

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

The Diocese of New Ulm,

Debtor.

Case No.: 17-30601
Chapter 11 Case

ORDER CONFIRMING PLAN

This case is before the court pursuant to the Second Amended Joint Chapter 11 Plan of Reorganization dated March 6, 2020 proposed by the debtor and the committee of unsecured creditors. The court conducted the plan confirmation hearing on March 10, 2020.

Pursuant to the findings, conclusions and statements of the court on the record at the confirmation hearing, the entire record and the orders approving the Insurance Settlement Agreements (as defined in the plan) which are incorporated into this confirmation order by reference as if set forth fully herein, the court further finds and concludes as follows:

1. The plan satisfies and complies with each of the provisions of 11 U.S.C. § 1129 to the extent applicable to the plan and this case.
2. Every class that was impaired has voted to accept the plan.
3. This case presents the rare and unique circumstances in which the channeling injunctions, supplemental settling insurer injunctions, and releases provided pursuant to the plan and such Insurance Settlement Agreements may be approved. The debtor has numerous and significant liabilities on which the Protected Parties, as defined in the plan and includes the debtor, and Settling Insurers (as defined in the plan), are also liable or possibly liable to some extent. Under the plan, such Protected Parties and Settling Insurers will make substantial contributions to provide for payment to the Survivor Claimants, as defined in the plan. Such contributions are

critical and significant contributions to the effective implementation of the plan, and the plan would not be feasible without such contributions. Such Protected Parties would not release their interests under the Settling Insurer Policies (as defined in the plan) unless they obtained the benefits of the releases and injunctions under the plan. Resolution of the case would not have been possible without such releases and injunctions, and such Protected Parties and Settling Insurers would not have made contributions to the plan without the protections, releases, indemnification, and injunctions provided in the plan and the Insurance Settlement Agreements.

4. The creditors most affected by the releases and injunctions – the Survivor Claimants (as defined in the plan) – have indicated by an overwhelming majority that they accept such provisions; indeed, the committee is a proponent of the plan.

5. The court has jurisdiction pursuant to 28 U.S.C. § 1334(a) and (b) to approve the exculpation, indemnification, release, and limitation of liability provisions of the plan and to issue the channeling injunction, supplemental settling insurer injunction, and other injunctions as provided in Article XIII of the plan.

6. The debtor and committee have complied with all applicable provisions of the bankruptcy code with respect to the plan and the solicitation of acceptances or rejections thereof. In particular, the plan complies with the requirements of 11 U.S.C. §§ 1125 and 1126 as follows:

a. The debtor and committee complied with this court’s order [Docket No. 343] approving notice and solicitation procedures and served the materials designated in the certificate of service [Docket No. 351] in full compliance with the court’s order.

b. The debtor and committee published a notice concerning the plan, confirmation objection deadline, and confirmation hearing date in national and local publications as required by this court’s order.

c. Copies of the plan and disclosure statement have been available upon request from the debtor's and committee's counsel and, free of charge, from the debtor's and court's website.

d. The debtor and the committee provided specific and adequate notice of, among other things, (i) the releases, indemnification, and injunctions provided for in the plan and the Insurance Settlement Agreements (as defined in the plan), (ii) the manner in which a creditor or interested party could take steps to obtain additional information regarding, or to object to, the releases or injunctions, (iii) the names of the Settling Insurers and Protected Parties (as the foregoing capitalized terms are defined in the plan) and (d) the confirmation hearing and all relevant dates, deadlines, procedures and other information relating to the plan and the solicitation of votes on the plan.

e. Based on the foregoing and this court's order, all persons entitled to receive notice of the disclosure statement, plan, and the confirmation hearing have received proper, timely and adequate notice in accordance with this court's order, the applicable provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the local rules, and have had an opportunity to appear and be heard with respect thereto. No other or further notice is required.

IT IS ORDERED:

A. CONFIRMATION. The plan filed and dated March 6, 2020, is confirmed.

B. BINDING EFFECT OF THE PLAN. Immediately upon entry of this order, the terms of the plan are approved, effective and binding, including without limitation upon any and all entities acquiring property under the plan, and all holders of claims and Interests (as defined in the plan), any and all non-debtor parties to executory contracts, any and all Survivor Claimants,

including Unknown Survivor Claimants and Late-Filed Survivor Claimants (as the foregoing capitalized terms are defined in the plan) and other creditors, whether or not such creditor has filed a proof of claim, whether or not the claim of such creditor is impaired under the plan, and whether or not such creditor has accepted or rejected the plan. All entities shall act or refrain from acting as set forth in the plan.

C. VESTING OF ESTATE'S ASSETS. Except as otherwise provided in this order or in the plan, and as of the effective date of the plan, under 11 U.S.C. §§ 1141(b) and 1141(c), all property of the debtor's estate and all property dealt with by the plan are vested in the trust or the reorganized debtor, or as may otherwise be set forth in the plan, free and clear of all liens, interests and claims of creditors of the debtor.

D. DISCHARGE. Except as otherwise expressly provided in the plan or in this order, on the effective date of the plan, the debtor is discharged and its liability is extinguished completely in respect to any claim and debt that arose prior to the effective date, including all Survivor Claims and Related Insurance Claims (as the foregoing capitalized terms are defined in the plan), whether reduced to judgment or not, liquidated or unliquidated, contingent or non-contingent, asserted or unasserted, fixed or not, matured or unmatured, disputed or undisputed, legal or equitable, known or future, including, without limitation, all interest, if any, on any such claims and debts, whether such interest accrued before or after the petition date, and including all claims and debts of the kind specified in 11 U.S.C. §§ 502(g), 502(h) and 502(i), whether or not a proof of claim is filed or is deemed filed under 11 U.S.C. § 501, such claim is allowed under 11 U.S.C. § 502, or the holder of such claim has accepted the plan.

E. EXCULPATION AND LIMITATION OF LIABILITY. Except as expressly provided in the plan, none of the Exculpated Parties (as defined in the plan) shall have or incur any

liability for, and each such Exculpated Party shall be released from, any claim, cause of action or liability to any other Exculpated Party, to any holder of a claim, or to any other party in interest, for any act or omission that occurred during and in connection with this case or in connection with the preparation and filing of this case, the formulation, negotiation or pursuit of confirmation of the plan, the consummation of the plan and the administration of the plan or the property to be distributed under the plan, except for claims, causes of action or liabilities arising from the gross negligence, willful misconduct, fraud or breach of the fiduciary duty of loyalty of any such Exculpated Party, in each case subject to determination of such by non-appealable order of a court of competent jurisdiction and provided that any Exculpated Party shall be entitled to reasonably rely upon the advice of counsel with respect to its duties and responsibilities, if any, under the plan. Without limiting the generality of the foregoing, the committee, the debtor and their respective officers, board and committee members, employees, attorneys, financial advisors and other professionals shall be entitled to and granted the benefits of 11 U.S.C. § 1125(e) and the channeling injunction.

F. CHANNELING INJUNCTION. Channeling Injunction Preventing Prosecution of Channeled Claims Against Protected Parties and Settling Insurers (as the foregoing capitalized terms are defined in the plan).

1. In consideration of the undertakings of the Protected Parties and the Settling Insurers under the plan, their contributions to the Trust (as defined in the plan) and other consideration, and pursuant to their respective settlements with the Diocese and to further preserve and promote the agreements between and among such Protected Parties and Settling Insurers, and pursuant to 11 U.S.C. §§ 105 and 363:

i. any and all Channeled Claims (as defined in the plan) are channeled into the Trust and shall be treated, administered, determined, and resolved under the procedures and protocols and in the amounts as established under the plan and the Trust Agreement as the sole and exclusive remedy for all holders of such Channeled Claims; and

ii. any and all Persons who have held or asserted, hold or assert, or may in the future hold or assert any such Channeled Claims 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 against the Protected Parties or Settling Insurers (as the foregoing capitalized terms are defined in the plan), including:

a. commencing or continuing in any manner any action or other proceeding of any kind with respect to any such Channeled Claim against any of the Protected Parties or the Settling Insurers (as defined in the plan), or against the property of any of such Protected Parties or Settling Insurers;

b. enforcing, attaching, collecting or recovering, or seeking to accomplish any of the preceding, by any manner or means, from any of the Protected Parties or the Settling Insurers (as defined in the plan), or the property of any of such Protected Parties or Settling Insurers, any judgment, award, decree, or order with respect to any Channeled

Claim (as defined in the plan) against any such Protected Parties or Settling Insurers;

c. creating, perfecting, or enforcing, or seeking to accomplish any of the preceding, any lien of any kind relating to any Channeled Claim (as defined in the plan) against any of the Protected Parties or the Settling Insurers (as the foregoing capitalized terms are defined in the plan) or the property of such Protected Parties or Settling Insurers;

d. asserting, implementing, or effectuating, any Channeled Claim (as defined in the plan) of any kind against:

1. any obligation due any of the Protected Parties or the Settling Insurers (as defined in the plan);

2. any such Protected Parties or Settling Insurers;

or

3. the property of any of such Protected Parties or Settling Insurers.

e. taking any act, in any manner, in any place whatsoever, that does not conform to, or comply with, the provisions of the plan; and

f. asserting or accomplishing any setoff, right of indemnity, subrogation, contribution, or recoupment of any kind against an obligation due to any of the Protected Parties, the Settling Insurers, or

the property of the Settling Insurers (as the foregoing capitalized terms are defined in the plan).

The Channeling Injunction is an integral part of the plan and is essential to the plan's consummation and implementation. It is intended that the channeling of the Channeled Claims as provided in this section shall inure to the benefit of the Protected Parties and Settling Insurers (as the foregoing capitalized terms are defined in the plan). In a successful action to enforce the injunctive provisions of this Section in response to a willful violation thereof, the moving party shall be entitled to recover all costs and expenses incurred, including reasonable attorneys' fees, from the non-moving party, and such other legal or equitable remedies as are just and proper, after notice and a hearing.

G. SUPPLEMENTAL SETTLING INSURER INJUNCTION. Supplemental Injunction Preventing Prosecution of Claims Against Settling Insurers (as defined in the plan).

1. Pursuant to 11 U.S.C. §§ 105(a) and 363 and in consideration of the undertakings of such Settling Insurers pursuant to the Insurance Settlement Agreements, including certain Settling Insurers' purchase of the applicable Settling Insurer Policies, free and clear of all Interests pursuant to 11 U.S.C. § 363(f), any and all Persons who have held, now hold, or who may in the future hold any Interests, including all debt holders, all equity holders, all such Persons holding a Claim, governmental, tax and regulatory authorities, lenders, trade and other creditors, Survivor Claimants, Other Insurers, perpetrators and all others holding Interests of any kind or nature whatsoever, including those Claims released or to be released pursuant to any such Insurance Settlement Agreement, against any of the Protected

Parties or the Settling Insurers (as the foregoing capitalized terms are defined in the plan) which, directly or indirectly, arise from, relate to, or are in connection with any such Survivor Claims that are covered or alleged to be covered under such Settling Insurer Policies, or any Related Insurance Claims (as defined in the plan) related to such Survivor Claims, are hereby permanently stayed, enjoined, barred, and restrained from taking any action, directly or indirectly, to assert, enforce or attempt to assert or enforce any such Interest against such Settling Insurers, Settling Insurer Policies, or Protected Parties to the extent such Interests arise from the same injury or damages asserted in connection with any such Survivor Claim, including:

i. Commencing or continuing in any manner any action or other proceeding, whether legal, equitable or otherwise, against the Protected Parties or the Settling Insurers (as the foregoing capitalized terms are defined in the plan), or the property of such Protected Parties or Settling Insurers;

ii. Enforcing, attaching, collecting, or recovering, or seeking to do any of the preceding, by any manner or means, any judgment, award, decree or order against the Protected Parties or the Settling Insurers (as the foregoing capitalized terms are defined in the plan) or the property of such Protected Parties or Settling Insurers;

iii. Creating, perfecting, or enforcing, or seeking to do any of the preceding, any lien of any kind against the Protected Parties or the Settling Insurers (as the foregoing capitalized terms are defined in the plan) or the property of such Protected Parties or Settling Insurers;

iv. Asserting or accomplishing any setoff, right of indemnity, subrogation, contribution, or recoupment of any kind against any obligation due to the Protected Parties or the Settling Insurers (as the foregoing capitalized terms are defined in the plan) or the property of such Protected Parties or Settling Insurers; and

v. Taking any act, in any manner, in any place whatsoever, that does not conform to, or comply with, the provisions of the plan.

H. EFFECTIVENESS OF RELEASES AND INJUNCTION. Except as otherwise expressly provided in the plan, for the consideration described in the Insurance Settlement Agreements, all persons who have held, hold or may hold Channeled Claims against the Protected Parties or the Settling Insurers under the Settling Insurer Policies (as the foregoing capitalized terms are defined in the plan), whether known or unknown, will be permanently enjoined on and after the effective date of the plan from: (a) commencing or continuing in any manner, any action or any other proceeding of any kind, including, but not limited to, any Survivor Claim against the Settling Insurers or the property of the Settling Insurers with respect to any Channeled Claim (as the foregoing capitalized terms are defined in the plan); (b) seeking the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree or order against the Settling Insurers or the property of the Settling Insurers, with respect to any Channeled Claim (as the foregoing capitalized terms are defined in the plan); (c) creating, perfecting or enforcing any encumbrance of any kind against the Settling Insurers with respect to any Channeled Claim (as the foregoing capitalized terms are defined in the plan); (d) asserting any setoff, right of subrogation or recoupment of any kind against any obligation due to the Settling Insurers

with respect to any Channeled Claim (as the foregoing capitalized terms are defined in the plan); and (e) taking any act, in any manner and in any place whatsoever, that does not conform to or comply with provisions of the plan or any documents relating to the plan, including the Trust Agreement. Any and all currently pending court proceedings, the continuation of which would violate the provisions of this section, shall be dismissed with prejudice.

I. INJUNCTIONS ARE PERMANENT; EXISTING INJUNCTIONS AND STAYS REMAIN IN EFFECT UNTIL EFFECTIVE DATE. On the effective date of the plan, the injunctions provided for in the plan shall be deemed issued, entered, valid and enforceable according to their terms and shall be permanent and irrevocable. All injunctions and stays provided for in the plan, the injunctive provisions of 11 U.S.C. §§ 524 and 1141 and all injunctions or stays protecting the Protected Parties and Settling Insurers (as the foregoing capitalized terms are defined in the plan) are permanent and will remain in full force and effect following the effective date and are not subject to being vacated or modified.

J. LIABILITY OF JOINT TORTFEASORS. Pursuant to the plan, any person or entity that is or was alleged to be a joint tortfeasor with the Protected Parties in connection with any Survivor Claim (as the foregoing capitalized terms are defined in the plan) shall not be liable for such Protected Parties' share of liability or fault for such claim.

K. JUDGMENT REDUCTION.

1. In any proceeding, suit or action to recover or obtain insurance coverage or proceeds for a Survivor Claim from an Other Insurer (as the foregoing capitalized terms are defined in the plan) the following shall apply: If the Trust, a Protected Party, a Survivor

Claimant or any other person bound by the plan obtains a judgment against an Other Insurer (as the foregoing capitalized terms are defined in the plan), the judgment shall automatically be reduced by the amount, if any, that all Settling Insurers (as defined in the plan) would have been liable to pay such Other Insurer as a result of its Related Insurance Claim (as defined in the plan) against one or more such Settling Insurers. To ensure that such a reduction is accomplished, (a) the person pursuing the Related Insurance Claim, whether the Trust, the Protected Parties, a Survivor Claimant or any other person bound by the plan, shall inform the Other Insurer (as the foregoing capitalized terms are defined in the plan) of the existence of this judgment reduction provision at the time a claim is first asserted against such Other Insurer; (b) the Other Insurer's Related Insurance Claim against a Settling Insurer (as the foregoing capitalized terms are defined in the plan) may be asserted as a defense in any proceeding, suit or action to obtain insurance coverage or proceeds from such Other Insurer for a Survivor Claim, as defined in the plan; and (c) to the extent the Other Insurer's Related Insurance Claim against a Settling Insurer (as the foregoing capitalized terms are defined in the plan) is determined to be valid by the court presiding over such action, the liability of such Other Insurer shall be reduced dollar for dollar by the amount so determined.

2. As provided in the Insurance Settlement Agreements, each Settling Insurer agrees that it will not pursue any Related Insurance Claim that it might have against any other Settling Insurer that does not assert a Related Insurance Claim against a corresponding Settling Insurer (as the foregoing capitalized terms are defined in the plan). Notwithstanding the foregoing, if a person pursues such a Related Insurance Claim against

such a Settling Insurer, then such Settling Insurer shall be free to assert such Related Insurance Claims against such person.

3. As provided in the Insurance Settlement Agreements, the debtor and the Trust shall use their best efforts to obtain, from all Other Insurers (as the foregoing capitalized terms are defined in the plan), if any, with which they execute a settlement agreement after the effective date, agreements similar to those contained in this section.

L. PROFESSIONAL FEES AND OTHER ADMINISTRATIVE EXPENSES. All applications for award of compensation or expenses to a trustee, examiner, attorney or other professional person, and all other requests to order payment of an administrative expense, shall be made by motion under Local Rules 2016-1 or 3002-2, and shall be served and filed within 30 days after the date of this order.

M. OBJECTIONS TO CLAIMS. All objections to claims, except objections to administrative expense claims, objections to Survivor Claims, or objections arising solely under 11 U.S.C. § 502(d), shall be made by motion under Local Rule 3007-1, and shall be served and filed within 90 days after the effective date of the plan, or 30 days after the claim is filed, whichever is later. Any claim objections arising solely under 11 U.S.C. § 502(d) are not subject to the 90-day deadline and may be pursued through an adversary proceeding asserting an avoidance claim.

N. MAILING OF NOTICE. The debtor shall forthwith mail copies of this order as notice of entry of this order and confirmation of the plan to the entities specified in Local Rule 9013-3 and to all creditors and other parties in interest.

DATED: *March 10, 2020*

/e/ Robert J. Kressel
United States Bankruptcy Judge