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Claimants resist as Milwaukee bankruptcy inches forward

by Marie Rohde

Milwaukee bankruptcy

Milwaukee — The bankruptcy of the Milwaukee archdiocese inched forward last month as U.S. Bankruptcy Judge Susan V. Kelley walked lawyers through changes in a document key to the confirmation of a reorganization plan. However, there are still major hurdles before the plan is presented for a vote by claimants, of whom 575 are survivors of sexual abuse.

Kelley scheduled a hearing on the plan that will run Oct. 14-17 with the understanding that lawyer for the creditors committee intend to file a motion to have the plan scrapped.

While lawyers for the claimants vigorously object to the bankruptcy plan, Kelley opened the door for the \$4 million allocated by the archdiocese for compensation to be shared among the survivors. In its plan to settle the case, the archdiocese deemed all but 128 of the abuse claims not eligible for funds.

"I would like to see an explanation for not putting all the survivors in one class and letting them decide how the funds will be allocated," Kelley said. "That's how it happened elsewhere."

If the 575 survivors share the money equally, they would get less than \$7,000 each. The 128 victims would get nearly \$31,000, far less than the \$300,000 that those in other parts of the country have received, according to their lawyers.

Kelley also said she wants an explanation of why Archbishop Jerome ListECKI encouraged abuse survivors to file claims, despite potential legal impediments, only to challenge most of them.

The judge asked lawyers for the archdiocese why only \$2 million could be borrowed from the cemetery

trust fund, which has become one of the most hotly contested issues in the case.

In 2007, Archbishop Timothy Dolan (now cardinal archbishop of New York) transferred nearly \$60 million into a fund for the perpetual care of eight cemeteries owned and operated by the archdiocese. Lawyers for the claimants allege the move was to shield funds from the bankruptcy estate; lawyers for the archdiocese maintain that the money was always segregated in the archdiocesan general accounts and the transfer was just a formality.

The Chapter 11 bankruptcy petition was not filed until January 2011, just as some of lawsuits filed on behalf of 17 survivors were about to go to trial. Most lawsuits against the archdiocese had been barred because the statute of limitations had expired. However, a 2007 ruling by the Wisconsin Supreme Court opened the door to lawsuits based on fraud -- that archdiocesan officials knew of abusers but failed to act to protect victims. Lawyers for the survivors accuse the archdiocese of moving the money into the cemetery trust and other funds to protect it from these abuse lawsuits, claims the archdiocese denies.

Kelley agreed in January 2013 that the \$54 million in the cemetery trust should be part of the estate, but U.S. District Judge Rudolph Randa overturned Kelley's ruling in August, based on the First Amendment's protection of religious rights and the Religious Freedom Restoration Act.

Lawyers for the claimants have appealed that decision to the 7th Circuit Court of Appeals based in Chicago. James Stang, lead lawyer for the claimants, told Kelley that he had contacted the court and been told that the case could be taken up as early as June, but there are no guarantees. A decision could take several months.

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Kenneth Brown, another lawyer for the claimants, argued that the rush to have the archdiocese plan approved is an attempt to kill the cemetery trust appeal before the 7th Circuit.

The time it will take to get a decision from the appellate court is "a heartbeat given they waited three and a half years to file a [reorganization] plan," Brown said.

Meanwhile, as part of the settlement plan, the archdiocese borrowed \$2 million from the cemetery trust to establish the fund for survivors.

Frank LoCoco, lead lawyer for the archdiocese, countered that the claimants are only trying to create a roadblock to slow approval of the plan and pursue their "national agenda," a term he declined to explain when asked by *NCR*.

Jeff Anderson, a lawyer representing survivors, has said in the past that dioceses and religious orders around the country are following the Milwaukee template and attempting to hide funds that could be the subject of lawsuits brought by abuse survivors.

Lawyers for the claimants are also challenging a deal the archdiocese made with Lloyd's of London and London Market Companies, which operate under London Market Insurers. The archdiocese entered into mediation with the insurers and got an \$8 million settlement.

Anderson, who represents some 350 survivors who want to sue the archdiocese in state court under the fraud statutes, told *NCR* outside of the court that the archdiocese had kept the existence of the insurance policies secret from his clients. "Our insurance experts found that they had \$200 million in coverage," he

said. The coverage, Anderson said, went back many decades and would have adequately provided funds for settlements.

"It's a scam, a sham, and it's illegal," Anderson said. "It's outrageous and we will not allow it to stand."

In court, LoCoco said in response to questions from Kelley about the insurance settlement: "We thought we should negotiate with whoever we could negotiate with." Brown, lawyer for the claimants, said: "This is a lousy settlement. Your exposure is a hundred times the settlement. You need to explain it."

By all accounts, the bankruptcy proceeding has been particularly pugilistic, with lawyers from each side exchanging verbal jabs in court and in their written briefs. Stang, representing the committee of claimants, called the plan drawn up by the archdiocese "morally repugnant" while LoCoco, lawyer for the archdiocese, called Stang's characterization of events that led to the filing a "bald-face lie."

LoCoco's comment in court April 17 drew a testy rebuke from Kelley who said, "This case is hard enough without any more mudslinging by the lawyer. There will be no more of 'that's a lie' or 'it's morally repugnant.' "

Kelley said she was intent on moving the case forward, despite the chasm between the lawyers. At one point, she said, "If this plan can't be confirmed, it should be dismissed."

The archdiocese prepared the reorganization plan with almost no input from the claimants, which is unusual. Stang, who represented claimants in six other diocesan bankruptcies and two involving religious orders, said all had agreed on the key document, the disclosure statement that underlies the final agreement that will be voted on by the claimants.

Kelley ordered the lawyers for both sides to put together a disclosure document -- or at least as much as they could agree on -- by May 9. She is expected to make a final ruling on the statement by mid-May. A schedule will then be established for when the claimants can vote on the reorganization plan.

[Marie Rohde is a freelance writer based in Milwaukee.]

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