UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

In re:	Chapter 11
THE DIOCESE OF CAMDEN, NEW JERSEY,	Case No. 20-21257 (JNP)
Debtor.	

THE DIOCESE OF CAMDEN, NEW JERSEY'S MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION OF THE EIGHTH AMENDED PLAN OF REORGANIZATION AND OMNIBUS RESPONSE TO OBJECTIONS THERETO

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TABLE OF CONTENTS

PAGE

INTRODUCTION 1

STATEMENT OF FACTS 2

A. The Diocese's Bankruptcy Case 2

B. The Independent Victim's Compensation Program 3

C. The Bar Date 3

D. The Proofs of Claim 4

E. The Adversary Proceeding 4

F. The Mediations 5

G. The 9019 Motion 6

H. The Tort Committee Adversary Proceedings & Standing 7

I. The Disclosure Statement and Plan 8

J. The Voting Results 10

LEGAL ARGUMENT 10

I. THE PLAN SATISFIES ALL ELEMENTS OF SECTION 1129 OF THE BANKRUPTCY CODE 10

A. The Plan Complies with All Applicable Provisions of the Bankruptcy Code, Satisfying 1129(a)(1) 11

B. The Plan Proponents Complied with the Bankruptcy Code in Accordance with 1129(a)(2) 12

C. The Plan Was Proposed in Good Faith and Not by Any Means Forbidden by Law in Accordance with 1129(a)(3) 12

i. The Plan is Consistent with the Objectives of Chapter 11 13

ii. The Diocese Conducted the Plan Negotiations in Good Faith and at Arms' Length 14

iii. There is No Evidence that the "Quantum of Liability" will be Raised through the Plan 18

iv. The Plan Proponents Will Establish the Necessary Factual Record at the Confirmation Hearings to Warrant Confirmation 20

v. The 9019 Motion is Unrelated to Good Faith 20

D. Pursuant to Sections to 1129(a)(4), All Payments to Proponents are Reasonable 21

E. All Officers of the Reorganized Debtor Have Been Disclosed, Satisfying Section 1129(a)(5) of the Bankruptcy Code 22

F. The Plan Satisfies Section 1129(a)(7) of the Bankruptcy Code – Best Interests of Creditors Test 22

G. Acceptance of Plan by Voting Classes in Accordance with Section 1129(a)(8) 23

H. Section 1129(a)(9) of the Bankruptcy Code – Treatment of Claims Entitled to Priority Pursuant to Section 507(a) of the Bankruptcy Code 23

I. Section 1129(a)(10) of the Bankruptcy Code – Acceptance by At Least One Impaired Class 26

J. The Plan is Feasible Under the Requirements of Section 1129(a)(11) 26

K. Under the Plan. the Diocese Will Satisfy All Applicable Fees and Satisfy Section 1129(a)(12) 28

L. The Diocese Will Continue All Retiree Benefits in Accordance with Section 1129(a)(13) 28

II. THE AJUK OBJECTION MUST BE OVERRULED BY THE COURT 29

III. CHANGED CIRCUMSTANCES WARRANT CONFIRMATION OF THE PLAN OVER APPROVAL OF THE 9019 MOTION 30

RESERVATION OF RIGHTS 33

CONCLUSION 34

TABLE OF AUTHORITIES

PAGE(S)

Cases

Bank of Am. Nat'l Trust and Sav. Ass'n v. 203 N. LaSalle St. P'ship,
526 U.S. 434 (1999) 13

Fry's Metals, Inc. v. Gibbons (In re RFE Indus., Inc.),
283 F.3d 159 (3d Cir. 2002) 31

Global Industrial Technologies, Inc.,
645 F.3d 201 (3d Cir. 2011) 18, 19

In re Abbotts Diaries of Pennsylvania, Inc.,
788 F.2d 150 (3d Cir. 1986) 13

In re ACandS, Inc.,
311 B.R. 36, 43 (Bankr. D. Del. 2004) 17

In re Acequia, Inc.,
787 F.2d 1352 (9th Cir. 1986) 27

In re American Capital Equipment, LLC,
688 F.3d 145 (3d Cir. 2012) 13

In re Boy Scouts of Am. & Delaware BSA, LLC,
No. 20-10343 (LSS), 2022 WL 3030138 (Bankr. D. Del. July 29, 2022) 19, 20

In re Burns and Roe Enterprises, Inc.,
No. 08–4191, 2009 WL 438694 (D.N.J. Feb. 23, 2009) 11

In re Chemtura Corp.,
439 B.R. 561 (Bankr. S.D.N.Y. 2010) 14, 18

In re Cypresswood Land Partners, Inc.,
409 B.R. 396 (Bankr. S.D. Tex. 2009) 12

In re Danny Thomas Properties II L.P.,
241 F.3d 959 (8th Cir. 2001) 27

In re Deval Corp.,
592 B.R. 587 (Bankr. E.D. Pa. 2018), *aff'd sub nom. In re DeVal Corp.*, 601 B.R. 725 (E.D. Pa. 2019) 25

In re Dow Corning Corp.,
255 B.R. 445, 497-499 (E.D. Mich. 2000) 16

In re Energy Future Holdings Corp.,
990 F.3d 728 (3d Cir. 2021) 26

In re Essential Therapeutics,
308 B.R. 170 (Bankr. D. Del. 2004) 25

In re Falch,
450 B.R. 88 (Bankr. E.D. Pa. 2011) 13

In re Filene's Basement, LLC,
No. 11-13511 (KJC), 2014 WL 1713416 (Bankr. D. Del. Apr. 29, 2014) 31

In re G–1 Holdings Inc.,
420 B.R. 216 (D.N.J. 2009) 11, 27

In re Griswold Bldg., LLC,
420 B.R. 666 (Bankr. E.D. Mich. 2009) 27

In re Jim Beck, Inc.,
214 B.R. 305 (W.D. VA. 1997) 29

In re Johns–Manville Corp.,
68 B.R. 618 (Bankr. S.D.N.Y. 1986) 29

In re Journal Register Co.,
407 B.R. 520 (Bankr. S.D.N.Y. 2009) 11

In re Kaiser Aluminum Corp.,
456 F.3d 328 (3d Cir. 2006) 13

In re Mountain Creek Resort, Inc.,
616 B.R. 45 (Bankr. D.N.J. 2020) 24

In re Patrician St. Joseph Partners L.P.,
169 B.R. 669 (D. Ariz. 1994) 27

In re Peabody Energy Corporation,
933 F.3d 918 (8th Cir. 2019) 16

In re Pizza of Haw., Inc.,
761 F.2d 1374 (9th Cir. 1985) 27

In re PWS Holding Corp.,
228 F.3d 224 (3d Cir. 2000) 12

In re RS Legacy Corp.,
No. 15-10197(BLS), 2016 WL 1084400 (Bankr. D. Del. Mar. 17, 2016) 25

In re Sound Radio, Inc.,
93 B.R. 849 (Bankr. D.N.J. 1988), *aff'd in part, remanded in part*, 103 B.R. 521 (D.N.J. 1989) *aff'd sub nom. In re Sound Radio Inc*, 908 F.2d 964 (3d Cir. 1990), *and aff'd sub nom. Appeal of Robinson*, 908 F.2d 964 (3d Cir. 1990) 15

In re Spansion, Inc.,
426 B.R. 114 (Bankr. D. Del. 2010) 24

In re Summit Metals, Inc.,
379 B.R. 40 (Bankr. D. Del. 2007) 25

In re Surfango, Inc.,
No. 09–30972, 2009 WL 5184221 (Bankr. D.N.J. Dec.18, 2009) 27

In re TCI 2 Holdings, LLC,
428 B.R. 117 (Bankr. D. N.J. 2010) 20

In re T–H New Orleans L.P.,
116 F.3d 790 (5th Cir. 1997) 27

In re U.S. Mineral Prods. Co.,
No. 01–2471, 2005 WL 5898300 (Bankr. D. Del. Nov. 29, 2005) 15

In re W.R. Grace & Co.,
475 B.R. 34 (D. Del. 2012) 15

In re Walker,
628 B.R. 9 (Bankr. E.D. Pa. 2021) 12

In re Whispering Pines Estates, Inc.,
370 B.R. 452 (1st Cir. BAP 2007) 11

In re Wiersma,
227 Fed.Appx. 603 (9th Cir. 2007) 27

In re Wool Growers Cent. Storage Co.,
371 B.R. 768 (Bankr. N.D. Tex. 2007) 11

In re Zick,
931 F.2d 1124 (6th Cir. 1991) 13

Integrated Solutions, Inc. v. Service Support Specialties,
124 F.3d 487 (3d Cir. 1997) 13

Kane v. Johns-Manville Corp.,
843 F.2d 636 (2d Cir. 1988)..... 22

Lebron v. Mechem Financial Inc.,
27 F.3d 937 (3d Cir. 1994)..... 25

Myers v. Martin (In re Martin),
91 F.3d 389 (3d Cir. 1996)..... 21, 30, 31

Walters v. U.S. National Bank of Johnstown,
879 F.2d 95 (3d Cir. 1989)..... 13

Statutes

11 U.S.C. § 1112..... 27

11 U.S.C. § 1122(a) 11

11 U.S.C. § 1123(a)(1)..... 12

11 U.S.C. § 1123(a)(4)..... 12

11 U.S.C. § 1129(a)(1)..... i, 11

11 U.S.C. § 1129(a)(10)..... ii, 26

11 U.S.C. § 1129(a)(11)..... ii, 26

11 U.S.C. § 1129(a)(12)..... ii, 28

11 U.S.C. § 1129(a)(2)..... i, 12

11 U.S.C. § 1129(a)(3)..... i, 12, 13, 14, 16

11 U.S.C. § 1129(a)(4)..... ii, 21

11 U.S.C. § 1129(a)(5)..... 22

11 U.S.C. § 1129(a)(7)..... ii, 22

11 U.S.C. § 1129(a)(8)..... ii, 23

11 U.S.C. § 303(a) 27

11 U.S.C. § 503(b)(3)(D)..... 24, 25

11 U.S.C. 1129(a)(9)..... ii, 23, 26

28 U.S. Code § 1930 28

N.J.S.A. 16:15-10 22

Other Authorities

H.R.Rep. No. 595, 95th Cong., 1st Sess. 412 (1977) 11

S.Rep. No. 989, 95th Cong., 2d Sess. 126 (1978) 11

U.S. Code Cong. & Admin. News 1978, pp. 5963, 6368, 5787, 5912 11

INTRODUCTION

The Diocese of Camden, New Jersey (the "Diocese"), by and through its undersigned counsel, hereby submits this memorandum of law in support of the Diocese's and its Official Committee of Tort Claimant Creditors (the "Tort Committee," and collectively with the Diocese, the "Plan Proponents") joint *Eighth Amended Plan of Reorganization* [ECF 1725] (the "Plan")[1] and in response[2] to: (i) the opposition filed by Certain Underwriters at Lloyd's, London and Certain London Market Companies (collectively, "LMI") [ECF 2401] (the "LMI Opposition"); (ii) the opposition filed by: (a) Century Indemnity Company, as successor to CCI Insurance Company, as successor to INA, Federal Insurance Company, and Illinois Union Insurance Company (collectively, "Century"), (b) Granite State Insurance Company, Lexington Insurance Company, and National Union Fire Insurance Company of Pittsburgh, PA (collectively, the "AIG Insurers"); (c) The National Catholic Risk Retention Group, Inc. ("TNCRRG"); and (d) Interstate Fire and Casualty Company ("Interstate," and collectively with LMI, Century, the AIG Insurers, and TNCRRG, the "Insurers") [ECF 2410] (the "Other Insurer Opposition,"[3] and collectively with the

[1] Capitalized terms used but not defined herein shall have the same meaning ascribed to such term in the Plan.

[2] Prior to the commencement of the Confirmation Hearing, the Plan Proponents will file a revised form of the Proposed Confirmation Order which will include changes made to address informal comments to the Plan received from the United States Trustee, the Unknown Claims Representative and changes to address certain concerns raised by the Insurers, including provisions regarding fraud prevention, requiring the Trust Administrator to review attorney fee awards for compliance with New Jersey law, and a reduction clause.

[3] This response does not address issues raised in the Insurer Oppositions for which the Insurers have no standing pursuant to the Court's *Memorandum and Opinion* [ECF 2226] (the "Insurer Standing Opinion"). Pursuant to the Insurer Standing Opinion, the Court limited the Insurers' standing to (i) whether the Transferred Insurance Interests may be assigned without Insurer consent; (ii) whether the Trust Distribution Procedures violate the Insurers' rights; (iii) whether the Plan was proposed in good faith; and (iv) to a limited extent, Plan. Specifically, the Court rejected that the Insurers have standing to object to third party releases and injunctions in the Plan. Thus, those issues are not addressed in this response, but the Diocese reserves the right to respond to such objections in the event that the Court permits such objections to be raised at the Confirmation Proceedings.

LMI Opposition, the "Insurer Oppositions")[4]; and (iii) the opposition filed by Vincent Ajuk ("Ajuk") [ECF 2230] (the "Ajuk Opposition") and respectfully represents as follows:

STATEMENT OF FACTS

A. The Diocese's Bankruptcy Case

On October 1, 2020 (the "Petition Date"), the Diocese filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, commencing the above-captioned chapter 11 case in the United States Bankruptcy Court for the District of New Jersey. [ECF 1]. The Diocese continues to maintain its operations to fulfill its mission and manage its affairs as a debtor-in-possession pursuant to Bankruptcy Code Sections 1107(a) and 1108.

On October 23, 2020, the Office of the United States Trustee formed the Tort Committee. [ECF 111]. On December 24, 2020, the Office of the United States Trustee appointed the Official Committee of Unsecured Trade Creditors (the "Trade Committee"). [ECF 293].

The Diocese is a Roman Catholic diocese of the Latin Church in New Jersey in which there are sixty-two (62) separately constituted parishes and approximately 486,000 Catholic parishioners in the six (6) southern New Jersey counties of Atlantic, Camden, Cape May, Cumberland, Gloucester, and Salem. [ECF 1724 at 12]. The Diocese is a not-for-profit religious corporation organized under the laws of the State of New Jersey. *Id.* A more detailed history and description of the Diocese and its operations, together with the reasons for its Chapter 11 filing, are set forth in the First Day Declaration of Rev. Robert E. Hughes, Vicar General [ECF 3] and the Amended First Day Declaration of Laura J. Montgomery [ECF 43], which are incorporated herein as if set forth in their entirety.

[4] To the extent this memorandum of law does not directly address any arguments raised in the Insurer Oppositions, the Diocese joins and expressly incorporates herein the response of the Tort Committee.

B. The Independent Victim's Compensation Program

Beginning on June 15, 2019, the Roman Catholic Archdiocese of Newark, along with the Dioceses of Camden, Metuchen, Paterson and Trenton established the Independent Victim Compensation Program ("IVCP") to begin accepting claims related to the abuse of minors by priests of these dioceses. The Diocese paid over $842,000 for administration of the IVCP. [ECF 3 at ¶ 40].

The IVCP was administered by Kenneth R. Feinberg and Camille S. Biros (collectively, the "IVCP Administrators"), two experienced victims' compensation experts who have designed and administered similar compensation programs for the Catholic Dioceses in New York and Pennsylvania. [ECF 1724 at 34]. They also have administered similar programs for the September 11th Victim Compensation Fund, the Hokie Spirit Memorial Fund (Virginia Tech shootings), Deepwater Horizon/BP oil spill fund, the Penn State abuse claims, Aurora, Colorado shooting victim relief fund, The Newtown-Sandy Hook Community Foundation, the One Fund (2013 Boston Marathon bombings), and the Archdiocese of New York Independent Reconciliation and Compensation Program. *Id.* The IVCP Administrators acted independently in evaluating and compensating individual claims. [ECF 3 at ¶ 41].

Effective July 31, 2020, the Diocese suspended its participation in the operation of the IVCP. *Id.* at ¶ 45.

C. The Bar Date

On October 14, 2020, the Diocese filed its *Motion for Entry of an Order Establishing a Deadline for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof* [ECF 74] (the "Bar Date Motion").

After unsuccessful mediation, various objections were filed to the Bar Date Motion [ECF 254, 327, 337, 339, 341, 345, 356]. In connection with the Bar Date Order, this Court ruled that the claim form for Survivor proofs of claim contained sufficient information to be entitled to *prima facie* validity under Section 502 of the Bankruptcy Code. [ECF 488 at Tr. 20:1 – 21:21, 22:9 – 23:18]. Thereafter, on February 11, 2021, the Court entered an order granting the Bar Date Motion (the "Bar Date Order"). [ECF 409]. The Bar Date Order set the deadline to file all proofs of claim, including Abuse Claims, as June 30, 2021 (the "Bar Date").

D. The Proofs of Claim

Prior to the Bar Date, a total of 345 Survivor proofs of claim were filed against the Diocese. [ECF 1087-3 at ¶13]. Upon review, the Diocese determined that several of the claims were duplicates. *Id.* Accordingly, the total number of Survivor proofs of claim is 324. *Id.* Subsequently, 31 late claims have been filed.

Based on the Diocese's review, seventy-eight (78) Survivor proofs of claim allege abuse completely outside of periods for which the Diocese had insurance. [*See* Claim Nos. 73, 77, 79, 80, 86, 88, 89, 90, 100, 107, 116, 137, 138, 146, 151, 159, 169, 172, 177, 179, 180, 182, 188, 190, 191, 192, 203, 205, 207, 208, 211, 219, 222, 236, 238, 240, 247, 248, 249, 251, 257, 259, 261, 262, 264, 269, 277, 278, 286, 342, 377, 380, 391, 395, 421, 422, 424, 425, 428, 437, 441, 442, 445, 454, 457, 461, 471, 464, 474, 481, 485, 487, 489, 494, 503, 508, 512, 518].

E. The Adversary Proceeding

On October 21, 2020, the Diocese filed a complaint commencing the adversary proceeding captioned *The Diocese of Camden, New Jersey v. Insurance Company of North America, et al.*;

Adv. Pro. No. 20-1573 (JNP) (the "Insurance Adv. Pro."). [Ins. Adv. ECF 1].[5] The Adversary Proceeding was filed against the Insurers. *Id.* On November 25, 2020, the Diocese filed a First Amended Complaint (the "Complaint") in the Adversary Proceeding. [Ins. Adv. ECF 10]. The Complaint alleges two causes of action, separately seeking a declaratory judgment: (i) of the rights and duties of the Diocese and the Defendants with respect to the Policies; and (ii) that the Policies are property of the Diocese's estate. *Id.*

On January 29, 2021, LMI filed a motion to dismiss Count II of the Complaint (the "Motion to Dismiss"). [Ins. Adv. ECF 25]. Interstate filed a joinder to the Motion to Dismiss. [Ins. Adv. ECF 28]. In order to resolve the Motion to Dismiss, the Diocese, LMI and Interstate entered into a stipulation and consent order whereby LMI and Interstate agreed that their policies are property of the Diocese's bankruptcy estate. [Ins. Adv. ECF 79]. Accordingly, Count II of the Complaint has been dismissed as to LMI and Interstate. Count II has not been dismissed as to the AIG Insurers, Century, and TNCRRG. [Ins. Adv. ECF 23, 24, 46, 67]. Count II of the Complaint seeks a determination that the insurers respective policies are property of the Diocese's bankruptcy estate. [Ins. Adv. ECF 10].

In their respective answers, the Insurers asserted various affirmative defenses. [Ins. Adv. ECF 23, 46, 68, 67, 69].

F. The Mediations

On April 7, 2021, the Diocese and the Tort Committee filed a joint motion for entry of an Order (i) appointing a mediator, (ii) referring matters to the mandatory global mediation, and (iii) granted related relief (the "Mediation Motion"). [ECF 562]. At the Court's direction, all parties

[5] "Ins. Adv. ECF" refers to the docket in the adversary proceeding captioned *The Diocese of Camden, New Jersey v. Insurance Company of North America, et al.*, which is currently pending in the United States Bankruptcy Court for the District of New Jersey at Adv. Pro. No. 20-01573 (JNP).

submitted proposed mediators for the Court's consideration and selection. On May 20, 2021, the Court entered an Order granting the Mediation Motion and appointed the Honorable Jose L. Linares, Chief United States District Judge (Ret.) as mediator (the "Mediation Order"). [ECF 640].

The Mediation Order ordered the "Mediation Parties" (as that term is defined in the Mediation Order) to participate in mediation, which included the Insurers, the Diocese and the Tort Committee. In total, there have been thirteen (13) "in person" mediation sessions[6], which occurred on the following dates:

DATE	LOCATION
July 28, 2021	McCarter & English, Newark
July 29, 2021	McCarter & English, Newark
August 18, 2021	McCarter & English, Newark
September 13, 2021	McCarter & English, Newark
September 14, 2021	McCarter & English, Newark
September 20, 2021	McCarter & English, Newark
September 21, 2021	McCarter & English, Newark
October 21, 2021	McCarter & English, Newark
January 12, 2022	Doubletree Suites, Mt. Laurel
January 18, 2022	McCarter & English, Newark
March 15, 2022	McCarter & English, Newark
April 11, 2022	McCarter & English, Newark
September 12, 2022	McCarter & English, Newark

A representative of the Diocese with settlement authority (i.e. the Bishop, Vicar General, and/or the Diocesan Finance Officer) attended each of the above-listed mediation sessions in person.

G. The 9019 Motion

Following certain mediation sessions, the Insurers agreed to contribute the following amounts to a trust for the benefit of the Abuse Claims:

INSURER	AMOUNT
LMI	$10,230,822.12

[6] In addition to the sessions listed below, the Diocese, Parishes and Tort Committee participated in an in-person mediation at McCarter & English with certain Class 8 Claimants.

INSURER	AMOUNT
Interstate	$12,987,274.80
Century	$4,711,298.62
TNCRRG	$1,850,000.00
AIG Insurers	$220,604.46
TOTAL	**$30,000,000**

(the "Insurance Settlement"). [ECF 1144 at ¶6]. On January 5, 2022, the Diocese filed a *Motion for Entry of an Order Approving Settlement of Controversy by and Among the Diocese and the Settling Insurers Pursuant to Fed. R. Bankr. P. 9019* [ECF 1087] (as thereafter supplemented, the "9019 Motion").

The 9019 Motion has not been withdrawn or abandoned by the Diocese and remains subject to the Court's consideration, which will be heard contemporaneously with Plan confirmation. [ECF 1845]. The Diocese, however, contends that "changed circumstances" require denial of the 9019 Motion, as the Plan represents a better outcome for the estate. [ECF 1724].

H. The Tort Committee Adversary Proceedings & Standing

On October 12, 2021, the Tort Committee filed an adversary complaint commencing the proceeding captioned *Official Committee of Tort Claimant Creditors of The Diocese of Camden, New Jersey v. Diocese of Camden Trusts, Inc., et al.*; Adv. Pro. No. 21-1293 (JNP) (the "DOC Trusts Action"). The DOC Trusts Action seeks, amongst other things, declaratory relief that the assets of Diocese of Camden Trusts, Inc. ("DOC Trusts") are property of the Diocese's estate. DOC Trusts has approximately $100 million in assets, which are used to support the mission of the Church in the Diocese. *Id.* DOC Trusts is a separately incorporated entity from the Diocese.

Also on October 12, 2021, the Tort Committee filed an adversary complaint commencing the proceeding captioned *Official Committee of Tort Claimant Creditors of The Diocese of Camden, New Jersey v. Cathedral of the Immaculate Conception, et al.*; Adv. Pro. No. 21-1294 (JNP) (the "Parish Action"). The Parish Action seeks, amongst other things, declaratory relief that

certain assets of the Parishes are property of the Diocese's estate. *Id.* Each of the Parishes are separately incorporated entities. In the Revolving Fund, the Parishes collectively have approximately $100 million in assets, which consists of restricted and unrestricted funds.

On October 12, 2021, the Tort Committee filed an adversary complaint commencing the proceeding captioned *Official Committee of Tort Claimant Creditors of The Diocese of Camden, New Jersey v. Catholic Community of Christ Our Light, et al.*; Adv. Pro. No. 21-1493 (JNP) (the "Restricted Assets Action"). The Restricted Assets Action seeks, amongst other things, declaratory relief that certain restricted assets of the Diocese and Parishes are unrestricted assets of the Diocese's estate. *Id.*

Also on October 12, 2022, the Tort Committee filed a motion seeking standing to bring certain (but not all) causes of action contained in the DOC Trusts Action, Parish Action, Restricted Assets Action, and another complaint filed by the Tort Committee seeking to find that the Bishop, Vicar General and other officers and trustees of the Diocese breached their fiduciary duties. [ECF 871].

On March 24, 2022, the Bankruptcy Court entered an Order and Opinion denying the Standing Motion. [ECF 1365]. The Tort Committee filed an appeal of this order, which is currently pending in the District Court (the "Standing Appeal"). [ECF 1469].

I. The Disclosure Statement and Plan

On April 12, 2022, after over a year and a half of intense litigation between (i) the Diocese and Other Catholic Entities, and (ii) the Tort Committee, and extensive arm's length and at times contentious negotiations facilitated by the Mediator, the parties announced an agreement on the

material terms of a consensual plan of reorganization. Those negotiations culminated in the filing of the Plan [ECF 1725] (the "Plan").[7]

With respect to the Abuse Claims and Unknown Abuse Claims, the Trust will be funded with: (i) $87.5 million by the Diocese and the Other Catholic Entities; (ii) any proceeds held by the Diocese or the Reorganized Debtor on account of Insurance Settlement Agreements as set forth in Section 7.2 of the Plan; and (iii) the Transferred Insurance Interests. [ECF 1725 at §7.2.1]. The Diocese and Other Catholic Entities are contributing the following:

Entity	**Contribution**
Diocese	$67,250,000 in accordance with schedule set forth in Section 7.2.2 of the Plan
Parishes	(i) $10,000,000 on the Effective Date, (ii) a security interest in the Revolving Fund for the Additional Debtor Contribution, and (iii) a waiver of claims against the estate
DOC Trusts	(i) $10,000,000 on the Effective Date, (ii) a loan of at least $15,000,000 to the Diocese in connection with its Initial Debtor Contribution, and (iii) a waiver of claims against the estate
Catholic Ministry Entities (besides DOC Trusts)	(i) $250,000 on the Effective Date, and (ii) a waiver of claims against the estate

[ECF 1725 at §7.2.2].

With respect to the other voting classes of the Plan, the Plan provides as follows:

Class	**Treatment**
Class 2	The Diocese and DOC Trusts will execute and deliver amended and restated loan documents in accordance with the Plan [ECF 1725 at §5.2].
Class 3	At the Class 3 Claimants' election: (i) 75% of their Allowed Claim paid over 5 years; or (ii) 50% of their Allowed Claim on the Effective Date. [ECF 1725 at §5.3].
Class 4	*Pro rata* share of a maximum of a $40 million distribution paid in equal annual installments over 20 years. [ECF 1725 at §5.4].

[7] Any description of the Plan contained herein is for summary purposes only. To the extent any description herein conflicts with the terms of the Plan, the Plan shall govern in all respects.

Class	Treatment
Class 8	*Pro rata* portion of a $100,000 distribution. [ECF 1725 at §5.9].

J. The Voting Results

The *Declaration of James Daloia of Kroll Restructuring Administration LLC Regarding the Solicitation of Votes and Tabulation of Ballots Cast on Eighth Amended Plan of Reorganization* [ECF 2218] (the "Voting Results") confirms that there is significant consensus among creditors in the Voting Classes in support of the Plan. Class 2 (PNC Bank Claim) (**100% in favor of Plan**), Class 3 (General Unsecured Claims) (**99.74% in favor of Plan**), Class 4 (Pension Claims) (**100% in favor of Plan**), Class 5 (Abuse Claims Other Than Unknown Abuse Claims) (**97.83% in favor of Plan**) and Class 6 (Unknown Abuse Claims) (**100% in favor of Plan**) voted to accept the Plan. *See id.* Class 8 (Non-Abuse Litigation Claims) initially voted to reject the Plan, but this Class will be deemed to have accepted the Plan once a consent order that has been submitted to the Court is approved.

LEGAL ARGUMENT

I. THE PLAN SATISFIES ALL ELEMENTS OF SECTION 1129 OF THE BANKRUPTCY CODE

At the Confirmation Hearing, the Plan Proponents will establish that the Plan satisfies all applicable[8] elements of Section 1129 of the Bankruptcy Code. Accordingly, the Plan should be confirmed.

[8] Sections 1129(a)(6) and (a)(13) through (a)(16) do not apply to the Diocese as: (i) the Plan does not provide for a rate change subject to regulatory approval; (ii) the Diocese does not owe domestic support obligations; (iii) the Diocese is not an individual; and (iv) the Diocese is not a moneyed, business, or commercial corporation.

A. The Plan Complies with All Applicable Provisions of the Bankruptcy Code, Satisfying 1129(a)(1)

The first requirement of section 1129(a) is that the plan must comply with "the applicable provisions of this title." 11 U.S.C. § 1129(a)(1). The legislative history reflects that "the applicable provisions of chapter 11 [include sections] such as section 1122 and 1123, governing classification and contents of plan." H.R.Rep. No. 595, 95th Cong., 1st Sess. 412 (1977); S.Rep. No. 989, 95th Cong., 2d Sess. 126 (1978), U.S. Code Cong. & Admin. News 1978, pp. 5963, 6368, 5787, 5912; *In re G–1 Holdings Inc.*, 420 B.R. 216 (D.N.J. 2009) (applicable provisions includes section 1122 and 1123); *In re Burns and Roe Enterprises, Inc.*, No. 08–4191, 2009 WL 438694, at *23 (D.N.J. Feb. 23, 2009); *In re Journal Register Co.*, 407 B.R. 520, 531–32 (Bankr. S.D.N.Y. 2009). Release and exculpation clauses have also been found to be subject to review pursuant to section 1129(a)(1). *See, e.g.*, *In re Whispering Pines Estates, Inc.*, 370 B.R. 452, 459 (1st Cir. BAP 2007); *In re Wool Growers Cent. Storage Co.*, 371 B.R. 768, 774 (Bankr. N.D. Tex. 2007).

The Plan properly classifies claims within separate classes in accordance with section 1122 of the Bankruptcy Code. 11 U.S.C. § 1122(a) ("Except as provided in subsection (b) of this section, a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class.). The classes set forth in the Plan are appropriate in light of the Claims contained therein. Class 2 contains the PNC Bank loan claim(s), Class 3 contains all non-tort general unsecured claims, Class 4 contains all pension claims, Class 5 contains all Abuse Claims that are not Unknown Abuse Claims, Class 6 contains all Unknown Abuse Claims, Class 7 includes all indemnification and contribution claims of the Other Catholic Entities, and Class 8 contains all non-Abuse tort litigation unsecured claims. [ECF 1725]. This classification is appropriate under the Bankruptcy Code.

Section 1123 of the Bankruptcy Code requires, in pertinent part, that "a plan shall—designate, subject to section 1122 of this title, classes of claims," and shall "provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment." 11 U.S.C. § 1123(a)(1), (a)(4). Here, all holders of allowed claims that are classified together receive the same treatment on account of their claims. Accordingly, the Plan meets the mandates of section 1123 of the Bankruptcy Code.

B. The Plan Proponents Complied with the Bankruptcy Code in Accordance with 1129(a)(2)

The Third Circuit has held that "§ 1129(a)(2) requires that the plan proponent comply with the adequate disclosure requirements of § 1125." *In re PWS Holding Corp.,* 228 F.3d 224, 248 (3d Cir. 2000); *In re Cypresswood Land Partners, I,* 409 B.R. 396, 424 (Bankr. S.D. Tex. 2009) ("Bankruptcy courts limit their inquiry under § 1129(a)(2) to ensuring that the plan proponent has complied with the solicitation and disclosure requirements of § 1125.").

Here, the Disclosure Statement was approved by the Court as adequately disclosing all of the necessary information for voting creditors to make an informed vote on the Plan. [ECF 1818]. The Plan was overwhelmingly accepted by almost every creditor body. In addition, the Affidavit of Service filed by the Diocese's claims and noticing agent demonstrates that the Disclosure Statement and Plan were properly solicited. [ECF 2093].

C. The Plan Was Proposed in Good Faith and Not by Any Means Forbidden by Law in Accordance with 1129(a)(3)

Pursuant to section 1129(a)(3) of the Bankruptcy Code, the Court shall only confirm a plan that is "proposed in good faith and not by any means forbidden by law." While the debtor has the burden of proving good faith under section 1129(a)(3) of the Bankruptcy Code, *In re Walker*, 628 B.R. 9, 18 (Bankr. E.D. Pa. 2021), "denial of bankruptcy relief based on a lack of good faith 'should be confined carefully and is generally utilized only in. . . . egregious cases.'" *Id*. at 17

(citing *In re Falch*, 450 B.R. 88, 93 (Bankr. E.D. Pa. 2011)) (quoting *In re Zick*, 931 F.2d 1124, 1129 (6th Cir. 1991)).

i. The Plan is Consistent with the Objectives of Chapter 11

The Third Circuit has stated that in the analysis of the Bankruptcy Code's good faith requirement, "the important point of inquiry is the plan itself and whether such a plan will fairly achieve a result consistent with the objectives and purposes of the Bankruptcy Code." *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 150, n. 5 (3d Cir. 1986); *see also In re Combustion Engineering, Inc.* 391 F.3d 190, 247 n. 67 (3d Cir. 2004) (finding the good faith requirement under §1129(a)(3) to be narrower than the good faith requirement in filing the petition). "Specifically, under Chapter 11, the two . . . objectives are 'preserving going concerns and maximizing property available to satisfy creditors.'" *In re American Capital Equipment, LLC,* 688 F.3d 145 (3d Cir. 2012) (quoting *Bank of Am. Nat'l Trust and Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 453 (1999)). Generally, the Bankruptcy Code's objectives are: (1) "discourage[ing] debtor misconduct," *Walters v. U.S. National Bank of Johnstown*, 879 F.2d 95, 98 (3d Cir. 1989); (2) "giving debtors a fresh start," *id*.; (3) "the expeditious liquidation and distribution of the bankruptcy estate to its creditors," *Integrated Solutions, Inc. v. Service Support Specialties*, 124 F.3d 487, 489 (3d Cir. 1997); and (4) "achieving fundamental fairness and justice." *American Capital Equipment*, 688 F. 3d at 157 (citing *In re Kaiser Aluminum Corp.*, 456 F.3d 328, 339-43 (3d Cir. 2006)).

Here, the Diocese's witnesses will testify at the Confirmation Hearing that the Diocese has complied with the objectives and purposes of the Bankruptcy Code. In this regard, the Diocese has made clear that:

> The Diocese has commenced this Chapter 11 Case (a) to maximize its assets in order to provide a reasonable recovery for abuse victims; (b) to provide an orderly claims administration process that will

> ensure fairness in distribution and avoid the inherent inequities in the proverbial "race to the courthouse" that would otherwise result in, absent Chapter 11, depleting the Diocese's assets at the expense of other claimants; and (c) to achieve certainty that will allow the Diocese to reorganize and continue to fulfill its charitable, humanitarian and religious mission for the entire community.

[ECF 3 at ¶121]. The Plan fulfills these purposes for filing this Chapter 11 Case, which also demonstrate that the Plan will fairly achieve a result consistent with the objectives and purposes of the Bankruptcy Code.

With respect to the Abuse Claims, the Plan sets forth a fair and equitable process for distribution of funds to the over 300 claims filed. This process protects all Abuse Claims from the "race to the courthouse" which this proceeding was meant to protect against. In addition, the Diocese and Other Catholic Entities, by making the contributions set forth in the Plan, are avoiding years of contentious litigation with the Abuse Claimants, which would affect the Diocese's ability to continue its mission in Southern New Jersey. Pursuant to the Plan, the Diocese will make a fair and equitable contribution to the Trust on behalf of the Abuse Claims, while preserving assets and resources to continue the good works of the Church, which serve all persons within the territory of the Diocese. In addition, the Plan ensures the continuation of certain protocols in the Diocese to ensure that future Abuse does not occur and adds additional protections. [ECF 1725, Exh. 2.2.24].

ii. The Diocese Conducted the Plan Negotiations in Good Faith and at Arms' Length

Additionally, the Diocese's witnesses will testify that the Plan negotiations were completed at arms' length and in good faith. "[T]he requirement of Section 1129(a)(3) "speaks more to the process of plan development than to the content of the plan." *In re Chemtura Corp.,* 439 B.R. 561, 608 (Bankr. S.D.N.Y. 2010) (finding that "the Debtor's negotiated honestly and at an arm's length, including with the Equity Committee, in an effort to create a confirmable plan that would satisfy

all parties."). Any argument made by the Insurers otherwise is just that – an argument of counsel with absolutely no evidential support. In analyzing whether a plan has been proposed for honest and good reasons, courts routinely consider whether the debtor intended to abuse the judicial process, whether the plan was proposed for ulterior motives, or if no realistic probability for effective reorganization exists. *In re Sound Radio, Inc.,* 93 B.R. 849, 853 (Bankr. D.N.J. 1988), *aff'd in part, remanded in part,* 103 B.R. 521 (D.N.J. 1989) *aff'd sub nom. In re Sound Radio Inc,* 908 F.2d 964 (3d Cir. 1990), *and aff'd sub nom. Appeal of Robinson,* 908 F.2d 964 (3d Cir. 1990) ("To find a lack of 'good faith' courts have examined whether the debtor intended to abuse the judicial process and the purposes of reorganization provisions."); *In re U.S. Mineral Prods. Co.,* Bankr.No. 01–2471, 2005 WL 5898300, at *6, 20 (Bankr. D. Del. Nov. 29, 2005) (noting that the parties' arm's length negotiations were a significant factor in finding that a plan was proposed in good faith).

Here, there is no evidence to suggest that the Plan was not negotiated in good faith and at arms' length. *In re W.R. Grace & Co.,* 475 B.R. 34, 89 (D. Del. 2012) ("There is no evidence that Grace was dishonest or had ulterior motives when it proposed the Joint Plan. Nor is there any indication that Grace intended to abuse the judicial process."). The terms of the Plan are the product of a mediated resolution over approximately two years and over a dozen mediation sessions before Judge Linares. The results of the mediation were borne out of the often hotly contested litigation before the Court, which is evidenced by the docket in this case and the huge administrative burden that such litigation has created. It has always been the goal of the Diocese to reach a fair and equitable resolution with the Abuse Claimants, and the Plan achieves that goal, while securing releases for the Other Catholic Entities, which are necessary and critical to the Diocese's reorganization and mission.

With respect to the mediation, courts have found that mediation is a factor weighed in favor of a finding that a plan was proposed in good faith pursuant to §1129(a)(3) of the Bankruptcy Code. In *In re Dow Corning Corp*., the Court was faced with determining whether the debtor's plan's confirmation was in the best interest of the creditors and whether the proposed plan was made in good faith. 255 B.R. 445, 497-499 (E.D. Mich. 2000). The court in *Dow Corning* found that the plan was proposed in good faith over the objections of various creditors where testimony of key witnesses revealed that there was "arms-length negotiation between the parties, the involvement of the Court's experienced Special Master Francis McGovern and the input of qualified experts." *Id*. at 499. In reviewing the Bankruptcy Court's decision finding that the plan was proposed in good faith, the district court took notice that the bankruptcy court found that "the Plan was the result of intense arm's-length negotiations between parties represented by competent counsel who were guided by an experienced Court-appointed mediator and the findings and recommendations of highly qualified expert." *Id*. at 503-504; *In re Peabody Energy Corporation*, 933 F.3d 918, 927 (8th Cir. 2019) (finding that evidence that a plan was proposed in good faith includes when "[t]he record shows that the Debtors mediated with their creditors to resolve a major dispute between those creditors."). Similarly, the Plan represents a mediated resolution resulting from the twelve mediation sessions held by Judge Linares over the past two years.

In addition, the Insurers' allegations that the Diocese "ceded the pen" to the Tort Committee during negotiations is inconsistent with the discovery served in this case. Instead, the documents reflect that counsel for the Diocese and counsel for the Tort Committee engaged in consistent, arms' length negotiations throughout the Plan process. The Insurers will be unable to point to any improper conduct by the Diocese or Tort Committee. Instead, the communications produced in this case – every negotiation between the Tort Committee and Diocese between

January 5, 2022 and the filing of the Plan – demonstrates that counsel for both parties actively negotiated the Plan, sometimes with heated exchanges. Indeed, the disagreements between the Diocese and the Tort Committee during negotiations led to the Diocese's filing of the Sixth Amended Plan ***without*** the support or input of the Tort Committee.

The cases cited by the Insurers are inapposite. The court in *In re ACandS, Inc.* specifically declined to find good faith where a committee had complete control over the entire process of plan drafting and dividing "who was going to get what." 311 B.R. 36, 43 (Bankr. D. Del. 2004) ("Given the unbridled dominance of the committee in the debtor's affairs and actions during the prepetition period, its continued influence flowing from its majority status on the postpetition creditors committee, and the obvious self-dealing that resulted from control of the debtor, it is impossible to conclude that the plan was consistent with the objectives and purposes of the Bankruptcy Code."). Unlike in *ACandS*, the Diocese, not the Tort Committee, controlled the negotiating and drafting of the Plan with respect to the other creditor bodies besides Class 5. Thus, *ACandS* is inapplicable in this case.

The evidence the Insurers point to is a single email from a Tort Committee attorney, expressing his off-hand comment on how to proceed towards achieving a global settlement. Notably, the Diocese's counsel never responded to this email, and there is no evidence of agreement, *nor collusion*, in this regard.[9] Indeed, it has always been the Diocese's position that this case must expeditiously move towards confirmation in order to fairly compensate the Abuse Claimants and permit the Diocese to exit Chapter 11 and continue its mission. The Diocese's position with respect to the Plan is no different than the tact it took in connection with the Fifth Amended Plan (and each proposed plan before that).

[9] Moreover, there is no content to this off hand email. It does not lay out any gameplan or strategy which would be expected if it was a plan of attack. It was not.

Moreover, the Diocese has negotiated with every single creditor body in this case and party-in-interest. *Chemtura Corp.*, 439 B.R. at 609 ("During the course of this bankruptcy, the Debtors negotiated and reached agreements with many other parties . . . . The settlements . . . are indicative of the Debtors' genuine efforts to reach consensual resolutions with other parties in interest."). The record is clear in this case that the Diocese has negotiated tirelessly to achieve a plan of reorganization. The Diocese negotiated and resolved issues with: (i) PNC Bank [ECF 751]; (ii) the Trade Committee [*compare* ECF 1527 *with* ECF 1725]; (iii) the Tort Committee [ECF 1725]; and (iv) certain Class 8 Creditors [ECF 2382]. The Diocese has attended mediations with the Insurers and, even in the face of Plan objections, has sought to negotiate insurance neutrality language. These efforts were rejected by the Insurers at the most recent mediation session on September 12, 2022. The Diocese has also worked cooperatively with the United States Trustee throughout this case and a revised confirmation order will fully resolve informal objections raised by the United States Trustee. Similarly, the Plan Proponents' revised confirmation order will reflect a settlement with the Unknown Claims Representative.

iii. There is No Evidence that the "Quantum of Liability" will be Raised through the Plan

The Insurers argue that the Plan and TDPs will increase the amount of liability by permitting otherwise invalid claims to pursue insurance interests. In making this argument, the Insurers assert that the bankruptcy proceeding resulted in false or "ginned" up claims against the Diocese. These assertions, however, have no basis in fact or evidence.

Instead, the Insurers rely on the Third Circuit's decision in *Global Industrial Technologies, Inc.* ("*GIT*"), 645 F.3d 201 (3d Cir. 2011). In *GIT*, the debtors sought bankruptcy relief due to 235,000 asbestos-related claims pending against the debtors, whereas only 169 silica-related claims were pending against the debtors pre-petition. *See id.* at 204. The debtors proposed a plan

that would create a separate trust for silica claims to induce asbestos plaintiffs' firms to support the plan (because they could also assert silica claims), and there was then an "explosion" of silica claims with a handful of firms filing 80% of silica claims. *See id.* at 205–06. The court in *GIT* was concerned about collusion and increased administrative expenses due to the high number of suspect claims filed.

Here, the Court should reject this argument from the outset. There is no evidence of an "explosion" of claims as a result of the bankruptcy. From 1990 to 2019, the Diocese paid 99 settlements to abuse victims. [ECF 3 at 36]. From December 1, 2019 through the Petition Date, fifty-five (55) lawsuits were filed against the Diocese. *Id.* at 38. On the Petition Date, 141 claims remained pending before the Independent Victim Compensation Program. *Id.* at 44. The Petition Date was more than a year before the reopened statute of limitations closed again (November 30, 2021). An increase of approximately 200 claims while the statute of limitations remained open simply cannot be considered an "explosion" equivalent of *GIT*.

Despite facing a significantly larger upsurge in claims, the court in *Boy Scouts of America* aptly rejected this argument advanced by many of the same Insurers in this matter, stating:

> While the upsurge in claims undoubtedly gives insurers standing to appear and be heard in these cases—and they have done so in abundance—the logical extension of their argument is that no entity with mass tort liabilities can file a bankruptcy case because claims might increase exponentially. A debtor's ability to obtain a good faith finding necessary for confirmation certainly cannot turn on the number of claims filed, whether plaintiff lawyers advertised for clients or whether plaintiff lawyers filed claims in derogation of applicable rules. The remedy for inappropriate behavior, if any, rests with state supreme courts and/or disciplinary counsel around the country, any appropriate remedy in this court for persons who failed to perform appropriate diligence before signing proofs of claim and appropriate procedures in the TDP to ferret out any fraudulent claims. Denying confirmation, however, is not an appropriate or proportional remedy.

In re Boy Scouts of Am. & Delaware BSA, LLC, No. 20-10343 (LSS), 2022 WL 3030138, at *109 (Bankr. D. Del. July 29, 2022).[10]

Similarly, the Court should reject these claims on the very same basis.

iv. The Plan Proponents Will Establish the Necessary Factual Record at the Confirmation Hearings to Warrant Confirmation

The Insurers assert that the Diocese will be unable to establish an appropriate factual record in order to warrant confirmation. As set forth above, the burden of proving each element of section 1129 is on the Plan Proponents by a preponderance of evidence. *See, e.g., In re TCI 2 Holdings, LLC*, 428 B.R. 117, 142 (Bankr. D.N.J. 2010) ("The plan proponent bears the burden to show by a preponderance of the evidence").

Here, the Diocese has: (i) produced thousands of pages of documents, including ten years of native financial data for the Diocese and each of the Parishes; (ii) disclosed all of its witnesses, including the Diocese's Vicar General, Diocesan Finance Officer and financial adviser; and (iii) all of the communications between the Tort Committee and Diocese counsel from January 5, 2022 through filing of the Plan relating to negotiations of the Plan. In addition, the Tort Committee has disclosed its experts and fact witnesses and similarly made all appropriate discovery available to the Insurers. Thus, the Plan Proponents will be able to demonstrate that the Plan has satisfied the good faith requirement under the Bankruptcy Code.

v. The 9019 Motion is Unrelated to Good Faith

The LMI Objection attempts to conflate the idea of "good faith and fair dealing" in connection with a contract and the "good faith" required under the Bankruptcy Code. As set forth

[10] The Court's statement that "The remedy for inappropriate behavior, if any, rests with state supreme courts and/or disciplinary counsel" is equally applicable to the Insurers' argument that the Plan permits attorney fee awards that are illegal under New Jersey law. Pursuant to the Court's direction, the Disclosure Statement notified Abuse Claimants of the contingency fee issue and there is no Plan provision that "permits" these inappropriate fees.

above, the Plan Proponents can and will demonstrate that the Plan is proposed in good faith. The 9019 Motion, which remains pending before the Court, is wholly separate from the Plan.

During the Confirmation Hearings, the Court will hear testimony on both the Plan and the 9019 Motion. The Court will then, after hearing the testimony and admitting evidence, determine whether: (i) the Insurers have established that the 9019 Motion is an appropriate exercise of the Diocese's business judgment under the *Martin* factors; (ii) whether the criteria under 11 U.S.C. § 1129 support confirmation of the Plan; or (iii) whether both should be denied. Indeed, the Diocese has not withdrawn the 9019 Motion. Instead, the Diocese asserts that "changed circumstances" mandate confirmation of the Plan over approval of the 9019 Motion.

To the extent that the 9019 Motion satisfied the *Martin* factors in April 2022, the Insurers will be able to establish the same result at the hearings in October 2022. Thus, there was no "inten[tion] to destroy LMI's rights under the Insurance Settlement", all of which are preserved for hearing on the 9019 Motion.

D. Pursuant to Sections to 1129(a)(4), All Payments to Proponents are Reasonable

The Plan satisfies section 1129(a)(4) of the Bankruptcy Code as the payment of certain fees and expenses to retained professionals of the Plan Proponents are subject to final review for reasonableness by the Bankruptcy Court under section 330 of the Bankruptcy Code. [ECF 1725 at §4.4]. Furthermore, the Plan provides that the Bankruptcy Court shall retain jurisdiction to hear and determine all fee applications. [ECF 1725, Art. XVI(g)]. Under the terms of the Plan, the Bankruptcy Court has jurisdiction to review any dispute with respect to the reasonableness of such fees. *Id.*

E. All Officers of the Reorganized Debtor Have Been Disclosed, Satisfying Section 1129(a)(5) of the Bankruptcy Code

The Plan satisfies section 1129(a)(5) of the Bankruptcy Code as the officers and directors of the Diocese are mandated by state law. Under New Jersey Law, the Diocese is an incorporated legal entity formed pursuant to New Jersey's Religious Corporations Law, Title 16 of the Revised Statutes of New Jersey. [ECF 3 at ¶55]. The juridic person of the Diocese of Camden was canonically established on December 9, 1937. [ECF 3 at ¶56]. Thereafter, on June 17, 1938, a corporation was formed to constitute the Diocese of Camden under N.J.S.A. 16:15-9 to 16:15-17. *Id.* By statute, N.J.S.A. 16:15-10, the five trustees of the Diocese are the Bishop, the Vicar General and the Chancellor and two priests of the Diocese whom they elect. *Id.* As a result, the Board of Trustees of the Reorganized Debtor will not change following confirmation of the Plan.

F. The Plan Satisfies Section 1129(a)(7) of the Bankruptcy Code – Best Interests of Creditors Test

Section 1129(a)(7) of the Bankruptcy Code provides, in relevant part, that the Court "shall confirm a plan only if" each creditor in an impaired class "(i) has accepted the plan; or (ii) will receive *or retain* under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive *or retain* if the debtor were liquidated under chapter 7 of this title on such date." 11 U.S.C. § 1129(a)(7) (emphasis added). *Kane v. Johns-Manville Corp.*, 843 F.2d 636, 649 (2d Cir. 1988) ("Subsection 1129(a)(7) incorporates the former 'best interest of creditors' test and requires a finding that each holder of a claim or interest either has accepted the plan or has received no less under the plan than what he would have received in a Chapter 7 liquidation.").

Here, the Diocese's liquidation analysis demonstrates that the Plan Proponents have satisfied section 1129(a)(7). In addition, the Diocese will provide testimony to further support satisfaction of the best-interests test.

G. Acceptance of Plan by Voting Classes in Accordance with Section 1129(a)(8)

Section 1129(a)(8) of the Bankruptcy Code provides that: "With respect to each class of claims or interests—(A) such class has accepted the plan; or (B) such class is not impaired under the plan." 11 U.S.C. § 1129(a)(8). As set forth in Section H, below, each Impaired Class of Claims except Class 8 has accepted the Plan.

With respect to Class 8, the Plan Proponents have continued to negotiate with the creditors of that Class to reach a consensual resolution of their Claims. In this regard, the Plan Proponents have sought entry of a stipulation and consent order with Class 8 claimant Crystal Martrell Gibbs, which would provide Mr. Gibbs with stay relief to liquidate his claim in state court and seek insurance coverage for such claim, in addition to the distribution provided under the Plan. The consent order provides that, upon entry, Gibbs will change his vote to accept the Plan. The Plan Proponents believe that a similar resolution is possible with Ajuk, which would resolve the Ajuk Objection.

To the extent that the Plan Proponents have not resolved the Class 8 objections, the Plan Proponents will demonstrate that the Plan can be confirmed under section 1129(b) of the Plan.

H. Section 1129(a)(9) of the Bankruptcy Code – Treatment of Claims Entitled to Priority Pursuant to Section 507(a) of the Bankruptcy Code

The Plan satisfies section 1129(a)(9) of the Bankruptcy Code, as the Plan provides for the treatment of Administrative Expense Claims, Priority Tax Claims, Fee Claims, and other Claims entitled to priority under sections 507(a)(1)-(8) of the Bankruptcy Code, as applicable, in the manner required by Section 1129(a)(9) of the Bankruptcy Code. [ECF 1725, Art. IV]. Therefore, the Plan complies with Section 1129(a)(9) of the Bankruptcy Code.

Moreover, there is no requirement under the Bankruptcy Code that the Diocese establish a reserve for the Insurers' alleged administrative claims. In asserting the need to reserve funds, the

Insurers rely on *In re Spansion, Inc.*, which is inapplicable in this case. 426 B.R. 114 (Bankr. D. Del. 2010). In *Spansion*, the court had already estimated the amount of the claim. *Id.* at 146. Here, the Insurers have not sought an estimation of their claim for Plan purposes. This is likely because the Insurers themselves cannot even estimate their claims. Despite numerous discovery requests, the Insurers have failed to demonstrate any amounts that should be reserved. Thus, no reserve can be established.

Moreover, the alleged administrative expense claims are baseless. First, the Court must first determine that the Diocese breached the Insurance Settlement Agreement. For example, if the Court determines that the 9019 Motion was not in the best interests of the estate, then there could not have been a breach of the Insurance Settlement. Without a breach, there is no administrative expense claim.

Second, the Insurers are not entitled to an administrative expense under the Bankruptcy Code. The Insurers are not parties under the Bankruptcy Code that are permitted to receive administrative claims under a "substantial contribution" concept. *See* 11 U.S.C. § 503(b)(3)(D) (limiting the parties who may request an administrative expense on account of a substantial contribution to "a creditor, an indenture trustee, an equity security holder, or a committee representing creditors or equity security holders other than a committee appointed under section 1102 of this title"); *see In re Mountain Creek Resort, Inc.*, 616 B.R. 45, 53-55 (Bankr. D.N.J. 2020) ("[S]ubsection (b)(3)(D) is extremely limited to a list of defined categories. If Congress intended to expand the list of entities delineated in § 503(b)(3)(D), then Congress would have followed the format used for subsections (b) and (b)(1) by inserting the word "including" to that subsection as well. Instead, § 503(b)(3)(D) purposefully limits who may recover.").

Fourth, if the Court determines that the Insurers do have standing to pursue such a claim, the Insurers do not meet the requirements of section 503(b). "Pursuant to section 503(b)(3)(D), the court shall allow the actual, necessary expenses incurred by a ***creditor*** in making a substantial contribution to a case under chapter 11 as an administrative expense." *In re Deval Corp.*, 592 B.R. 587, 598 (Bankr. E.D. Pa. 2018), *aff'd sub nom. In re DeVal Corp.*, 601 B.R. 725 (E.D. Pa. 2019) (emphasis added). "Section 503(b)(3)(D) represents an accommodation between the twin objectives of encouraging meaningful creditor participation in the reorganization process...and keeping fees and administrative expenses at a minimum so as to preserve as much of the estate as possible for creditors." *Lebron v. Mechem Financial Inc.*, 27 F.3d 937, 944 (3d Cir. 1994) (internal citations omitted). Accordingly, courts must strictly construe section 503(b)(3)(D). *In re RS Legacy Corp.*, No. 15-10197(BLS), 2016 WL 1084400, at *3 (Bankr. D. Del. Mar. 17, 2016) ("As with all of the Bankruptcy Code's priority statutes, section 503(b)(3) is strictly construed to keep administrative expenses at a minimum."). To satisfy the Third Circuit test for determining whether an applicant made a substantial contribution, the applicant must demonstrate that its efforts conferred an actual and demonstrable benefit to the estate and other creditors. *Lebron*, 27 F.3d at 944; *In re Essential Therapeutics*, 308 B.R. 170, 174 (Bankr. D. Del. 2004). Services which substantially contribute to a case are those which ultimately foster and enhance the progress of reorganization. *Lebron*, 27 F.3d at 944; *In re Summit Metals, Inc.*, 379 B.R. 40, 50 (Bankr. D. Del. 2007) ("The [applicant's] activities must facilitate progress in the case . . . ."). Courts may not allow as an administrative expense costs associated with actions primarily designed to advance the applicant's own interests. *Lebron*, 27 F.3d at 944, 946. Here, the only parties that benefit from the 9019 Motion are the Insurers, who solely seek to cap the claims payable and protect their own

interests. Nothing the Insurers have done in this case is for the benefit of any party other than themselves and the Insurers will not be able to prove otherwise.

Third, if the Court finds that the Insurers somehow provided a benefit to the estate, it must then weigh that "benefit" against the alleged costs to the estate that were attributable to the Insurers. *In re Energy Future Holdings Corp.*, 990 F.3d 728, 746 (3d Cir. 2021) (affirming the District Court's determination that *any* benefit the applicant may have conferred outweighed the costs imposed to the estate while it was pursuing "fruitless" appeals). The conduct of the Insurers opposing confirmation in the face of an insurance neutral plan that was overwhelmingly accepted by all creditors, and the exorbitant cost of that conduct, will nullify any alleged "benefit" to the estate.

Accordingly, there is no basis for requiring the Diocese to reserve funds, as the Insurers will be unable to establish a substantial contribution claim. As such, the Plan satisfies the requirements under section 1129(a)(9) of the Bankruptcy Code.

I. Section 1129(a)(10) of the Bankruptcy Code – Acceptance by At Least One Impaired Class

While various classes of claims are impaired under the Plan, at least one class of claims that is impaired under the Plan has accepted the Plan, determined without including any acceptance of the Plan by any insider. In this regard, Class 2 voted 100% in favor of Plan, Class 3 voted 99.74% in favor of Plan, Class 4 voted 100% in favor of Plan, Class 5 voted 97.83% in favor of Plan, and Class 6 voted 100% in favor of Plan. Thus, the Plan satisfies section 1129(a)(10) of the Bankruptcy Code.

J. The Plan is Feasible Under the Requirements of Section 1129(a)(11)

First, the Diocese asserts that section 1129(a)(11) is inapplicable in this case. Conversion of the case to Chapter 7 (i.e. a liquidation of the Diocese) is not available because the Diocese is a

nonprofit religious corporation. 11 U.S.C. § 303(a). The Diocese will not consent to the conversion of this case to a Chapter 7. *See id.* Therefore, the case could not result in a liquidation, but would, rather, result in a dismissal under 11 U.S.C. § 1112.

Even if the Court were to consider this issue, the Plan Proponents will demonstrate at the Confirmation Hearing that the Plan is feasible. The plan proponent bears the burden to show by a preponderance of the evidence that the proposed Chapter 11 "plan 'has a reasonable probability of success,' and is more than a 'visionary scheme [ ].'" *In re Wiersma,* 227 Fed.Appx. 603, 606 (9th Cir. 2007) (quoting *In re Acequia, Inc.,* 787 F.2d 1352, 1364 (9th Cir. 1986) and *In re Pizza of Haw., Inc.,* 761 F.2d 1374, 1382 (9th Cir. 1985)); *In re T–H New Orleans L.P.,* 116 F.3d 790, 801 (5th Cir. 1997) ("The standard of proof required by the debtor to prove a Chapter 11 plan's feasibility is by a preponderance of the evidence."); *In re Surfango, Inc.,* No. 09-30972, 2009 WL 5184221, at *11 (Bankr. D.N.J. Dec.18, 2009) (preponderance standard). In other words, "as a practical matter it requires the court to find that the plan is 'workable' before it may be confirmed." *In re Danny Thomas Properties II L.P.,* 241 F.3d 959, 962 (8th Cir. 2001); *G–1 Holdings Inc.,* 420 at 267 (the "key element of feasibility is whether there is a reasonable probability the provisions of the Plan can be performed"); *In re Griswold Bldg., LLC,* 420 B.R. 666, 697 (Bankr. E.D. Mich. 2009) (ultimately, the plan must be "doable"). That is not to say that the proponents must "guarantee" their financial future. It simply means that the "'mere potential for failure of the plan is insufficient to disprove feasibility.'" *Wiersma,* 227 Fed.Appx. at 606 (quoting *In re Patrician St. Joseph Partners L.P.,* 169 B.R. 669, 674 (D. Ariz. 1994)).

With respect to the payments required under the Plan by the Diocese and the Other Catholic Entities, the Diocese has submitted projections in connection with the Plan. [ECF 1724, Exh. B]. In addition, the Diocesan Finance Officer and the Diocese's financial adviser retained in this case

will testify as to the feasibility analysis of the Plan. Thus, the Diocese contends that at the Confirmation Hearing, the Diocese will establish feasibility.

With respect to the Trust assets, the Insurers do not have standing to raise feasibility arguments. The Insurers assert that the costs of defending the Abuse Claims, along with paying the necessary self-insured retentions under the Insurance Policies, will fully diminish distributions to Abuse Claims. The Insurers, however, are raising the rights of the Abuse Claimants, not their own, in making this argument. The Insurers will only benefit to the extent that the Trust either: (i) cannot satisfy the obligations under the Insurance Policies resulting in a breach of the policy; or (ii) can no longer pay litigation costs to pursue claims against the Insurers. Thus, these arguments should be rejected. Regardless, to the extent necessary, the Plan Proponents will establish at the hearing that these arguments are baseless.

K. Under the Plan. the Diocese Will Satisfy All Applicable Fees and Satisfy Section 1129(a)(12)

The Plan satisfies the requirement of section 1129(a)(12) of the Bankruptcy Code because it provides for payment of all fees under 28 U.S.C § 1930. In this regard, the Plan provides that: "All U.S. Trustee Fees due and payable prior to the Effective Date shall be paid by the Debtor on the Effective Date. After the Effective Date, the Reorganized Debtor shall pay any and all U.S. Trustee when due and payable." [ECF 1725 at §4.3]. To date, the Diocese has paid approximately $1 million in quarterly fees to the United States Trustee.

L. The Diocese Will Continue All Retiree Benefits in Accordance with Section 1129(a)(13)

The Plan provides for continued payments to the Diocese's pension plans, which are funded through Class 4 of the Plan. To the extent necessary, the Diocese's witnesses at the hearing will testify that the pension plans will be continued in accordance with the terms of such plans.

II. THE AJUK OBJECTION MUST BE OVERRULED BY THE COURT

The crux of the Ajuk Objection is that the Plan is not fair and equitable and unfairly discriminates against Ajuk, a Class 8 Claimant.[11] This argument must be rejected. Unfair discrimination is not defined in the Bankruptcy Code, nor does the statute's legislative history provide guidance as to its interpretation. *In re Johns–Manville Corp.*, 68 B.R. 618, 636 (Bankr. S.D.N.Y. 1986). "Generally speaking, this standard ensures that a dissenting class will receive relative value equal to the value given to all other similarly situated classes." *Id.* The pertinent inquiry is not whether the plan discriminates, but whether the proposed discrimination is "unfair." *In re Jim Beck, Inc.*, 214 B.R. 305, 307 (W.D. VA. 1997).

Here, there is no discrimination between the Class 8 and Class 5 or Class 3 creditors because the Class 8 Creditors will have the potential to receive 100% of their Claim amount. In this regard, the Confirmation Order will provide that the Diocese will consent to stay relief for any of the Class 8 Claims to liquidate their claims in the appropriate court and seek the proceeds of any insurance policy that covers such claim to the extent such claim exceeds the self-insured retention. As a result, the maximum claim any Class 8 Creditor would have in connection with the Plan is the $250,000 self-insured retention (to the extent that such SIR was not satisfied pre-petition). The Diocese has offered this option to Ajuk (as it is the exact result obtained by Gibbs upon approval by the Court). To date, however, the Diocese has been unable to reach this resolution with Ajuk, despite continuing attempts.

Accordingly, the Court should deny the Ajuk Objection.

[11] Crystal Martrell Gibbs ("Gibbs"), another Class 8 Claimant, filed an objection to the Plan. Following that objection, the Diocese and Gibbs mediated a resolution with Judge Linares, culminating in the submission of a stipulation and consent order. Entry of that Order would resolve the Gibbs' objection. Accordingly, the Diocese is not responding directly to the Gibbs objection herein, but reserves all rights to oppose same in the event the consent order is not entered.

III. CHANGED CIRCUMSTANCES WARRANT CONFIRMATION OF THE PLAN OVER APPROVAL OF THE 9019 MOTION

In connection with the Confirmation Hearing, the Court will also be hearing the 9019 Motion. The Diocese asserts that "changed circumstances" exist, such that the Court should deny the 9019 Motion in the best interests of the estate.

Courts have held that a debtor is not obligated to prosecute a motion for approval of a settlement if circumstances change and the trustee (here, the Diocese) no longer believes that the settlement is in the best interests of the estate. *Myers v. Martin (In re Martin)*, 91 F.3d 389 (3d Cir. 1996). In *Martin*, a chapter 7 trustee filed a motion to approve a settlement with litigation creditors of claims that the chapter 7 debtors had been prosecuting in a state court action. At the trustee's hearing on the settlement, the trustee learned that the debtors had obtained an expedited trial date for the state court action. *Id.* at 391– 92. Given this turn of events, the trustee elected not to argue in favor of the motion, and the bankruptcy court deferred ruling on the motion until after the state court trial. *Id.* The trial resulted in a larger jury verdict than the trustee's pending settlement, and the changed circumstances prompted the bankruptcy court to deny the settlement motion. *Id.* at 392. On appeal by the litigation creditors whose settlement had been denied, the district court held that the trustee had violated the contractual duty of good faith and fair dealing by refusing to support her motion to approve the settlement and that the court should not have disapproved the settlement. *Id.* at 393.

The Third Circuit disagreed, recognizing that in situations where circumstances have changed following a pending settlement motion, there may be a conflict between a trustee's "alleged duty to go forward with a settlement agreement favoring one creditor" and the "fiduciary relationship with all creditors of the estate." *Id.* at 394 (emphasis in original). The court refused to hold that the trustee was required to prosecute a motion to approve a settlement that was no

longer in the best interest of the estate. Rather, the trustee appropriately "inform[ed] the court and the parties of changed circumstances," and the determination on the settlement was left to the bankruptcy court. *Id.* Similarly, the bankruptcy court did not abuse its discretion in disapproving the settlement under the four-factor "fair and equitable" standard, in which the court reviews the fairness of the settlement to parties outside of the settlement, while expressly considering the changed circumstances in its analysis. *Id.*; *see also Fry's Metals, Inc. v. Gibbons (In re RFE Indus., Inc.)*, 283 F.3d 159, 165 (3d Cir. 2002) (holding that the bankruptcy court should examine the settlement in light of the present circumstances); *In re Filene's Basement, LLC*, Case No. 11-13511 (KJC), 2014 WL 1713416, at *7 (Bankr. D. Del. Apr. 29, 2014) (holding that the court was required to consider changed circumstances in determining whether a settlement should be enforced against the debtors and the creditor representative under the four *Martin* factors, and declining to enforce the settlement). The interests of all creditors were served by the court's rejection of the settlement so that the trustee could collect additional assets as property of the estate. *Id.*

Moreover, the *Martin* Court specifically held that such a situation does not breach the duty of good faith and fair dealing. In this regard, the Third Circuit made clear that: "we conclude that the conduct of this trustee did not constitute a breach of her duty of good faith and fair dealing. In ruling that such a breach occurred, the district court erred." *Martin*, 91 F.3d at 396. The Third Circuit continued, holding that:

> However, a trustee has a fiduciary relationship with *all* creditors of the estate. Indeed, under the Code a trustee must investigate all sources of income for the estate and "collect and reduce to money the property of the estate." She has the duty to maximize the value of the estate, and in so doing is "bound to be vigilant and attentive in advancing [the estate's] interests." In sum, "it is the trustee's duty to both the debtor and the creditor to realize from the estate all that is possible for distribution among the creditors." Thus, this trustee

> was faced with a conflict between her fiduciary duty to the creditor body as a whole and the alleged duty to go forward with a settlement agreement favoring one creditor but otherwise detrimental to the estate.
>
> We cannot require a trustee herself to choose between these conflicting legal obligations. Rather, Rule 9019(a) demonstrates the legislature's intent to place this responsibility with the bankruptcy court. In order to make such a determination, the bankruptcy court must be apprised of all relevant information that will enable it to determine what course of action will be in the best interest of the estate. Accordingly, the trustee should inform the court and the parties of any changed circumstances since the entry into the stipulation of settlement. The trustee may even opt not to argue in favor of the stipulation, as was done here, if she no longer believes the settlement to be in the best interest of the estate. The trustee does not breach any term of the stipulation by doing so, for the bankruptcy court may nonetheless approve the settlement.

Id. at 394.

At the hearing, the Diocese will establish that "changed circumstances" mandate confirmation of the Plan over approval of the 9019 Motion. In this regard, the Court will admit evidence regarding about the following non-exclusive items:

1. Confirmation of the Plan will resolve the following pieces of litigation, which entry into the Insurance Settlement would not: (i) the DOC Trusts Action; (ii) the Parishes Action; (iii) the Restricted Assets Action; (iv) the Standing Appeal. The resolution of these actions preserves the necessary assets of the Diocese and Other Catholic Entities to continue their mission post-confirmation of a Plan.

2. The Plan provides for the necessary votes needed in favor of a Plan to secure the necessary injunctions and third-party releases. Without these injunctions and releases, confirmation of a Plan would not be feasible.

3. Ensures the continuing injunction of the Abuse Claimants' state court actions from proceeding against the Other Catholic Entities.

4. Resolves the Tort Committee's claim objections against the Other Catholic Entities.

5. Ensures that the Court will not have to cram down a Plan over the objection of survivors of Abuse – the very people that the Diocese filed this Chapter 11 Proceeding to protect.

6. Ends the mountain of litigation with the Tort Committee that has resulted in administrative expenses that threaten to affect the Diocese's operations and ability to continue its mission.

In addition, both Father Hughes, the Vicar General of the Diocese, and Laura Montgomery, the Diocesan Finance Officer, testified regarding the goals of the Diocese in this Chapter 11 Proceeding and how the Plan achieved those goals. Specifically, Father Hughes testified that:

> I would say that the focus of the diocese, number one, was always to get to a global settlement. When we went into that, that was our initial, and still is to this day, our preference. The diocese had two, maybe three main objectives. First and foremost, the diocese wanted to take care of the survivors. This has been a 30-year stain on the church, not just in Camden, but in – throughout the world. Our primary objective was to take care and be fair and equitable to all of the survivors. Our second -- our second goal was in doing that, that we were still able to maintain the mission of the diocese. We serve people in ways that there is no one else that does, and so that was also our goal. Our third goal was that we'd be able to do this, and manage this, and not hemorrhage fees, be they in court cases, be they in bankruptcy, but in trying to manage that, we could ensure those first two goals were met, so that would be why.

At the Confirmation Hearing, the Dicoese will establish that the Plan, rather than the 9019 Motion, achieves the goals set forth above. Upon such evidence, the Diocese believes that it is appropriate to deny the 9019 Motion.

RESERVATION OF RIGHTS

The Diocese joins in, and adopts, the arguments set forth in the reply to the objections to the Plan filed by the Tort Committee and Parishes to the extent not inconsistent herein and reserves its rights to supplement, amend, or modify this reply and any other documents filed by the Plan Proponents in connection with confirmation of the Plan. The Diocese further reserves all rights and defenses to respond to, at the Confirmation Hearing, any and all objections or supplemental objections, whether or not argued in this Reply, or otherwise submitted to this Court and the record of this Chapter 11 Case.

CONCLUSION

WHEREFORE, for the reasons set forth herein and in the other pleadings filed in support of the Plan, the Diocese requests that this Court confirm the Plan as satisfying all of the applicable requirements of the Bankruptcy Code, overruling the Insurer Oppositions and Ajuk Opposition and granting such other and further relief as is just and proper.

Dated: September 23, 2022

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