

**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 EXTENDING
DEBTOR'S EXCLUSIVITY PERIODS**

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, as debtor and debtor in possession in this case, hereby moves the court for the relief requested below and gives notice of hearing:

1. The court will hold a telephonic hearing on this motion before the Honorable Robert J. Kressel on **October 22, 2020 at 10:30 a.m.** Parties interested in attending the hearing should contact Judge Kressel's calendar clerk at (612) 664-5250 for the call-in information.

2. Any response to this motion must be filed and served no later than October 17, 2020, which is five (5) days before the time set for the hearing (including Saturdays, Sundays, and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

JURISDICTION

3. The court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005 and Local Rules 1070-1. This is a core proceeding under 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The debtor files this motion under 11 U.S.C. § 1121, Bankruptcy Rule 9014, and Local Rule 9013-1 through 3.

5. The debtor hereby moves the court for entry of an order extending the exclusive periods for the debtor to file and confirm a plan of reorganization.

BACKGROUND

6. 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**”) and the Disclosure Statement (defined below). Joseph Spaniol, the debtor’s Finance Officer, also verified the additional facts set forth below, as evidenced by the attached verification.

7. During the first 120 days after commencement of a Chapter 11 case, only the debtor may file a plan. 11 U.S.C. § 1121(b). The debtor has an additional 60 days within which it alone may solicit acceptance to a filed plan. 11 U.S.C. § 1121(c). In this case, the 120-day exclusivity period expires on October 13, 2020 and the 180-day exclusivity period expires on December 12, 2020.

8. On September 23, 2020, the debtor and the Official Committee of Unsecured Creditors (the “**Committee**”) filed the *Joint Plan of Reorganization* (the “**Plan**”) and the *Disclosure Statement to Accompany Joint Plan of Reorganization* (the “**Disclosure Statement**”). A hearing on approval of the Disclosure Statement is currently set for October 22, 2020.

RELIEF REQUESTED

9. Pending approval of the Disclosure Statement and confirmation of the Plan, the debtor respectfully requests that the court enter an order: (i) under 11 U.S.C. § 1121(b), extending

the period within which the debtor has the exclusive right to file a plan of reorganization to January 31, 2021, and (ii) under 11 U.S.C. § 1121(c)(3), extending the period within which the debtor has the exclusive right to solicit acceptances of a plan of reorganization to March 31, 2021.

10. Although the debtor filed the Plan before the 120-day period expired, the Disclosure Statement must still be approved and the Plan solicited. In the unlikely event the Plan is withdrawn or is otherwise not confirmed (neither of which the debtor anticipates), exclusivity will have expired and other parties in interest would have the right to file their own plans in the case. Moreover, the Court has not yet set a confirmation hearing, which may ultimately be set beyond the 180 days period. The debtor therefore files this motion out of an abundance of caution.

11. Given certain of the debtor's unique characteristics (that the debtor is a non-profit, religious corporation established to further the ministry and mission of the Catholic Church) and the unique history of this case (extensive prepetition settlement negotiations took place between various stakeholders to reach an agreed-upon framework for a plan of reorganization), the debtor should be given every opportunity to consummate that framework without undue pressure or a competing plan that will only increase administrative costs and will not benefit creditors.

12. The debtor has informed the Committee of the relief requested herein and the Committee, as a Plan proponent, supports this relief.

WHEREFORE, the debtor requests entry of an order:

A. Extending the deadline under 11 U.S.C. § 1121(b) within which the debtor has the exclusive right to file a plan of reorganization to January 31, 2021;

B. Extending the deadline under 11 U.S.C. § 1121(c) within which the debtor has an exclusive right to solicit acceptances of a plan of reorganization to March 31, 2021, and

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

Dated: October 5, 2020.

QUARLES & BRADY LLP

/s/ Jason D. Curry

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re: Chapter 11
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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: October 5, 2020



Joseph Spaniol

**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.

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR
AN ORDER EXTENDING DEBTOR'S EXCLUSIVITY PERIODS**

The debtor submits this memorandum in support of its Motion for an Order Extending Debtor's Exclusivity Periods.

I. FACTS.

The factual basis for this memorandum is set forth in the verified motion, the Kettler Declaration, and the Disclosure Statement.

II. LEGAL ARGUMENT.

A. Legal Standard.

Bankruptcy Code § 1121 establishes the time lines for parties to file plans of reorganization. The debtor has the exclusive right to file a plan during the first 120 days after entry of the order for relief. 11 U.S.C. § 1121(b). If the debtor files a plan during the initial 120-day period, it has an additional 60 days to obtain acceptance of the plan by each class of impaired claims or interests. 11 U.S.C. § 1121(c)(3). Upon request, the court may increase either or both of the 120-day period and 180-day period "for cause." 11 U.S.C. § 1121(d)(1).

Although the term “cause” is not defined in Section 1121, the Bankruptcy Appellate Panel for the Eighth Circuit has held that “the granting of an extension [should] be based on a showing of some promise of probable success for reorganization” and “an extension should not be employed as a tactical measure to put pressure on parties in interest to yield to a plan they consider unsatisfactory.” *In re Hoffinger Industries, Inc.*, 292 B.R. 639, 643 (B.A.P. 8th Cir. 2003) (internal citations omitted). The *Hoffinger* court listed the following factors to be balanced in deciding whether to extend or shorten the 120 and 180 exclusivity periods.

- (1) the large size of the debtor and the consequent difficulty in formulating plan of reorganization for a huge debtor with a complex financial structure;
- (2) the need of the creditors’ committee to negotiate with the debtor and the ability to prepare adequate information;
- (3) the existence of good faith progress towards reorganization;
- (4) the existence of an unresolved contingency;
- (5) the fact that the debtor is paying bills as they become due;
- (6) the length of previous extensions of exclusivity;
- (7) breakdowns in plan negotiations, such that the continuation of the debtor’s exclusivity period would result in the debtor having an unfair bargaining position over creditors;
- (8) the debtor’s failure to resolve fundamental reorganization matters essential to its survival; and
- (9) the gross mismanagement of the debtor.

Id. at 643-44 (internal citations omitted). “It is within the discretion of the bankruptcy court to decide which factors are relevant and give the appropriate weight to each.” *Id.* at 644.

B. Cause Exists for this Court to Extend the Exclusivity Periods.

The concept of “exclusivity” was incorporated into the Bankruptcy Code to provide a debtor with a full and fair opportunity to propose a plan, and to solicit acceptances of such plan, without the disruption to the debtor’s operations that would be caused by the filing of competing plans. The current posture of this case warrants extension of the exclusivity period and the

solicitation period because (i) the debtor and the majority of tort claimants agreed on a framework for a consensual plan of reorganization prepetition; (ii) the debtor and the Committee jointly filed the Plan and Disclosure Statement and are pursuing approval of the Disclosure Statement and confirmation of the Plan; (iii) the debtor has managed its reorganization case in good faith; (iv) the motion is not being filed to pressure creditors but merely to preserve the debtor's exclusive right to propose a plan in the event the Plan is not confirmed; (v) the debtor has not filed any prior request to extend the exclusivity period; and (vi) the debtor has complied with its postpetition obligations. For these reasons, the exclusivity period should be extended to give the debtor a full and fair opportunity to confirm the plan of its choosing.

Extensions of the exclusivity period have routinely been granted in other Catholic diocese bankruptcy cases, including in cases filed in this jurisdiction. *See In re Archdiocese of Saint Paul and Minneapolis*, Case No. 15-30125 (ECF Nos. 168, 456); *In re Diocese of Winona-Rochester*, Case No. 18-33707 (ECF Nos. 108, 164, 197); *In re Diocese of Duluth*, Case No. 15-50792 (ECF Nos. 82, 273); *In re Crosier Fathers and Brothers Province, Inc.*, Case No. 17-41681 (ECF Nos. 78, 117). Most similar to this case is *In re Crosier Fathers and Brothers Province, Inc.*, in which the second request for an extension of the exclusivity periods arose after the plan and disclosure statement were filed but before the disclosure statement was approved or the plan solicited. *In re Crosier Fathers and Brothers Province, Inc.*, Case No. 17-41681 (ECF 99). As in this motion, the debtors in those cases sought the extension “in an abundance of caution . . . [i]n the event the filed plan might not be confirmed for some reason” so that it would have the exclusive right to file and solicit a new plan. *Id.* This court granted that relief. *Id.* (ECF 117).

Similarly, the debtor in this case has already successfully negotiated a resolution with the primary stakeholders and filed the Plan and Disclosure Statement. The extension requested in the

motion would merely give the debtor time to propose an amended plan in the unlikely event that the Plan is not confirmed. For all of the reasons set forth above, this relief is appropriate.

III. CONCLUSION.

WHEREFORE, the debtor requests entry of an order:

A. Extending the deadline under 11 U.S.C. § 1121(b) within which the debtor has the exclusive right to file a plan of reorganization to January 31, 2021;

B. Extending the deadline under 11 U.S.C. § 1121(c) within which the debtor has an exclusive right to solicit acceptances of a plan of reorganization to March 31, 2021, and

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

Dated: October 5, 2020.

QUARLES & BRADY LLP

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**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 GRANTING MOTION FOR AN ORDER EXTENDING
DEBTOR'S EXCLUSIVITY PERIODS**

This matter is before the court on the debtor's motion to extend the exclusivity periods to file and confirm a plan of reorganization.

Based on the motion and file,

IT IS ORDERED:

1. The deadline under 11 U.S.C. § 1121(b) within which the debtor has the exclusive right to file a plan of reorganization is hereby extended through January 31, 2021; and
2. The deadline under 11 U.S.C. § 1121(c) within which the debtor has the exclusive right to obtain acceptances of a plan of reorganization is hereby extended through March 31, 2021.

DATED:

ROBERT J. KRESSEL
UNITED BANKRUPTCY COURT JUDGE

**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.

CERTIFICATE OF SERVICE

I, Jason D. Curry, declare under penalty of perjury that on October 5, 2020 I caused to be served the foregoing *Notice of Hearing and Motion for an Order Extending Debtor's Exclusivity Periods* to each entity named below at the e-mail address or mailing address stated for each entity:

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