

**THIS DISCLOSURE STATEMENT IS NOT A SOLICITATION OF VOTES ON THE COMMITTEE PLAN. ACCEPTANCES OF THE COMMITTEE PLAN MAY NOT BE SOLICITED UNTIL THE BANKRUPTCY COURT HAS APPROVED A DISCLOSURE STATEMENT. THE COMMITTEE RESERVES THE RIGHT TO AMEND, SUPPLEMENT, OR OTHERWISE MODIFY THIS DISCLOSURE STATEMENT PRIOR TO THE HEARING TO APPROVE THIS DISCLOSURE STATEMENT.**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

\_\_\_\_\_)  
In re: ) Chapter 11  
)  
THE ROMAN CATHOLIC DIOCESE OF ) Case No. 20-12345 (MG)  
ROCKVILLE CENTRE, NEW YORK, )  
)  
Debtor. )  
\_\_\_\_\_)

**DISCLOSURE STATEMENT FOR THE FIRST AMENDED CHAPTER 11 PLAN  
OF REORGANIZATION PROPOSED BY THE OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS OF THE ROMAN CATHOLIC  
DIOCESE OF ROCKVILLE CENTRE**

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Dated: New York, New York  
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The Official Committee of Unsecured Creditors (the “**Committee**”) of The Roman Catholic Diocese of Rockville Centre, the debtor and debtor in possession (the “**Debtor**” or “**Diocese**”), respectfully submits this disclosure statement (the “**Committee Disclosure Statement**”) in support of the *First Amended Chapter 11 Plan of Reorganization Proposed by the Official Committee of Unsecured Creditors of the Roman Catholic Diocese of Rockville Centre* (Dkt. No. 1643) as it may hereafter be amended or modified, the “**Committee Plan**”), a copy of which is attached to this Disclosure Statement as Exhibit 1.<sup>1</sup>

## I. EXECUTIVE SUMMARY OF THE COMMITTEE PLAN

### A. Introduction.

On October 1, 2020, the Diocese filed a voluntary chapter 11 petition with the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”). On or about October 16, 2020, the United States Trustee for Region 2 appointed the Committee to represent the Diocese’s unsecured creditors under §1102(a)(1) of the Bankruptcy Code. The Committee consists of nine individuals who hold claims against the Debtor, including eight Survivors abused by perpetrators for whom the Debtor was responsible and one representative of a minor with a civil rights claim against the Debtor.

Since its appointment, the Committee and its professionals have conducted an extensive examination and analyses of the Diocese and its assets and liabilities, including insurance coverage. In an effort to resolve this case that would provide meaningful financial compensation to the survivors of child sexual abuse and other creditors and would enable the Diocese to continue to operate and fulfill other portions of its mission, the Committee engaged in negotiations and mediations with the Diocese, certain of its affiliates, including the Parishes, and the Diocese’s insurers. Unfortunately, no agreement was achieved.

The Committee Plan provides the means for settling and paying all Claims asserted against the Debtor and to enable the Diocese to emerge from bankruptcy. The Committee Plan consists of three alternatives, the Full Settlement Alternative, the Partial Settlement Alternative, and the Litigation Alternative. The Full and Partial Settlement Alternatives provide an opportunity for certain of the Debtor’s non-debtor affiliates, the Non-Debtor Affiliates, and certain of the Insurers to participate in the Committee Plan and to resolve their liability with respect to the Abuse Claims.

However, unless meaningful compensation from the Non-Debtor Affiliates is provided, the Committee Plan does not grant releases to them, and, if confirmed, the Abuse Claimants can pursue their Abuse Claims against the Non-Debtor Affiliates liable for such abuse. The Committee Plan is in the best interests of, and provides the highest and most expeditious recoveries to, all parties including Abuse Claimants who hold Claims against the Debtor.

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<sup>1</sup> The definitions set forth in Section I of the Committee Plan apply to capitalized terms used, but not defined, in this Disclosure Statement. The rules of construction set forth in Section II of the Committee Plan apply to this Disclosure Statement.

**THE COMMITTEE RECOMMENDS THAT HOLDERS OF CLAIMS, INCLUDING HOLDERS OF ABUSE CLAIMS VOTE TO ACCEPT THE COMMITTEE PLAN.**

This Disclosure Statement describes why Claims are placed into certain Classes, the relative allocations of property to the Holders of such Claims, the manner by which the Diocese’s Assets are to be distributed, the risks inherent in the Committee Plan, and the applicable bankruptcy and tax consequences of the Committee Plan. You are advised and encouraged to read this Disclosure Statement and the Committee Plan in their entirety before voting to accept or reject the Committee Plan.

The following table briefly summarizes the classification and treatment of Claims under the Committee Plan. For a more detailed description of the Committee Plan’s classification and treatment of Claims, see Article V below.

<b>CLASS</b>	<b>DESCRIPTION</b>	<b>IMPAIRMENT</b>	<b>VOTING</b>	<b>ESTIMATED RECOVERY</b>
1	Other Priority Claims	Unimpaired	Deemed to Accept	100%
2	Secured Claims	Unimpaired	Deemed to Accept	100%
3	Reserved	Not Applicable	Not Applicable	Not Applicable
4	Abuse Claims (Except Future Abuse Claims)	Impaired	Yes	To Be Determined
5	General Unsecured Claims	Unimpaired	Deemed to Accept	100%
6	Personal Injury Claims	Impaired	Yes	To Be Determined
7	Future Abuse Claims	Impaired	Yes	To Be Determined
8	Abuse Related Contingent Contribution/Reimbursement/ Indemnity Claims	Impaired	Deemed to Reject	No Recovery
9	Civil Rights Claims	Impaired	Yes	To Be Determined

As provided by Section 1126 of the Bankruptcy Code, only Classes of Claims that are both impaired under the Committee Plan and entitled to a recovery under the Committee Plan may vote to accept or reject the Committee Plan. Here, the only Classes of Claims entitled to vote are Class 4 (Abuse Claims, Except Future Abuse Claims), Class 6 (Personal Injury Claims), Class 7 (Future Abuse Claims), and Class 9 (Civil Rights Claims) (collectively, the “**Voting Classes**”).

**B. Principal Terms of the Committee Plan.**

This Section contains a summary of the principal terms of the Committee Plan. You should carefully review the Committee Plan in full before determining whether to vote to accept or reject the Committee Plan. To the extent that any provision of this Disclosure Statement conflicts with any term of the Committee Plan, the terms of the Committee Plan shall control.

**Committee’s Offer to Non-Debtor Affiliates and Insurers to Resolve Abuse Claims.**

The below chart sets forth the Settlement Offer to certain non-Debtor entities to resolve Abuse Claims. The deadline for each Entity to either accept or reject its Settlement Offer is the date set for the hearing on approval of the Disclosure Statement, or such later date as agreed to by the Committee in its sole discretion. The deadline for each Entity to fund its Settlement Offer, or such other settlement amount as agreed to by the Committee in its sole discretion (the “**Agreed Amount**”), is the Contribution Date.

Party	Settlement Offer
Non-Debtor Affiliates	\$200,000,000.00
Cemetery	\$80,000,000.00
Seminary	85% of the net proceeds of the sale of 206 acres of the real property owned by the Seminary <sup>2</sup>
Department of Education	\$6,000,000.00
LMI <sup>3</sup>	Amount provided directly to LMI under the Mediation Order
Allianz Insurers	Amount provided directly to Allianz Insurers under the Mediation Order
Lexington	Amount provided directly to Lexington under the Mediation Order

<sup>2</sup> The Seminary shall be entitled to retain possession and title to the buildings and approximately sixteen (16) acres associated with the operations of the Seminary; provided however, that if any portion of this property is leased, sold, or subject to an option for lease or sale on or before the date that is six months after the termination of the Future Abuse Claims Trust for the benefit of Abuse Claimants, 85% of the net proceeds of such transaction shall be paid to the Trust. The Future Abuse Claims Trust will terminate six years after the Effective Date.

<sup>3</sup> The Committee has made settlement proposals to the Insurers in the Mediation and all such proposals remain subject to the Mediation Privilege.

Evanston	Amount provided directly to Evanston under the Mediation Order
Ecclesia (because of insurance coverage obligations)	\$15,000,000 for Abuse Claims (the “ <b>Ecclesia Abuse Claim Amount</b> ”); \$500,000 for Civil Rights Claims (the “ <b>Ecclesia Civil Rights Claim Contribution</b> ”)

**Full Settlement Alternative**

The Full Settlement Alternative occurs if the Non-Debtor Affiliates, the Cemetery, Seminary, and Department of Education, and all of the Insurers commit to and fund an Agreed Amount. Under the Full Settlement Alternative, all Non-Debtor Affiliates, Cemetery, Seminary, and Department of Education become Participating Parties and all Insurers become Settling Insurers. The Trust Assets will consist of the Settlement Fund, including contributions from the Diocese, the Participating Parties, and the Settling Insurers. Trust Assets will fund Distributions to Abuse Claimants, under the Trust Allocation Protocol. The Diocese and Participating Parties will retain their Arrowood Insurance Claims.

**Partial Settlement Alternative**

Only in the Committee’s sole and absolute discretion, the Partial Settlement Alternative occurs if, by the first date set for the hearing on approval of the Disclosure Statement, (a) the Non-Debtor Affiliates, Seminary, Cemetery, and Department of Education commit to fund an Agreed Amount and (b) less than all of the Insurers (a) accept their Settlement Offers or (b) commit to fund a different amount that the Committee accepts in lieu of their Settlement Offer. Under the Partial Settlement Alternative, all Non-Debtor Affiliates, Cemetery, Seminary, and Department of Education become Participating Parties. Only those Insurers that contribute the Agreed Amount become Settling Insurers. The Diocese’s, the Participating Parties’ and the Settling Insurers’ Insurance Claims against any Non-Settling Insurer, except Arrowood, shall be transferred to the Trust and shall be a Trust Asset. The Trust Assets will consist of the Settlement Fund, including contributions from the Diocese, the Participating Parties, and the Settling Insurers and the assignment of Insurance Claims (except Arrowood Insurance Claims) held by the Diocese, the Settling Insurers, and the Participating Parties. The Diocese and the Participating Parties will retain their Arrowood Insurance Claims. Trust Assets will fund Distributions to Abuse Claimants, under the Trust Allocation Protocol. Under the Partial Settlement Alternative, Abuse Claimants whose Claims occurred during the coverage period of a Non-Settling Insurers’ policy may, subject to the Trustee’s consent and the Trust Documents, pursue their Abuse Claims in a court of competent jurisdiction against the Debtor and any other defendant; *provided, however*, that any such Claims are subject to the terms of the Committee Plan and that Claims against the Debtor or a Participating Party may be paid only from the proceeds of an Insurance Policy issued by a Non-Settling Insurer.

The Diocese, each Participating Party, and each Settling Insurer will receive the benefit of injunctions and releases provided under the Committee Plan. Nothing in the Committee Plan is intended to replace and does not affect, diminish, or impair the liabilities of any Non-Settling Insurer or any Person that is not a Participating Party under applicable non-bankruptcy law, including the law governing joint and several liabilities.

### **Litigation Only Alternative**

The Litigation Only Alternative occurs if the Non-Debtor Affiliates do not commit to fund the Agreed Amount. The Non-Debtor Affiliates and the Non-Settling Insurers will not be released from any of their obligations and/or liabilities and shall not benefit from any injunctions. The Trust Assets will consist of the Settlement Fund, including contributions from the Diocese and the assignment of the Diocese's Insurance Claims. For clarity, the Insurance Claims of the Non-Debtor Affiliates will not be assigned under the Litigation Only Alternative. Trust Assets will fund Distributions to Abuse Claimants, under the Trust Allocation Protocol. Under the Litigation Only Alternative, Abuse Claimants may elect to pursue their Abuse Claims in any court of competent jurisdiction against the Debtor and any other defendant; *provided, however*, that any such Claims and pursuing any such Claims by litigation are subject to the terms of the Committee Plan and the Trust Allocation Protocol and that Claims against the Debtor may recover only from the proceeds of an Insurance Policy and may not recover from any Revested Assets.

### **Overview of the Treatment of Abuse Claims in Class 4 (Excluding Future Abuse Claims).**

Excluding duplicative claims, 653 individuals have filed Abuse Claims in Class 4 against the Debtor asserting claims resulting or arising in whole or in part, directly or indirectly from Abuse, and seeking monetary damages or any other relief, under any theory of liability, including vicarious liability, any negligence-based theory, contribution, indemnity, or any other theory based on any acts or failures to act by the Diocese or any other person or entity for whose acts or failures to act the Diocese is or was allegedly responsible.<sup>4</sup>

On the Confirmation Date, under the terms of the Committee Plan and Trust Documents, the Trust shall be created. On the Effective Date, the Trust will be funded with (i) no less than [forty-one (\$41) million dollars of cash], (ii) title to or proceeds from the sale of certain assets described in Committee Plan Sections 12.2 – 12.4, (iii) all Avoidance Rights (not otherwise released, time-barred, compromised, enjoined or discharged under the Committee Plan), (iv) all Causes of Action and any recoveries of such Causes of Action arising from or related to denials of coverage or coverage defenses raised by Non-Settling Insurers, and (v) the Insurance Claims and the proceeds of such Insurance Claims. Under the Full or Partial Settlement Alternatives, the Trust shall also receive funds from the Participating Parties and any Settling Insurers, but it will not receive those Insurance Claims relating to or arising under the Arrowood Policies.

Additionally, as soon as possible after the Effective Date, and under the terms of the Committee Plan and the Trust Documents, the Trust shall pay all Class 4 Claimants. The payment

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<sup>4</sup> “Abuse Claim” does not include any Abuse Related Contingent Contribution/Reimbursement/Indemnity Claims, Extra-Contractual Claims, or Insurance Claims. To avoid doubt, Abuse Claim does not include any Claims first arising after the Petition Date or based only on conduct following the Petition Date.

of the Class 4 Claims by the Trust is not a release, accord or novation of the Debtor's or the Participating Parties' liability because of the Class 4 Claims; provided, however, that the Debtor's liability because of the Class 4 Claims shall be discharged under Bankruptcy Code section 1141(d), subject to Sections 7.1.5 and 15.1 of the Committee Plan.

Under the Full or Partial Settlement Alternatives, the Participating Parties' liabilities are subject to the Channeling Injunction and releases under the Committee Plan. Under no circumstance shall the Abuse Claims Reviewer's review of a Class 4 Claim affect the rights of a Non-Settling Insurer. Abuse Claimants in Class 4 shall have their Claims treated under the Trust Allocation Protocol. Neither the Trust nor the Diocese have any obligation to take any action to enforce an Insurance Policy of a Non-Settling Insurer, including any obligation to commence/prosecute any action against any Non-Settling Insurer or to defend an action commenced by a Non-Settling Insurer, though the Trust (or the Diocese, as applicable), may do so.

The Non-Settling Insurers remain liable for their obligations related to the Class 4 Claims, and their obligations are not reduced by the Diocese being in bankruptcy or by the distributions Class 4 Claimants receive, or are entitled to receive, based on the Committee Plan. Determinations by the Abuse Claims Reviewer and/or any distributions entitled to be received from the Trust shall not constitute a determination of the Diocese's, any Participating Party's or any Non-Settling Insurer's liability or damages for Class 4 Claims.

#### **Overview of Treatment of Future Abuse Claims**

Future Abuse Claims in Class 7 are impaired under the Committee Plan. The Future Abuse Claims Trust will be funded by the Trust with six percent (6 %) of the Non-Insurance Trust Assets under the Committee Plan. On the Effective Date, the Future Abuse Claims Trust shall pay all Future Abuse Claims under the Committee Plan and Future Abuse Claims Trust Documents. The payment of the Future Abuse Claims by the Future Abuse Claims Trust is not a release, accord or novation of the Debtor's or the Participating Parties' liability because of the Future Abuse Claims; provided, however, that the Debtor's liability because of the Future Abuse Claims shall be discharged under Bankruptcy Code section 1141(d), subject to Sections 7.1.5 and 15.1 of the Committee Plan and all of the Participating Parties' liabilities are subject to the Channeling Injunction and releases under the Committee Plan. Under no circumstance shall the Abuse Claims Reviewer's review of a Future Abuse Claim affect the rights of a Non-Settling Insurer. Future Abuse Claimants shall have their Claims treated under the Future Abuse Claims Trust Allocation Protocol.

#### **Overview of Treatment of Claims Other Than Abuse Claims.**

Claims against the Debtor that are not Abuse Claims are identified and described in full in Article V of this Disclosure Statement. They will be treated as follows under the Committee Plan:

- *Other Priority Claims* in Class 1 and *Secured Claims* in Class 2 shall be unimpaired under the Committee Plan and shall receive 100% recovery.

- *General Unsecured Claims* in Class 5 shall be unimpaired under the Committee Plan and shall receive 100% recovery.
- *Personal Injury Claims* in Class 6 are impaired under the Committee Plan. On the Effective Date, the Class 6 Claimants may elect to litigate against the non-Debtor Co-Defendants or select to receive from the Trust \$250,000 minus any amounts already expended by the Diocese or the non-Debtor Co-Defendants on pre-petition defense costs relating to litigation of such Class 6 Claim. If a Class 6 Claimant elects to litigate, the Trust shall provide the Reorganized Debtor with \$250,000 minus any amounts already expended by the Diocese or the non-Debtor Co-Defendants on pre-petition defense costs relating to litigation of such Class 6 Claim to satisfy the self-insured retention under the relevant Ecclesia policy which the Committee believes is the insurance policy that covers the Class 6 claims. Nothing in the Committee Plan shall enlarge the rights or Claims of Class 6 Claimants or limit or waive any defenses to the Class 6 Claims. Unless otherwise provided in the Committee Plan, the Committee Plan shall not affect the liability of any other Person on, or the property of any other Person for, the Class 6 Claims, which liability shall continue unaffected by the terms of the Committee Plan or the discharge granted to the Diocese under the Committee Plan and Section 1141(d) of the Bankruptcy Code. Nothing in the Committee Plan is intended to affect, diminish, or impair the Class 6 Claimant's right against any other parties, including such party's joint and several liability
- *Abuse Related Contingent Contribution/Reimbursement/ Indemnity Claims* in Class 8 are impaired under the Committee Plan and shall receive no recovery.
- *Civil Rights Claims* in Class 9 are impaired under the Committee Plan. The Trust shall create the Civil Rights Claim Reserve which will include \$300,000 from Non-Insurance Trust Assets. Under the Full Settlement Alternative, or the Partial Settlement Alternative if Ecclesia funds the Agreed Amount and becomes a Settling Insurer, the Civil Rights Claim Reserve shall also include the Ecclesia Non-Abuse Claim Contribution. On the Effective Date, the Trust shall pay all Civil Rights Claims their pro-rata share of the Civil Rights Claim Reserve. The payment of the Civil Rights Claims by the Trust is not a release, accord or novation of the Debtor's or the Participating Parties' liability because of the Civil Rights Claims; provided, however, that the Debtor's liability because of the Civil Rights Claims shall be discharged under Bankruptcy Code section 1141(d), subject to Sections VII.A.11 and subject to Sections 7.1.1 and 15.1 of the Committee Plan and all of the Participating Parties' liabilities are subject to the Channeling Injunction and releases under the Committee Plan. If Ecclesia does not fund the Agreed Amount, the Class 9 Claimants may elect to litigate against the non-Debtor Co-Defendants or to receive from the Trust \$250,000 minus any amounts already expended by the Diocese or the non-Debtor Co-Defendants on pre-petition defense costs relating to litigation of such Class 9 Claim. If a Class 9 Claimant elects to litigate, the Trust shall provide the Reorganized Debtor with \$250,000 minus any amounts already expended by the Diocese or the non-Debtor Co-Defendants on pre-petition defense costs relating to litigation of such Class 9 Claim to satisfy the self-insured retention under the relevant Ecclesia policy. Nothing in the Committee Plan shall enlarge the rights or Claims of Class 9 Claimants or limit or



waive any defenses to the Class 9 Claims. Unless otherwise provided in the Committee Plan, the Committee Plan shall not affect the liability of any other Person on, or the property of any other Person for, the Class 9 Claims, which liability shall continue unaffected by the terms of the Committee Plan or the discharge granted to the Diocese under the Committee Plan and Section 1141(d) of the Bankruptcy Code. Nothing in the Committee Plan is intended to affect, diminish, or impair the Class 9 Claimant’s right against any other parties, including such party’s joint and several liability

**Non-Monetary Commitments and Reforms.**

The Diocese has a long history of the sexual abuse of children by priests and lay people under the supervision and control of the Diocese or its Affiliates. Though the Diocese pretends that this is only a “legacy” issue, claims have been filed in this case related to sexual abuse in recent years, including as recently as 2016. Notably, the Diocese Plan contains *NO* commitments or reforms to prevent Abuse and other injury to children.

To further efforts to prevent Abuse and other injury to children from occurring in the Diocese, the Committee requests the Diocese undertake the commitments in Exhibit H attached to the Committee Plan. The Diocese must inform the Committee which commitments it will adopt at least seven (7) days before the first date set for the hearing on approval of this Disclosure Statement.

**C. Analysis of Amounts Available to Trust for Distribution to Abuse Claims under the Committee Plan**

Under the terms of the Committee Plan, the Diocese will transfer certain cash and assets to the Trust. The below chart estimates the amounts to be transferred to the Trust by the Diocese or to be recovered by the Trustee from the prosecution of Causes of Action, including actions against Non-Settling Insurers. **THE BELOW ESTIMATES ARE BASED ON THE COMMITTEE’S REVIEW AND ANALYSIS OF THE DIOCESE’S FINANCIAL INFORMATION TO DATE. THE ACTUAL AMOUNTS WILL DEPEND ON THE RESULT OF SALES OF CERTAIN ASSETS OR THE OUTCOME OF LITIGATION REGARDING CERTAIN ASSETS. THUS, ANY ESTIMATED AMOUNT IS INHERENTLY UNCERTAIN AND THE ACTUAL AMOUNTS RECEIVED BY THE TRUST MAY DIFFER MATERIALLY.**

Asset	Estimated Value <sup>5</sup>
Cash	[\$41,000,000.00]
FCC Licenses	To Be Determined
Radio/Cell Towers	To Be Determined

<sup>5</sup> The estimates provided herein were derived by the Committee’s professionals based on their analysis of information received from the Debtor. Such estimates are inherently uncertain, and there can be no guaranty that the estimated amounts will be realized and the actual amounts realized may differ materially from those projected here.

Glenn Curtis Studio (or proceeds from sale)	To Be Determined
Available Real Estate	To Be Determined
Proceeds from sale of Ecclesia	To be Determined
Recovery from IAC Transfers and Other Causes of Action	[\$86,000,000.00] [plus portion of Seminary property sale]
Recovery from Non-Settling Insurers or Insurers Settling after the Effective Date.	[Subject to Mediation Privilege]

Under the Full or Partial Settlement Alternatives, the Trust will also receive \$200,000,000 from the Non-Debtor Affiliates or the Agreed Amount.

The funds and assets received by the Trust will be used for payment of expenses of the Trust and distribution to Abuse Claims under the terms of the Trust Documents. Six percent (6 %) of the Non-Insurance Trust Assets of the Trust will be contributed to the Future Abuse Claims Trust. Because of the uncertainty of the total amounts available to the Trust and the Future Abuse Claims Trust, the Committee cannot estimate the ultimate recoveries to Abuse Claimants. Notwithstanding this uncertainty, the Committee believes those recoveries will be greater than amounts to be distributed to Abuse Claimants under the Diocese Plan or that would be distributed to Abuse Claimants if the Diocese’s Chapter 11 Case were converted to a case under Chapter 7 of the Bankruptcy Code.

Following confirmation of the Committee Plan, the Diocese’s Assets not contributed to the Trust or the Future Abuse Claims Trust will be revested in the Diocese. Based on the Diocese’s operational history, the Committee believes that the Diocese will have sufficient funds to continue to execute its mission.

To confirm a plan, the Bankruptcy Code requires that a Bankruptcy Court find that confirmation of the plan is not likely to be followed by liquidation or the need to further financially reorganize the Debtor (the “**Feasibility Test**”). For a plan to meet this test, the Bankruptcy Court must determine there is a reasonable likelihood that the Reorganized Debtor will possess the working capital and other resources to meet its obligations under the Committee Plan. The Committee believes and will demonstrate at the Confirmation Hearing that the Reorganized Debtor can make all distributions required by the Committee Plan and to fund its operations going forward and, therefore, that confirmation of the Committee Plan is not likely to be followed by liquidation or the need for further reorganization.

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## DISCLAIMER

THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF THE ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE (THE “COMMITTEE”), BELIEVES THAT THE FIRST AMENDED CHAPTER 11 PLAN OF REORGANIZATION (THE “COMMITTEE PLAN”) (DKT. \_\_\_), ATTACHED AS EXHIBIT 1 TO THIS DISCLOSURE STATEMENT, IS IN THE BEST INTERESTS OF CREDITORS OF THE ABOVE CAPTIONED DEBTOR AND DEBTOR-IN POSSESSION AND URGES ALL HOLDERS OF CLAIMS ENTITLED TO VOTE TO ACCEPT THE COMMITTEE PLAN.

THIS ENTIRE DISCLOSURE STATEMENT AND ITS RELATED DOCUMENTS ARE THE ONLY DOCUMENTS APPROVED BY THE BANKRUPTCY COURT TO BE USED IN CONNECTION WITH THE SOLICITATION OF VOTES TO ACCEPT OR REJECT THE COMMITTEE PLAN.

THIS DISCLOSURE STATEMENT CONTAINS ONLY A SUMMARY OF THE COMMITTEE PLAN AND IS NOT INTENDED TO REPLACE A DETAILED REVIEW AND ANALYSIS OF THE COMMITTEE PLAN. ALL HOLDERS OF CLAIMS ARE ENCOURAGED TO REVIEW THE FULL TEXT OF THE COMMITTEE PLAN AND THE EXHIBITS TO THE COMMITTEE PLAN AND THIS ENTIRE DISCLOSURE STATEMENT CAREFULLY BEFORE DECIDING WHETHER TO VOTE TO ACCEPT OR REJECT THE COMMITTEE PLAN. IN THE EVENT OF A CONFLICT BETWEEN THE COMMITTEE PLAN AND THIS DISCLOSURE STATEMENT, THE PROVISIONS OF THE COMMITTEE PLAN WILL GOVERN.

THIS DISCLOSURE STATEMENT IS BASED ON THE FACTUAL INFORMATION AND THE FINANCIAL, BUSINESS, AND ACCOUNTING DATA PROVIDED BY THE DEBTOR, OR DATA OBTAINED FROM OTHER SOURCES CONSIDERED RELIABLE BY THE COMMITTEE. THE COMMITTEE’S PROFESSIONALS HAVE NOT INDEPENDENTLY VERIFIED THE FINANCIAL INFORMATION PROVIDED BY THE DEBTOR CONTAINED IN THIS DISCLOSURE STATEMENT AND MAKE NO REPRESENTATIONS OR WARRANTIES AS TO SUCH INFORMATION. THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS NOT BEEN SUBJECT TO A CERTIFIED AUDIT. THUS, THE COMMITTEE IS UNABLE TO WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS COMPLETE AND ACCURATE, ALTHOUGH REASONABLE EFFORT HAS BEEN MADE TO PRESENT COMPLETE AND ACCURATE INFORMATION BASED ON INFORMATION MADE AVAILABLE TO THE COMMITTEE AND THE COMMITTEE’S PROFESSIONALS.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND RULE 3016(b) OF THE BANKRUPTCY RULES AND NOT NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAW OR OTHER NON-BANKRUPTCY LAW.

THIS DISCLOSURE STATEMENT MAY NOT BE RELIED ON FOR ANY PURPOSES OTHER THAN TO DETERMINE WHETHER TO VOTE TO ACCEPT OR REJECT THE COMMITTEE PLAN. NOTHING IN THIS DISCLOSURE STATEMENT IS, OR SHALL BE DEEMED TO BE AN ADMISSION OR A DECLARATION AGAINST INTEREST BY THE COMMITTEE (OR BY THE DEBTOR'S ESTATE TO THE EXTENT THAT THE COMMITTEE HAS, OR LATER COMES TO HAVE DERIVATIVE STANDING, TO PURSUE ESTATE CLAIMS) FOR PURPOSES OF ANY EXISTING OR FUTURE LITIGATION AS TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS AND OTHER ACTIONS OR THREATENED ACTIONS. THIS DISCLOSURE STATEMENT SHALL NOT CONSTITUTE OR BE CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY, STIPULATION, OR WAIVER, BUT RATHER AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS. THE DISCLOSURE STATEMENT SHALL NOT BE ADMISSIBLE IN ANY NON-BANKRUPTCY PROCEEDING NOR SHALL IT BE CONSTRUED TO BE CONCLUSIVE ADVICE ON THE TAX OR OTHER LEGAL EFFECTS OF THE COMMITTEE PLAN AS TO HOLDERS OF CLAIMS IN THIS CASE.

THIS DISCLOSURE STATEMENT CONTAINS STATEMENTS THAT ARE FORWARD-LOOKING. FORWARD-LOOKING STATEMENTS ARE STATEMENTS OF EXPECTATIONS, BELIEFS, PLANS, OBJECTIVES, ASSUMPTIONS, PROJECTIONS, AND FUTURE EVENTS OF PERFORMANCE. AMONG OTHER THINGS, THIS DISCLOSURE STATEMENT CONTAINS FORWARD-LOOKING STATEMENTS WITH RESPECT TO ANTICIPATED FUTURE PERFORMANCE OF A TRUST TO BE CREATED FOR THE BENEFIT OF HOLDERS OF ALLOWED CLAIMS, AS WELL AS ANTICIPATED FUTURE DETERMINATION OF CLAIMS, DISTRIBUTIONS ON CLAIMS, AND RECOVERIES UNDER INSURANCE POLICIES. THESE STATEMENTS, ESTIMATES, AND PROJECTIONS MAY OR MAY NOT PROVE TO BE CORRECT. ACTUAL RESULTS COULD DIFFER MATERIALLY FROM THOSE REFLECTED IN THESE FORWARD-LOOKING STATEMENTS. FORWARD-LOOKING STATEMENTS ARE SUBJECT TO INHERENT UNCERTAINTIES AND TO A WIDE VARIETY OF SIGNIFICANT BUSINESS, ECONOMIC, AND COMPETITIVE RISKS, INCLUDING, AMONG OTHERS, THOSE DESCRIBED IN THIS DISCLOSURE STATEMENT. THE COMMITTEE UNDERTAKES NO OBLIGATION TO UPDATE ANY FORWARD-LOOKING STATEMENT. NEW FACTORS EMERGE FROM TIME TO TIME AND IT IS NOT POSSIBLE TO PREDICT ALL SUCH FACTORS, NOR CAN THE IMPACT OF ANY SUCH FACTORS BE ASSESSED.

THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE HEREOF. THE DELIVERY OF THIS DISCLOSURE STATEMENT DOES NOT IMPLY THAT THE INFORMATION CONTAINED HEREIN IS CORRECT AT ANY TIME AFTER THE DATE HEREOF, AND THE COMMITTEE DOES NOT ASSUME ANY OBLIGATION TO UPDATE THIS DISCLOSURE STATEMENT FOR EVENTS OR INFORMATION ARISING AFTER THE DATE HEREOF.

HOLDERS OF CLAIMS SHALL NOT CONSTRUE THIS DISCLOSURE STATEMENT AS PROVIDING ANY LEGAL, FINANCIAL, OR TAX ADVICE. ALL HOLDERS OF CLAIMS SHOULD CONSULT WITH THEIR OWN ADVISORS AS TO ANY MATTERS CONCERNING THE COMMITTEE PLAN, ITS SOLICITATION, AND THE

TRANSACTIONS, TREATMENT, AND DISTRIBUTIONS CONTEMPLATED BY THE  
COMMITTEE PLAN.

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## II. REVIEW OF THE COMMITTEE PLAN AND THE DIOCESE PLAN

### A. The Committee Believes the Diocese Plan Offers Inadequate Compensation to Abuse Claimants and is Not Confirmable.

Without the support of the Committee and after refusing to engage in further negotiation with the Committee, on January 27, 2023 the Diocese filed the proposed *Chapter 11 Plan of Reorganization for The Roman Catholic Diocese of Rockville Centre, New York* (Dkt. 1614) (the “**Diocese Plan**”) and the proposed *Disclosure Statement for the Chapter 11 Plan of Reorganization Proposed By The Roman Catholic Diocese of Rockville Centre, New York* (Dkt. 1614) (the “**Diocese Disclosure Statement**”).

**In the Committee’s opinion, the Diocese Plan does not adequately compensate the abuse claimants for the release of their claims against the Diocese and the Diocese-Plan Released Non-Debtors, including the Parishes.**

The Diocese Plan is premised on the release of certain “Covered Parties” from all child sexual abuse liability. Though neither the Diocese Disclosure Statement nor the Diocese Plan identify these entities by name, the Diocese defines them in the Diocese Plan (I.A.31):

(a) the Debtor and the Reorganized Debtor, as applicable; (b) the Parishes; (c) any other Co-Insured Party;<sup>1</sup> (d) all Settling Insurers, (e) any Settling IAC Affiliate, (f) such other Entity that is a co-defendant in a CVA Action that becomes a Covered Party pursuant to Article V.S of the [Diocese] Plan, and (g) with respect to each of the foregoing Entities in clauses (a) through (f), such Entities’ predecessors, successors, assigns, subsidiaries, affiliates, current and former officers, directors, principals, equity holders, trustees, members, partners, managers, officials, advisory board members, advisory committee members, employees, agents, volunteers, attorneys, financial advisors, accountants, investment bankers, consultants, representatives, and other professionals, and such Entities’ respective heirs, executors, Estate, and nominees, as applicable; provided, however, that any perpetrator of Abuse that forms the basis for an Abuse Claim that is an individual is not and shall not be a Covered Party.

Based on the Diocese’s definition, the Committee believes that hundreds of entities may constitute Parishes or Co-Insured Parties (the “**Diocese-Plan Released Non-Debtors**”). The only “contributions” being made by these Diocese-Plan Released Non-Debtors is the contribution of certain insurance rights and a mere \$11.1 million in cash from the hundreds of Diocese-Plan

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<sup>1</sup> The Diocese Plan defines “Co-Insured Party” as “any Entity that is an insured whether primary or as an additional insured) under an Insurance Policy or is otherwise afforded rights, benefits, indemnity or insurance coverage under an Insurance Policy upon which any claim has been or may be made with respect to any Abuse Claim. For purposes of the [Diocese] Plan, all Parishes shall be Co-Insured Parties. For the avoidance of doubt, an individual that holds an Abuse Claim (other than an Indirect Abuse Claim) shall not be construed as a Co-Insured Party.

Released Non-Debtors. (Diocese Plan V.Q.) This stands in stark contrast to the Committee Plan. The Committee Plan would only provide a release to such Diocese-Plan Released Non-Debtors in return for meaningful financial contributions and proposes that the Non-Debtor Affiliates (which includes Parishes and may include other co-insured parties) pay \$200 million in return for such releases. Under the Committee Plan, if the Non-Debtor Affiliates do not agree on a meaningful contribution with the Committee, Abuse Claimants will remain free to pursue such Non-Debtor Affiliates in state court seeking their full individual damages.

The Committee believes that the “contributions” being made by the Diocese-Plan Released Non-Debtors do not justify the releases being granted to those Diocese-Plan Released Non-Debtors. The Abuse Claimants should not (and, cannot) be forced to release the Diocese-Plan Released Non-Debtors and should be able to maintain and pursue those Abuse Claims against such parties outside of this Bankruptcy.

The Diocese-Plan Released Non-Debtors *cannot* be released by the Diocese Plan without a significant percentage of the Abuse Claimants voting to accept the Diocese Plan and therefore consenting to such third-party releases. See *In re Metromedia Fiber Network, Inc.*, 416 F.3d 136, 141-42 (2d Cir. 2005) (ruling that nondebtor releases may “be tolerated if the affected creditors consent,” but such releases should be the exception rather than the rule); see also *In re Aegean Marine Petroleum Network, Inc.*, 599 B.R. 717 (Bankr. S.D.N.Y. 2019)(denying confirmation of a chapter 11 plan containing non-consensual third party releases); *In re Dreier LLP*, 2010 WL 1707737 (Bankr. S.D.N.Y. Apr 28, 2010) (noting that the Second Circuit is skeptical about third party releases); *In re Master Mortg. Inv. Fund, Inc.*, 168 B.R. 930, 937 (Bankr. W.D. Mo. 1994) (ruling that creditor support for proposed releases is considered the “single most important factor”). Consistent with this view, many courts have premised their approval of third-party releases on the affirmative acceptance of affected creditors. See, e.g., *Matter of Specialty Equip. Co., Inc.*, 3 F.3d 1043 (7th Cir. 1993) (allowing release if those creditors who rejected the plan or abstained from voting could still pursue claims against third-parties); *In re Washington Mutual, Inc.*, 442 B.R. 314, 354–55 (D. Del. 2011) (“[T]he court concludes that any third party release is effective only with respect to those who affirmatively consent to it by voting in favor of the Plan and not opting out of the third party releases.”); *In re Digital Impact, Inc.*, 223 B.R. 1 (Bankr. N.D. Okla. 1998) (ruling that plan could not be confirmed if any party who would be bound by the release did not vote for the plan); *In re W. Coast Video Enters., Inc.*, 174 B.R. 906, 911 (Bankr. E.D. Pa. 1994) (“[E]ach creditor bound by the terms of the release must individually affirm same . . . .”); *Ocean Carriers Ltd.*, 251 B.R. 31, 43 (D. Del. 2000) (requiring that the affected class accept the plan by at least the percentages required by section 1126 of the Bankruptcy Code); *In re Flintkote Co.*, 04-11300 (MFW), 2015 WL 4762580, at \*10 (Bankr. D. Del. Aug. 12, 2015) (finding the plan was overwhelmingly accepted when between 94% and 99% of affected creditors voted for the Plan).

The Second Circuit also requires that released parties substantially contribute to the estate and for the plan to “otherwise provide[] for the full payment of the enjoined claims.” *Metromedia*, 416 F.3d at 142. The Diocese-Plan Released Non-Debtors are making only a limited contribution to the Diocese Plan. Not only does the Debtor not even disclose the identity of the Diocese-Plan Released Non-Debtors, the Diocese also provides no information on their potential exposure to Abuse Claims or any information about their available assets to pay such liabilities. The Committee has performed a detailed investigation examining the assets and exposure of the

Diocese-Plan Released Non-Debtors, including the Parishes, and submits that the contributions being made are not substantial and that the Diocese-Plan Released Non-Debtors are effectively being granted a “gift” of releases under the Diocese Plan.

Critically, the law on channeling injunctions and third party releases is in flux. On December 16, 2021, the United States District Court for the Southern District of New York in the Purdue Pharma bankruptcy reversed the bankruptcy court’s order confirming a chapter 11 plan that had over 90% support from creditors affected by the releases the District Court found problematic. *In re Purdue Pharma, L.P.*, 635 B.R. 26 (S.D.N.Y. 2021). Specifically, the district court found that the bankruptcy court lacked subject matter jurisdiction to enter the releases. *Id.* The District Court’s ruling is on appeal and the Second Circuit has yet to rule. But while the state of the law may be fluid, it is not trending toward **broader** releases or releases not sustained under the current law embodied in *Metromedia*.

The Abuse Claimants cannot be forced to release the Diocese-Plan Released Non-Debtors unless a significant percentage of the Abuse Claimants consent to granting such releases through the Diocese Plan. Thus, if the Abuse Claimants reject the Diocese Plan, the third party non-debtor releases embodied in the Diocese Plan cannot be granted. The Committee Plan does not provide a release of the Non-Debtor Affiliates, including the Parishes, unless such entities make meaningful monetary contributions in the Committee Plan. Unless those non-debtors substantially contribute to the Committee Plan, the Abuse Claimants will be free to pursue claims against those non-debtors in state court.

**THE COMMITTEE STRONGLY RECOMMENDS THAT THE HOLDERS OF ABUSE CLAIMS REJECT THE DIOCESE PLAN AND THEREBY REFUSE TO GRANT THE RELEASES OF THE DIOCESE-PLAN RELEASED NON-DEBTORS.**

**B. Analysis of Recoveries under Diocese Plan and Comparison with Recoveries Pursuant to Committee Plan.**

The Committee believes that the potential amounts to be paid to Abuse Claimants is far greater under the Committee Plan than the Diocese Plan.

**Contribution of Assets by the Diocese.**

The Diocese severely restricts the assets it contributes to the Diocese Plan Trust holding back substantial value that should be paid to the victims of sexual abuse. The below chart compares the assets to be included in the respective Abuse Claimant Trusts under the Committee Plan as opposed to the Debtor Plan.



DIOCESE ASSETS <sup>2</sup>	COMMITTEE PLAN	DIOCESE PLAN
Cash	\$[41,000,000.00]	\$[7,700,000] <sup>3</sup>
Spectrum Communication Assets Proceeds <sup>4</sup>	All of the Proceeds of sale of the Spectrum and Communications Assets except for transaction costs	Value of sale of Spectrum and Communication Assets <b>MINUS \$20 million</b> of such sale proceeds for the Reorganized Debtor
Available Real Estate	Estimated value of \$3,000,000	\$0.0 Retained by Reorganized Debtor
Ecclesia Contribution	[To Be Determined] Proceeds from sale of Ecclesia	[To be Determined] A one-time contribution of excess reserves based on regulatory approval <sup>5</sup>

**Contribution of Assets by Non-Debtor Affiliates.**

The Diocese Plan also provides for releases to certain non-debtors in return for certain contributions to be made by the Co-Insured Parties, including the Parishes and the Diocese IAC

<sup>2</sup> In the Assets it contributes, the Diocese includes the PSZJ Fee Discount (Diocese Plan I.A.111) which is not an asset of the Diocese and so the Committee does not consider it a contribution on its behalf, and the High School Property Rights of Reverter (Diocese Plan I.A.70) which is included in both plans but to which the Committee ascribes only a minimal value.

<sup>3</sup> The Diocese Disclosure Statement does not provide a specific estimate of the “Available Cash” to be contributed to the Diocese Plan Trust. Based on its review of the definitions and limitations on Available Cash in the Diocese Plan, the Committee estimates that the unrestricted cash available to fund the Diocese Plan Trust will be zero. Under the Diocese Plan, the Diocese will retain \$10 million in unrestricted cash for operations following the Effective Date (Diocese Plan I.A.11) in addition to the \$20 million from the Spectrum and Communication Assets Proceeds (Diocese Plan I.A.127). The Diocese also includes “any reversionary interest in the \$7.6 million security posted to New York State Workers’ Compensation Board.” (Diocese Plan I.A.28). In light of the uncertainty and length of time for any realization by the Trust of such interest, the Committee estimates that portion of the “Contributed PSIP Assets” at \$0.0.

<sup>4</sup> The Diocese Plan defines the Spectrum and Communication Assets Proceeds as (i) the sale proceeds of the Assets (as defined in the Order (I)(A) Approving Bidding Procedures for the Sale of the Debtor’s Assets, (B) Authorizing the Debtor to Enter Into One or More Stalking Horse Purchase Agreements and to Provide Bid Protections Thereunder, (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (D) Approving Assumption and Assignment Procedures and (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice *Thereof*; and (II) *Granting Related Relief* (Docket No. 1471)), **less (ii) \$20 million** (which shall be maintained in a segregated account for the operations of Reorganized Debtor). (Diocese Plan I.A.127).

<sup>5</sup> The Diocese Plan defines the Ecclesia Undertaking as “Ecclesia’s promise to undertake to use reasonable good faith efforts to seek regulatory approval, and upon such approval, to make a dividend in an amount equal to the maximum amount allowed by Ecclesia’s regulator to the Estate for purposes of contributing to the [Diocese] Trust Assets.” To the extent that this is a one-time dividend, the Committee believes that the amount contributed to the Diocese Plan Trust as a result of Ecclesia’s Undertaking will be minimal compared to the value to be contributed to the Trust from Ecclesia in the Committee Plan.

Affiliates, if the those Diocese IAC Affiliates agree to make the requested settlement contributions defined in the Diocese Plan.

The Committee Plan only provides releases to non-debtors, if those non-debtors make meaningful contributions to the Trust.

The below chart compares the amounts to be contributed by certain non-debtors under the Diocese and Committee Plans.

<b>Non-Debtor Entity</b>	<b>Committee Plan</b>	<b>Diocese Plan</b>
Non-Debtor Affiliates/Co-Insured Parties <sup>6</sup>	\$200,000,000	\$11,100,000
The Cemetery Entities	\$80,000,000	\$34,000,000 <sup>7</sup>
The Seminary	85% of the proceeds of the sale of the Seminary Property	65% of the proceeds of the sale of the Seminary Property <sup>8</sup>
Department of Education	\$6,000,000	\$2,500,000 <sup>9</sup>

### **Diocese Projection and Characterization of Recoveries by Abuse Claimants**

The Diocese Disclosure Statement offers colorful charts lauding the projected recoveries to Abuse Claimants. The Diocese takes up several pages comparing recoveries to Abuse Claimants in different cases as if there is some market rate that can be established for the payment of child sexual abuse claims, as if such claims were objective commercial claims.

Each of the cases pointed to by the Diocese had unique attributes specific to that Diocese, including the assets of the particular Diocese and its affiliates, the insurance coverage of those Diocese and whether the claims asserted were filed in jurisdictions with statute of limitation windows statutes.

The Diocese conveniently ignores substantially greater recoveries in some other cases, in particular non-bankruptcy cases, which are more likely to reflect the reasonable settlement value of a claim rather than the available assets of a bankrupt defendant.

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<sup>6</sup> The Committee believes that the number of Entities considered Co-Insured Parties by the Diocese is far greater than those that the Committee defines as Non-Debtor Affiliates.

<sup>7</sup> The contribution to be made by the Cemetery is \$5,000,000 on the Diocese Plan Effective Date along with a \$29,000,000 promissory note payable over 10 years. Diocese Plan Exhibit G-1.

<sup>8</sup> Diocese Plan Exhibit G-2.

<sup>9</sup> Diocese Plan Exhibit G-3.

More important, the Diocese ignores the one real-world valuation of a child sexual abuse claim against it: an **\$11 million dollar** jury verdict against the Diocese and a Parish.

While the Committee understands the importance of trying to assess potential liability and claims value in each unique case, the Committee is taken aback at the moral vacuity of the idea that there is any going rate for repeated acts of assault of children by a Priest (or any other individual) affiliated with the Diocese and its constituents to which some “bankruptcy discount” can be applied. The potential liability for the Diocese and for certain of its Co-Insured Parties is, in the Committee’s view, in the 100s of millions, if not billions, of dollars.

Thus, for the Diocese to trumpet a “\$370,000 – \$400,000” possible recovery per victim (Diocese Disclosure Statement I.B. at p.6) when the Diocese and the Non-Debtor Third Party Releasees have assets available to pay significantly more is an unconscionable disgrace. It is yet another callous effort by the Diocese to preserve its temporalities at the willing spiritual cost of re-traumatizing and re-victimizing those children – now grown to adulthood at the cost of untellable pain -- in whose malevolent harm it was complicit, and to avoid its responsibility for that grievous harm. The Diocese Plan is not about healing or penitence; it is instead a contemptible offering to push these victims away.

Worse yet, the Diocese’s estimate of recovery per abuse claimant is fundamentally faulty as it assumes there are only 500 viable claims. *Id.* p. 5 According to the Diocese, it did not count claims that were, among other issues, “claims where the Debtor entered into a release with the claimant prior to the bankruptcy, already adjudicated claims, claims alleging abuse concerning entities that are not affiliated with the Debtor, and claims that pre-date the Debtor’s existence.” *Id.* These objections have yet to be adjudicated and the Committee believes that many of these objections are without merit. Additionally, regarding the Diocese’s allegation that the abuse was perpetrated by an entity “not affiliated with the Debtor,” certain of those entities are nonetheless entities for which the Diocese is seeking a release under the Diocese Plan. Even if successful in its objection, to the extent that such a claim is against a Co-Insured Party, the claim will be channeled to the Diocese Plan Trust. Thus, not only is the Diocese wasting resources objecting to such claims now, those claims will be channeled to the Diocese Plan Trust where such Co-Insured Party has made little or no cash contribution to the Diocese Plan Trust in return for that release and channeling injunction.

Six hundred fifty-three (653) unique, non-duplicative proofs of claim for sexual abuse were filed before the expiration of the bar date.<sup>10</sup> Using 653 claims instead of 500 and the Diocese’s estimate of recoveries<sup>11</sup> yields an average of \$283,000-306,000. If the contribution to the Diocese Plan Trust is lower, as the Committee believes it will be, then the recovery for over 653 claims would only be \$245,000-263,000.

The Diocese Plan separately classifies Abuse Claimants by year of abuse and ties the recovery of the Abuse Claimant to the Debtor Insurance Policies covering those years. The

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<sup>10</sup> The Committee recognizes that certain of these claims may be objectionable on various grounds. However, the Committee believes the allowance of claims should be addressed, as it has been in every other Diocesan case, through the Trust Allocation Protocol.

<sup>11</sup> The Committee disagrees with the Diocese’s estimate of recoveries from the assets being distributed and believes that the amount that would actually be received by the Diocese Plan Trust is materially less.

Committee believes that the Diocese classification scheme violates section 1123 of the Bankruptcy Code. The separate classification assumes Abuse Claimants have direct access to or third-party beneficiary rights in the Debtor's insurance proceeds without obtaining a judgment against the Diocese. Until those proceeds are assigned or a claimant obtains a judgment against the Debtor only the Debtor has a right to sue for those proceeds and the Debtor has the sole rights to those proceeds. Additionally, the Diocese Plan does not identify which Abuse Claims are covered by the particular insurance policies. The goal of this tortured and slipshod classification scheme is likely an attempt by the Diocese to foment disagreement and dissension among the Abuse Claimants in an effort to garner support for its plan from a subset of the Abuse Claimants.

By contrast, the Committee Plan classifies Abuse Claimants, except Future Abuse Claimants, together and all of the Abuse Claimants have the ability to share in the Trust in accordance with the Committee Plan and the Trust Documents, including the Trust Allocation Protocol ensuring that all of the Abuse Claimants are treated fairly based on factors relating to their abuse and not the happenstance of the Diocese's insurance coverage and date of abuse.

### **Failure of the Diocese Plan to Satisfy (or Even Acknowledge) the Best Interests Test**

The Diocese Disclosure Statement fails to establish that the Abuse Claimants will receive more under the Diocese Plan, including the loss of the claims against third parties, than the Abuse Claimants would receive in a hypothetical liquidation in which survivors could pursue their claims against the Diocese Plan Released Non-Debtor Parties, including the Parishes. The Diocese claims that the Best Interests Test does not apply to not for-profit entities ("NFPs"). (Diocese Disclosure Statement X.B.2). The Diocese is wrong as a matter of law.

No court has ever held a NFP debtor to be exempt from section 1129(a)(7). In most NFP cases, the court ruling on confirmation of a plan makes the finding that the best interests test has been met using traditional best interest test valuation.<sup>12</sup> The *Boy Scouts of America* ("BSA") case specifically addressed the argument that the best interest test does not apply in NFP cases.<sup>13</sup> Judge Silverstein expressly dismissed the argument that the best interest test does not apply to NFPs because NFPs cannot be forced into chapter 7.<sup>14</sup>

Section 1129(a)(7) is a confirmation requirement and *there is no exception for nonprofits*. Even if one could look beyond the plain language of the statute, there

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<sup>12</sup> See, e.g. *In re Charles St. African Methodist Episcopal Church of Boston*, 499 B.R. 66, 107 (Bankr. D. Mass. 2013); *In re Mandalay Shores Cooperative Housing Assoc.*, 53 B.R. 609, 615 (Bankr. M.D. Fla. 1985); *Sec. Farms v. Gen. Teamsters, Warehousemen & Helpers Union, Local 890* (*In re Gen. Teamsters, Warehousemen & Helpers Union, Local 890*), 265 F.3d 869, 877 (9th Cir. 2001); *In re Wabash Valley Power Ass'n*, 1991 Bankr. LEXIS 2213, \*155 (Bankr. S.D. Ind. August 7, 1991); *In re Albert Lindley Lee Mem. Hosp.*, 2010 Bankr. LEXIS 4148, \*13 (Bankr. N.D.N.Y. July 15, 2010); *In re Oaks*, 2012 Bankr. LEXIS 5359, \*31-32 (Bankr. N.D. Ill. November 15, 2012) (creditor plan); *In re Nat'l Heritage Found., Inc.*, 2009 Bankr. LEXIS 4928, \*20-23 (Bankr. E.D. Va. October 16, 2009); *In re Save Our Springs (S.O.S.) Alliance, Inc.*, 388 B.R. 202, 239 (Bankr. W.D. Tex. 2008) (Court found that "considering the unique nature of the Debtor as a non-profit organization dependent on contributions that are voluntary and may be restricted, and of the [limited value of] Debtor's other assets," there was sufficient proof that the plan met the best interest test.).

<sup>13</sup> *In re BSA*, 642 B.R. 504 (Bankr. D. Del. 2022).

<sup>14</sup> See 11 U.S.C. § 1112(c).

is nothing illogical about requiring a nonprofit to show that it can meet this requirement in order to obtain the benefits of a confirmed plan. A nonprofit has options if it is in financial distress. It can voluntarily file a bankruptcy case under either chapter 11 or chapter 7 or it can look to its state law alternatives. ***But, to obtain a discharge in bankruptcy, it must meet all applicable requirements of § 1129.***<sup>15</sup>

Ordinary principles of statutory construction support Judge Silverstein’s decision. In 2005, Congress amended the Bankruptcy Code<sup>16</sup> to recognize and protect the rights of NFPs seeking bankruptcy protection as well as those of the persons served by the NFPs.<sup>17</sup> Given these changes, had Congress intended to exempt NFP chapter 11 debtors from the confirmation requirement of section 1129(a)(7), it would have expressly done so.

The Best Interest Test therefore applies to the Diocese and it must satisfy that requirement as at least one Abuse Survivor will undoubtedly insist. In making a best interest determination with respect to the Diocese Plan, the Diocese must also factor in the potential recoveries to Abuse Claimants from the Diocese Non-Debtor Released Parties assessing both their potential liability and their ability to satisfy those liabilities.<sup>18</sup>

### **C. The Committee Plan is in the Best Interests of Creditors.**

As discussed in the unaudited Liquidation Analysis attached to this Disclosure Statement as Exhibit 2, the Committee estimates that recoveries under the Committee Plan for all Holders of Allowed Claims will be greater than their recoveries in a liquidation under chapter 7 of the Bankruptcy Code or under the Diocese Plan. The Committee believes that the value that can be realized from the liquidation of the Debtor’s assets, including Ecclesia will be less than those that will be realized through the monetization of those assets by the Diocese or the Trust, as applicable. The Liquidation Analysis does not include estimates of recovery from the Debtor’s Insurance Policies. Such estimates would be inherently imprecise because, given insurer coverage defenses and defenses to Abuse Claims, the liquidation value of those policies cannot be determined with precision. This is true for the value of the Arrowood policies as Arrowood is in run-off (not writing new policies) and there is a material risk that Arrowood may be insolvent. Under both the Diocese and Committee Plans, the recoveries from the Debtor’s Insurance Policies will be available to Abuse Claimants.

Any distributions in chapter 7 would also be reduced by the additional administrative

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<sup>15</sup> *Id.* at 662 (emphasis added).

<sup>16</sup> The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

<sup>17</sup> See 11 U.S.C. §§363(d), 541(f) and 1129(a)(16).

<sup>18</sup> *In re Ditech Holding Corp.*, 606 B.R. 544, 614 (Bankr. S.D.N.Y. 2019); see also *Mercury Capital Corp. v. Milford Conn. Assocs., L.P.*, 354 B.R. 1, 9 (D.Conn.2006) (“[T]he best interests equation also properly mandates consideration of creditors’ comparative recoveries on non-debtor claims, to the extent the plan is treating those non-debtor claims by release.”); *In re Washington Mutual, Inc.*, 442 B.R. 314 (Bankr. D. Del. 2011) (“[I]n a case where claims are being released under the chapter 11 plan but would be available for recovery in a chapter 7 case, the released claims must be considered as part of the analysis in deciding whether creditors fare at least as well under chapter 11 plan as they would in a chapter 7 liquidation”); *In re Quigley*, 437 B.R. 102 (Bankr. S.D.N.Y. 2010) (“ [T]he critical question is whether I should consider the value of these derivative claims in deciding whether the Fourth Plan is in the ‘best interest’ of the dissenting Non-Settling Claimants. I conclude that I must.”).

expenses that a chapter 7 trustee (who must be appointed in any chapter 7 case) and the trustee's professionals would incur. Also, because a new deadline will be set for creditors to file claims against the Debtor's estate (including for creditors who did not file their claims), additional claims may be filed that reduce the amount for each allowed claims. Distributions in a chapter 7 case will then be delayed due to the time it will take the chapter 7 trustee to assess the Debtor's Assets, review and analyze claims filed against the Debtor, and liquidate the Debtor's property for distribution. Claimants entitled to vote to accept or reject the Committee Plan should review the Liquidation Analysis before casting their votes.

Because the Committee Plan will provide a greater total amount of property to distribute to Holders of Allowed Claims than would be the case in a liquidation under chapter 7, and because the Committee Plan would provide a greater ultimate return to the Abuse Claimants because, the Non-Debtor Affiliates will either have contributed to the Trust or, if they do not contribute, the Abuse Claimants will maintain their claims against and be able to pursue the Non-Debtor Affiliates, the Committee submits that the Committee Plan is in the best interest of creditors and urges Claimants to vote for the Committee Plan.

#### **D. Voting and Confirmation Procedures.**

By order dated \_\_\_\_\_, 2023 (the "**Disclosure Statement Order**"), the Bankruptcy Court approved this Disclosure Statement as containing adequate information of a kind and in sufficient detail to enable creditors of the Debtor to decide whether to accept the Committee Plan. A copy of the Disclosure Statement Order is attached as Exhibit 3. The Bankruptcy Court's approval of the Disclosure Statement does not constitute a recommendation by the Bankruptcy Court to creditors they should vote to accept or to reject the Committee Plan.

Holders of Allowed Claims in Voting Classes can find voting instructions in the Disclosure Statement Order and in the ballots that accompany this Disclosure Statement. To vote only, each Abuse Claim in Class 4, each Personal Injury Claim in Class 6 and each Civil Rights Claim in Class 9 will be valued at one dollar (\$1.00). To be counted, ballots must be properly completed, executed, and **actually received** by [Epic], the Debtor's claims agent (the "**Claims Agent**"), by 5:00 p.m. (prevailing Eastern time), on \_\_\_\_\_, 2023 (the "**Voting Deadline**").

The Bankruptcy Court has scheduled a hearing to consider confirmation of the Committee Plan to commence \_\_\_\_\_, 2023 at \_\_\_\_\_ (prevailing Eastern time) (the "**Confirmation Hearing**"), [location/zoom info]. This hearing may be adjourned occasionally, including without further notice other than by announcement in the Bankruptcy Court on the scheduled date of the Confirmation Hearing. At the Confirmation Hearing, the Bankruptcy Court will consider whether the Committee Plan satisfies the Bankruptcy Code for confirmation. The Bankruptcy Court will also receive and consider a ballot report prepared by the Debtor's Claims Agent tabulating the votes accepting and rejecting the Committee Plan.

[The Bankruptcy Court also approved the Diocese Disclosure Statement. The voting deadline regarding the Diocese Plan is the Voting Deadline. The Bankruptcy Court has scheduled the confirmation hearing regarding the Diocese Plan simultaneously with the Confirmation Hearing regarding the Committee Plan.]

### **III. QUESTIONS AND ANSWERS REGARDING THIS DISCLOSURE STATEMENT AND THE COMMITTEE PLAN**

#### **Why is the Committee sending me this Disclosure Statement?**

The Committee is seeking Bankruptcy Court approval of the Committee Plan. This Disclosure Statement contains information about the Committee Plan. Section 1125 of the Bankruptcy Code requires the Committee to provide a Disclosure Statement approved by the Court with the Committee Plan to assist you in making an informed judgment about whether you will accept or reject the Committee Plan.

#### **What happens to my recovery if the Committee Plan is not confirmed, or does not go effective?**

If the Committee Plan is not confirmed, the Committee believes that recoveries for all claimants, including Abuse Claimants, will be materially reduced, including the recoveries to Abuse Claimants if the Diocese Plan is confirmed.

#### **If the Committee Plan provides that I get a distribution, do I get it upon Confirmation or when the Committee Plan goes effective, and what do you mean when you refer to “Confirmation” and “Effective Date”?**

“Confirmation” of the Committee Plan refers to the Bankruptcy Court approving the Committee Plan. Confirmation of the Committee Plan by a final order of the Bankruptcy Court will bind the Debtor, any person acquiring property under the Committee Plan, and any creditor, including Abuse Claimants, to the terms of the Committee Plan, in full satisfaction and compromise of any obligations that arose before this Case.

Confirmation of the Committee Plan does not guarantee you will receive the distribution contemplated under the Committee Plan. After confirmation of the Committee Plan by the Bankruptcy Court, there are conditions that need to be satisfied or waived so the Committee Plan can be consummated and become effective on the “Effective Date.”

The “Effective Date” will occur when there is a final Bankruptcy Court order confirming the Committee Plan, the Trustee and the Reorganized Debtor sign the Trust Agreement, and all parties contributing to the Trust transfer their funds or related assets to the Trust.

Distributions will be made after the Effective Date or as set forth in the Committee Plan to Holders of Claims other than Abuse Claimants in Class 4, Holders of Personal Injury Claims in Class 6 or Holders of Civil Rights Claims in Class 9. Abuse Claimants in Class 4, Personal Injury Claimants in Class 6, and Civil Rights Claimants in Class 9 will receive distributions under the terms of the Trust Agreement and the Trust Allocation Protocol.

#### **Will there be any releases granted to parties other than the Debtor as part of the Committee Plan?**

Under the Full or Partial Settlement Alternatives, the Participating Parties and the Settling Insurers will be released. To receive a distribution from the Trust, Abuse Claimants, Personal

Injury Claims and Future Abuse Claims must execute a release of the Participating Parties and the Settling Insurers, and all known or unknown parties who may claim coverage under any insurance policy issued to the Debtor by a Settling Insurer of any Claims arising from or relating to Abuse Claims or Future Abuse Claims. The release must be in form and substance acceptable to the Committee, the Reorganized Debtor, the Participating Parties and the Settling Insurers. Notwithstanding the above, to preserve coverage under any Non-Settling Insurer's Insurance Policies, Class 4 and Class 7 Claimants specifically reserve, and do not release, any claims they may have against the Diocese, the Reorganized Debtor, or any other Participating Party that implicate coverage under any Non-Settling Insurer's Insurance Policies, but recourse is limited as described in greater detail below.

Under the Litigation Alternative, there will not be any non-debtor releases, and Holders of Claims will maintain all of their rights regarding any non-debtors.

Under the Full Settlement Alternative, the Partial Settlement Alternative, or the Litigation Alternative, except as otherwise provided in the Committee Plan or in the Confirmation Order, on the Effective Date under section 1141(d) of the Bankruptcy Code, the Diocese will be discharged from all liability for any Claims and Debts that occurred before confirmation of the Committee Plan, and Abuse Claimants and Holders of Personal Injury Claims will only be permitted to recover on their claims from the Debtor's Insurance Policies or from non-debtors also found to be liable for the Abuse Claims or Personal Injury Claims. Under the Litigation Alternative, any claims that Abuse Claimants or Holders of Personal Injury Claims may have against non-debtors are unimpaired by the Committee Plan. Notwithstanding the above, to preserve coverage under any Non-Settling Insurer's Insurance Policies, Class 4 and Class 7 Claimants specifically reserve, and do not release, any claims they may have against the Diocese, the Reorganized Debtor, or any other Participating Party that implicate coverage under any Non-Settling Insurer's Insurance Policies, but recourse is limited to the proceeds of the Non-Settling Insurer's Insurance Policies and all other damages (including extra-contractual damages), awards, judgments over policy limits, penalties, punitive damages and attorney's fees and costs that may be recoverable against any Non-Settling Insurers because of their conduct about insurance coverage for, or defense or settlement of, any Abuse Claim. Any such judgments or awards will be handled under the Committee Plan and the Trust Allocation Protocol. The Class 4 and Class 7 Claims will not be released or enjoined as against the Diocese, the Reorganized Debtor, or any other Participating Party for any Abuse that may be covered under any Non-Settling Insurer's Insurance Policies until such claims are settled with the Diocese, the Reorganized Debtor, any other Participating Party and such Non-Settling Insurer or are adjudicated, resolved, and subject to Final Order, but recourse is limited as described above.

### **Will there be any injunctions entered under the Committee Plan?**

**Full or Partial Settlement Alternative: Channeling Injunction.** Under the Full or Partial Settlement Alternatives, the Participating Parties, and the Settling Insurers will receive the benefit of the Channeling Injunction. The Channeling Injunction prohibits any persons from asserting against any Participating Party or Settling Insurer any claim related to any Abuse Claim or Future Abuse Claim, any insurance policies issued by the Settling Insurers, or any claim against any Participating Party for contribution, indemnity, defense, subrogation, or similar relief. This injunction permits the Settling Insurers to contribute to the Trust in full satisfaction of their



respective comprehensive general liability insurance policies, ensuring they will face no claims because of such policies, and is a necessary component of the Committee Plan. Non-Settling Insurers will not have the benefit of the Channeling Injunction. Notwithstanding the above, Ecclesia and any insurance policies issued by Ecclesia will not be released with respect to Class 6 Personal Injury Claims.

**Litigation Only Alternative: No Channeling Injunction.** Under the Litigation Alternative, there will be no Channeling Injunction because, unlike under the Full or Partial Settlement Alternatives or the Debtor Plan, there will not be any releases of non-debtors that would require a channeling injunction.

**Discharge Injunction.** If the Committee Plan is confirmed the Debtor will receive the benefit of a discharge injunction in Section 7.1.5 and 15.1 of the Committee Plan.

**Exculpation and Limitation of Liability.** Certain Exculpated Parties will be protected from claims arising from or relating to any act or omission with this Bankruptcy Case, pursuing confirmation of the Committee Plan, or the administration of the Committee Plan, including the exercise of their business judgment and the performance of their fiduciary obligations.

These Exculpated Parties are defined in Section 2.5.9 of the Committee Plan to include the Debtor, the Reorganized Debtor, the Committee and its members, the Committee's Professionals, the Future Abuse Claims Representative, the Future Abuse Claims Representative's Professionals, and each of their respective predecessors, successors, assigns, past and present and former shareholders, affiliates, subsidiaries, employees, agents, officers, directors, trustees, partners, attorneys, financial advisors, accountants, and consultants, each in their capacities solely as such. Protecting this exculpation and limitation of liability will not extend to any person who committed an act or acts of abuse resulting in a claim against the Debtor. The exculpation and limitation of liability will also not apply to any claims arising from willful misconduct or fraud.

### **How do I vote for or against the Committee Plan?**

This Disclosure Statement is being distributed to the Holders of Claims entitled to vote on the Committee Plan, along with ballots to be used for voting on the Committee Plan. If you are a holder of a Claim in Class 4 (Abuse Claims), Class 6 (the Personal Injury Claim), Class 7 (Future Abuse Claims),<sup>19</sup> and Class 9 (Civil Rights Claim) you may vote for or against the Committee Plan by completing your ballot and by (a) mailing it to [DRVC- Committee Plan Ballot Processing, c/o [Epic], or (b) sending a signed, scanned copy of the ballot via email to [\_\_\_\_\_]. Do not send your ballot to the Debtor, the Committee or to the Bankruptcy Court – it will not be counted.

### **How do I vote for or against the Diocese Plan?**

The Diocese is also soliciting votes for the Diocese Plan. The Diocese has distributed the Diocese Disclosure Statement and Diocese Plan to holders of claims eligible to vote on its Plan.

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<sup>19</sup> The FCR will vote to accept or reject the Committee Plan on behalf of Future Abuse Claims.

Instructions for how to vote on the Diocese Plan are included in those materials. The Committee recommends that you vote to REJECT the Diocese Plan.

### **What is the deadline to vote on the Committee Plan?**

All ballots must be **actually received** by the Voting Agent (\_\_\_\_\_) by the Voting Deadline of 5:00 p.m. (prevailing Eastern time) on \_\_\_\_, 2023, via mail or email. If your ballot is not received by the Debtor's Claims Agent by the Voting Deadline, and such deadline is not extended, your vote on the Committee Plan will not be counted. The same Voting Deadline applies to votes on the Diocese Plan.

### **What is the Confirmation Hearing and when is it scheduled to occur?**

Section 1128(a) of the Bankruptcy Code requires that the Bankruptcy Court hold a hearing on confirmation of the Committee Plan. Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to confirmation of the Committee Plan. The standards for confirmation are set forth above and in Section 1129 of the Bankruptcy Code.

The Bankruptcy Court has scheduled the Confirmation Hearing to commence on \_\_\_\_, 2023 at [\_\_\_\_\_] (prevailing Eastern time) before the Honorable Martin Glenn, Chief United States Bankruptcy Judge for the Bankruptcy Court of the Southern District of New York, [location/zoom]. The Confirmation Hearing may be adjourned occasionally, including without further notice except for an announcement of the adjourned date made at the Confirmation Hearing.

Objections to Confirmation of the Committee Plan must be filed and served on the Notice Parties (defined below) **no later than \_\_\_\_\_, 2023 at 4:00 p.m.** (prevailing Eastern Time) under the notice of the Confirmation Hearing that accompanies this Disclosure Statement. Unless objections to the confirmation of the Committee Plan are timely filed and served, those objections might not be considered by the Bankruptcy Court.

### **What role does the Bankruptcy Court play after the Confirmation Hearing?**

After the Committee Plan is confirmed, the Bankruptcy Court will still have exclusive jurisdiction over all matters arising under, in furtherance of, or in connection with, the Committee Plan. These matters include: (1) determining objections to disputed claims and requests for payment on administrative expense claims; (2) resolving controversies and disputes regarding interpretation and implementation of the Committee Plan and related documents; (3) entering orders to protect parties from actions prohibited under the Committee Plan; (4) approving amendments to and modifications of the Committee Plan; (5) determining any applications, adversary proceedings, and contested or litigated matters pending on the Effective Date; and (6) the closure of this chapter 11 case.

### **Does the Committee recommend voting for the Committee Plan?**

Yes. The Committee recommends voting for the Committee Plan because the Committee Plan provides for a larger distribution to the Abuse Claimants and Personal Injury Claims, than would otherwise occur under the Diocese Plan or result from liquidation. **THE COMMITTEE**

**RECOMMENDS THAT THE HOLDERS OF CLAIMS IN THE VOTING CLASSES  
VOTE TO ACCEPT THE COMMITTEE PLAN.**

**IV. Overview of the Chapter 11 Process**

**A. A Chapter 11 Case.**

Chapter 11 of the Bankruptcy Code allows a debtor to reorganize its operations in an orderly fashion to benefit its creditors and other parties in interest.

The commencement of a chapter 11 case creates an estate comprising all the legal and equitable interests of the Debtor as of the date the petition is filed. Sections 1101, 1107, and 1108 of the Bankruptcy Code provide that a debtor may continue to operate and remain in possession of its property as a debtor in possession unless the Bankruptcy Court orders the appointment of a trustee. In the Debtor's case, there has been no request to appoint a trustee and the Debtor remains a debtor in possession.

Filing a petition under the Bankruptcy Code triggers the automatic stay provisions of the Bankruptcy Code. Section 362 of the Bankruptcy Code provides for an automatic stay of all attempts by individuals and entities to collect on pre-petition claims against a debtor, continue lawsuits against a debtor, or otherwise exercise control over or interfere with a debtor's property or operations. The automatic stay remains in full force and effect until the effective date of a confirmed chapter 11 plan, unless otherwise ordered by the Bankruptcy Court.

**B. A Chapter 11 Plan.**

The formulation of a chapter 11 plan is the principal purpose of a chapter 11 case. A chapter 11 plan sets forth the means for satisfying the claims against in a debtor's estate. Once a plan is confirmed by a bankruptcy court, it becomes binding on a debtor and all of its creditors, and the prior obligations owed by a debtor to such parties are compromised and exchanged for the obligations specified in the Committee Plan.

**C. Voting On a Chapter 11 Plan.**

**Court Approval Required.**

Before a debtor solicits votes to accept a proposed plan, Section 1125 of the Bankruptcy Code requires a debtor to prepare and file a disclosure statement containing adequate information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment about whether to accept or reject the Committee Plan. This Disclosure Statement is presented to holders of Claims against the Debtor to satisfy the requirements of Section 1125 of the Bankruptcy Code.

**Impaired Classes With Recoveries Entitled To Vote.**

After the disclosure statement to a chapter 11 plan has been approved by a bankruptcy court, creditors whose claims against a debtor are impaired under a plan, and who may receive some recovery under the plan, may vote to accept or reject the plan. Section 1124 of the

Bankruptcy Code provides that a claim is impaired if the legal, equitable, or contractual rights of the claim are altered. As an example, a claim is impaired if the time for the debtor to pay the amount due is extended beyond the time originally contemplated by the parties. A claim is also impaired if the plan provides that a claimant may only pursue recovery on the claim against certain, rather than all, of the debtor's assets after the chapter 11 case.

Applying these rules, only certain classes of Claims against the Debtor are entitled to vote. Class 4 (Abuse Claims), Class 6 (Personal Injury Claims), Class 7 (Future Abuse Claims) and Class 9 (Civil Rights Claims) are each impaired but entitled to receive some property under the Committee Plan. As a result, each of these Voting Classes may vote to accept or reject the Committee Plan.

Class 1 (Other Priority Claims), Class 2 (Secured Claims), and Class 5 (General Unsecured Claims) are each unimpaired under the Committee Plan and cannot vote because they are deemed to accept the Committee Plan. Relatedly, Class 8 (Abuse Related Contingent Contribution/Reimbursement/ Indemnity Claims) is impaired under the Committee Plan, may not receive any property, and is therefore deemed to reject the Committee Plan without voting. Any ballots cast by holders of Claims in these Classes will not be counted.

#### **Acceptance of a Chapter 11 Plan.**

Section 1126(c) of the Bankruptcy Code defines acceptance of a plan as votes for the plan by at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the holders of allowed claims in each voting class who cast ballots. Here, the Claims Agent will collect and tabulate all ballots cast by the Voting Classes and report this information to the Bankruptcy Court.

In addition, under Bankruptcy Rule 3018(a), the Bankruptcy Court may temporarily allow any claim in an amount that the Court deems proper for the purpose of voting to accept or reject the Committee Plan. In this case, the Abuse Claims in Class 4, the Personal Injury Claims in Class 6, and the Civil Rights Claims in Class 9 are unliquidated. The amount of damages to which any Abuse Claimant or Personal Injury Claimant is entitled, if any, has not yet been determined by any court or by any agreement between the Debtor, its insurers, and any Abuse, Personal Injury or Civil Rights Claimant.

Here, to determine if the required dollar amount of the Class 4 Abuse Claims, Class 6 Personal Injury Claims, and Class 9 Civil Rights Claims voted for the Committee Plan, each Claim in such Classes will be allocated \$1.00 for voting purposes only. If more than 2/3 of voting Class 4 Abuse Claimants vote for the Committee Plan, Class 4 will have accepted the Committee Plan. If more than 2/3 of the voting Class 6 Personal Injury Claimants vote for the Committee Plan, Class 6 will have accepted the Committee Plan. If more than 2/3 of the voting Class 9 Civil Rights Claimants vote for the Committee Plan, Class 9 will have accepted the Committee Plan.

#### **Voting by Disputed Claims.**

If any Claim in any Class entitled to vote is disputed by the Debtor (a "**Disputed Claim**"), the individual holding that Disputed Claim is not entitled to vote on the Committee Plan in the allocated amount of \$1.00. A Claim is disputed if it is subject to an objection timely filed and has neither been overruled nor denied by a final order and has not been withdrawn. A Claim is also

disputed if it is listed on the Debtor's Schedules as disputed, unliquidated, or contingent, and regarding which a superseding proof of claim has not been filed. Holders of Disputed Claims may seek the Bankruptcy Court's approval to vote notwithstanding the dispute.

#### **D. Confirmation of a Chapter 11 Plan.**

##### **Confirmation -- Rejection By Certain Classes.**

The Bankruptcy Court may confirm the Committee Plan even though a creditor class rejects the Committee Plan (Class 8 is deemed to reject the Committee Plan because Class 8 creditors are not receiving anything on account of Class 8 claims). In order for the Committee Plan to be confirmed despite its rejection by a Class of Impaired Claims, the Committee Plan must be accepted by at least one Class of Impaired Claims (determined without counting the votes of "insiders") and the Committee must show that the Committee Plan does not "discriminate unfairly" and that the Committee Plan is "fair and equitable" regarding each Impaired Class of Claims that does not vote to accept the Committee Plan.

Under Section 1129(b) of the Bankruptcy Code, a plan is "fair and equitable" as to a rejecting class of claims or equity interests if the plan provides that: (a) each holder of a secured claim will receive or retain because of its claim property with a value, as of the effective date of the plan, equal to the allowed amount of such claim or such other treatment as accepted by the holder of such claim; and (b) each holder of an unsecured claim junior to the claims of such class will not receive because of such junior claim any property unless the senior class is paid in full.

A plan does not "discriminate unfairly" against a rejecting class of claims if (a) the relative value of the recovery of such class under the plan does not differ materially from that of any class (or classes) of similarly situated claims, and (b) no senior class of claims is to receive over 100% of the claims in such class.

The Committee believes that the Committee Plan will satisfy the foregoing requirements as to any rejecting Class of Claims, and can therefore be confirmed.

#### **V. THE DEBTOR, ITS OPERATIONS, AND THE CHAPTER 11 CASE**

##### **A. The Diocese' Corporate Structure.<sup>20</sup>**

The Diocese is the seat of the Church on Long Island. The Diocese was established by the Vatican in 1957 from territory formerly part of the Diocese of Brooklyn. The State of New York established the Diocese as a religious corporation in 1958. *See* 1958 N.Y. SESS. LAWS Ch. 70 (1958), § 1. Under the New York statute, the purpose of the Diocesan corporation is "to support, maintain, aid, advise and cooperate with any charitable, religious, benevolent, recreational, welfare or educational corporation, association institution, committee, agency, or activity . . . within the state of New York or elsewhere . . ." *Id.* § 4.<sup>21</sup> The statute provides that "[t]he bishop, vicar-

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<sup>20</sup> This description comes from the First Day Declaration of Charles Moore ¶¶ 12 -24.

<sup>21</sup> Pursuant to the statute, the Diocese has the power to take and hold, by bequest, devise, gift, purchase or lease, either absolutely or in trust for any of its purposes, any property real or personal, without limitation as to amount or value; to sell, mortgage, lease or otherwise convey or transfer such property, and to invest and reinvest any principal and

general and chancellor of the [Diocese] ... shall, by virtue of their offices, be the members and trustees of the corporation.” *Id.* § 8.

The Diocese is one of eight Catholic dioceses in New York. The Diocese’s total Catholic population is approximately 1.4 million, roughly half of Long Island’s total population of 3.0 million. The Diocese is the eighth largest diocese in the United States when measured by the number of baptized Catholics.

The Diocese has 135 parishes. According to the Diocese, Parishes are the epicenter of the Church’s mission. The Diocese’s Parishes are separate religious corporations, formed under Article 5 of the New York’s Religious Corporations Law, N.Y. RELIG. CORP. § 90. Under the Religious Corporations Law, the trustees of each Parish Corporation are the Diocese’s bishop and vicar-general, the Parish pastor and two laypersons from the Parish. *Id.* § 91.

Parishes own and operate twenty-six elementary schools and two high schools in the Diocese. There are also four private Catholic elementary schools and five private Catholic high schools operating in the Diocese. The Diocese does not own or operate the Parish schools or private Catholic schools. The Department of Education, Diocese of Rockville Centre owns and operates two additional high schools and supervises nine regional elementary schools in the Diocese.

In addition, the Diocese has fourteen religious-service affiliates. The fourteen Diocese affiliates are: Catholic Charities of the Diocese of Rockville Centre; Catholic Community Foundation of Long Island, Inc.; Unitas Investment Fund, Inc.; Mission Assistance Corporation; Catholic Cemeteries of the Roman Catholic Diocese of Rockville Centre, Inc.; Diocese Rockville Centre Catholic Cemetery Permanent Maintenance Trust; Department of Education, Diocese of Rockville Centre; Tomorrow’s Hope Foundation, Inc.; Seminary of the Immaculate Conception; Catholic Faith Network; Catholic Press Association of the Diocese of Rockville Centre, Inc.; Diocesan Service, Inc.; Ecclesia Assurance Company; and Society for the Propagation of Faith and Mission Office. The Diocese provides administrative support to many of the Diocese affiliates under administrative services agreements.<sup>22</sup>

Within the geographic territory of the Diocese on Long Island, there are 135 Parishes, 39 schools, and the fifteen Diocese affiliates (each, a “**Enterprise Member**,” and collectively, the “**Enterprise Members**,” or the “**Enterprise**”). Through the Enterprise, the Diocese furthers its mission and serves the Catholic community on Long Island. None of the Enterprise Members have sought relief under chapter 11 or are debtors in this Bankruptcy Case.

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income and to deal with, use, apply and expend any property and the income derived therefrom in such a manner as in the judgment of its trustees will best promote its objects. 1958 N.Y. SESS. LAWS Ch. 70 (1958), § 5.

<sup>22</sup> The Diocese has, as of March 2019, administrative services agreements in place with the following Enterprise Members: Ecclesia Assurance Company; Catholic Community Foundation of Long Island, Inc.; Unitas Investment Fund, Inc.; Department of Education; Mission Assistance Corporation; Catholic Faith Network; Catholic Press Association of the Diocese of Rockville Centre, Inc.; Diocesan Service, Inc.; and Tomorrow’s Hope Foundation, Inc.

## **B. The Diocese's Operations.**

### **The Diocese's General Operations**

To support the Enterprise, the Diocese provides administrative support for and participates in plans providing retirement, health and welfare benefits for clergy and lay persons employed by the Diocese and by Enterprise Members. The plans for employee and clergy benefits are the Diocese of Rockville Centre 403(b) Employee Retirement Plan, the Diocese of Rockville Centre Health and Welfare Benefits Program, the Diocese of Rockville Centre Pension Plan, the Diocese of Rockville Centre Qualified Retirement Plan for Diocesan Priests and the Diocese of Rockville Centre Health Care and Other Assistance Plan for Retired and Disabled Diocesan Priests (collectively, the “**Benefit Plans**”).<sup>23</sup> The Committee estimates there is \$\_\_\_\_\_ of excess cash and reserves accounted for as part of the Benefits Plans available to the Diocese.<sup>24</sup>

The insurance program maintained for the insurance needs of the Diocese and Enterprise Members is the Protected Self Insurance Program of the Diocese of Rockville Centre (“**PSIP**” and collectively with the Benefit Plans, the “**Benefit and Insurance Plans**”). PSIP is not a civil entity separate from the Diocese. Each of the Benefit and Insurance Plans is primarily funded by its participating Enterprise Members contributing to the Diocese, with the Diocese also contributing a portion of annual funding for its own employees and insurance needs as an entity. The PSIP Funds belong to the Diocese and are administered by the Diocese with the Benefit and Insurance Plans. The Committee estimates that in addition to funds necessary to fund ongoing obligations under the Benefit and Insurance Plans, there are over \$\_\_\_\_\_ <sup>25</sup> surplus unrestricted funds in PSIP available for use by the Diocese not held in trust for any party.

### **The Parishes**

The assessments paid to the Diocese by the Parishes—a percentage of the Parishes’ income—are the Diocese’s “major source of funding.”<sup>26</sup> To establish a Parish’s required assessment level, and to otherwise monitor the Parishes’ activities and financial condition, the Diocese requires Parishes to, at a minimum, submit annual budgets and financial reports. The

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<sup>23</sup> The 403(b) Employees’ Retirement Plan is funded by custodial accounts and annuity contracts held by an insurance company, which are in the nature of trusts, but are not technically trusts and the funds in those accounts are available to the Diocese.

<sup>24</sup> The information that the Committee has with respect to such funds was provided by the Diocese on a confidential basis and so the Committee cannot provide this information without the Diocese agreeing to its disclosure or by Bankruptcy Court Order. The Committee is in the process of requesting the Diocese to permit the declassification of this information. The ability of the Diocese to access such excess funds may require the Diocese to take certain action to terminate or partially terminate programs, to seek loans from certain of the Benefits Plans of such excess funds, or to terminate certain plans and the related “trusts” regarding those plan assets that were created shortly before the filing of the Bankruptcy Case.

<sup>25</sup> The information that the Committee has with respect to such funds was provided by the Diocese on a confidential basis and so the Committee cannot provide this information without the Diocese agreeing to its disclosure or by Bankruptcy Court Order. The Committee is in the process of requesting the Diocese to permit the declassification of this information.

<sup>26</sup> Transcript of Diocese § 341 Meeting held on November 5, 2020, 20:4–7.

financial reports contain summary information regarding the Parish's activities throughout the year and its current financial condition.

There are over 489 state court actions filed by victims of childhood sexual abuse asserting claims against over 75% of the Parishes (the “**State Court Actions**”). Of these State Court actions, 263 name the Diocese (or potentially affect the Ecclesia Insurance) and 226 do not name the Diocese or have an immediate effect on shared insurance. The State Court Actions are subject to an injunction issued by the Bankruptcy Court staying the State Court Actions. On January 14, 2023, the Committee filed the Committee Consent Withdrawal Notice (Adv. 20-01126 Dkt. 166). The Diocese is seeking the continuation of the Parish Stay. The Bankruptcy Court entered a scheduling order (Adv. 20-011226 Dkt. 168) setting a hearing regarding the Parish Stay for April 19 and 20, 2023 (the “**Parish Stay Hearing**”). The Parish Stay will continue through the Parish Stay Hearing or as the Court may order.

### **C. The Control and Authority of the Bishop over the Parishes.**

New York law prohibits parishes from transferring property “without the consent of the archbishop or bishop of the diocese to which such church belongs or in case of or inability to act, without the consent of the vicar general or administrator of such diocese.” *Blaudziunas v Egan*, 18 NY3d 275, 281 (2011) (quoting Religious Corporations Law § 5).

New York law further states that “[n]o act or proceeding of the trustees of any such incorporated church shall be valid without the sanction of the archbishop or bishop of the diocese to which such church belongs, or in case of their absence or inability to act, without the sanction of the vicar-general or of the administrator of such diocese.” *Id.* at 282 (quoting Religious Corporations Law § 91). Finally, New York law “recognizes the jurisdiction of a Roman Catholic bishop over an individual parish and his authority to act independently or with the consent of the trustees of the original Roman Catholic church corporation to transfer property to a new or second Roman Catholic church corporation.” *Id.* (citing Religious Corporations Law § 92).

The Bishop's authority over Parishes also includes the ability to “suppress” a Parish, “an ecclesiastical decision to close the church building and extinguish the parish.” *Blaudziunas v. Egan*, 18 N.Y.3d 275, 279 (2011). The Bishop alone can suppress parishes, although he must consult with his Presbyteral Council first. *Id.*; see also *Comm. to Save St. Brigid v Egan*, 2007 NY Slip Op 34473, \*18 (Sup Ct, NY County 2007) (ruling that New York law “recognizes the bishop's authority to divide parishes and grants him the ‘right and power, of himself’ to dispose of the original Roman Catholic church corporation's property, including real property, without the consent of its board of trustees.”).

The Parishes' bylaws reiterate that the Bishop—and any Diocesan staff he may designate as his proxy<sup>27</sup>—have complete and unilateral control over the Parishes' real property, legal activities, and purchases or expenses above a certain threshold, upon information and belief, that threshold is \$25,000 in this Diocese.<sup>28</sup>

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<sup>27</sup> Generic Parish Bylaws, § 4.01.02.

<sup>28</sup> *Id.* § 4.01.01.



To the extent an action requires approval of a Parish board, the Bishop and Diocese control that outcome as well. The pastor, “who is appointed and may be removed by the archbishop [or bishop], is the third trustee; and two lay parishioners selected by the ecclesiastical trustees serve as the remaining trustees.” *Comm. to Save St. Brigid*, 2007 NY Slip Op 34473(U) at ¶¶ 17-19 (quoting Religious Corporations Law § 91). Diocesan staff—the Bishop and the Episcopal Vicar of the Vicariate—also have the ability, as the majority of the *ex officio* Parish board members, to remove the two lay trustees “with or without cause,” thus giving the Diocese complete control over each Parish board.<sup>29</sup>

#### **D. The Diocese’s Legacy of Child Sexual Abuse.**

Over six hundred claims relating to childhood sexual abuse were filed against the Diocese in this Bankruptcy. These claims allege acts of child sexual abuse ranging from over the clothes genital touching to repeated acts of anal or vaginal penetration. These acts of abuse were perpetrated on children as young as four years old. Most victims were boys ranging in age from 8-13 years. Some claims date back over 75 years ago and some are as recent as 2016.

The severity and volume of these claims is not surprising. On February 10, 2003, the Suffolk County Grand Jury (the “**Suffolk Grand Jury**”) released a report (the “**Diocese Grand Jury Report**”) finding that with the sexual abuse of children by priests within the Diocese there was “[a] general failure of supervision from officials of the Diocese, to individual pastors and other priests living in rectories, compounded and perpetuated these violations with devastating consequences for children.”<sup>30</sup>

The Suffolk Grand Jury found a failure by the Diocese and the Parishes to protect children from predators under the supervision of the Diocese, the Parishes and other Diocesan affiliates.

After examining thousands of pages of documents outlining the Diocesan response to the sexual abuse of children by priests, the Grand Jury found several overarching themes that can be summarized as follows:

The response of priests in the Diocesan hierarchy to allegations of criminal sexual abuse was not pastoral. In fact, although there was a written policy that set a pastoral tone, it was a sham. The Diocese failed to follow the policy from its inception even at its most rudimentary level. Abusive priests were transferred from parish to parish and between Dioceses. Abusive priests were protected under the guise of confidentiality; their histories mired in secrecy. Professional treatment recommendations were ignored and dangerous priests allowed to minister to children. Diocesan policy was to expend as little financial capital as possible to assist victims but to be well prepared for the possibility of enormous financial and legal liability. Aggressive legal strategies were employed to defeat

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<sup>29</sup> *Id.* § 5.04.

<sup>30</sup> Grand Jury Report, Suffolk County Supreme Court, Special Grand Jury, Term 1D, May 6, 2002, foreperson Rosanne Bonventre, dated January 17, 2003 at 5. A copy of the Suffolk Grand Jury Report is attached as Exhibit 4.

and discourage lawsuits even though Diocesan officials knew they were meritorious. Victims were deceived; priests who were civil attorneys portrayed themselves as interested in the concerns of victims and pretended to be acting for their benefit while they acted only to protect the Diocese. These officials boldly bragged about their success and arrogantly outlined in writing mechanisms devised to shield them from discovery. These themes framed a system that left thousands of children in the Diocese exposed to predatory, serial, child molesters working as priests.<sup>31</sup>

Following the Suffolk Grand Jury findings and the bankruptcy of other Catholic Diocese, rather than focusing on honestly and openly addressing the decades of abuse, the Diocese continued its practice of “[a]ggressive legal strategies [...] employed to defeat and discourage lawsuits.” The Diocese focused on preventing the expansion of the statute of limitations, enabling survivors of childhood sexual abuse to seek redress (the “CVA”). The Diocese also moved its assets out of the reach of child sexual abuse survivors should the CVA pass.

Between 2004 and 2019, the Diocese organized special lobbying groups to actively oppose the passage of legislation that would expand applicable statutes of limitations for claims relating to childhood sexual abuse. During the same period, the Diocese actively monitored bankruptcies filed by Roman Catholic entities across the United States that resulted from child sexual abuse claims and the threat of litigation.

In June 2017, the Diocese internally discussed its concerns that the CVA’s retroactive expansion of the civil statute of limitations would enable child sexual abuse survivors to reach the Diocese’s assets and it to be held accountable for enabling the sexual abuse of children that occurred for decades. The Diocese lobbied stridently against the CVA and similar legislation, based on its concern it would deplete its assets. The Diocese invested significant money and effort fighting the enactment of the CVA, which occurred in February 2019.

Concurrent with the Diocese’s effort to forestall enactment of the CVA, the Diocese announced the establishment of its Independent Reconciliation and Compensation Program (“IRCP”). The Diocese’s motive to launch the IRCP was to discourage the passage of the CVA or related litigation by proposing an alternative to litigation and to otherwise protect its assets from the claims of sexual abuse survivors.

#### **E. The Asset Protection Scheme.**

In or about November 2016, in response to intensifying efforts to pass the CVA, and in anticipation of significant lawsuits that would be filed against the Diocese, its Parishes, and related entities, the Diocese commenced a massive asset protection scheme (“**Asset Protection Scheme**”) to put its assets beyond the reach of the survivors of childhood sex abuse. The Asset Protection Scheme stripped the Diocese of valuable assets and involved the transfer of over \$250 million worth of real property consisting of three high schools, a seminary, multiple cemeteries, and cash and financial assets to affiliated entities controlled by the Diocese. The Asset Protection Scheme

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<sup>31</sup> *Id.* at 106.

was the Debtor's response to its concern that enactment of the CVA would require its assets to be used to satisfy the claims of child sexual abuse victims.

### **The Cemetery Transfers**

Before making the transfers described below, the Diocese held title to the associated real estate and financial assets of its cemeteries and operated through a department of the Diocese called Catholic Cemeteries of the Diocese of Rockville Centre. The Diocese maintained standalone financial statements for the cemeteries that reflected the assets and liabilities associated with the cemeteries. Catholic Cemeteries of the Diocese of Rockville Centre was not a separate legal entity, but was a part of the Diocese.

To further the Asset Protection Scheme, on February 17, 2016, Bishop Francis Murphy established Catholic Cemeteries of the Roman Catholic Diocese of Rockville Centre, Inc. ("**CemCo**") as a religious corporation to operate the cemeteries of the Diocese, receive certain of the Cemetery Transfers, and place those assets out of the reach of the Diocese's creditors, including the Survivors.

Also to further the Asset Protection Scheme, on May 25, 2017, the Diocese, as settlor, created the Diocese of Rockville Centre Catholic Cemetery Permanent Maintenance Trust (the "**Cemetery Trust**"), operated and overseen by CemCo, to receive the remaining Cemetery Transfers and to place those assets out of the reach of creditors, including the Survivors. CemCo is the sole trustee of the Cemetery Trust.

The Cemetery Trust may be terminated at any time by CemCo at its sole discretion and the assets distributed to other tax-exempt Catholic organizations of CemCo's choosing. CemCo and the Cemetery Trust were shell entities without assets until they received the Cemetery Transfers, described below.

On September 1, 2017, the Diocese transferred to CemCo 462 acres of real property and the personal property, the business operations of four cemeteries and \$40,330,000 of cash and investment assets (the "**CemCo Transfers**"). The transfers involved the real property, assets, and operations of (a) Holy Rood Cemetery of Westbury, NY, (b) Holy Sepulcher Cemetery of Coram, NY, (c) Queen of All Saints Cemetery of Central Islip, NY, and (d) real property slated for use as a cemetery in Old Westbury, NY ("Old Westbury Property" and collectively, the "**Cemeteries**").

On the same date, without consideration, the Diocese transferred (the "**Trust Transfer**") \$65,000,000 of investment assets to CemCo, as trustee of the Cemetery Trust, consisting of (i) shares of the Vanguard Fund valued at approximately \$60,900,000, and (ii) a fractional ownership of the Listerine Royalty Trust valued at approximately \$4,100,000. The transferred assets were to be administered under the terms of the Cemetery Trust.

The CemCo Transfers and the Trust Transfer are collectively the "**Cemetery Transfers.**" The Diocese purportedly received \$15,330,000 in consideration for the real property associated with the Cemeteries, which was paid from the CemCo Transfers. Specifically, the Diocese transferred \$40,330,000 of cash and investment assets under a Grant Agreement, which stated that CemCo shall have sole discretion over the funds. A letter from the Diocese to CemCo of September 1, 2017 confirmed that the cash and investment transfer was a gift from the Diocese to

CemCo. Of this amount, and immediately following its receipt, CemCo transferred back to the Diocese \$15,330,000 as purported consideration for the real properties associated with the Cemeteries.

The business operations of the Cemeteries were profitable at the time of the Cemetery Transfers. Before the Cemetery Transfers, the Cemeteries generated approximately \$25.7 million in annual revenue for the Diocese, of which approximately \$13.6 million was derived from operations and \$10.9 million was attributable to gains on cash and investments. Financial statements of the Diocese reflect its receipt of annual contributions of approximately \$3,250,000 from the operation of the Cemeteries, which ceased after the Cemetery Transfers.

The fair market value of the Cemetery Transfers when they were made exceeds \$200 million dollars. Prior to the Cemetery Transfers, in June 2017, the Diocese commissioned an independent valuation of the operations of the Cemeteries, excluding the real property slated for use in Old Westbury, NY (which was independently appraised and valued in 2015 at \$19,200,000). The study concluded that the enterprise value of just three of the Cemeteries as a combined operation was approximately \$234 million, net of the perpetual maintenance liability.

The Diocese did not obtain a fairness opinion or engage professionals to conduct a solvency analysis in connection with the Cemetery Transfers.

### **The Retreat Center Transfer**

On November 9, 2016, the Diocese, on the one hand, and Seminary of the Immaculate Conception of the Diocese of Rockville Centre (the “**Seminary**” or the “**Retreat Center**”), entered into a deed transferring (the “**Retreat Center Transfer**”) all interests of the Diocese in a 220-acre parcel of prime real property with extensive waterfrontage, in the village of Lloyd Harbor along the north shore of Long Island, New York (the “**Retreat Center Property**”).<sup>32</sup> The Retreat Center Property transferred included the buildings, furniture, and artwork on the Retreat Center Property (the “**Retreat Center Buildings**”). The Retreat Center Property formerly served as a seminary but is currently used for retreats and special events. The transfer deed was signed by Bishop Francis Murphy on behalf of the Diocese and recorded with the clerk of Suffolk County, New York, on January 14, 2017. Before the Retreat Center Transfer, the Diocese held legal title to the Retreat Center Property. The Diocese transferred the Retreat Center Property to the Retreat Center in consideration for ten dollars (\$10.00) to put this asset out of the reach of Survivors and its other creditors.

The precise current fair market value of the Retreat Center Property is unknown, but exceeds tens of millions of dollars. Three years before the Retreat Center Transfer, in January 2013, the Diocese obtained an independent appraisal of a 140-acre portion of the Retreat Center, excluding the Retreat Center Buildings, which concluded this land had a value of approximately \$27 million. Another appraisal in August 2019 of a 177-acre portion of the Retreat Center Property, excluding the Retreat Center Buildings, concluded that the land alone was worth \$22.8 million.

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<sup>32</sup> The address of the Retreat Center Property is 440 West Neck Road, Huntington, New York 11743.

On September 28, 2021, the Bankruptcy Court entered the Joint Stipulation and Order Prohibiting the Sale, Encumbrance or Other Disposition of the [Retreat Center] Property without Further Court Order which prohibits the sale of the Retreat Center without further order of the Bankruptcy Court. (Dkt. 756).

### **The Department of Education Transfer**

Before 2017, the Diocese operated three high schools through what it called the Education Department, and held title to the associated real estate. The Diocese maintained standalone financial statements for the High Schools that reflected the assets and liabilities associated with each High School. The Education Department was not a separate legal entity, but rather was a part of the Diocese. The Department of Education, Diocese of Rockville Centre (the “**DOE**”) is a nonprofit educational corporation that was incorporated in 1974 and was virtually inactive until September 1, 2016 when it received an initial subsidy of \$970,000 from the Diocese. In September of 2017, the Diocese transferred to the DOE: (a) the real and personal properties (the “**High School Properties**”) and operations of Bishop McGann-Mercy Diocesan High School (“**Bishop McGann-Mercy**”), Holy Trinity Diocesan High School (“**Holy Trinity**”), and St. John the Baptist Diocesan High School (“**St. John the Baptist**,” with Bishop McGann-Mercy and Holy Trinity, the “**High Schools**”), and (b) \$26.9 million unrestricted cash and investment assets (“**High School Investments**”) (collectively, the transfer of the High Schools, High School Properties and the High School Investments, the “**High School Transfers**”). Except for Bishop McGann-Mercy, the High Schools were not separately incorporated legal entities.

The High School Transfers were effected:

On September 1, 2017, the Diocese and the DOE contracted to transfer the High School Properties which included, “Bargain and Sale Deeds” and “Omnibus Bill of Sale, Assignment and Assumption of Leases and Contracts, and General Assignment and Assumption.” Under these agreements, the Diocese transferred the real property, personal property and intangibles, and operations of the High Schools to the DOE. The Bargain and Sale Deeds recite that the consideration for each of the High School Properties was one dollar. Resolutions executed by the board of trustees of the Diocese and the DOE recite that the High School Properties were transferred as a gift to the DOE.

After September 1, 2017, the Diocese transferred the High School Investments, consisting of approximately \$26.9 million of cash and investments internally recorded in the names of the High Schools. Transfer of the High School Investments is evidenced by the fact that as of June 30, 2017, prior to the High School Transfers, the audited standalone consolidated financial statements of the High Schools reflect cash and investments of \$26.9 million, and as of August 31, 2019, those cash and investments are reflected in audited combined financial statements of the DOE and the High Schools.

Before the High School Transfers, title to each of the High School Properties was held by the Diocese.<sup>33</sup> After the High School Transfers, the High Schools were operated by the DOE and title to each of the High School Properties was held by the DOE.

In April 2017, independent appraisals determined the aggregate fair market value of the High School Properties to be approximately \$51,400,000 based on these individual values: Bishop McGann-Mercy - \$11.8 million; Holy Trinity - \$19.2 million; and St. John the Baptist - \$20.4 million. Bishop McGann-Mercy was sold by the DOE to a third party in May 2020 for approximately \$14 million, well over its appraised value.<sup>34</sup> The proceeds of the sale were transferred by the DOE to the Diocese.

The foregoing values of the High School Properties do not include the value of the High School Investments which was approximately \$26.9 million at the time of the transfers. The Diocese did not obtain a fairness opinion or engage professionals to conduct a solvency analysis regarding the High School Transfers or any other aspect of the Asset Protection Scheme.

### **The Independent Advisory Committee**

In 2019, in conjunction with its bankruptcy planning, the Diocese formed an Independent Advisory Committee (the “IAC”), chaired by the Hon. Arthur J. Gonzalez (ret), to evaluate the transactions that made up the Asset Protection Scheme, including the Cemetery Transfers, the Retreat Center Transfers, and the High School Transfers (together, the “IAC Transfers”) and certain other transfers. The IAC determined that the IAC Transfers “give rise to colorable claims on behalf of the Diocese.”<sup>35</sup>

### **F. The Diocese’s Insurance Program.<sup>36</sup>**

To insure the Diocese’s many activities, the Diocese maintains a broad insurance program. Specifically, the Diocese purchased and continues to purchase a broad range of primary commercial liability insurance (“CLI”) and excess liability insurance policies to protect itself and various other entities from a myriad of risks. These CLI policies provided and continue to provide substantial insurance coverage, including under the older policies, for claims arising out of sexual abuse or sexual misconduct. The CLI policies provide coverage to the Diocese and the incorporated parishes, schools, and other Roman Catholic entities within the Diocese’s territory.<sup>37</sup>

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<sup>33</sup> Bishop McGann-Mercy is the only High School that was incorporated as a New York nonprofit educational corporation. Notwithstanding its incorporation, prior to the High School Transfers, the real property of Bishop McGann-Mercy was titled in the name of the Diocese consistent with the other High Schools.

<sup>34</sup> See Moore Dec. ¶59 (sale of Bishop-McGann Mercy property to Peconic Bay Medical Center Foundation).

<sup>35</sup> Debtor’s Reply in Support of the Retention Applications, Docket No. 150, p. 7 of 22.

<sup>36</sup> The description of the Diocese’s Insurance Program is largely taken from the Declaration of Kenneth F. Porter in Support of the Debtor’s Motion for a Preliminary Injunction Under Sections 362 and 105(a) of the Bankruptcy Code (Adv. 20-01226 Dkt. 6). The Committee conducted its own review of the Debtor’s Insurance Policies as provided by the Debtor and reserves all rights with respect to the terms and conditions of the Debtor’s Insurance Policies and with respect to any coverage disputes.

<sup>37</sup> Certain insurance companies have not agreed to defend certain of the entities covered under the Diocese’s insurance policies based on missing insurance policy documentation. The DRVC has reserved all rights with respect to such coverage disputes.

From 1957 to the present, the Diocese was insured for sexual abuse and sexual misconduct under insurance policies purchased from different insurance companies. These insurance policies can be broken down into three groups: the Royal years (from 1957 to 1976); the London Program years (from 1976 to 1986); and the Ecclesia years (from 1986 to the present).<sup>38</sup>

### **The Royal Policies (1957 to 1976)**

From 1957 until 1976, the Diocese purchased both primary and excess or umbrella insurance coverage (, the “**Royal Primary Policies**” and the “**Royal Umbrella Policies**”) from Royal Indemnity Insurance and Royal Globe Insurance Company (collectively now known as Arrowood Indemnity Company, “**Royal**” and its affiliates).<sup>39</sup>

The Royal Policies cover both the Diocese and the Other Insured Entities. The Royal Primary Policies provide the first layer of insurance coverage for the Diocese and the Other Insured Entities. These insurance policies do not have aggregate limits of liability, but they have per-occurrence limits of liability. These per occurrence policy limits range from \$150,000 to \$300,000, depending on the policy period. This means that the Royal Primary Policies cover the first \$150,000 to \$300,000 of liability, for as many claims as asserted for any injury occurring during the policy period. The Royal Primary Policies also provide for an unlimited payment of defense costs for each claim, as long as the Royal Primary Policies’ limits of liability have not been exhausted for that claim.

Until 1964, the Royal Primary Policies were the Diocese’s only insurance coverage—there are no Royal Umbrella Policies before that date.

From 1964 to 1976, Royal also provided the Diocese with excess or umbrella insurance coverage. The Royal Umbrella Policies cover liability that exceeds the limits of liability for the Royal Primary Policies. From June 4, 1964 to June 4, 1966, the Royal Umbrella Policies had a \$2 million per-occurrence limit of liability with no aggregate limit of liability per policy period. From June 4, 1966 to June 4, 1970, the per-occurrence limits were \$4 million, apparently with no aggregate limit of liability per policy period. From June 4, 1970 to October 1, 1973, the Royal Umbrella Policies had per-occurrence and likely aggregate limits of liability of \$4 million per policy period. And from October 1, 1973 through March 1, 1975, the Royal Umbrella Policies had per occurrence and likely aggregate limits of \$7 million per policy period. Finally, from March 1, 1975 through October 1, 1976, the Royal Umbrella Policies had per-occurrence and likely aggregate limits of \$12 million per policy period.

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<sup>38</sup> The descriptions provided in this Disclosure Statement are intended to provide an overview of the Diocese’s insurance programs. To the extent that the statements made in this Disclosure Statement in any way conflict with or are expanded upon by the insurance policies, the terms of and applicable law with respect to the insurance policies control. The rights of all parties are reserved. Furthermore, according to the Diocese, the Diocese and its advisors have not yet been able to locate copies of all relevant insurance policies and thus the descriptions provided in this Disclosure Statement may not encompass all of the Debtor’s Insurance Policies.

<sup>39</sup> From the founding of the Diocese in 1957 until 1960, the Diocese and certain of the Diocese’s affiliates were covered by Royal under policies purchased by the Diocese of Brooklyn.

### **The London Program Policies (1976 to 1986)**

From 1976 until 1986, the Diocese purchased insurance coverage (the “**London Policies**”) from various insurance syndicates known as the London Market Insurers (the “**London Insurers**”), with additional excess insurance coverage provided by various other insurers, including Interstate Fire & Casualty Company (collectively with the London Insurers, the “**London Program**”). Like the Royal Policies, the London Policies also cover both the Diocese and the Other Insured Entities.

Under the London Policies, the insureds must cover the first \$100,000 of liability per occurrence, an amount called the “Self-Insured Retention” (“**SIR**”).<sup>40</sup>

From there, the London Policies provide an initial layer of insurance coverage containing two insuring agreements—an “Aggregate Agreement” and a “Specific Excess Agreement.” The London Policies also provide a layer of umbrella insurance policies—the “Interstate Policies”—and upper layer excess insurance policies—the “**London Excess Policies**.”<sup>41</sup>

The Aggregate Agreement reimburses the insureds for SIR payments above a prescribed SIR aggregate amount. This SIR aggregate amount was \$1.2 million beginning with the first London Program insurance policy in 1976, and was incrementally increased to \$4.5 million with the last policy ending in 1986. Once the insureds have made the applicable aggregate amount of SIR payments, the London Insurers are responsible for any additional SIR payments during that policy year up to a stated aggregate limit (ranging between approximately \$500,000 and \$1 million in later years). Any SIR payments above these limits would again be the responsibility of the insureds.

The Specific Excess Agreement provides coverage for losses that exceed the SIR of \$100,000, up to a specified per-occurrence limit. The Specific Excess Agreement contained per-occurrence limits of mostly \$200,000, meaning that after the SIR was satisfied for a claim (either by the insureds or under the Aggregate Agreement), the Specific Excess Agreement required the London Insurers to cover the next \$100,000 of liability for that occurrence. There is no aggregate limit of liability under the Specific Excess Agreement. The London Insurers continue to be liable for their share of all covered losses over \$100,000, including for claims alleging injuries during a London Market policy period recently asserted under the New York Child Victims Act (the “CVA”). Under the London Policies, defense costs are generally considered part of the ultimate net loss.<sup>42</sup> This means that incurring reimbursable defense costs depletes the available policy proceeds.

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<sup>40</sup> Generally, a “self-insured retention,” or SIR, is a dollar amount specified in a liability insurance policy that must be paid by the insured before the insurer will respond to a loss. Insurance policies include “self-insured retentions” when the insured decides to retain some risk. Insurance policies that contain SIRs often have reduced premium costs and place the responsibility for handling the claim with the insured until the SIR is exhausted.

<sup>41</sup> Some of the London Market Insurers may currently be insolvent and unable to fulfill their obligations under the London Policies.

<sup>42</sup> The Debtor’s rights to argue that the London Insurers have a duty to defend under the London Policies is expressly reserved. To the extent that the statements made in this Disclosure Statement in any way conflict with or are expanded upon in the insurance policies, the language in the insurance policies controls, and the rights of all parties are reserved.



To cover losses beyond the amounts covered by the Specific Excess Agreement, the Diocese also purchased umbrella insurance policies as part of the London Program. The umbrella layer of coverage generally covered the difference between \$200,000 and \$5 million for each occurrence, with no aggregate limit of liability, and was provided by Interstate and other insurance companies. The excess insurance policies covered per-occurrence liability above \$5 million, up to a per-occurrence limit of liability of \$5 million to \$45 million, depending on the policy period. Typically, neither layer of insurance coverage included an aggregate limit of liability, meaning those insurance companies still retain liability for new claims alleging injury during a London Program policy period, up to their share of the per-occurrence limits of liability.

### **Ecclesia Assurance Company**

Ecclesia Assurance Company (“**Ecclesia**”) is the sole provider of insurance for the Diocese and the Other Insured Entities for alleged sexual abuse that occurred after August 31, 1986.<sup>43</sup> Ecclesia is a captive property and casualty insurance company that provides insurance to the Diocese, i.e, it is a separate corporation wholly owned by the Diocese. Ecclesia was incorporated in New York in December 2003. The company is a licensed insurer and reinsurer. It is also subject to the supervision of the New York State Department of Financial Services. The sexual abuse liability insurance coverage provided by Ecclesia is subject to per claim limits of \$750,000 over self-insured retentions (or deductibles) of \$250,000 per claim and an aggregate limit of liability for sexual abuse claims of (i) \$15 million for claims made before October 31, 2020 based on alleged incidents that occurred on or after September 1, 1986 and before October 31, 2019 and (ii) \$7.5 million for claims made, and for claims based on alleged incidents that occurred, on or after October 31, 2019. As with the Royal Policies and the London Program Policies, the Other Insured Entities are co-insureds with the Diocese.

### **G. The Chapter 11 Case.**

The Debtor commenced this Case on October 1, 2020 (the “**Petition Date**”). The Diocese commenced its bankruptcy in the wake of hundreds of lawsuits filed by Survivors under the CVA and in anticipation of additional claims against the Diocese and related entities for their complicity in, and derogation of duties regarding, persistent sexual abuse. The CVA modified the statute of limitations and created a one-year “window” during which victims of childhood sex abuse whose claim may have been time-barred may commence a timely civil action.<sup>44</sup> In addition, the CVA extended the statute of limitations for claims that were not time-barred on its date of passage, permitting such child victims to commence timely civil actions until they reach 55 years of age.

At the time of filing, 209 complaints related to childhood sexual abuse had been filed against the Diocese. The Diocese filed this case to limit its liability for the claims of childhood sexual abuse to a specified amount to be contributed by the Diocese. Having moved hundreds of millions of dollars of its assets out of the immediate reach of the survivors of childhood sexual abuse, the Diocese filed this case to limit the assets it would need to contribute to satisfy the claims of the victims of horrific abuse. The Diocese also asserted that it has hundreds of millions of

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<sup>43</sup> Ecclesia began providing insurance coverage in 2003 for sexual abuse claims made during the Ecclesia policy periods that allege wrongful acts after August 31, 1986.

<sup>44</sup> The CVA became effective on August 14, 2019 and the initial one-year window was scheduled to close on August 14, 2020, but was extended an additional year in response to the Covid-19 pandemic.

dollars of insurance that could compensate the victims of abuse – but leaving it to the abuse survivors to spend the time and money to pursue any such insurance recovery.

However, more than simply limiting the Diocese’s liability for its legacy of childhood sexual abuse, the Diocese filed this case, as evidenced by the Diocese Plan, to limit the liability of the Parishes and other non-debtor Affiliates of the Diocese for the claims of childhood sexual abuse for which the Parishes and those non-debtor Diocesan Affiliates bear independent responsibility. Under the Diocese Plan, for the contribution of \$11.1 million dollars and their rights under certain shared insurance policies, the Diocese is seeking a complete release of the Parishes and the other Co-Insured Parties. The Committee Plan will only provide releases if the Parishes or any such other Co-Insured Parties make material and meaningful contributions to the Committee Plan to compensate the survivors of childhood sexual abuse.

The Debtor’s filing for bankruptcy protection was yet another step in the Diocese’s history of aggressive tactics to avoid compensating the victims of child sexual abuse. In the time before filing this Bankruptcy Case and during the Bankruptcy Case, the Diocese has done everything it can to delay compensating the survivors and making the process long and expensive.

The Diocese’s contempt for the victims of sexual abuse at the hands of priests and lay people under the direction and control of the Diocese and its Affiliates is so great they are willing to spend tens of millions of dollars for armies of professionals to protect them from compensating legitimate claims rather than use those dollars to promote the healing of their victims.

In the two years before the bankruptcy filing, the Diocese paid Jones Day (the Diocese’s lead bankruptcy counsel) over \$10.4 million, Alvarez & Marsal (the Diocese’s restructuring advisor) over \$3.16 million, and Reed Smith (the Diocese’s special insurance counsel) over \$1.1 million.<sup>45</sup> During the Bankruptcy Case, through November 30, 2022, the Diocese incurred over \$40 million in professional fees and expenses, including over \$22 million for Jones Day, \$6.2 million for Alvarez & Marsal and \$4.8 million for Reed Smith. Thus, the Diocese has already spent nearly \$60 million in professional fees and expenses avoiding its obligations to the survivors of childhood sexual abuse. Remarkably, this is only slightly less than the approximately \$62 million paid by the Diocese as compensation to about 350 survivors with the IRCP.<sup>46</sup>

### **First Day Motions.**

On the Petition Date, the Diocese as debtor and debtor in possession filed several motions seeking relief from the Bankruptcy Court to ensure a seamless transition into chapter 11 (collectively, the “**First Day Motions**”). The Bankruptcy Court granted the relief requested in the First Day Motions, authorizing the Debtor to : (1) continue paying employee wages and benefits (Dkt. 126); (2) continue using the Debtor’s existing cash management system, bank accounts, and business forms (Dkt. 253); (3) continue insurance programs and pay related obligations (Dkt. 165); (4) establishing adequate assurance procedures for utility providers (Dkt. 97); (5) authorizing the payment of certain prepetition invoices for psychological counseling, therapy and authorizing continuation of the Debtor’s prepetition practice of paying for certain psychological counseling,

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<sup>45</sup> See Debtor’s Statement of Financial Affairs (Dkt. 300) at 182-186.

<sup>46</sup> Moore Dec. ¶ 109.

therapy and related treatment (Dkt. 96); and (7) approving special noticing and confidentiality provisions (Dkt. 125).

### **The Debtor's Professionals.**

After the Petition Date, the Court authorized the Debtor to retain Jones Day LLP (“**Jones Day**”) as lead bankruptcy counsel (Dkt. 132) and Alvarez & Marsal North America, LLC (“**Alvarez & Marsal**”), as its restructuring advisor (Dkt. 131). The Court also authorized the Debtor to retain (i) Epiq Corporate Restructuring LLC as Claims and Noticing Agent and as Administrative Agent (Dkts. 33, 137), (ii) Sitrick and Company, Inc., as corporate communications consultant (Dkt. 130), (iii) Reed Smith LLP (“**Reed Smith**”) as special insurance counsel (Dkt. 128), (iv) Nixon Peabody as special counsel (Dkt. 252), and (v) Standard Valuation Services as Real Estate Appraiser and Forchelli Deegan Terrana LLP as Special Real Estate Counsel (Dkt. 944).

### **The Debtor's Schedules and Statement of Financial Affairs.**

The Debtor's filed their Schedules and Statement of Financial Affairs on October 9, 2020. On January 8, 2021, the Debtor filed amended Schedules (Dkt. 299) and an amended Statement of Financial Affairs (Dkt. 299). The Debtor filed further amended Schedules A/B on February 11, 2022 (Dkt. 977).

### **The Committee.**

On or about October 16, 2020, the United States Trustee for Region 2 appointed the Committee to represent the Diocese's unsecured creditors under §1102(a)(1) of the Bankruptcy Code (Dkt. 71). The Committee consists of nine individuals who hold claims against the Debtor, including eight Survivors abused by perpetrators for whom the Debtor was responsible and one representative of a minor with a civil rights claim against the Debtor.

The Committee retained the law firm of Pachulski Stang Ziehl & Jones LLP (“**PSZ&J**”) as counsel and (Dkt. 163), and Berkely Research Group, LL as the Committee's financial advisor (Dkt. 247). The Committee also retained (i) Burns Bowen Bair LLP (now Burns Bair LLP) as special insurance counsel (Dkt. 246), (ii) Kinsella Media, LLC as expert consultant (Dkt. 248), Dr. Jon Conte as expert consultant on sexual abuse and expert witness (Dkt. 249), Ruskin Moscou Faltischek, P.C. as special real estate counsel (Dkt. 667), and Lerman Scenter as special FCC counsel (Dkt. 1466).

In connection with its retention, PSZ&J agreed to reduce its hourly rates for the benefit of the Abuse Claimants. In order to assure that any price reduction inures solely to the benefit of the Abuse Claimants, PSZ&J agreed hold ten percent of all fees received in this Case in a trust account to benefit this Case's tort claimants. The funds will be held until a trust is established for the benefit of Abuse Claimants through a confirmed and effective plan of reorganization.

### **The Insurance Adversary Proceeding**

On the Petition Date, the Diocese commenced an adversary proceeding against various insurers seeking a declaratory judgment regarding the scope of its insurance coverage and damages

for breach of contract. The Diocese named these insurers in its adversary proceeding: Arrowood Indemnity Company, formerly known as Royal Indemnity Company, as successor by merger to Royal Insurance Company of America (“**Arrowood**”); Lexington Insurance Company (“**Lexington**”); Evanston Insurance Company, successor by merger to Associated International Insurance Company (“**Evanston**”); Swiss Re America Corporation as Administrator for 21st Century Centennial Insurance Company, formerly known as Colonial Penn Insurance Company (“**Colonial Penn**”); Interstate Fire & Casualty Company, Fireman’s Fund Insurance Company, and National Surety Corporation (collectively, the “**Allianz Insurers**”); and Certain Underwriters at Lloyd’s, London subscribing various Insurance Policies, Ancon Insurance Co. (UK) Ltd., Assicurazioni Generali T.S., Dominion Insurance Co. Ltd., Catalina Worthing Insurance Ltd f/k/a HFPI (as Part VII transferee of Excess Insurance Co. Ltd. and London & Edinburgh Insurance Co. Ltd. as successor to London & Edinburgh General Insurance Co. Ltd.), River Thames Insurance Company Limited (as the legal successor to Unionamerica Insurance Company Limited, which was itself the legal successor to: (i) St. Paul Reinsurance Company Limited (formerly known as Mercury Reinsurance Company (UK) Limited and St. Paul Fire & Marine Insurance Company (UK) Limited) and (ii) certain business of St. Paul Travelers Insurance Company Limited (formerly known as St. Katherine Insurance Company Limited, St. Katherine Insurance Company Public Limited Company and St Paul International Insurance Company Limited); Riverstone Insurance (UK) Limited (as successor in interest to Terra Nova Insurance Ltd.); Harper Insurance Ltd. (formerly known as Turegum Insurance Company), and Sompo Japan Nipponkoa Insurance Company of Europe Limited (formerly known as Yasuda) (collectively, “**LMI**”).<sup>47</sup>

On November 20, 2020, the Committee filed a motion to intervene in the adversary proceeding, asserting that it had similar interests of the Debtor as well as conflicts of interest with the Debtor in regards to insurance coverage of the Abuse Claims (Dkt. No. 13). The Debtor consented to the Committee’s right to intervene, but several of the insurance companies did not consent and filed objections to the Committee’s motion to intervene (Dkt. Nos. 28, 27, 25, 24, and 22). After a hearing, the Bankruptcy Court granted the Committee’s motion to intervene on December 10, 2020. (Dkt. No. 38).

In January 2021, the Diocese agreed to voluntarily dismiss without prejudice Colonial Penn from the insurance adversary proceeding. Around that same time, in December 2020 and January 2021, after the Committee intervened in the adversary proceeding, each of the other insurers sought withdrawal of the reference from the Bankruptcy Court to have the District Court hear the Insurance Action. Each motion to withdraw the reference was granted (Dkt. Nos. 519, 721 and 1192) and four separate proceedings were created in District Court (i) Case No. 1:20-cv-11011-JLR (the “**Arrowood District Court Action**”); (ii) Case No. 1:21-cv-00071-JPC (the “**LMI District Court Action**”); (iii) Case No. 1:21-cv-07706-AKH (the “**Allianz Insurers District Court Action**”); and (iv) Case No. 1:21-cv-09304-JLR-SLC (the “**Evanston District Court Action**”).

Three of these actions—the LMI District Court Action, the Allianz Insurers District Court Action, and the Evanston District Court Action—have effectively been stayed since removal from

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<sup>47</sup> Certain insurers contend that they were misidentified or improperly plead in the Diocese’s original complaint. For clarity, the Committee uses the corrected names for each of the insurers.

the bankruptcy case while the parties attempted to reach a negotiated resolution assisted by professional mediator.

The Arrowood District Court Action has seen some activity. Following the Diocese's filing of a Motion for Judgment on the Pleadings and to Stay Proceedings on the Duty to Indemnify, the Court issued an Opinion and Order dated February 23, 2022 (Dkt. No. 84), granting the Diocese's motion in part, determining that (1) Arrowood has a duty to defend four lawsuits arising out of the CVA for which Arrowood had denied a defense and (2) staying issues of indemnity. In addition, the Court's February Opinion granted in part Arrowood's motion to amend its Answer (Dkt. No. 65).

More recently, on December 13, 2022, the Court granted in part and denied in part Arrowood's motion to compel. The current operative pleadings are the Diocese's Second Amended Complaint (Dkt. No. 128) and Arrowood's Answer to the Second Amended Complaint with Affirmative Defenses, Second Amended Counterclaim and Jury Demand (Dkt. No. 130). Discovery is ongoing, and the next case management conference is scheduled for July 10, 2023.

### **Stipulation Granting Committee Standing to Pursue IAC Transfers**

On October 12, 2020, the Diocese sought to employ Goldin ("**Goldin**"), a Teno Company (Dkt. 61), and Otterbourg P.C. ("**Otterbourg**") (Dkt. 60) as financial advisor and counsel, respectively, to the IAC. The Committee opposed the retention of professionals on behalf of the IAC. (Dkt. 103). The Committee argued the Diocese's applications failed to present any valid justification for the appointment and compensation of either Otterbourg or Goldin as an estate professional pursuant to section 327 of the Bankruptcy Code. The Committee pointed out that given the Diocese's ability to remove and replace members of the IAC or, potentially, to dissolve it, it was crystal clear that the "IAC" lacks any meaningful independence such that the appointment of additional professionals for the Debtor – for the alleged purpose of an "independent" committee" – is contrary to the estates interests and detrimental to creditors' recovery. The Diocese's efforts to employ the IAC to usurp the Committee's function of investigating the IAC Transfers is yet another example of the Diocese trying to obfuscate the truth of its actions and avoid any actual transparency about the Asset Transfer Scheme or its other efforts to remove its money from the reach of the survivors of childhood sexual abuse.

On February 12, 2021, the Committee moved for examination under Bankruptcy Rule 2004 seeking information from the Debtor relating to the IAC's investigation and the IAC Report. The Debtor opposed the Committee's motion arguing that the Committee was not entitled to discovery of the IAC Report because the report contains a privileged analysis of claims.

On March 5, 2021, the Committee and the Debtor entered into a *Joint Stipulation and Protective Order Concerning the Production of the Report of the Independent Advisory Committee Appointed by the Board of Trustees of the Debtor to the Official Committee of Unsecured Creditors* (Dkt. 392). The Debtor produced the IAC Report and related and underlying documents to the Committee.

On May 14, 2021, the Court entered the *Joint Stipulation and Order Concerning the Independent Advisory Committee and the Investigation and Pursuit of Certain Claims* (Dkt. 512)

(the “**IAC Standing Order**”). Under the IAC Standing Order, the Committee was granted exclusive authority to commence and prosecute any actions relating to the IAC Transfers. Additionally, the Hon. Arthur J. Gonzalez (ret) was appointed as a “special mediator” “with respect to the process regarding the investigation and resolution of any claims or settlements related to the [IAC Transfers]” and expressly noting that Judge Gonzalez was not appointed “to act as a mediator” regarding the transfers themselves.

Since receiving the IAC Report and over 200,000 documents underlying the IAC Report, the Committee actively reviewed the materials and investigated the IAC Transfers. The Committee determined there are colorable claims relating to the IAC Transfers.

- The Committee investigated the Cemetery Transfers and drafted a complaint seeking to avoid and recover as fraudulent the Diocese’s transfer of (a) the real and personal properties and business operations of four cemeteries to CemCo, (b) \$40 million cash and investment assets to CemCo, and (c) approximately \$65 million of investment assets to the Cemetery Trust. The fair market value of the Cemetery Transfers, including the revenue-generating operations of the cemeteries, was over \$200 million, but the Diocese only received \$15,330,000 from CemCo in exchange for the assets.
- The Committee investigated the Retreat Center Transfer and drafted a complaint seeking to avoid and recover as fraudulent, the transfer to the Retreat Center of the Retreat Center Property.
- The Committee investigated the High School Transfers and prepared a complaint to avoid and recover the High School Transfers. The fair market value of the assets transferred exceeded \$75 million. The Diocese received one dollar of consideration for each of the High School Properties transferred and acknowledges the High School Transfers were a gift.

The Committee has filed no complaints relating to the IAC Transfers and has been negotiating with the Diocese Affiliates that received the IAC Transfers regarding those claims.<sup>48</sup> As part of the Committee Plan, the Committee proposes terms of settlement with CemCo, the Retreat Center and the Department of Education.<sup>49</sup> If the Committee cannot agree with those respective Affiliates relating to the IAC Transfers, the Committee intends to bring litigation seeking to recover the IAC Transfers. Any recoveries relating to the IAC Transfers will be contributed to the Trust and for distribution to compensate Abuse Claims. The Affiliates assert various defenses to the claims raised by the Committee. In light of the inherent risk and uncertainty in litigation, the Committee cannot estimate the amounts the Committee may recover relating to the IAC Transfers.

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<sup>48</sup> The Committee entered into agreements to toll the statute of limitations regarding claims with the Retreat Center, the DOE and CemCo (Dkts. 1320, 1321, 1322).

<sup>49</sup> In the Diocese Disclosure Statement, the Diocese proposes materially lower terms of settlement with each of the Retreat Center, the Department of Education and Cemco. The Committee does not agree that the terms proposed by the Diocese are reasonable in light of the \$100s of millions of cash and property subject to the IAC Transfers. (Diocese Disclosure Statement)

### **The Bar Dates.**

On November 19, 2020, the Debtor filed a motion (the “**Bar Date Motion**”) seeking to set the last day to file proofs of claim for (i) general unsecured claims as February 17, 2021, (ii) a governmental bar date of March 30, 2021, and, in yet another effort to truncate survivors’ rights, (iii) sexual abuse claims of February 17, 2021 (Dkt. 174).

The Committee objected to the Bar Date Motion (Dkt. 215) regarding Abuse Claims arguing that the bar date should be co-extensive with the deadline for filing claims under the CVA which was August 14, 2021 and that the proposed notice to victims of childhood sexual abuse was inadequate because the proposed notice would not reach enough abuse survivors, would not properly cue recall for abuse survivors and would not provide enough opportunities to see the notice.

By order dated January 27, 2021 (Dkt. 333) (the “**Bar Date Order**”), the Bankruptcy Court set a bar date for claims other than Abuse Claims of March 30, 2021 (the “**General Bar Date**”) and set August 14, 2021 as the bar date for filing Abuse Claims (the “**Abuse Claims Bar Date**”).

The Debtor and its Claims Agent served notice of the Bar Date on all known creditors. The Debtor mailed notice of the Bar Date, a copy of the Bar Date Order, and a sexual abuse proof of claim form to all known survivors who had filed or threatened to file lawsuits

Consistent with the Bar Date Order, the Debtor sought to provide notice to all claimants it was aware of that may assert Abuse Claims. The Bar Date Order also authorized the Debtor to undertake a monumental noticing and publication campaign to make potential claimants aware of the Bar Date and the requirement that any Sexual Abuse Claims be filed in the Bankruptcy Court by August 14, 2021. The Debtor undertook to publish notice of the Bar Date using the publication plan prepared by the Committee’s publication expert, Dr. Shannon Wheatman. The Debtor spent approximately \$1.1 million to carry out the publication plan, which included media components across television, radio, magazines, newspapers, search engines, social media, earned media, and community outreach.<sup>50</sup>

Six hundred fifty-three (653) unique, non-duplicative proofs of claim for sexual abuse were filed before the expiration of the Abuse Claims Bar Date.

On May 24, 2022, New York Governor Kathy Hochul signed the Adult Survivors Act (S.66A/A.648A) (the “**ASA**”). While the CVA had revived certain claims based on allegations of sexual abuse of a minor, the ASA revived claims resulting from sexual offenses against individuals that occurred when the person was 18 years of age or older and allowed such persons to sue because of such claims, regardless of prior limitations periods. Like the CVA, the ASA opened a lookback window for individuals to sue because of such revived claims—specifically, the ASA allows individuals to commence claims, not earlier than six months after (November 24, 2022), and not later than one year and six month after (November 24, 2023), the effective date of the ASA (May 24, 2022). N.Y. C.P.L.R. 214-g (McKinney). On July 21, 2022, the Diocese sought a supplemental bar date (the “**Supplemental Bar Date**”), for claims against the Diocese revived by the ASA. By

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<sup>50</sup> See Declaration of Shannon R. Wheatman, Ph.D. Regarding Implementation of Notice Plan (Dk. No. 559).

Order dated August 10, 2022, the Bankruptcy Court set October 10, 2022 as the Supplemental Bar Date.

### **Sale of the Chancery**

On December 22, 2020, the Diocese moved (Dkt. 277) for permission to sell a 1.04 acre parcel of land at 50 North Park Avenue, Rockville Centre, NY 11570, including a five story, approximately 51,000 square foot office building (the “**Chancery Building**”). The Chancery Building served as home to the Debtor’s “Pastoral Center,” and several departments of the Debtor, including the Office of Faith Formation, the Office of Vocations, and the Office of Human Life, Family and Bioethics.

The Bankruptcy Court approved the sale of the Chancery Building for \$5,200,000, and the Diocese agreed to place the sale proceeds in a separate, segregated account that could be used only with the consent of the Committee or upon a further order of the Bankruptcy Court. (Dkt. 315). Under the Committee Plan, the proceeds from the sale of the Chancery Building will be contributed to the Trust.

### **Committee Investigation and Discovery**

#### **a. Discovery from the Diocese**

On November 17, 2020, the Committee provided the Diocese with a list of document requests (the “**November 2020 Requests**”). The Diocese balked at the breadth of the Committee’s requests, and the Committee agreed to prioritize and stage its requests to limit the burden on the Diocese. On January 20, 2021, the Committee and the Diocese entered into a Confidentiality Agreement and Protective Order, which outlined procedures for the Diocese to produce documents to the Committee (Dkt. 320). Shortly thereafter, on January 25, 2021, the Committee identified priority requests from the November 2020 Requests (the “**January 25, 2021 Requests**”). The Committee received no responsive documents until April 2021 and most requests were not responded to until June through August, 2021.

On April 1, 2021 to simplify and streamline the discovery process, the Committee filed the *Motion of The Official Committee of Unsecured Creditors For Entry of An Order Pursuant To Bankruptcy Rule 2004 Directing Debtor To Produce Electronically Stored Accounting Information*. (Dkt. 437). The Committee made the motion because having the accounting system would have provided the Committee with necessary financial information in a form that would enable the Committee to execute its fiduciary investigative function in the most efficient manner. On May 5, 2021, faced with opposition from the Diocese who wanted to continue to exercise complete control over the flow of information to the Committee, the Court denied the Committee’s 2021 Accounting System Motion (Dkt. 503). The Court did so understanding that the Diocese would work closely with the Committee and promptly respond to its requests. Unfortunately, the Diocese proved itself to be anything but transparent and, engaged the Committee in a long and expensive process to provide the Committee with the basic information it needed to evaluate the financial condition of the Diocese and certain Affiliates.

Following entry of that order, on May 12, 2021, the Committee provided the Diocese with requests regarding certain Diocese Affiliates, specifically the Diocese’s pooled investment fund,



Unitas, its loan program, Mission Assistance Corporation, and its captive insurance company, Ecclesia. On June 4, 2021, the Committee also sent the Diocese its initial accounting system requests. In response to these requests, the Committee received some of the information it requested, but many of its requests were only perfunctorily answered and many remain unanswered.

Although many of its existing requests remained outstanding, on June 22, 2021 the Committee provided its next round of priority requests (“**June 22, 2021 Requests**”). Each of the June 22, 2021 Requests were from the original November 2020 Requests. As the summer dragged on without responses to the Committee’s outstanding requests, the Committee pushed for the Diocese to set deadlines for productions. The Diocese agreed it would produce responsive documents by August 31, 2021. As additional accountability, the Committee requested and the Court agreed to hold regular status conferences on discovery progress. Although the Diocese continuously missed the established deadlines, it consistently produced information on the eve of each status conference.

To keep the process moving, on September 23, 2021 the Committee provided another list of priority requests (the “**September 23, 2021 Requests**”). These requests were a mix of requests from the November 2020 Requests and new requests based on areas for investigation the Committee identified primarily through its attempts to glean useful information from the 200,000 IAC Documents. As responses to the September 23, 2021 Requests dragged on, the Diocese eventually agreed to produce all responsive documents by the end of the year. Meanwhile, the Committee sent smaller requests as they arose and attempted to determine all the basic outstanding information it might need to begin mediation. As the end of the year came and went without the promised responses, the Committee collected the requests it had most recently been discussing with the Diocese as still in production and sent a letter to the Diocese outlining those requests. The items identified in that letter were stated not to be exhaustive. The Diocese agreed to a February 18 deadline for those requests. Because of the upcoming February 18 date for production of the prior requests, on February 1, 2022, the Committee sent new requests for information that the Committee determined was necessary based on its review of the documents and information produced (the “**February 1, 2022 Requests**”).

At that same time, the Committee also prepared requests directed to certain Diocese Affiliates. On February 1, 2022, the Committee asked the Diocese if it would prefer to gather information from Diocese Affiliates or whether Committee counsel should go directly to those Affiliates with requests. The Diocese requested that all requests go through it. On subsequent calls, the Diocese confirmed there was no resistance yet from the Diocese Affiliates regarding the requests. Yet on March 3, 2022, the Diocese informed the Committee it had determined that the Committee should make its requests directly to certain Diocese Affiliates and informed the Committee that the Diocese had not provided copies of the requests to the Diocese Affiliates.

While the Committee and Diocese typically met weekly to discuss progress of requests, for the February 1, 2022 Requests the Diocese provided a chart of its representation of the status of the requests several weeks following February 1, 2022. The Committee and the Diocese continued to work closely on the production of the outstanding items. When the process ended, while some information requests remained outstanding, the Committee believed that it finally had sufficient

diligence to evaluate the financial condition of the Diocese and to engage in a meaningful mediation and, ultimately, to propose the Committee Plan.

**b. Parish Information**

On June 7, 2021, the Committee *moved for Entry of an Order Pursuant to Bankruptcy Rule 2004 Directing Debtor to Produce Parish Information* (Dkt. 540) (the “**Parish Information Rule 2004 Motion**”) seeking information from the Diocese regarding the financial condition of the Parishes (Dkt. 437). The Committee sought the Parish financial information in the possession of the Diocese to evaluate whether the Parishes hold any property of the estate or property available to the estate. The Committee also sought the information to further the goal of all parties to this Case—an expeditious, global resolution—because the information is necessary for the Committee to evaluate any release of Abuse Claims against the Parishes or the imposition of any channeling injunction regarding Abuse Claims against the Parishes. The Bishop and the Diocese ultimately have complete and unilateral control over whether the Parishes participate in any plan and control over disposition of Parish property.

The Committee pointed out that to confirm a plan releasing claims against the Parishes and the Diocese, the Diocese will need to demonstrate the Parishes have substantially contributed to the plan and that creditors are receiving more through the Chapter 11 than they would in a liquidation, where they would be free to pursue their claims against the Diocese and the Parishes in state court. Now that the Diocese has filed a plan releasing claims against the Parishes, the Diocese must provide the financial information necessary for all creditors entitled to vote, include holders of Abuse Claims, to enable such claimants to determine whether they should support a plan granting those releases. The Committee believes that the disclosure made in the Diocese Disclosure Statement regarding the assets of the Parishes and other Diocese-Plan Released Non-Debtors is inadequate. The Committee does not believe that the contributions of the Diocese-Plan Released Non-Debtors, including the Parishes, is sufficient to warrant the extraordinary relief being requested. The Committee recommends that holders of Abuse Claims vote to reject the Diocese Plan.

The Parishes objected to the Parish Information 2004 Motion. (Dkt. 574) The Parishes asserted that the requested information was not relevant as it focused only on the Parishes’ ability to pay and was being requested before any assessment of the Parishes’ liability or request for releases. The Parishes further asserted that “[a] Parish’s net worth could become relevant only if (a) the Diocese seeks to confirm a plan with a channeling injunction that would, in effect, release one or more Parishes, (b) a Parish obtaining the benefit of the injunction has any real prospects for liability that is not covered by insurance (otherwise the release of the insurance would constitute the substantial contribution), and (c) such Parish asserts that it cannot afford to pay any additional liability amount above the available insurance.” (Dkt. 574 ¶25).

The Committee argued that it needed to understand the Parishes’ ability to substantially contribute because any plan will include releases for all Parishes. Every plan of every Catholic diocese has had broad releases for parishes. There have been no exceptions. The Diocese’s Plan is no exception.

Although any contribution required will need to be measured by the claims against the Parishes as well the assets available to satisfy those claims, the Committee argued it needed an understanding of those assets available to the Parishes as well as Parish assets that may belong to or otherwise be available to the Diocese for satisfaction of liabilities. Incredibly, the Parishes made the bold and unsubstantiated assertion that their insurance coverage would satisfy any liability, and the Committee should essentially agree now that a contribution of insurance rights is all that will be required of the Parishes. *Id.* Contrary to the parishes' representations, the insurers are vigorously disputing their coverage obligations. The insurers have filed answers asserting dozens of affirmative defenses they contend allegedly limit or disclaim coverage. As discussed below, Arrowood filed an amended answer and counterclaim in the district court action seeking to avoid its coverage obligations. In that filing, Arrowood clarifies that it has "denied coverage to certain parishes, schools and other entities in connection with certain lawsuits."<sup>51</sup>

Based on the Diocese's agreement to provide a few documents regarding Parish transfers, Judge Chapman denied the Parish Information Rule 2004 Motion without prejudice, without entering a written order.<sup>52</sup>

Judge Chapman admonished the Diocese and Parishes for not being open and transparent. At the initial hearing on the 2004 Motion, she advised that "[t]o the extent that money doesn't compensate [Survivors] adequately for what they suffered, disclosure and transparency will. . . [E]veryone should want there to be a full and complete picture of this so that the Diocese and Parishes and the parishioners can turn the page and move on."<sup>53</sup> Judge Chapman concluded the final hearing on the 2004 Motion by stating, "[W]e're going to keep going and things might change. So the Parishes ought not assume that we're not going to come back to this issue at some point in the not-too-distant future."<sup>54</sup>

Eventually, after over a year of litigating and significant estate professional fees, and in connection with a further extension of the Parish Stay, the Parishes produced certain financial information to the Committee to be used solely in connection with the Mediation.

### **The Parish Stay**

On the Petition Date, the Diocese initiated an adversary proceeding (Adv. 20-01126) by filing a complaint (Adv. 20-01126 Dkt. 1) seeking (i) a declaration that the automatic stay enjoins the prosecution of the State Court Actions, or (ii) a permanent injunction enjoining the State Court Actions. The Diocese also moved (Adv. 20-01126 Dkt. 2) for a preliminary injunction (the "**Parish Stay**") seeking to stay civil lawsuits against Parishes, schools, and other Catholic entities (collectively, "**DRVC Stay Parties**"). None of the DRVC Stay Parties are in bankruptcy. On October 29, 2020, the Diocese stipulated to let the Committee intervene in the adversary proceeding. (Adv. 20-01126 Dkt. 33). After filing an initial opposition to the Parish Stay (Adv. 20-01126 Dkt. 17), on November 4, 2020, the Court entered a stipulated order reflecting the Committee's agreement to a stay of the State Court Actions through December 10, 2020 (Adv. 20-

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<sup>51</sup> Arrowood Indemnity Company's Amended Answer With Affirmative Defenses, Counterclaim And Jury Demand, Case No. 20-CV-11011 (VEC), Docket No. 67-2, ¶ 68 (emphasis added).

<sup>52</sup> August 19, 2021 Transcript, 25:3-19.

<sup>53</sup> July 7, 2021 Transcript, 43:6-16.

<sup>54</sup> August 19, 2021 Transcript, 25:15-19.

01126 Dkt. 36) (the “**Parish Stay Order**”). The Parish Stay Order has been extended by agreement with the Committee nine times and a stay remains in place until there is a Bankruptcy Court determination regarding the Parish Stay. (*See* Adv. 20-01126 Dkts. 59, 69, 88, 98, 105, 112, 120, 137 and 157). There are now 489 non-duplicative State Court Actions pending against the DRVC Stay Parties.

With the last extension of the Parish Stay, the Parishes agreed to produce certain financial information to the Committee for use in connection with the Mediation. *See Stipulation and Agreed Order Extending the Termination Date of the Preliminary Injunction Staying Continued Prosecution of Certain Lawsuits* (the “**Parish Stay Stipulation**”) (Adv. 20-01126 Dkt. 157). Additionally, on the terms described in the Parish Stay Stipulation, the Committee agreed to consent to the Parish Stay until filing a Committee Consent Withdrawal Notice (as defined in the Parish Stay Stipulation) withdrawing the Committee’s consent to the continuation of the Parish Stay based on the Committee’s determination, in its sole discretion, that the Mediation is at a standstill except that the Committee could not file the Committee Consent Withdrawal Notice until after January 13, 2023. On January 14, 2023, the Committee filed the Committee Consent Withdrawal Notice (Adv. 20-01126 Dkt. 166). The Diocese is seeking the continuation of the Parish Stay. The Bankruptcy Court entered a scheduling order (Adv. 20-011226 Dkt. 168) setting a hearing regarding the Parish Stay for April 19 and 20, 2023 (the “**Parish Stay Hearing**”). The Parish Stay will continue through the Parish Stay Hearing or as the Court may order.

### **The Claims Against The Debtor.**

#### **a. The Abuse Claims.**

Over six hundred claims relating to childhood sexual abuse were filed against the Diocese in this Bankruptcy. These claims allege acts of child sexual abuse ranging from over the clothes genital touching to repeated acts of anal or vaginal penetration. These acts of abuse were perpetrated on children as young as four (4) years old. Most victims were boys ranging in age from eight (8) to thirteen (13) years old. There are claims with occurrences dating to over 75 years ago and as recently as 2018.

On January 10, 2023 the Bankruptcy Court approved procedures relating to the Diocese objecting to certain of the Abuse Claims.<sup>55</sup> To date, no objections have been filed, but the Diocese has indicated its continuing intent to pursue objections to claims. The Committee believes that the allowance of Abuse Claims is most efficiently and effectively addressed through the protocols and procedures established in the Trust. Upon the Effective Date, the allowance of Abuse Claims will be addressed through the procedures and protocols established by the Trust.

#### **b. The Personal Injury Claims.**

Thirty-nine (39) claims were filed before the General Bar Date relating to personal injury unrelated to sexual abuse and two of those claims relate to civil rights violations alleged against the Diocese and certain of its Affiliates. The Personal Injury Claims include claims relating to

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<sup>55</sup> See Order Approving Claim Objection Procedures and Granting Related Relief (Dkt. 1554).

injuries and accidents on Diocese property as well as civil rights claims. One civil rights claim alleges that a child was subject to severe racial bullying in a Parish school, and that the Diocese and the relevant Affiliates took no efforts to prevent or intervene regarding such bullying.

**c. Other Claims.**

The claims register, prepared and maintained by Epiq shows that approximately 300 general proofs of claim were filed by the General Bar Date. On August 3, 2021, the Debtor filed its First Omnibus Objection to certain General Claims (Dkt. 658) relating to claims that were duplicative or had been amended such that two proofs of claim were pending, and its Second Omnibus Objection to certain General Claims (Dkt. 659) relating to scheduled claims or proofs of claims where such claims were already satisfied. The Bankruptcy Court entered orders regarding both the First and Second Omnibus Objections to General Claims on September 20, 2021 (Dkts. 744, 745).

**Mediation.**

On October 20, 2021, the Court entered an order appointing Paul J. Van Osselaer as mediator (Dkt. 794) and ordering the Committee, the Diocese, and the Diocese's insurers to mediate in good faith.<sup>56</sup> The first mediation session did not occur until April 2022. Another four months passed before the next mediation session was scheduled for August 2022. Despite the Diocese's insistence on the necessity of a global resolution, the Parishes, for whom the Bishop and the Vicar General are the board chairs and vice chairs respectively, only became mediation parties upon the Committee's insistence in June 2022 (Dkt. 1170) and the Committee only received the Parishes' basic financial information in September 2022.<sup>57</sup> The Mediator filed status reports relating to the Mediation on December 13, 2021 (Dkt. 913), March 22, 2022 (Dkt. 1030), and October 31, 2022 (Dkt. 1390).

Since the Committee received the Parish financial information, the Committee has participated in multiple Zoom and in-person mediation sessions, and the Committee understands the mediator has held multiple additional sessions focused only on other parties. To date, the Mediation has failed to result in a global settlement. The Committee has therefore filed the Committee Plan to bring the case to resolution.

**Future Claimant Representative.**

On October 27, 2021, the Bankruptcy Court appointed Robert Gerber as Future Claimant Representative (the "FCR" or the "**Future Claims Representative**") to represent "individuals that may hold a Sexual Abuse Claim based on sexual abuse that occurred prior to the Petition Date, but who, as of the Sexual Abuse Bar Date (as defined in the *Order Establishing Deadlines For Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof*, as amended), had

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<sup>56</sup> The FCR was added as a mediation party on December 8, 2021 (Dkt. 904). Slater Slater Schulman LLP, solely in its capacity as counsel for certain claimants, was added as a mediation party on April 20, 2022 (Dkt. 1075).

<sup>57</sup> See Notice of Additional Mediation Parties (Certain Parishes) (Dkt. 1170).

not filed a proof of claim against the Debtor and who have a valid legal excuse for not doing so (the “**Future Abuse Claimants**”). (Dkt. 799).<sup>58</sup>

The FCR retained the Honorable Michael Hogan (ret) as financial advisor (Dkt. 920) and Joseph Hage Aaronson LLC as legal counsel (Dkt. 921).

The FCR is the legal representative for Future Abuse Claimants holding Future Abuse Claims as defined in Section 2.6.3 of the Committee Plan. The FCR represents the interests of each person who (a) held a Sexual Abuse Claim against the Debtor as of the Bar Date; and (b) meets one of these criteria: (i) was under the age of majority under applicable state law as of October 1, 2020; (ii) as of October 1, 2020, the statute of limitations for such person was tolled under applicable state law or had not run under applicable state law; (iii) as of October 1, 2020, the Debtor was estopped under applicable state law from asserting the statute of limitations; or (iv) such person’s Sexual Abuse Claim was barred by the applicable statute of limitations as of October 1, 2020, but is or becomes no longer barred by the applicable statute of limitations including the enactment of legislation that revives such claims. “Future Abuse Claimants” exclude any Person who has, before the Bar Date, asserted a claim against, asserted a cause of action against, provided notice to, or made a demand to or against the Debtor, arising out of or relating to Sexual Abuse or whose parent or guardian or other legal representative had done so on behalf of such Person.

Future Abuse Claims are classified in Class 7 of the Committee Plan and are impaired under the Committee Plan. The Future Abuse Claims Trust will be funded by the Trust with six percent (6 %) of the Non-Insurance Trust Assets under the Committee Plan. On the Effective Date, the Future Abuse Claims Trust shall pay all Future Abuse Claims under the Committee Plan and Future Abuse Claims Trust Documents. The payment of the Future Abuse Claims by the Future Abuse Claims Trust is not a release, accord or novation of the Debtor’s or the Participating Parties’ liability because of the Future Abuse Claims; provided, however, that the Debtor’s liability because of the Future Abuse Claims shall be discharged under Bankruptcy Code section 1141(d), subject to Sections 7.1.5 and 15.1 and all of the Participating Parties’ liabilities are subject to the Channeling Injunction and releases under the Committee Plan. Under no circumstance shall the Abuse Claims Reviewer’s review of a Future Abuse Claim affect the rights of a Non-Settling Insurer. Future Abuse Claimants shall have their Claims treated under the Future Abuse Claims Trust Allocation Protocol

### **Plan Exclusivity.**

Under Section 1121 of the Bankruptcy Code, a debtor in possession is granted an exclusive right to file a plan of reorganization for 120 days following the commencement of the case. A debtor also has the exclusive right to solicit votes accepting any plan of reorganization within the 180 days following the commencement of the case. The Bankruptcy Code further provides that a court can increase a debtor’s exclusive period to file and solicit acceptances on a plan of

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<sup>58</sup> The appointment order further expressly provided that the “definition of “Future Abuse Claimants” is without prejudice to the right of any party in interest to file a motion seeking entry of an order modifying the definition of Future Abuse Claimants, or for the Court to modify such definition in connection with confirming a plan of reorganization for the Debtor.”

reorganization for up to eighteen months and twenty months, respectively, after commencement of the case for cause.

The Bankruptcy Court extended both periods. The Debtor was granted the first extension on January 14, 2021 (Dkt. 316), the second extension was granted on May 13, 2021 (Dkt. 509), the third extension was granted on September 22, 2021 (Dkt. 755), the fourth extension was granted on December 9, 2021 (Dkt. 907). The Debtor's exclusive periods expired on April 1, 2022. On March 30, 2022, the Court entered an order (Dkt. 1049) approving a stipulation between the Diocese and the Committee agreeing that neither the Diocese nor the Committee would file a plan of reorganization until after either party provided a notice to the other of the termination of the agreed standstill. After a party providing notice of an end of the standstill, the Committee would not file a plan of reorganization until forty-five days after termination of the standstill. The Committee provided notice of the end of the standstill on November 29, 2022 (Dkt. 1485). The Diocese did not file a plan during the forty-five day standstill period.

## **VI. KEY TERMS OF THE COMMITTEE PLAN**

The Committee proposes the Committee Plan in good faith and believes the Committee Plan is feasible and in the best interest of the creditors of the Debtor. The Committee therefore recommends acceptance of the Committee Plan by holders of Claims in the Voting Classes, and recommends that the Abuse Claimants vote to accept the Committee Plan. This Disclosure Statement summarizes key components of the Committee Plan. To the extent of any inconsistencies between these summaries and the terms of the Committee Plan, the Committee Plan controls. To the extent the summaries omit any provisions of the Committee Plan, such omission does not affect the enforceability of those provisions in the Committee Plan. All Claimants are encouraged to carefully read the Committee Plan before voting.

### **A. Treatment of Unclassified Claims.**

The following summarizes the treatment of Administrative Claims, Professional Claims, Priority Tax Claims, and U.S. Trustee Fees under the Committee Plan. In accordance with Section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Professional Claims, Priority Tax Claims, and U.S. Trustee Fees have not been classified under the Committee Plan. Article IV of the Committee Plan sets forth the treatment for each type of Claim. The Committee anticipates that it will pay these unclassified claims in full on the Effective Date.

#### **Administrative Claims.**

An Administrative Claim is a claim for payment of an administrative expense of a kind specified in Bankruptcy Code Section 503(b) and referred to in Bankruptcy Code Section 507(a)(2), including the actual and necessary costs and expenses of preserving the estate or operating the Debtor's businesses after the commencement of a chapter 11 case, and compensation for legal and other services and reimbursement of expenses awarded or allowed under Bankruptcy Code Sections 330(a), 331, or 503.

The Committee Plan provides that Holders of Administrative Claims must file any requests for allowance and payment within thirty days after a notice of the Effective Date is filed with the Bankruptcy Court. Each Allowed Administrative Claim shall be paid in full in Cash under the

Committee Plan unless otherwise agreed between the Reorganized Debtor and the Holder of the Allowed Administrative Claim. Such payment shall be made either (a) on or as soon as practicable following the Effective Date, or, if later, the Allowance Date; or (b) upon such terms as agreed to in writing by the Administrative Claimant.

#### **Professional Fee Claims.**

The Committee Plan sets forth the manner and timing in which Professionals must submit Professional Claims to be considered for payment. All Professionals or other Persons requesting compensation or reimbursement of expenses under any of Sections 327, 328, 330, 331, 503(b), and 1103 of the Bankruptcy Code for services rendered by the Effective Date (including any compensation requested by any Professional or any other Person for making a substantial contribution in the Chapter 11 Case) shall file and serve an application for final allowance of compensation and reimbursement of expenses accruing from the Petition Date to the Effective Date, within 45 days of the Effective Date, or such later date as ordered by the Bankruptcy Court. If there is a dispute over what amount of a Professional Fee Claim shall be Allowed the dispute shall be resolved by the Bankruptcy Court.

#### **Priority Tax Claims.**

A Priority Tax Claim is an unsecured Claim of a governmental unit entitled to priority in payment under any provision of Section 507(a)(8) of the Bankruptcy Code. The Debtor received a single Priority Tax Claim (General Unsecured Claim No. 1) asserting a liability of \$182.08. As for any Allowed Priority Tax Claim not paid before the Effective Date, the Reorganized Debtor shall (a) pay such Claim in Cash as soon as practicable after the Effective Date; or (b) provide such other treatment agreed to by the Holder of such Allowed Priority Tax Claim and the Debtor and the Estate (if before the Effective Date) or the Reorganized Debtor (on and after the Effective Date).

#### **U.S. Trustee Fees.**

All fees due and payable under 28 U.S.C. § 1930 (the “**U.S. Trustee Fees**”) and not paid before the Effective Date shall be paid in Cash as soon as practicable after the Effective Date. The Debtor does not believe that it will owe any U.S. Trustee Fees as of the Effective Date. After the Effective Date, the Reorganized Debtor shall pay quarterly fees to the U.S. Trustee, in Cash, until the Chapter 11 Case is closed and a Final Decree is entered. In addition, the Reorganized Debtor shall file post-Confirmation Date reports in conformance with the U.S. Trustee guidelines. The U.S. Trustee shall not have to file a request for payment of its quarterly fees, which will be deemed Administrative Claims against the Debtor and the Estate.

#### **B. Treatment of Classified Claims.**

The Committee Plan does not treat each Claim identically; rather, the Committee Plan categorizes Claims into Classes, consistent with the requirements in Sections 1122 and 1123(a)(1) of the Bankruptcy Code. That means that, under the Committee Plan, some Holders of Claims will receive full satisfaction of their Claims, some will receive partial satisfaction, and some will receive nothing. In each instance, the Committee believes that Holders of Claims will receive at least as much value as they would receive if the Debtor’s Assets were to be liquidated under



chapter 7 of the Bankruptcy Code and that impaired creditors will receive more than they would receive in a chapter 7 liquidation. Regardless, it is important for Holders of Claims to read the Committee Plan and this Disclosure Statement carefully to understand how they will be treated under the Committee Plan.

The categories of Claims in the Committee Plan and summarized below classify Claims for all purposes, including voting, confirmation, and distribution under the Committee Plan and Sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim shall be deemed classified in a particular Class only if the Claim qualifies within the description of that Class and shall be deemed classified in a different Class if any remainder of the Claim qualifies within the description of such different Class. A Claim is classified within a particular Class to receive distributions only if such Claim is Allowed and has not already been satisfied before the Effective Date.

Except regarding Abuse Claims and Personal Injury Claims, the treatment in the Committee Plan is in complete satisfaction of the legal, contractual, and equitable rights that each holder of a Claim (regardless of the non-Abuse or Personal Injury Claim) may have against the Debtor or its property. This treatment supersedes and replaces any agreements or rights those holders have in or against the Debtor or its property. All Distributions under the Committee Plan will be tendered to the entity holding the Claim. EXCEPT AS SET FORTH IN THE COMMITTEE PLAN, NO DISTRIBUTIONS WILL BE MADE FROM AND NO RIGHTS WILL BE RETAINED AGAINST THE DEBTOR OR ITS PROPERTY ON ACCOUNT OF ANY CLAIM THAT IS NOT AN ALLOWED CLAIM

#### **Class 1—Priority Claims.**

- a. Classification.** Class 1 consists of Priority Claims, which are entitled to priority under Section 507 of the Bankruptcy Code, and which are not Administrative Claims or Priority Tax Claims.
- b. Impairment and Voting.** Class 1 is unimpaired under the Committee Plan. Any Holders of a Class 1 Claim is deemed to have accepted the Committee Plan under Section 1126(f) of the Bankruptcy Code and are not entitled to vote on the Committee Plan.
- c. Treatment.** The holders of Allowed Priority Claims will receive either (a) payment from the Reorganized Debtor of the full amount of their Allowed Claims in Cash, without interest on or as soon as practicable following the Effective Date or, if later, the Allowance Date; or (b) payment of their Allowed Claims upon such terms as agreed in writing by the Claimant and the Reorganized Debtor.

#### **Class 2—Secured Claims.**

- a. Classification.** Class 2 consists of Claims (i) secured by a lien on collateral to the extent of the value of such collateral as (a) in the Committee Plan, (b) agreed to by the Holder of such Claim and the Debtors, or (c) determined by a Final Order under section 506(a) of the Bankruptcy Code, or (ii)

secured by the amount of any right of setoff of the Holder thereof under section 553 of the Bankruptcy Code.

- b. Impairment and Voting.** Class 2 is unimpaired under the Committee Plan. Holders of Secured Claims are deemed to have accepted the Committee Plan under section 1126(f) of the Bankruptcy Code and are not entitled to vote on the Committee Plan. For purposes of distributions under the Committee Plan, each holder of a Secured Claim in Class 2 is considered to be in its own separate subclass within Class 2 (i.e., Class 2-1, Class 2-2, etc.), and each such subclass is deemed to be a separate Class for the Committee Plan.
- c. Treatment.** On or as soon as practicable following the Effective Date, the Reorganized Debtor in its discretion may select one alternative treatment for each Allowed Secured Claim in Class 2, which treatment shall be in full and final satisfaction, settlement and release of, and in exchange for, such Allowed Secured Claim:

(i) *Abandonment or Surrender.* The Reorganized Debtor shall abandon or surrender to the holder of such Claim the property securing such Claim, in full satisfaction and release of such Claim.

(ii) *Cash Payment.* The Reorganized Debtor shall pay to the holder of such Claim Cash equal to the Allowed amount of such Claim upon the sale of the collateral, or such lesser amount to which the holder of such Claim and Reorganized Debtor or the Trust shall agree, in full satisfaction and release of such Claim.

(iii) *Unimpairment.* The Reorganized Debtor may leave the rights of the holder of such Claim unimpaired or provide for such other treatment as necessary to otherwise satisfy the Bankruptcy Code.

(iv) *Unsecured Deficiency Claim.* Any unsecured deficiency Claim asserted by a holder of an Allowed Secured Claim in Class 2 shall be filed with the Bankruptcy Court within thirty (30) days following the date of the abandonment or surrender of such Creditor's collateral or such Creditor's receipt of its distribution under the Committee Plan. Any Allowed unsecured deficiency Claim shall be treated as a Class 5 General Unsecured Claim under the Committee Plan.

#### **Class 4—Abuse Claims.**

- a. Classification.** Class 4 consists of the Abuse Claimants against the Debtor. Abuse Claims means any claim (as defined in section 101(5) of the Bankruptcy Code), including, but not limited to any Future Abuse Claim, against the Debtor resulting or arising in whole or in part, directly or indirectly from Abuse, and seeking monetary damages or any other relief, under any theory of liability, including vicarious liability, any negligence-based theory, contribution, indemnity, or any other theory based on any acts or failures to act by the Diocese or any other person or entity for whose acts

or failures to act the Diocese is or was allegedly responsible. “Abuse Claim” does not include any Abuse Related Contingent Contribution/Reimbursement/Indemnity Claims, Extra-Contractual Claims, or Insurance Claims. To avoid doubt, Abuse Claim does not include any Claims first arising after the Petition Date or based only on conduct following the Petition Date. Under the Committee Plan, the term “Abuse” means any actual or alleged sexual conduct or misconduct, sexual abuse or molestation, indecent assault and/or battery, rape, pedophilia, ephebophilia, or sexually-related physical, psychological, or emotional harm, or contacts, or interactions of a sexual nature between a child and an adult, or a nonconsenting adult and another adult, sexual assault, sexual battery, sexual psychological or emotional abuse, humiliation, or intimidation, or any other conduct constituting a sexual offense, incest, or use of a child in a sexual performance (as such terms are defined in the New York Penal Law).

- b. Impairment and Voting.** Class 4 is impaired under the Committee Plan. The Holders of Class 4 Abuse Claims are entitled to vote on the Committee Plan. Only for purposes of voting, the claims in Class 4 are deemed valued at \$1.00.
  
- c. Treatment of Abuse Claims.** On the Effective Date, and under the terms of the Committee Plan, the Trust Documents and the Future Abuse Claim Trust Documents, the Trust and the Future Abuse Claim Trust shall be created. The Trust will be funded with (i) the sum of [forty-one (41) million], (ii) title to or proceeds from the sale of certain assets described in Committee Plan Sections 12.2 – 12.4, (iii) all Avoidance Rights (not otherwise released, time-barred, compromised, enjoined or discharged under the Committee Plan), (iv) all Causes of Action and any recoveries of such Causes of Action arising from or related to denials of coverage or coverage defenses raised by Non-Settling Insurers, and (v) the Insurance Claims and the proceeds of such Insurance Claims. The Future Abuse Claims Trust will be funded by the Trust with six percent (6 %) of the Non-Insurance Trust Assets under the Committee Plan. On the Effective Date, and subject to the terms of the Committee Plan and Trust Documents, the Trust shall pay all Class 4 Claims. Abuse Claimants shall have their Claims treated under the Trust Allocation Protocol or the Future Abuse Claims Trust Allocation Protocol, as applicable.

The Debtor shall be discharged as set forth in Section 15 of the Committee Plan of any liability because of all Abuse Claims, even if the Claimant accepts or rejects the Committee Plan. Except as otherwise provided in the Committee Plan or in the Confirmation Order, on the Effective Date under section 1141(d) of the Bankruptcy Code, the Diocese will be discharged from all liability for any Claims (except Personal Injury Claims) and Debts, known or unknown, whether or not giving rise to a right to payment or an equitable remedy, that arose, directly or indirectly, from any action,

inaction, event, conduct, circumstance, happening, occurrence, agreement, or obligation of the Debtor, or the Debtor's Representatives before the Confirmation Date, or that otherwise arose before the Confirmation Date, including all interest on any such Claims and Debts, whether such interest accrued before or after commencement of this Case, and including all Claims and Debts based upon or arising out of a Class 4 Abuse Claim and from any liability of the kind specified in sections 502(g), 502(h), and 502(i) of the Bankruptcy Code, whether or not (a) a proof of claim is filed or is deemed filed under section 501 of the Bankruptcy Code; (b) such Claim is Allowed under the Committee Plan; or (c) the holder of such Claim has accepted the Committee Plan for all claims that occurred before confirmation of the Committee Plan, and Abuse Claimants in Class 4 and Class 7, and Holders of Personal Injury Claims in Class 6 and Holders of Civil Rights Claims in Class 9 will only be permitted to recover on their claims from the Debtor's Insurance Policies or from third parties also found to be liable for the Abuse Claims, Personal Injury Claims or Civil Rights Claims.

Notwithstanding the above, to preserve coverage under any Non-Settling Insurer's Insurance Policies, Class 4 and Class 7 Claimants specifically reserve, and do not release, any claims they may have against the Diocese, the Reorganized Debtor, or any other Participating Party that implicate coverage under any Non-Settling Insurer's Insurance Policies, but recourse is limited to the proceeds of the Non-Settling Insurer's Insurance Policies and all other damages (including extra-contractual damages), awards, judgments in excess of policy limits, penalties, punitive damages and attorney's fees and costs that may be recoverable against any Non-Settling Insurers because of their conduct regarding insurance coverage for, or defense or settlement of, any Abuse Claim, and any such judgments or awards will be handled under the Committee Plan and the Trust Allocation Protocol. The Class 4 Claims and Class 7 Claims will not be released or enjoined as against the Diocese, the Reorganized Debtor, or any other Participating Party for any Abuse that may be covered under any Non-Settling Insurer's Insurance Policies until such claims are settled with the Diocese, the Reorganized Debtor, any other Participating Party and such Non-Settling Insurer or are adjudicated, resolved, and subject to Final Order, but recourse is limited as described above.

#### **Class 5—General Unsecured Claims.**

- a. Classification.** Class 5 consists of the Holders of General Unsecured Claims against the Diocese. These Claims consist of any Claim against the Debtor not otherwise separately classified under the Committee Plan.
- b. Treatment.** On, or as soon as reasonably practicable after, the later of (a) the Effective Date or (b) the date on which a General Unsecured Claim becomes an Allowed General Unsecured Claim, each Holder of an Allowed

General Unsecured Claim shall receive, in full satisfaction, settlement, and release of, and in exchange for, such Allowed General Unsecured Claim, (i) Cash equal to the unpaid part of such Allowed General Unsecured Claim; (ii) reinstatement of such claim to be paid in the ordinary course of business of the Reorganized Debtor; (iii) such other treatment such that it will not be impaired under section 1124 of the Bankruptcy Code; or (iv) such other less favorable treatment as to which the Debtor or the Reorganized Debtor and the Holder of such Allowed General Unsecured Claim shall have agreed upon in writing. If a General Unsecured Claim is unliquidated and was subject to existing litigation pending in state or federal court before the Petition Date, if the Diocese does not object to such Claim before the Claims Objection Deadline, then following the Claims Objection Deadline, such litigation shall no longer be stayed and such litigation may be continued against the Diocese as the Reorganized Debtor and such litigation shall continue as the same existed on the Petition Date.

- c. **Impairment and Voting.** The Holders of Allowed General Unsecured Claims in Class 5 are unimpaired and are not entitled to vote to accept or reject the Committee Plan.

#### **Class 6—Personal Injury Claims.**

- a. **Classification.** Class 6 Personal Injury Claims are the Claims listed on Committee Plan Exhibit F. To avoid doubt, no Abuse Claim is a Personal Injury Claim.
- b. **Impairment and Voting.** Class 6 is impaired under the Committee Plan. The Holders of Personal Injury Claims in Class 6 are entitled to vote on the Committee Plan. Only for purposes of voting, the claims in Class 6 are deemed valued at \$1.00
- c. **Treatment.** On the Effective Date, the Class 6 Claimants may elect to litigate against the non-Debtor Co-Defendants or select to receive from the Trust \$250,000 minus any amounts already expended by the Diocese or the non-Debtor Co-Defendants on pre-petition defense costs relating to litigation of such Class 6 Claim. If a Class 6 Claimant elects to litigate, the Trust shall provide the Reorganized Debtor with \$250,000 minus any amounts already expended by the Diocese or the non-Debtor Co-Defendants on pre-petition defense costs relating to litigation of such Class 6 Claim to satisfy the self-insured retention under the relevant Ecclesia policy. Nothing in the Committee Plan shall enlarge the rights or Claims of Class 6 Claimants or limit or waive any defenses to the Class 6 Claims. Unless otherwise provided in the Committee Plan, the Committee Plan shall not affect the liability of any other Person on, or the property of any other Person for, the Class 6 Claims, which liability shall continue unaffected by the terms of the Committee Plan or the discharge granted to the Diocese under the Committee Plan and Section 1141(d) of the Bankruptcy Code.

Nothing in the Committee Plan is intended to affect, diminish, or impair the Class 6 Claimant's right against any other parties, including such party's joint and several liability.

**Class 7—Future Abuse Claims.**

- a. Classification.** Class 7 consists of the Future Abuse Claims. The Future Abuse Claims are Sexual Abuse Claims held by Future Abuse Claimants—*i.e.*, individuals who held Sexual Abuse Claims as of October 1, 2020, and had a valid justification for failing to assert a timely Abuse Claim in the Case, as detailed in Section 7.4 of the Committee Plan. The FCR, as the legal representative of the Future Abuse Claimants, is deemed to be the Holder of the Class 7 Claims.
- b. Impairment and Voting.** Class 7 is impaired under the Committee Plan. The Future Claims Representative is entitled to vote on the Committee Plan on behalf of Class 7 Claimants. Only to vote, the Future Claims Representative is deemed to have an Allowed Claim for \$1.00
- c. Treatment and Election.** Class 7 is impaired under the Committee Plan. The Future Abuse Claims Trust will be funded by the Trust with six percent (6 %) of the Non-Insurance Trust Assets under the Committee Plan. On the Effective Date, the Future Abuse Claims Trust shall pay all Future Abuse Claims under and the Committee Plan and Future Abuse Claims Trust Documents. The payment of the Future Abuse Claims by the Future Abuse Claims Trust is not a release, accord or novation of the Debtor's or the Participating Parties' liability because of the Future Abuse Claims; provided, however, that the Debtor's liability because of the Future Abuse Claims shall be discharged under Bankruptcy Code section 1141(d), subject to Sections 7.1.5 and 15.1 of the Committee Plan and all of the Participating Parties' liabilities are subject to the Channeling Injunction and releases under the Committee Plan. Under no circumstance shall the Abuse Claims Reviewer's review of a Future Abuse Claim affect the rights of a Non-Settling Insurer. Future Abuse Claimants shall have their Claims treated under the Future Abuse Claims Trust Allocation Protocol.

The Non-Settling Insurers remain liable for their obligations related to the Future Abuse Claims, and their obligations are not reduced by the Diocese being in bankruptcy or by the distributions Future Abuse Claimants receive, or are entitled to receive, based on the Committee Plan. For the avoidance of doubt, determinations by the Abuse Claims Reviewer and/or any distributions entitled to be received from the Future Abuse Claims Trust shall not constitute a determination of the Diocese's or any Participating Party's liability or damages for Future Abuse Claims.

Notwithstanding the above, to preserve coverage under any Non-Settling Insurer's Insurance Policies, Class 4 and Class 7 Claimants specifically

reserve, and do not release, any claims they may have against the Diocese, the Reorganized Debtor, or any other Participating Party that implicate coverage under any Non-Settling Insurer's Insurance Policies, but recourse is limited to the proceeds of the Non-Settling Insurer's Insurance Policies and all other damages (including extra-contractual damages), awards, judgments in excess of policy limits, penalties, punitive damages and attorney's fees and costs that may be recoverable against any Non-Settling Insurers because of their conduct regarding insurance coverage for, or defense or settlement of, any Abuse Claim, and any such judgments or awards will be handled under the Committee Plan and the Trust Allocation Protocol. The Class 4 Claims and Class 7 Claims will not be released or enjoined as against the Diocese, the Reorganized Debtor, or any other Participating Party for any Abuse that may be covered under any Non-Settling Insurer's Insurance Policies until such claims are settled with the Diocese, the Reorganized Debtor, any other Participating Party and such Non-Settling Insurer or are adjudicated, resolved, and subject to Final Order, but recourse is limited as described above.

**Class 8: Abuse Related Contingent  
Contribution/Reimbursement/Indemnity Claims.**

- a. **Classification.** Class 8 consists of Holders of Abuse Related Contingent Contribution/ Reimbursement/Indemnity Claims.
- b. **Impairment and Voting.** Class 8 is impaired under the Committee Plan. The Holders of Claims in Class 8 are not entitled to vote on the Committee Plan and are deemed to reject the Committee Plan.
- c. **Treatment.** Under Section 502(e)(1) of the Bankruptcy Code, each Abuse Related Contingent Contribution/ Reimbursement/Indemnity Claim held by any Person or Entity against the Debtor shall be disallowed and will receive no distribution under the Committee Plan. Notwithstanding the disallowance of an Abuse Related Contingent Contribution / Reimbursement / Indemnity Claim, an Abuse Litigation Claimant who liquidates its claim in an amount greater than \$0, consents to application of its part of the reserve established by the Trustee under Section 10.3 of the Trust Agreement to pay any Co-Defendant for its contribution / reimbursement / indemnity claim against the Debtor.

**Class 9: Civil Rights Claims.**

- a. **Classification.** Class 9 consists of Holders of Civil Rights Claims.
- b. **Impairment and Voting.** Class 9 is impaired under the Committee Plan. The Holders of Claims in Class 9 are entitled to vote on the Committee Plan.
- c. **Treatment.** The Trust shall create the **Civil Rights Claim Reserve** with \$300,000 from Non-Insurance Trust Assets. Under the Full Settlement

Alternative, or the Partial Settlement Alternative if Ecclesia funds the Agreed Amount and becomes a Settling Insurer, the Civil Rights Claim Reserve shall also include the Ecclesia Non-Abuse Claim Contribution. On the Effective Date, the Trust shall pay all Civil Rights Claims their pro-rata share of the Civil Rights Claim Reserve. The payment of the Civil Rights Claims by the Trust is not a release, accord or novation of the Debtor's or the Participating Parties' liability because of the Civil Rights Claims; provided, however, that the Debtor's liability because of the Civil Rights Claims shall be discharged under Bankruptcy Code section 1141(d), subject to Sections VII.A.11 and subject to Sections 7.1.1 and 15.1 of the Committee Plan and all of the Participating Parties' liabilities are subject to the Channeling Injunction and releases under the Committee Plan. Non-Settling Insurers remain fully liable for their obligations related in any way to the Civil Rights Claims, and their obligations are not reduced by the Diocese being in bankruptcy or by the distributions Civil Rights Claimants receive, or are entitled to receive, based on the Committee Plan.

**Civil Rights Claim Objections.** No Class 9 Claimant may challenge the merit, validity, or amount of any other Class 9 Claim. Except for any objection to a Class 9 Claim filed by the Committee, any objection to a Class 9 Claim pending as of the Effective Date is deemed withdrawn with prejudice. The Trustee has the exclusive right to object to a Class 9 Claim and shall succeed to the rights of the Committee because of the Committee's objection to a Class 9 Claim. The Reorganized Debtor shall not have the right to object to a Class 9 Claim.

**Litigation Option.** If Ecclesia does not fund the Agreed Amount, the Class 9 Claimants may elect to litigate against the non-Debtor Co-Defendants or select to receive from the Trust \$250,000 minus any amounts already expended by the Diocese or the non-Debtor Co-Defendants on pre-petition defense costs relating to litigation of such Class 9 Claim. If a Class 9 Claimant elects to litigate, the Trust shall provide the Reorganized Debtor with \$250,000 minus any amounts already expended by the Diocese or the non-Debtor Co-Defendants on pre-petition defense costs relating to litigation of such Class 9 Claim to satisfy the self-insured retention under the relevant Ecclesia policy. Nothing in the Committee Plan shall enlarge the rights or Claims of Class 9 Claimants or limit or waive any defenses to the Class 9 Claims. Unless otherwise provided in the Committee Plan, the Committee Plan shall not affect the liability of any other Person on, or the property of any other Person for, the Class 9 Claims, which liability shall continue unaffected by the terms of the Committee Plan or the discharge granted to the Diocese under the Committee Plan and Section 1141(d) of the Bankruptcy Code. Nothing in the Committee Plan is intended to affect, diminish, or impair the Class 9 Claimant's right against any other parties, including such party's joint and several liability.



## VII. MEANS FOR IMPLEMENTATION OF THE COMMITTEE PLAN

### A. Establishment of the Trust.

On the Confirmation Date, the Trust shall be established under the Trust Documents and the Future Abuse Claims Trust shall be established under the Future Abuse Claims Trust Documents.

#### **Trust Funding.**

The Trust will be funded:

- On the Effective Date the Diocese, by wire transfer, will pay or deliver to the Trust [\$41 million] and, further, the Diocese shall transfer, assign or otherwise deliver the assets identified in Sections 12.2 – 12.4 to the Trust. The Participating Parties by wire transfer, will pay or deliver to the Trust their agreed upon amount.
- Under the Full or Partial Settlement Alternatives, the Settling Insurers shall pay the trust under any applicable settlement agreements.
- On the Effective Date, with no further act by any party, the Diocese and the Committee will be deemed to have assigned to the Trustee and the Trust all Avoidance Rights (not otherwise released, time-barred, compromised, enjoined or discharged under the Committee Plan).
- Under the Litigation Only Alternative, on the Effective Date, with no further act by any party, the Diocese and the Participating Parties shall be deemed to have assigned the Insurance Claims and the proceeds of such Insurance Claims to the Trust and such assignment shall immediately be deemed effective. On the Effective Date, the Trust will be empowered to receive assignment of Litigation Awards and to take all steps necessary to pursue recovery from Non-Settling Insurers.
- Under the Partial Settlement Alternative, on the Effective Date, with no further act by any party, the Diocese and the Participating Parties shall be deemed to have assigned the Insurance Claims, except the Arrowood Insurance Claims, and the proceeds of such Insurance Claims to the Trust and such assignment shall immediately be deemed effective. On the Effective Date, the Trust will be empowered to receive assignment of Litigation Awards and to take all steps necessary to pursue recovery from Non-Settling Insurers.
- The Trust shall transfer six percent (6 %) of the Non-Insurance Trust Assets to the Future Abuse Claims Trust.

### **Reserve Accounts.**

As set forth in the Trust Agreement and Future Abuse Claims Trust Agreements, the Trustee and Future Abuse Claims Trustee shall establish reserves for various purposes.

### **No Execution.**

All funds held in the Trust will remain property of the Trust until the funds have been actually paid to and received by a Person or Entity entitled to receive payment under the Committee Plan, Confirmation Order and Trust Documents. Except as provided in the Committee Plan, Confirmation Order and the Trust Documents, the Trust shall not be responsible for any Claims against the Debtor. All funds held in the Future Abuse Claims Trust will remain property of the Future Abuse Claims Trust until the funds have been actually paid to and received by a Person or Entity entitled to receive payment under the Committee Plan, Confirmation Order and Future Abuse Claims Trust Documents. Except as provided in the Committee Plan, Confirmation Order and the Future Abuse Claims Trust Documents, the Future Abuse Claims Trust shall not be responsible for any Claims against the Debtor.

### **Liquidation and Payment of Abuse Claims.**

The Trust and Future Abuse Claims Trust shall pay Abuse Claims under the terms of the Committee Plan, Confirmation Order, the Trust Agreement, the Trust Allocation Protocol, the Future Abuse Claims Trust Agreement, and the Future Abuse Claims Trust Allocation Protocol, as applicable.

The Abuse Claims Reviewer's determinations shall not be a finding or fixing of the fact or liability or the amount payable for any Abuse Claim with any binding legal effect, other than for distribution purposes by the Trust under the Trust Allocation Protocol or the Future Abuse Claims Trust under the Future Abuse Claims Trust Allocation Protocol. The Trustee's, Future Abuse Claims Trustee's or Abuse Claims Reviewer's determination of qualification of an Abuse Claim, payment because of an Abuse Claim or reserve for payment because of an Abuse Claim does not admit liability by the Debtor, a Participating Party, the Trust, or the Future Abuse Claims Trust regarding any Abuse Claims and has no *res judicata* or collateral estoppel effect on the Debtor, any Participating Party, the Trust, the Future Abuse Claims Trust, any Non-Settling Insurer or Settling Insurer.

Trust and Future Abuse Claims Trust distributions do not release the Debtor or any other Participating Party nor are Trust Distributions or Future Abuse Claims Trust Distributions an agreement or novation of the Debtor's or other Participating Party's liability because of the Abuse Claims. The Trust's or Future Abuse Claims Trust's act of making a distribution is immaterial to, and shall not be construed as, a determination or admission of the Diocese's or any Participating Party's liability for, or damages regarding, any Abuse Claim. The determination of qualification, estimation of Abuse Claims, and payment of distributions is not a settlement, release, accord, or novation of any Abuse Claims and cannot be used by any Joint Tortfeasor as a defense to any alleged joint liability. The Trustee's, Future Abuse Claims Trustee's or Claims Reviewer's determination of qualification of an Abuse Claim, payment because of an Abuse Claim or reserve for payment because of an Abuse Claim does not impair an Abuse Claimant's rights to obtain a

judgment, including a judgment based on joint and several liability, against the Diocese, a Participating Party, or any Non-Settling Insurer, to establish the Diocese's and/or a Participating Party's liability on the Abuse Claim, but any such judgment awarded to an Abuse Claimant will be reduced by the Trust Distributions or Future Abuse Claims Trust Distributions already paid by the Trust or Future Abuse Claims Trust to such Abuse Claimant on his or her Abuse Claim(s).

Nothing in the Trust Documents or Future Abuse Claims Trust Documents shall (i) impose any costs, directly or indirectly, upon the Estate, any Participating Party or any Settling Insurer relating to the treatment of Abuse Claims or (ii) otherwise modify the rights or obligations of the Estate, any Participating Party or Settling Insurer as otherwise in the Committee Plan.

Neither the Debtor's or the Participating Parties' obligations to Abuse Claimants shall be deemed to have been paid in full, nor their liability to Abuse Claimants satisfied, because of reserves for, distributions because of or payments received by Abuse Claimants from the Trust or Future Abuse Claims Trust, except as modified by the discharge provisions in Section 15. The Trust, Future Abuse Claims Trust or the Diocese and Participating Parties may continue efforts to obtain recoveries from Non-Settling Insurers related to the Abuse Claims. In addition, the Non-Settling Insurers remain liable for their obligations related to the Abuse Claims, and their obligations are not reduced by the Diocese being in bankruptcy or by the distributions Abuse Claimants receive, or are entitled to receive, based on the Committee Plan. For the avoidance of doubt, determinations by the Abuse Claims Reviewer and/or any distributions entitled to be received from the Trust or Future Abuse Claims Trust shall not constitute a determination of the Diocese's or any Participating Party's liability or damages for Abuse Claims.

#### **Effect of No Award on Abuse Claims.**

If an Abuse Claim is denied payment under the Trust Allocation Protocol or Future Abuse Claims Trust Allocation Protocol, the holder of such Abuse Claim will have no further rights against the Diocese, Participating Parties, the Trust, Trustee, Future Abuse Claims Trust, or Future Abuse Claims Trustee relating to such Abuse Claim.

#### **Treatment of Punitive Damages.**

Claims for punitive or exemplary damages in connection with any of the Claims will be treated as Penalty Claims and will receive no distribution under the Committee Plan.

#### **Withdrawal of Abuse Claims.**

An Abuse Claimant may withdraw an Abuse Claim at any time on written notice to the Trustee or Future Abuse Claims Trustee, as applicable. If withdrawn, the Claim will be withdrawn with prejudice and may not be reasserted.

#### **Diocese Cooperation with Trustee, Future Abuse Claims Trustee and Abuse Claims Reviewer.**

The Diocese and its counsel shall reasonably cooperate with the Trustee, the Future Abuse Claims Trustee and the Abuse Claims Reviewer with any inquiries by either in the administration of the Trust Allocation Protocol and the Future Abuse Claims Trust Allocation Protocol.

### **Abuse Claim Objections.**

1.1.2 No Class 4 Claimant may challenge the merit, validity, or amount of any other Class 4 Claim. Except for any objection to a Class 4 Claim filed by the Committee, any objection to a Class 4 Abuse Claim pending as of the Effective Date is deemed withdrawn with prejudice. The Trustee has the exclusive right to object to a Class 4 Claim and shall succeed to the rights of the Committee because of the Committee's objection to a Class 4 Claim. The Reorganized Debtor shall not have the right to object to a Class 4 Claim. To the extent there is an objection a Class 4 Claim pending as of the Confirmation Date, the Trustee shall succeed the Debtor for any pending objections to Class 4 Claims.

### **Future Abuse Claims Objections.**

No Class 7 Claimant may challenge the merit, validity, or amount of any other Class 7 Claim. Except for any objection to a Class 7 Claim filed by the Committee, any objection to a Class 7 Abuse Claim pending as of the Effective Date is deemed withdrawn with prejudice. The Future Abuse Claims Trustee has the exclusive right to object to a Class 7 Claim and shall succeed to the rights of the Committee because of the Committee's objection to a Class 7 Claim. The Reorganized Debtor shall not have the right to object to a Class 7 Claim.

### **Diocese Discharge of Abuse Claim Liability.**

The Debtor shall be discharged as set forth in Section 15 of the Committee Plan of any liability because of all Class 4 and Class 7 Claims, even if the Claimant rejects the Committee Plan. As provided in Bankruptcy Code section 524(e), unless otherwise provided in the Committee Plan, such discharge shall not affect the liability of any other Person or Entity on, or the property of any other Person or Entity for, the Abuse Claims including the liability of any Co-Defendant or Non-Settling Insurer, which liability shall continue unaffected by the terms of the Committee Plan or the discharge granted to the Debtor or the Reorganized Debtor under the Committee Plan and Bankruptcy Code section 1141(d). Nothing in the Committee Plan is intended to affect, diminish or impair any Abuse Claimant's rights against a Co-Defendant, including that Co-Defendant's joint and several liability for Abuse.

Notwithstanding the above, to preserve coverage under any Non-Settling Insurer's Insurance Policies, Class 4 and Class 7 Claimants specifically reserve, and do not release, any claims they may have against the Diocese, the Reorganized Debtor, or any other Participating Party that implicate coverage under any Non-Settling Insurer's Insurance Policies, but recourse is limited to the proceeds of the Non-Settling Insurer's Insurance Policies and all other damages (including extra-contractual damages), awards, judgments in excess of policy limits, penalties, punitive damages and attorney's fees and costs that may be recoverable against any Non-Settling Insurers because of their conduct regarding insurance coverage for, or defense or settlement of, any Abuse Claim, and any such judgments or awards will be handled under the Committee Plan and the Trust Allocation Protocol. The Class 4 Claims will not be released or enjoined as against the Diocese, the Reorganized Debtor, or any other Participating Party for any Abuse that may be covered under any Non-Settling Insurer's Insurance Policies until such claims are settled with the Diocese, the Reorganized Debtor, any other Participating Party and such Non-Settling Insurer or are adjudicated, resolved, and subject to Final Order, but recourse is limited as described above.

### **Remand of State Court Actions.**

On the thirtieth (30th) day after the Effective Date, all actions related to Abuse Claims removed to the Bankruptcy Court shall be remanded to the state courts where the actions originally were commenced; provided that an action shall not be remanded if the plaintiff files a written request to the contrary with the Bankruptcy Court prior thereto. The Bankruptcy Court shall enter an order in each of the removed actions remanding them under the Committee Plan.

### **Litigation of Abuse Claims Against Non-Settling Insurers.**

Under the Partial Settlement or Litigation Only Alternatives, a Class 4 Claimant, with the consent of the Trustee and under the Trust Allocation Protocol and Trust Agreement, may commence an action against the Diocese and, if applicable, one or more Participating Parties, solely for liquidating a Class 4 Claim to pursue Insurance Recoveries regarding such Class 4 Claim from Non-Settling Insurers. The Diocese will not have to expend any funds regarding such defense, except to the extent required by the terms of any Insurance Policy issued by a Non-Settling Insurer. Consistent with the discharge provided for in Section 15.1 and the rights of a Participating Party, any judgment obtained in such action may not be enforced against the Diocese, a Participating Party and/or any of the non-insurance assets of the Diocese or such Participating Party, including, but not limited to, the Revested Assets or any assets acquired by the Reorganized Debtor after the Effective Date, and such judgment shall be paid under the Committee Plan and the Trust Allocation Protocol and shall be enforceable solely against and paid by any Non-Settling Insurer under the terms of that Non-Settling Insurer's Insurance Policy. Any recovery from the prosecution of such an action is deemed assigned to the Trust to the extent provided in the Committee Plan, including as provided in Trust Allocation Protocol Insurance Matters.

### **Applicability.**

The terms of Section IX of the Committee Plan as described below only applies under the Partial Settlement and Litigation Only Alternatives.

### **Transfer of Insurance Rights under the Partial Settlement Alternative.**

On the Effective Date, and with no further action by any party, but subject to the Committee Plan, the Diocese and each of the Participating Parties will be deemed to have assigned to the Trust the Diocese's and the Participating Parties' rights to all Insurance Claims, except the Arrowood Insurance Claims, and Insurance Recoveries, except Arrowood Insurance Recoveries, against the Non-Settling Insurers. The foregoing transfer shall be effective to the maximum extent permissible under applicable law and the terms of the Insurance Policies and shall not be construed: (a) as an assignment of the Insurance Policies or (b) to entitle any person or entity to Insurance Coverage other than those Persons or entities entitled to such coverage under the terms of the Insurance Policies. The determination of whether the assignment of Insurance Claims provided for in the Committee Plan is valid, and does not defeat or impair the Insurance Coverage shall be made by the Bankruptcy Court at the Confirmation Hearing. If a party in interest fails to timely file an objection to the proposed assignment by the deadline for filing objections to confirmation of the Committee Plan, that party in interest shall be deemed to have irrevocably consented to the assignment and will be forever barred from asserting that the assignment in any way affects the

ability of the Trust to pursue Insurance Claims, Insurance Coverage, and/or Insurance Recoveries from the Non-Settling Insurers. If the Bankruptcy Court determines that the assignment of the Insurance Claims and Insurance Recoveries is valid and does not defeat or impair the Insurance Coverage, following the Effective Date, the Trust shall assume responsibility for, and be bound by, all of the obligations of the Debtor and Participating Parties under the Insurance Policies; provided, however, that the Trust's assumption of such responsibility shall not relieve the Diocese or the Participating Parties from any obligation that such entities may have under the Insurance Policies.

#### **Transfer of Insurance Rights under the Litigation Only Alternative.**

On the Effective Date, and with no further action by any party, but subject to the Committee Plan, the Diocese and each of the Participating Parties will be deemed to have assigned to the Trust the Diocese's and the Participating Parties' rights to all Insurance Claims and Insurance Recoveries against the Non-Settling Insurers. The foregoing transfer shall be effective to the maximum extent permissible under applicable law and the terms of the Insurance Policies and shall not be construed: (a) as an assignment of the Insurance Policies or (b) to entitle any person or entity to Insurance Coverage other than those Persons or entities entitled to such coverage under the terms of the Insurance Policies. The determination of whether the assignment of Insurance Claims provided for in this Section is valid, and does not defeat or impair the Insurance Coverage shall be made by the Bankruptcy Court at the Confirmation Hearing. If a party in interest fails to timely file an objection to the proposed assignment by the deadline for filing objections to confirmation of the Committee Plan, that party in interest shall be deemed to have irrevocably consented to the assignment and will be forever barred from asserting that the assignment affects the ability of the Trust to pursue Insurance Claims, Insurance Coverage, and/or Insurance Recoveries from the Non-Settling Insurers. If the Bankruptcy Court determines that the assignment of the Insurance Claims and Insurance Recoveries is valid and does not defeat or impair the Insurance Coverage, following the Effective Date, the Trust shall assume responsibility for, and be bound by, only such obligations of the Diocese or the Participating Parties under the Non-Settling Insurer Insurance Policies as are necessary to enforce the Transferred Insurance Claims; provided, however, that the Trust's assumption of such responsibility shall not relieve the Diocese or the Participating Parties from any duty that such entities may have under the Non-Settling Insurer Insurance Policies.

#### **Appointment of Trustee as Estate Representative to Enforce Insurance Rights and Obtain Insurance Recoveries.**

Under section 1123(b)(3)(B) of the Bankruptcy Code, the Trustee is appointed as the representative of the Diocese and Participating Parties to retain and enforce the Diocese's and Participating Parties' Insurance Coverage and for Insurance Claims regarding the Abuse Claims against the Diocese and Participating Parties for any Insurance Claims transferred to the Trust. The determination of whether the appointment of the Trust as the Debtor's and the Debtor's Estate's representative provided for in Section 15 of the Committee Plan is valid and does not defeat or impair the Insurance Coverage, shall be made by the Bankruptcy Court at the Confirmation Hearing. If a party in interest fails to timely file an objection to the proposed appointment by the deadline for filing objections to confirmation of the Committee Plan, that party in interest shall be deemed to have irrevocably consented to the appointment and will be forever barred from asserting that the appointment in any way affects the ability of the Trust to pursue

Insurance Claims identified as transferred to the Trust under Sections 11.2 and 11.3 of the Committee Plan (the “**Transferred Insurance Claims**”), Insurance Coverage, and/or Insurance Recoveries related to Transferred Insurance Claims from the Non-Settling Insurers. If the Bankruptcy Court determines that the appointment is valid and does not defeat or impair the Insurance Coverage, following the Effective Date, the Trust shall assume responsibility for, and be bound by, only such obligations of the Diocese or the Participating Parties under the Non-Settling Insurer Insurance Policies as are necessary to enforce the Transferred Insurance Claims; provided, however, that the Trust’s appointment shall not relieve the Diocese or the Participating Parties from any duty that such entities may have under the Non-Settling Insurer Insurance Policies.

**Consequences of Determination That Assignment or Appointment is Invalid.**

If a Final Order is entered holding that the assignment of Insurance Claims provided for in Sections 11.2 and 11.3 of the Committee Plan, or that the appointment of the Trust as the Diocese’s and Participating Parties’ representative provided for in Section 11.4 of the Committee Plan, is invalid or would defeat or impair the Insurance Coverage regarding an Insurance Policy, as to such Insurance Policy, the assignment and/or appointment, as the case may be, will be deemed not to have been made. If the assignment and/or appointment is not deemed to have been made, the Diocese and each of the Participating Parties will retain the Insurance Claims under such Insurance Policy.

The Trust, the Reorganized Debtor, and any Participating Parties shall sign a common interest agreement related to pursuing any Transferred Insurance Claims.

The Reorganized Debtor and the Participating Parties will assert their Insurance Claims to the extent requested by the Trust against any Non-Settling Insurer. All Insurance Recoveries identified as transferred to the Trust under Sections 11.2 and 11.3 of the Committee Plan received by the Reorganized Debtor and the Participating Parties will be immediately paid to the Trust. The Reorganized Debtor and Participating Parties will select and retain counsel to pursue their Insurance Claims under this Section, subject to the Trustee’s approval, which approval shall not be unreasonably withheld.

The Reorganized Debtor and Participating Parties shall cooperate with the Trust regarding the Transferred Insurance Claims, including that the Reorganized Debtor and Participating Parties will provide the Trustee and its counsel with all discovery requests, pleadings, moving documents and other papers that the Reorganized Debtor or Participating Parties intend to make or file regarding the Transferred Insurance Claims and any related counterclaims against the Non-Settling Insurers before making such requests or filing. The Reorganized Debtor and Participating Parties shall keep the Trustee advised of any settlement discussions regarding any litigation against a Non-Settling Insurer and will involve the Trust’s counsel in all settlement discussions with any Non-Settling Insurer.

The Trust shall pay the reasonable attorneys’ fees, costs and expenses allowed by the Bankruptcy Court incurred by the Reorganized Debtor and Participating Parties in pursuing the Transferred Insurance Claims under Section 11.5 of the Committee Plan, subject to a monthly cap

to be established by the Trustee, in consultation with the Reorganized Debtor and Participating Parties.

The Trust shall, in addition to reasonable attorneys' fees, costs and expenses provided for in Section 11.5.4 of the Committee Plan, reimburse the Reorganized Debtor and Participating Parties for any reasonable out of pocket costs and expenses it incurs as a direct consequence of pursuing such Transferred Insurance Claims, but will not compensate the Reorganized Debtor and Participating Parties for any time any of its employees spends. All Insurance Recoveries received by the Reorganized Debtor or Participating Parties because of such Transferred Insurance Claims shall be held in trust to benefit the Trust and shall be immediately remitted by the Reorganized Debtor or Participating Parties to the Trust.

#### **Preservation of Insurance Rights.**

Nothing in the Committee Plan shall be construed to impair or diminish any Non-Settling Insurer's obligations under any Insurance Policy. No provision of the Committee Plan shall impair or diminish any Non-Settling Insurer's legal, equitable, or contractual obligations relating to the Insurance Policies issued by the Non-Settling Insurers or the Insurance Claims against the Non-Settling Insurers. If any court determines that any provision of the Committee Plan impairs or diminishes any Non-Settling Insurer's obligations regarding the Insurance Claims or Insurance Recoveries, such provision shall be given effect only if it shall not cause such impairment or diminishment.

#### **Post-Judgment Actions Against Non-Settling Insurers.**

If the Trust or any Abuse Claimant obtains a judgment against the Reorganized Debtor or Participating Parties, the Reorganized Debtor or Participating Parties will cooperate with the Trust or Abuse Claimant in the pursuit of any action brought by the Trust or Abuse Claimant against a Non-Settling Insurer that the Trust contends provides Insurance Coverage for such judgment. The Reorganized Debtor and/or Participating Parties will provide the Trust or Abuse Claimant with any non-privileged and relevant documents and information reasonably requested by the Trust or Abuse Claimant in pursuit of such an action. The Trust will reimburse the Reorganized Debtor and Participating Parties for any reasonable out of pocket costs they incur, including attorneys' fees, as a direct consequence of such cooperation, but will not compensate the Reorganized Debtor and Participating Parties for any time their employees spend.

#### **Settlement with Non-Settling Insurers Under the Partial Settlement Alternative.**

Following the Effective Date, the Reorganized Debtor and the Participating Parties shall not enter into a settlement agreement affecting any Insurance Policy with any Non-Settling Insurer, except Arrowood, without the express written consent of the Trustee, which consent may be granted or withheld at the Trustee's sole and absolute discretion. Following the Effective Date, the Trust shall exclusively act on the Reorganized Debtor's and Participating Parties' behalf to negotiate a settlement with any Non-Settling Insurer, except Arrowood, because of such Insurance Claims, unless 11.5 of the Committee Plan applies. The Diocese and Participating Parties shall



retain authority to negotiate and enter into a settlement agreement with Arrowood. Such settlements may provide for the Non-Settling Insurer to become a Settling Insurer.

**Settlement with Non-Settling Insurers Under the Litigation Only Alternative.**

Following the Effective Date, the Reorganized Debtor and the Participating Parties shall not enter into a settlement agreement affecting any Insurance Policy with any Non-Settling Insurer without the express written consent of the Trustee, which consent may be granted or withheld at the Trustee's sole and absolute discretion. Following the Effective Date, the Trust shall exclusively act on the Reorganized Debtor's and Participating Parties' behalf to negotiate a settlement with any Non-Settling Insurer because of such Insurance Claims, unless Section 11.5 of the Committee Plan applies. Such settlements may provide for the Non-Settling Insurer to become a Settling Insurer.

**Cooperation with Non-Settling Insurer in Defense of Claims.**

Without limiting the Diocese and/or Participating Party's obligations under Section 11.5 of the Committee Plan, if any Abuse Claimant prosecutes an action against the Diocese and/or Participating Party, the Diocese and/or Participating Party will cooperate, under the terms of any applicable Insurance Policy, with a Non-Settling Insurer providing a defense to such a Claim. The Trust will reimburse the Reorganized Debtor and/or the Participating Party the reasonable attorneys' fees, costs and expenses allowed by the Bankruptcy Court incurred as a direct consequence of such cooperation, subject to a monthly cap to be established by the Trustee, in consultation with the Reorganized Debtor and Participating Parties, but the Trust will not compensate the Reorganized Debtor or Participating Parties for any time their employees spend. To the extent a Non-Settling Insurer has refused to defend an Abuse Claim, the Reorganized Debtor and/or Participating Party will not cooperate with such Insurer and may enter into stipulated judgments with the Abuse Claimant or the Trustee. The Trust will not reimburse the Reorganized Debtor or Participating Party for any out-of-pocket costs if the Non-Settling Insurer has refused to defend the Abuse Claim.

If the Trust asserts any claim that the Diocese has breached such duties or obligations under the Non-Settling Insurer Insurance Policies causing a loss of coverage, it shall give the Diocese notice and an opportunity to cure any alleged breach, and the Diocese shall not be liable for any alleged breach causing a loss of coverage unless (i) the breach relates to post-Effective Date conduct of the Diocese, and (ii) the Diocese willfully or intentionally violates its continuing obligations under the Non-Settling Insurer Insurance Policies. In addition, any such claim will not be automatically allowed; the Diocese may defend against such claim.

**Insurance Neutrality.**

Other than as provided in the Committee Plan, no provision of the Committee Plan shall diminish or impair the right of any Insurer to assert any defense to any Insurance Claim. That the Trust is liquidating and paying/reserving monies because of the Abuse Claims shall not be construed to diminish any duty of any Insurer under any Insurance Policy to provide Insurance Coverage to the Diocese for Abuse Claims. The duties and obligations of the Non-Settling Insurers

under each Non-Settling Insurer's Insurance Policy shall not be impaired, altered, reduced or diminished by: (a) the discharge granted to the Debtor under the Committee Plan under section 1141(d) of the Bankruptcy Code, (b) the exonerations, exculpations and releases in the Committee Plan or (c) the Channeling Injunction.

### **Judgment Reduction**

In connection to any action by the Trust to enforce Insurance Claims regarding an Insurance Policy issued by a Non-Settling Insurer, if any Insurer obtains a judicial determination or binding arbitration award that, it could obtain a sum certain from a Settling Insurer because of a claim for contribution, subrogation, indemnification, or other similar claim against a Settling Insurer for such Settling Insurer's alleged share or equitable share, or to enforce subrogation rights of the defense and/or indemnity obligation of such Settling Insurer for any Claims released or resolved under any settlement agreement with a Settling Insurer, the Diocese, the Trustee or other Participating Party, as applicable, shall be deemed to have reduced its judgment or Claim against, or settlement with, such other Insurer to the extent necessary to satisfy such contribution, subrogation, indemnification, or other claims against such Settling Insurer. To make sure such a reduction is accomplished, such Settling Insurer shall be entitled to assert this Section as a defense to any action against it brought by any other Insurer for any such portion of the judgment or Claim and may request that the court or appropriate tribunal issue such orders as are necessary to effectuate the reduction to protect such Settling Insurer and the Released Parties under a settlement agreement with a Settling Insurer from any liability for the judgment or Claim. If a Non-Settling Insurer asserts that it has a Claim for contribution, indemnity, subrogation, or similar relief against a Settling Insurer, such Claim may be asserted as a defense against the Trust or Diocese in any litigation of Insurance Claims (and the Trust or Diocese may assert the legal and equitable rights of such Settling Insurer in response thereto); and to the extent such a Claim is found to be valid by the court presiding over such action, the liability of such Non-Settling Insurer to the Trust, the Diocese or other Participating Party shall be reduced dollar for dollar by the amount so determined. The Bankruptcy Court shall retain non-exclusive jurisdiction to determine the amount of any judgment reduction under this Section. In addition, any court of competent jurisdiction may determine the amount of any judgment reduction under the Committee Plan.

### **B. Additional Means of Implementation of Plan**

#### **Debtor's Funding of Trust.**

By the Effective Date, [\$41 million] in Cash shall be transferred by wire transfer to the Trust by or on behalf of the Debtor.

#### **Sale of Telecommunications Assets.**

If the sale contemplated in the *Motion of the Debtor for Entry of Orders (I)(A) Approving Bidding Procedures for the Sale of the Debtor's Assets, (B) Authorizing The Debtor To Enter Into One Or More Stalking Horse Purchase Agreements and To Provide Bid Protections Thereunder, (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (D) Approving Assumption and Assignment Procedures and (E) Scheduling A Sale Hearing and Approving the Form and Manner of Notice Thereof; (II)(A) Approving the Sale of the Debtor's Assets Free and*

*Clear of Liens, Claims, Interests and Encumbrances and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Granting Related Relief* (Dkt. 1459) closes before the Effective Date, the Diocese shall transfer the net proceeds from that sale to the Trust. If the sale is still pending on the Effective Date, the Diocese shall transfer the net proceeds no later than five business days following its receipt of such funds. If no such sale is pending on the Effective Date, the Diocese shall take all steps necessary to effectuate transfer of ownership of the assets to the Trust, subject to regulatory approval if applicable.

#### **Transfer of Real Property.**

On the Effective Date, the Diocese shall take all steps necessary to effectuate transfer of ownership to the Trust of all real property titled to the Diocese. If any real property is sold before the Effective Date, the net proceeds from such sale shall be transferred to the Trust on the Effective Date. On the Effective Date, the Diocese shall also take all steps necessary to effectuate transfer of all reversionary interests in the real and/or personal property listed in the Diocese's schedules, as they may be amended, if any portion of the properties are leased, sold, or subject to an option for lease or sale on or before the Trust Termination Date (as that term is defined in the Trust Documents).

#### **Transfer of Ecclesia**

The Diocese will, in consultation with the Committee or Trustee, sell Ecclesia, subject to regulatory approval. Upon closing such a sale, the Diocese shall transfer the net proceeds of such sale to the Trust. To the extent such sale is not pending before the Effective Date, the Diocese shall take all steps necessary to effectuate transfer of ownership of the Ecclesia assets to the Trust, subject to regulatory approval if applicable.

#### **Participating Party or Settling Insurer Settlement Contribution.**

By the Effective Date, transfers to the Trust by or on behalf of a Participating Party or Settling Insurer shall be made by wire transfer to the Trust.

#### **Debtor and Trust Waiver and Release of Estate's Causes of Action Against Participating Parties and Settling Insurers.**

In consideration of the contributions and other consideration to be provided by each Participating Party and Settling Insurer, the Debtor and Trust, as applicable, irrevocably and unconditionally, without limitation, shall release, acquit, and forever discharge such Participating Party and Settling Insurer from any Causes of Action of the Estate against any Participating Party or Settling Insurer, or the property thereof, such release to be effective upon the Effective Date.

Notwithstanding the above, to preserve coverage under any Non-Settling Insurer's Insurance Policies, Class 4 and Class 7 Claimants specifically reserve, and do not release, any claims they may have against the Diocese, the Reorganized Debtor, or any other Participating Party that implicate coverage under any Non-Settling Insurer's Insurance Policies, but recourse is limited to the proceeds of the Non-Settling Insurer's Insurance Policies and all other damages (including extra-contractual damages), awards, judgments in excess of policy limits, penalties, punitive damages and attorney's fees and costs that may be recoverable against any Non-Settling Insurers

because of their conduct concerning insurance coverage for, or defense or settlement of, any Abuse Claim, and any such judgments or awards will be handled under the Committee Plan and the Trust Allocation Protocol. The Class 4 and Class 7 Claims will not be released or enjoined as against the Diocese, the Reorganized Debtor, or any other Participating Party for any Abuse that may be covered under any Non-Settling Insurer's Insurance Policies until such claims are settled with the Diocese, the Reorganized Debtor, any other Participating Party and such Non-Settling Insurer or are adjudicated, resolved, and subject to Final Order, but recourse is limited as described above.

#### **Debtor and Participating Party Contributions.**

The Debtor's and Participating Party's contributions are being made regarding the uninsured or underinsured exposure of the Debtor and the Participating Parties for Abuse Claims and, to the extent required under applicable law, to satisfy self-insured retentions or deductibles under Non-Settling Insurer Insurance Policies.

#### **Additional Documentation; Non-Material Modifications.**

After the Effective Date, the Trustee, the Future Abuse Claims Trustee, the Reorganized Debtor, and the Participating Parties are authorized to enter into, execute, adopt, deliver and/or implement all contracts, leases, instruments, releases, and other agreements or documents necessary to effectuate or memorialize the settlements in the Committee Plan without further Order of the Bankruptcy Court. Also, the Trustee, the Reorganized Debtor, and the Participating Parties may make technical and/or immaterial alterations, amendments, modifications or supplements to the terms of any settlement in the Committee Plan, without Bankruptcy Court approval, provided that the amendment or modification does not materially and adversely change the treatment of any holder of a Class 4 Claim without the prior written agreement of such holder. A Class of Claims that has accepted the Committee Plan shall be deemed to have accepted the Committee Plan, as altered, amended, modified or supplemented under this Section, if the proposed alteration, amendment, modification or supplement does not materially and adversely change the treatment of the Claims within such Class. An Order of the Bankruptcy Court approving any amendment or modification made under this provision in the Committee Plan shall constitute an Order in aid of consummation of the Committee Plan and shall not require the re-solicitation of votes on the Committee Plan.

#### **Non-Settling Insurers Unaffected.**

The rights and obligations of Non-Settling Insurers and Co-Defendants shall be unaffected by the Committee Plan.

#### **Closing.**

Closing will be conducted in the New York offices of Pachulski, Stang, Ziehl & Jones LLP, or at such other location designated by the Committee, including remotely, as soon as reasonably practicable following the Effective Date for the Diocese and the Participating Parties to execute and deliver the Plan Documents and completing those actions necessary for the Reorganized Debtor and the Participating Parties to establish and fund the Trust and make other distributions required to be made upon, or promptly following, the Effective Date. As soon as practicable after

conditions in Section 14.1 have been satisfied or waived under Section 14.2 of the Committee Plan, the Diocese shall file notice of the Closing and the occurrence of the Effective Date.

### **Obligations of the Reorganized Debtor and Participating Parties.**

The Reorganized Debtor and the Participating Parties will:

- a) In the exercise of their respective business judgment, review all Claims filed against the Estate except for Abuse and Personal Injury Claims and, if advisable, object to such Claims;
- b) After the Effective Date, not object to any Abuse Claims or Personal Injury Claims. Despite the foregoing, the Reorganized Debtor shall timely provide the Abuse Claims Reviewer with information regarding Abuse Claims as requested by the Abuse Claims Reviewer.
- c) Fulfill the Diocese's obligations under the Insurance Policies issued by the Non-Settling Insurers and under applicable non-bankruptcy law, with the Diocese's reasonable attorneys' fees, costs and expenses incurred in doing so to be paid by the Non-Settling Insurers and/or the Trust, as provided under the Insurance Policies, the Committee Plan, or the Trust Documents, as applicable;
- d) Honor the Diocese's obligations arising under any settlement agreement between the Diocese and any Participating Party approved by the Bankruptcy Court; and,

Perform all of their obligations under the Committee Plan and Committee Plan Documents, in each case, as and when the same become due or are to be performed.

### **Objections to Claims.**

Objections to a Claim (except for Abuse and Personal Injury Claims) as to which no objection is pending as of the Effective Date, must be filed by the Claims Objection Deadline, provided that the Reorganized Debtor may request extensions of the Claims Objection Deadline, or of any Bankruptcy Court approved extensions thereof, by Filing a motion with the Bankruptcy Court. A motion seeking to extend the deadline to object to any Claim is not an amendment to the Committee Plan. No party in interest other than the Trustee may object to an Abuse Claim. No party in interest other than the Trustee may object to a Class 4, Class 6, or Class 9 Claim. No party in interest other than the Future Abuse Claims Trustee may object to a Class 7 Claim. The process and deadlines for any objections to Abuse Claims are in the Trust Allocation Protocol or the Future Abuse Claims Trust Allocation Protocol.

### **Reservation of Rights to Object to Claims Other Than Abuse or Personal Injury Claims.**

Unless a Claim is expressly described as an Allowed Claim under the Committee Plan, or otherwise becomes an Allowed Claim before the Effective Date, upon the Effective Date, the Reorganized Debtor shall be deemed to have a reservation of any rights, interests and objections of the Debtor to any Claims and motions or requests for the payment of or because of Claims, whether administrative expense, priority, secured or unsecured (but not Abuse or Personal Injury

Claims), whether under the Bankruptcy Code, other applicable law or contract. Subject to the Claims Objection Deadline, the Debtor's failure to object to any Claim shall be without prejudice to the Reorganized Debtor's rights to contest or otherwise defend against such Claim in the Bankruptcy Court in this Section when and if such Claim is sought to be enforced by the holder of such Claim.

#### **Service of Objections.**

An objection to a Claim shall be deemed properly served on the holder of such Claim if the objector effects service by any of the following methods: (i) under Rule 4 of the Federal Rules of Civil Procedure, as modified and made applicable by Bankruptcy Rule 7004; (ii) to the extent counsel for such holder is unknown, by first class mail, postage prepaid, on the signatory on the Proof of Claim or other representative identified on the Proof of Claim or any attachment thereto; or (iii) by first class mail, postage prepaid, on any counsel that has appeared on the behalf of such holder.

#### **Determination of Claims.**

After the Effective Date, any Claim (except for Abuse or Personal Injury Claims) as to which a Proof of Claim or motion or request for payment was timely filed in the Case or deemed timely filed by Order of the Bankruptcy Court, may be determined and (so long as such determination has not been stayed, reversed or amended and as to which determination (or any revision, modification or amendment thereof) the time to appeal or seek review or rehearing has expired and as to which no appeal or petition for review or rehearing was filed or, if filed, remains pending) liquidated under (i) an Order of the Bankruptcy Court, (ii) applicable bankruptcy law, (iii) agreement of the parties with no Bankruptcy Court approval, (iv) applicable non-bankruptcy law or (v) the lack of (a) an objection to such Claim, (b) an application to equitably subordinate such Claim and (c) an application to otherwise limit recovery regarding such Claim, filed by the Diocese or any other party in interest by any applicable deadline for Filing such objection or application regarding such Claim. Any such Claim so determined and liquidated shall be deemed to be an Allowed Claim for such liquidated amount and shall be satisfied under the Committee Plan. Nothing in this Section shall be or be deemed a waiver of any Claims, rights, interests or Causes of Action that the Diocese may have against any Person in connection with or arising out of any Claim or Claims, including any rights under 28 U.S.C. § 157. Notwithstanding the foregoing, no party in interest other than the Trustee may object to an Abuse Claim.

#### **No Distributions Pending Allowance.**

No payments or distributions will be made regarding all or any part of a Disputed Claim unless all objections to such Disputed Claim have been settled or withdrawn or have been determined by a Final Order, and the Disputed Claim has become an Allowed Claim; provided, however, that if only a portion of such Claim is an Allowed Claim, the Reorganized Debtor may, in their discretion, make a distribution because of the part of such Claim that is an Allowed Claim.

#### **Claim Estimation.**

To effectuate distributions under the Committee Plan and avoid undue delay in the administration, the Diocese, after notice and a hearing (which notice may be limited to the holder

of such Disputed Claim), shall have the right to seek an Order of the Bankruptcy Court or the District Court under section 502(c) of the Bankruptcy Code, estimating or limiting, because of a Disputed Claim, the amount of (i) property that must be withheld from or reserved for distribution purposes because of such Disputed Claim(s), (ii) such Claim for allowance or disallowance purposes, or (iii) such Claim for any other purpose allowed under the Bankruptcy Code; provided, however, that the Bankruptcy Court or the District Court, as applicable, shall determine (i) whether such Claims are subject to estimation under section 502(c) of the Bankruptcy Code and (ii) the timing and procedures for such estimation proceedings such matters being beyond the Committee Plan. Notwithstanding the foregoing, no party in interest except the Trustee or Future Abuse Claim Trustee, as applicable, may seek to estimate an Abuse Claim or a Personal Injury Claim.

### **Closing of the Case.**

As soon as practicable after the Effective Date, when the Diocese deems appropriate, the Diocese will seek authority from the Bankruptcy Court to close the Case under the Bankruptcy Code and the Bankruptcy Rules; provided, however, that entry of a final decree closing the Case shall, whether or not specified therein, be without prejudice to the right of the Diocese, the Trustee, Future Abuse Claim Trustee, or any other party in interest to reopen the Case for any matter over which the Bankruptcy Court or the U.S. District Court for the Southern District of New York has retained jurisdiction under the Committee Plan. Any order closing this Case will provide that the Bankruptcy Court or the U.S. District Court for the Southern District of New York, as appropriate, will retain (a) jurisdiction to enforce, by injunctive relief or otherwise, the Confirmation Order, any other orders entered in this Case, and the obligations created by the Committee Plan and the Plan Documents; and (b) all other jurisdiction and authority granted to it under the Committee Plan and the Plan Documents.

## **VIII. CONDITIONS PRECEDENT.**

### **A. Conditions Precedent to the Effective Date.**

Section 14.1 of the Committee Plan sets forth the conditions precedent to the effectiveness of the Committee Plan. The Committee Plan's Effective Date will occur when each those conditions have been satisfied or waived under Section 14.2 of the Committee Plan.

#### **Waiver of Conditions.**

Any condition in Section 14.1 of the Committee Plan may be waived by the mutual written consent of the Committee, the Debtor and the Participating Parties.

#### **Non-Occurrence of Effective Date.**

Subject to further order of the Bankruptcy Court, if the Effective Date does not occur within ninety (90) days of entry of a Final Order confirming the Committee Plan, the Committee Plan shall become null and void. A statement shall be filed with the Court within three (3) Business Days after either the Effective Date or any event that renders the Committee Plan null and void.

## **IX. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES.**

### **Assumed Employee and Retiree Benefit Plans.**

To the extent not previously assumed, all employee and retiree benefit plans to which the Debtor are a party will be deemed assumed by the Reorganized Debtor on the Effective Date.

### **General; Assumed if Not Rejected.**

Subject to the requirements of Section 365, all executory contracts and unexpired leases of the Debtor not rejected by order of the Bankruptcy Court or are not the subject of a motion to reject pending on the Confirmation Date will be deemed assumed by the Reorganized Debtor on the Effective Date. If any party to an executory contract or unexpired lease being assumed objects to such assumption, the Bankruptcy Court may conduct a hearing on such objection on any date either mutually agreeable to the parties or fixed by the Bankruptcy Court. All payments to cure defaults that may be required under section 365(b)(1) of the Bankruptcy Code will be made by the Reorganized Debtor. In the event of a dispute regarding any such payments, or the ability of the Debtor to provide adequate assurance of future performance, the Reorganized Debtor will make any payments required by section 365(b)(1) of the Bankruptcy Code after the entry of the Final Order resolving such dispute.

### **Claims for Contract Rejection.**

All proofs of claim regarding Claims arising from the rejection of executory contracts or unexpired leases must be filed with the Bankruptcy Court within 30 days after the Effective Date or such Claims will be forever barred. If any order providing for the rejection of an executory contract or unexpired lease did not provide a deadline for filing Claims arising from such rejection, proofs of Claim with respect thereto must be filed within 30 days after the later to occur of (a) the Effective Date or, (b) if the order is entered after the Effective Date, the date such order becomes a Final Order, or such Claims will be forever barred.

## **X. MISCELLANEOUS PROVISIONS**

### **A. Retention of Jurisdiction.**

Except as otherwise stated in the Committee Plan or in the Confirmation Order, the Bankruptcy Court will retain jurisdiction over all matters arising under, to further, or in connection with the Committee Plan, including:

- i. The determination of objections to Disputed Claims; determining requests for payment of Claims entitled to priority under section 507 of the Bankruptcy Code, including compensation of and reimbursement of expenses of parties entitled thereto;
- ii. Resolving controversies and disputes regarding interpretation and implementation of the Committee Plan and the Plan Documents;



- iii. Granting relief in aid of the Committee Plan and the Plan Documents including the entry of orders (which may include removal of actions in non-Bankruptcy Court forums to the Bankruptcy Court, contempt or other sanctions) to protect the Reorganized Debtor, the Participating Parties, the Settling Insurers, and the Released Parties from actions prohibited under the Committee Plan or the Plan Documents;
- iv. Amendments to and modifications of the Committee Plan
- v. The compelling of the Diocese and/or a Participating Party to cooperate with the Trust as required under this Plan;
- vi. Subject to the limitations and exclusions described above, determining any applications, adversary proceedings, and contested or litigated matters pending on the Effective Date;
- vii. Allowance of post-confirmation fees provided for in the Committee Plan, including but not limited to in Section 11.5.4 of the Committee Plan;
- viii. Approving a settlement agreement whereby a Person or Entity, including a Non-Settling Insurer, may become a Participating Party or Settling Insurer; and
- ix. Closing this case.

**B. Miscellaneous Provisions.**

**Remand of Removed Actions and Relief from Automatic Stay/Discharge.**

On the Effective Date and without further order of the Bankruptcy Court or the District Court, (a) all actions removed by the Debtor or any other Co-Defendant during the Case are remanded to the Court from which they were removed and (b) such actions are not subject to the automatic stay or the injunction in Bankruptcy Code section 524(a)(2). Nothing herein is intended to affect, diminish or impair those provisions of the Committee Plan that prohibit execution of any judgment against the Reorganized Debtor's Revested Assets or assets the Reorganized Debtor acquire after the Effective Date.

**Modification of the Committee Plan.**

The Committee reserves the right, under the Bankruptcy Code, to amend, modify or withdraw the Committee Plan before the entry of the Confirmation Order. After the entry of the Confirmation Order, the Proponent may, upon order, amend or modify the Committee Plan under section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in the Committee Plan in such manner as may be necessary to carry out the purpose and intent of the Committee Plan.

**Severability.**

If, before confirmation, the Bankruptcy Court holds that any Committee Plan term or provision is invalid, void, or unenforceable, the Bankruptcy Court may alter or interpret that term or provision so it is valid and enforceable to the maximum extent possible consistent with the original purpose of that term or provision. That term or provision will then apply as altered or interpreted, unless such term or provision is inconsistent with the intent of the Committee, in which case the Committee Plan may be unilaterally withdrawn by the Committee. Notwithstanding any such holding, alteration, or interpretation, the Committee Plan's remaining terms and provisions will remain in full force and effect and will in no way be affected, impaired, or invalidated. The Confirmation Order will constitute a judicial determination providing that each Plan term and provision, as it may have been altered or interpreted, is valid and enforceable under its terms. In the event of a successful collateral attack on any provision of the Committee Plan (i.e., an attack other than through a direct appeal of the Confirmation Order), the remaining provisions of the Committee Plan will remain binding on the Diocese, the Participating Parties, the Settling Insurers, the non-Settling Insurers, the Trustee, the Future Abuse Claims Trustee, the Committee, all Claimants, all Creditors, and all other parties in interest.

**Notices.**

All notices or requests to the Reorganized Debtor in connection with the Committee Plan shall be in writing and served either by (i) United States mail, postage prepaid, (ii) hand delivery, or (iii) reputable overnight delivery service, all charges prepaid, and shall be deemed given when received by these parties:

If to the Debtor or Reorganized Debtor:

With a copy to:

If to the Trustee:

With a copy to:

If to the Future Abuse Claims Trustee:

With a copy to:

**Notices to Claimants.**

All notices and requests to a Person or Entity holding any Claim will be sent to them at the last known address listed for such Person or Entity with the Bankruptcy Court or with the Debtor's

Claims Agent, or to the last known address of their attorney of record. The holder of a Claim may designate in writing any other address, which designation will be effective upon actual receipt by the Reorganized Debtor, the Trustee, and the Future Abuse Claims Trustee. Any Person or Entity entitled to receive notice under the Committee Plan will have the obligation to provide the Reorganized Debtor, the Trustee, and the Future Abuse Claims Trustee with such Person's or Entity's current address for notice purposes. The Reorganized Debtor, the Trustee, and the Future Abuse Claims Trustee will have no obligation to locate a more current address if any notice proves to be undeliverable to the most recent address provided to the Reorganized Debtor, the Trustee, and the Future Abuse Claims Trustee.

#### **Post-Confirmation Court Approval.**

Any action requiring Bankruptcy Court, U.S. District Court or state court approval after the Effective Date will require the Person or Entity seeking such approval to file an application, motion, or other request with the Bankruptcy Court, U.S. District Court, or state court, as applicable, and obtain a Final Order approving such action before the requested action may be taken. The Person or Entity filing such application, motion, or other request shall serve such application, motion, or other request, with a notice setting forth the time in which objections must be filed with the court, on the Reorganized Debtor, the Committee, the Trustee and the Future Abuse Claims Trustee by first-class mail, electronic mail, ECF, overnight courier, facsimile, or hand delivery. Unless the court orders otherwise, all notices shall provide the recipients at least 21 days in which to file an objection to the application, motion, or other request. If no objection is timely filed, the court may authorize the proposed action without further notice or a hearing. If an objection is timely filed, the court will determine whether to conduct a hearing, or to require the submission of further documentation, before ruling on the application, motion, or other request.

#### **Election Under Section 1129(b) of the Bankruptcy Code.**

The Proponent requests confirmation of the Committee Plan under section 1129(b) of the Bankruptcy Code if the requirements of all provisions of section 1129(a) of the Bankruptcy Code, except section (a)(8) thereof, are met regarding the Committee Plan. In determining whether the requirements of section 1129(a)(8) of the Bankruptcy Code have been met, any Class that does not have as an element of it an Allowed Claim or a Claim temporarily allowed under Bankruptcy Rule 3018 as of the date fixed by the Bankruptcy Court for filing acceptances or rejections of the Committee Plan shall be deemed deleted from the Committee Plan for purposes of voting to accept or reject the Committee Plan and to determine acceptance or rejection of the Committee Plan by such Class.

#### **Consummation of the Committee Plan.**

The Proponent reserves the right to request that the Confirmation Order include a finding by the Bankruptcy Court that Bankruptcy Rule 3020(e) shall not apply to the Confirmation Order.

#### **Exemption from Transfer Taxes.**

Under section 1146(a) of the Bankruptcy Code, Trustee's, Debtor's or Reorganized Debtor's delivery of any deed or other instrument of transfer under, to further, or in connection with the Committee Plan, whether occurring before or after the Confirmation Date, including any

deeds, bills of sale or assignments executed ~~with~~ any sale or disposition of assets contemplated by the Committee Plan (i.e. the Properties), shall not be subject to any stamp tax, real estate transfer tax, excise tax, sales tax, use tax or other similar tax.

### **Waivers.**

Except as otherwise provided in the Committee Plan or in the Confirmation Order, any term of the Committee Plan may be waived by the party benefited by the term to be waived.

### **Setoffs, Recoupments, and Defenses.**

Except for the Sections of the Committee Plan about the Abuse Claims, nothing in the Committee Plan shall constitute a waiver or release by the Debtor, Reorganized Debtor, Participating Parties, the Trustee, or the Future Abuse Claims Trustee of any rights of setoff or recoupment, or of any defense, they may have regarding any Claim (including rights under section 502(d) of the Bankruptcy Code). Except as otherwise provided in the Committee Plan or in the Confirmation Order or in agreements previously approved by a Final Order, the Debtor, Reorganized Debtor, Participating Parties, the Trustee, or the Future Abuse Claims Trustee may, but will not be required to, set off against any Claim or any distributions regarding such Claim, the Claims, rights and Causes of Action of any nature that the Debtor, the Reorganized Debtor, Participating Parties, the Trustee, or the Future Abuse Claims Trustee may hold against the holder of such Claim; provided, however, that neither failing to effect such a setoff, the allowance of any Claim, the payment of any distribution under the Committee Plan or any other action or omission of the Debtor, Reorganized Debtor, Participating Parties, the Trustee, or the Future Abuse Claims Trustee, nor any provision of the Committee Plan, shall constitute a waiver or release by the Debtor, the Reorganized Debtor, Participating Parties, the Trustee, or the Future Abuse Claims Trustee of any such Claims, rights and Causes of Action that the Debtor, the Reorganized Debtor, Participating Parties, the Trustee, or the Future Abuse Claims Trustee may possess against such holder.

### **Compromise of Controversies.**

#### **a. Bankruptcy Court Approval of Settlements**

In consideration for the classification, distributions and other benefits provided under the Committee Plan, the Committee Plan shall constitute a good faith compromise and settlement of all Claims or controversies resolved under the Committee Plan. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of each compromise and settlement provided for in the Committee Plan, and the Bankruptcy Court's findings shall constitute its determination under the standards of Bankruptcy Rule 9019 that such compromises and settlements are in the best interests of the Debtor and the Estates.

#### **b. Settlement with Participating Parties and Settling Insurers.**

Specifically included within the Bankruptcy Court's approval of compromises and settlements of Claims and controversies is the Bankruptcy Court's approval of the agreements with Participating Parties and Settling Insurers. If a conflict exists between the Committee Plan and such agreements, the agreements control such conflict. Such agreements contain the protections

and benefits afforded the Participating Party and Settling Insurer and the rights and obligations of the parties thereto, to the extent of any conflict with the Committee Plan. Such agreements bind the Trust.

#### **Withdrawal or Revocation of the Committee Plan.**

The Proponent reserves the right to revoke or withdraw the Committee Plan before the Confirmation Date but the consent of the Proponent is required. If the Committee Plan is revoked or withdrawn, or if the Confirmation Date does not occur, the Committee Plan shall have no force and effect and nothing in the Committee Plan shall be deemed to constitute a waiver or release of any Claims by or against the Estate or any other Person or Entity, or to prejudice in any other manner the rights of a Proponent, whether one or more, or any other entity in further proceedings involving a Proponent and specifically shall not modify or affect the rights of any party under any prior orders of the Bankruptcy Court.

#### **Default.**

Except as otherwise provided in the Committee Plan or in the Confirmation Order, if the Reorganized Debtor, a Participating Party, a Settling Insurer, or the Trustee shall default in the performance of any of their respective obligations under the Committee Plan or under the Plan Documents and shall not have cured such a default within any applicable cure period (or, if no cure period is specified in the Committee Plan or Plan Documents or in any instrument issued to or retained by a Claimant under the Committee Plan, then within 30 days after receipt of written notice of default), then the entity to whom the performance is due may pursue such remedies as are available at law or in equity. An event of default occurring with respect to one Claim shall not be an event of default regarding any other Claim.

#### **Governing Law.**

Unless federal law (including the Bankruptcy Code or Bankruptcy Rules) applies, the rights and obligations arising under the Committee Plan or under the Plan Documents shall be governed by and construed and enforced under the laws of the State of New York without giving effect to the principles of conflicts of laws.

#### **Reservation of Rights.**

If the Committee Plan is not confirmed by a Final Order, or if the Committee Plan is confirmed and the Effective Date does not occur, the rights of all parties in interest in the Case are and will be reserved in full. Any concessions or settlement reflected are made for the Committee Plan only, and if the Committee Plan does not become effective, no party in interest shall be bound or deemed prejudiced by any such concession or settlement.

#### **Controlling Documents.**

To the extent any provision of a settlement agreement with a Participating Party or Settling Insurer is inconsistent with the Committee Plan, such settlement agreement shall control.

### **Successors and Assigns.**

The Committee Plan shall be binding upon and inure to the benefit of the Debtor, the Reorganized Debtor, all Claimants and all other parties in interest affected and their respective successors, heirs, legal representatives and assigns.

### **Direction to a Party.**

On and after the Effective Date, the Trustee, the Future Abuse Claims Trustee or the Reorganized Debtor may apply to the Bankruptcy Court for entry of an Order directing any Person to execute or deliver or to join in the execution or delivery of any instrument or document reasonably necessary or reasonably appropriate to effect a transfer of properties dealt with by the Committee Plan, and to perform any other act (including satisfaction of any lien or security interest) that is reasonably necessary or reasonably appropriate for consummating the Committee Plan.

### **Certain Actions.**

From entry of the Confirmation Order, before, on or after the Effective Date (as appropriate), all matters provided for under the Committee Plan that would otherwise require approval of the officers of the Debtor under the Committee Plan, including (a) the adoption, execution, delivery, and implementation of all contracts, leases, instruments, releases, and other agreements or documents related to the Committee Plan, and (b) the adoption, execution, and implementation of other matters provided for under the Committee Plan involving the Debtor or organizational structure of the Debtor, shall be deemed to have occurred and shall be in effect before, on or after the Effective Date (as appropriate), under applicable non-bankruptcy law, with no requirement of further action by the officers of the Debtor.

### **Dissolution of the Committee.**

On the Effective Date, the Committee shall dissolve automatically, whereupon its members, Professionals and agents shall be released from any further duties and responsibilities in the Case and under the Bankruptcy Code, except that such parties shall continue to be bound by any obligations arising under confidentiality agreements, joint defense/common interest agreements (whether formal or informal), and protective Orders entered during the Case, which shall remain in full force and effect according to their terms, provided that such parties shall have a right to be heard regarding any (i) applications for Professional Claims and (ii) requests for compensation and reimbursement of expenses under section 503(b) of the Bankruptcy Code for making a substantial contribution .

## **XI. EFFECTS OF PLAN CONFIRMATION AND DISCHARGE**

### **A. Discharge.**

Except as otherwise expressly provided in the Committee Plan or in the Confirmation Order, on the Effective Date under section 1141(d) of the Bankruptcy Code, the Diocese will be discharged from all liability for any Claims and Debts, known or unknown, whether or not giving rise to a right to payment or an equitable remedy, that arose, directly or indirectly, from any action,

inaction, event, conduct, circumstance, happening, occurrence, agreement, or obligation of the Debtor, or the Debtor's Representatives before the Confirmation Date, or that otherwise arose before the Confirmation Date, including all interest on any such Claims and Debts, whether such interest accrued before or after commencement of this Case, and including all Claims and Debts based upon or arising out of an Abuse Claim and from any liability of the kind specified in sections 502(g), 502(h), and 502(i) of the Bankruptcy Code, whether or not (a) a proof of claim is filed or is deemed filed under section 501 of the Bankruptcy Code; (b) such Claim is Allowed under the Committee Plan; or (c) the holder of such Claim has accepted the Committee Plan.

Class 4 and Class 7 Claimants specifically reserve, and do not release, any claims they may have against the Diocese or any other Participating Party that implicate coverage under any Non-Settling Insurer's Insurance Policies, but recourse is limited to the proceeds of the Non-Settling Insurer's Insurance Policies and all other damages (including extra-contractual damages), awards, judgments in excess of policy limits, penalties, punitive damages and attorney's fees and costs that may be recoverable against any Non-Settling Insurers because of their conduct regarding insurance coverage for, or defense or settlement of, any Abuse Claim, and any such judgments or awards will be handled under the Committee Plan and the Trust Allocation Protocol. The Class 4 Claims will not be released or enjoined as against the Diocese or any other Participating Party for any Abuse that may be covered under any Non-Settling Insurer's Insurance Policies until such claims are settled with the Diocese, any other Participating Party and such Non-Settling Insurer or are adjudicated, resolved, and subject to Final Order, but recourse is limited as described above.

Abuse Claimants and the Trust shall be permitted to name the Diocese or any other Participating Party in any proceeding to resolve whether the Diocese or any other Participating Party has liability for Abuse Claims and the amount of any such liability, solely for the purpose of obtaining insurance coverage from Non-Settling Insurers. The discharge under the Committee Plan does not apply to, and shall not limit the obligations of Non-Settling Insurers to defend and pay, the Diocese's or any other Participating Party's liability for Abuse Claims under Non-Settling Insurer Insurance Policies.

Personal Injury Claimants and Civil Rights Claimants (if Ecclesia does not fund an Agreed Amount) specifically reserve, and do not release, any claims they may have against the Diocese that implicate coverage under any insurance policies issued by Ecclesia, but recourse is limited to Co-Defendants and the proceeds of the Ecclesia insurance policies and all other damages (including extra-contractual damages), awards, judgments in excess of policy limits, penalties, punitive damages and attorney's fees and costs that may be recoverable against Ecclesia because of its conduct regarding insurance coverage for, or defense or settlement of, any Personal Injury Claim. The Personal Injury Claims and Civil Rights Claims (if Ecclesia does not fund an Agreed Amount) will not be released or enjoined as against the Diocese until such claims are settled with the Diocese, any Co-Defendants and Ecclesia or are fully adjudicated, resolved, and subject to Final Order, but recourse is limited as described above.

Personal Injury Claimants and Civil Rights Claimants (if Ecclesia does not fund an Agreed Amount) shall be permitted to name the Diocese in any proceeding to resolve whether the Diocese has liability for Personal Injury Claims and Civil Rights Claims (if Ecclesia does not fund an Agreed Amount) and the amount of any such liability, solely for the purpose of obtaining insurance

coverage from Ecclesia. The discharge under the Committee Plan does not apply to, and shall not limit in any way the obligations of Ecclesia to defend and pay, the Diocese's or any other Participating Party's liability for Personal Injury Claims under any insurance policies issued by Ecclesia.

**NOTHING CONTAINED IN THE COMMITTEE PLAN SHALL CONSTITUTE A RELEASE OF ANY ABUSE CLAIM AGAINST A PERSON HAVING PERSONALLY COMMITTED AN ACT OR ACTS OF ABUSE RESULTING IN A CLAIM AGAINST THE DEBTOR, A PARTICIPATING PARTY OR A SETTLING INSURER; A SUCCESSOR OR PREDECESSOR OF THE DEBTOR TO THE EXTENT OF SUCH SUCCESSOR'S OR PREDECESSOR'S INDEPENDENT LIABILITY FOR AN ACT OR ACTS OF ABUSE; AND THE HOLY SEE.**

**FOR AVOIDANCE OF DOUBT, EXCEPT AS REQUIRED BY THE INSURANCE POLICIES OF NON-SETTLING INSURERS, THE DEBTOR MAY ELECT NOT TO DEFEND ANY ABUSE LITIGATION THAT IS AUTHORIZED TO BE PROSECUTED AGAINST THE DEBTOR PURSUANT TO THE COMMITTEE PLAN AND NO JUDGMENT OBTAINED AGAINST THE DEBTOR IN SUCH ABUSE LITIGATION CAN BE EXECUTED AGAINST THE REVESTED ASSETS OR FROM ANY ASSETS ACQUIRED BY THE REORGANIZED DEBTOR SUBSEQUENT TO THE EFFECTIVE DATE.**

#### **SCOPE OF DISCHARGE**

**SECTION 15.1 OF THE COMMITTEE PLAN DOES NOT APPLY TO (A) THE OBLIGATIONS OF ANY NON-SETTLING INSURERS FOR ANY CLAIMS; (B) THE OBLIGATIONS ARISING UNDER ANY SETTLEMENT AGREEMENT BETWEEN THE DEBTOR, ANY PARTICIPATING PARTY OR ANY SETTLING INSURER APPROVED BY THE BANKRUPTCY COURT (INCLUDING THE DEBTOR'S INDEMNIFICATION OBLIGATIONS, IF ANY), WHICH ARE NOT AND WILL NOT BE DISCHARGED; (C) THE PERFORMANCE BY THE REORGANIZED DEBTOR OF ANY AND ALL OBLIGATIONS DUE TO THE NON-SETTLING INSURERS UNDER THEIR INSURANCE POLICIES WITH RESPECT TO ANY ABUSE CLAIM; (D) A PERSON HAVING PERSONALLY COMMITTED AN ACT OR ACTS OF ABUSE RESULTING IN A CLAIM AGAINST THE DEBTOR, A PARTICIPATING PARTY OR A SETTLING INSURER; (E) A SUCCESSOR OR PREDECESSOR OF THE DEBTOR TO THE EXTENT OF SUCH SUCCESSOR'S OR PREDECESSOR'S INDEPENDENT LIABILITY FOR AN ACT OR ACTS OF ABUSE; AND (F) THE HOLY SEE.**

#### **POSTPETITION ABUSE CLAIMS.**

**EXCEPT TO THE EXTENT PROVIDED FOR IN A SETTLEMENT AGREEMENT WITH A PARTICIPATING PARTY OR A SETTLING INSURER, ABUSE CLAIMS ARISING OR OCCURRING AFTER THE PETITION DATE WILL NOT BE DISCHARGED, RELEASED, IMPAIRED AGAINST THE DEBTOR OR A PARTICIPATING PARTY, OR THE SUBJECT OF THE CHANNELING INJUNCTION OR SETTLING INSURER INJUNCTION.**



### **Vesting of Assets.**

Under sections 1141 and 1123(a)(5) of the Bankruptcy Code, and except as otherwise provided in the Committee Plan or the Confirmation Order, the Revested Assets on the Effective Date shall be free and clear of all liens, Claims, and interests of Creditors, including successor liability Claims. On and after the Effective Date, the Reorganized Debtor may operate and manage its affairs and may use, acquire and dispose of property without notice to any Person, and without supervision or approval by the Bankruptcy Court and free of any restrictions imposed by the Bankruptcy Code, Bankruptcy Rules, or the Bankruptcy Court, other than those restrictions imposed by the Committee Plan or the Confirmation Order.

### **Continued Existence of Reorganized Debtor.**

The Debtor will, as the Reorganized Debtor, continue to exist after the Effective Date as separate entities under the applicable laws of the State of New York, with all the powers of a not-for-profit, non-stock member corporation having tax-exempt status under 26 U.S.C. § 501(c)(3) under applicable law and without prejudice to any right to alter or terminate such existence under applicable state law, except as such rights may be limited and conditioned by the Committee Plan and the documents and instruments executed and delivered in connection therewith.

### **Directors and Officers of the Reorganized Debtor**

The Committee cannot mandate the appointment of particular officers and directors of the Reorganized Debtor, the Committee recommends the appointment of the individuals identified in Exhibit I to the Committee Plan. These individuals are the same as those identified in the Diocese Plan as the parties proposed to serve as officers of the Reorganized Debtor on and after the Effective Date. In accordance with § 1129(a)(5) of the Bankruptcy Code, the identities and affiliations of the persons proposed to serve as the members and trustees of the Reorganized Debtor and the persons proposed to serve as officers of the Reorganized Debtor on and after the Effective Date are thus set forth on Exhibit I to the Committee Plan.

### **EXCULPATION AND LIMITATION OF LIABILITY.**

**EXCEPT AS EXPRESSLY PROVIDED IN THE COMMITTEE PLAN, NONE OF THE EXCULPATED PARTIES WILL HAVE OR INCUR ANY LIABILITY TO, OR BE SUBJECT TO ANY RIGHT OF ACTION BY, ANY HOLDER OF A CLAIM, ANY OTHER PARTY IN INTEREST, OR ANY OF THEIR RELATED PARTIES, FOR ANY ACT OR OMISSION IN CONNECTION WITH, RELATING TO, OR ARISING OUT OF THE CASE, INCLUDING THE EXERCISE OF THEIR RESPECTIVE BUSINESS JUDGMENT AND THE PERFORMANCE OF THEIR RESPECTIVE FIDUCIARY OBLIGATIONS, THE PURSUIT OF CONFIRMATION OF THE COMMITTEE PLAN, OR THE ADMINISTRATION OF THE COMMITTEE PLAN, THE TRUST, OR THE FUTURE ABUSE CLAIMS TRUST, EXCEPT LIABILITY FOR THEIR WILLFUL MISCONDUCT OR GROSS NEGLIGENCE (PROVIDED HOWEVER THE DIOCESE WILL BE DISCHARGED FROM ANY SUCH LIABILITY FOR SUCH ACTS OR OMISSIONS OCCURRING PRIOR TO THE CONFIRMATION DATE) OR, EXCEPT AS PROVIDED BELOW, ANY CAUSES OF ACTION ARISING FROM OR RELATED**

**TO DENIALS OF COVERAGE OR COVERAGE DEFENSES RAISED BY NON-SETTLING INSURERS, AND IN ALL RESPECTS, SUCH PARTIES WILL BE ENTITLED TO REASONABLY RELY UPON THE ADVICE OF COUNSEL WITH RESPECT TO THEIR DUTIES AND RESPONSIBILITIES UNDER THE COMMITTEE PLAN OR IN THE CONTEXT OF THE CASE. FOR THE AVOIDANCE OF DOUBT, THIS SECTION AND THE DEFINITION OF “EXCULPATED PARTIES” SHALL NOT, DIRECTLY OR INDIRECTLY, INURE TO OR FOR THE BENEFIT OF (I) A PERSON OR PERSONS HAVING PERSONALLY COMMITTED AN ACT OR ACTS OF ABUSE RESULTING IN A CLAIM AGAINST THE DEBTOR, A PARTICIPATING PARTY OR A SETTLING INSURER, (II) A SUCCESSOR OR PREDECESSOR OF THE DEBTOR TO THE EXTENT OF SUCH SUCCESSOR’S OR PREDECESSOR’S INDEPENDENT LIABILITY FOR AN ACT OR ACTS OF ABUSE, (III) THE HOLY SEE, OR (IV) ANY NON-SETTLING INSURER.**

**IF THE TRUST ASSERTS ANY CLAIM THAT THE DIOCESE HAS BREACHED DUTIES OR OBLIGATIONS UNDER ANY NON-SETTLING INSURER INSURANCE POLICIES RESULTING IN A LOSS OF COVERAGE, IT SHALL GIVE THE DIOCESE NOTICE AND AN OPPORTUNITY TO CURE ANY ALLEGED BREACH, AND IN ANY EVENT, THE DIOCESE SHALL NOT BE LIABLE FOR ANY ALLEGED BREACH RESULTING IN A LOSS OF COVERAGE EXCEPT TO THE EXTENT THAT (I) THE BREACH RELATES TO POST-EFFECTIVE DATE CONDUCT OF THE DIOCESE, AND (II) THE DIOCESE WILLFULLY OR INTENTIONALLY FAILS TO COMPLY WITH ITS CONTINUING OBLIGATIONS UNDER THE NON-SETTLING INSURER INSURANCE POLICIES. IN ADDITION, ANY SUCH CLAIM WILL NOT BE AUTOMATICALLY ALLOWED; THE DIOCESE WILL HAVE THE RIGHT TO DEFEND AGAINST SUCH CLAIM.**

**PARTICIPATING PARTIES, SETTLING INSURERS, THE REORGANIZED DEBTOR, THE TRUST, THE TRUSTEE, THE FUTURE ABUSE CLAIMS TRUST, THE FUTURE ABUSE CLAIMS TRUSTEE, THE FUTURE CLAIMANT REPRESENTATIVE, THE MEDIATOR, THE SPECIAL MEDIATOR AND PROFESSIONALS EMPLOYED BY THE FOREGOING SHALL NOT HAVE ANY LIABILITY TO ANY GOVERNMENTAL ENTITY OR INSURER ON ACCOUNT OF PAYMENTS MADE TO AN ABUSE CLAIMANT, INCLUDING BUT NOT LIMITED TO LIABILITY UNDER THE MEDICARE SECONDARY PAYER ACT.**

**EFFECTIVE DATE INJUNCTIONS.**

**ON THE EFFECTIVE DATE, THE INJUNCTIONS PROVIDED FOR IN THE COMMITTEE PLAN SHALL BE DEEMED ISSUED, ENTERED, VALID AND ENFORCEABLE ACCORDING TO THEIR TERMS. THE INJUNCTIONS SHALL BE PERMANENT AND IRREVOCABLE AND MAY ONLY BE MODIFIED BY THE BANKRUPTCY COURT.**

**CHANNELING INJUNCTION PREVENTING PROSECUTION OF  
ABUSE CLAIMS AGAINST PARTICIPATING PARTIES AND  
SETTLING INSURERS.**

**APPLICABILITY. SECTION 15.10 OF THE COMMITTEE PLAN IS ONLY  
APPLICABLE UNDER THE FULL OR PARTIAL SETTLEMENT ALTERNATIVE.**

**IN CONSIDERATION OF THE UNDERTAKINGS OF THE PARTICIPATING  
PARTIES AND SETTLING INSURERS, PURSUANT TO THEIR RESPECTIVE  
SETTLEMENTS WITH THE DEBTOR OR THE TRUSTEE, THE FUNDING OF THE  
TRUST, OTHER CONSIDERATION, AND TO FURTHER PRESERVE AND PROMOTE  
THE AGREEMENTS BETWEEN AND AMONG THE PARTICIPATING PARTIES,  
SETTLING INSURERS AND THE DEBTOR OR THE TRUSTEE, AND THE  
PROTECTIONS AFFORDED THE PARTICIPATING PARTIES AND SETTLING  
INSURERS, AND PURSUANT TO SECTIONS 105, 363 AND 1123 OF THE  
BANKRUPTCY CODE AND SUBJECT TO THE PROVISIONS OF THE COMMITTEE  
PLAN AND EXCEPT AS OTHERWISE PROVIDED IN THE COMMITTEE PLAN:**

**a) ANY AND ALL CHANNELED CLAIMS ARE CHANNELED INTO  
THE TRUST; AND**

**b) ALL PERSONS OR ENTITIES THAT HAVE HELD OR ASSERTED,  
HOLD OR ASSERT, OR MAY IN THE FUTURE HOLD OR ASSERT, ANY  
CHANNELED CLAIM (INCLUDING ALL DEBT HOLDERS,  
GOVERNMENTAL, TAX AND REGULATORY AUTHORITIES, LENDERS,  
TRADE AND OTHER CREDITORS, ABUSE CLAIMANTS, OTHER INSURERS,  
AND ALL OTHERS HOLDING CLAIMS OR INTERESTS OF ANY KIND OR  
NATURE WHATSOEVER) ARE HEREBY PERMANENTLY STAYED,  
ENJOINED, BARRED AND RESTRAINED FROM TAKING ANY ACTION,  
DIRECTLY OR INDIRECTLY, FOR THE PURPOSES OF ASSERTING,  
ENFORCING, OR ATTEMPTING TO ASSERT OR ENFORCE ANY  
CHANNELED CLAIM, INCLUDING:**

**(i) COMMENCING OR CONTINUING IN ANY MANNER ANY  
ACTION OR OTHER PROCEEDING OF ANY KIND WITH RESPECT TO  
ANY CHANNELED CLAIM AGAINST ANY PARTICIPATING PARTY,  
SETTLING INSURERS THEIR RESPECTIVE PREDECESSORS,  
SUCCESSORS, AND ASSIGNS, OR THEIR RESPECTIVE EMPLOYEES,  
OFFICERS, AND DIRECTORS, OR AGAINST THE PROPERTY OF ANY  
PARTICIPATING PARTY OR SETTLING INSURER;**

**(ii) ENFORCING, ATTACHING, COLLECTING OR  
RECOVERING, BY ANY MANNER OR MEANS, FROM ANY  
PARTICIPATING PARTY OR SETTLING INSURER OR FROM THE  
PROPERTY OF ANY PARTICIPATING PARTY OR SETTLING  
INSURER, WITH RESPECT TO ANY SUCH CHANNELED CLAIM, ANY**

**JUDGMENT, AWARD, DECREE, OR ORDER AGAINST ANY PARTICIPATING PARTY OR SETTLING INSURER;**

**(iii) CREATING, PERFECTING OR ENFORCING ANY LIEN OF ANY KIND AGAINST ANY PARTICIPATING PARTY, OR SETTLING INSURER OR THE PROPERTY OF ANY PARTICIPATING PARTY OR SETTLING INSURER WITH RESPECT TO ANY SUCH CHANNELED CLAIM (EXCEPT AS PROVIDED IN THE COMMITTEE PLAN; AND**

**(iv) ASSERTING, IMPLEMENTING OR EFFECTUATING ANY CHANNELED CLAIM OF ANY KIND AGAINST:**

**(1) ANY OBLIGATION DUE ANY PARTICIPATING PARTY OR SETTLING INSURER;**

**(2) ANY PARTICIPATING PARTY OR SETTLING INSURER; OR**

**(3) THE PROPERTY OF ANY PARTICIPATING PARTY OR SETTLING INSURER WITH RESPECT TO ANY SUCH CHANNELED CLAIM.**

**ANY INJUNCTION CONTAINED IN A BANKRUPTCY-COURT APPROVED AGREEMENT WITH A PARTICIPATING PARTY OR SETTLING INSURER IS INCORPORATED INTO THE COMMITTEE PLAN BY REFERENCE, IS DEEMED FULLY SET FORTH IN THE COMMITTEE PLAN AND IS IN ADDITION TO THE CHANNELING INJUNCTION. ANY DIFFERENCES BETWEEN THE CHANNELING INJUNCTION IN SECTION 8 AND THE INJUNCTION(S) DEEMED SET FORTH BY THIS SUBPARAGRAPH ARE NOT INTENDED TO AFFECT, DIMINISH OR IMPAIR THE INJUNCTION(S) INCORPORATED IN THE COMMITTEE PLAN AND CONTAINED IN SUCH AGREEMENT.**

**NOTWITHSTANDING ANY PROVISION OF THE COMMITTEE PLAN, THE FOREGOING DESCRIBED “CHANNELING INJUNCTION PREVENTING PROSECUTION OF ABUSE CLAIMS AGAINST PARTICIPATING PARTIES OR SETTLING INSURERS” PROVIDES ABSOLUTELY NO PROTECTION TO (I) A PERSON HAVING PERSONALLY COMMITTED AN ACT OR ACTS OF ABUSE RESULTING IN A CLAIM AGAINST THE DEBTOR, A PARTICIPATING PARTY OR A SETTLING INSURER, (II) THE HOLY SEE; (III) ANY PERSON OR ENTITY ON ACCOUNT OF CLAIMS EXCEPTED FROM THE EXCULPATION UNDER SECTION 6 OF THE COMMITTEE PLAN; AND (IV) ANY NON-SETTLING INSURER.**

**TO THE EXTENT NOT OTHERWISE ENJOINED IN SECTION 8 OF THE COMMITTEE PLAN, ASSERTION AND ENFORCEMENT OF CHANNELED CLAIMS, AND ANY ATTEMPT TO ASSERT OR ENFORCE SUCH CLAIMS, BY ANY PERSON OR ENTITY, AGAINST A PARTICIPATING PARTY OR SETTLING INSURER IS HEREBY PERMANENTLY STAYED, ENJOINED, BARRED, AND RESTRAINED.**

**NOTWITHSTANDING ANY PROVISION OF THE COMMITTEE PLAN, THE FOREGOING “CHANNELING INJUNCTION PREVENTING PROSECUTION OF ABUSE CLAIMS AGAINST PARTICIPATING PARTIES AND SETTLING INSURERS” IS NOT INTENDED TO AFFECT, DIMINISH OR IMPAIR THE RIGHTS OF ANY ABUSE CLAIMANT TO COMMENCE OR PROSECUTE AN ABUSE CLAIM AGAINST THE DEBTOR OR A PARTICIPATING PARTY PROVIDED THAT SUCH COMMENCEMENT OR PROSECUTION IS SUBJECT TO THE TERMS AND CONDITIONS OF THE DEBTOR’S DISCHARGE, THE TRUST AGREEMENT, THE TRUST ALLOCATION PROTOCOL, THE FUTURE ABUSE CLAIM TRUST AGREEMENT, AND THE FUTURE ABUSE CLAIM TRUST ALLOCATION PROTOCOL.**

**ABUSE CLAIMANTS SPECIFICALLY RESERVE, AND DO NOT RELEASE, ANY AND ALL CLAIMS THAT THEY MAY HAVE AGAINST THE DIOCESE OR ANY OTHER PARTICIPATING PARTY THAT IMPLICATE COVERAGE UNDER ANY NON-SETTLING INSURER’S INSURANCE POLICIES, BUT RECOURSE IS LIMITED TO THE PROCEEDS OF THE NON-SETTLING INSURER’S INSURANCE POLICIES AND ALL OTHER DAMAGES (INCLUDING EXTRA-CONTRACTUAL DAMAGES), AWARDS, JUDGMENTS IN EXCESS OF POLICY LIMITS, PENALTIES, PUNITIVE DAMAGES AND ATTORNEY’S FEES AND COSTS THAT MAY BE RECOVERABLE AGAINST ANY NON-SETTLING INSURERS BECAUSE OF THEIR CONDUCT CONCERNING INSURANCE COVERAGE FOR, OR DEFENSE OR SETTLEMENT OF, ANY ABUSE CLAIM, AND ANY SUCH JUDGMENTS OR AWARDS WILL BE HANDLED IN ACCORDANCE WITH THE COMMITTEE PLAN AND THE TRUST ALLOCATION PROTOCOL. THE ABUSE CLAIMS WILL NOT BE RELEASED OR ENJOINED AS AGAINST THE DIOCESE OR ANY OTHER PARTICIPATING PARTY FOR ANY ABUSE THAT MAY BE COVERED UNDER ANY NON-SETTLING INSURER’S INSURANCE POLICIES UNTIL SUCH CLAIMS ARE SETTLED WITH THE DIOCESE, ANY OTHER PARTICIPATING PARTY AND SUCH NON-SETTLING INSURER OR ARE FULLY ADJUDICATED, RESOLVED, AND SUBJECT TO FINAL ORDER, BUT RECOURSE IS LIMITED AS DESCRIBED ABOVE.**

**ABUSE CLAIMANTS AND THE TRUST SHALL BE PERMITTED TO NAME THE DIOCESE OR ANY OTHER PARTICIPATING PARTY IN ANY PROCEEDING TO RESOLVE WHETHER THE DIOCESE OR ANY OTHER PARTICIPATING PARTY HAS LIABILITY FOR ABUSE CLAIMS AND THE AMOUNT OF ANY SUCH LIABILITY, SOLELY FOR THE PURPOSE OF OBTAINING INSURANCE COVERAGE FROM NON-SETTLING INSURERS. THE DISCHARGE UNDER THE COMMITTEE PLAN DOES NOT APPLY TO, AND SHALL NOT LIMIT IN ANY WAY THE OBLIGATIONS OF NON-SETTLING INSURERS TO DEFEND AND PAY, THE DIOCESE’S OR ANY OTHER PARTICIPATING PARTY’S LIABILITY FOR ABUSE CLAIMS UNDER NON-SETTLING INSURER INSURANCE POLICIES.**

**SETTLING INSURER INJUNCTION.**

**IN CONSIDERATION OF THE UNDERTAKINGS OF THE SETTling INSURERS, PURSUANT TO THEIR RESPECTIVE SETTLEMENTS WITH THE**

**DEBTOR OR THE TRUSTEE, THE FUNDING OF THE TRUST, OTHER CONSIDERATION, AND TO FURTHER PRESERVE AND PROMOTE THE AGREEMENTS BETWEEN AND AMONG THE SETTLING INSURERS AND THE DEBTOR OR THE TRUSTEE, AND THE PROTECTIONS AFFORDED THE SETTLING INSURERS, AND PURSUANT TO SECTIONS 105, 363 AND 1123 OF THE BANKRUPTCY CODE, AND EXCEPT AS OTHERWISE PROVIDED IN THE COMMITTEE PLAN, ANY AND ALL PERSONS OR ENTITIES (INCLUDING, WITHOUT LIMITATION, ALL DEBT HOLDERS, ALL EQUITY HOLDERS, GOVERNMENTAL, TAX, AND REGULATORY AUTHORITIES, LENDERS, TRADE AND OTHER CREDITORS, ABUSE CLAIM HOLDERS, OTHER INSURERS, AND ALL OTHERS HOLDING CLAIMS OR INTERESTS) ARE PERMANENTLY ENJOINED AND BARRED FROM ASSERTING AGAINST A SETTLING INSURER ANY CLAIM (INCLUDING, WITHOUT LIMITATION, ANY INSURANCE COVERAGE CLAIM OR EXTRA-CONTRACTUAL CLAIM) OR INTEREST OF ANY KIND OR NATURE WHATSOEVER ARISING FROM OR RELATING IN ANY WAY TO (i) ANY ABUSE CLAIM OR (ii) ANY OF THE SETTLING INSURER POLICIES OR (iii) ANY CLAIM AGAINST ANY SETTLING INSURER FOR CONTRIBUTION, INDEMNITY, DEFENSE, SUBROGATION, OR SIMILAR RELIEF THAT ARISES DIRECTLY OR INDIRECTLY FROM ANY CLAIM AGAINST THE DEBTOR OR ANY PARTICIPATING PARTY.**

**NOTHING CONTAINED IN SECTION 15.15 OF THE COMMITTEE PLAN IS INTENDED TO AFFECT, DIMINISH OR IMPAIR ANY INJUNCTIONS CONTAINED IN AN AGREEMENT BETWEEN THE DEBTOR OR THE TRUSTEE AND ANY SETTLING INSURER. SUCH INJUNCTIONS ARE INCORPORATED IN THE COMMITTEE PLAN BY REFERENCE AND ARE DEEMED FULLY SET FORTH THEREIN.**

**NOTWITHSTANDING THE ABOVE, ECCLESIA AND THE ECCLESIA INSURANCE POLICIES ARE NOT RELEASED WITH RESPECT TO THE CLASS 6 CLAIMS.**

**TERM OF INJUNCTIONS OR STAYS AND CONFIRMATION OF SETTLEMENTS WITH PARTICIPATING PARTIES AND SETTLING INSURERS.**

**ALL INJUNCTIONS AND/OR STAYS PROVIDED FOR IN THE COMMITTEE PLAN, THE INJUNCTIVE PROVISIONS OF SECTIONS 524 AND 1141 OF THE BANKRUPTCY CODE, AND ALL INJUNCTIONS OR STAYS PROTECTING PARTICIPATING PARTIES AND ANY SETTLING INSURER THAT HAS PURCHASED ITS INSURANCE POLICY OR POLICIES IN A SECTION 363 SALE, ARE PERMANENT AND WILL REMAIN IN FULL FORCE AND EFFECT FOLLOWING THE EFFECTIVE DATE AND ARE NOT SUBJECT TO BEING VACATED OR MODIFIED. DEBTOR'S SETTLEMENT AGREEMENTS, IF ANY, WITH THE SETTLING INSURERS, AND THE PARTICIPATING PARTIES PREVIOUSLY AUTHORIZED BY THE BANKRUPTCY COURT ARE HEREBY AFFIRMED AND ANY OBLIGATIONS OF DEBTOR WITH RESPECT TO SUCH SETTLEMENT**

**AGREEMENTS ARE EXCEPTED FROM THE DEBTOR'S DISCHARGE AND SHALL BE ASSUMED BY THE REORGANIZED DEBTOR AND TRUSTEE, AS APPLICABLE, ON THE EFFECTIVE DATE.**

**RELEASE OF AVOIDANCE RIGHTS AGAINST PARTICIPATING PARTIES AND SETTLING INSURERS.**

**ON THE EFFECTIVE DATE, ALL AVOIDANCE RIGHTS, INCLUDING THOSE ARISING UNDER SECTIONS 544, 547, 548, 549, 550, AND 553 OF THE BANKRUPTCY CODE, AGAINST EACH OF THE PARTICIPATING PARTIES AND SETTLING INSURERS AND THE DEBTOR AND REORGANIZED DEBTOR SHALL BE DEEMED SETTLED, COMPROMISED, AND RELEASED BY THE COMMITTEE PLAN.**

**RELEASE OF CLAIMS AGAINST PARTICIPATING PARTY OR SETTLING INSURER.**

**EXCEPT FOR OBLIGATIONS ARISING UNDER ANY EXECUTORY CONTRACT ASSUMED BY THE REORGANIZED DEBTOR PURSUANT TO ARTICLE XVII OF THE COMMITTEE PLAN, OBLIGATIONS UNDER ANY SETTLEMENT AGREEMENT AND CLAIMS EXCEPTED FROM EXCULPATION AND DISCHARGE UNDER SECTION 16.4 AND 16.7, ON THE EFFECTIVE DATE, THE DEBTOR, REORGANIZED DEBTOR AND THE ESTATE WAIVE, RELEASE AND DISCHARGE ANY AND ALL CLAIMS OR CAUSES OF ACTION OF EVERY KIND AND NATURE THAT DEBTOR, REORGANIZED DEBTOR, OR THE ESTATE HAVE OR MAY HAVE AGAINST A PARTICIPATING PARTY OR SETTLING INSURER, INCLUDING AVOIDANCE RIGHTS, AND ANY CLAIM THAT SUCH PARTICIPATING PARTY OR SETTLING INSURER OR ITS ASSETS ARE A PART OF OR OWNED BY THE DEBTOR OR THE ESTATE. NO SUCH CLAIM WILL SURVIVE THE EFFECTIVE DATE OR BE DEEMED TO BE ASSIGNED TO THE TRUST. WITH RESPECT TO ANY RELEASES IN A BANKRUPTCY COURT-APPROVED AGREEMENT WITH A PARTICIPATING PARTY OR SETTLING INSURER, NOTHING CONTAINED IN THE COMMITTEE PLAN IS INTENDED TO AFFECT, DIMINISH OR IMPAIR SUCH RELEASES.**

**Pension Plan.**

No provision in the Committee Plan, Confirmation Order, the Bankruptcy Code (including section 1141 of the Bankruptcy Code), or any other document filed or order entered in the Chapter 11 Cases shall be construed to exculpate, discharge, release or relieve the Debtor, the Non-Debtor Affiliates, or any other party, in any capacity, from any liability or responsibility to any Person regarding the Pension Plans under any law, governmental policy, or regulatory provision. The Pension Plans shall not be enjoined or precluded from enforcing any such liability or responsibility because of the Committee Plan (including those provisions providing for exculpation, satisfaction, release and discharge of Claims against the Debtor), the Confirmation Order, the Bankruptcy Code (including section 1141 of the Bankruptcy Code), or any other document filed or order entered in the Chapter 11 Case. The Trust shall not have any liability to any Person on account of the Pension Plans, including liability as a member of a "Controlled Group" as defined in 29 U.S.C. § 1301(a)(14)(A) or on any other basis.

As of the Effective Date, the Reorganized Debtor shall assume and continue the Pension Plans to the extent of its obligations under the Pension Plans and applicable law. Notwithstanding the foregoing, the Reorganized Debtor reserves all of its rights under the Pension Plan. For the avoidance of doubt, any claims asserted by any beneficiary of the Pension Plan shall be reinstated and shall remain with the same priority and validity as before the Petition Date.

## **XII. BEST INTERESTS TEST**

Under Section 1129(a)(7) of the Bankruptcy Code, often called the “best interests test,” holders of impaired allowed claims must either (i) accept the plan of reorganization, or (ii) receive or retain under the plan property of a value, as of the plan’s assumed effective date, that is not less than the value such rejecting claimants would receive or retain if the Debtor was liquidated under chapter 7 of the Bankruptcy Code on such date.

The Committee believes that the Committee Plan provides the same or a greater recovery for claimants holding Allowed Claims as would be achieved in a liquidation under chapter 7 of the Bankruptcy Code. This belief is based on several considerations, including: (i) the additional administrative claims generated by conversion to a chapter 7 case; (ii) the administrative costs of liquidation and associated delays with a chapter 7 liquidation; and (iii) the lack of value ascribed to the Debtor’s insurance recoveries because liquidation value of those policies is highly uncertain.

The Committee has prepared an unaudited Liquidation Analysis, Exhibit 2, to assist claimants holding Allowed Claims in evaluating the Committee Plan. The Liquidation Analysis compares the projected creditor recoveries that would result from the liquidation of the Debtor in a hypothetical case under chapter 7 of the Bankruptcy Code with the estimated distributions to claimants holding Allowed Claims under the Committee Plan. The Liquidation Analysis is based on the value of the Debtor’s assets and liabilities as of a certain date and incorporates various estimates and assumptions, including a hypothetical conversion to a chapter 7 liquidation as of a certain date. Further, the analysis is subject to potentially material changes, including regarding economic and business conditions and legal rulings. The actual liquidation value of the Debtor could vary materially from the estimate provided in the Liquidation Analysis. Finally, the Liquidation Analysis does not include a liquidation analysis of the Debtor’s Insurance Policies. This is so because, given insurer coverage defenses and defenses to Abuse Claims, the liquidation value of those policies is highly uncertain.

## **XIII. RISK FACTORS**

In evaluating whether to vote to accept or to reject the Committee Plan, all Claimants holding Allowed Claims and all Abuse Claimants in the Voting Classes should carefully read and consider the risk factors set forth below, which describe how the anticipated distributions and treatments under the Committee Plan rely on uncertain assumptions and are not guaranteed. These disclosures are not intended to be inclusive and should be read in connection with the other disclosures in this Disclosure Statement and the exhibits attached. You should consult with your legal, financial, and tax advisors regarding the risks associated with the plan and distributions you may receive.



**A. Parties in Interest May Object to the Committee’s Classification of Claims.**

Section 1122 of the Bankruptcy Code provides that a plan of reorganization may place a claim or an equity interest in a particular class only if such claim is substantially similar to the other claims in such class. The Committee believes that the classification of claims under the Committee Plan complies with the requirements in the Bankruptcy Code because the Committee created classes of claims that only encompass claims substantially similar to the other claims in such class. Still, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

**B. The Committee May Not Be Able To Secure Confirmation of the Committee Plan.**

Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation of a chapter 11 plan, and requires findings by the bankruptcy court that: (i) such plan “does not unfairly discriminate” and is “fair and equitable” regarding any rejecting classes; (ii) confirmation of such plan is not likely to be followed by a liquidation or a need for further financial reorganization unless such liquidation or reorganization is contemplated by the Committee Plan; and (iii) the value of distributions to rejecting holders of claims and equity interests within a particular class under such plan will not be less than the value of distributions such holders would receive if the Debtor was liquidated under chapter 7 of the Bankruptcy Code.

There can be no assurance that the Bankruptcy Court will confirm the Committee Plan. The Bankruptcy Court could decline to confirm the Committee Plan if it found that the statutory requirements for confirmation had not been met, including the requirement that the terms of the Committee Plan do not “unfairly discriminate” and are “fair and equitable” to rejecting Classes. If the Committee Plan is not confirmed, it is unclear what distributions that claimants holding Allowed Claims will receive regarding their Allowed Claims, or the timing of receipt of such distributions, as it is unclear whether a confirmable alternative plan can be proposed by any other party in this chapter 11 case.

**C. The Debtor May Object to the Committee Plan.**

The Diocese has not agreed to the terms of the Committee Plan. Nor has the Diocese agreed to voluntarily contribute to the Trust provided for in the Committee Plan. The Diocese may oppose confirmation of the Committee Plan arguing it is unconfirmable on the bases, among others, that (i) the Diocese cannot be compelled to contribute assets to the Trust, (ii) the Committee Plan is not feasible as it does not leave the Diocese with sufficient resources to maintain its mission, and (iii) the Diocese Plan is superior to the Committee Plan. Even if the Bankruptcy Court confirmed the Committee Plan over the objections of the Diocese, the Diocese may appeal the confirmation order increasing administrative expenses, delaying resolution, and delaying the occurrence Effective Date of the Committee Plan even if such appeal failed.

**D. The Non-Settling Insurers May Object to the Committee Plan.**

The Non-Settling Insurers may object to the Committee Plan. The Non-Settling Insurers may argue that the provisions relating to the assignment and/or enforcement of the Debtor’s Insurance Policies are not enforceable and violate the terms of those policies. In other Diocesan cases, non-settling insurers have heavily litigated the confirmation of proposed reorganization

plans. If those objections have been overruled, the non-settling insurers have appealed those decisions. Thus, even if the Bankruptcy Court confirmed the Committee Plan over the objections of Non-Settling Insurers, such Non-Settling Insurers may appeal the confirmation order increasing administrative expenses, delaying resolution and the Effective Date of the Committee Plan even if such appeal failed.

**E. Parties In Interest May Object To The Releases And Injunctions Contained In The Committee Plan.**

Confirmation is also subject to the Bankruptcy Court's approval of the releases, injunction, and discharge and related provisions described in the Committee Plan under the Full or Partial Settlement Alternatives. Certain parties in interest may assert that the Committee cannot demonstrate that the Committee Plan meets the standards for approval of releases, injunctions, and exculpations under applicable law. Even if the Bankruptcy Court confirmed the Committee Plan over such objections, such objectors may appeal the confirmation order increasing administrative expenses, delaying resolution and the Effective Date of the Committee Plan even if such appeal failed.

**F. Nonconsensual Confirmation.**

The Committee believes that the Committee Plan satisfies the requirements of Section 1129(b) of the Bankruptcy Code to seek a nonconsensual confirmation of the Committee Plan if necessary unless the holders of Abuse Claims vote to reject the Committee Plan. However, there is no assurance that the Bankruptcy Court will conclude this, in which case the Committee Plan may not be confirmed.

**G. Non-Occurrence of the Effective Date.**

The Effective Date is subject to the conditions precedent in the Committee Plan. There can be no assurance that the conditions necessary for the Committee Plan to become effective will be met, in which case distributions will be delayed.

**XIV. CERTAIN FEDERAL INCOME TAX CONSIDERATIONS<sup>59</sup>**

THE FEDERAL, STATE, LOCAL, AND FOREIGN TAX CONSEQUENCES OF THE COMMITTEE PLAN ARE COMPLEX AND, IN MANY AREAS, UNCERTAIN. ALL HOLDERS OF CLAIMS ARE STRONGLY URGED TO CONSULT THEIR TAX ADVISORS WITH SPECIFIC REFERENCE TO THE FEDERAL, STATE, AND LOCAL TAX CONSEQUENCES OF THE COMMITTEE PLAN. NEITHER THE DEBTOR NOR THE DEBTOR'S COUNSEL MAKE ANY REPRESENTATIONS REGARDING THE PARTICULAR TAX CONSEQUENCES OF CONFIRMATION AND CONSUMMATION OF THE COMMITTEE PLAN AS TO THE DEBTOR OR ANY CREDITOR.

The following summary is a general discussion of certain potential Federal income tax consequences of the Committee Plan. The summary is based upon relevant provisions of the Internal Revenue Code of 1986, as amended (the "Tax Code"), the applicable Treasury

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<sup>59</sup> Subject to review by tax counsel.

Regulations promulgated (the “**Treasury Regulations**”), judicial authority, published rulings, and such other authorities considered relevant now in effect, which are subject to change.

The federal income tax consequences to any particular creditor may be affected by matters not discussed below. The summary does not address all categories of Creditors, some of which may be subject to special rules not addressed herein. There also may be state, local, or foreign tax considerations applicable to each Creditor or the Debtor.

#### **A. Tax Consequences to Creditors**

A creditor that receives a distribution to satisfy its Claim will generally recognize a gain or loss equal to the difference between (i) the amount of cash received by such creditor regarding its Claim (excluding any cash received regarding a Claim for accrued interest) and (ii) the creditor’s tax basis in its Claim. The character of any gain or loss recognized as long-term or short-term capital gain or loss or as ordinary income or loss will be determined by several factors, including the tax status of the creditor, whether the Claim constitutes a capital asset in the hands of the creditor, whether the Claim has been held for more than one year, and whether and to what extent the creditor has claimed a bad debt deduction (or charged a reserve for bad debts) regarding the Claim.

For example, if a distribution is made to satisfy a receivable acquired in the ordinary course of the Claimant’s trade or business, and the Claimant had previously included the amount of such receivable Distribution in his or her gross income under his or her method of accounting, and had not previously claimed a loss or bad debt deduction for that amount, the receipt of the distribution should not result in additional income to the Claimant but may, result in a loss. Conversely, had the Claimant previously claimed a loss or bad debt deduction regarding the item previously included in income, the Claimant generally would have to include the amount of the distribution in income when received.

The Committee anticipates that distributions to satisfy Abuse Claims will, in all instances, constitute damages, other than punitive damages, because of personal physical injuries and/or physical sickness, within the meaning of Section 104(a)(2) of Tax Code. The Committee has not, however, analyzed such tax issues and cannot (and does not) make any assurances or representations regarding the anticipated tax treatment of Abuse Claims.

THERE ARE MANY FACTORS THAT WILL DETERMINE THE TAX CONSEQUENCE TO EACH HOLDER OF AN UNSECURED CLAIM. THE TAX CONSEQUENCES OF THE COMMITTEE PLAN ARE COMPLEX, AND IN SOME CASES, UNCERTAIN. THEREFORE, IT IS IMPORTANT THAT EACH HOLDER OF AN UNSECURED CLAIM OBTAIN HIS, HER, OR ITS OWN PROFESSIONAL TAX ADVICE REGARDING THE TAX CONSEQUENCES TO SUCH HOLDER OF AN UNSECURED CLAIM AS A RESULT OF THE COMMITTEE PLAN.

#### **B. Tax Consequences to the Debtor**

The Debtor is a non-profit, non-stock member corporation having tax-exempt status under 26 U.S.C. § 501(c)(3). Due to the Debtor’s status as a non-profit corporation, the Debtor does not

expect that the Committee Plan will result in any significant federal income tax consequences to the Debtor.

Under the Internal Revenue Code of 1986, as amended (the “Code”), there may be significant federal income tax issues arising under the Committee Plan described in this Disclosure Statement that affect creditors in this chapter 11 case.

### **C. Tax Consequences to the Trust.**

The Trust may satisfy the requirements of a designated settlement fund under § 468B of the Tax Code or a qualified settlement fund under Regulation 1.468B-1 of the Treasury Regulations. There are certain tax consequences associated with the characterization of the Trust as a designated settlement fund or a qualified settlement fund (“QSF”). The Committee expresses no opinion on whether the Internal Revenue Service would conclude that the Trust is a designated settlement fund or a QSF. The Debtor has not requested a ruling from the Internal Revenue Service or an opinion of counsel regarding whether the Trust is a designated settlement fund or a qualified settlement fund. Each creditor is urged to consult its own tax advisor regarding the characterization of the Trust and the tax consequences of such characterization.

The federal income tax consequences to a Holder of a Claim receiving, or entitled to receive, a distribution in partial or total satisfaction of a Claim may depend on several factors, including the Claim, the Claimants’ method of accounting, and their own particular tax situation. Because each Claimant’s tax situation differs, Claimants should consult their own tax advisors to determine how the Committee Plan affects them for federal, state, and local tax purposes, based on its particular tax situations.

## **XV. VOTING INSTRUCTIONS**

The Committee’s Claims Agent will send to all Claimants entitled to vote on the Committee Plan: (i) the Disclosure Statement Order, (ii) a notice of the Confirmation Hearing, (iii) the Disclosure Statement, as approved by the Bankruptcy Court and together with the Committee Plan attached as an exhibit, and (iv) a ballot (collectively, the “**Solicitation Packages**”). The Solicitation Packages will also describe the procedures and deadline for submitting ballots to the Committee’s Claims Agent.

## XVI. CONCLUSION AND RECOMMENDATION

The Committee believes that confirmation and implementation of the Committee Plan is preferable to any other alternative. The Committee urges all claimants entitled to vote to accept the Committee Plan, and urges Abuse Claimants to vote to accept the Committee Plan by so indicating on their ballots and returning them as specified in the instructions in the Solicitation Packages.

Dated: February 3, 2023

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**EXHIBIT 1**

**Chapter 11 Plan Of Reorganization Proposed By The Official Committee of Unsecured  
Creditors of the Roman Catholic Diocese of Rockville Centre**

**[FILED AS SEPARATE DOCUMENT]**

**EXHIBIT 2**

**Liquidation Analysis**

**ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE**

**Notes To Liquidation Analysis**



**EXHIBIT 3**

**Disclosure Statement Order**

**[TO COME]**

**EXHIBIT 4**

**SUFFOLK GRAND JURY REPORT**

The Grand Jury Report is publicly available at [https://www.bishop-accountability.org/reports/2003\\_02\\_10\\_SuffolkGrandJury/](https://www.bishop-accountability.org/reports/2003_02_10_SuffolkGrandJury/)

**A copy of the Suffolk Grand Jury Report itself will be attached as an Exhibit to the Solicitation Version of the Disclosure Statement**