

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

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

NOTICE OF HEARING AND MOTION FOR AN ORDER (I) GRANTING EXPEDITED RELIEF, (II) APPOINTING A LEGAL REPRESENTATIVE TO REPRESENT THE INTERESTS OF UNKNOWN TORT CLAIMANTS, INCLUDING MINORS; AND (III) GRANTING THE APPLICATION TO EMPLOY MICHAEL R. HOGAN AS UNKNOWN CLAIMS REPRESENTATIVE

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 in this case, 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 to respond 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, 327, 328, 1109 and Bankruptcy Rule 2014(a). 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 that the court enter an order appointing a representative (the “**Unknown Claims Representative**”) to represent the interests of individuals who may have claims arising from sexual abuse experienced as minors and, as a result of a valid legal excuse, do not timely submit a proof of claim against the debtor in this case. This would ensure that such claimants’ rights are represented in this case, while allowing the debtor to reorganize and emerge from Chapter 11.

6. The debtor nominates the Honorable (Ret.) Michael R. Hogan, a retired judge and currently the principal of Hogan Mediation, as the Unknown Claims Representative. If approved as the Unknown Claims Representative, the debtor seeks entry of an order authorizing Judge Hogan’s employment pursuant to 11 U.S.C. §§ 327 and 328.

7. By this motion, the debtor respectfully requests that the court enter an order: (i) granting expedited relief; (ii) appointing an Unknown Claims Representative with the powers and duties set forth in this motion to (a) represent tort claimants who are not yet aware of their claims as a result of a valid legal excuse, and (b) take such other actions or perform such other duties as authorized by the court at the request of the Unknown Claims Representative, the

debtor, or other party in interest; (iii) authorizing Michael R. Hogan's employment as the Unknown Claims Representative; and (iv) authorizing Judge Hogan's compensation at the rate of \$550.00 per hour for services as Unknown Claims Representative (with fees to be capped at \$50,000 for the case), and reimbursement of actual, reasonable, and necessary expenses incurred in the course of his approved services.

8. The debtor seeks this relief on an expedited basis so that the interests of unknown claimants are represented as early as possible in this case.

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**").

II. THE CLAIMS AGAINST THE DEBTOR

As explained in more detail in the Kettler Declaration and other pleadings filed in this case, certain claimants (the "**Tort Claimants**") assert unsecured claims against the debtor under various legal theories related to sexual abuse by clergy or other persons associated with the debtor (the "**Tort Claims**"). The majority of the alleged sexual abuse underlying the Tort Claims occurred decades ago.

The Tort Claims consist of (i) Tort Claimants who filed lawsuits against the debtor, (ii) Tort Claimants who will file proofs of claim in this case, (iii) Tort Claimants who informed the debtor of their potential claims, but who have not filed any legal actions and who may not file proofs of claim in this case, and (iv) Tort Claimants who identified themselves to the debtor

and subsequently settled their Tort Claims, but who are included in the confidential master mailing list in this case out of an abundance of caution. Tort Claims also consist of claims held by those Tort Claimants who experienced abuse as minors but, as a result of a valid legal excuse, do not timely file a proof of claim against the debtor in this case and are not presently known to the debtor (the “**Unknown Tort Claimants**”).¹

Unknown Tort Claimants require representation because various recognized theories may toll the statute of limitations for such claimants to bring claims against the debtor. *See, e.g.*, Minn. Stat. § 541.15 (recognizing insanity as a basis to toll the statute of limitations). Although Unknown Tort Claimants have prepetition claims (the “**Unknown Tort Claims**”), if they cannot assert their claims prior to confirmation of the debtor’s plan of reorganization, their interests will not be represented in this case. Appointing an Unknown Claims Representative addresses this concern.

In addition, a remote possibility exists that certain Unknown Tort Claimants are presently minors.² Although the debtor is not aware of any minor Tort Claimants, the debtor seeks to ensure that if any such claimants later come forward, the court has appointed an Unknown Claims Representative to represent their interests and to negotiate on their behalf.

Moreover, some aspects of the Unknown Tort Claimants’ interests may diverge from those interests the official committee of unsecured creditors represents. Therefore, the unsecured creditors committee may not adequately represent the Unknown Tort Claimants’ interests.

Accordingly, the debtor requests that the court appoint an Unknown Claims Representative with the responsibilities, in appropriate circumstances, of a guardian *ad litem* or

¹ As used herein, the term Unknown Tort Claimants includes only those individuals who experienced sexual abuse as minors.

² The debtor does not believe that any abuse victims are currently minors. However, the debtor includes reference to such potential claimants out of an abundance of caution.

next friend³ to represent the interests of the Unknown Tort Claimants in this case. The relief that the debtor requests is necessary to successfully conclude this case.

III. APPLICATION TO EMPLOY

Under 11 U.S.C. §§ 327 and 328, with this court's approval, a disinterested professional may be employed in chapter 11 cases on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis. *See*, 11 U.S.C. §§ 327 and 328. The debtor respectfully requests that the court appoint Judge Hogan as the Unknown Claims Representative on the terms and conditions set forth herein.

As evidenced by this motion and the verified statement attached hereto as **Exhibit A**, Judge Hogan has the appropriate experience and knowledge required to perform the Unknown Claims Representative's duties. Judge Hogan was appointed as the future claims representative by the United States Bankruptcy Court for the District of Montana for the Roman Catholic Bishop of Helena, Montana in Case No. 14-60074-TLM; by the United States Bankruptcy Court for the District of New Mexico in the case of the Roman Catholic Church for the Diocese of Gallup in Case No. 13-13676-t11; and by this court multiple times in the cases of the Archdiocese of Saint Paul and Minneapolis, Case No. 15-30125, the Diocese of Duluth, Case No. 15-50792, and the Crosier Fathers and Brothers Province, Inc., Case No. 17-41681. The United States Bankruptcy Court for the Eastern District of Washington also appointed Judge Hogan as a future claims adjudicator in *In re: The Catholic Bishop of Spokane, aka The Catholic*

³ In Minnesota, settlements with minors or other incompetent persons must be judicially approved, and minors or other incompetent persons must be represented by someone appointed by the court to represent their legal interests, usually a next friend or a guardian *ad litem*. M.S.A. § 540.08 ("No settlement or compromise [of an action brought on behalf of a minor] is valid unless it is approved by a judge of the court in which the action is pending.").

Diocese of Spokane, Case No. 04-08822-FPC11. Judge Hogan was also involved in resolving many of the tort claims pending in *In re: Roman Catholic Archbishop of Portland in Oregon*, United States Bankruptcy Court for the District of Oregon Case No. 04-37154-ELP11. Therefore, Judge Hogan possess the requisite experience and expertise to serve as the Unknown Claims Representative in this case.

The Unknown Claims Representative's rights, duties, and responsibilities will include:

- Undertaking an investigation and analysis regarding the estimated number of Unknown Tort Claimants and the estimated value of Unknown Tort Claims;
- Filing proofs of claim on behalf of all Unknown Tort Claimants within 60 days of entry of an order approving Judge Hogan's retention, subject to extension by consent of the debtor and the unsecured creditors' committee or for good cause shown;
- Negotiating treatment of Unknown Tort Claims in a plan of reorganization with the debtor, the unsecured creditors' committee, and other appropriate parties;
- Advocating Unknown Tort Claimants' legal positions before the court and, if necessary, filing pleadings and presenting evidence on any issue affecting such claimants;
- Taking all other legal actions reasonably necessary to represent the interests of Unknown Tort Claimants; and
- Serving as an independent fiduciary acting on behalf of all Unknown Tort Claimants.⁴

The Unknown Claims Representative will have access to any confidential proofs of claim filed by known Tort Claimants and such other information as may be germane to his assessment of the Unknown Tort Claims, pursuant to the terms of the confidentiality agreement, approved by the debtor and the unsecured creditors' committee.

⁴ For the avoidance of doubt, the Unknown Claims Representative will not represent any individual Unknown Tort Claimant with respect to such claimant's specific, individual claim.

As set forth in Exhibit A, and subject to court approval, the debtor and Judge Hogan have reached the following agreements regarding Judge Hogan's employment, compensation for professional services, and reimbursements of costs and other expenses incurred as part of his representation:

a. Judge Hogan will be employed as the Unknown Claims Representative, effective as of the date of the filing of this application.

b. Judge Hogan will be compensated at the hourly rate of \$550 per hour, with fees to be capped at \$50,000 (excluding any expenses that may be approved).

c. Judge Hogan will be reimbursed for his reasonable out-of-pocket expenses incurred in connection with this assignment, such as travel, lodging, and meals.

The services Judge Hogan will provide will not duplicate or overlap the efforts of any other professionals retained in this matter. Such services are separate and distinct from the services to be provided by the estate's other professionals and each is essential to the debtor's reorganization efforts. Judge Hogan is not a creditor of the debtor nor has he previously been involved in any capacity in this case.

Except as is further disclosed in Exhibit A, and to the best of the debtor's knowledge, information, and belief, Judge Hogan does not have any other connection with the debtor, the debtor's creditors, or any other parties in interest or their respective attorneys and accountants, the United States Trustee, or any person employed by the Office of the United States Trustee. To the best of the debtor's knowledge, information, and belief, Judge Hogan has not made, and will not make, any agreement to share compensation, or any other agreement prohibited by 11 U.S.C. § 504 or 18 U.S.C. § 155. To the best of the debtor's knowledge, information, and belief, the information disclosed in Exhibit A does not preclude Judge Hogan's appointment as the Unknown Claims Representative under applicable law and ethical rules. Judge Hogan will be

paid from the available assets of the debtor's estate, pursuant to the applicable fee application process.

Except as otherwise disclosed in the verified statement and in accordance with 11 U.S.C. §§ 101(14), 327, and 328, Judge Hogan is "disinterested." Judge Hogan is not employed by any entity that has any interest adverse to the debtor, nor does he hold an interest adverse to the debtor. Judge Hogan will not be employed by any other entity that may have an interest adverse to the debtor or its estate during the course of his employment in this case. As stated in Exhibit A, to the extent that the debtor or Judge Hogan discovers any new relevant facts or relationships during the period of Judge Hogan's retention that relate to the matters described herein, Judge Hogan will use reasonable efforts to promptly file a supplemental declaration, as required by Bankruptcy Rule 2014(a).

IV. RELIEF REQUESTED

WHEREFORE, the debtor requests entry of an order:

- A. Granting expedited relief;
- B. Appointing an Unknown Claims Representative with the powers and duties set forth in this motion to represent Unknown Tort Claimants and, on their behalf, (i) to perform the duties enumerated in this motion, and (ii) to take such other actions or perform such other duties as the court may authorize upon request of the Unknown Claims Representative, the debtor, or other parties in interest;
- C. Authorizing the debtor to employ Judge Hogan as the Unknown Claims Representative on the terms set forth in Exhibit A to this motion;
- D. Subject to application and final approval, authorizing Judge Hogan to be compensated at the rate of \$550.00 per hour for his services associated with his role as Unknown

Claims Representative (with fees to be capped at \$50,000), plus the actual, reasonable, and necessary expenses incurred in the course of his services; and

E. 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

Susan G. Boswell (AZ Bar No. 004791)

Jason D. Curry (AZ Bar No. 026511)

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Proposed Counsel for the Debtors

**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.

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

EXHIBIT A

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

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

**VERIFIED STATEMENT OF MICHAEL R. HOGAN WITH RESPECT TO DEBTOR'S
APPLICATION TO EMPLOY MICHAEL R. HOGAN AS UNKNOWN CLAIMS
REPRESENTATIVE**

I, MICHAEL R. HOGAN, make this verified statement pursuant to 28 U.S.C. § 1746 and Fed. R. Bankr. P. 2014 and state:

1. I am over the age of eighteen and competent to testify to the statements herein.
2. Capitalized terms used but not defined herein have the meanings ascribed to such terms in the NOTICE OF HEARING AND MOTION FOR AN ORDER (I) GRANTING EXPEDITED RELIEF, (II) APPOINTING A LEGAL REPRESENTATIVE TO REPRESENT THE INTERESTS OF UNKNOWN TORT CLAIMANTS, INCLUDING MINORS; AND (III) GRANTING THE APPLICATION TO EMPLOY MICHAEL R. HOGAN AS UNKNOWN CLAIMS REPRESENTATIVE.

QUALIFICATIONS

3. I served as United States District Court Judge for the District of Oregon from 1991 through 2012, including serving as a Senior United States District Court Judge from 2011 through 2012. Prior to that, I served as a United States Magistrate Judge and as a United States Bankruptcy Judge. My experience and qualifications are further set forth in **Exhibit 1** attached hereto.

4. Currently, I am serving as the principal of Hogan Mediation, providing mediation and other dispute resolution services since my retirement in October 2012. My private mediation services are set out in detail on the website at <http://hoganmediation.net/>.

5. I previously served as the unknown claims representative in the following United States Bankruptcy Court for the District of Minnesota cases: *In re: The Archdiocese of Saint Paul and Minneapolis*, Case No. 15-30125; *In re: Diocese of Duluth*, Case No. 15-50792; and *In re: Crosiers Fathers and Brothers Province, Inc.*, Case No. 17-41681. I also served as the future claims representative or adjudicator in the following bankruptcy cases: *In re: Roman Catholic Church of the Diocese of Gallup*, Case No. 13-13676-t11 in the United States Bankruptcy Court for the District of New Mexico (future claims representative); *In re: Roman Catholic Bishop of Helena, Montana*, Case No. 14-60074 in the United States Bankruptcy Court for the District of Montana (future claims representative); and *In re: The Catholic Bishop of Spokane, aka The Catholic Diocese of Spokane*, Case No. 04-08822-FPC11 in the United States Bankruptcy Court for the Eastern District of Washington (future claims adjudicator). Prior to service as adjudicator, I mediated several dozen future claim matters that were pending against the Diocese of Spokane. I was also involved in resolving many of the tort claims pending in *In re: Roman Catholic Archbishop of Portland in Oregon*, Case No. 04-37154-ELP11 in the United States Bankruptcy Court for the District of Oregon.

6. I have mediated hundreds of abuse claims involving religious and secular entities where childhood sexual abuse has been alleged. I am also familiar with the unknown claims process and the necessity and reasoning for having an unknown claims representative. I understand the importance of properly evaluating the scope of Unknown Tort Claims in this matter, as well as seeking and negotiating an appropriate resolution in any plan. Further, I recognize the

importance that any such plan must have a fair process for funding an ultimate resolution of any valid Unknown Tort Claims.

SERVICES TO BE RENDERED

7. My duties and responsibilities as the Unknown Claims Representative will include the duties of the Unknown Claims Representative as set forth in the motion.

8. I understand that in the unlikely event any minor Tort Claimants may be discovered, I would serve in a guardian *ad litem* capacity with respect to such claimants. I do not foresee any conflict between my duties and responsibilities as guardian *ad litem* and my duties and responsibilities as Unknown Claims Representative.

DISINTERESTEDNESS

9. To the best of my knowledge, I am a disinterested person with regard to this pending reorganization case, and I do not have any connection or relationship of any kind to the debtor; to the Tort Claimants; or to any of the other creditors, insurers, or any of the other parties in this reorganization case.

10. I have not worked with the debtor prepetition, and I am not a creditor of the debtor. I am not holding a retainer from the debtor.

11. Except as set forth below, I am not aware of any connections between myself and counsel in this case.

12. Quarles & Brady, LLP, proposed reorganization counsel for the debtor, was also counsel for the debtor while I was the Unknown Claims Representative in the bankruptcy cases *In re: Crosiers Fathers and Brothers Province, Inc.*, Case No. 17-41681 in the United States Bankruptcy Court for the District of Minnesota and *In re: Roman Catholic Church of the Diocese*

of Gallup, Case No. 13-13676-t11 in the United States Bankruptcy Court for the District of New Mexico.

13. When I was sitting as a Judge and also in connection with mediations I have conducted, both while I was sitting and in connection with my current mediation practice, I may have mediated or had dealings with some of the attorneys involved in the case. I realize the duty to disclose such connection in the context of my service as Unknown Claims Representative, if appointed, is a continual one.

PROFESSIONAL COMPENSATION

14. I recognize that if appointed, I will need to comply with the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules for the District of Minnesota, with regard to seeking compensation.

15. I request compensation, subject to court approval for services rendered in connection with the case at the hourly rate of \$550.00 per hour, capped at a total fee of \$50,000.00.

16. In addition to the fee outlined above, I seek this court's approval for reimbursement of all reasonable out-of-pocket expenses incurred in connection with this assignment, such as travel, lodging, and meals.

17. I understand that if appointed as Unknown Claims Representative, I will be an independent fiduciary acting on behalf of the Unknown Tort Claimants, and I will be acting solely on behalf of the Unknown Tort Claimants.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

DATED: June 1, 2020.


MICHAEL R. HOGAN

EXHIBIT 1

Judge Michael R. Hogan

Retired U.S. District Court Judge



Judge Hogan is a mediator who has led thousands of disputes to a fruitful settlement. He worked more than 40 years in federal service and earned national renown as a mediator of complex civil suits. In all, Judge Hogan has led successful mediations in hundreds of construction defect cases, hundreds more sexual abuse cases, and of corporate bankruptcy cases with billions of dollars in the balance. Some of these cases have had hundreds of claimants apiece. In October 2012, he retired as a Senior U.S. District Court Judge to become a full-time mediator.

Judge Hogan's service on the bench began in 1973, when he was hired as a part-time U.S. Magistrate Judge and part-time U.S. Bankruptcy Judge. He was just 26 years old at the time, making him one of the youngest federal judges in this country's history. He received a U.S. District Court commission from President George H.W. Bush in 1991 and then assumed the duties of Chief Judge from 1995 to 2002.

Along with his membership in various bar associations, Judge Hogan served for many years as president of the Roland K. Rodman Inn of Court. He is a senior fellow of the American Leadership Forum, served as national president of the National Council of Federal Magistrates from 1980 to 1981, was chairman of the Board of Visitors for the University of Oregon School of Law from 1993 to 1996. Other professional involvements include sitting on committees for the Judicial Conference of the United States, the Administrative Office Committee of the United States Courts, the Oregon Federal-State Judicial Council, the Judicial Council of the Ninth Circuit, the Federal Judicial Center, the National Institute of Trial Advocacy, the National Judicial College, and the Federal Bar Association.

Judge Hogan is well known for bringing "the gentle touch" to successful settlements in civil cases. He has received the Individual Award for Leadership in the Promotion of Dispute Resolution from the Willamette University College of Law. He is a regular speaker at legal conferences of all types, and has also taught several seminars to judges in other countries.

Positions

- Senior U.S. District Court Judge 2011-12
- Chief Judge, District of Oregon 1995-2002
- U.S. District Court Judge 1991-2012
- U.S. Magistrate Judge 1973-91
- U.S. Bankruptcy Judge 1973-80
- Associate Attorney, Miller Nash LLP 1972-73
- Law Clerk, District Court Judge Robert Belloni 1971-72
- Capitol Policeman, U.S. Capitol Building 1968-71

Education

- Georgetown University Law Center 1968-71
- Robert D. Clark Honors College, University of Oregon 1963-68

**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 OF POINTS AND AUTHORITIES IN SUPPORT OF DEBTOR'S
MOTION FOR AN ORDER (I) GRANTING EXPEDITED RELIEF; (II) APPOINTING A
LEGAL REPRESENTATIVE TO REPRESENT THE INTERESTS OF UNKNOWN
TORT CLAIMANTS, INCLUDING MINORS; AND (III) GRANTING THE
APPLICATION TO EMPLOY MICHAEL R. HOGAN AS UNKNOWN CLAIMS
REPRESENTATIVE**

The debtor respectfully submits this memorandum in support of its motion seeking an order: (i) appointing an Unknown Claims Representative with the powers and duties set forth in the motion to represent Unknown Tort Claimants and, on their behalf, (a) to perform the duties enumerated in the motion, and (b) take such other actions or perform such other duties as the court may authorize upon request of the Unknown Claims Representative, the debtor, or other party in interest; (ii) allowing the debtor to employ The Hon. (Ret.) Michael R. Hogan as the Unknown Claims Representative; and (iii) allowing Judge Hogan to be compensated at the rate of \$550.00 per hour (with fees to be capped at \$50,000) for his services as Unknown Claims Representative, plus the actual, reasonable, and necessary expenses incurred in the course of his services.

I. BACKGROUND

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

II. LEGAL ANALYSIS

In order to compensate all Tort Claimants in this case, the debtor's plan of reorganization will provide for Unknown Tort Claimants that are currently unable to assert, or are excused from asserting, their Unknown Tort Claims for various legal excuses. Unknown Tort Claimants require representation because, in Minnesota, various recognized theories may toll the statute of limitations for such claimants. *See, e.g.*, Minn. Stat. § 541.15 (recognizing insanity as a basis to toll the statute of limitations). Although Unknown Tort Claimants may have prepetition claims, they may not have a meaningful ability to participate in this case. Appointment of an Unknown Claims Representative addresses this concern and provides the Unknown Tort Claimants with a voice in this case.

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

The debtor requests expedited relief pursuant to Bankruptcy Rule 9006(c) and Local Rule 9006-1(e). Cause exists to reduce notice of the hearing on the motion. The court should appoint an Unknown Claims Representative as early in this case as possible to provide comprehensive representation of Unknown Tort Claimants' interests.

B. Unknown Tort Claimants May Have Claims Cognizable in the Case.

The Bankruptcy Code employs the "broadest possible definition" of the word "claim," which is designed to ensure that "all legal obligations of the debtor, no matter how *remote or contingent* [would] be dealt with in the bankruptcy case." *Sigmon v. Royal Cake Co. (In re Cybermech, Inc.*, 13 F.3d 818, 821 (4th Cir. 1994) (quoting H.R. Rep No. 595, 95th Cong. 2nd Sess. 309, *reprinted in* 1978 U.S.C.C.A.N. 5963, 6266). Bankruptcy courts in the Eighth Circuit have adopted the conduct theory, which determines the date of a claim by the date of the conduct

giving rise to the claim. *See In re Sullivan*, No. 02-03073, 2006 WL 1686168, at *4 (Bankr. N.D. Iowa June 13, 2006); *In re Food Barn Stores*, 175 B.R. 723, 731 (Bankr. W.D. Mo. 1994); *In re Wis. Barge Lines*, 91 B.R. 65, 68 (Bankr. E.D. Mo. 1988). Whether Unknown Tort Claimants hold allowable claims, therefore, may depend on when the conduct that gave rise to their claims occurred. In almost all cases, that conduct occurred prior to the petition date. Therefore, regardless of whether the Unknown Tort Claimants are currently able to assert their claims against the debtor, the debtor can and should address such claims in a plan of reorganization.

C. Unknown Tort Claims May Present Due Process Issues.

The existence of Unknown Tort Claims may present due process concerns. Certain Unknown Tort Claimants may assert that they were unaware of their claims. Even if notice of the deadline to file proofs claim is published, Unknown Tort Claimants might not recognize themselves as affected by the debtor's case and may, therefore, take no action to ensure that their interests are protected. Other bankruptcy courts have faced this issue:

[T]he purpose behind requiring notice to creditors is to provide them the 'opportunity to be heard' which is 'the fundamental requisite of due process of law.' Such a notice by publication is an exercise in futility as applied to creditors who are not only unknown to the debtor, but are also unknown to themselves. It cannot possibly define the requirements of the Due Process Clause.

In re Chance Industries, Inc., 367 B.R. 689, 708 (Bankr. D.Kan. 2006) (quoting Laura B. Bartell, *Due Process for the Unknown Future Claim in Bankruptcy—Is this Notice Really Necessary?*, 78 Am. Bankr. L.J. 339 (2004)).

Appointment of an Unknown Claims Representative to act on behalf of Unknown Tort Claimants resolves this due process issue. The Unknown Tort Claimants have a stake in this case, in the plan confirmation process, and in any plan of reorganization confirmed by the debtor. Appointment of the Unknown Claims Representative allows Unknown Tort Claimants to

participate in the reorganization process and have their interests represented. An Unknown Claims Representative may, therefore, be necessary to enable the court to render valid and binding judgments against all Unknown Tort Claimants, while protecting their due process rights.

D. Appointment Of A Legal Representative For Unknown Tort Claimants Is Necessary And Proper Under The Circumstances.

The appointment of a representative to protect unknown tort claimants' interests in Chapter 11 cases involving mass tort litigation is well established. This protection was pioneered in the asbestos bankruptcy cases and ultimately codified as to asbestos claims under 11 U.S.C. § 524(g)(2)(B). Prior to the enactment of 11 U.S.C. § 524(g), bankruptcy courts routinely appointed unknown claims representatives as parties in interest pursuant to 11 U.S.C. § 1109(b)⁵ and 105(a). *See, e.g., In re Johns-Manville Corp.*, 36 B.R. 743, 757 (Bankr. S.D.N.Y. 1984). Although the Tort Claimants and Unknown Tort Claimants may have many coinciding interests in this case, other instances where their interests are not entirely aligned may exist. The majority of cases appointing an independent representative for unknown claimants have done so based on the potential conflicts of interest between present and unknown claimants. *See id.* at 749 (finding that none of the existing committees of unsecured creditors and present asbestos claimants could represent unknown claimants).

Similarly, courts supervising diocesan cases have routinely appointed unknown (or future) claims representatives. *See, e.g., In re: Crosiers Fathers and Brothers Province, Inc.*, Case No. 17-41681 *Order Appointing Unknown Claims Representative* [Dkt. No. 68]; *In re: The Archdiocese of Saint Paul and Minneapolis*, Case No. 15-30125, *Order Appointing Future*

⁵ 11 U.S.C. § 1109(b) provides that “A party in interest, including the debtor, a trustee, a creditors’ committee, an equity security holders’ committee, a creditor, an equity security holder, or any indenture trustee, may raise and may appear and be heard on any issue in a case under this chapter.”

Claimants' Representative [Dkt. No. 969]; *In re: Diocese of Duluth*, Case No. 15-50792, *Order Appointing Unknown Claimants' Representative* [Dkt. No. 328]; *In re: Roman Catholic Bishop of Helena, Montana*, Case No. 14-60074, *Order* [Dkt. No. 186]; *In re: Roman Catholic Church of the Diocese of Gallup*, Case No. 13-13676-t11, *Order Appointing a Legal Representative to Represent the Interests of Unknown Tort Claimants, Including Minors, in the Reorganization Cases and Authorizing Debtors to Employ Michael P. Murphy as Unknown Claims Representative* [Dkt. No. 352]; *In re: Roman Catholic Archbishop of Portland in Oregon*, Case No. 04-37154-elp11, *Order Appointing Future Claimants Representative* [Dkt. No. 723]; *In re: The Catholic Bishop of Spokane*, Case No. 04-08822-PCW11, *Final Order Appointing a Legal Representative for Future Tort Claimants and Minors* [Dkt. No. 550]; *In re: Roman Catholic Church of the Diocese of Tucson*, Case No. 4:04-bk-04721-JMM, *Minute Entry* [Dkt. No. 121].

The Federal Rules of Civil Procedure (the relevant provisions of which are made applicable in this case by the Federal Rules of Bankruptcy Procedure) also specifically address the interests of minors or other incompetent claimants. For example, Bankruptcy Rule 9014(c) provides that Bankruptcy Rule 7017 is applicable in contested matters (such as plan confirmation). Bankruptcy Rule 7017 incorporates Fed. R. Civ. P. 17, providing that “[t]he court must appoint a guardian ad litem—or issue another appropriate order—to protect a minor or incompetent person who is unrepresented in an action.” Fed. R. Civ. P. 17(c)(2). The Bankruptcy Rules, therefore, dovetail with precedent requiring a representative for unknown or minor claimants who cannot speak for themselves.

In this case, the debtor seeks to balance the rights and needs of all prepetition creditors, including Unknown Tort Claimants, with the debtor’s continued ministry and mission, taking into account the debtor’s limited resources. Although the debtor does not believe that the

universe of Unknown Tort Claimants is significant, those individuals' interests should be represented. One of the reasons for filing this case was to ensure that a plan of reorganization either finally resolves all Tort Claims (including Unknown Tort Claims), or provides a mechanism for their future satisfaction. To achieve this goal, the court should appoint an Unknown Claims Representative to represent the Unknown Tort Claimants' interests.

The debtor, therefore, requests that the court appoint a single person as the Unknown Claims Representative and guardian *ad litem*, so long as that person has no clear conflict of interest and can adequately represent both classes of Tort Claimants. Because the debtor is unaware of any minor claimants, a single claims representative avoids the potential waste of appointing a separate guardian *ad litem*. Such an approach will conserve estate resources and reduce administrative costs.

E. The Court Should Grant the Application to Employ.

In Chapter 11 reorganization cases, a debtor may employ a disinterested professional on any reasonable terms and conditions of employment, including on a retainer, an hourly basis, a fixed or percentage fee basis, or a contingent fee basis. 11 U.S.C. §§ 327 and 328.

As set forth in the motion and the verified statement, Judge Hogan has the appropriate experience and knowledge to perform the duties of the Unknown Claims Representative in this case. His services will not unnecessarily duplicate the efforts of any other professionals retained in this case. Therefore, nothing in the Bankruptcy Code, Bankruptcy Rules, Local Rules, or applicable ethical rules precludes Judge Hogan's appointment, and such appointment is in the best interest of creditors.

III. CONCLUSION

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

A. Granting the expedited relief sought in the motion;

B. Appointing an Unknown Claims Representative with the powers and duties set forth in the motion to represent Unknown Tort Claimants and, on their behalf, (i) to perform the duties enumerated in the motion, and (ii) take such other actions or perform such other duties as the court may authorize upon request of the Unknown Claims Representative, the debtor, or other parties in interest;

C. Authorizing the debtor to employ Judge Hogan as the Unknown Claims Representative on the terms set forth in Exhibit A to the motion;

D. Subject to application and final approval, authorizing Judge Hogan to be compensated at the rate of \$550.00 per hour for his services associated with his role as Unknown Claims Representative (with fees to be capped at \$50,000), plus the actual, reasonable, and necessary expenses incurred in the course of his services; and

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E. 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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Proposed Counsel for the Debtors

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

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

ORDER APPOINTING UNKNOWN CLAIMS REPRESENTATIVE

At Minneapolis, Minnesota, June ____, 2020.

This matter is before the court on the motion of debtor to consider and to appoint an unknown claims representative. Based on the motion and the file,

IT IS ORDERED:

1. The motion is granted.
2. Michael R. Hogan is appointed the unknown claims representative to represent the unknown claimants. "Unknown claimants," as used in this order, are those tort claimants who may have claims arising from sexual abuse experienced as minors but, as a result of a valid legal excuse, do not timely file a proof of claim, have never identified themselves to the debtor, and are not presently known to the debtor.
3. The unknown claims representative shall have standing under 11 U.S.C. § 1109(b) to be heard as a party in interest in all matters relating to the debtor's case.
4. The duties and responsibilities of the unknown claims representative will include:
 - A. Undertaking an investigation and analysis regarding the estimated number of unknown tort claimants and the estimated value of unknown tort claims;

- B. Filing proofs of claim on behalf of all unknown tort claimants within 60 days of entry of this order, subject to extension by consent of the debtor and the unsecured creditors' committee or for good cause shown;
- C. Negotiating treatment of unknown tort claims in a plan of reorganization with the debtor, the unsecured creditors' committee, and other appropriate parties;
- D. Advocating unknown tort claimants' legal positions before the court and, if necessary, filing pleadings and presenting evidence on any issue affecting such claimants;
- E. Taking all other legal actions reasonably necessary to represent the interests of unknown tort claimants; and
- F. Serving as an independent fiduciary acting on behalf of all unknown tort claimants.

5. The unknown claims representative shall be compensated at the rate of \$550 per hour and shall be entitled to reimbursement of his actual, reasonable, and necessary expenses, in accordance with such other orders as have been or may be entered by the court with respect to compensation of professionals in this case; *provided, however*, that the unknown claims representative's fees are capped at \$50,000.00. Thereafter, the unknown claims representative shall file a status report summarizing all services rendered, as well as his findings and recommendations and must seek further leave of the court to incur any fees in excess of \$50,000.00.

6. The unknown claims representative may employ attorneys and other professionals consistent with the applicable provisions of the bankruptcy code, only with prior approval of the court.

7. The unknown claims representative shall not be liable for any damages or have any obligations other than as prescribed by orders of this court; *provided, however*, that the unknown claims representative may be liable for damages caused by his willful misconduct or gross negligence.

ROBERT J. KRESSEL
UNITED STATES BANKRUPTCY JUDGE