before it commenced its bankruptcy case identified potential causes of action against several of the Diocese’s affiliates. Although the creditors’ committee gained derivative standing to pursue the estate’s causes of action against the affiliates, the Diocese successfully resolved these actions in

exchange for an aggregate contribution of \$79.5 million in cash and releases. Notably, releases of derivative claims are within the power of the Diocese, as a debtor, to grant and are unaffected by *Purdue*. The Diocese and the parishes also obtained releases for certain school affiliates that were sued as successors in interest, again because such claims against an affiliate, as a successor to a debtor, are also derivative claims that a debtor can release.⁴

KEY TAKEAWAYS

The chapter 11 case of the Diocese of Rockville Centre provides a model for other diocesan and mass tort cases. The successful, groundbreaking “hybrid” approach provided both the certainty of a traditional process and the speed of a pre-packaged process. What was unique in this case is combining the traditional court supervised chapter 11 case with rapid pre-packaged cases for related co-defendants. That combination provides comfort from a due process point of view. It also provides certainty for the related co-defendants who commence bankruptcy cases if and only if there is overwhelming support for the joint plan.

The discharge in bankruptcy from that hybrid process provides sufficient comfort for the debtors (in both traditional and rapid prepackaged cases) to surrender and release their insurance policies in exchange for a cash settlement payable to the settlement trust created under the plan. That discharge dynamic supports a parallel section 363(f) sale process for policy “buy backs” which can launch additional *Purdue*-compliant protections for settling insurers, including the protection of a supplemental sale injunction and presaging a plan that has a channeling injunction directing all derivative claims against such insurers to the settlement trust and further incorporates a mechanic for consensual releases to be granted to the settling insurers by abuse claimants, with interim protections for the settling insurers pending submission of such releases.

The Diocese relied upon the release and undertaking required by the trustee from abuse claimants as a predicate for distributions to serve as the vehicle for consensual releases in favor of the settling insurers. The Diocese added a “check the box” feature for the release of settling insurers. There was an incentive for abuse claimants to “check the box” to release the settling insurers, thereby gaining an enhanced distribution from the insurance sale and settlement proceeds. There were also interim protections for the settling insurers through an indemnity by the settlement trust for any direct claims by abuse claimants and a reserve set aside within the settlement trust to be held pending the submission by abuse claimants of the “check the box” releases.

Jones Day represented the Diocese of Rockville Centre and coordinated matters for its parishes and schools, pioneering the “hybrid” approach to mass tort reorganizations.

LAWYER CONTACTS

Corinne Ball

New York

+1.212.326.7844

cball@jonesday.com

Todd R. Geremia

New York

+1.212.326.3429

trgeremia@jonesday.com

Ben Rosenblum

New York

+1.212.326.8312

brosenblum@jonesday.com

Eric P. Stephens

New York

+1.212.326.3916

epstephens@jonesday.com

Connor J. Farley, an associate in the New York Office, contributed to this White Paper.

ENDNOTES

- 1 *Harrington v. Purdue Pharma L.P. ("Purdue")*, 603 U.S. ----, 144 S. Ct. 2071, 219 L. Ed. 2d 721 (2024).
- 2 *Truck Ins. Exch. v. Kaiser Gypsum Co., Inc. ("Truck")*, 602 U.S. 268, 144 S. Ct. 1414, 219 L. Ed. 2d 41 (2024).
- 3 See *In re Johns-Manville Corp.*, 517 F.3d 52 (2d Cir. 2008), *rev'd on other grounds sub nom., Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 129 S. Ct. 2195, 174 L. Ed. 2d 99 (2009).
- 4 See *In re Tronox Inc.*, 855 F.3d 84, 105-07 (2d Cir. 2017); *In re Nordlicht*, 115 F.4th 90, 108-09 (2d Cir. 2024).

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