

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
	)	
CATHOLIC DIOCESE OF WILMINGTON, INC., a Delaware Corporation, <sup>1</sup>	)	Case No. 09-13560 (CSS)
	)	
Debtor.	)	Ref. Dkt. Nos. 1321, 1379, 1380, 1381, 1383, 1388, 1389 & 1390

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**DEBTOR’S OMNIBUS REPLY TO OBJECTIONS TO CONFIRMATION OF THE  
SECOND AMENDED PLAN OF REORGANIZATION AS A SETTLEMENT PLAN**

The debtor and debtor in possession (the “Debtor”) in the above-captioned case hereby replies (the “Reply”) to certain objections and statements [*see* D.I. 1379, 1380, 1381, 1383, 1388, 1389, and 1390] filed in connection with the *Second Amended Plan of Reorganization of Catholic Diocese of Wilmington, Inc.* dated as of May 23, 2011 [D.I. 1321] (as may be amended, supplemented, and/or modified, the “Plan”). In support of this Reply, the Debtor relies upon the Declaration of Jeffrey S. Stein of the Garden City Group certifying the results of voting on the Plan (the “Voting Declaration”) filed contemporaneously herewith. In further support of this Reply, the Debtor respectfully represents as follows:

**PRELIMINARY STATEMENT**

As the Court may recall, the Plan provides for alternative outcomes depending on the results of the Class 3A (Survivor Claims) vote. The “Settlement Plan” alternative provides for the creation of a Settlement Trust<sup>2</sup> for the benefit of Survivor Claims, to be funded with \$77.425 million contributed by or on behalf of Non-Debtor Catholic Entities (approximately \$62 million) and Settling Insurers (approximately \$15.4 million), made possible by a series of

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<sup>1</sup> The last four digits of the Debtor’s federal tax identification number are 5439. The Debtor’s mailing address is 1925 Delaware Avenue, P.O. Box 2030, Wilmington, Delaware 19899-2030.

<sup>2</sup> Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Plan.

interrelated settlements (e.g., of the Pooled Investment Account litigation and potential insurance coverage actions). For Class 3B (Lay Pension Claims), the Lay Pension Plan Trust will receive approximately \$9.8 million of additional funding on the Effective Date, plus a fully-secured, unsubordinated Default Note from the Reorganized Debtor in the amount of \$15 million.<sup>3</sup> The Debtor will then use its reasonable best efforts to obtain Court approval of the Lay Pension Plan Reaffirmation Agreement, whereby the Reorganized Debtor will reaffirm the Debtor's obligations under the Lay Pension Plan, as modified by the Lay Pension Plan Reaffirmation Agreement consistent with the LEC Term Sheet. Class 3C (DEDA Bond Transaction Claims) will share *pro rata* in the Capital Campaign Fund, a Restricted PIA Fund raised in connection with a Diocese-wide capital campaign for the construction and improvement of schools. Class 4 (Penalty Claims) will be discharged without distribution, and Classes 3D (Clergy Pension Claims), 3E (Gift Annuity Claims) and 3F (Other Unsecured Claims) will be unimpaired.

99.35% (150 of 151) holders of Class 3A Claims voted to accept the Plan as a Settlement Plan. Accordingly, pursuant to Section 5.5 of the Plan, the Confirmation Hearing will proceed solely for the purpose of confirming the Plan as a Settlement Plan. Accordingly, all references to the "Plan" herein should be read to mean "the Plan, insofar as it is a Settlement Plan," with all parties' rights reserved with respect to the Plan insofar as it is a CDOW-Only Plan.

Both of the Class 3C Claims voted in favor of the Plan as a Settlement Plan, and Classes 3D, 3E and 3F are deemed to accept by virtue of their non-impairment. Class 3B did not accept the Plan as a Settlement Plan (though the Debtor and the Lay Employees Committee have

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<sup>3</sup> The Default Note is to be included in an amendment to the Plan, consistent with the settlement term sheet between the Debtor and the Lay Employees Committee attached as Exhibit B hereto (the "LEC Term Sheet").

resolved the Lay Employees Committee's objections to the Plan), and Class 4 is deemed to reject. Accordingly, the Debtor will make the appropriate evidentiary showing at the Confirmation Hearing to support cramdown of Classes 3B and 4. Additionally, the Debtor will make the appropriate evidentiary showing at the Confirmation Hearing that the "best interests of creditors" test is satisfied with respect to non-accepting claimants within Classes 3A and 3B.

The Plan's satisfaction of the basic requirements of confirmation is not disputed by any party in interest. Accordingly, the Debtor does not dwell on these requirements here, but reserves the right to present evidence (and, to the extent necessary, argument) at the Confirmation Hearing regarding the undisputed elements of the Plan.

The Debtor believes the objections and responses to the Plan set forth in Exhibit C hereto present narrow issues and/or are capable of being resolved by the addition of language to the Confirmation Order. The Debtor's responses and/or proposed resolutions with respect to these objections and responses are set forth in Exhibit C.

The remaining objections are by (i) the Unofficial Committee of Abuse Survivors (the "Unofficial Committee"), which argues primarily that the Plan does not comply with the Settlement Term Sheet dated February 2, 2011, between the Debtor, the Unofficial Committee and the Creditors Committee, and (ii) Survivor Joseph Curry, who voted against the Plan and objects to the channeling of his secured claim against St. Dennis Parish to the Settlement Trust. The Creditors Committee, for its part, has reached a global resolution of open issues with the Debtor, to be memorialized in amendments to the Plan, and does not object to confirmation of the Plan. As set forth more fully below, the Debtor believes the Unofficial Committee's objections are entirely without merit, and that Curry's objection can be resolved very easily by inclusion of language in the Confirmation Order. Nevertheless, to the extent the Confirmation

Order is not amended to resolve Curry's objection, the Debtor will make a requisite evidentiary showing at the Confirmation Hearing in support of the proposed channeling of Curry's claim.

Accordingly, the Plan should be confirmed.

### ARGUMENT

#### **I. THE PLAN COMPLIES FULLY WITH THE SETTLEMENT TERM SHEET DATED FEBRUARY 2, 2011, BETWEEN THE DEBTOR, THE CREDITORS COMMITTEE AND THE UNOFFICIAL COMMITTEE OF ABUSE SURVIVORS**

##### **A. The Plan Expressly Requires Funding of the Settlement Trust Within 60 Days Post-Confirmation as a Condition of the Discharge and Channeling of Survivor Claims**

In paragraph 1 of the Settlement Term Sheet, the Debtor agreed "to contribute [\$77.425 million] to a Plan Trust . . . within ninety (90) days of the date of this Term Sheet or within sixty (60) days of Plan Confirmation (unless the properties owned by the Debtor to be contributed have been sold prior to that sixty-day period), whichever is later." In paragraph 2 of the Settlement Term Sheet, the Creditors Committee and the Unofficial Committee of Abuse Survivors agreed that, "in consideration of this contribution, the Debtor, its affiliates, including parishes, and their officers and employees, shall be released from liability for all claims asserted against them under the Child Victim's Act, including claims filed in the bankruptcy proceeding, as more fully set forth in the Plan of Reorganization."

In accordance with the Settlement Term Sheet, the Plan defines the term "Settlement Funding Date" as follows:

the earlier of (i) the first Business Day<sup>[4]</sup> that is at least sixty (60) days after the Confirmation Date and (ii) the first Business Day after which all properties set forth in Exhibit C have been sold by the Debtor, Catholic Diocese Foundation,

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<sup>4</sup> Bankruptcy Rule 9006(a) provides that deadlines in Court orders (e.g., the order confirming the Plan) falling on a Saturday, Sunday, or legal holiday are automatically extended to the next day that is not a Saturday, Sunday, or legal holiday.

Catholic Cemeteries, Inc., Seton Villa, Inc., or Children's Home, Inc., as applicable.

(Plan Exh. A ¶ 148.) The "Confirmation Date" is defined as "the date on which the Bankruptcy Court enters the Confirmation Order on its docket." (Id. Exh. A ¶ 30.) The Plan expressly requires the NDCE Settlement Contribution and Insurer Settlement Contribution (totaling \$77.425 million cash) to be contributed to the Settlement Trust "on or before the Settlement Funding Date." (Id. § 5.1(a) & (b).) Additionally, an express condition precedent to effectiveness of a Settlement Plan is that "the Settlement Trust shall have been formed and funded . . . on or before the Settlement Funding Date." (Id. § 15.1(f)(2).) While conditions precedent to effectiveness are generally waiveable by the Debtor, waiver of this particular condition "shall require the unanimous written agreement of State Court Counsel." (Id. § 15.1.) "State Court Counsel," in turn, is defined to include the signatories to the Settlement Term Sheet. (Id. Exh. A ¶ 160.)

The discharge of claims against the Debtor and the channeling of Survivor Claims against Non-Debtor Catholic Entities (effectuating paragraph 2 of the Settlement Term Sheet) do not occur until the "Effective Date" of the Plan. (Plan §§ 16.2 and 16.3.) Although the Effective Date and the Settlement Funding Date are expected to be the same day as a practical matter, they are legally distinct. As is common in chapter 11 plans in this district, the Plan defines the "Effective Date" as

the Business Day on which the Plan becomes effective pursuant to Article XV of the Plan; provided however, that if any stay or injunction against enforcement or execution of the Confirmation Order is issued prior to the date that would otherwise be the Effective Date, the Effective Date shall be the first Business Day after all such stays or injunctions are no longer in effect, *which cannot occur unless and until all conditions to effectiveness (including the funding of the Settlement Trust on or before the Settlement Funding Date) have occurred.*

(*Id.*, Exh. A ¶ 56 (emphasis added).) The purpose of differentiating between the Settlement Funding Date and the Effective Date was simple, to wit: the Settlement Funding Date must occur within a time period fixed by the terms of the Settlement Term Sheet, whereas the Effective Date may depend on the occurrence or non-occurrence of things unrelated to the funding of the Settlement Trust, such as the payment or creation of reserves for administrative and priority claims, *see* 11 U.S.C. § 1129(a)(9), the pendency of an appeal, or the issuance of an order staying effectiveness of the Plan and/or Confirmation Order. If for some reason the Settlement Funding Date were fast approaching but the other conditions for effectiveness of the Plan could not be met, the Debtor, the Non-Debtor Catholic Entities, and the Settling Insurers would have to choose between (i) funding the Settlement Trust and bearing the downside risk of non-consummation of the Plan, (ii) seeking State Court Counsel’s consent to extension of the Settlement Funding Date, or (iii) not funding the Settlement Trust, and losing the benefits of the global resolution of Survivor Claims embodied in the Settlement Term Sheet. As the italicized language in the definition of “Effective Date” above underscores, irrespective of the occurrence or non-occurrence of any conditions to effectiveness, or any order staying effectiveness of the Plan, the Effective Date simply “cannot occur” unless the Settlement Trust has been funded on or before the Settlement Funding Date. This is perfectly consistent with the Settlement Term Sheet.

Notwithstanding the Plan’s compliance with the Settlement Term Sheet, counsel for the Unofficial Committee stated publicly on or about May 25, 2011, that the Debtor’s Plan “would withhold the [settlement] money until all appeals have been resolved” in violation of the Settlement Term Sheet. (*See* Unoff. Comm. Obj. Exh. E at 2 (*Delaware News Journal* article). When contacted by the *Delaware News Journal* in connection with this story, counsel for the Debtor correctly stated that the Plan did not propose to “block” funding of the Settlement Trust

within sixty days post-confirmation in the event of an appeal, and that only an order from this Court could do that. (*See id.*) So began the tempest in a teapot that resulted in several news articles and letters to the Court and culminated in a threat by counsel for the Unofficial Committee to advise their clients to vote to reject the Plan based upon the Debtor's purported breach of the Settlement Term Sheet.

Counsel for the Debtor sent counsel for the Unofficial Committee a letter on or about May 27, 2011, explaining the difference and interplay between the Settlement Funding Date and Effective Date provisions of the Plan. This letter was followed by several phone calls over the course of the next month. The apparent concern that materialized over the course of these phone calls was *not* that the funding of the Settlement Trust would be delayed past the Settlement Funding Date, as was reported to the press and to this Court, but rather that *distributions from the Settlement Trust* to holders of Survivor Claims (and to State Court Counsel) would be delayed pending the occurrence of the Effective Date.

The timing of distributions from the Settlement Trust was not addressed in the Settlement Term Sheet. But even if the Settlement Term Sheet had required that distributions from the Settlement Trust commence within sixty days post-confirmation, which it did not, the mere *possibility* that distributions might not occur as and when required by the Settlement Term Sheet would not constitute a present material breach thereof by the Debtor. Indeed, where performance under a contract is due in the future, a present breach can only occur where the breaching party repudiates by either (i) taking an action that forecloses future performance or (ii) stating unequivocally that he has *no intention* of performing in the future. See Restatement (Second) of Contracts § 250 (1981); see also *Franconia Assocs. v. U.S.*, 536 U.S. 129, 143 (2002) (Repudiation “entails a statement or ‘voluntary affirmative act’ indicating that the

promisor ‘will commit a breach’ when performance becomes due.”<sup>5</sup> Nothing in the Plan precludes the possibility that the Effective Date would occur concurrently with the Settlement Funding Date, nor has the Debtor stated (unequivocally or otherwise) that it does not intend for the Effective Date to occur concurrently with the Settlement Funding Date. *Nevertheless*, in an effort to bring closure to this non-issue, the Debtor agreed to amend Section 15.2 of the Plan (governing non-consummation of the Plan as a Settlement Plan) to provide that if the Effective Date has not occurred on or before the Settlement Funding Date (as may be extended by unanimous written agreement of State Court Counsel), then the Confirmation Order shall be vacated automatically, subject to the Debtor’s right to move for entry of a supplemental order confirming the Plan as a CDOW-Only Plan.

Notwithstanding the foregoing, the Unofficial Committee persists in asserting—*with no explanation of or citation to the Plan whatsoever*<sup>6</sup> in its six-page argument on this point—that the Debtor “now seeks to indefinitely delay payment of the funds until after all appeals to the District Court, the Third Circuit and the Supreme Court are resolved.” (Unoff. Comm. Obj. at 6.) This is simply not true. Rather, as is typical of chapter 11 plans in this district and elsewhere, the Debtor has reserved for itself the ultimate decision whether, in the event of an appeal or a stay of effectiveness of the Confirmation Order, the Debtor will waive the “final order” condition to effectiveness of the Plan. The Debtor is not in a position to “pre-waive” this condition without knowing who, if anyone, will appeal the Confirmation Order, and

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<sup>5</sup> “Such a repudiation ripens into a breach prior to the time for performance only if the promisee ‘elects to treat it as such.’” *Franconia*, 536 U.S. at 143, quoting *Roehm v. Horst*, 178 U.S. 1, 13 (1900) (repudiation “gives the promisee the right of electing either to . . . wait till the time for [the promisor’s] performance has arrived, or to act upon [the renunciation] and treat it as a final assertion by the promisor that he is no longer bound by the contract”).

<sup>6</sup> Rather than analyzing the Plan, the Unofficial Committee attaches declarations of some State Court Counsel to provide parol evidence of a point that is apparent from the unambiguous language of the Settlement Term Sheet and is not disputed by the Debtor, i.e., that the Settlement Trust is to be funded within sixty days after the Confirmation Order is entered.



on what basis, because the *quid pro quo* for payment of \$77.425 million to the Settlement Trust for the benefit of Survivor Claims was a full release of Survivor Claims for the Debtor and the Non-Debtor Catholic Entities, and if such release is challenged, then the Debtor and the Non-Debtor Catholic Entities could be left in the untenable position of parting with a substantial portion of their assets while being deprived of the essential benefit of their bargain. The Debtor has worked hard to resolve many issues and to reduce or eliminate the chance of an appeal, but as it stands now there remains one Survivor (Joseph Curry) who is challenging the Plan's channeling injunction.

**B. The Settlement Term Sheet is Unambiguous and Does Not Require the Reorganized Debtor to Pay the Administrative Expenses of the Settlement Trust**

In paragraph 1 of the Settlement Term Sheet, the Debtor agreed "to contribute [\$77.425 million] to a Plan Trust to compensate clerical sexual-abuse survivor-claimants." In paragraph 2 of the Settlement Term Sheet, the Creditors Committee and the Unofficial Committee of Abuse Survivors agreed that, "*in consideration of this contribution*, the Debtor, its affiliates, including parishes, and their officers and employees, shall be released from liability for all claims asserted against them under the Child Victim's Act, including claims filed in the bankruptcy proceeding, as more fully set forth in the Plan of Reorganization" (emphasis added).

In accordance with the Settlement Term Sheet, the Plan provides for the funding of the Settlement Trust in the amount of \$77.425 million (approximately \$61.968 million from Non-Debtor Catholic Entities and \$15.457 million from Settling Insurers), and for distributions from the Settlement Trust in accordance with the Settlement Trust Distribution Procedures (to be proposed by the Creditors Committee) to be made in full satisfaction of Survivor Claims against the Debtor and the Non-Debtor Catholic Entities. Section 6.5 of the Plan prohibits the Settlement Trust Distribution Procedures from "impos[ing] any costs, directly or indirectly, upon

the Estate or any Protected Party relating to the liquidation and Allowance (or Disallowance) of any Class 3A Claims, or distributions from the Settlement Trust to holders of Class 3A Claims.” Similarly, Sections 7.6 and 7.7 of the Plan require the Settlement Trust to compensate and reimburse the expenses and costs of the Settlement Trustee and the Settlement Arbitrator. In accordance with the Plan, Section 6.1.2 of the Settlement Trust Agreement proposed by the Creditors Committee [D.I. 1364] provides for the payment of expenses of the Settlement Trust from the Settlement Trust Estate.

The Unofficial Committee asserts that paragraph 1 of the Settlement Term Sheet unambiguously required the \$77.425 million contributed to the Settlement Trust to be used solely “to compensate clerical sexual abuse survivors” and not to pay the expenses of administration of the Settlement Trust, because “monies paid to professionals are not being used to ‘compensate clerical sexual abuse survivor claimants’.” (Unoff. Comm. Obj. at 7.) The Unofficial Committee goes on to cite the “practice in this case” of the Debtor paying all professional fees as indicative of the “clear intent of the parties” that the Debtor would pay all administrative expenses of the Settlement Trust. (*Id.*) Notably, none of the declarations of counsel filed by the Unofficial Committee assert under oath that counsel’s subjective understanding of the Settlement Term Sheet was that the Debtor would be responsible for Settlement Trust administrative expenses (but even if they had, such testimony would be inadmissible parol evidence contradicting the unambiguous terms of the Settlement Term Sheet).

There are several problems with the Unofficial Committee’s reading of the Settlement Term Sheet on this point. First and foremost, it does not comport with the unambiguous language of paragraph 2 of the Settlement Term Sheet. Paragraph 1 requires the Debtor “to contribute [\$77.425 million] to a Plan Trust to compensate clerical sexual abuse

survivor-claimants” (emphasis added). Paragraph 2 provides that the release of the Debtor and the Non-Debtor Catholic Entities from Survivor Claims is “in consideration for *this contribution*” (emphasis added)—it does not condition the releases on this contribution “plus” payment of the Settlement Trust’s administrative expenses.

Second, the Unofficial Committee’s assertion that monies paid to professionals are not being used to compensate survivor-claimants proves too much. Taken to its logical conclusion, this reasoning would require the Debtor to pay not only for the Settlement Trust’s administrative expenses, but also for the tens of millions of dollars in contingent fees and expense reimbursements that will be paid to State Court Counsel under the Settlement Trust Distribution Procedures before any distribution is made to survivor-claimants.

Third, the alleged “course of dealing” between the parties is not a course of dealing at all, but rather a requirement of the Bankruptcy Code that the *bankruptcy estate* (not the Debtor as such) bears the costs of estate professionals during the pendency of the chapter 11 case. If anything, the Plan is consistent with this “course of dealing,” insofar as it provides for the “Settlement Trust Estate” (as it is referred to in the Settlement Trust Agreement) to bear the administrative expenses of the Settlement Trust. In this regard, the Plan is consistent with each of its prior iterations (the most recent of which served as the backdrop for the negotiations of the Settlement Term Sheet), which similarly provided for the creation of a post-confirmation trust that would bear the burden of paying administrative expenses from the trust estate. [See D.I. 787, 862, 1054 & 1239.] The Debtor has never proposed or contemplated a chapter 11 plan that would saddle the Reorganized Debtor with continuing expenses relating to Survivor Claims, which would largely defeat the purpose of the Debtor’s chapter 11 filing.

Finally, the Debtor's supposed agreement to bear the costs of the Settlement Trust is inconsistent with other provisions of the Settlement Term Sheet. For instance, why would the Debtor undertake an open-ended funding commitment for a Settlement Trust to which causes of action against Religious Orders and Perpetrators will be assigned, and for which the Debtor has ceded responsibility for nominating the trustee to the Creditors Committee and State Court Counsel? (Sett. Term Sheet ¶¶ 4-5.) The Debtor would not have done that, it did not agree to do that, and the unambiguous language of paragraph 2 of the Settlement Term Sheet providing for global releases in consideration of the \$77.425 million contribution to the Settlement Trust is clear and unambiguous and does not require additional clarification.

For its part, the Creditors Committee (also a signatory to the Settlement Term Sheet) has agreed with the Debtor that the Settlement Trust should bear its own administrative expenses. To ease the financial burden on the Settlement Trust of doing so, and in consideration of the global resolution of open items with the Creditors Committee, the Debtor has agreed to escrow \$50 million of the NDCE Settlement Contribution for the benefit of the Settlement Trust fourteen days post-confirmation (and forty-six days prior to the Settlement Funding Date), which no reading of the Settlement Term Sheet could possibly require. If the Court is inclined to rewrite the Plan to conform with the Unofficial Committee's untenable reading of the Settlement Term Sheet and impose the costs of the Settlement Trust upon the Reorganized Debtor, then the Debtor would have to revert to the *status quo ante* with respect to its global resolution of issues with the Creditors Committee, including funding the NDCE Settlement Contribution on the Settlement Funding Date as originally agreed in the Settlement Term Sheet. The Unofficial Committee cannot have it both ways, and should not be permitted to leverage the Creditors

Committee to obtain more favorable terms than originally agreed upon, then take a free swing at obtaining even better treatment by filing an independent objection to the Plan.

**II. THE DEBTOR'S REFUSAL TO INCLUDE THE NEUBERGER FIRM OR JACOBS & CRUMPLAR, P.A. IN THE PLAN'S EXCULPATION PROVISIONS IS JUSTIFIED AND DOES NOT IMPLICATE THE FIRST AMENDMENT**

In its Plan filed May 23, 2011, the Debtor included an exculpation provision covering, among others, the Creditors Committee and its professionals. (Plan § 16.4 and Exh. A ¶ 59 (definition of "Exculpated Parties".) The Debtor was not required to include this provision in the Plan. See 11 U.S.C. § 1123(a) (mandatory elements of chapter 11 plan). Rather, the provision was an optional "provision not inconsistent with the applicable provisions of th[e Bankruptcy Code]" within the meaning of § 1123(b)(6). See In re PWS Holding Corp., 228 F.3d 224, 246-47 (3d Cir. 2000) (affirming exculpation of fiduciaries and counsel to the fiduciaries in such capacity); In re W.R. Grace & Co., 446 B.R. 96, 133 n.63 (Bankr. D. Del. 2011) (approving exculpation of parties covered by plan's settlement provisions). As the sole plan proponent, the Debtor has the exclusive right to amend the Plan prior to confirmation. 11 U.S.C. § 1127(a).

In the context of settlement discussions with the Creditors Committee regarding open items in connection with the Plan, the Debtor was asked to consider inclusion of State Court Counsel within the definition of "Exculpated Parties," on account of counsel's active involvement in the chapter 11 case (and, more particularly, the negotiation and formulation of the global settlement of Survivor Claims embodied in the Plan). The Debtor considered this request to be highly unusual as to the Neuberger Firm and Jacobs & Crumplar, P.A. (the "NF/JC Group"), given that there are two pending motions fully briefed before the Court where relief is sought in connection with pleadings filed by the NF/JC Group. [See D.I. 476 (Catholic Charities, Inc. Motion to Strike pleadings making defamatory and unsupported allegations

regarding lay employees of Catholic Charities, Inc. and other Non-Debtor Catholic Entities) and D.I. 546 & 554 (frivolous contempt motion against the Debtor, the Bishop, Young Conaway, and individual Young Conaway attorneys, and cross-motion for an award of costs).<sup>7</sup>] *Nevertheless*, the Debtor was willing to consider including the NF/JC Group within the Plan's exculpation provision if the NF/JC Group agreed to withdraw these pleadings as well as a pleading making defamatory and unsupported allegations regarding former Bishop [D.I. 189] (collectively, the "Subject Pleadings"), such withdrawal being with prejudice as to docket item 546 (the Sheehan contempt motion), with the parties to bear their own costs. The NF/JC Group did not agree to do so, so the Debtor did not agree to amend the Plan to include the NF/JC Group in the exculpation provision. The Debtor was not and is not willing to amend the Plan to provide full exculpation of the NF/JC Group if they are going to attempt to preserve any rights with respect to the Subject Pleadings. It being the Debtor's Plan, such amendment (or non-amendment) of the Plan was the Debtor's prerogative. And the Creditors Committee, for its part, did not view the non-inclusion of the NF/JC Group in the exculpation provision as an impediment to settlement with the Debtor on its remaining open issues.

The NF/JC Group now argues that if the Court does not force the Debtor to amend its Plan to include the NF/JC Group among the exculpated parties, the Court will be violating their First Amendment rights. In support of this novel theory, counsel provides fourteen pages of First Amendment headnotes and case cites, all of which presuppose (without explication) that (i) the Debtor seeks "to include . . . a provision in the Plan" (NF/JC Obj. at 9) that requires the NF/JC Group to withdraw the Subject Pleadings at peril of deprivation of the

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<sup>7</sup> The Debtor has requested sanctions against the NF/JC Group under 28 U.S.C. § 1927 in connection with this contempt motion [D.I. 554]. The contempt motion and the Debtor's cross-request for sanctions are fully briefed [D.I. 546, 554 & 565] but have not been scheduled for a hearing. If the NF/JC Group withdraws the Subject Pleadings, then the Debtor will withdraw its cross-motion.

“valuable governmental benefit” (*id.* at 12) of “exculpation protection,” and (ii) that confirmation of the Plan by the Court would constitute a “refus[al] to grant” such protection to the NF/JC Group in “retaliation” for their protected speech (*id.* at 21).

As a threshold matter, the Debtor notes the irony of the NF/JC Group’s pending request for the imposition of civil and criminal sanctions against the Debtor, the Bishop, and Young Conaway in connection with the Debtor’s attempted exercise of its First Amendment right relating to the filing of an *amicus curiae* brief with the Delaware Supreme Court regarding the constitutionality of the Child Victim’s Act (“CVA”).<sup>8</sup> But irony aside, there is simply nothing in the Plan that would require the NF/JC Group to abandon its tactics (whether or not such tactics are protected by the First Amendment, which the Debtor disputes), or which could be construed as “government action” retaliating against the NF/JC Group for any reason. To the contrary, the Debtor was at one time willing to seek inclusion of the NF/JC Group in the permissive exculpation provisions of the Debtor’s own Plan, under certain conditions that were not met.

### **III. THE DEBTOR WOULD SUPPORT INCLUSION OF A PROVISION IN THE CONFIRMATION ORDER GUARANTEEING JOSEPH CURRY HIS JUDGMENT AMOUNT FROM THE SETTLEMENT TRUST**

Paragraph 2 of the Settlement Term Sheet, which was executed by the Unofficial Committee of which Curry is a member [*see* D.I. 1354 (2019 statement of counsel for the Unofficial Committee)], provides that in consideration of the contribution of \$77.425 million to the Settlement Trust, the Debtor and the Non-Debtor Catholic Entities will receive releases of Survivor Claims. Paragraph 7 of the Settlement Term Sheet requires that the Confirmation

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<sup>8</sup> Although the CVA was upheld as constitutional, the Debtor notes that many state legislators have been quoted as saying the CVA had unintended consequences and should be amended in some form.

Order guarantee Survivor John Vai a distribution from the Settlement Trust at least equal to his \$3 million judgment against non-debtor St. Elizabeth Roman Catholic Church. From the outset, and contrary to the suggestions of Curry's counsel in his objection, the Debtor has been supportive of the inclusion of a similar provision in the Confirmation Order for Curry, guaranteeing him a distribution from the Settlement Trust at least equal to the outstanding amount of his judgment against St. Dennis Roman Catholic Church. For reasons the Debtor does not fully comprehend, the Creditors Committee and the Unofficial Committee have not consented to the inclusion of such a provision in the Plan or Confirmation Order for Mr. Curry.

Whatever their reasons, the Debtor has reserved the right under Section 18.3 of the Plan to modify the Plan prior to the Confirmation Hearing in accordance with § 1127(a) of the Bankruptcy Code. The Debtor would consider amendment of the Plan to provide Curry with protections similar to those provided to Vai to be an immaterial modification of the Plan vis-à-vis the other holders of Survivor Claims because, based on the Debtor's understanding of Curry's case in light of the scoring system in the proposed Settlement Trust Distribution Procedures [D.I. 1372] for the valuation of Survivor Claims, Curry is likely to receive a distribution from the Settlement Trust in line with his judgment against St. Dennis.<sup>9</sup>

Accordingly, the Debtor requests that the Court permit this modification in order to resolve Curry's objection and effectuate the language and intention of the Settlement Term Sheet, which was to provide a full release of all Survivor Claims (including Curry's) against the Debtor *and* the Non-Debtor Catholic Entities (including St. Dennis) in consideration of the contribution of \$77.425 million to the Settlement Trust.

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<sup>9</sup> Indeed, the Debtor suspects that Curry's share of the Settlement Trust even *without* taking into account anticipated future recoveries from Religious Orders (which recoveries are to be shared by all beneficiaries of the Settlement Trust, by agreement among the Survivor Claimants) will provide him a recovery at or near his judgment amount.



**IV. EVEN IF THE CONFIRMATION ORDER DOES NOT GUARANTEE CURRY HIS JUDGMENT AMOUNT FROM THE SETTLEMENT TRUST, CHANNELING OF CURRY'S CLAIM AGAINST ST. DENNIS ROMAN CATHOLIC CHURCH IS NECESSARY AND APPROPRIATE UNDER THE CIRCUMSTANCES**

Curry now concedes that non-consensual third-party releases may be permitted in the Third Circuit if justified on the facts and arguments presented. (Curry Obj. at 6.) Curry also acknowledges the “flexible analysis” used by courts in this district, and implicitly endorsed by the Third Circuit, when evaluating the merits of a particular proposed release. (Id. at 8.); see Gillman v. Continental Airlines (In re Continental Airlines), 203 F.3d 203 (3d Cir. 2000); In re Exide Techs., 303 B.R. 48, 72 (Bankr. D. Del. 2003) (Carey, J.). However, Curry argues that the factors identified by the courts for evaluating third-party releases do not support approval of the release of Curry’s claim against St. Dennis on the facts of this case.

The Debtor disagrees with Curry’s analysis, particularly insofar as he asserts that (i) the lack of a release for (and even the potential dissolution of) St. Dennis would not affect the Debtor’s reorganization and (ii) St. Dennis is “contributing no money or effort” to the reorganization. (Curry Obj. at 8.) On the former point, the Settlement Term Sheet upon which the Plan is premised provides for the settlement of *all* Survivor Claims against the Debtor and Non-Debtor Catholic Entities in exchange for a single contribution of \$77.425 million to the Settlement Trust. Consistent with the Settlement Term Sheet, the Plan provides that the payment of the NDCE Settlement Contribution is conditioned expressly upon the treatment of all Non-Debtor Catholic Entities (including St. Dennis) as “Protected Parties” protected by the Plan’s channeling injunction. (Plan § 5.1(a).) The reason for this is simple: the purpose of the Non-Debtor Catholic Entities in pledging their assets to the Settlement Plan (including a great number of entities, such as Catholic Diocese Foundation and Catholic Cemeteries, Inc., who have absolutely no exposure to Survivor Claims) was to protect parishes such as St. Dennis from

dismemberment and destruction at the hands of judgment creditors. To the extent there is any doubt as to the importance of protecting *all* Parishes within the Diocese, the Debtor will make a requisite evidentiary showing at the Confirmation Hearing.

As to St. Dennis's contribution to the reorganization, as this Court is aware, St. Dennis is a co-insured with the Debtor under a shared insurance policy covering Curry's claim. In connection with the Plan, St. Dennis is consenting to the Debtor's sale of this insurance (including St. Dennis's interest in the insurance), and contribution of the proceeds to the Settlement Trust. (Plan § 5.1(a).) Absent protection by the Plan's channeling injunction, the Debtor's sale of the shared insurance applicable to Curry's claim would leave St. Dennis worse off than it was before confirmation of the Plan. Additionally, and despite Curry's attempts to paint St. Dennis as a "non-contributing" parish, there are tens of millions of dollars being contributed to the Settlement Trust by entities having no exposure to Survivor Claims, on behalf of entities such as St. Dennis. It would elevate form over substance to overlook this and to focus on St. Dennis's lack of a specific cash contribution to the Settlement Trust. Again, to the extent the fairness of the consideration being provided in exchange for a global release of Survivor Claims (i.e., \$77.425 million) is seriously disputed, the Debtor will make the requisite evidentiary showing at the Confirmation Hearing of the fairness of the proposed release of St. Dennis.

The Debtor reserves the right to supplement its response to Curry's objection at or prior to the Confirmation Hearing, to the extent necessary in the event his objection is not resolved by amendment to the Plan as suggested above. The Debtor submits that, under the circumstances of this extraordinary case, and given the overwhelming acceptance of the Plan by

Curry's Class (150 of 151 voting), and the fairness of the consideration being provided by and on behalf of St. Dennis to the Settlement Trust, Curry's objection should be overruled.

**CONCLUSION**

WHEREFORE, the Debtor respectfully requests that the Court enter an order overruling any unresolved objections, confirming the Plan as a Settlement Plan, and awarding the Debtor such other and further relief as is just and proper.

Dated: July 6, 2011  
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

*/s/ Patrick A. Jackson* \_\_\_\_\_

James L. Patton, Jr. (No. 2202)

Anthony G. Flynn (No. 74)

Robert S. Brady (No. 2847)

Maris J. Finnegan (No. 5294)

Patrick A. Jackson (No. 4976)

Justin H. Rucki (No. 5304)

The Brandywine Building

1000 West Street, 17<sup>th</sup> Floor

Wilmington, Delaware 19801

(302) 571-6600

*Counsel to the Debtor*

**EXHIBIT A**

**Settlement Term Sheet dated February 2, 2011,  
by and among the Debtor, the Creditors Committee and State Court Counsel**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)	
	)	Chapter 11
CATHOLIC DIOCESE OF WILMINGTON,	)	
INC., a Delaware Corporation,	)	Case No. 09-13560 (CSS)
	)	
Debtor.	)	

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**SETTLEMENT TERM SHEET DATED FEBRUARY 2, 2011**

1. Debtor agrees to contribute Seventy-Seven Million Four Hundred Twenty-Five Thousand Dollars (\$77,425,000.00) to a Plan Trust to compensate clerical sexual abuse survivor-claimants. These funds shall be paid within ninety (90) days of the date of this Term Sheet or within sixty (60) days of Plan Confirmation (unless the properties owned by the Debtor to be contributed have been sold prior to that sixty day period), whichever is later

2. The Official Committee of Unsecured Creditors and the Unofficial Committee of Abuse Survivors agree that, in consideration of this contribution, the Debtor, its affiliates, including parishes, and their officers and employees, shall be released from liability for all claims asserted against them under the Child Victim’s Act, including claims filed in the bankruptcy proceeding, as more fully set forth in the Plan of Reorganization.

3. The Trust shall be constructed so it may receive future payments from the Catholic Orders and their schools as those cases are resolved.

4. The Trustee shall be nominated by State Court counsel and the Official Committee of Unsecured Creditors.

5. The Special Arbitrator for the division of the Trust will be created within the Plan and shall be nominated by the Official Committee of Unsecured Creditors and state counsel.

6. The Debtor shall assign to the Trust, or its designee, its rights with respect to any claims it might have against all other defendants.

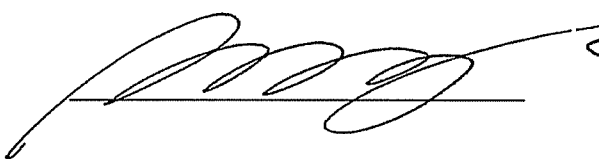
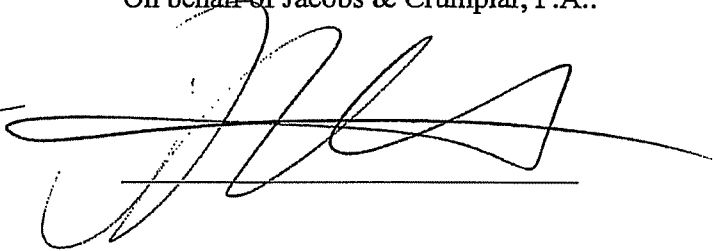
7. The Plan Confirmation Order shall provide that survivor John Vai shall receive from the Trust a gross distribution not less than Three Million Dollars (\$3,000,000.00), from the Trust funds allocated to The Neuberger Firm, subject to his obligations under his contract with state court counsel.

8. The Debtor shall not object to the motion of Thomas Shelton seeking enlargement of the bar date to file a late proof of claim.

9. The Debtor and The Official Committee will use best efforts to minimize Estate professional fees going forward from the date of this Term Sheet.

Dated: February 2, 2011  
On behalf of the Debtor:

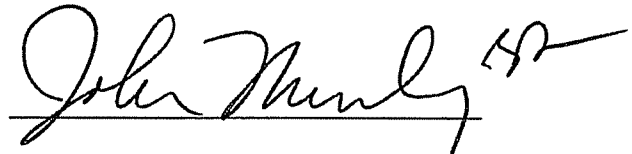
On behalf of Jacobs & Crumplar, P.A.:

On behalf of The Neuberger Law Firm, P.A.

On behalf of Manly & Stewart:

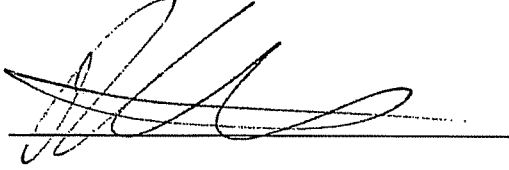




On behalf of Dalton & Associates, P.A.:

On behalf of Jeff Anderson & Associates, P.A. and Conaty, Curran & Sisk:





**EXHIBIT B**

**Settlement Term Sheet Dated June 21, 2011,  
by and among the Debtor and the Lay Employees Committee**

**AGREED TERMS OF SETTLEMENT REGARDING LAY PENSION CLAIMS  
AND LAY PENSION PLAN REAFFIRMATION AGREEMENT**

This term sheet (the "Term Sheet") dated June 21, 2011, sets forth the agreement of Catholic Diocese of Wilmington (the "Debtor") and the Official Committee of Lay Employees (the "LEC" and, together with the Debtor, the "Parties") regarding the LEC's objection to confirmation of the Debtor's Second Amended Chapter 11 Plan of Reorganization (the "Chapter 11 Plan"). Capitalized terms not otherwise defined in this Term Sheet have the meanings ascribed to them in the Chapter 11 Plan. The terms of the settlement set forth herein are subject to final documentation by the parties and shall be memorialized in the Chapter 11 Plan and/or the Lay Pension Plan Reaffirmation Agreement, as applicable, subject to approval by the Bankruptcy Court.

**I. Treatment of Class 3B Claims in a Settlement Plan.** If the Chapter 11 Plan is confirmed as a Settlement Plan, then in addition to the treatment of Class 3B Claims currently set forth in Section 4.4(a) of the Chapter 11 Plan,<sup>1</sup> the Lay Pension Plan Trust shall receive a fully-secured, unsubordinated promissory note in the amount of fifteen million dollars (\$15,000,000) executed by the Reorganized Debtor (the "Default Note"). The Default Note shall be payable, without interest, upon demand in the event the Lay Pension Plan Trust has insufficient assets to make benefit payments as and when due under the Lay Pension Plan.<sup>2</sup> Any such demand shall be limited to the estimated amount of benefits payable under the Lay Pension Plan for the twelve (12)-month period immediately following such demand. The Default Note shall be canceled and returned to the Reorganized Debtor upon the Lay Pension Plan Trust's receipt of a written report from an independent actuary that the Lay Pension Plan is fully funded on a termination basis. DSD

**II. Terms of Lay Pension Plan Reaffirmation Agreement in a Settlement Plan.** If the Chapter 11 Plan is confirmed as a Settlement Plan, then the Lay Pension Plan Reaffirmation Agreement shall contain the following terms, which shall supersede the terms set forth in Section 17.5(a)(1) of the Chapter 11 Plan.

**A. "Hard Freeze" of Benefits under Lay Pension Plan**

1. No further benefits under the Lay Pension Plan shall accrue as of December 31, 2011 (the "Freeze Date"), and salary increases following the Freeze Date shall not be considered for purposes of calculating the benefit payable under the Lay Pension Plan.

2. Participants in the Lay Pension Plan who have accrued, but unvested benefits as of the Freeze Date will be permitted to vest upon the satisfaction of the ordinary conditions for vesting.

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<sup>1</sup> Section 4.4(a) provides that, on the Effective Date of the Chapter 11 Plan, \$5 million and the Lay Pension Fund (valued at approximately \$4.9 million) shall be contributed to the Lay Pension Plan Trust, increasing the total assets of the Lay Pension Plan Trust to approximately \$14.8 million.

<sup>2</sup> All references to the "Lay Pension Plan" in this Term Sheet refer to "the Lay Pension Plan, as modified by the Lay Pension Plan Reaffirmation Agreement."



3. The Reorganized Debtor's obligation to provide benefits under the Lay Pension Plan shall not be limited to the amount of benefits that are funded.

**B. Funding of the Lay Pension Plan**

1. The Reorganized Debtor shall fully fund the Lay Pension Plan on an actuarial basis by June 30, 2060.

2. No later than December 31, 2011, the Reorganized Debtor shall contribute to the Lay Pension Plan Trust additional cash in the amount of five million dollars (\$5,000,000).

3. No later than June 30, 2013, the Reorganized Debtor shall contribute to the Lay Pension Plan Trust additional cash in an amount not less than two million dollars (\$2,000,000).

4. No later than June 30, 2014, the Reorganized Debtor shall contribute to the Lay Pension Plan Trust additional cash in an amount not less than two million, one-hundred thousand dollars (\$2,100,000).

5. No later than June 30, 2015, the Reorganized Debtor shall contribute to the Lay Pension Plan Trust additional cash in an amount not less than two million, two-hundred thousand dollars (\$2,200,000).

6. The Reorganized Debtor shall contribute to the Lay Pension Plan Trust cash proceeds from a capital campaign to be conducted by the Diocese no later than December 31, 2015, in the amount of (i) five million dollars (\$5,000,000) no later than December 31, 2016, and (ii) an additional five million dollars (\$5,000,000) no later than December 31, 2017.

7. For fiscal years 2016 and later, the term "Baseline Contribution" shall refer to two million, two-hundred thousand dollars (\$2,200,000) plus 2.5% for each fiscal year after 2016. Beginning in fiscal year 2016,<sup>3</sup> the Reorganized Debtor shall make annual contributions to the Lay Pension Plan Trust equal to the *lesser* of (i) the Baseline Contribution and (ii) the amount recommended by the Lay Pension Plan Advisory Committee based on an amortization schedule that assumes full funding of the Lay Pension Plan on an actuarial basis as of June 30, 2060, which schedule shall be subject to annual adjustment based on actual experience.

8. The Reorganized Debtor shall use reasonable best efforts to conduct additional fundraising to address any future shortfalls in the Lay Pension Plan Trust.

**C. Administrative Provisions**

1. At all times, all assets of the Lay Pension Plan will be held in the Lay Pension Plan Trust. The trustee of the Lay Pension Plan Trust shall be the trustee of the Lay Pension Plan (in such capacity, the "Trustee") and shall perform all responsibilities delegated

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<sup>3</sup> Fiscal year 2016 commences on July 1, 2015 and ends June 30, 2016.

pursuant to, and have all such powers enumerated under, the Lay Pension Plan Reaffirmation Agreement. The Trustee shall hold the Default Note and shall have standing to foreclose upon collateral securing such note.

2. All Lay Pension Plan participants shall be intended third-party beneficiaries of the Lay Pension Plan Reaffirmation Agreement.

3. Any surplus in the Lay Pension Plan Trust upon the payment of all benefits to participants in the Lay Pension Plan shall revert to the Reorganized Debtor.

4. A Lay Pension Plan Advisory Committee will be constituted and will always include at least three (3) Beneficiaries of the Lay Pension Plan. The Lay Pension Plan Advisory Committee shall perform all responsibilities delegated pursuant to, and have all such powers enumerated under, the Lay Pension Plan Reaffirmation Agreement.

5. From and after approval of the Lay Pension Plan Reaffirmation Agreement, no amendment will be made to the Lay Pension Plan, the Lay Pension Plan Trust or any other document governing the operation or administration of the Lay Pension Plan that would reduce the rights of Participants or the obligations of the Reorganized Debtor under the Lay Pension Plan.

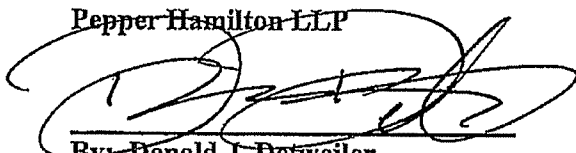
### III. Additional Agreements.

A. The Parties will use best efforts to minimize Estate professional fees going forward from the date of this Term Sheet.

B. The LEC agrees that, if the Chapter 11 Plan is confirmed as a Settlement Plan, then effective on the Effective Date, the Lay Pension Litigation shall be dismissed, with prejudice.

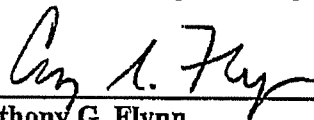
C. This Term Sheet may be executed electronically (including via facsimile or PDF) and in counterparts, each of which shall be deemed an original document and all such counterparts, together, shall constitute a single document.

Pepper Hamilton LLP



By: Donald J. Detweiler  
Counsel to the Official Committee  
of Lay Employees

Young Conaway Stargatt & Taylor, LLP



By: Anthony G. Flynn  
Counsel to Catholic Diocese of Wilmington, Inc.

**EXHIBIT C**

**Response and/or Proposed Resolution of Certain Objections/Comments**

Charles Wiggins [D.I. 1379]	Page	Response
<p>The Plan should incorporate the Court's prior ruling as to the production of Wiggins' personnel file [D.I. 275].</p>	<p>4</p>	<p>To the extent the protections for Wiggins' personnel file granted by the prior protective order would govern in the post-confirmation period, they were expressly subject to "further Order of this Court." The Confirmation Order would be such a further Order of the Court.</p>
<p>Wiggins' personnel file should be excluded from the Non-Monetary Provisions Relating to Documents (Plan <u>Exhibit D</u>) because he is not a "Perpetrator" as defined in the Plan.</p>	<p>5</p>	<p>Whether Wiggins is a "Perpetrator" as defined in the Plan is irrelevant because he is an "Abusive Person" within the scope of <u>Exhibit D's</u> "Document" production obligation, which is to be interpreted independent from the Plan (<u>see</u> Plan § 1.4).</p>
<p>Requiring the Debtor to permit Wiggins' entire personnel file to be publicly disclosed without any prior notice to Wiggins is improper, extraordinarily overbroad and serve's no one's interests.</p>	<p>5-6</p>	<p><u>Exhibit D</u> is a voluntary undertaking by the Debtor in consideration of the global settlement of Survivor Claims to be effectuated pursuant to the Plan. To the extent Wiggins did not previously have notice that the Debtor intended to produce some or all of his personnel file, he is now on notice. The documents in question belong to the Debtor, and it is the Debtor's intention to produce them, subject to <u>Exhibit D's</u> provisions regarding "Stipulated Privileges" and medical records, to the extent applicable. If Wiggins opposes this production, he is free to seek a protective order (or extension of the existing protective order), with which the Debtor would of course comply. For the avoidance of doubt, the Debtor would not support entry of a protective order (or extension of the existing protective order) with respect to Wiggins' personnel file.</p>

<p style="text-align: center;"><b>Premonstratensian Fathers (“TPF”) [D.I. 1380]</b></p>	<p style="text-align: center;"><b>Page</b></p>	<p style="text-align: center;"><b>Response</b></p>
<p>The Plan fails to acknowledge that the extinguishment of Religious Order contribution claims against Protected Parties will not adversely protect the setoff rights of TPF under the Delaware Uniform Contribution Among Tortfeasors Law or equivalent statutory/common law.</p>	<p style="text-align: center;">3</p>	<p>The Plan does not extinguish the alleged contribution claims of TPF against the Debtor or the Protected Parties. Vis-à-vis the Debtor, such claims would be Class 3F Claims, which are unimpaired by the Plan.<sup>1</sup> Vis-à-vis the Protected Parties, the only claims that are subject to the Plan’s channeling injunction are Survivor Claims.</p>
<p>Requests addition of language to the Confirmation Order.</p>	<p style="text-align: center;">4</p>	<p>Debtor is agreeable to the proposed language and it will be included in the proposed Confirmation Order.</p>

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<sup>1</sup> To be clear, the non-impairment of claims under the Plan is distinct from the “allowance” of claims under § 502 of the Bankruptcy Code. The Debtor expressly reserves the right to object to allowance of TPF’s alleged contribution claims.

Creditors Committee [D.I. 1382]	Page	Response
<p>The Creditors Committee is deeply offended by the Plan's non-impairment of Clergy Pension Claims and Other Unsecured Claims because it believes that under the Plan, a person responsible for the sexual abuse of children will enjoy the full benefits of a claim for pensions, sustenance and/or medical coverage.</p>	<p>1</p>	<p>The Creditors Committee appears to confuse "non-impairment" of a class of claims with "allowance" of a given claim within the class. The Debtor does not acknowledge the existence or validity of any "claims" for sustenance or medical coverage (one form of sustenance or charity), because sustenance and charity are based solely in Canon Law and do not give rise to a "right to payment" under secular law. To the extent any sustenance/charity "claims" have been filed that would fall within Class 3F of the Plan (which is unimpaired), the Debtor intends to object to their allowance during the claims reconciliation period post-confirmation. Post-Effective Date, appropriately, the decision whether to provide sustenance or charity to any individual will be made by the Bishop in consultation with his canonical advisors, independent from any provision of the Plan.</p> <p>With respect to Clergy Pension Claims, which are "claims" insofar as they have a secular legal basis in the Debtor's Clergy Pension Plan, the Reorganized Debtor will amend the Clergy Pension Plan to provide that any clergy regarding whom there are admitted, corroborated or otherwise substantiated allegations of sexual abuse of minors (including both of the abusive priests identified in the Disclosure Statement as holding Clergy Pension Claims) shall be ineligible to receive any benefits under the Plan.</p>

Pachulski Stang Ziehl & Jones LLP and Morgan, Lewis & Bockius LLP [D.I. 1384]	Page	Response
Debtor is not current on making outstanding payments that are due and owing to the firms under the interim compensation procedures.	1	At the instance of the Creditors Committee, the Debtor has been operating under a Court-imposed cap on expenditure of its own funds from the Pooled Investment Account (“PIA”); as memorialized in a series of interim orders governing PIA withdrawals. The Debtor has exhausted its \$11.4 million of existing authority under these orders [D.I. 1209], primarily as a result of paying professionals’ fees. The Debtor will make the requisite showing at the Confirmation Hearing regarding feasibility (including, <i>inter alia</i> , the Debtor’s ability to pay or reserve for professionals’ fees on the Effective Date).
Norbertine Fathers [D.I. 1388]	Page	Response
The Plan fails to acknowledge that the extinguishment of Religious Order contribution claims against Protected Parties will not adversely protect the setoff rights of the Norbertine Fathers under the Delaware Uniform Contribution Among Tortfeasors Law or equivalent statutory/common law.	1	The Plan does not extinguish the alleged contribution claims of the Norbertine Fathers against the Debtor or the Protected Parties. <i>Vis-à-vis</i> the Debtor, such claims would be Class 3F Claims, which are unimpaired by the Plan. <sup>2</sup> <i>Vis-à-vis</i> the Protected Parties, the only claims that are subject to the Plan’s channeling injunction are Survivor Claims.

<sup>2</sup> To be clear, the non-impairment of claims under the Plan is distinct from the “allowance” of claims under § 502 of the Bankruptcy Code. The Debtor expressly reserves the right to object to allowance of The Norbertine Fathers’ alleged contribution claims.

<p><b>Certain Underwriters at Lloyd's, London ("<u>Pre-1994 Underwriters</u>") [D.I. 1380]</b></p>	<p><b>Page</b></p>	<p><b>Response</b></p>
<p>Plan's requirement that the Pre-1994 Underwriters assign their Order/Perpetrator Indemnification Claims to the Settlement Trust is unfair, inequitable, outside the scope of the Pre-1994 Underwriters' agreement with the Debtor, and is not permitted under the Bankruptcy Code or applicable state law.</p>	<p>1</p>	<p>While the Debtor does not necessarily agree with the Pre-1994 Underwriters' objection (and reserves all rights with respect thereto), the Debtor is willing to amend the Plan to remove the requirement of Settling Insurers' assignment of Order/Perpetrator Indemnification Claims to the Settlement Trust, which the Debtor would consider an immaterial modification of the Plan. (See Plan § 18.3 (permitting modification of the Plan in accordance with § 1127(a) of the Bankruptcy Code at any time prior to the Confirmation Hearing).) To the extent the Creditors Committee would oppose such an amendment, the Debtor is working with the Creditors Committee and the Pre-1994 Underwriters on a proposed resolution to address the concerns of both.</p>

## General Information

<b>Court</b>	United States Bankruptcy Court for the District of Delaware; United States Bankruptcy Court for the District of Delaware
<b>Docket Number</b>	1:09-bk-13560
<b>Status</b>	CLOSED