UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:	Chapter 11
THE DIOCESE OF ST. CLOUD, a Minnesota religious corporation, Debtor.	Case No. 20-60337

NOTICE OF HEARING AND MOTION FOR AN ORDER UNDER 11 U.S.C. §§ 105, 363, AND 507 (I) GRANTING EXPEDITED RELIEF, (II) AUTHORIZING THE DEBTOR TO PAY PREPETITION WAGES AND EXPENSE REIMBURSEMENTS, (III) AUTHORIZING THE DEBTOR TO HONOR EMPLOYEE BENEFITS ACCRUED PREPETITION, AND (IV) GRANTING RELATED RELIEF

TO: The United States Bankruptcy Judge, the United States Trustee, and other parties in interest as specified in Local Rule 9013-3(a)(2).

The Diocese of St. Cloud, the debtor and debtor in possession, moves the court for the expedited relief requested below and gives notice of hearing:

1. The court will hold a telephonic hearing on this motion at 9:30 a.m. (CDT) on June 18, 2020. Parties interested in attending the hearing should contact Judge Kressel's calendar clerk, Lynn Hennen, at (612) 664-5250 for the call-in information.

2. Given the expedited nature of this motion, Local Rule 9006-1(e) governs the deadline for responding to this motion and provides that responses may be filed no later than two hours before the scheduled time for the hearing, unless otherwise ordered by the court. **PURSUANT TO LOCAL RULE 9013-2, UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT A HEARING.**

3. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157(b)(2) and 1334, Bankruptcy Rule 5005, and Local Rule 1070-1. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The debtor filed its petition commencing this Chapter 11 case on June 15, 2020.

4. This motion arises under 11 U.S.C. §§ 105(a), 363(b), and 507(a). This motion is filed under Bankruptcy Rule 9013 and Local Rules 9013-1 through 3. The debtor requests expedited relief pursuant to Bankruptcy Rule 9006(c) and Local Rule 9006-1(e). The debtor will provide notice of the hearing on this motion pursuant to Bankruptcy Rule 2002(a) and Local Rules 9013-3 and 2002-1(b).

5. The debtor respectfully requests entry of an order authorizing it to pay and honor all accrued but unpaid prepetition payroll, expense reimbursement, and benefit obligations.

6. The debtor seeks this relief on an expedited basis because, among other things, its employees are essential to its operations and ability to successfully reorganize, and these employees depend upon the wages and benefits that are the subject of this motion.

I. BACKGROUND

On June 15, 2020, the debtor commenced this case by filing a voluntary Chapter 11 petition. The debtor is a debtor in possession under 11 U.S.C. §§ 1107 and 1108. Additional background information about the debtor is set forth in the *Declaration of Bishop Donald J. Kettler in Support of Chapter 11 Petition and First Day Motions* (the "**Kettler Declaration**"). Joseph Spaniol, Finance Officer, also verified the additional facts set forth below, as evidenced by the attached verification.

II. EMPLOYEE PAYROLL AND BENEFITS OBLIGATIONS

To ensure continuity of the debtor's operations and to retain its current employees who are integral to the debtor's ability to reorganize within the consensual framework addressed in the Kettler Declaration, the debtor requests that its employees continue to receive their current wages and benefits that are the subject of this motion.

A. Payroll Obligations and Expense Reimbursements

The debtor employs 64 people (36 full time employees and 28 part time employees). The debtor's payroll is run bi-weekly and, ordinarily, paid one week in arrears through the Friday prior to the payday.

Payroll Obligations. The debtor's payroll obligations include the employees' gross hourly wages or salaries, payroll withholding taxes, and other withholding obligations. The debtor's payroll processing company, BerganKDV, Ltd., automatically withdraws the amount due for a given pay period from the debtor's primary operating account. BerganKDV is responsible for: (i) remittance of appropriate amounts to various federal and state taxing agencies,[1] Social Security, and Medicare, and (ii) issuance of each employee's net payroll funds by check or ACH transaction.[2] Once BerganKDV receives an automatic transfer of funds from the debtor's account, the debtor believes that such funds are no longer property of the estate.

Prior to the petition date, the debtor paid all of its employees for all work completed through the petition date. The debtor therefore believes that no outstanding prepetition wages currently are due and owing. Nevertheless, out of an abundance of caution, the debtor seeks

[1] As part of BerganKDV's payroll services and services fee, it also prepares and files the debtor's quarterly tax returns.

[2] The debtor pays its employees almost exclusively by direct deposit. Although BerganKDV has the ability to pay employees by check if an ACH transaction cannot be completed for some reason, the debtor believes that all employees currently receive payments by direct deposit.

authority to honor any paychecks that remain uncashed as of the petition date or to otherwise pay any prepetition wages, although the debtor does not believe that any such wages exist. This relief would not prejudice the estate or other creditors because each employee's wage claim would not exceed $13,650 and would therefore be entitled to priority treatment in this case under in 11 U.S.C. § 507(a)(4).

Expense Reimbursement. The debtor reimburses its employees for certain expenses incurred and paid by the employees in the course of their employment. The debtor believes that, prior to the petition date, the debtor reimbursed all employees for any reimbursable expenses the employees incurred prepetition. Therefore, the debtor does not believe that any prepetition reimbursements exists. Nevertheless, a remote possibility exists that the debtor has received or will receive reimbursement requests pertaining to an unpaid prepetition expense. Out of an abundance of caution, the debtor requests authority to make payments for any such request, so long as the amount of each request is reasonable and approved under the debtor's internal processes.

B. Benefits Obligations

The debtor offers various benefits to its employees, depending on the employees' status as full time versus part time or salaried versus hourly. To the extent the debtor makes monthly contributions for these benefits, those amounts are paid by the debtor from its general operating funds rather than through BerganKDV.

Insurance Benefits. All of the debtor's full time employees are eligible to receive certain insurance benefits.[3] Employees receive health insurance through a multi-employer insurance plan, known as the Diocese of St. Cloud Health Plan Trust. The plan includes other employers, such as

[3] The debtor classifies employees as full time if they work more than 25 hours per week.

the separately incorporated parishes within the Diocese's territorial boundaries. A third party claims administer manages the claims and a separate trustee manages the trust and trust account. Claims are paid by the collected premiums and through reinsurance, as described below.

Employees electing healthcare coverage, except clergy,[4] pay 20% of the premium costs and the participating employers (including the debtor) pays the remaining 80%. As of the petition date, approximately 25 of the debtor's employees participate in the plan, and the debtor has paid all accrued health insurance premiums for each employee. All health insurance premiums are held in a trust account belonging to the Diocese of St. Cloud Health Plan Trust. The plan collects approximately $437,000 in monthly premiums and, as of the petition date, the plan held approximately $2,444,000 in trust. The trust funds pay the first $150,000 of medical expenses incurred by an insured individual in a given coverage year. Anything over that amount is paid by reinsurance. In a typical year, only a handful of employees in the plan exceed the $150,000 cap. In addition, reinsurance covers aggregate claim amounts in excess of $455,000 per month. The difference (if any) between the aggregate collected monthly premiums and $455,000 monthly cap is paid by the plan's available trust funds (*i.e.*, the $2.4 million cash balance).

The debtor also provides its employees with dental insurance (with premium costs split 50/50 between the debtor and the employee), vision insurance (with 100% of premium costs paid by the employee), disability insurance (paid by the debtor), workers' compensation insurance (paid by the debtor), and a $20,000 life insurance policy per employee (premiums paid by the debtor). Health and dental insurance benefits are available to employees' families, but the debtor's contribution percentages are the same whether an employee elects an individual plan or family

[4] The Clerical Aid Association of the Diocese of St. Cloud, a separate corporation, funds 100% of the clergy's healthcare costs. Every year, the Clerical Aid Association assesses the debtor $11,600 per priest. The debtor paid all outstanding assessments prepetition.

plan. All other insurance programs are either (i) unavailable to family members, or (ii) receive no family member contribution from the debtor. The debtor pays approximately $25,000 per year to provide workers' compensation insurance to its employees[5] and approximately $36,000 per month to provide all other insurance benefits to its employees. Postpetition, the debtor will continue to honor these health insurance benefits as ordinary course transactions under 11 U.S.C. § 363(c).

Vacation Time. Both hourly employees and salaried employees (except for department supervisors) accrue vacation time based on their years of employment. Hourly employees are entitled to ten days of vacation time each year for their first four years of service. Thereafter, they receive fifteen days of vacation time each year through their ninth year of service, and twenty days of annual vacation time if they have ten or more years of service. Part time hourly employees accrue vacation time at the same rate as full time hourly employees, prorated based on hours worked. Salaried employees are entitled to fifteen days of vacation time each year for their first nine years of service. Thereafter, they receive a total of twenty days of vacation time each year. All department supervisors employed for more than ninety days are entitled to twenty days of vacation time each year. The debtor employs six (6) department supervisors.

Unused vacation time rolls over at the end of each year, but no employee can accumulate more than 1.5 times the employee's annual vacation accrual. Employees are paid the cash value of their accrued vacation time at the end of their employment. The debtor estimates that employees have accrued approximately 4,735 hours in total unused vacation time as of the petition date. The debtor requests authority to honor, postpetition, its vacation policy regarding all vacation days that accrued prepetition.

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[5] As required by state law, the debtor provides workers' compensation insurance to both full time and part time employees. The debtor paid all workers' compensation insurance premiums prepetition for the current policy year and no amounts are presently outstanding.

Sick Time. Full time employees accrue seven hours of sick time each month. Part time employees accrue sick time at the same rate as full time employees, prorated for the number of hours worked. Sick time rolls over from year to year, up to a maximum of 420 hours per employee. Employees do not receive any payment on account of accrued sick time when their employment ends. The debtor estimates that the total number of hours of accrued but unused prepetition sick time is approximately 8,440 hours. The debtor requests authority to honor its sick time policy postpetition regarding all sick time that accrued prepetition.

Retirement Plan. All employees may elect to contribute to an I.R.C. § 403(b) retirement plan available through Christian Brothers Retirement Services. The debtor does not make any matching contribution to the employees' 403(b) retirement plans.

Pension Plans. The debtor funds two pension plans on behalf of its current employees and funds payments under a legacy pension plan to a limited number of pensioners.

- Lay Pension Plan. The St. Cloud Diocese Lay Pension Plan is a multiemployer plan administered by Christian Brothers through the Christian Brothers Employee Retirement Plan, Plan #33. The debtor contributes approximately $11,000 to this plan each month on behalf of its full time, non-clergy employees. As of the petition date, the debtor does not owe any prepetition amounts to this pension plan. Postpetition, the debtor will continue to pay monthly contributions to this plan as ordinary course transactions under 11 U.S.C. § 363(c).

- Priests Pension Plan. The debtor also contributes to The Pension Plan for Priests of the Diocese of St. Cloud, which is a multi-employer, qualified defined benefit church plan. The plan is available to substantially all of the priests within the territory of the diocese, but the debtor only contributes to this plan for its own priests. The debtor understands and believes that parishes and other separate entities contribute to this plan on behalf of their own priests.

To make the contribution for its own priests, the debtor is assessed annually for each priest. That assessment is currently $3,600 per year, per priest.[6] In addition, the plan may request an additional annual contribution of $100,000 from the debtor. That contribution is voluntary and subject to approval of the debtor's board. The debtor does not owe any prepetition assessments. The debtor will pay any postpetition assessments in the ordinary course under 11 U.S.C. § 363(c).

- Legacy Plan. The debtor also funds monthly payments to retired employees under a pension plan established June 11, 1973. This is a legacy plan that has not accepted new employees for many years. Only seventeen pensioners currently receive monthly payments under this plan. The monthly amounts range from $34 to $222. The pensioners are elderly and depend on these payments. The total monthly cost to the debtor is approximately $2,000. The debtor does not owe any pension payments that accrued prepetition. Postpetition, the debtor will continue to make the monthly pension payments under this plan in ordinary course under 11 U.S.C. § 363(c).

III. RELIEF REQUESTED

The debtor seeks expedited relief because its employees are essential to its operations and ability to successfully implement the framework for a consensual resolution and plan of reorganization referred to in the Kettler Declaration. Any interruption in pay or discontinuance of benefits would detrimentally impact the debtor's ability to retain its employees, causing immediate and irreparable harm and delaying the reorganization process, which will also be detrimental to the sex abuse survivors. Expedited consideration and approval of the motion, and waiver of any applicable stay, will avoid any disruption to payroll and benefits, thus encouraging employee

[6] Currently, the debtor employs and is assessed for two priests.

confidence and retention and allowing the debtor to expeditiously propose and confirm a consensual plan of reorganization.

WHEREFORE, the debtor requests entry of an order:

A. Granting the expedited relief sought in this motion.

B. Authorizing, but not directing, the debtor to pay all accrued, unpaid, prepetition payroll obligations and expense reimbursement, to the extent necessary, subject to the cap of 11 U.S.C. § 507(a)(4).

C. Authorizing, but not directing, the debtor to honor any prepetition obligations for accrued vacation and sick time, subject to the cap of 11 U.S.C. § 507(a)(4).

D. Authorizing, but not directing, the debtor to pay and honor prepetition employee benefits plans and programs described in the motion, including health insurance, dental insurance, vision insurance, workers' compensation insurance, long-term disability insurance, life insurance, and pension funds, subject to the cap of 11 U.S.C. § 507(a)(4).

E. Finding that the relief requested in this motion is necessary to avoid immediate and irreparable harm under Bankruptcy Rule 6003.

F. Finding that notice of this motion is good and sufficient and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice;

G. Waiving any applicable stays of the court's order, including, without limitation, the stay set forth in Bankruptcy Rule 6004(h); and

/ / /

H. Granting such other and further relief as the court deems just and proper under the circumstances.

Dated: June 15, 2020.

QUARLES & BRADY LLP

/s/ *Susan G. Boswell*
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UNITED STATES BANKRUPTCY COURT

DISTRICT OF MINNESOTA

In re:	Chapter 11
THE DIOCESE OF ST. CLOUD, a Minnesota religious corporation, Debtor.	Case No. 20-60337

VERIFICATION OF JOSEPH SPANIOL

I, Joseph Spaniol, Finance Officer for The Diocese of St. Cloud, declare under penalty of perjury that the facts in the motion and the memorandum are true and correct to the best of my knowledge, information, and belief.

Executed on: June 15, 2020

Joseph Spaniol

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:	Chapter 11
THE DIOCESE OF ST. CLOUD, a Minnesota religious corporation,	Case No. 20-60337
Debtor.	

MEMORANDUM IN SUPPORT OF MOTION FOR AN ORDER UNDER 11 U.S.C. §§ 105, 363, and 507 (I) GRANTING EXPEDITED RELIEF, (II) AUTHORIZING THE DEBTOR TO PAY PREPETITION WAGES AND EXPENSE REIMBURSEMENT, (III) AUTHORIZING THE DEBTOR TO HONOR EMPLOYEE BENEFITS ACCRUED PREPETITION, AND (IV) GRANTING RELATED RELIEF

The debtor submits this memorandum in support of its motion seeking expedited relief and authorization to (i) pay accrued, unpaid prepetition payroll obligations and expense reimbursement, to the extent necessary, and (ii) continue to pay or honor obligations under its employee benefit plans and programs that have accrued prepetition. The debtor's employees are essential to a successful reorganization and must be retained. Therefore, the debtor has a compelling business justification for paying or continuing to honor these obligations, and the court should grant the motion.

I. BACKGROUND

The facts relevant to this memorandum are set forth in the verified motion and the Kettler Declaration.

II. <u>LEGAL ANALYSIS</u>

A. The Court Should Grant the Debtor's Request for Expedited Relief.

The debtor requests expedited relief under Bankruptcy Rule 9006(c) and Local Rule 9006-1(e). Cause exists to reduce notice of the hearing on the motion. The debtor seeks to facilitate a smooth transition into Chapter 11, to minimize disruptions to the debtor's operations, and to facilitate implementation of the framework for a consensual plan of reorganization for the sex abuse survivors. Given the debtor's critical need to continue operating its ministries without additional interruption and to move forward expeditiously in this case, the court should reduce the notice of hearing on the motion.

B. Payment of Prepetition Wages and Employee Benefits is Justified.

Recognizing the need to retain employees, courts routinely allow debtors to pay and honor prepetition wage and benefit obligations under various legal theories. *See, e.g.*, 11 U.S.C. §§ 105(a) and 363(b)(1). Moreover, courts in this district have granted similar relief in other diocesan reorganization cases. *See, e.g., In re Diocese of Winona-Rochester*, Case No. 18-33707, Docket No. 49; *In re The Diocese of New Ulm*, Case No. 17-30601, Docket No. 30; *In re Diocese of Duluth*, Case No. 15-50792, Docket Nos. 23 and 27; *In re Archdiocese of Saint Paul and Minneapolis*, Case No. 15-30125, Docket No. 47.

The debtor submits that payment of prepetition wages and expense reimbursements, as well as honoring benefit obligations earned or accrued by the debtor's employees prepetition is wholly warranted in this case. Upon information and belief, no employee will receive payments above the statutory cap of $13,650.00. The debtor depends on its employees to, among other things, operate the diocese, implement the framework to compensate sexual abuse survivors, continue its ministry, and successfully reorganize. Approving the relief requested in the motion will allow the debtor to retain its employees and the valuable services they provide at a low cost to the estate.

Therefore, the court should authorize the debtor to pay any prepetition compensation or expense reimbursements and honor any employee benefits owing on the petition date.

C. Bankruptcy Rule 6003 Does Not Apply.

Bankruptcy Rule 6003 precludes the court from entering an order granting "a motion to use . . . property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition" before the day that is 21 days after the bankruptcy petition was filed, *"[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm . . . ."* Fed. R. Bankr. P. 6003(b) (emphasis added). The relief sought in the motion is necessary to avoid immediate and irreparable harm. If the debtor's employees are not timely paid or do not continue to receive benefits, they will likely seek other employment. The debtor cannot operate the diocese, compensate sexual abuse survivors, continue its ministry, and successfully reorganize without its employees. Accordingly, the debtor (and other stakeholders) will suffer immediate and irreparable harm if the court does not grant the motion. Under such circumstances, Bankruptcy Rule 6003 does not prevent the court from granting the motion.

D. Waiver of Stay.

Because the relief sought in the motion is necessary to retain the debtor's employees, and thus avoid immediate and irreparable harm, the debtor requests that, in addition to granting the motion, the court waive the notice requirements under Bankruptcy Rule 6004(a) and all applicable stays, including, without limitation, the stay that would otherwise apply under Bankruptcy Rule 6004(h).

/ / /

III. CONCLUSION

For the foregoing reasons, the debtor respectfully requests entry of an order:

A. Granting the expedited relief sought in the motion;

B. Authorizing, but not directing, the debtor to pay all accrued, unpaid, prepetition payroll obligations and expense reimbursement, to the extent necessary, subject to the cap of 11 U.S.C. § 507(a)(4);

C. Authorizing, but not directing, the debtor to honor any prepetition obligations for accrued vacation and sick time, subject to the cap of 11 U.S.C. § 507(a)(4);

D. Authorizing, but not directing, the debtor to pay and honor prepetition employee benefits plans and programs described in the motion, including health insurance, dental insurance, vision insurance, workers' compensation insurance, long-term disability insurance, life insurance, and pension funds, subject to the cap of 11 U.S.C. § 507(a)(4);

E. Finding that the relief requested in the motion is necessary to avoid immediate and irreparable harm under Bankruptcy Rule 6003;

F. Finding that notice of the motion is good and sufficient and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice;

G. Waiving any applicable stays of the court's order, including, without limitation, the stay set forth in Bankruptcy Rule 6004(h); and

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/ / /

H. Granting such other and further relief as the court deems just and proper under the circumstances.

Dated: June 15, 2020.

QUARLES & BRADY LLP

/s/ *Susan G. Boswell*

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:	Chapter 11
THE DIOCESE OF ST. CLOUD, a Minnesota religious corporation,	Case No. 20-60337
Debtor.	

ORDER UNDER 11 U.S.C. §§ 105, 363, AND 507 (I) GRANTING EXPEDITED RELIEF, (II) AUTHORIZING THE DEBTOR TO PAY PREPETITION WAGES AND EXPENSE REIMBURSEMENTS, (III) AUTHORIZING THE DEBTOR TO HONOR EMPLOYEE BENEFITS ACCRUED PREPETITION, AND (IV) GRANTING RELATED RELIEF

At Minneapolis, Minnesota, June _____, 2020.

This matter is before the court on the debtor's motion seeking (i) expedited relief; (ii) authorization to pay all accrued unpaid prepetition payroll obligations and expense reimbursement, and (iii) authorization to honor employee benefits accrued prepetition. Based on the motion and the file,

IT IS ORDERED:

1. The expedited relief sought in the motion is granted.

2. The debtor is authorized, but not directed, to pay all accrued, unpaid, prepetition payroll obligations and expense reimbursement, to the extent necessary, subject to the cap of 11 U.S.C. § 507(a)(4).

3. The debtor is authorized, but not directed, to honor any prepetition obligations for accrued vacation and sick time, subject to the cap of 11 U.S.C. § 507(a)(4).

4. The debtor is authorized, but not directed, to pay and honor prepetition employee benefits plans and programs described in the motion, including health insurance, dental insurance,

vision insurance, workers' compensation insurance, long-term disability insurance, life insurance, and pension funds, subject to the cap of 11 U.S.C. § 507(a)(4).

5. To the extent Fed. R. Bankr. P. 6003 applies, the relief granted in this order is necessary to avoid immediate and irreparable harm.

6. Notice of the motion, as provided therein, shall be deemed good and sufficient, and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

7. Notwithstanding Fed. R. Bankr. P. 6004(h) or any other applicable stay, this order is effective immediately.

ROBERT J. KRESSEL
UNITED STATES BANKRUPTCY JUDGE