

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA**

In re:

The Diocese of New Ulm,

Debtor.

Case No.: 17-30601
Chapter 11 Case

**NOTICE OF HEARING AND JOINT MOTION FOR ORDER (I) GRANTING
EXPEDITED RELIEF AND (II) DEEMING ACCEPTANCES OF THE SECOND
AMENDED JOINT PLAN OF REORGANIZATION DATED MARCH 6, 2020**

TO: The parties specified in Local Rule 9013-3(a)(2).

1. The Diocese of New Ulm (the “Diocese”) and the committee of unsecured creditors (the “Committee”) move the court for the relief requested below and gives notice of a hearing.

2. The court will hold a hearing on this motion on **March 10, 2020**, at **11:00 a.m.**, or as soon thereafter as counsel can be heard, in **Courtroom 305, Brown County Courthouse, 14 South State Street, New Ulm, Minnesota 56073**.

3. Local Rule 9006-1(b) provides deadlines for responses to this Motion. However, given the expedited nature of the relief sought, the Diocese and the Committee do not object to written responses being served and filed at least 24 hours prior to the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Rule 5005 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Local Rules 1070-1 and 1073-1. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

5. This motion arises under 11 U.S.C. § 1127, Bankruptcy Rule 3019, and Local Rule 3019-1. This motion is filed under Bankruptcy Rules 9006 and 9014 and Local Rules 9006-1 and 9013-1 through 9013-3.

6. The Diocese and the Committee request an order determining that the Second Amended Joint Plan of Reorganization dated March 6, 2020, (the “Modified Plan”) [Docket No. 360] filed by the Diocese and Committee is deemed accepted by creditors who cast ballots accepting the First Amended Joint Plan of Reorganization dated December 18, 2019 (the “Plan”) [Docket No. 338]. This relief is appropriate because the Modified Plan does not adversely change the treatment of the claims of any creditor who has not consented in writing to such change.

GENERAL BACKGROUND

7. On the Filing Date, the Diocese filed a voluntary petition for relief pursuant to chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Diocese continues to operate its business as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Committee was appointed on April 6, 2017 [Docket No. 61]. No trustee or examiner has been appointed in the Diocese’s chapter 11 case.

8. Further general background about the Diocese is set forth in the Declaration of Monsignor Douglas L. Grams in Support of Debtor’s First Day Motions (the “Grams Declaration”) [Docket No. 19].

BACKGROUND RELEVANT TO RELIEF REQUESTED

9. On December 20, 2019, the court entered an order [Docket No. 343] approving the disclosure statement filed by the Diocese and the Committee [Docket No. 339]. In addition to approving the disclosure statement, the order also approved the Diocese’s proposed solicitation and balloting procedures as requested through the Diocese’s Motion for an Order (I) Approving

Disclosure Statement; (II) Approving Solicitation Packages and Distribution Procedures; (III) Approving Ballot Forms and Plan Voting Procedures; (IV) Fixing the Voting Deadline; and (V) Approving Procedures for Vote Tabulation [Docket No. 327].

10. Between December 26, 2019, through January 10, 2020, the Diocese served the applicable solicitation packages and hearing notices as more fully described in the Diocese's certificate of service [Docket Nos. 345, 359].

11. The court set February 19, 2020, as the deadline to submit ballots and as the deadline to object to confirmation of the plan. As of February 19, 2020, 153 ballots were received by the clerk of court and no objections to plan confirmation were filed.

12. Since the voting and objection deadline, the Diocese and the Committee filed the Modified Plan. Attached as **Exhibit 1** and **Exhibit 2** to the Unsworn Declaration of Steven R. Kinsella [Docket No. 362] are redlines showing a comparison of the Plan and the Modified Plan indicating the modifications.

13. The Diocese and the Committee modified the Plan to correct minor errors. Specifically:

- a. To revise the definition of "Parishes" to indicate that the Parishes include, but are not limited to, the entities listed on Exhibit A;
- b. To revise the definition of "Settling Insurer Policies" to remove unnecessary and repetitious language;
- c. To add the New Ulm Area Catholic Schools to Exhibit A; and
- d. Other minor typographical and formatting errors.

14. Creditors are not affected by these changes.

15. The Diocese and Committee reserve their right to further modify the Modified Plan prior to confirmation, but do not anticipate doing so. In the event the Diocese and the Committee make further changes to the Modified Plan, **THE DIOCESE AND THE COMMITTEE GIVE NOTICE OF THEIR INTENTION TO SEEK APPROVAL OF ANY SUCH CHANGES AT THE HEARING ON THIS MOTION AND ON THE CONFIRMATION OF THE MODIFIED PLAN.**

RELIEF REQUESTED

16. The Diocese and the Committee request that the court deem the Modified Plan to be accepted by all creditors who voted in favor of the Plan. Section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 provide that a plan may be modified if the court finds that the proposed modification does not adversely change the treatment of the claim of any creditor or interest holder who has not accepts the modification in writing. The changes in the Modified Plan are described above and do not adversely change the treatment of the claim of any creditor.

17. The Diocese and the Committee seek an expedited hearing on this motion for cause. Cause exists to reduce notice of the hearing on this motion so that it may be heard in conjunction with the confirmation hearing, which is scheduled for March 10, 2020, at 11:00 a.m.

18. Pursuant to Local Rule 9013-2(a), this motion is verified and is accompanied by a memorandum of law and proposed order.

WHEREFORE, the Diocese and the Committee respectfully request that this court enter an order:

A. Granting expedited relief;

B. Determining that the modifications in the Modified Plan do not adversely change the treatment of the claim of any creditor or the interest of anyone who has not accepted in writing the modification and deeming acceptances; and

C. Granting such further relief as the court deems just and equitable.

Dated: March 6, 2020

/e/ Steven R. Kinsella

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Dated: March 6, 2020

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**ATTORNEYS FOR THE OFFICIAL
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ULM**

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA

In re:

The Diocese of New Ulm,

Debtor.

Case No.: 17-30601
Chapter 11 Case

**MEMORANDUM IN SUPPORT OF JOINT MOTION FOR ORDER (I) GRANTING
EXPEDITED RELIEF AND (II) DEEMING ACCEPTANCES OF THE AMENDED
JOINT PLAN OF REORGANIZATION DATED MARCH 6, 2020**

The Diocese of New Ulm (the “Diocese”) and the committee of unsecured creditors (the “Committee”) submits this memorandum in support of its Motion for Order (I) Granting Expedited Relief and (II) Deeming Acceptances of the Amended Joint Plan of Reorganization Dated March 6, 2020 (the “Motion”). The modifications contained in the Modified Plan are described in the Motion and are reflected in the redlines attached to the Unsworn Declaration of Steven R. Kinsella [Docket No. 362]. Accordingly, the Diocese and the Committee request that the court order that holders of claims that voted to accept the Plan be deemed to have accepted the Modified Plan.

The facts in support of the relief requested are set forth in the verified motion. Capitalized terms not defined in this memorandum of law have the meanings ascribed to them in the motion.

I. CAUSE EXISTS TO GRANT EXPEDITED RELIEF

Local Rule 9006-1(b) provides that moving papers shall be filed and served not later than 14 days before the hearing. However, subsection (d) provides that the court may reduce notice on the hearing for cause. Here, cause exists to reduce notice of the hearing and grant expedited relief. As described below, none of the changes in the Modified Plan adversely impact any holders of claims who voted in favor of the Plan. The hearing on the confirmation of the Modified Plan is

scheduled for March 10, 2020, and this motion must be heard in conjunction with a determination as to confirmation. Accordingly, only limited notice of the changes was possible, which is sufficient, and the Diocese and the Committee believe that cause exists to reduce notice of the hearing on the Motion.

II. THE COURT SHOULD DETERMINE THAT THE MODIFICATIONS DO NOT ADVERSELY CHANGE THE TREATMENT OF ANY CLAIM OF ANY CREDITOR OR OTHER PARTY WHO HAS NOT ACCEPTED THE MODIFICATIONS IN WRITING.

Section 1127 of the Bankruptcy Code provides in relevant part:

(a) The proponent of a plan may modify such plan at any time before confirmation, but may not modify such plan so that such plan as modified fails to meet the requirements of sections 1122 and 1123 of this title. After the proponent of a plan files a modification of such plan with the court, the plan as modified becomes the plan.

. . . .

(d) Any holder of a claim or interest that has accepted or rejected a plan is deemed to have accepted or rejected, as the case may be, such plan as modified, unless, within the time fixed by the court, such holder changes such holder's previous acceptance or rejection.

Bankruptcy Rule 3019(a) provides:

[A]fter a plan has been accepted and before its confirmation, the proponent may file a modification of the plan. If the court finds after hearing on notice to the trustee, any committee appointed under the Code, and any other entity designated by the court that the proposed modification does not adversely change the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted in writing the modification, it shall be deemed accepted by all creditors and equity security holders who have previously accepted the plan.

In addition, Local Rule 3019-1 provides that “[t]he proponent of a plan in a Chapter 11 or 12 case may file a modified plan any time before confirmation.”

The changes in the Modified Plan are described in more detail in the Motion. None of these revisions adversely affect any creditors' treatment under the Plan. Thus, the court should

deem the Modified Plan to be accepted by creditors who have voted in favor of the Plan. *See In re TransWorld Airlines*, 185 B.R. 302, 322 (Bankr. E.D. Mo. 1995); *In re American Solar King Corp.*, 90 B.R. 808, 823-26 (Bankr. W.D. Texas 1988); *In re Mount Vernon Plaza Community Urban Redevelopment Corporation I*, 79 B.R. 305, 306 (Bankr. S.D. Ohio 1987).

CONCLUSION

For the foregoing reasons, the Diocese and the Committee respectfully request that the court grant the relief sought in the Motion.

Dated: March 6, 2020

/e/ Steven R. Kinsella

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**ORDER (I) GRANTING EXPEDITED RELIEF AND (II) DEEMING ACCEPTANCES
OF THE AMENDED JOINT PLAN OF REORGANIZATION DATED MARCH 6, 2020**

This matter is before the court on the debtor's and unsecured creditor committee's joint motion for order (I) granting expedited relief and (II) deeming acceptances of the amended joint plan of reorganization dated March 6, 2020. Based on all the file and the record,

IT IS ORDERED:

1. The debtor's and committee's request for expedited relief is granted.
2. Those holders of claims who voted to accept the debtor's and committee of unsecured creditors' joint plan of reorganization dated December 18, 2019, are deemed to have accepted the debtor's and the committee's amended joint plan of reorganization dated Mach 6, 2020.

Dated:

United States Bankruptcy Judge