

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re: Bankruptcy Case No. 18-33707
Chapter 11 Case
Diocese of Winona-Rochester,
Debtor.

ORDER CONFIRMING PLAN

This case is before the Bankruptcy Court on the *Fifth Amended Joint Chapter 11 Plan of Reorganization of the Diocese of Winona-Rochester* dated October 11, 2021 [Doc. No. 398] (the “Plan”) proposed by the Debtor and the UCC. Undefined capitalized terms in this order have the meanings set forth in the Plan. The Bankruptcy Court conducted the Plan confirmation hearing on September 23, 2021, October 7, 2021 and October 14, 2021.

Based upon the Plan, the findings and conclusions set forth in the Bankruptcy Court’s Confirmation Findings and Conclusions [Dkt. No. 404] entered concurrently with this order, the findings, conclusions and statements of the Bankruptcy Court on the record at the confirmation hearing, and the order approving the LMI/Interstate Settlement Agreement, which is incorporated into this Confirmation Order by reference, the Bankruptcy Court further finds and concludes as follows:

IT IS ORDERED:

1. CONFIRMATION. The Plan is confirmed. 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. VOTING. Every class that voted, all of which are impaired, accepted the Plan.
3. BINDING EFFECT OF THE PLAN. The terms of the Plan are approved, and

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effective as of the Effective Date, are binding, including without limitation upon any and all entities acquiring property under the Plan, and all holders of Claims and Interests, any and all non-debtor parties to executory contracts, any and all Tort Claimants, including Impaired Unknown Tort Claimants, any and all Unimpaired Unknown Tort Claimants 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.

4. 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 against the Debtor.

5. 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, 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, based on conduct occurring before the Confirmation Date, 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 Bankruptcy Code Sections 502(g), 502(h) and 502(i), whether or not a Proof of Claim is filed or is deemed filed under Bankruptcy Code Section 501, such Claim is allowed under Bankruptcy Code Section 502, or the holder of such Claim has accepted the Plan. For clarity, the Debtor is not discharged from Unimpaired

Unknown Tort Claims, Unimpaired Unknown Contingent Claims or Non-Settling Insurer Policy Claims, but recourse with respect to Non-Settling Insurer Policy Claims is limited to the proceeds of Non-Settling Insurer 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 Tort Claim, and any such judgments or awards will be handled in accordance with Sections 6.14(i) and (j) of the Plan.

Tort Claimants and the Trust shall be permitted to name the Diocese in any proceeding to resolve whether the Diocese has liability for Tort Claims and the amount of any such liability, solely for the purpose of obtaining insurance coverage from Non-Settling Insurers. The discharge hereunder does not apply to, and shall not limit in any way the obligations of Non-Settling Insurers to defend and pay, the Diocese's liability for Tort Claims under Non-Settling Insurer Policies. The limitations otherwise set forth in the Plan on a Tort Claimant's recovery will not in any way limit the Non-Settling Insurers' obligations under the Non-Settling Insurer Policies or the Tort Claimants' and/or Trust's recoveries against the Non-Settling Insurers for the Non-Settling Insurers' conduct in connection with the defense or settlement of a Tort Claim, including on any judgments in excess of the limits of a Non-Settling Insurer Policy.

6. EXCULPATION AND LIMITATION OF LIABILITY. From and after the Effective Date, none of the Exculpated Parties shall have or incur any liability for, and each 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 Chapter 11 case or in connection with

the preparation and filing of this Chapter 11 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 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 UCC and the Diocese and their respective officers, board and committee members, employees, attorneys, financial advisors, and other Professionals shall be entitled to and granted the benefits of Section 1125(e) of the Bankruptcy Code and the Channeling Injunction.

7. CHANNELING INJUNCTION. Channeling Injunction Preventing Prosecution of Channeled Claims Against Protected Parties and Settling Insurers.

(a) In consideration of the undertakings of the Protected Parties and Settling Insurers under the Plan, their contributions to the Trust, and other consideration, and pursuant to their respective settlements with the Debtor and to further preserve and promote the agreements between and among the Protected Parties and any Settling Insurers, and pursuant to Section 105 of the Bankruptcy Code:

- 1. any and all Channeled Claims are channeled into the Trust and shall be treated, administered, determined, and resolved under the procedures and protocols and in the amounts as established under the Plan and the Trust**

Agreement as the sole and exclusive remedy for all holders of Channeled Claims; and

- 2. all Persons who have held or asserted, hold or assert, or may in the future hold or assert any 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, including:**

(i) commencing or continuing in any manner any action or other proceeding of any kind with respect to any Channeled Claim against any of the Protected Parties or Settling Insurers or against the property of any of the Protected Parties or Settling Insurers;

(ii) enforcing, attaching, collecting or recovering, by any manner or means, from any of the Protected Parties or Settling Insurers, or the property of any of the Protected Parties or Settling Insurers, any judgment, award, decree, or order with respect to any Channeled Claim against any of the Protected Parties, Settling Insurers, or any other Person;

(iii) creating, perfecting or enforcing any lien of any kind relating to any Channeled Claim against any of the Protected Parties or the Settling Insurers, or the property of the Protected Parties or the Settling Insurers;

(iv) **asserting, implementing or effectuating any Channeled**

Claim of any kind against:

1. any obligation due any of the Protected Parties or Settling Insurers;

2. any of the Protected Parties or Settling Insurers;

or

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

(v) **taking any act, in any manner, in any place whatsoever, that does not conform to, or comply with, the provisions of the Plan; and**

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

Notwithstanding anything to the contrary in this paragraph or the Plan, Tort Claimants and the Trust shall be permitted to name the Diocese and any other Protected Party in any proceeding to resolve whether the Diocese or such other Protected Party has liability for a Tort Claim, and the amount of any such liability, for the purpose of obtaining insurance coverage from Non-Settling Insurers under the Non-Settling Insurer Policies, but recourse is limited to the proceeds of Non-Settling Insurer 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 Tort Claim, and any such judgments or awards will be turned over to the Trust for handling in accordance with Sections 6.14(i) and (j) of 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 Section 13.3 of the Plan shall inure to the benefit of the Protected Parties and Settling Insurers. In a successful action to enforce the injunctive provisions of Section 13.3 of the Plan in response to a willful violation thereof, the moving party may seek an award of costs (including reasonable attorneys' fees) against the non-moving party, and such other legal or equitable remedies as are just and proper, after notice and a hearing.

The Channeling Injunction will not be for the benefit of Non-Settling Insurers, including the Insolvent Insurers. Nothing herein will be construed to authorize a violation of any stay that is applicable in light of the pending insolvency proceedings with respect to such Insolvent Insurers.

The Channeling Injunction will be effective with respect to the LMI/Interstate Entities as of the date that the Trust receives the Settlement Amount (as defined in the LMI/Interstate Settlement Agreement).

8. SUPPLEMENTAL SETTLING INSURER INJUNCTION

(a) **Supplemental Injunction Preventing Prosecution of Claims Against Settling Insurers.** Pursuant to Sections 105(a) and 363 of the Bankruptcy Code and in consideration of the undertakings of the Settling Insurers pursuant to the Insurance Settlement Agreements, including LMI's

and Interstate's purchases of insurance policies or Interests in insurance policies free and clear of all interests pursuant to Section 363(f) of the Bankruptcy Code:

Any and all Persons who have held, now hold or who may in the future hold any Interests (including all debt holders, all equity holders, governmental, tax and regulatory authorities, lenders, trade and other creditors, Tort Claimants, perpetrators, and all others holding Interests of any kind or nature whatsoever, including those Claims released or to be released pursuant to the Insurance Settlement Agreements) against any of the Settling Insurers, or any other Person covered or allegedly covered under the Settling Insurer Policies, including (i) Claims relating to the Settling Insurer Policies, including Tort Claims, Direct Action Claims, Indirect Claims, and Released Claims; (ii) the payment of any of the Claims identified in (i), including Contribution Claims and Medicare Claims; (iii) Extra-Contractual Claims; (iv) Unimpaired Unknown Tort Claims; and (v) Unimpaired Unknown Contingent 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 the Settling Insurers or the Settling Insurer Policies:

- 1. Commencing or continuing in any manner any action or other proceeding against the Settling Insurers or the property of the Settling Insurers;**
- 2. Enforcing, attaching, collecting, or recovering, by any manner or means, any judgment, award, decree or order against the Settling Insurers or the property of the Settling Insurers;**

- 3. Creating, perfecting, or enforcing any lien of any kind against the Settling Insurers or the property of the Settling Insurers;**
- 4. Asserting or accomplishing any setoff, right of indemnity, subrogation, contribution, or recoupment of any kind against any obligation due the Settling Insurers or the property of the Settling Insurers; and**
- 5. Taking any action, in any manner, in any place whatsoever, that does not conform to, or comply with, the provisions of the Plan.**

For the avoidance of doubt, this Supplemental Settling Insurer Injunction bars the above-referenced actions against the Settling Insurers and the Settling Insurer Policies but against no other person or thing. The foregoing injunctive provisions are an integral part of the Plan and are essential to its implementation.

The Supplemental Settling Insurer Injunction will not be for the benefit of Non-Settling Insurers, including the Insolvent Insurers. Nothing herein will be construed to authorize a violation of any stay that is applicable in light of the pending insolvency proceedings with respect to such Insolvent Insurers.

The Supplemental Settling Insurer Injunction will be effective with respect to the LMI/Interstate Entities as of the date that the Trust receives the Settlement Amount (as defined in the LMI/Interstate Settlement Agreement).

9. 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 Bankruptcy Code Sections 524 and 1141 and

all injunctions or stays protecting the Protected Parties and Settling Insurers are permanent and will remain in full force and effect following the Effective Date and are not subject to being vacated or modified.

10. **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 the Abuse that forms the basis of a Class 3 Claim shall not be liable for any Protected Party's share of causal liability or fault for such Claim.

11. **JUDGMENT REDUCTION.** In any proceeding, suit or action to recover or obtain insurance coverage or proceeds from a Non-Settling Insurer for a Tort Claim, Section 7.5 of the Plan (Judgment Reduction) shall govern as it relates to Contribution Claims against Insurers other than the LMI/Interstate Entities. Effective as of the date that the Trust receives the Settlement Amount (as defined in the LMI/Interstate Settlement Agreement), Section 8 (Reduction Clause) of the LMI/Interstate Settlement Agreement shall govern with respect to Contribution Claims against the LMI/Interstate Entities.

12. **DISMISSAL OF ACTIONS.** Effective as of the date that the Trust receives the Settlement Amount (as defined in the LMI/Interstate Settlement Agreement), all Tort Claimants who have pending state court actions against any DoW Entity are required to dismiss such actions, except to the extent that their pending state court actions allege any Non-Settling Insurer Policy Claims.

13. **POST-CONFIRMATION TERMINATION OF TRUST.** Upon Post-Confirmation Termination of the Trust (as defined in the Trust Agreement), provided that all fees and expenses of the Trust have been paid or provided for in full, the Trustee is authorized to deliver all funds and other investments in the Trust, if any, including any investment earnings, to a charity selected by the Trustee supporting survivors of childhood sexual abuse.

14. PROFESSIONAL FEES AND OTHER ADMINISTRATIVE EXPENSES.

Requests for allowance and payment of Administrative Claims, excluding Professional Claims, must be filed and served no later than thirty (30) days after a notice of the Effective Date is filed with the Bankruptcy Court (the “Administrative Claims Filing Deadline”). Administrative Claims holders, excluding Professional Claims, that do not file a request for payment by the Administrative Claims Filing Deadline shall be forever barred from asserting such Claims against the Diocese, the Reorganized Debtor, any Settling Insurer (to the extent applicable), the Trust, or any of their property. Administrative Claims representing obligations incurred by the Diocese after the Effective Date (including, without limitation, Claims for professionals’ fees and expenses) will not be subject to application to the Bankruptcy Court and may be paid by the Reorganized Debtor in the ordinary course of business and without Bankruptcy Court approval. In addition, holders of Administrative Claims representing trade debt incurred after the Petition Date in the ordinary course of Debtor’s operations are not required to file requests for allowance of an Administrative Claim and will be paid by the Debtor in the ordinary course. All Professionals or other Persons holding a Professional Claim for services rendered on or before the Effective Date (including, among other things, 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, no later than thirty (30) days after a notice of the Effective Date is filed.

15. MAILING OF NOTICE. The Debtor shall promptly 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.

16. WAIVER OF STAY. The stay imposed by Fed. R. Bankr. P. 3020(e) is waived.

Dated: *October 14, 2021*

/e/ William J. Fisher

William J. Fisher
United States Bankruptcy Judge