

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

In re:

ROMAN CATHOLIC DIOCESE OF
HARRISBURG,

Debtor.¹

Chapter 11

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

**DEBTOR’S MOTION FOR AN ORDER FURTHER EXTENDING ITS EXCLUSIVE PERIODS TO FILE A CHAPTER 11 PLAN AND SOLICIT ACCEPTANCES THERETO
PURSUANT TO SECTION 1121(d) OF THE BANKRUPTCY CODE**

The above-captioned debtor and debtor-in-possession (the “*Debtor*”) hereby files this motion (the “*Motion*”) pursuant to section 1121(d) of title 11 of the United States Code (the “*Bankruptcy Code*”) and Rule 9006 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”) for entry of an order substantially in the form attached hereto as **Exhibit A** (the “*Proposed Order*”) further extending the Debtor’s Exclusive Periods (as defined below) to file a chapter 11 plan for an additional period of thirty-seven (37) days up to and including August 19, 2021 and to solicit acceptances of such plan for an additional period of ninety-seven (97) days up to and including October 18, 2021. In support thereof, the Debtor respectfully represents:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion, pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the Middle District of Pennsylvania. This matter is a core proceeding, pursuant to 28 U.S.C. § 157(b), and the Debtor consents to the entry of a final judgment or order with respect to this

¹ The last four digits of the Debtor’s federal tax identification number are: 4791. The Debtor’s principal place of business is located at 4800 Union Deposit Road, Harrisburg, Pennsylvania 17111.

Motion, if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

2. Venue is proper before this Court, pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

3. On February 19, 2020 (the “*Petition Date*”), the Debtor commenced this chapter 11 case. The Debtor is operating its business and managing its property as a debtor in possession, pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Official Committee of Tort Claimants (the “*Committee*”) was appointed on March 6, 2020. No request for the appointment of a trustee or examiner has been made in the chapter 11 case.

4. A description of the Debtor’s history, business operations, operational structure, the reasons for commencing the chapter 11 case, the relief sought from the Court, and the facts and circumstances supporting this Motion are set forth in the *Informational Brief of the Roman Catholic Diocese of Harrisburg* (the “*Informational Brief*”) and the *Declaration of Christopher G. Linscott in Support of First Day Motions* (the “*Linscott Declaration*” and, with the Informational Brief, collectively, the “*First Day Informational Pleadings*”).

5. Since the Petition Date, the Debtor has been actively engaged in the administration of this complex chapter 11 case, including: (a) finalizing and filing its schedules of assets and liabilities and statement of financial affairs; (b) arguing all of the Debtor’s “first day” motions, and negotiating with the United States Trustee, PNC Bank, and the Committee concerning the terms of certain interim and final orders; (c) extensive and ongoing communications with counsel to the Committee and other stakeholders; (d) preparing and obtaining approval of its claims bar date motion that established the date on which all non-governmental and governmental unit claims must be submitted as November 13, 2020 and December 11, 2020, respectively (the “*Claims Bar Dates*”); (e) reviewing and assembling numerous documents in response to requests from the

United States Trustee and the Committee; (f) reviewing, assembling and creating a secure data room in order to share confidential information with the Committee and the insurance companies party to the recently filed adversary proceeding (the “*Insurers*”); (g) negotiating and finalizing nondisclosure agreements with the Committee and Insurers; and (h) participating in multiple days of ongoing mediation in furtherance of a consensual resolution of claims filed by survivors of childhood abuse.

6. In addition to the above, the Debtor has commenced an adversary proceeding (Adv. Pro. Case No. 1:20-ap-00018-HWV) (the “*Adversary Proceeding*”) against the Insurers to facilitate, and if necessary, litigate, a global resolution of all of the Debtor’s insurance coverage issues, the outcome of which will, in large part, guide the Debtor in the drafting of its ultimate plan of reorganization. To that end, the Debtor has negotiated a consensual mediation order with the Committee and Insurers. To date, the parties have engaged in multiple mediation sessions of the Adversary Proceeding with the next scheduled mediation session scheduled for June 25, 2021.

7. The resolution of the Adversary Proceeding is a gating item to the proposal and confirmation of a consensual plan of reorganization.

8. In light of the foregoing, on June 22, 2020, the Court entered the *Order Granting Debtor’s Motion for an Order Extending Its Exclusive Periods to File Chapter 11 Plan and Solicit Acceptances Thereto Pursuant to Section 1121(d) of the Bankruptcy Code* [Dkt. No. 351] (the “*First Exclusivity Order*”). Pursuant to the First Exclusivity Order, the Debtor was granted until December 15, 2020 to file a plan of reorganization and until February 13, 2021 to solicit acceptances of such plan.

9. On December 15, 2020, the Court entered the *Order Granting Debtor’s Motion for an Order Further Extending Its Exclusive Periods to File Chapter 11 Plan and Solicit Acceptances*

There to Pursuant to Section 1121(d) of the Bankruptcy Code [Dkt. No. 498] (the “**Second Exclusivity Order**”, and together with the First Exclusivity Order, the “**Previous Orders**”). Pursuant to the Second Exclusivity Order, the Debtor was granted until March 15, 2021 to file a plan of reorganization and until May 14, 2021 to solicit acceptances of such plan.

10. On March 22, 2021, the Court entered the *Order Granting Debtor’s Motion for an Order Further Extending Its Exclusive Periods to File Chapter 11 Plan and Solicit Acceptances There to Pursuant to Section 1121(d) of the Bankruptcy Code* [Dkt. No. 568] (the “**Third Exclusivity Order**”, and together with the First Exclusivity Order and the Second Exclusivity Order, the “**Previous Orders**”). Pursuant to the Third Exclusivity Order, the Debtor was granted until July 13, 2021 to file a plan of reorganization and until September 13, 2021 to solicit acceptances of such plan.

REQUESTED RELIEF

11. By this Motion and pursuant to section 1121(d)(1) of the Bankruptcy Code, the Debtor seeks entry of an order further extending the periods under section 1121(b) and (c) of the Bankruptcy Code in which the Debtor has the exclusive right to file a chapter 11 plan for an additional period of thirty-seven (37) days up to and including August 19, 2021 and to solicit acceptances of such plan for an additional period of ninety-seven (97) days up to and including October 18, 2021. The requested extension is reasonable and necessary given the tasks to be completed and issues to be resolved before a confirmable chapter 11 plan can be negotiated and proposed.

BASIS FOR RELIEF

A. **Section 1121(d) of the Bankruptcy Code Permits the Court to Extend the Exclusive Periods for “Cause”**

12. Section 1121(b) of the Bankruptcy Code provides for an initial period of 120 days after the commencement of a chapter 11 case during which a debtor has the exclusive right to file a chapter 11 plan. Section 1121(c)(3) of the Bankruptcy Code provides that if the debtor proposes a chapter 11 plan within the exclusive filing period, it has a period of 180 days after the commencement of the chapter 11 case to obtain acceptances of such chapter 11 plan. Absent an extension, the Debtor’s exclusive filing period and exclusive solicitation period will expire on July 13, 2021 and September 13, 2021, respectively (the “*Exclusive Periods*”). Pursuant to section 1121(d)(1) of the Bankruptcy Code, the Court may, upon a demonstration of cause, extend the Debtor’s Exclusive Periods. As described below, cause exists for extending the Debtor’s Exclusive Periods.

13. The paramount objectives of a chapter 11 case are the rehabilitation of a debtor’s business and the negotiation, development, proposal, confirmation and consummation of a chapter 11 plan. The periods for exclusively filing a chapter 11 plan and exclusively soliciting votes on such plan under section 1121 of the Bankruptcy Code are intended to afford a debtor a full and fair opportunity to achieve these objectives without the disruption of its business that might be caused by the filing of competing chapter 11 plans.

14. Section 1121(d)(1) of the Bankruptcy Code provides in pertinent part:

Subject to paragraph (2), on request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.

11 U.S.C. § 1121(d)(1).

15. Congress intended that the period during which only the debtor may file a chapter 11 plan be of adequate length for the debtor to formulate, negotiate and draft a consensual chapter 11 plan and solicit acceptances thereof. As reflected in the legislative history of section 1121 of the Bankruptcy Code, section 1121(d) strikes a balance between allowing a debtor “to remain in control to some degree,” yet at the same time not “unduly delaying creditors.” H.R. Rep. No. 95-595, at 231-32 (1977); see *In re Newark Airport/Hotel Ltd. P’Ship*, 156 B.R. 444, 451 (Bankr. D.N.J. 1993), *aff’d*, 155 B.R. 93 (D.N.J. 1993); *In re Pub. Serv. Co. of N.H.*, 88 B.R. 521, 534 (Bankr. D.N.H. 1988) (explaining that “the legislative intent . . . [is] to promote maximum flexibility to suit various types of reorganization proceedings”).

16. In circumstances in which the initial period to exclusively file a chapter 11 plan proves inadequate for the debtor to negotiate and file a chapter 11 plan, the bankruptcy court has the discretion to extend the periods under section 1121 of the Bankruptcy Code for substantial periods of time. The moving party bears the burden of proving that cause exists. *In re Service Merchandise Co., Inc.*, 256 B.R. 744, 751 (Bankr. M.D. Tenn. 2000).

17. In determining whether “cause” exists to extend a debtor’s exclusive periods, courts generally consider the following factors:

- (i) the size and complexity of the case;
- (ii) the necessity of sufficient time to negotiate a plan and prepare adequate information;
- (iii) the existence of good faith progress toward reorganization;
- (iv) whether the debtor is paying its debts as they become due;
- (v) whether the debtor has demonstrated reasonable prospects for filing a viable chapter 11 plan;
- (vi) whether the debtor has made progress in negotiating with creditors;
- (vii) the length of time a case has been pending;

- (viii) whether the debtor is seeking an extension to pressure creditors; and
- (ix) whether or not unresolved contingencies exist.

In re Borders Group, Inc., 460 B.R. 818, 822 (Bankr. S.D.N.Y. 2011); *In re R.G. Pharmacy, Inc.*, 374 B.R. 484, 487 (Bankr. D. Conn. 2007); *In re Adelpia Communications Corp.*, 352 B.R. 578, 587 (Bankr. S.D.N.Y. 2006); *In re Cent. Jersey Airport Servs.*, 282 B.R. 176, 184 (Bankr. D.N.J. 2002) (and cases cited therein); *In re Service Merchandise Co., Inc.*, 256 B.R. at 751; *In re Express One Int'l, Inc.*, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996); *In re Gibson & Cushman Dredging Corp.*, 101 B.R. 405, 409–10 (E.D.N.Y. 1989); see *In re McLean Indus., Inc.*, 87 B.R. 830, 834 (Bankr. S.D.N.Y. 1987). Not all factors are relevant to every case, and courts have relied on subsets of the above factors to hold that cause exists. *In re Pine Run Trust, Inc.*, 67 B.R. 432, 435 (Bankr. E.D. Pa. 1986)

18. The facts and circumstances of this chapter 11 case and the express terms of section 1121(d) fully support the extension of the Debtor's Exclusive Periods as requested herein. See *Express One Int'l, Inc.*, 194 B.R. at 100 (large size of debtor and concomitant difficulty in formulating a chapter 11 plan are traditional grounds for extension); *In re Pine Run Trust, Inc.*, 67 B.R. at 435 (“[t]he traditional ground for cause [is] the large size of the debtor and the concomitant difficulty in formulating a plan of reorganization . . .”).

B. Cause Exists for an Extension of the Debtor's Exclusive Periods

19. The Debtor believes that sufficient cause exists to support the requested extension of the Exclusive Periods.

- (i) *An Extension is Warranted Because the Chapter 11 Case is Sufficiently Complex and Unresolved Contingences in Connection Therewith Remain*

20. Both Congress and the courts have recognized the size and complexity of a debtor's case alone may constitute cause for the extension of a debtor's exclusive period to file a chapter

11 plan and the period to solicit acceptances of such a plan. “[I]f an unusually large company were to seek reorganization under chapter 11, the court would probably need to extend the time in order to allow the debtor to reach an agreement.” H.R. Rep. No. 95-595, at 232 (1977).

21. Although not as large as some cases, the Debtor’s case is certainly complex. As noted above, in order to move forward with a confirmable plan of reorganization, certain complex issues must first be resolved, including, but not limited to, the issues at the center of the Adversary Proceeding. The Debtor, Committee, and Insurers continue to move forward with mediation of the Adversary Proceeding and have made substantial progress to date. The final resolution of the Adversary Proceeding will determine the scope of funds available to fund the Debtor’s plan of reorganization.

22. In addition to resolution of the Adversary Proceeding, the Debtor must receive and review each claim filed by creditors, primarily those claims arising from abuse, before it can formulate an adequate plan of reorganization. The Debtor received 59 abuse-related proofs of claim prior to the passage of the November 13, 2020 bar date. The Debtor is currently working to review those claims in an efficient, careful, and expeditious manner.

23. Until a proper determination of the scope of the insurance proceeds and abuse claims is made, it would be difficult, if not impossible, for the Debtor to formulate a confirmable plan of reorganization. Under the unique and complex circumstances of this chapter 11 case, the proposed extension of the Debtor’s Exclusive Periods is appropriate and gives the Debtor the best opportunity to propose a plan of reorganization with the broadest support possible.

C. The Existence of Good Faith Progress in Negotiating with Creditors

24. Since the inception of this chapter 11 case, the Debtor has progressed in good faith towards reorganization. The Debtor has already to date: (a) timely filed its schedules and statement of financial affairs; (b) successfully established the Claims Bar Dates; (c) instituted the Adversary

Proceeding and made significant progress towards the mediation of the claims raised in the Adversary Proceeding; (d) established a secure data room and populated it with numerous confidential documents to be shared with the Committee and Insurers in furtherance of resolving the Adversary Proceeding; (e) responded to numerous document requests from the United States Trustee and the Committee; (f) negotiated and finalized nondisclosure agreements with the Committee and Insurers; and (g) participated in multiple mediation sessions concerning the Adversary Proceeding.

D. The Debtor Will Use the Extension to Resolve the Outstanding Issues and Negotiate in Good Faith with its Stakeholders

25. The Debtor is not seeking an extension of the Exclusive Periods for purposes of delaying recoveries to creditors or forcing them to accede to the Debtor's demands. On the contrary, the Debtor requests this extension so that it can resolve the above-described outstanding issues in a consensual manner and in an effort to ensure all parties are fairly compensated.

E. The Debtor Has Paid Postpetition Debts As They Become Due

26. A Debtor's payment of postpetition obligations as they come due supports a finding that the Debtor is not abusing its exclusivity period. *See In re McLean Indus., Inc.*, 87 B.R. at 834. The Debtor is current on all postpetition obligations and anticipates that this practice will continue. Thus, the requested extension of the Exclusive Periods will not prejudice any legitimate interests of its creditors.

CONCLUSION

27. Since the entry of the Previous Orders, the Debtor has continually worked in an expeditious manner to resolve any outstanding issues that may be causing a delay in their ability to formulate a confirmable plan of reorganization.

28. For the reasons set forth herein, the requested extension of the Exclusive Periods is warranted, necessary and appropriate. Further, termination of the Debtor's Exclusive Periods would adversely impact the interests of the Debtor's estate and the substantial progress that has been made in this chapter 11 case. Therefore, the Debtor respectfully submits that cause exists to further extend the Exclusive Periods pursuant to section 1121(d) of the Bankruptcy Code.

NOTICE

29. The Debtor has provided notice of this Motion either by electronic mail, facsimile, or United States First Class mail to: (i) the Office of the United States Trustee for the Middle District of Pennsylvania; (ii) counsel to the Committee; and (iii) all parties entitled to notice pursuant to Bankruptcy Rule 2002 and Local Rule 9013-1(d). Due to the nature of the relief requested herein, the Debtor submits that no other or further notice is required.

NO PRIOR REQUEST

30. Other than as set forth in paragraphs 8 through 10, no prior request for the relief sought in this Motion has been made to this or any other court.

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WHEREFORE, the Debtor respectfully requests that the Court grant the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: June 21, 2021
Nashville, Tennessee

Respectfully submitted,

WALLER LANSDEN DORTCH & DAVIS, LLP

/s/ Blake D. Roth

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Attorneys for the Debtor and Debtor In Possession

Exhibit A

Proposed Order

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

In re:

ROMAN CATHOLIC DIOCESE OF
HARRISBURG,

Debtor.¹

Chapter 11

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

**ORDER GRANTING DEBTOR'S MOTION FOR AN ORDER FURTHER EXTENDING
ITS EXCLUSIVE PERIODS TO FILE A CHAPTER 11 PLAN AND SOLICIT
ACCEPTANCES THERETO PURSUANT TO SECTION 1121(d) OF THE
BANKRUPTCY CODE**

Upon consideration of the motion (the “*Motion*”)² for entry of an order (this “*Order*”) filed by the above-captioned Debtor requesting an extension of its Exclusive Periods pursuant to section 1121(d) of the Bankruptcy Code; and the Court having found that it has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334; and the Court having found that consideration of the Motion and the relief requested therein is a core proceeding pursuant to 28 U.S.C. § 157(b); and the Court having found that venue of this proceeding in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that notice of the Motion as set forth therein is sufficient under the circumstances; and the Court having reviewed the Motion and having considered the record at the hearing held before this Court (the “*Hearing*”); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS THEREFORE ORDERED:

¹ The last four digits of the Debtor’s federal tax identification number are: 4791. The Debtor’s principal place of business is located at 4800 Union Deposit Road, Harrisburg, Pennsylvania 17111.

² Capitalized terms not defined herein shall have the meanings given to them in the Motion.

1. The Motion is granted as set forth herein.
2. The Exclusive Period for filing a plan of reorganization is hereby extended up to and including August 19, 2021.
3. The Exclusive Period for soliciting such plan of reorganization shall be extended up to and including October 18, 2021.
4. The entry of this Order shall not prejudice the rights of the Debtor to request further extensions of the Exclusive Periods or to seek other appropriate relief.
5. The Court hereby retains jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

Dated: _____, 2021

By the Court,

Henry W. Van Eck, Chief Bankruptcy Judge