

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA**

In re:

Case No.: 15-50792

Diocese of Duluth,

Chapter 11

Debtor-in-Possession.

NOTICE OF HEARING AND MOTION PURSUANT TO SECTIONS 105(a) and 363(f) OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 9019 FOR AN ORDER (1) APPROVING SETTLEMENT AGREEMENT AMONG THE DIOCESE, THE PARISHES, THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, AND FIREMAN'S FUND, (2) APPROVING THE DIOCESE'S SALE OF THE POLICIES BACK TO FIREMAN'S FUND FREE AND CLEAR OF CLAIMS AND INTERESTS, AND (3) ENJOINING ASSERTION OF CLAIMS AGAINST FIREMAN'S FUND

TO: The parties specified in Local Rule 9013-3(a)(2) and the parties identified on the attached service list.

1. The above-captioned debtor moves the Court for the relief requested below and gives notice of a hearing.

2. The Court will hold a hearing on the Motion at **10:30 a.m. on January 4, 2018**, before the Honorable Robert J. Kressel in Courtroom 8 West at the United States Courthouse, 300 South Fourth Street, Minneapolis, Minnesota.

3. Any response to this motion must be filed and served no later than **Friday, December 29, 2017**, which is five days before the time set for the hearing (including Saturdays, Sundays, and holidays). **UNLESS A RESPONSE OPPOSING THIS MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334, Fed. R. Bankr. P. 5005, and Local Rule 1070-1. This is a core proceeding. The petition

commencing the Diocese's chapter 11 case was filed on December 7, 2015. The case is now pending in this Court.

5. This Motion is brought pursuant to sections 105(a) and 363(f) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"). This Motion is filed under Fed. R. Bankr. P. 9019 and Local Rules 2002-1, 9013-1, and 9013-2. The Diocese requests an order: (1) approving a settlement set forth in a settlement agreement among the Diocese, the Parishes (as defined below), the Official Committee of Unsecured Creditors, and Fireman's Fund Insurance Company; (2) authorizing the Diocese to sell the Fireman's Fund Policies back to Fireman's Fund, free and clear of claims and interests of any other person or entity; (3) enjoining all claims against Fireman's Fund under the Fireman's Fund Policies; (4) approving the manner and form of notice of this Motion and the proposed injunction, and (5) granting such other relief as is just and proper.

GENERAL BACKGROUND

6. On December 7, 2015, the Diocese filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Diocese has continued to manage its business as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

7. General information about the Diocese's business and the events leading up to the Petition Date can be found in the Affidavit of the Very Reverend Father James B. Bissonette [Docket No. 8].

BACKGROUND SPECIFIC TO MOTION

8. Over the last several decades, some clergy members in the Diocese have violated, or allegedly violated, the sacred trust placed in them by children, their families, and the Diocese by committing acts of sexual abuse. After the enactment of Minn. Stat. § 541.073, which

temporarily changed the statute of limitations applicable to claims for sexual abuse, numerous persons commenced lawsuits (the “Lawsuits”) against the Diocese and/or various parishes (the “Parishes”) within the Diocese, seeking financial compensation for the effects of such abuse, or alleged abuse.

9. The Diocese filed this chapter 11 bankruptcy case in an effort to compensate, as fairly and equitably as possible, all survivors of such abuse. Approximately 125 persons (the “Claimants”) have filed proofs of claim (“POCs”) in this bankruptcy case alleging that the Diocese is financially responsible for damages resulting from this abuse, or alleged abuse. The Court has appointed an Official Committee of Unsecured Creditors (the “Committee”) to represent the financial interests of the Claimants.

10. During times in which much of the actual and/or alleged sexual abuse occurred, the Diocese purchased, or allegedly purchased, insurance coverage that it believes will provide some of the funds necessary to compensate the Claimants. To determine the existence, extent, and applicability of the available coverage, the Diocese initiated an adversary proceeding (the “Coverage Litigation”) seeking declaratory judgment against various insurance companies, including Fireman’s Fund Insurance Company (“Fireman’s Fund”). [Minn. Bankr. Case No. 16-05012]. As a result of procedural motions, the Coverage Litigation is now pending in the District Court before the Honorable Donovan Frank as Case No. 17-cv-03254.

11. In the Coverage Litigation, the Diocese alleges that Fireman’s Fund sold certificates or policies of insurance (the “Fireman’s Fund Policies”). Fireman’s Fund timely answered the Diocese’s Complaint in the Coverage Litigation and denied the Diocese’s allegation that Fireman’s Fund provided coverage to the Diocese.

12. In the Coverage Litigation, the Diocese further alleges that the Fireman's Fund Policies require Fireman's Fund to pay, on behalf of the Diocese, all sums that the Diocese becomes legally obligated to pay as damages as a result of bodily injury, as long as any part of the injury took place during the policy period. The Diocese also alleges that the Fireman's Fund Policies require Fireman's Fund to pay all defense costs and expenses, including attorney's fees, incurred by the Diocese and the Parishes in the investigation and defense of certain Lawsuits and POCs alleging abuse within the years in which Fireman's Fund allegedly provided insurance coverage.

13. The Diocese maintains that it timely notified Fireman's Fund of the Lawsuits and POCs and that it has fulfilled its duties and conditions under the Fireman's Fund Policies. As a result, the Diocese maintains that it is entitled to all benefits provided by the Alleged Fireman's Fund Insurance Policies.

14. For its part, Fireman's Fund does not dispute that the Diocese and the Parishes provided notice of various Lawsuits and POCs. However, and as set forth in its pleadings and motions filed in the Coverage Litigation, Fireman's Fund disputes that it provided any insurance coverage to the Diocese and the Parishes. In addition, to the extent it could be determined that Fireman's Fund did in fact issue one or more insurance policies to the Diocese, Fireman's Fund has reserved the right to limit or deny coverage to the Diocese and the Parishes on various grounds, including (but not limited to) the application of certain policy defenses and the amount of coverage available to the allegations made by any given Claimant. Further, Fireman's Fund has taken the position that the Diocese and the Parishes do not have any legal liability for the damages asserted by some or all of the Claimants; as a consequence, Fireman's Fund would have no indemnity obligation.

15. To resolve the coverage disputes over the alleged existence and extent of any obligations of Fireman's Fund under the Fireman's Fund Policies, the Diocese, the Parishes, the Committee, and Fireman's Fund have conferred and have entered into a Settlement Agreement, Release, and Certificate Buyback (the "Settlement Agreement"). The Settlement Agreement is attached as **Exhibit A**. Subject in all respects to the provisions of the Settlement Agreement, the material provisions of the Settlement Agreement may be summarized as follows (terms in bold or in underline in the bullet points in this paragraph, below, have the same meaning assigned to them in the Settlement Agreement):

- **Fireman's Fund** will make a payment in the total amount of \$975,000.00 (the "**Settlement Amount**") to settle its alleged obligations to the **Diocese** and the **Parishes** under the **Fireman's Fund Policies** with respect to all **Tort Claims**;
- The **Diocese** and the **Parishes** shall sell to **Fireman's Fund**, free and clear of any interest of any person or entity, any and all interests the **Diocese** and the **Parishes** have or may have in the **Fireman's Fund Policies**;
- The **Diocese** will request that the Court issue an injunction under Bankruptcy Code § 105 to implement the sale to **Fireman's Fund** of the **Fireman's Fund Policies**, free and clear of any interest of any person or entity, and **Fireman's Fund's** obligation to pay the **Settlement Amount** shall be conditioned on such injunctive order being entered and becoming a **Final Order**;
- **Fireman's Fund**, the **Diocese** and the **Parishes** shall exchange global releases for any and all **Tort Claims**, including **Unknown Tort Claims**, as more specifically set forth in the Settlement Agreement;
- The **Diocese** will propose a Plan of Reorganization containing both a Channeling Injunction and a Supplemental Injunction with respect to **Tort Claims**, and **Fireman's Fund** will be entitled to the benefit of such Channeling Injunction and Supplemental Injunction, but the **Committee** will reserve the right to object to any provision on the proposed Plan of Reorganization;
- The **Diocese** and the **Parishes** reserve any rights they have or may have to seek recovery from any other insurer respecting any **Tort Claim** that is not satisfied in full by the payment and policy buy-back contemplated in the Settlement Agreement, and the **Diocese** and the **Parishes** will not be obligated to take any actions that would breach their obligations to any such non-settling insurer; and

- The **Diocese** may use the **Settlement Amount** to pay Court-approved administrative expenses, including professional fees and expenses incurred by the **Diocese** in connection with the Coverage Litigation.

16. The Diocese has negotiated the terms of the Settlement Agreement with Fireman's Fund, the Committee, the Parishes, and counsel for the Tort Claimants.

17. In entering into the Settlement Agreement, the Diocese has considered the probability of success in the Coverage Litigation, the difficulties to be encountered in collection, the complexity of the Coverage Litigation, and the paramount interest of the creditors. The Diocese believes that the Settlement Agreement is in the best interest of the estate and has concluded that it promotes the integrity of the judicial system.

18. Pursuant to Local Rule 9013-2(a), this Motion is verified and is accompanied by a Memorandum, Proposed Order, and proof of service.

19. Pursuant to Local Rule 9013-2(c), the Diocese gives notice that it may, if necessary, call Father James B. Bissonette, the Vicar General of the Diocese, to testify regarding the facts set forth in this Motion.

WHEREFORE, the Diocese respectfully requests that the Court enter an order: (1) approving the Settlement Agreement among the Diocese, the Parishes, the Committee, and Fireman's Fund; (2) authorizing the Diocese to sell the Policies back to Fireman's Fund, free and clear of claims and interests of any other person or entity; (3) enjoining all claims against Fireman's Fund under the Policies; (4) approving the manner and form of notice of this Motion and the proposed injunction, and (5) granting such other relief as is just and proper.

[SIGNATURE PAGE TO FOLLOW]

Dated: December 11, 2017

ELSAESSER ANDERSON, CHTD

/s/ J. Ford Elsaesser
Bruce A. Anderson (admitted *pro hac vice*)
J. Ford Elsaesser (admitted *pro hac vice*)
320 East Neider Ave.
Suite 102
Coeur d'Alene, ID 83815
Phone: 208-263-8517
bruce@eaidaho.com
ford@eaidaho.com

-and-

**GRAY PLANT MOOTY MOOTY &
BENNETT**

/s/ Phillip L. Kunkel
Phillip L. Kunkel (#058981)
Abigail M. McGibbon (#0393263)
101 West St. Germain
Suite 500
St. Cloud, MN 56301
Phone: 320-202-5335
phillip.kunkel@gpmlaw.com
abigail.mcgibbon@gpmlaw.com

Attorneys for the Diocese of Duluth

VERIFICATION

I, Father James B. Bissonette, the Vicar General of the Diocese of Duluth, hereby declare under penalty of perjury, that the facts set forth in the preceding Motion are true and correct, according to the best of my knowledge, information, and belief.

Executed on December 11, 2017 at Duluth, Minnesota.

Signed: J. James B. Bissonette

EXHIBIT A

(Settlement Agreement)

SETTLEMENT AGREEMENT, RELEASE, AND POLICY BUYBACK

This Settlement Agreement, Release, and Policy Buyback (“Agreement”) is hereby made by, between, and among the “**Diocese Parties**” (as defined in Section 1.1.9 below), the **Parish Parties** (as defined in Section 1.1.19), the **Committee** (as defined in Section 1.1.5), and the “**Fireman’s Fund Parties**” (as defined in Section 1.1.14 below).

RECITALS

WHEREAS, numerous individuals have asserted certain “**Tort Claims**” (as defined in Section 1.1.28 below) against the “**Diocese**” (as defined in Section 1.1.7 below) and the **Parish Parties**;

WHEREAS, **Fireman’s Fund** issued, allegedly issued, or may have issued certain insurance policies that insured, or allegedly provided insurance coverage to, the **Diocese Parties** (the “**Fireman’s Fund Policies**”).

WHEREAS, certain disputes between the **Diocese Parties** and the **Fireman’s Fund Parties** have arisen and/or may arise in the future concerning **Fireman’s Fund’s** position regarding the nature and scope of its responsibilities, if any, to provide coverage to the **Diocese Parties** under the **Fireman’s Fund Policies** including in connection with **Tort Claims** (the “Coverage Disputes”), including those disputes at issue in the lawsuit captioned *Diocese of Duluth v. Liberty Mutual Insurance Company, et al.*, Case No. 17-cv-03254-DWF-LIB pending in the United States District Court for the District of Minnesota (the “Coverage Suit”);

WHEREAS, on December 7, 2015 (the “Petition Date”), the **Diocese** filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the “Bankruptcy Code”), in the United States Bankruptcy Court for the District of Minnesota, Case No. 15-50792 (the “Reorganization Case”);

WHEREAS, through this Agreement, the **Diocese Parties** and **Fireman’s Fund**, without any admission of liability or concession of the validity of the positions or arguments advanced by each other, now wish to compromise and resolve fully and finally any and all Coverage Disputes and all other disputes between and among them relating to the **Diocese**, the Coverage Disputes, the Coverage Suit, the **Fireman’s Fund Policies**, and/or the **Tort Claims**;

WHEREAS, through this Agreement, the **Diocese Parties** intend to provide **Fireman’s Fund** and the **Fireman’s Fund Parties** with the broadest possible release and the broadest possible buyback with respect to the **Fireman’s Fund Policies** and to provide that the **Fireman’s Fund Parties** shall have no further obligations now or in the future to the “**Protected Parties**” (as defined in Section 1.1.22 below) and no further obligations now or in the future under or related to the **Fireman’s Fund Policies**;

WHEREAS, as part of the compromise and resolution of the Coverage Disputes, the **Diocese Parties** and **Fireman’s Fund** wish to effect a sale of the **Fireman’s Fund Policies**, pursuant to 11 U.S.C. § 363(b), (f), and (m); and

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual covenants contained in this Agreement, the sufficiency of which is hereby acknowledged, and

intending to be legally bound, subject to the approval of the United States Bankruptcy Court for the District of Minnesota (the “Bankruptcy Court”), the **Diocese Parties** and **Fireman's Fund** hereby agree as follows:

1. DEFINITIONS

1.1 As used in this Agreement, the following terms shall have the meanings set forth below or in the recitals. Capitalized terms not defined below, herein, or in the recitals shall have the meanings given to them in the Bankruptcy Code.

1.1.1 “**Abuse**” means (i) any actual or alleged sexual conduct, misconduct, abuse, or molestation, including actual or alleged “sexual abuse” as that phrase is defined in Minnesota Statutes § 541.073(1); (ii) indecent assault or battery, rape, lascivious behavior, undue familiarity, pedophilia, ephebophilia, or sexually-related physical, psychological, or emotional harm; (iii) contacts or interactions of a sexual nature; or (iv) assault, battery, corporal punishment, or other act of physical, psychological, or emotional abuse, humiliation, intimidation, or misconduct.

1.1.2 “**Bankruptcy Plan Effective Date**” means the date upon which a **Plan** approved by the **Bankruptcy Court** that contains terms and conditions consistent with those required by this **Agreement** becomes effective.

1.1.3 ““**Channeled Claim**” means any **Tort Claim** that is covered or alleged to be covered under the **Fireman's Fund Policies**, or any other **Claim** that is covered or alleged to be covered under the **Fireman's Fund Policies** against any of the **Protected Parties** or the **Fireman's Fund Parties** that, directly or indirectly, arises out of, relates to, or is in connection with any **Tort Claim** and any **Related Insurance Claim**.

1.1.4 “**Claim**” means any past, present or future claim, demand, action, request, cause of action, suit, proceeding or liability of any kind or nature whatsoever, whether at law or equity, known or unknown, actual or alleged, asserted or not asserted, suspected or not suspected, anticipated or unanticipated, accrued or not accrued, fixed or contingent, which has been or may be asserted by or on behalf of any **Person**, whether seeking damages (including compensatory, punitive or exemplary damages) or equitable, mandatory, injunctive, or any other type of relief, including cross-claims, counterclaims, third-party claims, suits, lawsuits, administrative proceedings, notices of liability or potential liability, arbitrations, actions, rights, causes of action or orders, and any other claim within the definition of “claim” in section 101(5) of the Bankruptcy Code.

1.1.5 “**Claim Filing Date**” means May 25, 2016.

1.1.6 “**Committee**” means the Official Committee of Unsecured Creditors appointed in the Reorganization Case, pursuant to the Appointment of Official Committee of Unsecured Creditors in Chapter 11 Case of the Bankruptcy Court entered on December 28, 2015, at Docket No. 30.

1.1.7 “**Diocese**” means the Diocese of Duluth, which is the diocesan corporation formed pursuant to Minnesota Statutes § 315.16 that is the public juridic person of the

Roman Catholic Diocese of Duluth, as now constituted or as it may have been constituted, and the Estate pursuant to section 541 of the Bankruptcy Code.

1.1.8 “**Diocesan Insurance Policy**” means any and all known and unknown contracts, binders, certificates, or policies of insurance, in effect on or before the **Effective Date**, that were issued or allegedly issued to, or for the benefit of, or that otherwise actually, allegedly, or might insure, the **Diocese** or any of its predecessors in interest, successors or assigns, and that actually, allegedly, or might afford coverage with respect to any **Tort Claim**; provided, however, that if an insurance policy that was not issued to the **Diocese** and under which the **Diocese** is not a named insured insures both the **Diocese** and any other **Person** who is not a **Parish Party**, such policy is a “**Diocesan Insurance Policy**” to the extent it insures the **Diocese** or a **Parish Party**, but not to the extent it insures any other **Person** who is not the **Diocese** or a **Parish Party**. **Diocesan Insurance Policy** does not include any insurance policy on which the Archdiocese of St. Paul and Minneapolis is a “named insured” and that also provides coverage to any of the **Diocese Parties** or **Parish Parties**.

1.1.9 “**Diocese Parties**” means collectively the **Diocese** and: (i) each of the past, present, and future parents, subsidiaries, merged companies, divisions, and acquired companies of the **Diocese**; (ii) any and all named insureds, insureds, and additional insureds under the **Fireman’s Fund Policies**; (iii) each of the foregoing **Persons**’ respective past, present, and future parents, subsidiaries, merged companies, divisions and acquired companies; (iv) each of the foregoing **Persons**’ respective predecessors, successors and assigns; and (v) any and all past and present employees, officers, directors, shareholders, principals, teachers, staff, members, boards, administrators, priests, deacons, brothers, sisters, nuns, other clergy or religious, volunteers, agents, attorneys, and representatives of the **Persons** identified in the foregoing subsections (i)-(iv), in their capacity as such. Nothing in the foregoing is intended to suggest that such **Persons** are “employees” or agents of the **Diocese** or subject to its control. An individual who perpetrated an act of **Abuse** that forms the basis of a **Tort Claim** is not an **Diocese Party** with respect to that **Tort Claim**. No religious order other than the **Diocese** itself is a **Diocese Party**.

1.1.10 “**Effective Date**” means the date on which the Agreement is executed by all of the **Parties**.

1.1.11 “**Extra-Contractual Claim**” means any **Claim** against any of the **Fireman’s Fund Parties** based, in whole or in part, on allegations that any of the **Fireman’s Fund Parties** acted in bad faith or in breach of any express or implied duty, obligation or covenant, contractual, statutory or otherwise, including any **Claim** on account of alleged bad faith; failure to act in good faith; violation of any express or implied duty of good faith and fair dealing; violation of any unfair claims practices act or similar statute, regulation, or code; any type of alleged misconduct; or any other act or omission of any of the **Fireman’s Fund Parties** of any type for which the claimant seeks relief other than coverage or benefits under a policy of insurance. **Extra-Contractual Claims** include: (i) any **Claim** that, directly or indirectly, arises out of, relates to, or is in connection with any of the **Fireman’s Fund Parties**’ handling of any **Claim** or any request for insurance coverage, including any request for coverage for any **Claim**, including any **Tort Claim**; (ii) any **Claim** that, directly or indirectly, arises

out of, relates to, or is in connection with any of the **Fireman's Fund Policies** or any contractual duties arising therefrom, including any contractual duty to defend any of the **Protected Parties** against any **Claim**, including any **Tort Claims**; and (iii) the conduct of the **Fireman's Fund Parties** with respect to the negotiation of this Agreement.

1.1.12 "**Final Order**" means an order, judgment, or other decree (including any modification or amendment thereof) that remains in effect and has not been reversed, withdrawn, vacated, or stayed, and as to which the time to appeal or seek review, rehearing, or writ of certiorari has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument or rehearing shall then be pending or as to which, if such an appeal, writ of certiorari, review, reargument, or rehearing has been sought, (a) appeal, certiorari, review, reargument, or rehearing has been denied or dismissed and the time to take any further appeal or petition for certiorari, review, reargument, or rehearing has expired; or (b) such order has been affirmed by the highest court to or in which such order was appealed, reviewed, reargued, or reheard or that granted certiorari and the time to take any further appeal or petition for certiorari, review, reargument, or rehearing has expired; provided, however, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure or any analogous rule under the Bankruptcy Rules may be filed with respect to such order shall not cause such order not to be a "**Final Order**."

1.1.13 "**Fireman's Fund**" means Fireman's Fund Insurance Company.

1.1.14 "**Fireman's Fund Parties**" means **Fireman's Fund**; each of its past, present and future parents, subsidiaries, affiliates, and divisions; each of the foregoing **Person's** respective past, present, and future parents, subsidiaries, affiliates, holding companies, merged companies, related companies, divisions and acquired companies; each of the foregoing **Person's** respective past, present, and future directors, officers, shareholders, employees, partners, principals, agents, attorneys, joint ventures, joint venturers, representatives, and claims handling administrators, and each of the foregoing **Person's** respective predecessors, successors, assignors, and assigns, whether known or unknown, and all **Persons** acting on behalf of, by, through or in concert with them.

1.1.15 "**Fireman's Fund Policies**" means any and all **Diocesan Insurance Policies** that were issued or allegedly issued by a **Fireman's Fund Party**, including, without limitation, the alleged insurance policies identified on Exhibit 1 of this Agreement.

1.1.16 "**Interests**" means all liens, **Claims**, encumbrances, interests, and other rights of any nature, whether at law or in equity, including any rights of contribution, indemnity, defense, subrogation, or similar relief.

1.1.17 "**Parishes**" means all past and present parishes of or in the **Diocese**.

1.1.18 "**Parish Policies**" means any and all known and unknown binders or policies of insurance issued or allegedly issued by the **Fireman's Fund Parties** to the **Parish Parties** or as which any **Parish Party** claims it is a "named insured," "additional insured," or otherwise entitled or allegedly entitled to coverage, in existence or allegedly in existence on or before the **Effective Date**, regardless of whether **Fireman's Fund Party** has acknowledged coverage under such policies. **Parish Policies** does not

include any insurance policy on which the Archdiocese of St. Paul and Minneapolis is a “named insured” and that also provides coverage to any of the **Parish Parties**.

1.1.19 “**Parish Parties**” means the **Parishes** and (i) each of the past, present, and future parents, subsidiaries, merged companies, divisions, and acquired companies of the **Parishes**; (ii) any and all named covered party, covered party and additional covered party under the **Parish Policies**; (iii) each of the foregoing **Persons**’ respective past, present, and future parents, subsidiaries, merged companies, divisions and acquired companies; (iv) each of the foregoing **Persons**’ respective predecessors, successors and assigns; and (v) any and all past and present employees, officers, directors, shareholders, principals, teachers, staff, members, boards, administrators, priests, deacons, brothers, sisters, nuns, other clergy or religious, volunteers, agents, attorneys, and representatives of the **Persons** identified in the foregoing subsections (i)-(iv), in their capacity as such. Nothing in the foregoing is intended to suggest that such **Persons** are “employees” or agents of the **Parishes** or subject to their control. An individual who perpetrated an act of **Abuse** that forms the basis of a **Tort Claim** is not a **Parish Party** with respect to that **Tort Claim**.

1.1.20 “**Parties**” means the **Diocese Parties**, **Parish Parties**, the **Committee** and the **Fireman’s Fund Parties**.

1.1.21 “**Person**” shall have the meaning ascribed in 11 U.S.C. § 101(41) and shall also include the term “Entity” as defined in 11 U.S.C. § 101(15).

1.1.22 “**Protected Parties**” means any of the **Diocese Parties**, the **Reorganized Debtor**, and the **Parish Parties** and, in their capacity as such, their respective predecessors and successors, and all of the foregoing **Person**’s, past, present, and future members, shareholders, trustees, officers, directors, officials, employees, agents, representatives, servants, contractors, consultants, volunteers, attorneys, professionals, insiders, subsidiaries, merged or acquired companies or operations, and their successors and assigns; but an individual who perpetrated an act of **Abuse** that forms the basis of a **Tort Claim** is not a **Protected Party** with respect to that **Tort Claim**. **Protected Party** also includes all of the foregoing **Person**’s past, present, and future members, shareholders, trustees, officers, directors, officials, employees, agents, representatives, servants, contractors, consultants, volunteers, attorneys, professionals, insiders, subsidiaries, merged or acquired companies or operations, and their predecessors, successors, and assigns. No religious order other than the **Diocese** itself is a **Protected Party**.

1.1.23 “**Related Insurance Claim**” means (i) any **Claim** by any **Person** against any **Fireman’s Fund Parties** that, directly or indirectly, arises from, relates to, or is in connection with a **Tort Claim** that is covered or alleged to be covered under the **Fireman’s Fund Policies**, including any such **Claim** for defense, indemnity, contribution, subrogation, or similar relief or any direct action or claim under Minn. Stat. § 60A.08, subd. 8; and (ii) any **Extra-Contractual Claim** that, directly or indirectly, arises out of, relates to, or is in connection with any **Tort Claim** that is covered or alleged to be covered under the **Fireman’s Fund Policies**, including any such **Claim** that, directly or indirectly, arises out of, relates to or is in connection with any of the **Fireman’s Fund Parties**’ handling of any **Tort Claim**..

1.1.24 “**Reorganized Debtor**” means the **Diocese**, on and after the **Bankruptcy Plan Effective Date**.

1.1.25 “**Settlement Amount**” means the sum of \$975,000 (Nine Hundred Seventy-Five Thousand Dollars) to be paid to the **Diocese** by or on behalf of **Fireman’s Fund**.

1.1.26 “**Tort Claim**” means any **Claim** against any of the **Protected Parties** that arises out of, relates to, results from, or is in connection with, in whole or in part, directly or indirectly, **Abuse** that took place in whole or in part prior to the **Bankruptcy Plan Effective Date**, including any such **Claim** that seeks monetary damages or any other relief, under any theory of liability, including vicarious liability; respondeat superior; any fraud-based theory, including fraud in the inducement; any negligence-based or employment-based theory, including negligent hiring, supervision, retention or misrepresentation; any other theory based on misrepresentation, concealment, or unfair practice; contribution; indemnity; public or private nuisance; or any other theory, including any theory based on public policy or any acts or failures to act by any of the **Protected Parties** or any other **Person** for whom any of the **Protected Parties** are allegedly responsible, including any such **Claim** asserted against any of the **Protected Parties** in connection with the Reorganization Case. “**Tort Claim**” includes any **Unknown Tort Claim**.

1.1.27 “**Tort Claimant**” means any **Person** holding a **Tort Claim**, including but not limited to any **Claims** articulated or set forth in proofs of claim filed with the Bankruptcy Court in the Reorganization Case.

1.1.28 “**UCR**” means any **Person** appointed by the Bankruptcy Court or District Court, as applicable, as the unknown claims representative.

1.1.29 “**Unknown Tort Claim**” means any **Tort Claim** that is neither filed, nor deemed filed, by the **Claim Filing Date** and is held by a **Person** who (i) was continuously between the **Claim Filing Date** and the **Bankruptcy Plan Effective Date** under a disability recognized by Minn. Stat. § 541.15, subds. 1, 2 and 3 (or other applicable law suspending the running of the limitation period, if any, other than Minn. Stat. § 541.15, subd. 4); (ii) has a **Tort Claim** that was barred by the statute of limitations as of the **Claim Filing Date** but is no longer barred by the applicable statute of limitations for any reason, including the enactment of legislation that revises previously time-barred **Tort Claims**; or (iii) claims he or she was incapable of knowing of the existence of his or her **Tort Claim** as of the **Claim Filing Date** for any reason, including alleged memory repression or suppression; or as otherwise defined by subsequent order of the Bankruptcy Court.

2. THE REORGANIZATION CASE AND PLAN FOR REORGANIZATION

2.1 Not later than five (5) days after the last **Party** signs this Agreement, the **Diocese** shall file a motion in the Bankruptcy Court (the “Approval Motion”) that seeks the entry of an order in substantially the form attached as Exhibit 2 to this Agreement, approving this Agreement and authorizing the **Parties** to undertake the settlement and the transactions contemplated by this Agreement (the “Approval Order”).

2.1.1 The **Diocese** shall provide written notice of the Approval Motion to all **Tort Claimants** to the extent they are known by the **Diocese**, counsel, if any, for the **Committee**, the **UCR**, all **Persons** who have filed notices of appearance in the Reorganization Case, all **Persons** known or believed by any of the **Diocese Parties** or **Parish Parties** to have provided general or professional liability insurance to the **Diocese Parties** or the **Parish Parties**. The **Diocese** shall serve all **Tort Claimants** identified above at the address shown on their proofs of claim or to their counsel of record or, if no proof of claim was filed, then at the address on the **Diocese's** schedules. The **Diocese** shall also serve the attorney for each **Tort Claimant**. The **Diocese** shall serve known **Tort Claimants** even if not scheduled or the subject of a proof of claim, to the extent known to the **Diocese**. The **Diocese** shall also serve any and all co-defendants and their counsel (to the extent of record) in any pre-petition litigation brought by **Tort Claimants** at the last address shown on any filed appearance or, if such co-defendant is proceeding *pro se*, then to the last address of record for such *pro se* co-defendant. The **Diocese** shall provide notice of the Approval Motion in a form and substance acceptable to **Fireman's Fund**.

2.1.2 The **Fireman's Fund Parties** may, at their own expense, publish notice of the Approval Motion at least once in the Duluth News-Tribune, the St. Paul Pioneer Press, and/or the Star Tribune.

2.3 If any **Person** files an objection to the Approval Motion, the **Diocese** shall file a written response, in a form acceptable to the **Fireman's Fund Parties**, and shall take all reasonable steps to defend against any appeal, petition, motion, or other challenge to the Bankruptcy Court's entry of the Approval Order. The **Fireman's Fund Parties** will cooperate with the **Diocese**, including making all reasonably appropriate submissions.

2.4 The **Diocese** shall file a Plan of Reorganization ("Plan"), including all exhibits, schedules and related documents, which shall be in all respects consistent with this Agreement and shall not deprive the **Fireman's Fund Parties** of any right or benefit under this Agreement or otherwise adversely affect the **Interests** of the **Fireman's Fund Parties** under this Agreement. The **Committee** reserves all rights it has or may have in the future to seek recovery from any other insurers with respect to any claims not satisfied in full by this Settlement Agreement.

2.4.1 The Plan shall include an injunction (the "Channeling Injunction") in substantially the form attached as Schedule A to this Agreement, with only such modifications as are acceptable to the **Fireman's Fund Parties**, the **Diocese**, the **Parishes** and the **Committee**, pursuant to section 105 of the Bankruptcy Code, barring and permanently enjoining all **Persons** who have held or asserted, or may in the future hold or assert Claims from taking any action, directly or indirectly for purposes of asserting, enforcing or attempting to assert or enforce any **Channeled Claim** and channeling such **Channeled Claims** to a trust or trusts established pursuant to the Plan ("Trust"), to which all **Channeled Claims** are channeled as the sole and exclusive source of payment of any such **Channeled Claims**.

2.4.2 The Plan shall also include an injunction (the "Supplemental Injunction") in substantially the form attached as Schedule B to this Agreement, with only such

modifications as are acceptable to the **Fireman's Fund Parties**, the **Diocese**, the **Parishes** and the **Committee**, pursuant to sections 105(a) and 363 of the Bankruptcy Code.

2.5 In the Reorganization Case, the **Diocese** shall seek and obtain entry of an order in form and substance acceptable to the **Fireman's Fund Parties** that: (i) approves the Plan pursuant to section 1129 of the Bankruptcy Code and any other applicable provision of the Bankruptcy Code; (ii) contains the Channeling Injunction; (iii) contains the Supplemental Injunction; (iv) provides that this Agreement is binding on any Trust created in this case, the reorganized **Diocese**, and any successors of the Trust or reorganized **Diocese**; and (v) provides all protections to the **Fireman's Fund Parties** against **Tort Claims** that are afforded to settling insurers under the Plan (the "Plan Confirmation Order").

2.5.1 The Plan and Plan Confirmation Order must be in all respects consistent with this Agreement and contain no provisions that diminish or impair the benefit of this Agreement to **Fireman's Fund Parties**.

2.5.2 In seeking to obtain the Plan Confirmation Order, the **Diocese** must: (i) seek a confirmation hearing on an appropriately timely basis; (ii) urge the Bankruptcy Court to overrule any objections and confirm the Plan; and (iii) take all reasonable steps to defend against any appeal, petition, motion, or other challenge to the Bankruptcy Court's entry of the Plan Confirmation Order.

2.5.3 The form and manner of notice of the hearing to confirm the Plan and the form and manner of notice of the hearing as to the adequacy of the disclosure statement pertaining thereto are subject to advance approval by the **Fireman's Fund Parties**, which approval cannot be unreasonably withheld. The **Diocese** shall publish notice of the Plan, balloting and disclosure statement relating to the Plan, twice in publications, to be agreed to by the **Parties**, and at times and in substance agreed to by the **Parties**.

2.5.4 Prior to entry of the Plan Confirmation Order, the **Diocese** shall oppose any motion to lift any stay pursuant to section 362 of the Bankruptcy Code as to any **Tort Claim**. If the Bankruptcy Court lifts the stay as to any **Tort Claim** prior to the Plan Confirmation Order, the **Diocese** shall defend itself against that **Tort Claim** and comply with the terms of the stay relief order. If the **Diocese** fails to defend that **Tort Claim**, then the **Fireman's Fund Parties** shall have the right, but not the duty, to defend and/or indemnify the **Diocese** against that **Tort Claim** and any reasonable costs necessarily incurred by the **Fireman's Fund Parties** in defending and/or indemnifying the **Diocese** shall be reimbursed by the **Diocese**. In such event, the **Diocese** will cooperate with the **Fireman's Fund Parties** in the defense and/or indemnification of such **Tort Claim**.

2.6 The **Diocese** agrees that the Plan and any Trust shall provide that the assets in the Trust shall be used solely for payment of indemnity and expenses relating to reimbursing the United States government for reimbursement obligations for any payments ("Conditional Payments") made pursuant to Section 1395y(b)(2)(B) of the Medicare Secondary Payer Act, codified at 42 U.S.C. § 1395y, and the regulations promulgated thereunder, found at 42 C.F.R. § 4.11.1 *et seq.* ("MSPA") applicable to any **Tort Claimant** who claims he or she is eligible to receive, is receiving, or has received Medicare benefits ("Medicare Beneficiary")

and, after satisfaction thereof, to such Medicare Beneficiaries and **Tort Claimants**. Except for the payment of the **Settlement Amount**, the **Fireman's Fund Parties** shall not be obligated to make any other payments, including any payments to the Trust. The Committee reserves all rights it has or may have to object to any provision in the Plan, the Trust, the Plan Confirmation Order, or any other document or order purporting to transfer to the Trust the obligations of any **Person** to repay or reimburse the United States Government or any agency or instrumentality thereof.

2.7 The **Diocese Parties** will undertake all reasonable actions and cooperate with the **Fireman's Fund Parties** in connection with their reinsurers and/or retrocessionaires.

2.8 The **Parties** shall cease all litigation activities against each other in the Coverage Suits; provided, however, that each Party may take whatever steps that, in its sole judgment, are necessary to defend its interests as long as it remains a party in the Coverage Suits.

2.9 The **Diocese** shall use its reasonable efforts to obtain the dismissal of other **Claims**, if any, against the **Fireman's Fund Parties** by any other insurer in the Coverage Suits. Within five business days after payment of the **Settlement Amount** on behalf of the **Fireman's Fund Parties**, the **Diocese** shall dismiss, with prejudice, all claims it has asserted against the **Fireman's Fund Parties** in the Coverage Suits.

2.10 The **Parties** covenant not to sue each other until (a) the Approval Order has become a **Final Order**, at which time this covenant is superseded by the releases provided in Section 4, or (b) the date on which this Agreement is terminated. Once the Approval Order has become a **Final Order**, and the **Fireman's Fund Parties** have made payment of the **Settlement Amount**, the **Diocese Parties**:

- 2.10.1 will withdraw all outstanding tenders of **Claims** to the **Fireman's Fund Parties** for defense and indemnity;
- 2.10.2 will not tender any **Claims** to the **Fireman's Fund Parties**; and
- 2.10.3 will not request the **Fireman's Fund Parties** to fund any judgments, settlements, or defense costs.

2.11 After the Approval Order has become a **Final Order**, and the **Fireman's Fund Parties** have made payment of the **Settlement Amount**, the **Fireman's Fund Parties** shall have no obligation to pay, handle, object, or otherwise respond to any **Claim**.

3. PAYMENT OF THE SETTLEMENT AMOUNT

3.1 Conditions Precedent. The **Fireman's Fund Parties'** obligations to pay any part of the **Settlement Amount** is conditioned on the **Diocese** obtaining the Approval Order and such Approval Order becoming a **Final Order**.

3.2 In full and final settlement of all responsibilities under and arising out of the **Fireman's Fund Policies** that were issued to the **Diocese** or under which the **Diocese** is a named insured, and in consideration of the sale of the **Fireman's Fund Policies** to **Fireman's Fund** free and clear of all Interests of any **Person**, and the other releases provided herein, **Fireman's Fund** shall pay to the **Diocese** the **Settlement Amount**. Payment shall be made

within thirty (30) days after **Fireman's Fund** receives both written notice from the **Diocese** that the Approval Order is a **Final Order** and directions as to transmission of the payment.

3.3 The **Parties** agree: (a) the **Settlement Amount** is the total amount the **Fireman's Fund Parties** are obligated to pay on account of any and all **Claims** under, arising out of, relating to, or in connection with the **Fireman's Fund Policies** (including **Channeled Claims** and any reimbursement obligations for Conditional Payments under the MSPA); (b) under no circumstance will the **Fireman's Fund Parties** ever be obligated to make any additional payments to or on behalf of anyone in connection with the **Fireman's Fund Policies**, including any payments in connection with amounts allegedly owed under the MSPA or in connection with any **Claims**, including any **Channeled Claims**; (c) under no circumstance will the **Fireman's Fund Parties** ever be obligated to make any additional payments to or on behalf of the **Diocese Parties** or any **Tort Claimants** in connection with the **Fireman's Fund Policies** or the **Parish Policies**, with respect to any **Claims** that, directly or indirectly, arise out of, relate to, or are in connection with any **Tort Claims**, including any **Channeled Claims**; (d) all limits of liability of the **Fireman's Fund Policies**, regardless of how the **Fireman's Fund Policies** identify or describe those limits, including all per person, per occurrence, per claim, "each professional incident," per event, per accident, total, and aggregate limits, shall be deemed fully and properly exhausted. The **Parties** further agree that the **Settlement Amount** also includes the full purchase price of the **Fireman's Fund Policies** and consideration for the releases and other protections afforded by this Agreement, respectively.

3.3.1 The **Parties** agree and represent that (a) the consideration to be provided by the **Fireman's Fund Parties** pursuant to this Agreement (including the **Settlement Amount**) constitute fair and reasonable exchanges for the consideration granted to the **Fireman's Fund Parties** in this Agreement (including the releases set forth below), and (b) the consideration to be provided by the **Diocese Parties** to the **Fireman's Fund Parties** pursuant to this Agreement (including the releases set forth below) constitutes a fair and reasonable exchange for the consideration granted to the **Diocese Parties** in this Agreement (including the **Settlement Amount**). The **Fireman's Fund Parties** are not acting as volunteers in paying the **Settlement Amount**, and the **Fireman's Fund Parties'** payment of the **Settlement Amount** reflects potential liabilities and obligations to the **Diocese Parties** of the amount the **Fireman's Fund Parties** allegedly are obligated to pay on account of any and all **Claims**.

4. RELEASES AND SALE FREE AND CLEAR

4.1 Upon payment by the **Fireman's Fund Parties** of the **Settlement Amount** pursuant to Section 3.2, and with no further action being required:

(a) the **Diocese Parties** shall be deemed to have fully, finally, and completely remised, released, acquitted, and forever discharged the **Fireman's Fund Parties** and any of their reinsurers or retrocessionaires, solely in their capacity as such, from any and all past, present, and future **Claims** that, directly or indirectly, arise out of, relate to, or are in connection with the **Fireman's Fund Policies** or **Tort Claims** that are covered or alleged to be covered under the **Fireman's Fund Policies**, including any **Channeled Claims**, reimbursement obligations for

Conditional Payments under the MSPA, and all **Claims** that, directly or indirectly, arise from, relate to, or are in connection with the Reorganization Case;

(b) each **Parish Party** shall be deemed to have fully, finally, and completely remised, released, acquitted, and forever discharged the **Fireman's Fund Parties** and any of their reinsurers or retrocessionaires, solely in their capacity as such, from any and all past, present, and future **Claims** that, directly or indirectly, arise out of, relate to, or are in connection with any of the **Fireman's Fund Policies** that insure or allegedly insure that **Parish Party** or any **Tort Claims** that are covered or alleged to be covered under any such Policies; and

(c) each **Person** listed in Section 1.1.9 (iii) to (v) above shall be deemed to have hereby fully, finally, and completely remised, released, acquitted, and forever discharged the **Fireman's Fund Parties** to the same extent as the **Diocese Parties, Parish Parties,** or other insured or additional insured with respect to which it has the capacity listed in Section 1.1.9 (iii) to (v) above is releasing the **Fireman's Fund Parties** pursuant to Section 4.1(a) to (b) and then only to the extent of such capacity.

The releases in this Section 4.1 specifically include all future **Claims** that are based in whole or in part on the referenced **Tort Claims** or the referenced **Fireman's Fund Policies**.

4.2 The Committee's agreement to the terms and conditions of this Agreement is not, and shall not be construed to be, a release of any **Claim** any **Tort Claimant** may have or claim to have against any **Person** other than the **Fireman's Fund Parties**. The **Diocese Parties, the Parish Parties,** and the **Committee** reserve all rights to seek recovery from any other insurers with respect to any claims not satisfied in full by this Agreement. Under no circumstances will any of the obligations or rights set forth in this Agreement impact the rights of the **Diocese, the Parishes** or the Trust, as applicable, to seek recovery against any other insurer for insurance proceeds respecting **Tort Claims** not satisfied in full by this Agreement, and if any provision of this Agreement is deemed by any court of competent jurisdiction to eliminate the rights of the **Diocese, the Parishes** or the Trust, as applicable, to recover sums owed by any other insurer(s), the provision of the Agreement at issue will be deemed to be of no force and effect, and will be considered stricken from the Agreement, but the scope and finality of the releases set forth in this Agreement shall not be affected or modified.

4.3 Upon payment by the **Fireman's Fund Parties** of the **Settlement Amount** pursuant to Section 3.2, and with no further action being required, the **Fireman's Fund Parties**:

(a) shall be deemed to have hereby fully, finally, and completely remised, released, acquitted, and forever discharged the **Diocese Parties** from any and all past, present, and future Claims that, directly or indirectly, arise out of, relate to, or are in connection with the **Tort Claims** or the Policies, including any **Channeled Claims**, reimbursement obligations for Conditional Payments under the MSPA, and all **Claims** that, directly or indirectly, arise from, relate to, or are in connection with the Reorganization Case;

(b) shall be deemed to have hereby fully, finally, and completely remised, released, acquitted, and forever discharged each **Parish Party** from any and all past, present, and future Claims that, directly or indirectly, arise out of, relate to, or are in connection with any of the **Fireman's Fund Policies** that insure or allegedly insure that **Parish Party** or any **Tort Claims** that are covered or alleged to be covered under any such **Fireman's Fund Policies**;

(c) hereby fully, finally, and completely remise, release, acquit, and forever discharge each **Person** listed in Section 1.1.9 (iii) to (v) above to the same extent as the **Fireman's Fund Parties** are releasing the **Diocese, Parish Parties**, or other insured or additional insured with respect to which such **Person** has the capacity listed in Section 1.1.9 (iii) to (v) above and then only to the extent of such capacity.

4.4 From and after the first day on which the Approval Order is a **Final Order**, none of the **Diocese Parties** shall assert against any of the **Fireman's Fund Parties** any **Claim** with respect to any matter, conduct, transaction, occurrence, fact, or other circumstance that, directly or indirectly, arises out of, relates to, or is in connection with any of the Policies, any **Channeled Claim**, and/or any other matter released pursuant to Section 4.1 above.

4.5 From and after the first day on which the Approval Order is a **Final Order**, the **Fireman's Fund Parties** hereby buy back the **Fireman's Fund Policies**, free and clear of all **Interests** of all **Persons**, including all **Interests** of the **Diocese Parties**, the **Parish Parties**, any other **Person** claiming coverage by, through, or on behalf of any of the **Diocese Parties**, any other insurer, and any **Tort Claimant**. This sale is pursuant to sections 363(b), (f), and (m) of the Bankruptcy Code. The **Parties** acknowledge and agree, and the Approval Order shall find and conclude, that: (a) the **Fireman's Fund Parties** are good faith purchasers of the **Fireman's Fund Policies** and **Interests** within the meaning of section 363(m) of the Bankruptcy Code; (b) the consideration exchanged constitutes a fair and reasonable settlement of the **Parties'** disputes and of their respective rights and obligations relating to the foregoing Policies and Interests and constitutes reasonably equivalent value; (c) the releases in this Agreement and the policy buyback comply with the Bankruptcy Code and applicable non-bankruptcy laws; (d) upon entry of the Approval Order as a **Final Order**, the **Fireman's Fund Policies** and **Interests** shall be terminated and of no further force and effect; (e) the **Fireman's Fund Parties'** payment of the **Settlement Amount** constitutes the **Fireman's Fund Parties'** full and complete performance of any and all obligations under the foregoing Policies and with respect to the foregoing **Interests**, including any performance owed to the **Diocese Parties**, and exhausts all limits of liability of the foregoing Policies and with respect to the foregoing **Interests**; (f) all **Interests** the **Diocese Parties** may have had, may presently have, or in the future may have in the **Fireman's Fund Policies** are released pursuant to the terms of this Agreement; and (g) the **Diocese Parties** accept the **Settlement Amount** set forth in Section 3.2 in full and complete satisfaction of all the **Fireman's Fund Parties'** past, present, and future obligations, including any obligations to any of the **Diocese Parties** under such **Fireman's Fund Policies** or arising therefrom, as to any and all **Claims** for insurance coverage or policy benefits of any nature whatsoever arising out of or related in any way to such **Fireman's Fund Policies**, whether legal or equitable, known or unknown, suspected or unsuspected, fixed or contingent, and regardless of whether or not such **Claims**

arise from, relate to, or are in connection with the **Channeled Claims**, the Reorganization Case, or otherwise under the **Fireman's Fund Policies**.

4.6 The **Diocese** represents and warrants that all of the releases and other benefits provided in this Agreement by the **Diocese Parties** to the **Fireman's Fund Parties** are at least as favorable as the releases and other benefits that the **Diocese** has provided to any other one of the **Diocese's** insurers in the Reorganization Case. If the **Diocese** enters into any agreement with any other one of its insurers in the Reorganization Case that provides that insurer with releases or other benefits that are more favorable than those contained in this Agreement, then this Agreement shall be deemed to be modified to provide the **Fireman's Fund Parties** with those more favorable releases and/or benefits. However, Section 7.2 shall not be modified. The **Diocese Parties** shall notify the **Fireman's Fund Parties** promptly of the existence of such more favorable releases or benefits.

4.7 Notwithstanding anything in this Agreement, nothing in this Agreement is intended to or shall be construed to apply to or have any effect on the **Fireman's Fund Parties'** right to reinsurance recoveries under any reinsurance treaties, certificates, or contracts that cover losses arising under or in connection with the Policies or any other binder, certificate, or policy of insurance issued by the **Fireman's Fund Parties**.

4.8 Notwithstanding anything in this Agreement, nothing in this Agreement is intended to or shall be construed to release any **Claims** that the **Fireman's Fund Parties** have or might have against any insurer that is not one of the **Fireman's Fund Parties** except that, to the extent such other insurers have agreed or in the future agree to release any **Claims** against the **Fireman's Fund Parties** arising out of or related in any way related to the **Tort Claims**, the **Fireman's Fund Parties** also release such **Claims** against such other insurers to the same extent.

4.9 This Section 4 is not intended to, and shall not be construed to, release, waive, relinquish, or otherwise affect the **Parties'** rights and obligations under this Agreement.

5. TERMINATION OF AGREEMENT

5.1 In the event (i) the Approval Order does not become a **Final Order** of the Bankruptcy Court within one year from the date on which the Agreement is executed by all the **Parties**, or (ii) a Plan is filed or confirmed that is inconsistent with the terms of this Agreement or is otherwise reasonably unacceptable to the **Fireman's Fund Parties**, or (iii) the Reorganization Case is dismissed or converted, then the **Fireman's Fund Parties** may terminate this Agreement upon fifteen (15) days' notice to the **Diocese**, immediately following which this Agreement shall be null and void and of no force or effect.

6. REPRESENTATIONS AND WARRANTIES OF THE PARTIES

6.1 The **Parties** separately represent and warrant as follows:

6.1.1 To the extent it is a corporation, including a non-profit corporation, or other legal entity, each **Party** has the requisite power and authority to enter into this Agreement and to perform the obligations contemplated by this Agreement, subject only to approval of the Bankruptcy Court;

6.1.2 This Agreement has been thoroughly negotiated and analyzed by counsel to the **Parties** and executed and delivered in good faith, pursuant to arm's length negotiations and for value and valuable consideration.

6.2 The **Diocese Parties** represent and warrant that they have not assigned, and will not assign, any **Interests** in the **Fireman's Fund Policies** to any **Person**.

6.3 The **Diocese Parties** represent and warrant that to the best of their knowledge that they are the owners of the **Fireman's Fund Insurance Policies** and that no other **Person** has legal title to the **Fireman's Fund Insurance Policies**.

6.4 The **Diocese Parties** represent and warrant that they have not in any way assisted, and shall not in any way assist, any **Person** in the establishment or pursuit of any **Claim** against the **Fireman's Fund Parties**.

6.5 The **Diocese** represents and warrants that actual notice of the Approval Motion will be sent to all **Tort Claimants**, whose names and addresses are known to the **Diocese** or can be ascertained by the **Diocese**, by service on their counsel of record, or if they are not represented, to the address listed in the Diocese's schedules filed in the Reorganization Case, or as otherwise ordered by the Bankruptcy Court. The **Diocese** further represents and warrants that it will comply with any other requirements imposed by the Bankruptcy Court with respect to the Approval Motion.

6.6 The **Diocese** and the **Fireman's Fund Parties**, respectively, represent and warrant that they have completed a reasonable search for evidence of any policy of insurance issued by the **Fireman's Fund Parties** to the **Diocese** that would afford coverage with respect to any **Tort Claim**. Other than the policies or alleged policies identified in Exhibit 1, no such policies have been identified. Notwithstanding the foregoing, nothing in this Agreement, including the Exhibits hereto, shall be construed as or deemed to be an admission or evidence that any binder, certificate, or policy of insurance was in fact issued and/or affords coverage in connection with any **Tort Claims**.

7. ACTIONS INVOLVING THIRD PARTIES

7.1 For purposes of supporting the releases granted in Section 4 and the extinguishment of any and all rights under the **Fireman's Fund Policies** resulting from the purchase and sale thereof contemplated by this Agreement, the **Diocese Parties** hereby agree as follows:

7.1.1 From and after the first day on which the Approval Order becomes a **Final Order**, if any other insurer of the **Diocese Parties** obtains a judicial determination or binding arbitration award that it is entitled to obtain a sum certain from any of the **Fireman's Fund Parties** as a result of a claim for contribution, subrogation, indemnification, or other similar **Claim** for any of the **Fireman's Fund Parties'** alleged share or equitable share, or to enforce subrogation rights, if any, with respect to the defense and/or indemnity obligation of any of the **Fireman's Fund Parties** for any **Claims** or reimbursement obligations for Conditional Payments released or resolved pursuant to this Agreement, the **Diocese Parties** or the **Parish Parties**, as applicable, shall voluntarily reduce any judgment or **Claim** against, or settlement with, such other insurer(s) to the extent necessary to satisfy such contribution, subrogation, indemnification, or other Claims against the **Fireman's Fund Parties**. To ensure that

such a reduction is accomplished, the **Fireman's Fund Parties** shall be entitled to assert this Section 7 as a defense to any action against them brought by any other insurer for any such portion of the judgment or **Claim** and shall be entitled to request that the court or appropriate tribunal issue such orders as are necessary to effectuate the reduction to protect the **Fireman's Fund Parties** from any liability for the judgment or **Claim**. Moreover, if a non-settling insurer asserts that it has a **Claim** for contribution, indemnity, subrogation, or similar relief against any of the **Fireman's Fund Parties**, such **Claim** may be asserted as a defense against a **Claim** by the **Diocese Parties** or the **Parish Parties**, as applicable, in any coverage litigation (and the **Diocese Parties** or the **Parish Parties**, as applicable, may assert the legal and equitable rights of the **Fireman's Fund Parties** in response thereto); and to the extent such a **Claim** is determined to be valid by the court presiding over such action, the liability of such non-settling insurer to the **Diocese Parties** or the **Parish Parties** shall be reduced dollar for dollar by the amount so determined.

7.1.2 Unless this Agreement is terminated, the **Fireman's Fund Parties** shall not seek reimbursement for any payments they make under this Agreement under theories of contribution, subrogation, indemnification, or similar relief from any other insurer of the **Diocese** unless that other insurer first seeks contribution, subrogation, indemnification, or similar relief from any of the **Fireman's Fund Parties**. Notwithstanding the foregoing, nothing herein shall be construed as prohibiting any of the **Fireman's Fund Parties** from seeking recovery from its reinsurers. The **Diocese** shall use its reasonable best efforts to obtain from all insurers with which it settles agreements similar to those contained in this Section 7; provided, however, that the failure of the **Diocese**, despite its reasonable best efforts, to obtain such an agreement from any insurer with which it settles will not be a basis to terminate this Agreement or excuse the **Fireman's Fund Parties** from performing their respective obligations hereunder, including payment of the **Settlement Amount**.

7.2 From and after the Bankruptcy Plan Effective Date, the **Diocese** and **Parishes** shall defend, indemnify, and hold harmless the **Fireman's Fund Parties** with respect to any and all **Claims** relating to the **Fireman's Fund Policies**, including all **Claims** made by (i) any **Person** claiming to be insured (as a named insured, additional insured, or otherwise) under any of the Policies; (ii) any **Person** who has made, will make, or can make a **Tort Claim** or **Related Insurance Claim**; and (iii) any **Person** who has actually or allegedly acquired or been assigned the right to make a **Claim** under any of the **Fireman's Fund Policies**. This indemnification includes **Claims** made by **Persons** over whom the **Diocese** does not have control, including any other **Person** who asserts **Claims** against or rights to coverage under any of the **Fireman's Fund Policies**. This indemnification does not extend to nor does it include **Claims** that are or may be made against **Fireman's Fund** by other insurers. The **Fireman's Fund Parties** shall have the right to defend any **Claims** identified in this Section 7.2 and shall do so in good faith. The **Fireman's Fund Parties** may undertake the defense of any such **Claim** on receipt of such **Claim**. The **Fireman's Fund Parties** agree to notify the **Diocese** as soon as practicable of any **Claims** identified in this Section 7.2 and of their choice of counsel. The **Diocese** shall reimburse all reasonable and necessary attorneys' fees, expenses, costs, and amounts incurred by the **Fireman's Fund Parties** in defending such **Claims**. The **Fireman's Fund Parties** may settle or otherwise resolve a **Claim** only with the prior consent of the **Diocese Parties**, which consent shall not be unreasonably withheld. The

Fireman's Fund Parties' defense, settlement, or other resolution of any **Claims** pursuant to this Section 7.2 shall not diminish the **Diocese's** obligations to indemnify the **Fireman's Fund Parties** for such **Claims**, as set forth in this Section 7.2.

7.3 If any Person attempts to prosecute a **Channeled Claim** against any of the **Fireman's Fund Parties** before the Approval Order becomes a **Final Order**, or, alternatively, this Agreement is terminated under Section 5, then promptly following notice to do so from the **Fireman's Fund Parties** against whom the **Claim** is asserted, the **Diocese** will file a motion and supporting papers to obtain an order from the Bankruptcy Court, pursuant to Bankruptcy Code §§ 362 and 105(a), protecting the **Fireman Fund's Parties** from any such **Claims** until the Approval Order has become a **Final Order**, or, alternatively, this Agreement is terminated under Section 5.

8. MISCELLANEOUS

8.1 If any action or proceeding of any type whatsoever is commenced or prosecuted by any **Person** not a **Party** to this Agreement to invalidate, interpret, or prevent the validation or enforcement, or carrying out, of all or any of the provisions of this Agreement, the **Parties** mutually agree to cooperate fully in opposing such action or proceeding.

8.2 The **Parties** will take such steps and execute any documents as may be reasonably necessary or proper to effectuate the purpose and intent of this Agreement and to preserve its validity and enforceability.

8.3 The **Parties** shall cooperate with each other in connection with the Approval Motion, the Approval Order, the Plan, the Plan Confirmation Order, and the Reorganization Case. Such cooperation shall include consulting with each other upon reasonable request concerning the status of proceedings and providing each other with copies of reasonably requested pleadings, notices, proposed orders, and other documents relating to such proceedings as soon as reasonably practicable prior to any submission thereof. The **Committee** reserves the right to object to any provision of the Plan and the Plan Confirmation Order.

8.3.1 If the Bankruptcy Court issues an order denying the request for the Channeling Injunction provided in the Plan, denying confirmation of the Plan, or dismissing the Reorganization Case or if the Bankruptcy Court issues an order on the Approval Motion that refuses to approve the Agreement with respect to **Fireman's Fund Parties**, the **Diocese** shall exhaust all rights to appeal with respect to such order and, if no appeal of right is allowed, the **Diocese** shall seek interlocutory review of each such order by all possible means, including by invoking all exceptions to the final order requirement for appellate review, all certifications for immediate appeal, and all available writs, each as provided by the federal rules, U.S. Code, or decisional authority. Notwithstanding the foregoing, the **Diocese** has no obligation seek a writ of certiorari from the United States Supreme Court.

8.4 Notwithstanding any language to the contrary in this Agreement, under no circumstance will any of the **Diocese Parties** or the **Parish Parties** be obligated to take any action that violates any obligation or duty owed by any of the **Diocese Parties** or the **Parish**

Parties to any other insurer, and if a court of competent jurisdiction determines that a term or condition in this Agreement does violate any obligation or duty owed by any of the **Diocese Parties** or the **Parish Parties** to any other insurer, the **Diocese Parties** or the **Parish Parties** shall be relieved of such term or condition, but the scope and finality of the releases set forth in this Agreement shall not be affected or modified.

8.5 This Agreement constitutes a single integrated written contract that expresses the entire agreement and understanding between and among the **Parties**.

8.6 This Agreement may be modified only by a written amendment signed by the **Parties**, and no waiver of any provision of this Agreement or of a breach thereof shall be effective unless expressed in a writing signed by the waiving **Party**. The waiver by any **Party** of any of the provisions of this Agreement or of the breach thereof shall not operate or be construed as a waiver of any other provision or breach.

8.7 By entering into this Agreement, none of the **Parties** has waived or shall be deemed to have waived any rights, obligations, or positions they have asserted or may in the future assert in connection with any matter outside the scope of this Agreement. No part of this Agreement, its negotiation, or its performance may be used in any manner in any action, suit, or proceeding as evidence of the rights, duties, or obligations of the **Parties** with respect to matters outside the scope of this Agreement. All actions taken and statements made by the **Parties** or by their representatives, relating to this Agreement or participation in this Agreement, including its development and implementation, shall be without prejudice or value as precedent and shall not be used as a standard by which other matters may be judged.

8.8 This Agreement represents a compromise of disputed **Claims** and shall not be deemed an admission or concession regarding liability, culpability, wrongdoing, or insurance coverage. All related discussions, negotiations, and all prior drafts of this Agreement shall be deemed to fall within the protection afforded to compromises and to offers to compromise by Rule 408 of the Federal Rules of Evidence and any parallel state law provisions. Any evidence of the negotiations or discussions associated with this Agreement shall be inadmissible in any action or proceeding for purposes of establishing any rights, duties, or obligations of the **Parties**, except that they shall be admissible to the extent they would have otherwise been admissible, absent this Section 8.7, in (i) an action or proceeding to enforce the terms of this Agreement, including any use as set forth in Section 7.1.1 or (ii) any possible action or proceeding between any of the **Fireman's Fund Parties** and any of their reinsurers. This Agreement shall not be used as evidence or in any other manner, in any court or dispute resolution proceeding, to create, prove, or interpret the **Fireman's Fund Parties'** obligations under any of the Policies or any other binder, certificate, or policy of insurance issued by the **Fireman's Fund Parties**, with respect to any **Claims** against any of the **Fireman's Fund Parties**.

8.9 None of the **Parties** shall make any public statements or disclosures (i) regarding each other's rationale or motivation for negotiating or entering into this Agreement, or (ii) asserting or implying in any way that the **Parties** acted improperly or in violation of any duty or obligation, express or implied, in connection with any matter arising out of, relating to, or in connection with the Policies or any other binder, certificate, or policy of insurance issued or allegedly issued by the **Fireman's Fund Parties**, including handling of or involvement in connection with the **Tort Claims** or the resolution of the **Tort Claims**.

8.10 Neither this Agreement nor the rights and obligations set forth in this Agreement shall be assigned without the prior written consent of the other **Parties**.

8.11 This Agreement was jointly drafted by the **Parties** and the language of all parts of this Agreement shall in all cases be construed as a whole according to its meaning and not strictly for or against any of the **Parties**.

8.12 Section titles and/or headings contained in this Agreement are included only for ease of reference and shall have no substantive effect.

8.13 All notices, demands, or other communication to be provided pursuant to this Agreement shall be in writing and sent by e-mail and Federal Express or other overnight delivery service, costs prepaid, to the **Parties** at the addresses set forth below, or to such other person or address as any of them may designate in writing from time to time:

If to the **Diocese Parties**:

Rev. James Bissonette
Diocese of Duluth
2830 East 4th Street
Duluth, MN 55812

and

With a copy to:

Ford Elsaesser
Bruce A. Anderson
Elsaesser Anderson, Chtd.
320 East Neider Avenue, Suite 102
Coeur d'Alene, ID 83815
Email: ford@eaidaho.com
brucea@eaidaho.com

and

Phillip Kunkel
Gray Plant Mooty
500 IDS Center
80 South Eighth Street
Minneapolis, MN USA 55402
Email: Phillip.Kunkel@gpmlaw.com

If to the **Parish Parties**:

John D. Kelly
1000 U.S. Bank Place
130 W Superior Street
Duluth, MN 55802-2094

Email: jdk@hanftlaw.com

If to **Fireman's Fund**:

Deborah Sons
San Francisco Reinsurance (ARM US) –
Allianz Resolution Management (ARM)
33 West Monroe Street – 12th Floor
Chicago, IL 60603
Email: Deborah.sons@ffic.com

With copies to:

Charles E. Jones
Moss & Barnett
150 South Fifth Street, Suite 1200
Minneapolis, MN 55402
Email: charles.jones@lawmoss.com

Mark D. Plevin
Crowell & Moring LLP
Three Embarcadero Center, 26th Floor
San Francisco, CA 94111
Email: mplevin@crowell.com

If to the **Committee**:

Robert T. Kugler
Stinson Leonard Street
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402
Email: Robert.kugler@stinson.com

8.14 This Agreement may be executed in multiple counterparts, all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by facsimile, e-mail, or other electronic image, which facsimile, e-mail, or other electronic image counterparts shall be deemed to be originals. This Agreement may be electronically signed. Any such electronic signatures are the same as handwritten signatures for the purposes of validity, enforceability and admissibility.

8.15 Nothing contained in this Agreement shall be deemed or construed to constitute (i) an admission by any of the **Fireman's Fund Parties** that the **Diocese Parties**, the **Parish Parties**, or any other **Person** was or is entitled to any insurance coverage under the **Fireman's Fund Policies** or any other binder, certificate, or policy of insurance issued by the **Fireman's Fund Parties** or as to the validity of any of the positions that have been or could have been asserted by the **Diocese Parties** or the **Parish Parties**, (ii) an admission by the **Diocese Parties** or the **Parish Parties**, as to the validity of any of the positions or defenses to coverage that have been or could have been asserted by the **Fireman's Fund Parties** or any

Claims that have been or could have been asserted by the **Diocese Parties** or the **Parish Parties**, against the **Fireman's Fund Parties**, or (iii) an admission by the **Diocese Parties**, the **Parish Parties**, or the **Fireman's Fund Parties** of any liability whatsoever with respect to any of the **Tort Claims**.

8.16 All of the **Persons** included in the definition of **Fireman's Fund Parties**, all of the **Parties** to this Agreement, and the bankruptcy Trust and Trustee, are intended beneficiaries of this Agreement. Except as set forth in the preceding sentence or otherwise set forth in this Agreement, there are no third-party beneficiaries of this Agreement.

8.17 The **Diocese Parties** and the **Fireman's Fund Parties** shall be responsible for their own fees and costs incurred in connection with the Reorganization Case, this Agreement, and the implementation of this Agreement.

8.18 The following rules of construction shall apply to this Agreement:

8.18.1 Unless the context of this Agreement otherwise requires: (i) words of any gender include each other gender; (ii) words using the singular or plural number also include the plural or singular number, respectively; (iii) the terms "hereof," "herein," "hereby," and derivative or similar words refer to this entire Agreement; and (iv) the words "include," "includes," or "including" shall be deemed to be followed by the words "without limitation."

8.18.2 References to statutes shall include all regulations promulgated thereunder and references to statutes or regulations shall be construed as including all statutory and regulatory provisions regardless of whether specifically referenced in this Agreement.

8.18.3 The wording of this Agreement was reviewed by legal counsel for each of the **Parties**, and each of them had sufficient opportunity to propose and negotiate changes prior to its execution. The wording of this Agreement shall not be construed in favor of or against any **Person**.

8.18.4 The use of the terms "intend," "intended," or "intent," when describing the intention of the **Parties**, as the case may be, shall not be construed to create a breach of this Agreement when the stated intent is not achieved.

8.19 The Bankruptcy Court in the Reorganization Case shall retain jurisdiction to interpret and enforce the provisions of this Agreement, which shall be construed in accordance with Minnesota law. The **Fireman's Fund Parties** do not, by virtue of this Section 8.18 or any other provision in this Agreement, consent to the Bankruptcy Court's jurisdiction as to any other matter.

8.20 This Agreement and the **Diocese**'s obligations under this Agreement shall be binding on the **Diocese** and the **Reorganized Debtor** and shall survive the entry of the Plan Confirmation Order.

8.21 This Agreement shall be effective on the **Effective Date**.

[Remainder of page left blank intentionally]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the last date indicated below.

On behalf of the Diocese of Duluth

By: J. James B. Bissonette
Reverend James B. Bissonette

Title: Vicar General, Diocese of Duluth

Date: December 8, 2017

IN WITNESS WHEREOF, the **Parties** have duly executed this Agreement as of the last date indicated below.

**On behalf of the Official Committee of Unsecured Creditors
(as defined herein)**

By: Robert J. Kyte

Title: Counsel

Date: 12/11/17

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the last date indicated below.

On behalf of the FIREMAN'S FUND PARTIES (as defined herein)

By: Deborah Snow

Title: Claim Specialist

Date: December 11, 2017

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. James' Church, Aitkin
a Minnesota religious corporation**

By: _____
Reverend David Forsman

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the Our Lady of Fatima Church, Garrison
a Minnesota religious corporation**

By: _____
Reverend David Forsman

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the Holy Family Church, Hillman
a Minnesota religious corporation**

By: _____
Reverend David Forsman

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the Our Lady of Hope Church, Aurora
a Minnesota religious corporation**

By: _____
Reverend Peter Lambert

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the Our Lady of the Snows Church, Big Fork
a Minnesota religious corporation**

By: _____
Reverend Thomas Galarneault

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. Michael's Church, Northome
a Minnesota religious corporation**

By: _____
Reverend Thomas Galarneault

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. Catherine's Church, Squaw Lake
a Minnesota religious corporation**

By: _____
Reverend Thomas Galarneault

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. Francis' Church, Brainerd
a Minnesota religious corporation**

By: _____
Reverend Anthony Wroblewski

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the All Saints Church, Baxter
a Minnesota religious corporation**

By: _____
Reverend Anthony Wroblewski

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. Thomas' Church, Pine Beach
a Minnesota religious corporation**

By: _____
Reverend Anthony Wroblewski

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. Andrew's Church, Brainerd
a Minnesota religious corporation**

By: _____
Reverend Daniel Weiske

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. Mathias' Church, Fort Ripley
a Minnesota religious corporation**

By: _____
Reverend Daniel Weiske

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. Francis' Church, Carlton
a Minnesota religious corporation**

By: _____
Reverend David Tushar

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. Mary & Joseph's Church, Sawyer
a Minnesota religious corporation**

By: _____
Reverend David Tushar

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the Queen of Peace Church, Cloquet
a Minnesota religious corporation**

By: _____
Reverend Justin Fish

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the Holy Family Church, Cloquet
a Minnesota religious corporation**

By: _____
Reverend Justin Fish

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. Joseph's Church, Chisholm
a Minnesota religious corporation**

By: _____
Reverend Anthony Craig

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the Our Lady of Sacred Heart Church,
Buhl
a Minnesota religious corporation**

By: _____
Reverend Anthony Craig

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. Mary's Church, Cook
a Minnesota religious corporation**

By: _____
Reverend Nicholas Nelson

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the Holy Cross Church, Orr
a Minnesota religious corporation**

By: _____
Reverend Nicholas Nelson

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. Martin's Church, Tower
a Minnesota religious corporation**

By: _____
Reverend Nicholas Nelson

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. Joseph's Church, Crosby
a Minnesota religious corporation**

By: _____
Reverend Elias Gieske

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. Joseph's Church, Deerwood
a Minnesota religious corporation**

By: _____
Reverend Elias Gieske

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the Immaculate Heart Church, Crosslake
a Minnesota religious corporation**

By: _____
Reverend Blake Rozier

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. Emily's Church, Emily
a Minnesota religious corporation**

By: _____
Reverend Blake Rozier

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. Mary's Church, Deer River
a Minnesota religious corporation**

By: _____
Reverend Steven Daigle

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. Joseph's Church, Ball Club
a Minnesota religious corporation**

By: _____
Reverend Steven Daigle

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. Charles' Church, Cass Lake
a Minnesota religious corporation**

By: _____
Reverend Steven Daigle

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the Holy Rosary Cathedral, Duluth
a Minnesota religious corporation**

By: _____
Reverend Peter Muhich

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. Mary Star of the Sea Church,
Duluth
a Minnesota religious corporation**

By: _____
Reverend Peter Muhich

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the Our Lady of Mercy Church, Duluth
a Minnesota religious corporation**

By: _____
Reverend Peter Muhich

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. Benedict's Church, Duluth
a Minnesota religious corporation**

By: _____
Reverend Joel Hastings

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. James' Church, Duluth
a Minnesota religious corporation**

By: _____
Reverend James Bissonette

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. John's Church, Duluth
a Minnesota religious corporation**

By: _____
Reverend Richard Kunst

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. Joseph's Church, Gnesen
a Minnesota religious corporation**

By: _____
Reverend Richard Kunst

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. Lawrence's Church, Duluth
a Minnesota religious corporation**

By: _____
Reverend Ryan Moravitz

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the Holy Family Church, Duluth
a Minnesota religious corporation**

By: _____
Reverend Ryan Moravitz

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. Joseph's Church, Duluth
a Minnesota religious corporation**

By: _____
Reverend Ryan Moravitz

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. Michael's Church, Duluth
a Minnesota religious corporation**

By: _____
Reverend Francis Kabiru

Title: Administrator and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. Agnes' Church, Walker
a Minnesota religious corporation**

By: _____
Reverend Timothy Lange

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the Sacred Heart Church, Hackensack
a Minnesota religious corporation**

By: _____
Reverend Timothy Lange

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. Raphael's Church, Duluth
a Minnesota religious corporation**

By: _____
Reverend Joseph Sobolik

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. Rose's Church, Proctor
a Minnesota religious corporation**

By: _____
Reverend Joseph Sobolik

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. Anthony's Church, Ely
a Minnesota religious corporation**

By: _____
Reverend William Skarich

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. Pius' Church, Babbitt
a Minnesota religious corporation**

By: _____
Reverend William Skarich

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the Resurrection Church, Eveleth
a Minnesota religious corporation**

By: _____
Reverend Michael Garry

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. Joseph's Church, Gilbert
a Minnesota religious corporation**

By: _____
Reverend Michael Garry

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. Louis' Church, Floodwood
a Minnesota religious corporation**

By: _____
Reverend Pio Atonio

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the Immaculate Conception Church,
Cromwell
a Minnesota religious corporation**

By: _____
Reverend Pio Atonio

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. Mary's Church, Meadowlands
a Minnesota religious corporation**

By: _____
Reverend Pio Atonio

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. John's Church, Grand Marais
a Minnesota religious corporation**

By: _____
Reverend Drew Braun

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the Holy Rosary Church, Grand Portage
a Minnesota religious corporation**

By: _____
Reverend Drew Braun

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. Joseph's Church, Grand Rapids
a Minnesota religious corporation**

By: _____
Reverend Jerome Weiss

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. Augustine's Church, Cohasset
a Minnesota religious corporation**

By: _____
Reverend Jerome Weiss

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the Blessed Sacrament Church, Hibbing
a Minnesota religious corporation**

By: _____
Reverend Gabriel Waweru

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. Patrick's Church, Hinckley
a Minnesota religious corporation**

By: _____
Reverend Joseph Sirba

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. Luke's Church, Sandstone
a Minnesota religious corporation**

By: _____
Reverend Joseph Sirba

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. Thomas' Church,
International Falls
a Minnesota religious corporation**

By: _____
Reverend Benjamin Hadrich

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. Columban's Church, Little Fork
a Minnesota religious corporation**

By: _____
Reverend Benjamin Hadrich

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. Edward's Church, Longville
a Minnesota religious corporation**

By: _____
Reverend Keith Bertram

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. Paul's Church, Remer
a Minnesota religious corporation**

By: _____
Reverend Keith Bertram

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the Holy Family Church, McGregor
a Minnesota religious corporation**

By: _____
Reverend Kuriakose Nediakala, MCBS

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the Our Lady of Fatima Church,
McGrath**

By: _____
Reverend Kuriakose Nediakala, MCBS

Title: Pastor of Holy Family Church, McGregor,
surviving parish religious corporation to Our Lady
of Fatima Church, McGrath by reason of merger.

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the Holy Angels' Church, Moose Lake
a Minnesota religious corporation**

By: _____
Reverend Justin Fish

Title: Administrator and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. Mary's Church, Willow River
a Minnesota religious corporation**

By: _____
Reverend Justin Fish

Title: Administrator and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. Isidore's Church, Sturgeon Lake
a Minnesota religious corporation**

By: _____
Reverend Justin Fish

Title: Administrator and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. Cecilia's Church, Nashwauk
a Minnesota religious corporation**

By: _____
Reverend Seth Gogolin

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the Mary Immaculate Church, Coleraine
a Minnesota religious corporation**

By: _____
Reverend Seth Gogolin

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the Our Lady of the Lakes Church,
Pequot Lakes
a Minnesota religious corporation**

By: _____
Reverend Michael Patullo

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the Immaculate Conception Church,
Pine City
a Minnesota religious corporation**

By: _____
Monsignor Aleksander Suchan

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. Joseph's Church, Beroun
a Minnesota religious corporation**

By: _____
Monsignor Aleksander Suchan

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the Holy Spirit Church, Two Harbors
a Minnesota religious corporation**

By: _____
Reverend Steve Laflamme

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the St. Mary's Church, Silver Bay
a Minnesota religious corporation**

By: _____
Reverend Steve Laflamme

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the Holy Spirit Church, Virginia
a Minnesota religious corporation**

By: _____
Reverend Brandon Moravitz

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the last date indicated below.

**On behalf of the Newman Catholic Campus Ministries
at U.M.D., Duluth
a Minnesota religious corporation**

By: _____
Reverend Michael Schmitz

Title: Pastor and Vice-President

Date: _____, 2017

Witness: _____

Schedule A

All terms in bold or underline in this Schedule A shall have the meanings given to them in the Settlement Agreement, Release, and Policy Buyback (“Agreement”) between and among the **Diocese Parties**, the **Parish Parties**, the **Committee**, and the **Fireman’s Fund Parties**.

Channeling Injunction. In consideration of the undertakings of the **Fireman’s Fund Parties** and the **Protected Parties** pursuant to the Agreement, the payment of the **Settlement Amount**, and other consideration, and to further preserve and promote the agreements between and among the **Protected Parties** and the **Fireman’s Fund Parties**, and the protections afforded the **Protected Parties** and the **Fireman’s Fund Parties** pursuant to Section 105 of the Bankruptcy Code:

a. any and all **Channeled Claims** are channeled into the Trust and shall be treated, administered, determined, and resolved under the procedures and protocols and in the amounts as established under the Plan and the Trust Documents as the sole and exclusive remedy for all holders of **Channeled Claims**; and

b. all **Persons** who have held or asserted, presently hold or assert, or may in the future hold or assert any **Channeled Claim** are hereby permanently stayed, restrained, and enjoined from taking any action, directly or indirectly, for the purpose of asserting, enforcing, or attempting to assert or enforce any **Channeled Claim** against any of the **Protected Parties** and the **Fireman’s Fund Parties**, including:

- (i) commencing, continuing, or otherwise proceeding to take, in any manner, any action or other proceeding of any kind with respect to any **Channeled Claim** against any of the **Protected Parties** or the **Fireman’s Fund Parties** or against the property of any of the **Protected Parties** or the **Fireman’s Fund Parties**;
- (ii) enforcing, attaching, collecting, or recovering, by any manner or means, from any **Protected Parties** or **Fireman’s Fund Parties**, or from the property of any **Protected Parties** or the **Fireman’s Fund Parties**, with respect to any such **Channeled Claim**, any judgment, award, decree, or order against any **Protected Parties** or **Fireman’s Fund Parties**;
- (iii) creating, perfecting, or enforcing any lien of any kind against any **Protected Parties** or **Fireman’s Fund Parties**, or the property of any **Protected Parties** or **Fireman’s Fund Parties**, with respect to any such **Channeled Claim**;
- (iv) asserting, implementing, or effectuating any **Channeled Claim** of any kind against:
 - (1) any obligation due any **Protected Parties** or **Fireman’s Fund Parties**;

- (2) any **Protected Parties** or **Fireman's Fund Parties**; or
- (3) the property of any **Protected Parties** or **Fireman's Fund Parties**;
- (v) taking any act, in any manner, in any place whatsoever that does not conform to, or comply with, the provisions of the Plan; and
- (vi) asserting or accomplishing any setoff, right of indemnity, subrogation, contribution, or recoupment of any kind against any obligation due any of the **Protected Parties** or **Fireman's Fund Parties** or the property of the **Protected Parties** or **Fireman's Fund Parties**.

Provided, however, that as to the **Protected Parties**, this Channeling Injunction applies only to the extent such **Claims** are covered or allegedly covered under the **Fireman's Fund Policies**, and does not apply to such **Claims** to the extent such **Claims** are covered under any **Diocesan Insurance Policy** issued by an insurer that is not one of the **Fireman's Fund Parties**, unless such other insurer has become a settling insurer under this Plan.

The foregoing channeling provisions are an integral part of the Plan and are essential to its implementation.

Schedule B

Supplemental Injunction Preventing Prosecution Of Claims Against **Fireman's Fund Parties**.

All terms in bold or underline in this Schedule B shall have the meanings given to them in the Settlement Agreement, Release, and Policy Buyback ("Agreement") between and among the **Diocese Parties**, the **Parish Parties**, the **Committee**, and the **Fireman's Fund Parties**.

Pursuant to Sections 105(a) and 363 of the Bankruptcy Code and in consideration of the undertakings of the **Fireman's Fund Parties** pursuant to the Agreement, including **Fireman's Fund's** buyback of the **Fireman's Fund Policies** free and clear of all interests pursuant to Section 363(f) of the Bankruptcy Code, any and all **Persons** who have held, now hold or who may in the future hold any **Interests** (including all debt holders, all equity holders, governmental, tax and regulatory authorities, lenders, trade and other creditors, **Tort Claimants**, perpetrators, non-settling insurers, and all others holding interests of any kind or nature whatsoever, including those **Claims** released or to be released pursuant to the Agreement) against any of the **Protected Parties**, **Fireman's Fund Parties**, or other **Person** covered or allegedly covered under the **Fireman's Fund Policies** and which relate to any **Tort Claims** that are covered or alleged to be covered under the **Fireman's Fund Policies**, or any insurance claims related to such **Tort Claims**, are hereby permanently stayed, restrained, and enjoined from taking any action, directly or indirectly, to assert, enforce, or attempt to assert or enforce any such interest against the **Fireman's Fund Parties**, including:

- (a) Commencing, continuing, or otherwise proceeding to take, in any manner, any action or other proceeding against the **Fireman's Fund Parties** or the property of the **Fireman's Fund Parties**;
- (b) Enforcing, attaching, collecting, or recovering, by any manner or means, any judgment, award, decree, or order against the **Fireman's Fund Parties** or the property of the **Fireman's Fund Parties**;
- (c) Creating, perfecting, or enforcing any lien of any kind against the **Fireman's Fund Parties** or the property of the **Fireman's Fund Parties**;
- (d) Asserting or accomplishing any setoff, right of indemnity, subrogation, contribution, or recoupment of any kind against any obligation due the **Fireman's Fund Parties** or the property of the **Fireman's Fund Parties**; and
- (e) Taking any act, in any manner, in any place whatsoever, that does not conform to, or comply with, the provisions of the Plan.

Any and all **Persons** holding **Interests** or **Claims** of any kind arising under the **Parish Policies** shall be permanently enjoined from pursuing such **Interests** or **Claims** against the **Fireman's Fund Parties**.

This injunction does not enjoin, or operate as a release of, any **Claim** against any **Person** other than the **Fireman's Fund Parties**.

EXHIBIT 1

FIREMAN'S FUND POLICIES

<u>Policy No.</u>	<u>Policy Period</u>	<u>Limits</u>
CL3-31-858	3/10/1958 to 3/10/1961	\$50,000 per person / \$100,000 per occurrence
CL3-135-500	3/10/1961 to 2/1/1964	\$50,000 per person / \$100,000 per occurrence

EXHIBIT 2

3909818v1

8289263v3

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA**

In re: Case No.: 15-50792
Diocese of Duluth, Chapter 11
Debtor.

**ORDER (1) AUTHORIZING AND APPROVING SETTLEMENT AGREEMENT
AMONG THE DEBTOR, THE PARISHES, THE COMMITTEE, AND
FIREMAN’S FUND, (2) APPROVING THE DEBTOR’S SALE OF THE ALLEGED
FIREMAN’S FUND POLICIES BACK TO FIREMAN’S FUND FREE AND CLEAR OF
CLAIMS AND INTERESTS, AND (3) ENJOINING ASSERTION OF CLAIMS
AGAINST FIREMAN’S FUND**

This matter is before the Court on the motion of the debtor in possession (the “Debtor”), pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, Fed. R. Bankr. P. 9019, and Local Rules 2002-1, 9013-1, and 9013-2 (the “Motion”) for entry of an order (1) approving a settlement set forth in that certain Settlement Agreement, Release, and Policy Buyback among the Debtor, the Parishes (as defined below), the Official Committee of Unsecured Creditors (the “Committee”), and Fireman’s Fund Insurance Company (“Fireman’s Fund”) (such agreement, including the attachments thereto, the “Settlement Agreement”), a true and correct copy of which is attached as Exhibit 1 to this Order a settlement agreement between, (2) authorizing the Debtor to sell the Fireman’s Fund Policies (as defined in the Settlement Agreement) back to Fireman’s Fund, free and clear of claims and interests of any other person or entity, (3) enjoining all claims against Fireman’s Fund under the Fireman’s Fund Policies, (4) approving the manner and form of notice of this Motion and the proposed injunction, and (5) granting such other relief as is just and proper. The Motion was filed by the Debtor on December 11, 2017.

Appearances were as noted on the record. Based upon the Motion, the Settlement Agreement, and the arguments of counsel, and after due deliberation and sufficient cause appearing therefor, this Court hereby makes the following findings of fact and conclusions of law:

I. FINDINGS OF FACT

IT IS HEREBY FOUND AND DETERMINED THAT:

A. Adequate notice of the Motion and of the hearing on the Motion was given by mailing a copy of the Motion and notice of the hearing on the Motion to: (1) the counsel for the Committee; (2) all other persons or entities that, as of the date the Motion was filed, had filed a notice of appearance or other demand for service of papers in this case or are otherwise entitled to notice under Local Rule 9013.3 (the “Parties in Interest”); (3) insurers that are or were parties to the declaratory judgment action brought by the Debtor and currently pending in District Court (the “Other Insurers”) as *Diocese of Duluth v. Liberty Mutual Insurance Company, et al*, Case No. 0:17-cv-03254-DWF-LIB (the “Coverage Litigation”); (4) counsel to Fireman’s Fund; (5) the United States Trustee; and (6) counsel for each of the parishes named in the Settlement Agreement (the “Parishes”). In addition, to ensure the broadest notice possible, the Debtor published notice of the Motion and notice of hearing on the Motion in the Duluth News-Tribune, the St. Paul Pioneer Press, and the Minneapolis Star-Tribune. Such notice, including the aforesaid notice by publication, was good and sufficient under the particular circumstances to provide adequate and appropriate notice to both known and unknown claimants and all Parties in Interest, and no other or further notice is or shall be required.

B. Notice of the Settlement Agreement, the Motion, and the hearing on the Motion and an opportunity to be heard is sufficient to bind (1) the Committee; (2) the Parishes; (3) Fireman’s Fund; (4) the Other Insurers; (5) all Parties in Interest; (6) all known claimants; and (7) all unknown claimants.

C. This Order and each of its Findings and Conclusions are binding upon (1) the Debtor; (2) the Parishes; (3) the Committee; (4) all Parties in Interest; (5) the Other Insurers; (6) all known claimants; (7) all unknown claimants; and (8) immediately upon its creation, any trust named in any plan of reorganization filed by or on behalf of the Debtor (the “Trust”).

D. The Debtor, the Parishes, the Committee, and Fireman’s Fund have agreed that upon the entry of this Order, and the running of any applicable appeal periods related

thereto, this Order shall satisfy and extinguish in full all of the obligations of Fireman's Fund under, arising out of, or relating to the Fireman's Fund Policies.

E. The Debtor, the Parishes, the Committee, and Fireman's Fund have agreed that upon the entry of this Order, and the running of any applicable appeal periods related thereto, all limits of liability under the Fireman's Fund Policies are exhausted.

F. The Debtor, the Parishes, the Committee, and Fireman's Fund have agreed that: (1) Fireman's Fund shall pay \$975,000.00, as provided in the Settlement Agreement (the "Settlement Amount"), to the Debtor or as otherwise directed by the Bankruptcy Court; and (2) the proceeds of the Settlement Amount shall be used by the Debtor only to pay (i) Court-approved administrative expenses incurred in connection with the case, including professional fees and expenses and/or (ii) certain other amounts payable pursuant to a plan of reorganization filed by the Debtor and the trust distribution procedures for any Trust, as may be amended from time to time.

II. CONCLUSIONS OF LAW

IT IS HEREBY ORDERED:

1. The relief requested in the Motion is granted and approved in all respects, and the Settlement Agreement is approved in its entirety, except that in the event of any inconsistency between this Order and the Settlement Agreement, this Order shall control.

2. The Debtor, the Parishes, the Committee, and Fireman's Fund are directed to perform their obligations pursuant to the terms and conditions of the Settlement Agreement. Notwithstanding any provision to the contrary contained in the Settlement Agreement or this Order, the Settlement Agreement shall be binding only on the parties to the Settlement Agreement, the reorganized Debtor, and the Trust, and no other person or entity.

3. In exchange for the Settlement Amount, and upon payment of the same to the Debtor, and without any further action being required, Fireman's Fund shall be deemed to have bought back the Policies free and clear of all interests of all persons, including all Interests of the Debtor, the Parishes, and other persons claiming coverage by, through, or on behalf of

any of the Parishes, any other insurer, and any person holding a claim against any of the Parishes or the Debtor that arises out of, relates to, results from, or is in connection with, in whole or part, directly or indirectly, any (a) actual or alleged sexual conduct, misconduct, abuse, or molestation including actual or alleged “sexual abuse” as defined in Minnesota Statutes § 541.073, (b) indecent assault or battery, rape, lascivious behavior, undue familiarity, pedophilia, ephebophilia, or sexually-related physical, psychological, or emotional harm, (c) contact or interactions of a sexual nature, or (d) assault, battery, corporal punishment, or other action of physical, psychological, or emotional abuse, humiliation, intimidation, or misconduct (collectively, and individually, “Abuse”) that took place in whole or in part prior to the date of this Order (each such claim a “Tort Claim” and each such holder of a Tort Claim a “Tort Claimant”).

4. Such sale of the Fireman’s Fund Policies is made by the Debtor to Fireman’s Fund pursuant to sections 363(b), 363(f), and 363(m) of the Bankruptcy Code.

5. Fireman’s Fund is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code.

6. The consideration exchanged, including, but not limited to, the Settlement Amount, constitutes a fair and reasonable settlement of the parties’ disputes and of their respective rights and obligations relating to the Policies and constitutes reasonably equivalent value.

7. The releases set forth in the Settlement Agreement comply with the Bankruptcy Code and applicable non-bankruptcy law.

8. Upon entry of this Order, the expiration of any appeal periods relating thereto, and the payment by Fireman’s Fund of the Settlement Amount, the Policies and Interests shall be terminated and of no further force and effect.

9. Fireman’s Fund’s payment of the Settlement Amount constitutes its full and complete performance of any and all obligations under the Fireman’s Fund Policies and with

respect to the foregoing Interests, including any performance owed to the Debtor, and exhausts all limits of liability of the Fireman's Fund Policies and with respect to the Interests.

10. All Interests the Debtor may have had, may presently have, or in the future may have in the Fireman's Fund Policies are released pursuant to the terms of this Agreement.

11. The Diocese Parties, the Parish Parties, and the Committee reserve all rights to seek recovery from any insurers other than the Fireman's Fund Parties (as defined in the Settlement Agreement) with respect to any claims not satisfied in full by the Settlement Agreement. Nothing in this Order shall eliminate or affect any right or obligation that any insurance companies other than the Fireman's Fund Parties, including, but not limited to the Other Insurers, may have or may in the future have with respect to the Debtor, the Parishes, or the Trust. Under no circumstances will any of the obligations or rights set forth in the Settlement Agreement impact the rights of the Diocese, the Parishes, or the Trust, as applicable, to seek recovery against any insurer other than the Fireman's Fund Parties for insurance proceeds respecting Tort Claims not satisfied in full by the Settlement Agreement, and if any provision of the Settlement Agreement is deemed by any court of competent jurisdiction to eliminate the rights of the Diocese, the Parishes, or the Trust, as applicable, to recover sums owed by any insurer(s) other than the Fireman's Fund Parties, the provision of the Settlement Agreement at issue will be deemed to be of no force and effect, and will be considered stricken from the Settlement Agreement, but Fireman's Fund's obligation to pay the Settlement Amount and the finality of the releases set forth in the Settlement Agreement shall not be disturbed.

12. Any plan filed by the Debtor shall designate the Fireman's Fund Parties as settling insurers with respect to the Fireman's Fund Policies in any schedule of settling insurers. The Fireman's Fund Parties will be entitled to the benefit of any channeling injunction and supplemental injunction contained in any such plan.

13. The Debtor shall designate the Settlement Agreement as an Insurance Settlement Agreement under any plan filed by the Debtor.

14. Pursuant to sections 105(a) and 363 of the Bankruptcy Code, all persons and entities who have held or asserted, who presently hold or assert, or who may in the future hold or assert (a) any claim, including without limitation any Tort Claim, as defined in the Settlement Agreement, or interest of any kind or nature against or in any of the Debtor's bankruptcy estates or the Trust, or (b) a claim, including without limitation any Tort Claim, of any kind or nature against the Fireman's Fund Parties, based upon the claims released in the Settlement Agreement, whenever or wherever arising or asserted (including all claims in the nature of or sounding in tort, contract, warranty or any other theory of law, equity or admiralty) (collectively, the "Released Claims"), shall be and hereby are permanently stayed, restrained, and enjoined from (i) asserting, enforcing, or attempting to assert or enforce any such claims or interests against the Fireman's Fund Parties or any property of the Fireman's Fund Parties, (ii) enforcing, attaching, collecting, or recovering, by any manner or means, from the Fireman's Fund Parties or from the property of the Fireman's Fund Parties, with respect to any Released Claim, any judgment, award, decree, or order against any Fireman's Fund Parties, and (iii) continuing, commencing, or otherwise proceeding to take, or taking, any action against the Fireman's Fund Parties, or the property of the Fireman's Fund Parties, to enforce any Released Claim or for the purpose of directly or indirectly collecting, recovering, or receiving payments from the Fireman's Fund Parties with respect to any such Released Claim; provided that, subject to the right of Fireman's Fund to cure a default in payment as set forth in the Settlement Agreement, this injunction shall become null and void if Fireman's Fund has not paid the Settlement Amount in full to the Debtor as of the date that is thirty (30) days after Fireman's Fund receives both (a) written notice from the Diocese that this Order has become a Final Order and (b) directions as to how Fireman's Fund should transmit the Settlement Amount. For the avoidance of doubt: (i) the Debtor and the Trust are not stayed, restrained, or enjoined from asserting any claims that are not Released Claims under the Settlement Agreement; and (ii) the Other Insurers are not stayed, restrained, or enjoined from asserting contribution, subrogation, indemnification,

reimbursement, or other similar claims that are not based upon Released Claims; and (iii) the Fireman's Fund Parties may assert any and all defenses, claims, interests, rights, and remedies to or relating to any claims that are not stayed, restrained, or enjoined.

15. The Debtor and Fireman's Fund shall, within twenty (20) days after the entry of this Order and payment of the Settlement Amount, file with the District Court in the Coverage Litigation a stipulation of dismissal with prejudice of all claims, rights, and remedies relating to the Fireman's Fund Policies.

16. This Order shall not limit or preclude the entry or effectiveness of any injunction that may be granted in connection with, or as part of, any order confirming the plan, including, without limitation, the benefit of an injunction that may be provided to the Fireman's Fund Parties with respect to rights of contribution, subrogation, reimbursement, indemnification, or similar claim that any other insurer may have or may in the future have against any of the Fireman's Fund Parties.

17. Notwithstanding anything to the contrary contained in this Order, the Motion or the Settlement Agreement, any of the Other Insurers that asserts that it has or may have a contribution, subrogation, indemnification, reimbursement, or other similar claim against the Fireman's Fund Parties in connection with coverage for Released Claims, and which, prior to the date of this Order, has asserted such claim against Fireman's Fund in the Coverage Litigation, may assert and fully prosecute such claim as a counterclaim, defense, or otherwise as an offset against any claim for coverage for underlying Released Claims that the Debtor, the Parishes, or the Trust (as the case may be) may assert against such insurer (a "Coverage Claim"). If such other insurer obtains a judicial determination or binding arbitration award that it is entitled to obtain a sum certain from any of the Fireman's Fund Parties as a result of such claim for contribution, subrogation, indemnification, or other similar Claim for the Fireman's Fund Parties' alleged share or equitable share, or to enforce subrogation rights, if any, with respect to the defense and/or indemnity obligation of the Fireman's Fund Parties for any Claims or reimbursement obligations for Conditional Payments released or resolved under the Agreement, the Diocese Parties or the

Parish Parties, as applicable, shall voluntarily reduce their judgment or Claim against, or settlement with, such other insurer(s) to the extent necessary to satisfy such contribution, subrogation, indemnification, or other claims against the Fireman's Fund Parties. Under no circumstances shall any of the Fireman's Fund Parties be required to pay any additional amounts to another insurer, the Debtor, the Parishes, or the Trust as a result of or related to any judgment reduction.

18. This Court shall retain jurisdiction to resolve any disputes that may arise between or among the Parties in respect of the implementation of the Settlement Agreement, which shall be construed in accordance with Minnesota law, or the interpretation or enforcement of this Order.

19. The Settlement Agreement and this Order shall be binding upon the parties to the Settlement Agreement, the reorganized Debtor, and the Trust, and shall survive confirmation of any plan of reorganization of the Debtor.

United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA**

In re:

Case No.: 15-50792

Diocese of Duluth,

Chapter 11

Debtor-in-Possession.

DEBTOR'S MEMORANDUM OF LAW IN SUPPORT OF MOTION PURSUANT TO SECTIONS 105(a) and 363(f) OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 9019 FOR AN ORDER (1) APPROVING SETTLEMENT AGREEMENT AMONG THE DIOCESE, THE PARISHES, THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, AND FIREMAN'S FUND, (2) APPROVING THE DIOCESE'S SALE OF THE POLICIES BACK TO FIREMAN'S FUND FREE AND CLEAR OF CLAIMS AND INTERESTS, AND (3) ENJOINING ASSERTION OF CLAIMS AGAINST FIREMAN'S FUND

INTRODUCTION

The above-referenced debtor submits this memorandum in support of its motion for an order approving its settlement with Fireman's Fund, approving the Diocese's sale of all policies and alleged policies back to Fireman's Fund free and clear of all interests of any person or entity, and enjoining the assertion of claims against Fireman's Fund (the "Motion"). The Court should approve the Settlement Agreement, attached hereto as **Exhibit A**, because it is fair and reasonable in amount and in the best interests of the Diocese, the claimants, and the Diocese's bankruptcy estate. The Settlement Agreement resolves all Tort Claims and insurance coverage claims among Fireman's Fund, the Parishes, the Committee, and the Diocese.

FACTS

The Diocese alleges that Fireman's Fund issued certain insurance policies that provide the Diocese and the Parishes with insurance coverage for the sexual abuse claims asserted against the Diocese and the Parishes in the Lawsuits and the POCs. However, Fireman's Fund disputes that it issued such insurance coverage. Neither the Diocese nor Fireman's Fund have copies of any insurance policies issued by Fireman's Fund to the Diocese.

In addition, to the extent it is determined that Fireman's Fund did in fact did issue one or more insurance policies to the Diocese, Fireman's Fund has reserved the right to limit or deny coverage to the Diocese and the Parishes on various grounds, including (but not limited to) the application of certain policy defenses and the amount of coverage available to any given Claimant. Further, Fireman's Fund has taken the position that the Diocese and the Parishes do not have any legal liability for the damages asserted by some or all of the Claimants.

To address these disputed issues involving Fireman's Fund as well as similar issues involving other insurance companies, on June 24, 2016 the Diocese initiated the Coverage Litigation against Liberty Mutual, Catholic Mutual, Fireman's Fund, Church Mutual, and Continental (collectively, "the Insurers"). The Diocese's First Amended Complaint in the Coverage Litigation seeks a judicial determination of the rights and duties of the Diocese and the Insurers under the insurance policies issued or allegedly issued by the Insurers. The Coverage Litigation involves interpretation of multiple insurance agreements and litigation of disputed legal positions and defenses. The district court has withdrawn the reference and is now presiding over the Coverage Litigation. If a settlement is not reached, it may take years to conclude the Coverage Litigation.

In an attempt to resolve the disputed matters at issue in the Coverage Litigation, the Diocese, the Parishes, the Insurers, and the Committee participated in two formal mediation sessions overseen by Judge Zive. Unfortunately, mediation did not result in a settlement. The parties then engaged in motion practice, including procedural motions and motions for partial summary judgment.

The Diocese, however, recommenced settlement discussions with Fireman's Fund, the Parishes, and the Committee and ultimately the parties entered into the Settlement Agreement, which the Diocese believes is supported by the Committee, the Claimants, and the Parishes.

Subject in all respects to the provisions of the Settlement Agreement, the material provisions of the Settlement Agreement may be summarized as follows (terms in bold or in underline in this paragraph, below, have the same meaning assigned to them in the Settlement Agreement):

- **Fireman's Fund** will make a payment in the total amount of \$975,000.00 (the "**Settlement Amount**") to settle its alleged obligations to the **Diocese** and the **Parishes** under the **Fireman's Fund Policies** with respect to all **Tort Claims**;
- The **Diocese** and the **Parishes** shall sell to **Fireman's Fund**, free and clear of any interest of any person or entity, any and all interests the **Diocese** and the **Parishes** have or may have in the **Fireman's Fund Policies**.
- The **Diocese** will request that the Court issue an injunction under Bankruptcy Code § 105 to implement the sale to **Fireman's Fund** of the **Fireman's Fund Policies**, free and clear of any interest of any person or entity, and **Fireman's Fund's** obligation to pay the **Settlement Amount** shall be conditioned on such order being entered and becoming a **Final Order**;
- **Fireman's Fund**, the **Diocese** and the **Parishes** shall exchange global releases for any and all **Tort Claims**, including **Unknown Tort Claims**, but the **Committee's** agreement is not, and shall not be construed to be, a release of any **Claim** any **Tort Claimant** may have or claim to have against any **Person** other than the **Fireman's Fund Parties**, as more specifically set forth in the Settlement Agreement;
- The **Diocese** will propose a Plan of Reorganization containing both a Channeling Injunction and a Supplemental Injunction with respect to **Tort Claims**, and

Fireman's Fund will be entitled to the benefit of such Channeling Injunction and Supplemental Injunction; and

- The **Diocese** may use the **Settlement Amount** to pay Court-approved administrative expenses, including professional fees and expenses incurred by the **Diocese** in connection with the Coverage Litigation.

As explained below, the settlement meets the requirements of Rule 9019 and Section 363(b) and (f) and should be approved. The Diocese and its bankruptcy estate benefit from resolution of its disputed coverage claims against Fireman's Fund on the terms set forth in the Settlement Agreement, including that the settlement funds will be paid to the Diocese as soon as the approval order becomes a final order, thus giving the Diocese immediate access to funds needed for court-approved administrative expenses incurred in connection with the case, including professional fees and expenses incurred by the Diocese in connection with the Coverage Litigation. In addition, the Court should issue an injunction under Section 105 to implement the free and clear sale of the Alleged Fireman's Fund Insurance Policies back to Fireman's Fund. Such protection for Fireman's Fund is a condition of Fireman's Fund paying the Settlement Amount and is entirely reasonable given Fireman's Fund's agreement to the Diocese's request that Fireman's Fund make its settlement agreement now, long before any plan has been confirmed.

ARGUMENT

I. The Settlement Should Be Approved Pursuant to Rule 9019.

Compromise is favored by the law as a normal part of the reorganization process. *In re Trism, Inc.*, 282 B.R. 662, 666 (B.A.P. 8th Cir. 2002). Rule 9019(a) of the Federal Rules of Bankruptcy Procedure provides:

On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States Trustee, the debtor and indenture

trustees as provided in Rule 2002 and to any other entity as the court may direct.

“A decision to approve or disapprove a proposed settlement under Bankruptcy Rule 9019 is within the discretion of the bankruptcy judge.” *In re Trism, Inc.*, 282 B.R. at 666 (citing *In re Flight Transp. Corp. Sec. Litig.*, 730 F.2d 1128, 1135-36 (8th Cir. 1984)). Bankruptcy Rule 9019 vests a bankruptcy court with “broad authority to approve or disapprove all compromises and settlements affecting the bankruptcy estate.” *In re Bates*, 211 B.R. 338, 343 (Bankr. D. Minn. 1997). In exercising its discretion, a court should consider the following factors:

1. The probability of success in the litigation;
2. The difficulties, if any, to be encountered in the matter of collection;
3. The complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending to it;
4. The paramount interests of the creditors and a proper deference to their reasonable views in the premises; and
5. Whether the conclusion of the litigation promotes the integrity of the judicial system.

In re Flight Transp. Corp. Sec. Litig., 730 F.2d at 1135-36 (citing *Drexel v. Loomis*, 35 F.2d 800, 806 (8th Cir. 1929), and *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (1968)); *In re Bates*, 211 B.R. at 343; see also *In re Farmland Indus., Inc.*, 289 B.R. 122 (B.A.P. 8th Cir. 2003).

Consideration of these factors allows a court to determine whether a settlement is “fair and equitable,” *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc.*, 390 U.S. at 424, and in the best interests of the estate. *In re Trism, Inc.* 282 B.R. at 668. A court’s function is not to ensure that the proposed settlement is the best possible settlement obtainable.

Rather, the court must determine only whether the settlement falls below the lowest point on the range of reasonableness. *In re Hanson Indus., Inc.*, 88 B.R. 942, 945 (Bankr. D. Minn. 1988); *see also In re Teltronics Servs., Inc.*, 762 F.2d 185, 189 (2d Cir. 1985).

In this instance, consideration of the five factors set out above compels the conclusion that the Diocese's settlement with Fireman's Fund should be approved.

A. Probability of Success in the Litigation.

Given the inherent uncertainty with respect to the outcome of the Coverage Litigation, this factor weighs heavily in favor of the approval of the Settlement Agreement.

As a threshold matter, Fireman's Fund disputes the Diocese's allegation that Fireman's Fund issued insurance coverage to the Diocese. Neither the Diocese nor Fireman's Fund has located copies of any policies. Thus, the Diocese faces the risk that it will be unable to carry its burden of proving the issuance, terms, and conditions of the Alleged Fireman's Fund Insurance Policies. In such event, the Diocese would receive nothing from Fireman's Fund.

Even if the Diocese were to succeed in establishing the existence of the Alleged Fireman's Fund Insurance Policies, it would then have to (i) establish that its liability to Claimants comes within the scope of coverage provided by Fireman's Fund and (ii) overcome Fireman's Fund's coverage defenses. Fireman's Fund is a well-represented party with the motivation, resources, and demonstrated willingness to litigate the multiple significant coverage issues that arise in this complicated legal setting, including whether specific claims involve bodily injury during the policy periods of any coverage provided by Fireman's Fund.

Although the Diocese is confident of the merits of its positions, there can of course be no guarantee that the Diocese would ultimately be successful against Fireman's Fund in the Coverage Litigation. Moreover, there is the prospect that Coverage Litigation could continue for

several years including appeals and the possibility that it could produce a mixed result for the Diocese. In addition, the Diocese is asserting claims in the Coverage Litigation against several insurers other than Fireman's Fund, and removing Fireman's Fund from the case not only eliminates the need to litigate questions regarding the existence of the Alleged Fireman's Fund Policies, it also simplifies the litigation and allows the Diocese to target its efforts against the remaining non-settled insurers.

B. Likely Difficulties in Collection.

This factor also weighs in favor of the Court approving the proposed settlement. Absent the proposed settlement, it is highly possible that the Abuse Claims for which Diocese contends Fireman's Fund is responsible to afford coverage would be liquidated and paid over a period of many years. Moreover, resolution of the Coverage Litigation, including appeals, could take years, further delaying the Diocese's receipt of insurance proceeds. By contrast, under the settlement Fireman's Fund will make its settlement payment as soon as the approval order becomes a final order, benefitting the estate and claimants.

C. The Complexity of the Litigation Involved, and the Attendant Expense, Inconvenience, and Delay.

This factor also supports approval of the Diocese's settlement with Fireman's Fund.

The Coverage Litigation is complicated, time consuming, and expensive multi-party litigation against several insurers with the means and incentive to litigate vigorously. The litigation will involve the interpretation of many historical insurance agreements and requires the adjudication of many disputed legal issues. As to Fireman's Fund, there is an added threshold issue concerning the existence, terms, and conditions of the Alleged Fireman's Fund Policies. Further, in its response to the Diocese's First Amended Complaint, Fireman's Fund asserts

several defenses to coverage by way of a counterclaim for declaratory relief, including the following:

a) The Diocese did not purchase any contracts of insurance from Fireman's Fund, and Fireman's Fund did not provide any insurance coverage to the Diocese;

b) Some, or all, of the Underlying Actions are not "suits" which give rise to any obligation pursuant to any contracts of insurance that Fireman's Fund may be determined to have issued;

c) The injuries and/or damage alleged in the Underlying Actions do not fall within the coverage grant of any contracts of insurance that Fireman's Fund may be determined to have issued;

d) The Underlying Actions do not allege injury and/or conduct within the coverage periods of any contracts of insurance that Fireman's Fund may be determined to have issued;

e) The Underlying Actions do not allege any injury that was caused by an "occurrence", as that term may have been defined in any contracts of insurance that Fireman's Fund may be determined to have issued; and

f) The injuries and/or damage alleged in the Underlying Actions are excluded from coverage pursuant to the language of any contracts of insurance that Fireman's Fund may be determined to have issued.

In addition, Fireman's Fund asserts that if it is determined to have a coverage obligation to the Diocese with respect to some of the Underlying Claims, then Fireman's Fund is entitled to a declaration regarding the extent and limits of any insurance coverage that Fireman's Fund may be determined to have issued to the Diocese.

As a result of the settlement, the Diocese will not have to litigate any these issues against Fireman's Fund. Nor will the Diocese's recovery of insurance proceeds from Fireman's Fund be delayed, possibly for years, while the underlying Abuse Claims are liquidated. Instead, the settlement ensures that Fireman's Fund will make a significant settlement payment once the Court's order approving the settlement becomes a final order.

D. Interest of Creditors.

The fact that the Committee is a party to the Diocese's settlement with Fireman's Fund is a factor that strongly supports approval of the Settlement Agreement.

The Committee's support for the Settlement Agreement likely reflects a number of considerations, including (i) the reasonableness of the settlement given all of the issues noted above, including the dispute over the very existence of the Alleged Fireman's Fund Policies, and (ii) the fact that Fireman's Fund's settlement payment is not conditioned on plan confirmation, thus providing the Diocese with necessary funding to enable it to pursue the Coverage Litigation against the non-settling Insurers, for the ultimate benefit of claimants.

The Diocese has exercised its business judgment and concludes that it cannot reasonably justify the expense, delay, and uncertainty of pursuing the Coverage Litigation against Fireman's Fund given the amount of the settlement payment Fireman's Fund has agreed to make. The proposed settlement is well within the range of likely outcomes of the Diocese's insurance coverage dispute with Fireman's Fund and represents an appropriate compromise and settlement taking into account the costs, risks, and potential rewards of litigation. Far from falling "below the lowest point in the range of reasonableness," *Pacific Gas*, 304 B.R. at 417, payment of \$975,000.00 by Fireman's Fund comes in well above the lowest point; moreover, it results in a known outcome for the Diocese and will benefit the claimants asserting Abuse Claims.

For all of these reasons, approval of the Settlement Agreement is in the best interest of the estate and creditors.

E. Promoting the Integrity of the Judicial System.

The last factor, whether the conclusion of the litigation promotes the integrity of the judicial system, also supports approval of the settlement. As noted above, the settlement is a reasonable resolution of complex litigation against an able adversary with the resources and incentive to litigate the Coverage Litigation to conclusion, including appeals. Under these circumstances, approval of the settlement is consistent with promoting the integrity of the judicial system.

For all the reasons set forth above, the Court should exercise its discretion to approve the Diocese's settlement with Fireman's Fund on the terms set forth in the Settlement Agreement.

II. The Diocese's Sale of the Policies Back to Fireman's Fund Should Be Approved Pursuant To 11 U.S.C. § 363(b) and (f).

As part of the consideration for the immediate payment of the Settlement Amount, the Settlement Agreement provides for a buyback, by Fireman's Fund pursuant to section 363(f) of the Bankruptcy Code, of the Alleged Fireman's Fund Policies and all of the rights of the Diocese and the Parishes, if any, to insurance coverage under those alleged policies. Section 363(f) allows a debtor to sell property of the estate pursuant to section 363(b)(1) "free and clear of any interest" in such property if one or more of the following requirements are met:

- 1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- 2) such entity consents;
- 3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- 4) such interest is in bona fide dispute; or

- 5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). *See also Lindsey v. Ipock*, 732 F.2d 619, 622 (8th Cir. 1984).

Here, the proposed sale of the Alleged Fireman’s Fund Policies is to be free and clear of any interests of other persons. Since the Alleged Fireman’s Fund Policies are not encumbered, the Diocese submits that § 363(f)(1) is satisfied. *See In re Dow Corning Corp.*, 198 B.R. 214, 245 (Bankr. E.D. Mich. 1996) (noting that nonbankruptcy law permits the sale of an insured’s cause of action against its insurer free and clear of any interest of an injured party whose tort claim would trigger the insurer’s duty to defend and indemnify the insured). In addition, § 363(f)(4) is satisfied because the claims of Tort Claimants against the Diocese are subject to bona fide dispute. *Id.* (given “that the Debtor vehemently denies liability to the tort claimants, it is easy to conclude that the interest, if any, of a tort claimant in any of the Debtor’s insurance policies ‘is in bona fide dispute.’”). Further, § 363(f)(5) is satisfied because any Tort Claimant who establishes a right to recover from the Diocese or Fireman’s Fund could be compelled to accept a money satisfaction of such interest. *See In re Sunland, Inc.*, 2014 WL 7011747, at *4 (Bankr. D.N.M. Dec. 11, 2014) (where a claimant asserting an allegedly insured claim against a debtor “would only be entitled to money damages,” not injunctive relief, the requirements of § 363(f)(5) are satisfied).¹

Moreover, the sale of the Alleged Fireman’s Fund Policies will not negatively affect the rights of the Tort Claimants. Rather, the Committee, as representative of the Tort Claimants, has consented to the buyback of the Alleged Fireman’s Fund Policies. The Settlement Amount will be paid to the Diocese and available for funding ongoing administrative expenses in the Chapter 11 case, including professional fees and expenses incurred in connection with the Coverage

¹ If no claimant objects to the Motion, then § 363(f)(2) will also have been satisfied.

Litigation, and to pay Tort Claimants. The Coverage Litigation is the largest asset in the case and, in the absence of additional settlements, its continued prosecution is in the best interest of the Diocese, the Parishes, the Committee, and the Tort Claimants. The settlement payment to be made by Fireman's Fund will assist the Diocese in prosecuting the Coverage Litigation and thus monetizing that valuable asset, for the benefit of Tort Claimants. Successful resolution of the Coverage Litigation against the remaining parties to the Coverage Litigation, either through additional settlements or judgments, will enable the Diocese to propose and confirm a plan of reorganization for the benefit of the Tort Claimants. Thus, the settlement with Fireman's Fund is reasonable and appropriate and the Court should approve the "free and clear" sale to Fireman's Fund of the Alleged Fireman's Fund Policies and the Diocese's coverage rights thereunder, consistent with § 363(f) of the Bankruptcy Code.

III. An Injunction Should be Issued under § 105(a) of the Bankruptcy Code to Implement the Sale of the Policies.

Under § 105(a) of the Bankruptcy Code, the Court has the power to enjoin the Diocese's creditors or any other person from pursuing claims against Fireman's Fund relating to the Alleged Fireman's Fund Policies. Here, as in other cases, such an injunction "barring creditors from suing a purchaser of estate assets is necessary and appropriate to give the 'free and clear' aspects of 363(f) meaning." *In re Dow Corning Corp.*, 198 B.R. at 245 (citing cases). Accordingly, this Court may issue an injunction to prohibit claims from being raised against a buyer of an asset of the estate, such as Fireman's Fund. *See id.* at 247 (holding that a court has the power to enter orders enjoining lawsuits against debtor's insurers as a component of an insurance buy-back settlement related to the debtor's potential mass tort liability).

Such injunctions have been granted by other courts with respect to an insurer's purchase from a debtor's estate of insurance policies previously issued by that insurer. In fact, such

injunctions “are relatively common with § 363(f) sale orders.” *In re Sunland, Inc.*, 2014 WL 7011747, at *5. *See, e.g., Macarthur Co. v. Johns-Manville Corp.*, 837 F.2d 89, 93 (2d Cir. 1988) (approving the imposition of an injunction in favor of certain insurers under both sections 363 and 105), *Campbell v. Motors Liquidation Co. (In re Motors Liquidation Co.)*, 428 B.R. 43, 56 (S.D.N.Y. 2010), *aff’d*, 430 B.R. 65 (S.D.N.Y. 2010) (upholding injunction preventing parties from asserting claims against purchaser of property of the estate and citing cases involving injunctions issued in support of § 363(f) sales); *Intertek USA, Inc. v. Caribbean Petrol. Corp. (In re Caribbean Petrol. Corp.)*, 2013 WL 950361 at *3 (quoting with approval a channeling injunction previously entered in connection with an insurance buyback order); *In re Sunland, Inc.*, 2014 WL 7011747, at *5 (issuing an injunction in a Chapter 7 case to protect an insurer who was buying back its coverage against claims by creditors of the debtor); *In re Flintkote Co.*, No. 04-11300 (JKF) (Bankr. D. Del. Sept. 14, 2010) (approving an insurer’s buy-back of its policies, and enjoining claims under both sections 363 and 105); *In re Peanut Corp. of America*, 2009 WL 8757732, at *3 (Bankr. W.D. Va. Oct. 2, 2009) (granting a channeling injunction under §§ 363(f) and 105(a) in an order approving settlement and buyback procedures of a Chapter 7 debtor’s insurance policies); *In re Quigley Co.*, No. 04-15739 (SMB) (Bankr. S.D.N.Y. Jun. 9, 2009) (approving an insurer’s buy-back of its policies, and enjoining claims under section 105); *In re Federal-Mogul Global, Inc.*, No. 01-10578 (JKF) (Bankr. D. Del. Nov. 8, 2007) (approving an insurer’s buy-back of its policies, and enjoining claims under section 105); *In re Congoleum Corp.*, No. 03-51524 (KCF) (Bankr. D.N.J. Sept. 20, 2006) (approving an insurer’s buy-back of its policies, and enjoining claims under both sections 363 and 105); *In re Kaiser Aluminum Corp., et al.*, Case No. 02-10429 (Bankr. D. Del. May 15, 2006); *In re Burns and Roe Enters., Inc.*, No. 00-41610RG (Bankr. D.N.J. Feb. 17, 2005) (approving an insurer’s

buy-back of its policies, and enjoining claims under section 105); *In re Trans World Airlines, Inc.*, 2001 WL 1820325 at *8 (Bankr. D. Del. March 27, 2001) (approving debtor's sale of an estate asset "based on the 'free and clear' language of § 363(f)" and holding that "the injunctive relief in the Sale Order is appropriate under § 105(a) because it is necessary to carry out the effect and purpose of § 363(f)"), *aff'd*, 322 F.3d 283 (3d Cir. 2003).

Here, the proposed injunction is necessary and appropriate to protect the integrity of the sale of the Alleged Fireman's Fund Policies free and clear of claims and interests. Without the protection of the injunction, Fireman's Fund may, notwithstanding its settlement and the payment of the Settlement Amount, be unfairly subject to claims brought under the Alleged Fireman's Fund Policies. Fireman's Fund's willingness to make its full settlement payment prior to plan confirmation is conditioned on (i) the Court entering an order granting such injunctive relief protecting Fireman's Fund and (ii) such order becoming a final order. The Diocese believes that this is a reasonable condition in light of the benefits to be obtained from receiving Fireman's Fund's payment as soon as the approval order and injunction become final orders. Therefore, the Diocese submits that an injunction in aid of the sale of the Alleged Fireman's Fund Policies free and clear under section 363(f) is justified and appropriate here.

Further, the § 105 injunction is also consistent with the Diocese's intention to include a channeling injunction in a plan of reorganization. The injunction being sought now, in connection with Fireman's Fund's purchase of the Alleged Fireman's Fund Policies free and clear of claims and interests, simply gives Fireman's Fund now the same protection that would be available later under the Diocese's proposed plan of reorganization, in exchange for Fireman's Fund's agreement to make the settlement payment prior to plan confirmation.

In connection with issuance of the injunction, the Diocese will not only give notice of the proposed injunction to all parties in interest via CM/ECF or, in the case of known Tort Claimants who are not registered with CM/ECF, by mail, but the Diocese will also publish notice of this Motion and the proposed injunction in the *Minneapolis Star-Tribune* and the *Duluth News Tribune*.

Accordingly, in conjunction with the settlement and the buy-back of the Alleged Fireman's Fund Policies, the Court should issue an injunction to give effect to the sale of the Alleged Fireman's Fund Policies free and clear of claims or interests.

CONCLUSION

The factors recognized in the Eighth Circuit for the approval of compromises and settlements weigh strongly in favor of the Court approving the Diocese's Settlement Agreement with Fireman's Fund. The Diocese therefore respectfully requests that the Court grant the Motion and enter an order (i) approving the Settlement Agreement, (ii) approving the sale of the Alleged Fireman's Fund Policies and the Diocese's rights thereunder free and clear of claims and interests, (iii) enjoining all claims against Fireman's Fund under the Alleged Fireman's Fund Policies, (iv) approving the manner and form of notice of this Motion and the proposed injunction, and (v) providing such other relief as may be appropriate.

Dated: December 11, 2017

ELSAESSER ANDERSON, CHTD

/s/ J. Ford Elsaesser
Bruce A. Anderson (admitted *pro hac vice*)
J. Ford Elsaesser (admitted *pro hac vice*)
320 East Neider Ave.
Suite 102
Coeur d'Alene, ID 83815
Phone: 208-263-8517
bruce@eaidaho.com
ford@eaidaho.com

-and-

**GRAY PLANT MOOTY MOOTY &
BENNETT**

/s/ Phillip L. Kunkel
Phillip L. Kunkel (#058981)
Abigail M. McGibbon (#0393263)
101 West St. Germain
Suite 500
St. Cloud, MN 56301
Phone: 320-202-5335
phillip.kunkel@gpmlaw.com
abigail.mcgibbon@gpmlaw.com

Attorneys for the Diocese of Duluth

3909247v1

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA

In re:

Case No.: 15-50792

Diocese of Duluth,

Chapter 11

Debtor-in-Possession.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 11, 2017, the Notice of Hearing and Motion Pursuant to Sections 105(a) and 363(f) of the Bankruptcy Code and Bankruptcy Rule 9019 for an Order (1) Approving Settlement Agreement Among the Diocese, the Parishes, the Official Committee of Unsecured Creditors, and Fireman's Fund, (2) Approving the Diocese's Sale of the Policies Back to Fireman's Fund Free and Clear of Claims and Interests, and (3) Enjoining Assertion of Claims Against Fireman's Fund was filed in the above-captioned matter using the CM/ECF system, which sent a Notice of Electronic Filing to the following person(s):

Nancy D. Adams on behalf of Counter-Claimant and Defendant Liberty Mutual Group, Inc.
ndadams@mintz.com

Nancy D. Adams on behalf of Interested Party Liberty Mutual Insurance Company
ndadams@mintz.com

Jeffrey R Anderson on behalf of Interested Party Certain Personal Injury Creditors
jeff@andersonadvocates.com, therese@andersonadvocates.com; erin@andersonadvocates.com

Phillip J Ashfield on behalf of Creditor Committee Official Committee of Unsecured Creditors
phillip.ashfield@stinsonleonard.com, laura.schumm@stinsonleonard.com

Teri E. Bentson on behalf of Counter-Claimant Liberty Mutual Group
teri.bentson@libertymutual.com

Kristi K. Brownson on behalf of Defendant, Counter-Claimant and Cross Defendant LIBERTY MUTUAL GROUP, INC.
kbrownson@brownsonlinnihan.com, lwaskosky@brownsonlinnihan.com

Kristi K. Brownson on behalf of Interested Party Liberty Mutual Insurance Company
kbrownson@brownsonlinnihan.com, lwaskosky@brownsonlinnihan.com

Edwin H. Caldie on behalf of Creditor Committee Official Committee of Unsecured Creditors
Edwin.Caldie@stinsonleonard.com, laura.schumm@stinsonleonard.com

David C. Christian, II on behalf of Interested Party Continental Insurance Company
dchristian@davidchristianattorneys.com

Benjamin J. Court on behalf of Creditor Committee Official Committee of Unsecured Creditors
benjamin.court@stinson.com, aong.moua@stinson.com, laura.schumm@stinson.com

Everett J Cygal on behalf of Interested Party CATHOLIC MUTUAL RELIEF SOCIETY OF AMERICA
ecygal@schiffhardin.com

Louis T DeLucia on behalf of Interested Party CATHOLIC MUTUAL RELIEF SOCIETY OF AMERICA
ldelucia@schiffhardin.com, jacquaviva@schiffhardin.com; afiedler@schiffhardin.com

Alyson M Fiedler on behalf of Interested Party CATHOLIC MUTUAL RELIEF SOCIETY OF AMERICA
afiedler@schiffhardin.com, jacquaviva@schiffhardin.com

Michael G Finnegan on behalf of Interested Party Certain Personal Injury Creditors
mike@andersonadvocates.com, therese@andersonadvocates.com; erin@andersonadvocates.com

Charles E. Jones on behalf of Defendant, Counter-Claimant and Cross Defendant FIREMAN'S FUND INSURANCE COMPANY
charles.jones@lawmoss.com, Brenda.murphy@lawmoss.com

John D Kelly on behalf of Interested Party Parishes of Diocese of Duluth
jdk@hanftlaw.com, saw@hanftlaw.com; dar@hanftlaw.com

Jeffrey D Klobucar on behalf of Interested Party Continental Insurance Company
jklobucar@bassford.com, mmooney@bassford.com

Robert T. Kugler on behalf of Creditor Committee Official Committee of Unsecured Creditors
robert.kugler@stinson.com, laura.schumm@stinson.com

Phillip Kunkel on behalf of Debtor 1 Diocese of Duluth
phillip.kunkel@gpmlaw.com

Connie A. Lahn on behalf of Interested Party CATHOLIC MUTUAL RELIEF SOCIETY OF AMERICA
clahn@btlaw.com, tpaulson@btlaw.com; marobinson@btlaw.com; pgroff@btlaw.com

Greta A. Matzen on behalf of Continental Insurance Group
greta.matzen@cna.com

Abigail M McGibbon on behalf of Debtor 1 Diocese of Duluth
abigail.mcgibbon@gpmlaw.com

Laura K. McNally on behalf of Interested Party Continental Insurance Company
lmcnally@loeb.com, chdocket@loeb.com; tmcintyre@loeb.com

Brittany Mitchell on behalf of Creditor Committee Official Committee of Unsecured Creditors
brittany.mitchell@stinson.com, laura.schumm@stinson.com

James R. Murray on behalf of Debtor 1 Diocese of Duluth
jmurray@blankrome.com

Christian A. Preus on behalf of Cross Defendant CHURCH MUTUAL INSURANCE COMPANY
cpreus@bassford.com, pcarter@bassford.com

Christian A. Preus on behalf of Defendant CHURCH MUTUAL INSURANCE COMPANY
cpreus@bassford.com, pcarter@bassford.com

Beth A. Jenson Prouty on behalf of Defendant CHURCH MUTUAL INSURANCE COMPANY
bprouty@bassford.com, dpezsel@bassford.com

Robert Raschke on behalf of U.S. Trustee US Trustee
robert.raschke@usdoj.gov

Andrea E. Reisbord on behalf of Continental Insurance Company
areisbord@bassford.com

Daniel J Schufreider on behalf of Interested Party CATHOLIC MUTUAL RELIEF SOCIETY OF AMERICA
dschufreider@schiffhardin.com

David M Spector on behalf of Interested Party CATHOLIC MUTUAL RELIEF SOCIETY OF AMERICA
dspector@schiffhardin.com,
jacquaviva@schiffhardin.com; ecygal@schiffhardin.com; cmethven@schiffhardin.com

Laura B Stephens on behalf of Counter-Claimant Liberty Mutual Group
lbstephens@mintz.com

Laura B Stephens on behalf of Interested Party Liberty Mutual Insurance Company
lbstephens@mintz.com

Scott E. Turner on behalf of Continental Insurance Group
scott.turner@cna.com

US Trustee

ustpregion12.mn.ecf@usdoj.gov

Jeanne H. Unger on behalf of Counter-Claimant The Continental Insurance Company

junger@bassford.com, mmooney@bassford.com

Jeanne H. Unger on behalf of Cross-Claimant The Continental Insurance Company

junger@bassford.com, mmooney@bassford.com

Jeanne H. Unger on behalf of Defendant The Continental Insurance Company

junger@bassford.com, mmooney@bassford.com

Darin J Van Thournout on behalf of Interested Party Continental Insurance Company

dvanthournout@dca.law

Kevin J Walsh on behalf of Counter-Claimant Liberty Mutual Group

kwalsh@mintz.com, jcannata@mintz.com

Sarah J Wencil on behalf of U.S. Trustee US Trustee

Sarah.J.Wencil@usdoj.gov

Jared Zola on behalf of Debtor 1 Diocese of Duluth

jzola@blankrome.com, nylitigationdocketing@blankrome.com; jcarter@blankrome.com

Mary F. Sieling on behalf of Bankruptcy Trustee

mary@mantylaw.com

AND I FURTHER CERTIFY that on December 11, 2017, I served the same on the Non-ECF parties listed below by U.S. mail, postage prepaid:

IRS DISTRICT COUNSEL
380 JACKSON STREET, SUITE 650
SAINT PAUL, MN 55101

INTERNAL REVENUE SERVICE
WELLS FARGO PLACE
30 7TH STREET
MAIL STOP 5700
ST PAUL MN 55101

MN DEPARTMENT OF REVENUE
COLLECTION ENFORCEMENT
551 BANKRUPTCY SECTION
600 NORTH ROBERT STREET
SAINT PAUL, MN 55101

OFFICE OF THE U.S. ATTORNEY
600 US COURTHOUSE
300 SOUTH FOURTH STREET
MINNEAPOLIS, MN 55415

Dated: December 11, 2017

/s/ Abigail M. McGibbon
Abigail M. McGibbon

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA**

In re: Case No.: 15-50792
Diocese of Duluth, Chapter 11
Debtor.

**ORDER (1) AUTHORIZING AND APPROVING SETTLEMENT AGREEMENT
AMONG THE DEBTOR, THE PARISHES, THE COMMITTEE, AND
FIREMAN’S FUND, (2) APPROVING THE DEBTOR’S SALE OF THE ALLEGED
FIREMAN’S FUND POLICIES BACK TO FIREMAN’S FUND FREE AND CLEAR OF
CLAIMS AND INTERESTS, AND (3) ENJOINING ASSERTION OF CLAIMS
AGAINST FIREMAN’S FUND**

This matter is before the Court on the motion of the debtor in possession (the “Debtor”), pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, Fed. R. Bankr. P. 9019, and Local Rules 2002-1, 9013-1, and 9013-2 (the “Motion”) for entry of an order (1) approving a settlement set forth in that certain Settlement Agreement, Release, and Policy Buyback among the Debtor, the Parishes (as defined below), the Official Committee of Unsecured Creditors (the “Committee”), and Fireman’s Fund Insurance Company (“Fireman’s Fund”) (such agreement, including the attachments thereto, the “Settlement Agreement”), a true and correct copy of which is attached as Exhibit 1 to this Order a settlement agreement between, (2) authorizing the Debtor to sell the Fireman’s Fund Policies (as defined in the Settlement Agreement) back to Fireman’s Fund, free and clear of claims and interests of any other person or entity, (3) enjoining all claims against Fireman’s Fund under the Fireman’s Fund Policies, (4) approving the manner and form of notice of this Motion and the proposed injunction, and (5) granting such other relief as is just and proper. The Motion was filed by the Debtor on December 11, 2017.

Appearances were as noted on the record. Based upon the Motion, the Settlement Agreement, and the arguments of counsel, and after due deliberation and sufficient cause appearing therefor, this Court hereby makes the following findings of fact and conclusions of law:

I. FINDINGS OF FACT

IT IS HEREBY FOUND AND DETERMINED THAT:

A. Adequate notice of the Motion and of the hearing on the Motion was given by mailing a copy of the Motion and notice of the hearing on the Motion to: (1) the counsel for the Committee; (2) all other persons or entities that, as of the date the Motion was filed, had filed a notice of appearance or other demand for service of papers in this case or are otherwise entitled to notice under Local Rule 9013.3 (the “Parties in Interest”); (3) insurers that are or were parties to the declaratory judgment action brought by the Debtor and currently pending in District Court (the “Other Insurers”) as *Diocese of Duluth v. Liberty Mutual Insurance Company, et al*, Case No. 0:17-cv-03254-DWF-LIB (the “Coverage Litigation”); (4) counsel to Fireman’s Fund; (5) the United States Trustee; and (6) counsel for each of the parishes named in the Settlement Agreement (the “Parishes”). In addition, to ensure the broadest notice possible, the Debtor published notice of the Motion and notice of hearing on the Motion in the Duluth News-Tribune, the St. Paul Pioneer Press, and the Minneapolis Star-Tribune. Such notice, including the aforesaid notice by publication, was good and sufficient under the particular circumstances to provide adequate and appropriate notice to both known and unknown claimants and all Parties in Interest, and no other or further notice is or shall be required.

B. Notice of the Settlement Agreement, the Motion, and the hearing on the Motion and an opportunity to be heard is sufficient to bind (1) the Committee; (2) the Parishes; (3) Fireman’s Fund; (4) the Other Insurers; (5) all Parties in Interest; (6) all known claimants; and (7) all unknown claimants.

C. This Order and each of its Findings and Conclusions are binding upon (1) the Debtor; (2) the Parishes; (3) the Committee; (4) all Parties in Interest; (5) the Other Insurers; (6) all known claimants; (7) all unknown claimants; and (8) immediately upon its creation, any trust named in any plan of reorganization filed by or on behalf of the Debtor (the “Trust”).

D. The Debtor, the Parishes, the Committee, and Fireman’s Fund have agreed that upon the entry of this Order, and the running of any applicable appeal periods related

thereto, this Order shall satisfy and extinguish in full all of the obligations of Fireman's Fund under, arising out of, or relating to the Fireman's Fund Policies.

E. The Debtor, the Parishes, the Committee, and Fireman's Fund have agreed that upon the entry of this Order, and the running of any applicable appeal periods related thereto, all limits of liability under the Fireman's Fund Policies are exhausted.

F. The Debtor, the Parishes, the Committee, and Fireman's Fund have agreed that: (1) Fireman's Fund shall pay \$975,000.00, as provided in the Settlement Agreement (the "Settlement Amount"), to the Debtor or as otherwise directed by the Bankruptcy Court; and (2) the proceeds of the Settlement Amount shall be used by the Debtor only to pay (i) Court-approved administrative expenses incurred in connection with the case, including professional fees and expenses and/or (ii) certain other amounts payable pursuant to a plan of reorganization filed by the Debtor and the trust distribution procedures for any Trust, as may be amended from time to time.

II. CONCLUSIONS OF LAW

IT IS HEREBY ORDERED:

1. The relief requested in the Motion is granted and approved in all respects, and the Settlement Agreement is approved in its entirety, except that in the event of any inconsistency between this Order and the Settlement Agreement, this Order shall control.

2. The Debtor, the Parishes, the Committee, and Fireman's Fund are directed to perform their obligations pursuant to the terms and conditions of the Settlement Agreement. Notwithstanding any provision to the contrary contained in the Settlement Agreement or this Order, the Settlement Agreement shall be binding only on the parties to the Settlement Agreement, the reorganized Debtor, and the Trust, and no other person or entity.

3. In exchange for the Settlement Amount, and upon payment of the same to the Debtor, and without any further action being required, Fireman's Fund shall be deemed to have bought back the Policies free and clear of all interests of all persons, including all Interests of the Debtor, the Parishes, and other persons claiming coverage by, through, or on behalf of

any of the Parishes, any other insurer, and any person holding a claim against any of the Parishes or the Debtor that arises out of, relates to, results from, or is in connection with, in whole or part, directly or indirectly, any (a) actual or alleged sexual conduct, misconduct, abuse, or molestation including actual or alleged “sexual abuse” as defined in Minnesota Statutes § 541.073, (b) indecent assault or battery, rape, lascivious behavior, undue familiarity, pedophilia, ephebophilia, or sexually-related physical, psychological, or emotional harm, (c) contact or interactions of a sexual nature, or (d) assault, battery, corporal punishment, or other action of physical, psychological, or emotional abuse, humiliation, intimidation, or misconduct (collectively, and individually, “Abuse”) that took place in whole or in part prior to the date of this Order (each such claim a “Tort Claim” and each such holder of a Tort Claim a “Tort Claimant”).

4. Such sale of the Fireman’s Fund Policies is made by the Debtor to Fireman’s Fund pursuant to sections 363(b), 363(f), and 363(m) of the Bankruptcy Code.

5. Fireman’s Fund is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code.

6. The consideration exchanged, including, but not limited to, the Settlement Amount, constitutes a fair and reasonable settlement of the parties’ disputes and of their respective rights and obligations relating to the Policies and constitutes reasonably equivalent value.

7. The releases set forth in the Settlement Agreement comply with the Bankruptcy Code and applicable non-bankruptcy law.

8. Upon entry of this Order, the expiration of any appeal periods relating thereto, and the payment by Fireman’s Fund of the Settlement Amount, the Policies and Interests shall be terminated and of no further force and effect.

9. Fireman’s Fund’s payment of the Settlement Amount constitutes its full and complete performance of any and all obligations under the Fireman’s Fund Policies and with

respect to the foregoing Interests, including any performance owed to the Debtor, and exhausts all limits of liability of the Fireman's Fund Policies and with respect to the Interests.

10. All Interests the Debtor may have had, may presently have, or in the future may have in the Fireman's Fund Policies are released pursuant to the terms of this Agreement.

11. The Diocese Parties, the Parish Parties, and the Committee reserve all rights to seek recovery from any insurers other than the Fireman's Fund Parties (as defined in the Settlement Agreement) with respect to any claims not satisfied in full by the Settlement Agreement. Nothing in this Order shall eliminate or affect any right or obligation that any insurance companies other than the Fireman's Fund Parties, including, but not limited to the Other Insurers, may have or may in the future have with respect to the Debtor, the Parishes, or the Trust. Under no circumstances will any of the obligations or rights set forth in the Settlement Agreement impact the rights of the Diocese, the Parishes, or the Trust, as applicable, to seek recovery against any insurer other than the Fireman's Fund Parties for insurance proceeds respecting Tort Claims not satisfied in full by the Settlement Agreement, and if any provision of the Settlement Agreement is deemed by any court of competent jurisdiction to eliminate the rights of the Diocese, the Parishes, or the Trust, as applicable, to recover sums owed by any insurer(s) other than the Fireman's Fund Parties, the provision of the Settlement Agreement at issue will be deemed to be of no force and effect, and will be considered stricken from the Settlement Agreement, but Fireman's Fund's obligation to pay the Settlement Amount and the finality of the releases set forth in the Settlement Agreement shall not be disturbed.

12. Any plan filed by the Debtor shall designate the Fireman's Fund Parties as settling insurers with respect to the Fireman's Fund Policies in any schedule of settling insurers. The Fireman's Fund Parties will be entitled to the benefit of any channeling injunction and supplemental injunction contained in any such plan.

13. The Debtor shall designate the Settlement Agreement as an Insurance Settlement Agreement under any plan filed by the Debtor.

14. Pursuant to sections 105(a) and 363 of the Bankruptcy Code, all persons and entities who have held or asserted, who presently hold or assert, or who may in the future hold or assert (a) any claim, including without limitation any Tort Claim, as defined in the Settlement Agreement, or interest of any kind or nature against or in any of the Debtor's bankruptcy estates or the Trust, or (b) a claim, including without limitation any Tort Claim, of any kind or nature against the Fireman's Fund Parties, based upon the claims released in the Settlement Agreement, whenever or wherever arising or asserted (including all claims in the nature of or sounding in tort, contract, warranty or any other theory of law, equity or admiralty) (collectively, the "Released Claims"), shall be and hereby are permanently stayed, restrained, and enjoined from (i) asserting, enforcing, or attempting to assert or enforce any such claims or interests against the Fireman's Fund Parties or any property of the Fireman's Fund Parties, (ii) enforcing, attaching, collecting, or recovering, by any manner or means, from the Fireman's Fund Parties or from the property of the Fireman's Fund Parties, with respect to any Released Claim, any judgment, award, decree, or order against any Fireman's Fund Parties, and (iii) continuing, commencing, or otherwise proceeding to take, or taking, any action against the Fireman's Fund Parties, or the property of the Fireman's Fund Parties, to enforce any Released Claim or for the purpose of directly or indirectly collecting, recovering, or receiving payments from the Fireman's Fund Parties with respect to any such Released Claim; provided that, subject to the right of Fireman's Fund to cure a default in payment as set forth in the Settlement Agreement, this injunction shall become null and void if Fireman's Fund has not paid the Settlement Amount in full to the Debtor as of the date that is thirty (30) days after Fireman's Fund receives both (a) written notice from the Diocese that this Order has become a Final Order and (b) directions as to how Fireman's Fund should transmit the Settlement Amount. For the avoidance of doubt: (i) the Debtor and the Trust are not stayed, restrained, or enjoined from asserting any claims that are not Released Claims under the Settlement Agreement; and (ii) the Other Insurers are not stayed, restrained, or enjoined from asserting contribution, subrogation, indemnification,

reimbursement, or other similar claims that are not based upon Released Claims; and (iii) the Fireman's Fund Parties may assert any and all defenses, claims, interests, rights, and remedies to or relating to any claims that are not stayed, restrained, or enjoined.

15. The Debtor and Fireman's Fund shall, within twenty (20) days after the entry of this Order and payment of the Settlement Amount, file with the District Court in the Coverage Litigation a stipulation of dismissal with prejudice of all claims, rights, and remedies relating to the Fireman's Fund Policies.

16. This Order shall not limit or preclude the entry or effectiveness of any injunction that may be granted in connection with, or as part of, any order confirming the plan, including, without limitation, the benefit of an injunction that may be provided to the Fireman's Fund Parties with respect to rights of contribution, subrogation, reimbursement, indemnification, or similar claim that any other insurer may have or may in the future have against any of the Fireman's Fund Parties.

17. Notwithstanding anything to the contrary contained in this Order, the Motion or the Settlement Agreement, any of the Other Insurers that asserts that it has or may have a contribution, subrogation, indemnification, reimbursement, or other similar claim against the Fireman's Fund Parties in connection with coverage for Released Claims, and which, prior to the date of this Order, has asserted such claim against Fireman's Fund in the Coverage Litigation, may assert and fully prosecute such claim as a counterclaim, defense, or otherwise as an offset against any claim for coverage for underlying Released Claims that the Debtor, the Parishes, or the Trust (as the case may be) may assert against such insurer (a "Coverage Claim"). If such other insurer obtains a judicial determination or binding arbitration award that it is entitled to obtain a sum certain from any of the Fireman's Fund Parties as a result of such claim for contribution, subrogation, indemnification, or other similar Claim for the Fireman's Fund Parties' alleged share or equitable share, or to enforce subrogation rights, if any, with respect to the defense and/or indemnity obligation of the Fireman's Fund Parties for any Claims or reimbursement obligations for Conditional Payments released or resolved under the Agreement, the Diocese Parties or the

Parish Parties, as applicable, shall voluntarily reduce their judgment or Claim against, or settlement with, such other insurer(s) to the extent necessary to satisfy such contribution, subrogation, indemnification, or other claims against the Fireman's Fund Parties. Under no circumstances shall any of the Fireman's Fund Parties be required to pay any additional amounts to another insurer, the Debtor, the Parishes, or the Trust as a result of or related to any judgment reduction.

18. This Court shall retain jurisdiction to resolve any disputes that may arise between or among the Parties in respect of the implementation of the Settlement Agreement, which shall be construed in accordance with Minnesota law, or the interpretation or enforcement of this Order.

19. The Settlement Agreement and this Order shall be binding upon the parties to the Settlement Agreement, the reorganized Debtor, and the Trust, and shall survive confirmation of any plan of reorganization of the Debtor.

United States Bankruptcy Judge

General Information

Court United States Bankruptcy Court for the District of Minnesota;
United States Bankruptcy Court for the District of Minnesota

Docket Number 5:15-bk-50792