1	IN THE UNITED STATE	S BANKRUPTCY COURT					
2	FOR THE DISTRICT OF ARIZONA						
3							
4	In re:	In Proceedings Under Chapter 11					
5	THE ROMAN CATHOLIC CHURCH OF	Case No. 4-04-04721					
6 7	THE DIOCESE OF TUCSON <i>aka</i> THE DIOCESE OF TUCSON, an Arizona corporation sole,						
8	Debtor.						
9							
10		NT REGARDING PLAN OF ED, SEPTEMBER 20, 2004					
11							
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15	The	Roman Catholic Church of the Diocese of son					
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18	BANKRUPTCY COURT AS CONTAININ	NOT YET BEEN APPROVED BY THE G ADEQUATE INFORMATION WITHIN					
19	RECEIVED A COPY OF THE DISCLOSU	§ 1125. IF YOU HAVE REQUESTED AND RE STATEMENT IN CONNECTION WITH					
20	STATEMENT, NOTHING CONTAINED	ER APPROVAL OF THE DISCLOSURE HEREIN IS OR WILL BE DEEMED A					
21	SOLICITATION OF ACCEPTANCE REORGANIZATION FILED BY THE DEBT						
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The Roman Catholic Church of the Diocese of Tucson *aka* the Diocese of Tucson, an Arizona corporation sole and the debtor and debtor in possession in the above captioned Chapter 11 reorganization case (the "Diocese" or the "Debtor"), has prepared this Disclosure Statement in connection with the solicitation of acceptances of the "Debtor's Plan of Reorganization" dated September 20, 2004 (the "Plan"). A copy of the Plan is attached as Exhibit "1" to this Disclosure Statement.

# I. <u>INTRODUCTION</u>.

#### A. The Filing of the Reorganization Case.

On September 20, 2004 (the "Petition Date"), the Diocese commenced the above-captioned Chapter 11 reorganization case ("Reorganization Case") by filing a voluntary Chapter 11 petition. The Diocese filed this Reorganization Case in order to reorganize its financial affairs pursuant to a plan of reorganization that will, among other things, fairly, justly and equitably compensate the victims of sexual abuse by clergy or others associated with the Diocese and bring healing to victims, Parishioners and other affected by the past acts of sexual abuse committed by clergy and others while allowing the Diocese to continue its ministry and mission. It is through the Reorganization Case that the Diocese seeks to finally and comprehensively address the issues resulting from the abuse crisis that has caused great harm to the victims, plunged the Diocese into a dire financial condition, and has interfered with the Catholic Church's traditional ministries in the communities within the Diocese.

In proposing the Plan, the Diocese seeks first to provide care, compassion and compensation to those who have endured harm. The Plan necessarily recognizes its financial limitations, while establishing a fund for those victims who have presently identified themselves and for those who recognize their Claims or identify themselves in the future. The Diocese believes that the Plan is the only vehicle available to it to ensure an equitable and fair distribution of compensation to victims, some identified and some still unknown.

financial reorganization of this religious organization as well as providing for the continuation of the programs that the Diocese has put in place to educate and screen people working with the Diocese and to ensure that the Diocese can continue to provide care and counseling to those injured. The ability of the Diocese to reorganize its financial affairs and provide an orderly way to deal with victims of abuse also provides for and allows the Diocese to continue programs recently started to respond to the crisis and which are described in more detail below which include screening Diocesan and other personnel, so that individuals of faith and integrity who have the highest standards of behavior will fill the trusted roles of clergy, teachers and administrators.

The Plan maintains funding of programs within the Diocese which are essential to the

# B. <u>Institution of Programs</u>.

Among other ways in which the Diocese responded to the sex abuse crisis was to establish a Sexual Misconduct Policy Review Committee in February 2002 to review all policies and procedures related to child abuse (reporting, prevention, response to victims) and to make pointed recommendations on how to strengthen policies and procedures. The Committee issued recommendations and proposed a Code of Conduct for All Who Minister in the Diocese (the "Code of Conduct") and comprehensive Guidelines for the Prevention of and Response to Sexual Misconduct ("Guidelines"). Pursuant to the recommendations of the Sexual Misconduct Policy Review Committee, the Diocese promulgated the Code of Conduct and Guidelines and established the Sexual Misconduct Review Board in July of 2002. The Sexual Misconduct Review Board is responsible for the review of all allegations of child abuse and sexual misconduct made against Church personnel and for the oversight of all efforts at Parishes and Schools to implement the Guidelines.

Also pursuant to the recommendations of the Sexual Misconduct Policy Review Committee, the Diocese created the Office of Child, Adolescent, and Adult Protection (the "Office") under the supervision of the Sexual Misconduct Review Board. The Office is headed

by Dr. Paul Duckro, Ph.D., a former senior clinician in the Program for Psychology and Religion at St. Louis Behavioral Medicine Institute, an academic affiliate of St. Louis University Health Sciences Center in St. Louis, Mo., and professor emeritus at the St. Louis University School of Medicine in the Department of Community and Family Medicine. Attached hereto as Exhibit "2" is a copy of Dr. Duckro's Curriculum Vitae.

Through the work of the Office, the Diocese has committed itself to work openly and collaboratively with law enforcement. The Diocese has held training for its employees and others associated with the Diocese, such as Priests, Parish employees, teachers and administrators.

Screening of current and new personnel is part of the preventive program. The Diocese hired a human resources director, Richard Serrano, to lead this effort. His work has included the development of systematic processes to recruit, screen and orient new personnel. He is also revising human resources policies to insure that management practices are consistent with the emphasis of the Code of Conduct and Guidelines on prudent behavior, early detection of problems, and effective response to problems.

Education is ongoing and focused on both awareness and motivation. Educational sessions that focus on diocesan policy and mandated reporting have been held around the Diocese for all personnel. That education process is continuing both at the Diocese and at the Parishes and Schools, and the Diocese is committed to continuing that effort which is why it is so important that the Diocese be able to continue these programs while as the same time finding a just and equitable way to respond to victims and provide for payment to its other creditors.

The Diocese has also established programs for screening candidates for the priesthood, deaconate and lay ministry. The screening programs are required before entry into the formation process so as to help ensure that mature persons of integrity with the highest standards of behavior are admitted. A program is underway to improve ongoing formation of priests. Outreach to victims is done by publicizing widely the Bishop's commitment to receive respectfully any report of sexual abuse by anyone ministering or working under the auspices of

the Diocese. High priority is given to the freedom of the victim to come forward when he or she is ready. Counseling is offered, and the individual is given the opportunity to meet with the Bishop if that is requested. Outreach is also conducted by collaborating with local agencies devoted to child advocacy and to child abuse prevention and awareness. The Director of Child, Adolescent and Adult Protection sits on the Board of the Southern Arizona Child Advocacy Center. The Diocese is a Corporate Member of the Pima County Child Abuse Prevention Council. The positive and productive relationships the Office has developed with law enforcement and social service, and child advocacy groups have been a hallmark of the Diocese's efforts to prevent child abuse within the Church.

While most Chapter 11 reorganization plans focus only on the financial, the Plan proposed by the Diocese addresses not only compensation for victims and other Creditors, but also proposes the continuation of the economic and institutional reforms it started so that the Diocese can further its role as a trusted, leader for both Catholic faithful and the communities it serves.

# II. <u>STATEMENTS REGARDING REPRESENTATIONS</u>.

# A. <u>Definitions And Plan Supremacy</u>.

Unless this Disclosure Statement expressly states that a term defined in the Plan will have a different meaning herein, all terms defined in the Plan will have the same meanings when used in this Disclosure Statement. In addition, unless otherwise stated, terms used in this Disclosure Statement will have the same meanings as in the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, or the Local Rules of the Bankruptcy Court. Terms defined in this Disclosure Statement which are also defined in the Plan or the other sources described above are solely for convenience; and the Debtor does not intend to change the definitions of those terms from the Plan or from the otherwise applicable sources. Furthermore, in the event of any inconsistency between the Plan and this Disclosure Statement, the Plan will control. The Exhibits

attached to this Disclosure Statement are incorporated into and are a part of this Disclosure Statement.

# **B.** Limited Representations.

This Disclosure Statement is submitted in accordance with Bankruptcy Code § 1125 for the purpose of soliciting acceptances of the Plan from holders of certain Claims. It is subject to approval by the Bankruptcy Court as containing information of a kind, and in sufficient detail, which is adequate to enable you to make an informed judgment whether to vote to accept or to reject the Plan. This Disclosure Statement will be used to solicit acceptances of the Plan only after the Bankruptcy Court enters an order approving this Disclosure Statement as containing adequate information.

In determining whether the Plan should be confirmed, the Bankruptcy Court will consider whether the Plan satisfies the requirements of the Bankruptcy Code, including whether it is feasible, and whether it is in the best interests of the holders of Claims. The Bankruptcy Court also will receive and consider a ballot report prepared by the Debtor concerning the votes for acceptance or rejection of the Plan by parties entitled to vote. Only holders of Allowed Claims that are impaired under the Plan will be allowed to vote to approve or reject the Plan.

THIS DISCLOSURE STATEMENT IS NOT THE PLAN. THIS DISCLOSURE STATEMENT, TOGETHER WITH THE PLAN, WHICH IS ATTACHED HERETO AS EXHIBIT "1", SHOULD BE READ COMPLETELY. FOR THE CONVENIENCE OF CREDITORS, THE PLAN IS SUMMARIZED IN THIS DISCLOSURE STATEMENT, BUT ALL SUMMARIES AND OTHER STATEMENTS REGARDING THE PLAN ARE QUALIFIED IN THEIR ENTIRETY BY THE PLAN ITSELF, WHICH IS CONTROLLING IN THE EVENT OF ANY INCONSISTENCY.

The Bankruptcy Court will hold a hearing on confirmation of the Plan. The date and time of the hearing will be fixed by order of the Court and will be noticed to Creditors after the Disclosure Statement is approved. The Confirmation Hearing may be adjourned from time to time without further written notice.

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Certain materials contained in this Disclosure Statement are taken directly from other, readily accessible documents or are digests of other documents. While every effort has been made to retain the meaning of such documents, you are urged to rely upon the contents of such documents only after a thorough review of the documents themselves.

NO REPRESENTATIONS OR ASSURANCES CONCERNING THE DEBTOR, INCLUDING, WITHOUT LIMITATION, ITS OPERATIONS, THE VALUE OF ITS ASSETS, OR THE FUTURE OPERATIONS OF THE REORGANIZED DEBTOR ARE AUTHORIZED BY THE DEBTOR OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT.

THIS IS A SOLICITATION BY THE DEBTOR ONLY AND IT IS NOT A SOLICITATION BY THE DEBTOR'S ATTORNEYS OR ANY **EMPLOYED** PROFESSIONALS BYTHE DEBTOR. REPRESENTATIONS MADE HEREIN ARE THOSE OF THE DEBTOR AND NOT OF THE DEBTOR'S ATTORNEYS OR ANY OTHER PROFESSIONAL.

REASONABLE EFFORTS HAVE BEEN MADE TO ACCURATELY PREPARE ALL UNAUDITED FINANCIAL STATEMENTS WHICH MAY BE **DISCLOSURE STATEMENT** CONTAINED IN THIS **FROM** INFORMATION AVAILABLE TO THE DEBTOR. HOWEVER, AS TO ALL FINANCIAL STATEMENTS, THE DEBTOR IS UNABLE WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED THEREIN IS WITHOUT ERROR.

#### C. **Voting Procedures.**

If you are the holder of a Claim that is "impaired" under the Plan, it is important that you vote. In that regard, acceptances of the Plan are sought only from those holders of Claims whose Claims are "impaired" by the Plan and who are not deemed to have accepted or rejected the Plan. Specifically, acceptances are solicited only from those Creditors and parties in interest whose legal, equitable, or contractual rights are altered by the Plan or who will not receive under the Plan the full amounts of their Allowed Claims in Cash. Holders of Claims which are not impaired under the Plan are deemed to have accepted the Plan. See Bankruptcy Code § 1126(f). Conversely, acceptances need not be solicited from the holders of Claims who will receive nothing under the Plan because they are deemed to have rejected the Plan. See Bankruptcy Code § 1126(g).

In order for a Class of Claims to vote to accept the Plan, votes representing at least twothirds in amount and more than one-half in number in that Class must be cast in favor of acceptance of the Plan. As more fully described below, the Debtor is seeking acceptances from holders of Allowed Claims in the following Classes (reserving the right to supplement as to any other impaired Class(es) of Claims, if any):

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Class **Description Status** Class 1 **Priority Employee Unsecured Claims** Impaired – Entitled To Vote Class 2 Prepetition Property Tax Secured Claims Impaired – Entitled To Vote General Unsecured Convenience Claims Class 4 Impaired – Entitled To Vote Class 6 Parish Unsecured Claims Impaired – Entitled To Vote Class 7 General Unsecured Claims Impaired – Entitled To Vote Class 8 Other Tort and Employee Claims Impaired – Entitled To Vote Class 9 **Tort Claims** Impaired – Entitled To Vote

The following Classes of Claims are not impaired under the Plan or are otherwise prohibited by the Bankruptcy Code from voting on the Plan for the reason indicated:

Class	<b>Description</b>	<u>Status</u>
Unclassified	Administrative Claims	Unimpaired – Deemed to Accept
Unclassified	Priority Unsecured Claims	Unimpaired – Deemed to Accept
Unclassified	Priority Tax Claims	Unimpaired – Deemed to Accept
Class 3	Other Secured Claims	Unimpaired – Deemed to Accept
Class 5	Parish Guaranty Claims	Unimpaired – Deemed to Accept
Class 10	Penalty Claims	Take Nothing- Deemed to Reject

The specific treatment of each Class under the Plan is set forth in the Plan and is summarized in Article VII of this Disclosure Statement. Bankruptcy Code § 1129(b) provides that, if the Plan is rejected by one or more impaired classes of Claims, the Plan nevertheless may

be confirmed by the Bankruptcy Court, if: (i) the Bankruptcy Court determines that the Plan does not discriminate unfairly and is fair and equitable with respect to the rejecting Class(es) of Claims or Interests that are impaired under the Plan; and (ii) at least one Class of Impaired Claims has voted to accept the Plan.

A VOTE FOR ACCEPTANCE OF THE PLAN BY THOSE HOLDERS OF CLAIMS WHO ARE ENTITLED TO VOTE IS MOST IMPORTANT. THE DEBTOR RECOMMENDS THAT THE HOLDERS OF ALLOWED CLAIMS VOTE IN FAVOR OF THE PLAN.

Unless otherwise expressly stated, portions of this Disclosure Statement describing the Diocese have not been subject to a certified audit, but have been prepared from information compiled by the Diocese from records maintained in the ordinary course of its business. Every effort has been made to be as accurate as possible in the preparation of this Disclosure Statement.

# III. OVERVIEW OF THE PLAN.

# A. General Structure Of The Plan.

The Diocese filed the Reorganization Case in order to reorganize its financial affairs pursuant to a plan of reorganization that will, among other things, fairly, justly and equitably compensate the victims of abuse by clergy or others associated with the Diocese while allowing the Diocese to continue its ministry and mission and its efforts to prevent abuse of children in the future and attempt to finally bring healing to victims, parishioners and others affected by the past acts of abuse committed by clergy and others. The Plan seeks to achieve this healing by restructuring the Diocese's debt obligations so that it can fairly and justly compensate the victims of sexual abuse while the Diocese continues its ministry and mission. The Plan contemplates that, on the Effective Date, the Diocese will transfer certain assets consisting of Cash and a pledge of the proceeds from the sale of Diocese Real Property (to the extent not sold prior to the Effective Date), proceeds contributed by Settling Insurers, proceeds of settlements with Participating Third Parties and assignment of Insurance Actions or a mechanism for the Insurance Action Recoveries to be transferred in whole or in part. Pursuant to the Plan, a Settlement Trust

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and a Litigation Trust will be established. The other Allowed Claims in the Estate will be paid in full in accordance with the terms of the Plan. Such other Allowed Claims will be paid from the reserves established by the Diocese for such payment and from the business operations of the Diocese.

All Tort Claimants will have their Claims treated and resolved under either the Settlement Trust or the Litigation Trust. All Tort Claimants will automatically be included in the Settlement Trust unless such Tort Claimant affirmatively elects to have his or her Claim treated under the terms of the Litigation Trust. The Settlement Trust and the Litigation Trust will be funded from the transfers by the Diocese on the Effective Date and any earnings obtained by the Trustees from investments of such assets after the Effective Date and any Insurance Action Recoveries after the Effective Date. The allocation of the transferred Cash and assets between the Settlement Trust and the Litigation Trust will be determined by the Bankruptcy Court as part of the confirmation process.

The Allowance of the Tort Claims in the Settlement Trust will be evaluated and determined by a Special Master selected by the Bankruptcy Court as part of the confirmation process. The Diocese will suggest at least three people who might serve as the Special Master and give notice of such suggestions prior to the Confirmation Hearing. If a Tort Claim is Allowed, such Tort Claim will be classified into a Tier based upon criteria proposed by the Diocese and finally determined by the Court. There are four (4) Tiers which are generally described in the Plan. The criteria for each Tier will be set forth in the Settlement Trust.<sup>1</sup>

If a Tort Claimant wishes to retain his/her right to a jury trial to liquidate such Tort Claim (a "Non-Settling Tort Claimant"), he or she will have to affirmatively elect such treatment on the Ballot sent with the Plan. Any jury trial of a Non-Settling Tort Claimant will be held in the United States District Court for the District of Arizona, Tucson Division.

<sup>&</sup>lt;sup>1</sup> Proposed copies of the Settlement Trust Agreement and the Litigation Trust Agreement will be filed by the Diocese thirty (30) days prior to the hearing on the Disclosure Statement.

# B. <u>Estimated Distributions To Creditors</u>.

The following is a summary of the projected recoveries for each the holders of Allowed Claims (or provisionally Allowed Claims) under the Plan:

Class/Nature of Claim	<u>Treatment</u>	Approximate Total Estimated Allowed (Or Provisionally Allowed) Claims	Estimated Dates of <u>Distributions</u>	Estimated <u>Distributions</u>
Class 1 Prepetition Employee Claims	Impaired	\$364,000.00	Various depending upon Employee's status and use of vacation time and sick leave time	To be satisfied by Diocese assuming and honoring policy after Effective Date
Class 2 Prepetition Property Tax Secured Claims	Impaired	\$8,754	One-half - 30 Days after Effective Date and One-half – 6 months after the Effective Date	\$8,754
Class 3 Other Secured Claims.	Unimpaired	\$3,300,000	January 24, 2007, the due date of the Promissory Note payable to the Escrow Agent	\$3,000,000 <sup>2</sup>
Class 4 General Unsecured Convenience Claims	Impaired	\$2,000 <sup>3</sup>	30 Days after the Effective Date or applicable Claim Payment Due	\$500 per Claim

<sup>&</sup>lt;sup>2</sup> The other \$300,000 is a Secured Claim of Bank One, N.A. which secures a letter of credit issued by Bank One, N.A. The letter of credit has not been drawn upon and the Diocese is not in default of the obligation which the letter of credit secures.

<sup>&</sup>lt;sup>3</sup> These consist of certain vendor payables in the amount of \$1000 or less that the Diocese believes may comprise the Class 4 Claims.

1 2 3	Class/Nature of Claim	<u>Treatment</u>	Approximate Total Estimated Allowed (Or Provisionally Allowed) Claims	Estimated Dates of <u>Distributions</u>	Estimated <u>Distributions</u>
4	Class 5 Parish Guaranty Claims	Unimpaired	\$6,900,000	No distribution. Parishes will continue to pay in accordance with terms	\$ -0-
5 6 7	Class 6 Parish Unsecured Claims	Impaired	\$7,100,000	Interest only at the rate of 2.5% per annum, monthly payments of \$44,738 until paid in full.	Unknown <sup>4</sup>
8	Class 7 General Unsecured Claims	Impaired	\$2,100,000 <sup>5</sup>	Paid in full in installments beginning 30 days after the Effective Date and monthly thereafter until paid in full.  Obligations bear Interest at	\$2,100,000
0 1 2	Class 8 Other Tort and Employee Claims	Impaired	\$Unknown	4.5% per annum.  To be paid from proceeds of applicable insurance to the extent available. Otherwise, no distribution.	\$Unknown
3	Class 9 Tort Claims	Impaired	\$Unknown	To be paid from proceeds of Settlement Trust (Settling Tort Claimants) and Litigation Trust (Non-	\$Unknown
5				Settling Tort Claimants). Settling Tort Claimants will have Claims determined by Special Master and placed in	
7				Tiers. Distribution will depend upon Tier in which	
3				Tort Claim is placed and aggravating or mitigating factors. Non-Settling Tort Claimants share Pro Rata in	
0   1	Class 10 Penalty Claims	Impaired	\$Unknown	proceeds of Litigation Trust.  N/A	\$0

<sup>&</sup>lt;sup>4</sup> It is anticipated that the Parishes may contribute some portion of the amounts owed to become Participating Third Parties under the Plan. Therefore, any such contribution will be deducted from the amount owed.

<sup>&</sup>lt;sup>5</sup> This amount does not include the amounts that might be owing to employees of the Diocese for nonpriority accrued vacation and sick leave in the event the Bankruptcy Court does not approve the Diocese's request to continue to honor its policy.

# IV. THE DEBTOR.

## A. The History and Mission of the Diocese

The Roman Catholic Church is a hierarchical religious organization governed by its own laws and customs. These laws are written in the Code of Canon Law. The Code of Canon Law defines the organization of the Church, the roles and powers of the various entities which comprise the Church, and the duties of the various entities participating in the Church. The Code of Canon Law applicable to the Roman Catholic Church is, for the most part: (i) a set of norms created to bring order to the life of the ecclesial community; (ii) articulated and promulgated by those who are entrusted with the community's care; and (iii) to serve the common good, thus imposing obligations and establishing legal bonds from which certain rights, duties and interests flow. Hereinafter the Code of Canon Law will be cited as the "Canon Law."

A diocese is a territory subject to the jurisdiction of the Bishop. The Diocese traces its origin to the activities of Padre Eusebio Francisco Kino, the Jesuit missionary who, in 1692, founded the Mission San Xavier del Bac, which today is a functioning Parish in the Diocese. In 1897, the Church in Arizona was elevated to the status of a regular diocese, with Tucson as the see, under the jurisdiction of the first Bishop of Tucson, Bishop Peter Bourgade, who had been recruited in France by Bishop John Baptist Salpointe for missionary work in Arizona. The first U.S. born Bishop of Tucson was Bishop Daniel J. Gercke, who served as Bishop from 1922 until 1960. Following Bishop Gercke were: Bishop Francis J. Green (1960-1981); Bishop Manuel D. Moreno (1982-2003); and Bishop Gerald F. Kicanas (2003 until the present).

The Diocese was incorporated by Bishop Granjon in 1914 in Arizona as a corporation sole under the name of "Roman Catholic Church of the Diocese of Tucson" with the stated purpose of the corporation being "the care and administration of the temporal affairs of the Roman Catholic Church of the Diocese of Tucson, which embraces the State of Arizona, and a portion of the State of New Mexico, and religious, educational, and charitable ministrations, and maintenance and care of all the property now held, or that may be received, by the said Roman Catholic Church of

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25 26 the Diocese of Tucson." The Articles of Incorporation have been amended over the years to reflect the succession of bishops and changes in the territory of the Diocese. The Diocese operates as a 501(c)(3) non-profit corporation.

Over the generations since Padre Kino, the Diocese has grown to serve 300,000 plus Roman Catholics and seventy-five (75) Parishes in the Diocese (the "Parishes") located within nine southern Arizona Counties (La Paz, Yuma, Pima, Santa Cruz, Pinal, Graham, Gila, Greenlee and Cochise) encompassing a territory of more than 40,000 square miles. A map showing the locations of the Parishes and missions located within the Diocese is attached as Exhibit "3". Geographically, the Diocese is the fifth largest diocese in the continental United States. The Diocese's southern border of 350 miles is also the border of the United States with Mexico, and is the largest such border with Mexico of any diocese in the United States.

In a total population of 1.45-million in the counties that comprise the territory of the Diocese, there are an estimated 300,000-plus Roman Catholics who are served by the Parishes, dozens of missions and twenty (20) parochial Schools. The Church personnel who minister in the territory of the Diocese<sup>7</sup> include 189 priests, 238 religious women (sisters), 143 deacons, nearly 1,000 lay employees of Parishes and Schools, and forty-three (43) lay employees of the Diocese. In addition, there are thousands of volunteers who participate in the spiritual and service ministries of the Parishes and Schools. Roman Catholics comprise approximately twenty-five percent (25%) of the total population within the territory of the Diocese.

There are also dozens of charitable, fraternal, and spiritual organizations and movements through which thousands of Catholics serve their Parishes and their communities. For the most

<sup>&</sup>lt;sup>6</sup>In 1969, the Diocese of Phoenix was formed from the Diocese of Tucson, leaving the Diocese with its present territory.

<sup>&</sup>lt;sup>7</sup> These personnel are not employees of the Diocese but are associated with or employed by Parishes and other orders; however, they minister and carry on the work of the Catholic Church within the territory of the Diocese.

part, these organizations are affiliated with national and international Catholic institutes and organizations. Many operate in conjunction and collaboration with Parishes. The Knights of Columbus, Catholic Daughters of the Americas, Catholic Foresters, Cursillo Movement, St. Vincent de Paul, Serra Club International and Catholic Worker are among these organizations. These organizations are not part of the Diocese, nor do they receive support from the Diocese other than through the spiritual guidance of the Bishop and others associated with the Diocese.

The Diocese of Tucson is located in the Bishop Manuel D. Moreno Pastoral Center, 111 South Church Avenue, in downtown Tucson. The Diocese has maintained offices in downtown Tucson since the formation of the Vicariate Apostolic in 1868.

The United States Conference of Catholic Bishops Secretariat on the Home Missions identifies the Diocese of Tucson as a "mission diocese" eligible for financial assistance from the annual Catholic Home Missions Appeal national collection taken up in Catholic Parishes across the United States. This identification is due to a number of geographic and socio-economic factors, including:

- the sheer size of the Diocese;
- the predominantly rural nature of the communities within the Diocese;
- the isolation of the Parishes that serve the communities (62% of the Parishes are located in rural areas or border towns);
  - economies that are agriculture and service based;
  - economic devastation of communities that were dependent on copper mining;
- nearly 50% of Parishes and missions within the Diocese have total annual incomes of less than \$150,000;
- four Native American reservations, one of which is geographically equivalent to the size of the state of Connecticut (On the Tohono O'odahm Reservation, there are only two priests for 24,000 persons scattered over three million acres.);
  - Arizona's low ranking as a state in several leading social and economic indices.

The Diocese of Tucson receives financial assistance annually from the Home Missions Appeal. The financial assistance is restricted and must be used to help fund diocesan evangelization efforts, Parish religious education programs, lay ministry training, and the pastoral care of migrant communities.

The Diocese is also the recipient of financial assistance from the Catholic Church Extension Society. The Society "extends" financial resources provided by Catholics in the United States to dioceses in rural and remote areas of the country. The resources are restricted and required to be used in support of salary subsidies for Church personnel in ministry, for construction of church buildings, and for Parish religious education programs.

The Diocese provides spiritual guidance for the Parishes and the Catholics within the Diocese through its Bishop and various offices discussed below. The Diocese also provides administrative services to the Parishes and missions located within the Diocese, such as financial services, property management, pension plan and insurance programs. The nature of these programs and the manner in which the Diocese is compensated for these services is discussed below.

# B. <u>Organizational Structure Of The Diocese</u>.

The Diocese is structured and operates in accordance with Canon Law. Among other things, Canon Law establishes that the Roman Catholic Church is comprised of "juridic persons." According to Canon Law, a "juridic person" is the equivalent of a corporation in civil law. Each Parish, service organization, School, or other charity affiliated with the Church is considered a separate juridic person. An ordinary (bishop) is given the responsibility to supervise the juridic persons in a diocese.

The Bishop of the Diocese is the Most Reverend Gerald F. Kicanas, D.D. According to Canon Law, the Bishop is a teacher of doctrine, priest of sacred worship, and minister of governance. The Bishop governs those within the Diocese with legislative, executive, and judicial power. The Bishop also: explains the truths of faith; fosters vocations; strives to promote

holiness of the Christian faithful; presides over and administers the sacraments of the church; and protects the integrity of ecclesiastical discipline and sacraments. Part of the duties of the Bishop and the Diocese are carried out by the offices of the Diocese which consist of: Office of the Bishop (includes Vicars General, Moderator of the Curia, Vicar for the Religious, Vicar for Deacons, and Office of Child, Adolescent and Adult Protection); Chancellor's Office (includes Archives); Vocations; Human Resources; Fiscal Services; Property and Insurance Services; Community Relations (includes Catholic Vision newspaper); Tribunal; Formation; Catechesis; Evangelization; Catholic Schools; and Catholic Social Mission.

These offices are under the direct supervision of the Bishop. They conduct work of several types: work required by Canon Law; work required by civil law of a non-profit corporation; work that supports the Bishop in his responsibilities to the Catholic people and to their Parishes and Schools in the territory of the Diocese; work that supports the Bishop in his responsibilities to respond to social issues and concerns; and work that is involved in any business effort. Each of the offices performs specific functions in support of the Bishop's pastoral ministries and in support of the Parishes and Schools in the territory of the Diocese which include:

- Office of the Bishop: This Office deals with official correspondence of the Bishop; scheduling of appointments with pastors, Parish clergy, Parish staff, and parishioners; pastoral visits to Parishes and Schools, and Confirmations at Parishes; oversight of child protection efforts and initiation and coordination of training of Parish and School staff and volunteers in creation of safe environments for children (Office of Child, Adolescent, and Adult Protection).
- Vicar General: The Vicar General has the executive power over the Diocese which belongs to the Bishop by law, namely the power to place all administrative acts except those, however, that the Bishop has reserved to himself or which require a special mandate of the Bishop by law. There are two Vicar Generals in the Diocese: Rev. Van Wagner and Rev. Raul Trevizo.

- Moderator of the Curia: The Moderator of the Curia, under the authority of the Bishop, is to coordinate those things which pertain to the treatment of administrative affairs and to take care that the other members of the curia properly fulfill the office entrusted to them. The Moderator of the Curia in the Diocese is Rev. Al Schifano.
- Chancellor's Office: This office is responsible for facilitation of archival record keeping; arrangement of priest substitute needs for Parishes. The Chancellor is required by the Canon Law to ensure that all documents which regard the Diocese or Parishes must be protected with greatest care. The Chancellor ensures that there is in a safe place a diocesan archive, or record storage area in which instruments and written documents which pertain to the spiritual and temporal affairs of the Diocese are to be safeguarded after being properly filed and diligently secured. The Chancellor of the Diocese is June Kellen.
- Financial Officer: The Financial Officer administers the finances and property of the Diocese under the authority of the Bishop in accord with the budget determined by the finance council and, from the income of the Diocese, is to meet expenses which the Bishop or others designated by him have been legitimately authorized. The Financial Officer of the Diocese is Mary Huerstel.
- Vocations: This office provides for the recruitment of seminarians; initiation and coordination of Parish vocation awareness programs; assistance with and facilitation of responses at Parish level to interest in pursuing a ministry.
- Human Resources: This office participates in negotiations on behalf of all Parishes and Schools with employee benefit providers; facilitation of response of Parishes and Schools to employee needs; assistance with compliance by Parishes and Schools with child protection policies (fingerprinting of employees and volunteers and background checks of employees and volunteers). Richard Serrano is the head of Human Resources.

In addition, the Diocese provides, among other things:

- Fiscal Services: training of Parish financial staff; assistance with bookkeeping and other Parish and School financial administration needs.
- Property and Insurance Services: facilitation of insurance claims reports; property recording assistance; construction project oversight assistance.
- Development Services: assistance with capital and other fundraising needs; assistance with Parish stewardship programs.
  - Community Relations: publication of the diocesan newspaper, Catholic Vision.
- Tribunal: assistance with and facilitation of needs of parishioners related to the Sacrament of Marriage.
- Formation: initiation and coordination of workshops and certification training for the development of Parish lay leadership and for the permanent deacons.
- Catechesis: initiation and coordination of workshops and other training for Parish religious education teachers and youth ministers.
- Evangelization: initiation and coordination of resources and workshops and certification training for Parish-based evangelization programs.
- Catholic Schools: initiation and coordination of workshops for principals, faculty, and staff and facilitation of and assistance with certification of Catholic Schools.
- Catholic Social Mission: initiation and coordination of workshops for Parish staff and parishioners in response to social issues and concerns.

# C. Legal Structure of the Diocese.

A juridic person is an artificial person, distinct from all natural persons or material goods, constituted by competent ecclesiastical authority for an apostolic purpose, with a capacity for continuous existence and with canonical rights and duties like those of a natural person (e.g., to own property, enter into contracts, sue or be sued). As decreed by Canon Law, every diocese (which is itself a juridic person) is to be divided into distinct parts or Parishes. The establishment of Parishes is obligatory, not optional. A Parish is a certain community of the church members

whose pastoral care is entrusted to a pastor under the authority of the diocesan bishop. Canon 515, § 1. Once a Parish has been established, it becomes a juridic person. Canon 515, § 3. The Pastor (not the Bishop) represents the Parish in all juridic affairs in accord with the norm of Canon Law; he is to see to it that the goods of the Parish are administered in accordance with the norms of Canon Law. Canon 532.

While the Church (including each Diocese and each Parish) is governed by and adheres to Canon Law, the Church (and the Diocese and each Parish) also operates pursuant to civil laws that establish their own norms for, among other things, property ownership. Each Parish has its own governance structure. It has its own employees, it has its own tax identification number, it keeps its own books and records, it has its own bank accounts, and it is governed in accordance with Canon Law. Each Parish also has its own finance council which is responsible (along with the Pastor) for managing the financial affairs of the Parish. The closest analogous entity to a Parish commonly recognized under Arizona law is an unincorporated association. However, there are certain limitations on unincorporated associations. For example, Arizona law does not allow unincorporated associations to, among other things, hold title to real property. Accordingly, mere legal title to the Parish Real Property which is owned by the Parishes is in the name of the Diocese (or the Bishop). However, the Diocese does not have any equitable, beneficial or proprietary interest in the Parish Real Property.

As previously stated, the Diocese is a corporation sole. The utilization of the corporate structure of a corporation sole is a way of preserving the authority of the Bishop to make certain decisions under Canon Law which are tantamount to reserved powers under civil law. As stated, the Parishes operate separately and conduct their own business subject only to the oversight and reserved powers of the Bishop. The Diocese, under the direction and leadership of the Bishop and the Offices of the Diocese discussed above, provides services to the Parishes. The Diocese is compensated for these services both through the chancery tax and other agreed fees and compensation. The best analogy to this structure under civil law is a trust or restricted asset.

Under applicable trust law, as under Canon Law, the Diocese, acting through the Bishop, does not have unfettered authority to deal with the assets of the Parishes. Trust law (and the applicable trust documents) prescribe the actions of the trustees and give (or fail to give) authority for the trustees of a trust to act (or refrain from acting) in a certain way. If, for example, the Diocese were to attempt to alienate Parish property, sell Parish property or otherwise affect the Parishes without complying with the applicable requirements of Canon Law, the Bishop would violate Canon Law just as the Diocese (acting through the Bishop), acting as the trustee or holder of property subject to a restriction would be violating the trust or restriction encumbering the property if he took action in violation of the terms of the trust or applicable law.

The real property upon which a Parish is located is owned by the Parish. The Parish paid for the property (either by direct acquisition from a third party or acquisition from the Diocese). Improvements to those properties were made by the Parishes and paid for by the Parishes. To fund construction, Parishes either obtain loans or do not commence construction until all of the money required has been raised. The monies to build the churches, Schools and other improvements to Parishes come from the work and generosity of the parishioners of that Parish (and others who might donate). The monies to construct the churches, the Schools and associated improvements do not come from the Diocese unless it is through a loan which constitutes a legal obligation of a Parish and which is repaid.

However, as stated because the Parish has no "civil" legal<sup>8</sup> authority to hold title to real estate, mere legal title is in the name of the Diocese.<sup>9</sup> The Diocese has no equitable or beneficial interest in the Parish Real Property. The Parish Real Property has been described in Statement of

<sup>&</sup>lt;sup>8</sup> As opposed to whatever equitable, beneficial or proprietary rights the Parish may have in Parish Real Property.

<sup>&</sup>lt;sup>9</sup> However, as the beneficiary of the trust between each Parish and the Diocese, the Parish has a beneficial, equitable and proprietary interest in the Parish Real Property. Consistent with this concept, under Canon Law, the Parish is the owner of its "temporal goods" which includes all real and personal property owned by a Parish. Therefore, civil and Canon Law are consistent with respect to the ownership of the Parish Real Property.

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Financial Affairs filed by the Diocese. The Parish Real Property is not included as property of the Estate of the Diocese nor is it considered for purposes of the Plan.

The Diocese also administers certain pooled investments for the benefit of the Parishes

and other associated entities. These funds consist of the regular collections and other monies of the Parishes and other entities in excess of the three months of expenses retained by the Parishes and which are not specifically restricted (the "Unrestricted Deposits"). In addition, the Parishes and other entities remit restricted funds to the Diocese for management (the "Third Party Restricted Deposits"). The Diocese is also the direct recipient of restricted donations, restricted grants and similar restricted gifts (the "Diocese Restricted Funds"). Collectively, the Third Party Restricted Deposits and the Diocese Restricted Funds will hereinafter be referred to as the "Restricted Funds". The Diocese pools the Unrestricted Deposits and the Restricted Funds and invests them for the benefit of the Parishes, the Diocese and other entities. The Diocese acts as a trustee, manager and custodian of the Third Party Restricted Deposits and the Unrestricted Deposits. Just as a trustee under a trust can invest, re-invest and manage assets of the Trust, so does the Diocese perform that function. In addition, just as a trustee of a trust acquires bare legal title to the assets under the trustee's management and control, so does the Diocese have bare legal title. However, just as a trustee of a trust does not acquire any beneficial or equitable interest in the property subject to the trust except as explicitly provided in the Trust or applicable law, the Diocese has no beneficial or equitable interest in the Restricted Funds and the Unrestricted Deposits except to the extent that the Diocese has also placed unrestricted and restricted assets in the fund. Moreover, the relationship between the Diocese and the Parishes and other entities that are themselves juridic persons is governed by Canon Law just as the obligations, rights and powers of a trustee are governed by state law. The pooled fund that is managed by the Diocese is commonly referred to as the Deposit and Loan Fund.

# D. The Financial Structure and Operations of the Diocese

The operations of the Diocese are funded through three primary sources: (1) a "tax" on the offertory donations collected by the Parishes (the "Chancery Tax"); (2) the difference in earnings on the Deposit and Loan Fund and the fixed rate of return paid to Parishes and other participants in the Deposit and Loan Fund; and (3) grants and direct donations.

The Diocese pays the participants in the Deposit and Loan Fund a fixed rate of return on their investments. As of the Petition Date, that rate was of .75 percent (the "Participant's Rate"). The difference between the Participant's Rate and the actual return on the investments is retained by the Diocese to compensate it for its services. In addition, as provided under Canon Law, the Diocese charges each Parish a "tax" on the total offertory donations collected by each Parish (the "Chancery Tax"). The Chancery Tax is used to fund Diocesan operations. As of the Petition Date, the Chancery Tax varied depending upon the Parish. The Diocese also receives grants and direct testamentary and non testamentary donations. Typically these funds are donated with a restricted purpose and are reflected on the books and records of the Diocese as restricted or endowment funds (also restricted). If no such restriction exists, those assets are considered to be part of the general assets of the Diocese.

Information regarding Diocese historical financial performance is contained in the Audited Financial Statements for fiscal years 2002 and 2003 which are attached hereto as Exhibit "4" and, the unaudited internally prepared financial statement dated September 20, 2004 which is attached hereto as Exhibit "5".

# E. The Diocese's Assets And Liabilities.

Following is a description of some of the Assets and liabilities of the Diocese. This discussion is not inclusive of all Assets and liabilities as reflected on Exhibit "5" and for a more comprehensive listing of such Assets and liabilities, reference should be made to Exhibit "5".

#### 1. Assets

# (a) Real Property

The Diocese owns certain real property. This real property consists primarily of two categories of property: (i) property given to the Diocese by a third party which might consist of a house, a vacant lot or similar property; and (ii) property which the Diocese has acquired to be used for establishing future Parishes within the Diocese. This real property, collectively, is more particularly described in Exhibit "6". As of the Petition Date, the Diocese Real Property had a combined book value and fair market value 11 of approximately \$3.3 million dollars. As part of the Plan, the Diocese intends to liquidate all of the Diocese Real Property. Proceeds of these sales, after payments of costs of sale including commissions, will be used to fund the Settlement Trust and the Litigation Trust in accordance with the terms of the Plan.

# (b) <u>Personal Property</u>

# (i) <u>Accounts Receivable</u>

These Assets consist of amounts owed to the Diocese by Parishes and others for chancery tax and other fees and costs. The amount, net of doubtful accounts, as of the Petition Date was \$211,638.

#### (ii) St. Augustine High Catholic School

The newly opened St. Augustine High Catholic School operates out of what used to be referred to as the Regina Cleri Center. The Diocese secured part of its obligations under the 2002 Settlement (described in Section IV.E.2(c) below) with a deed of trust encumbering the Regina

<sup>&</sup>lt;sup>10</sup> Many of these parcels of real property are located in remote locations and some without utilities. Therefore, there is some question as to whether the values reflected here could be obtained.

<sup>&</sup>lt;sup>11</sup> Where recent appraisals were available to the Diocese, the Diocese listed the values at fair market value. Otherwise, the values listed are book value.

<sup>&</sup>lt;sup>12</sup> The Diocese has fairly recent appraisals for these parcels of real property and believes that this value is obtainable in an orderly sale of this property.

Cleri property. In order to pay the settlement amount, and consistent with its mission to assist with Catholic education within the geographic area of the Diocese, the Diocese sold the Regina Cleri Property to the St. Augustine High School Corporation, an Arizona nonprofit corporation, subject to the deed of trust in favor of the Escrow Agent. The terms of the sale provided for a payment of \$600,000 (the "Restricted Payment") at the time of closing and a deferred payment of \$2,400,000 to be paid on September 1, 2006 (the "St. Augustine Deferred Payment"). The St. Augustine Deferred Payment is secured by a deed of trust encumbering the Regina Cleri property (the "St. Augustine Deed of Trust"). The St. Augustine Deed of Trust is a second priority deed of trust, second in priority only to the Deed of Trust securing the remaining payment on the Remaining 2002 Settlement Amount. As of the petition date, therefore, there was \$2,400,000 owing to the Diocese by St Augustine High School. Under the terms of the sale, the Restricted Payment is to be held in restricted account and only used to pay the Remaining 2002 Settlement Amount owed to the Escrow Agent. The Restricted Payment plus the St. Augustine Deferred Payment are, by the terms of the transaction, restricted and can only be used to pay the Promissory Note.

## (iii) <u>Insurance Actions</u>

The Diocese is the insured under certain general liability insurance policies (including sexual misconduct) which were issued at various times relevant to the times at which certain Tort Claims are alleged to have occurred. The Insurance Companies issuing the Insurance Policies and the effective year(s) for each Insurance Policy are set forth in Exhibit "7" attached hereto. Each of the Insurance Policies with the exception of the policy issued by The Ordinary Mutual is an occurrence policy which means that if the act occurred during a policy year, regardless of when the claim is made, then the claim is covered by the applicable Insurance Policy. The Ordinary Mutual Insurance Policy is a "claims made" policy which means that the relevant time

period for determining coverage is not the date of occurrence, but the date the claim is first made. 13

All of the Insurers have been put on notice of the Tort Claims which are known to the Diocese. For those Tort Claims which are currently the subject of a pending lawsuit, the Insurers are paying the cost of defense. Pursuant to the terms of the Ordinary Mutual policy, the Diocese must pay fifty percent (50%) of the costs of defense. Each of the Insurers (other than Ordinary Mutual) has reserved all rights with respect to whether there is coverage for the Tort Claims at all. The Diocese contends that it has various claims against the Insurance Company related to coverage and additional claims arising out of an Insurance Company's actions with respect to coverage and settlement (or failure to settle) of the Tort Claims.

Each Insurance Company will be given an opportunity to participate in the Plan and become a Settling Insurer. Any Insurance Company that fails to settle with the Diocese on terms and conditions acceptable to the Diocese and approved by the Bankruptcy Court will not receive the benefits of a Settling Insurer under the Plan. The Diocese has reserved the right with respect to the Insurance Actions, to the extent not commenced prior to the Effective Date, to assign the Insurance Actions to the Trustees of the Settlement Trust and the Litigation Trust. At this time it is not possible for the Diocese to provide an estimate of the total value of the Insurance Actions.

# (iv) <u>Interest of Bishop in certain other corporations</u>

A number of nonprofit corporations associated with the mission of the Diocese have one member, the Bishop of the Diocese. Those corporations are Catholic Community Services, Inc., Catholic Foundation and Diocese of Tucson Catholic Cemeteries, Inc. The Bishop has no proprietary interest in these corporations. Moreover, each of the articles and by-laws provide that upon a dissolution of the corporation, the assets are to be transferred to another religious entity

<sup>&</sup>lt;sup>13</sup> Although the Ordinary Mutual policy is a "claims made" policy, it is limited to claims first made after 1985.

that performs the same service as the dissolved corporation. The Bishop's only real authority is to remove and replace the board of directors of such corporation(s) if he disagrees with their actions. To the best of the knowledge of the Diocese, that power has not been exercised.

#### (v) Restricted Assets

There are various Assets which the Diocese lists on its financial statements as being held for others. As a non-profit religious organization, the Diocese is the recipient of grants, gifts and other assets which are subject to restrictions imposed by the donor or the grantor of the grant. In addition, the Diocese manages the Deposit and Loan Fund into which Restricted Deposits are made. These Restricted Deposits are subject to similar restrictions and are, therefore, not available for general purposes. These restricted assets are not property of the Estate nor are they available for distribution to Creditors.

#### 2. Liabilities

# (a) <u>Parish Claims</u>

The Claims of the Parishes against the Diocese arise in two respects. First, the Parishes have Claims against the Diocese for the amount of their Unrestricted Deposits. <sup>14</sup> In addition, a number of Parishes and affiliated entities have made unsecured loans to the Diocese to fund the 2002 Settlement (collectively, the "Settlement Loans"). The balance of Settlement Loans as of the Petition Date were approximately \$4,700,000. The amount of the Unrestricted Deposits which comprise the balance of the Parish Claims is approximately \$2,400,000. Accordingly, the Parishes have Unsecured Claims against the Diocese (the "Parish Unsecured Claims") in the approximate amount of \$7,100,000. As of the petition date the Diocese had made no payments on the Parish Loans.

The Diocese believes that the Parishes dispute the Diocese's position, and that the Parishes will claim that the Unrestricted Deposits are not property of the Estate but are the property of the Parishes, are held for their benefit and cannot be used by the Diocese nor are they available for the Claims of Creditors.

#### (b) Catholic Order of Foresters

The Catholic Order of Foresters is a fraternal philanthropic Catholic organization (the "Foresters") which has loaned money to the Diocese from time to time and, as of the Petition Date, the Diocese was obligated to Foresters for Unsecured direct obligations of approximately \$2,000,000.

# (c) 2002 Settlement Obligations

As part of the 2002 Settlement, the Diocese executed a promissory note in favor of the Escrow Agent in the principal amount \$3,000,000.00 (the "Promissory Note") secured by a first deed of trust against the Regina Cleri property. The Promissory Note is non-interest bearing and matures in 2007.

# (d) Parish Guaranty Claims

As part of the administrative services that are provided to the Parishes by the Fiscal Office of the Diocese, the Diocese assists Parishes with obtaining loans from such organizations as the Foresters by guarantying payment on the loans. As of the Petition Date the Diocese had the Parish Guaranty Claims of approximately \$6,900,000. The Parish Guaranty Claims are contingent and the Diocese does not expect to have to pay any sums on the Parish Guaranty Claims because the Parishes will full perform on those loans.

#### (e) Trade Debt

The Diocese, as a business, has incurred certain trade debt. As of the Petition Date the Diocese believes that it had approximately \$55,000 in trade debt.

#### (f) Tort Claims

As is discussed in detail below, the Diocese is a party to a number of lawsuits or other claims wherein the claimants allege that they were abused by clergy or others associated with the Diocese. The Tort Claimants assert, among other things, that the Diocese is liable because it failed to properly supervise these individuals and that the Diocese knew or should have known about the actions of these individuals. The Diocese has denied these allegations and has been

defending those suits. The Diocese cannot, at this time, estimate the magnitude of the amount of the Tort Claims. In addition to the currently identified claims, the Diocese believes that there likely are Tort Claimants who, for one reason or another, have not yet come forward and, therefore, are not known to the Diocese (collectively the "Present Tort Claims"). The Diocese further believes that there may be other potential Tort Claimants who are either minors, or whose memories are still repressed ("Future Tort Claims").

Each of these categories of Tort Claimants 15 have claims that satisfy the definition of claim under the Bankruptcy Code and are addressed under the Plan. The Bankruptcy Code has the "broadest possible definition" of a claim which is designed to ensure that "all legal obligations of the debtor, no matter how remote or contingent, will be able to be dealt with in the bankruptcy case." California Dept. Health Services v. Jensen (In re Jensen), 995 F.2d 925, 929 (9th Cir. 1993) quoting from H.R. Rep Non. 595, 95th Cong. 2nd Sess. 1, 309 (1978). In Jensen the 9<sup>th</sup> Circuit has adopted "what might be called the 'fair contemplation' test for determining when the relationship between a debtor and a putative creditor gives rise to a claim. The focus in determining whether the claim exists is on the debtor's pre-confirmation conduct and a determination as to whether a relationship existed pre-confirmation between an identifiable claimant or group of claimants and the debtor's pre-confirmation conduct. Epstein v. Committee of Unsecured Creditors (In re Piper Aircraft), 58 F.3d 1573 (11th Cir. 1995); Hassanally 208 B.R. 52; Ritter Ranch 255 B.R. 765 See also, Jensen, 995 F.2d at 930. Claims have been recognized under these tests beyond the typical context of mass torts and environmental liabilities, and even where rights are not yet enforceable under state law. Ritter Ranch, 255 B.R. 765; Hassanally, 208 B.R. at 51.

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<sup>&</sup>lt;sup>15</sup> These categories would include: (i) those Tort Claimants who have already instituted litigation; (ii) those Tort Claimants who have notified the Diocese of a claim but have either chosen to receive services from the Diocese or not pursue the claim at all; (iii) those Tort Claimants who are aware of their claims but haven't brought them as of the Petition Date; and (iv) the Future Tort Claimants.

In this case all of the Tort Claimants, irrespective of whether the repressed memories of the abuse have surfaced or they are minors, necessarily had a relationship and contact with clergy or others who were serving in the Diocese at the time the alleged abuse occurred. As such all of the Tort Claimants and Future Tort Claimants had an identifiable relationship with the Diocese which gives rise to the Claims. Accordingly, all of the Tort Claims may be addressed as part of the Plan.

The Diocese is requesting that the Court appoint a representative to represent the interests of the Future Claimants (the "Future Claims Representative"). The Future Claims Representative will be appointed by the Bankruptcy Court. The Diocese will solicit the input from interested parties with respect to the scope of the obligations and rights of the Future Claims Representative as well as the proposal(s) as to who the Future Claims Representative should be. Furthermore, the Diocese will request that the Court appoint a Guardian ad Litem to represent the interests of any minors who might have Claims arising out of abuse that would be included as Tort Claims (the "Guardian ad Litem"). Similar to the Future Claims Representative, the Diocese will solicit input from interested parties regarding the scope of the rights and obligations of the Guardian ad Litem as well as the selection of that person. The Guardian ad Litem will be appointed by the Bankruptcy Court after notice and hearing on motion of the Diocese for such appointment.

# F. The Sex Abuse Crisis

Over the last fifty years a tragedy that runs contrary to the every teaching and tradition of the Roman Catholic Church has unfolded in the Roman Catholic Church as a whole and in the Diocese in particular: a small number priests, other clergy, and others took advantage of their positions of trust and respect in the community and sexually abused children. The Diocese was also affected by this tragedy. Starting in 1997, lawsuits were filed alleging that acts of abuse had been committed by clergy and others within the Diocese. Most of these claims were made by adults based upon acts that they alleged occurred as many as thirty years prior to bringing the suit.

Although generally the statute of limitations for bringing a civil suit is two years from the date of the act, that changed in Arizona in 1998 when the Arizona Supreme Court issued the *Doe v. Roe* opinion (*Doe v. Roe*, 191 Ariz. 313, 955 P.2d 951, 266 Ariz. Adv. Rep. 19 (Ariz.1998)), which recognized that childhood sexual abuse can create latent psychological injuries to the abuse victims which prevents the victims of that abuse from bringing a tort action within the statute of limitations. This doctrine, commonly known as the "Repressed Memory Doctrine", is a variation on the discovery rule that makes it legally possible for victims of sexual abuse to overcome the statute of limitations defense in such suits.

#### 1. The 2002 Settlement

The first round of cases alleging liability on the part of the Diocese because of acts of clergy or others associated with the Diocese were starting toward trial in late 2001. At that time, the Diocese was a defendant in 11 suits involving 16 plaintiffs (the "2002 Cases"). Most of the plaintiffs were represented by the same counsel. In addition, the Diocese was providing counseling and other services to people who alleged they had been abused but who had not sought damages through civil actions. In early 2002, the Diocese and the plaintiffs in the 2002 Cases participated in a mediation that resulted in a settlement (the "2002 Settlement"). As part of the 2002 Settlement, the Diocese and the plaintiffs agreed that \$3,000,000 of the settlement amount could be deferred until January, 2007 (the "Remaining 2002 Settlement Payment") which

The plaintiffs consisted of 11 plaintiffs who alleged that they were the victims of sexual abuse and 5 parents who alleged damages as result of their children having been allegedly abused. The plaintiffs contended that the Diocese was liable for their damages on a theory of respondeat superior. The Diocese denied and continues to deny any liability for these acts by clergy and others.

<sup>17</sup> The 2002 Settlement provided that its terms, including the amount paid, were confidential. Although counsel for most of the plaintiffs in the 2002 Cases breached the confidentiality by disclosing the amount in a newspaper interview, the Diocese is going to abide by the confidentiality provisions of the 2002 Settlement unless the Court orders the Diocese to disclose the terms of the 2002 Settlement or the plaintiffs in the 2002 Cases request it.

creditors in the Reorganization Case.

is evidenced by the Promissory Note. 18 The Claimants in the 2002 Cases are, therefore, secured

The Diocese believed at the time of the 2002 Settlement that the claimants in the 2002 Cases, together with those who had informally sought help from the Diocese, constituted the universe of claims arising out of these problems. As part of the 2002 Settlement, the Diocese requested that the attorneys for the plaintiffs in the 2002 Cases disclose any other cases they were aware of that claims had not yet been brought. Based upon that disclosure and the knowledge of the Diocese at the time, the Diocese believed that the universe of claims was known and had been resolved. That belief was mistaken. In addition, there were additional claims that were brought after the 2002 Settlement that the Diocese settled.

#### 2. The Current Cases.

Since the 2002 Settlement, another twenty-two (22) cases have been filed here and in California<sup>19</sup> involving thirty-four (34) plaintiffs alleging, among other things, the failure of the Diocese to properly supervise or otherwise deal with alleged knowledge by the Diocese of the actions of certain clergy and others.<sup>20</sup> Furthermore, additional Tort Claims have been made; however, no litigation has been commenced by the Tort Claimants. Given the experience since the 2002 Settlement as well as the experience of other Dioceses around the country who have settled these types of cases, the Diocese believes that there may well be other claimants who have not yet asserted formal (i.e. through litigation) or informal claims arising out of alleged abuse by clergy or others associated with the Diocese. The current Tort Claimants are, in many instances,

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<sup>&</sup>lt;sup>18</sup> Disclosure of this amount does not breach the confidentiality provisions of the 2002 22 Settlement because this amount is a matter of public record, having been disclosed in the Deed of Trust that secures the Remaining 2002 Settlement Payment. 23

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<sup>&</sup>lt;sup>19</sup> The California cases name the Diocese as a defendant along with other Dioceses in California.

<sup>25</sup> 26

<sup>&</sup>lt;sup>20</sup> None of the current cases have been tried; accordingly, neither the liability of the Diocese (which the Diocese disputes) nor the validity of the claims has been established.

seeking punitive damages. In addition, the demands of these Tort Claimants are far beyond the ability of the Diocese to respond, particularly given the likelihood that there are additional claims that have not yet been brought.

The purpose of this Reorganization Case is to enable the Diocese to pay fair and just compensation to all victims of clergy abuse irrespective of the happenstance of when their trial is scheduled or whether the alleged victim has recovered a repressed memory and at the same time allow the Diocese to continue its ministry, service its Parishes and Schools, continue its efforts to provide education and services to prevent child abuse and fairly pay its trade and other Creditors.

# V. <u>SIGNIFICANT EVENTS PRIOR TO THE REORGANIZATION CASE</u>.

#### A. The Response to Childhood Sexual Abuse Crisis

Bishop Kicanas became the coadjutor Bishop of Tucson on October 30, 2001 and sole Bishop after the retirement of Bishop Manuel Moreno in 2003. Bishop Kicanas has led the Diocese's response to the sexual abuse issues by: (1) providing and offering support to the victims of childhood sexual abuse; (2) reforming Diocesan operations to provide improved transparency regarding finances and historic and present abuse allegations; and (3) reforming Diocesan operations to prevent future abuse from occurring and to appropriately respond to abuse allegations.

In addition to the response discussed in Section I. above, other examples of the response of the Diocese under the leadership of Bishop Kicanas include:

• Formed the Victim Assistance Program ("VAP"), in June of 2002 in conjunction with Catholic Social Service ("CSS") and Pima County Attorney's Office ("County Attorney"). The VAP is designed so that an abuse victim seeking assistance will receive appropriate care through a process that respects that person's privacy. When a person calls the VAP, a report is made both to law enforcement and to the Diocese so that the allegation can be investigated. Each allegation is either investigated by law enforcement or, when law enforcement declines to investigate because the alleged behavior occurred too long ago, by the Diocese. Without waiting for any

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determination of the credibility or the validity of the allegation, the VAP may initiate counseling services through CSS or, if the individual prefers, through an independent licensed or certified professional.

- Established the Sexual Misconduct Review Board in October of 2002 consisting of noted community leaders.<sup>21</sup>
- Published (and continues to publish) the names of all priests and other workers for the Church against whom there are credible allegations of sexual misconduct involving children and updating this list when new allegations arise.
- Entered into an agreement with the County Attorney, under which the Diocese reports all allegations of sexual abuse of children it receives or which it becomes aware of to the County Attorney so that the County Attorney can initiate an appropriate law enforcement investigation and response. This agreement, entered into voluntarily by the Diocese, is considered a model for other dioceses and law enforcement agencies across the country.
- In conjunction with the release of the national John Jay College of Criminal Justice Study on the Nature and Scope of the Problem of Sexual Abuse of Children and Young People by

Members of the Board are: Msgr. Arsenio S. Carrillo, Vicar General and Rector Emeritus of St. Augustine Cathedral; Charlotte Harris, former director of development of Salpointe Catholic High School; Maureen Keegan, retired teacher; Sister Kathleen Kluthe, S.S.F., member of Jordan Ministry Team, which provides spiritual formation and religious education services in the Diocese of Tucson; Deacon Oscar Magallanes, child and family clinician at La Frontera Clinic in Tucson; Charles Pettis, retired president of Tucson Realty & Trust Co.; George Robles; retired Tucson Police Department officer, retired South Tucson Chief of Police, former chief investigator for the U.S. District of Arizona Federal Public Defender and former officer of Division 15 of the Pima County Superior Court; Dr. José Santiago (Board Chairman), senior vice president and chief medical officer at Carondelet Health Network in Tucson; Sarah R. (Sally) Simmons, attorney specializing in employment law, past president of the UA Law College Association, and past president of the State Bar of Arizona; Rev. Frederick Tillotson, O.Carm, president of Salpointe Catholic High School, former director of Clinical Ethics for the Franciscan Health System, member of the Institutional Review Board for behavioral and social sciences at the UA, a member of the ethics committee at Tucson Medical Center and a consultant on medical ethics for several Catholic hospitals; Mercy Valencia, director of Space Management at the University of Arizona, former management analyst of the UA Office of Institutional Research and program coordinator for the UA Office of Arid Lands Studies.

Catholic Priests 1950 - 2003, the Diocese released detailed statistics regarding allegations of sexual abuse by priests and other workers in the Diocese.

- Participated in annual Compliance Audits by The Gavin Group of Boston, an independent compliance auditing firm, regarding the Diocese's implementation of policies and procedures for the response to allegations of sexual abuse of minors, for the creation of safe environment programs, and for pastoral response and outreach to victims.
- Created and implemented the Safe Environment Program that includes training sessions of all Parish and School employees, mandatory fingerprinting of all current and prospective employees of the Diocese, Parishes and Schools (including priests, religious women, religious brothers, deacons, and seminarians) and volunteers as well as criminal history background checks of all current and prospective employees and volunteers. Through June of 2004 more than 2,000 people had been fingerprinted and had received background checks. In addition, a structure for oversight of compliance with policies and procedures for the creation of safe environments for children at Parishes and Schools was established.
- Hired Richard Serrano as Director of Human Resources in July of 2003. His background in law enforcement and more than twenty-five (25) years of human resource experience with IBM international placed him in a unique position to work with Dr. Duckro to develop a safe environment program for all Parishes and Schools.

#### B. The Reorganization Case

As previously stated, at the time of the 2002 Settlement, the Diocese believed that substantially all of the victims of sexual abuse had come forward. That belief was mistaken as indicated above. The Diocese's attempts to resolve these later cases have been unsuccessful. As stated, the Diocese is a "mission" Diocese. It does not have unrelated business income or activities. It has limited property. And, most importantly, it is desirous of achieving a final just, equitable, and fair resolution for those who suffered abuse, for its parishioners, and for others so that this chapter in the history of the Diocese can be closed.

### VI. SIGNIFICANT EVENTS IN CHAPTER 11.

This Disclosure Statement was filed with the Petition on the Petition Date. Accordingly, no significant events have occurred as of the date of this Disclosure Statement. However, in conjunction with the filing on the Petition Date, the Diocese also filed (or will be filing) the following motions:

- Motions to Employ Professionals for the Debtor<sup>22</sup>
- An application to file certain documents and creditor lists under seal. Because of the sensitive nature of the Tort Claims and the concern of the Diocese not to publicize the names of the claimed victims, the Diocese has requested that certain information regarding the Tort Claimants be filed under seal.
- An application to pay certain prepetition wages in an amount that is less than the priority claims such employees would have under Bankruptcy Code § 507 if the claims were not paid.
- A motion to allow the Diocese to continue to honor certain employee benefit plans for vacation and sick pay in order to retain its current employees.
- A motion to establish a procedure for allowance and payment of professionals during the course of the Reorganization Case.
- A motion to allow the Diocese to continue its current bank accounts and current cash management system in order to avoid disruption in the Diocese's business and conserve Estate assets.
- A motion to set a date by which claims against the Estate must be filed or be barred.

<sup>&</sup>lt;sup>22</sup> The Chapter 11 professionals that the Debtor is seeking to employ are the Proposed counsel for the Debtor; Gust Rosenfeld PLC as general business counsel; Thomas A. Zlaket P.L.L.C. as counsel for the Debtor with respect to special matters; and Keegan, Linscott & Kenon P.C. as accountants and financial advisors to the Diocese.

- In addition, the Diocese filed its Statement of Financial Affairs and Schedules of Assets and Liabilities on the Petition Date.
- A motion to appoint Future Claims Representative to represent the interest of future claimants who might still be suffering from repressed memory will be filed.
- A motion to appoint a Guardian ad Litem to represent the interests of any minor Tort Claimants will be filed.

### VII. <u>DESCRIPTION OF THE PLAN</u>.

The following description of the Plan is for informational purposes only. Creditors and holders of Equity Interests should not rely on this description for voting purposes, but should read the Plan in its entirety. This summary of the Plan does not purport to be complete. THE PLAN IS CONTROLLING IN THE EVENT OF ANY INCONSISTENCY BETWEEN THE CONTENTS OF THE PLAN AND THIS DISCLOSURE STATEMENT.

#### A. <u>Classification And Treatment Of Claims Under The Plan.</u>

#### 1. Claim Amounts.

Until Allowed by the Court, certain Claims against the Diocese are in unknown or undetermined amounts. Accordingly, the amounts of Claims specified in this Disclosure Statement reflect only the Diocese's best estimates. Additionally, the amounts of Claims specified in this Disclosure Statement do not include all Claims that may arise from the rejection of certain executory contracts or other contingent or unliquidated Claims against the Diocese.

#### 2. Effective Date of the Plan.

The "Effective Date" of the Plan determines when the performance of many of the obligations under the Plan are due. The Effective Date is defined in the Plan.

#### 3. <u>Classification generally.</u>

The Plan divides Claims against the Diocese into ten (10) separate Classes which the Diocese believes complies with the requirements of the Bankruptcy Code. Unless otherwise expressly stated in the Plan, the respective treatments under the Plan of Allowed Claims are in

full discharge and satisfaction of those Allowed Claims. Except as provided in the Plan, all Claims against the Diocese arising prior to entry of the Confirmation Order will be discharged as of the Confirmation Date pursuant to Bankruptcy Code § 1141(d).

### B. <u>Unclassified claims</u>

#### 1. Administrative Claims.

The Administrative Claims consist of the Allowed fees of the Chapter 11 Professionals and other Claims that would be allowable as Administrative Claims pursuant to Bankruptcy Code § 503. The holder of an Allowed Administrative Claim will receive, in full satisfaction of such Claim: (a) a single Cash payment in the Allowed amount of the Claim on the Effective Date (or the applicable Claim Payment Date if the Administrative Claim is not an Allowed Claim on the Effective Date); or (b) as otherwise agreed in writing by the holder of the Allowed Claim or ordered by the Bankruptcy Court. Every Allowed Administrative Claim for an expense of operation of the Debtor incurred in the ordinary course of such operations will be paid fully and in Cash in the ordinary course of business (including any payment terms applicable to any such expense). The Diocese cannot estimate at this time the amount of Administrative Claims in light of the fact that the Petition Date has just occurred but will supplement this Disclosure Statement as more information is available.

### 2. <u>Priority Unsecured Claims</u>.

The holder of every Allowed Priority Unsecured Claim will be paid, in full satisfaction of such Claim: (a) a single Cash payment in the Allowed amount of the Claim on the Effective Date (or the applicable Claim Payment Date if the Unsecured Priority Claim is not an Allowed Claim on the Effective Date); or (b) as otherwise agreed in writing by the holder of the Allowed Claim or ordered by the Bankruptcy Court. The Priority Unsecured Claims include all Claims entitled to priority pursuant to Bankruptcy Code § 507 other than Employee Unsecured Priority Claims which are treated elsewhere in the Plan. The Diocese does not believe that there are any Priority Unsecured Claims.

#### 3. **Priority Tax Claims.**

The holder of every Allowed Priority Tax Claim, will be paid, in full satisfaction of such Claim pursuant to the provisions of Bankruptcy Code § 1129(a)(9)(C): (a) in deferred Cash payments over a period of six (6) years from the date of assessment, to be paid in equal quarterly installments of principal and interest; (b) the first payment to be made on the first Business Day after the day which is ninety (90) days after the applicable Claim Payment Date, and each payment thereafter to be paid on the first Business Day of each succeeding quarter until paid in full; provided, however, that, the entire unpaid amount of the Allowed Priority Tax Claim, together with any interest accrued thereon, will be paid in full on the date which is six (6) years after the date of assessment of such Allowed Priority Tax Claim; or (c) as otherwise agreed in writing by the holder of the Allowed Claim or ordered by the Bankruptcy Court. The Debtor does not believes there are any Priority Tax Claims.

# C. <u>Unimpaired Claims</u>.

#### 1. Other Secured Claims – Class 3. Unimpaired

The legal, equitable and contractual rights of holders of Allowed Other Secured Claims in Class 3 will either: (a) not be altered by the Plan; or (b) at the option of the Debtor, be treated in any other manner that will result in such Allowed Secured Claims being deemed unimpaired under Bankruptcy Code § 1124, including, but not limited to, the retention by the holder of an Allowed Other Secured Claim of the lien on its collateral to the extent of his/her/its Allowed Other Secured Claim. The Other Secured Claims consist of the amounts due the Escrow Agent pursuant to the Promissory Note in the amount of \$3,000,000. In addition Bank One, N.A. has a contingent secured claim in the amount of \$300,000 arising out of a letter of credit issued by Bank One, N.A. The obligations to the beneficiary of the letter of credit are current. The Debtor does not believe that there are additional Other Secured Claims other than those identified.

#### 2. Parish Guaranty Claims – Class 5. Unimpaired

The holders of Allowed Parish Guaranty Claims will retain their Claims, if any, against the Reorganized Debtor, and the Plan will leave unaltered the legal, equitable and contractual rights to which such Claims entitle the holders thereof. The Parish Guaranty Claims consist of obligations of the Parishes which are guaranteed by the Diocese. These Parish Guaranty Claims are Unsecured Claims and are contingent and unliquidated. The Parish obligations are not in default and the Diocese does not anticipate that there will be a default by any Parish. The guaranty(s) by the Diocese will continue unaffected by the Plan or the Reorganization Case. The full amount of the guaranties outstanding which are Parish Guaranty Claims is approximately \$6,900,000. These Claims are unimpaired. The Diocese does not anticipate any distribution to the holders of Parish Guaranty Claims under the Plan.

### D. <u>Impaired Claims</u>

# 1. <u>Class 1: Priority Employee Unsecured Claims.</u>

Class 1 consists of every Unsecured Claim of an employee of the Diocese for vacation or sick leave pay which is otherwise entitled to priority pursuant to Bankruptcy Code § 507(a)(3)(A). No holder of an Allowed Priority Employee Unsecured Claim will receive any Cash on account of such Claim. All Allowed Priority Employee Unsecured Claims will be satisfied, in full, in accordance with the policies and procedures regarding vacation and sick leave pay in effect at the Diocese at the time such Priority Employee Unsecured Claim becomes matured and liquidated. If the Bankruptcy Court grants the Debtor's motions to pay any prepetition wages and continue to honor the Diocese's sick pay and vacation policy, there will be no Priority Employee Unsecured Claims. If it does not, the Unsecured Priority Claims will be approximately \$343,000 but will be satisfied by the Diocese continuing to honor the accrued vacation and sick time and will not require any Cash payment under the Plan.

#### 2. <u>Class 2: Pre-petition Date Property Tax Secured Claims.</u>

Class 2 Claims consist of every whole or prorated portion of a Secured Tax Claim which arises before and up to the Petition Date. Class 2 Claims, when and as they become Allowed Claims, will be determined based upon the Property Tax Claims Proration, if necessary. Any Allowed Class 2 Claims will bear interest at the rate of three percent (3%) per annum from the Effective Date until paid. Any Allowed Class 2 Claims, including interest thereon, will be paid in two equal installments. The first installment will be paid on the first Business Day which is thirty (30) days after the Effective Date or the applicable Claim Payment Date. The second installment will be paid on the first Business Day of the sixth (6th) month after the Effective Date or the applicable Claim Payment Date. No penalties will be paid on any of the Allowed Class 2 Claims.

#### 3. Class 4: General Unsecured Convenience Claim.

Class 4 General Unsecured Convenience Claims will consist of all Unsecured Claims (other than Tort Claims) in an amount of \$500 or less, and the Claims of any holder of a General Unsecured Claim that makes an election to reduce such holder's General Unsecured Claim to an amount of \$500 or less, in which event such Claim will be treated as a General Unsecured Convenience Claim for all purposes. Such election will be made on the ballot for accepting or rejecting the Plan, completed and returned within the time fixed by order of the Court. The Diocese believes that the total amount of the Class 4 General Unsecured Convenience Claims will not exceed \$2,000.

#### 4. Class 6: Parish Unsecured Claims.

The Class 6 Parish Unsecured Claims will consist every Unsecured Claim against the Diocese now held by a Parish, including, but not limited to, all Claims of a Parish for any unrestricted funds on deposit with the Diocese and managed by the Diocese and all Parish Loans including all interest, attorneys' fees and other costs and charges to which each Parish is entitled pursuant to the terms of the Parish Loan, any agreements between the Diocese and a Parish and applicable law. Each Allowed Parish Unsecured Claim that is not otherwise contributed or becomes part of the consideration for a Parish to participate as a Participating Third Party will

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bear interest from and after the Effective Date at the rate of two and one-half percent (2.5%) per annum or such other rate as set by the Bankruptcy Court in the Confirmation Order. The Diocese will make monthly payments, including interest, in the amount of \$44,738 per month until the Allowed Parish Unsecured Claims are paid in full. The full amount of the Parish Unsecured Claims are unknown at this time because there are no agreements with any Parish regarding how and if any contributions will be made by a Parish in order to become a Participating Third Party. As soon as that information is known, the Diocese will supplement this Disclosure Statement.

#### 5. Class 7: General Unsecured Claims.

The Class 7 Claims will consist of all General Unsecured Claims that are not General Unsecured Convenience Claims, Administrative Priority Claims, Priority Unsecured Claims, Priority Tax Claims, Priority Employee Unsecured Claims, Parish Guaranty Claims, Parish Unsecured Claims, Other Tort and Employee Claims, Tort Claims or Penalty Claims. Class 7 Claims will also include every Unsecured Claim arising from the rejection of an Executory Contract and every Claim which is the undersecured portion of any Secured Claim. The Class 7 Claims consist of the Claims of Foresters and any holders of Class 7 Claims who have not elected to be treated as General Unsecured Convenience Claims. The holders of all General Unsecured Claims will be paid in full. Such Claims will bear interest at the rate of four and one-half percent (4.5%) per annum or such other rate as set by the Bankruptcy Court in the Confirmation Order. Each holder of an Allowed General Unsecured Claim will be paid the Allowed amount of such General Unsecured Claim in monthly installments, including interest, with the first installment to be paid on the first Business Day that is thirty (30) days after the Effective Date (or the applicable Claim Payment Date) and succeeding monthly installments to be paid on the same day of each month thereafter until paid in full. The Class 7 General Unsecured Claims consist of the Unsecured Claims of Foresters in the approximately amount of \$2,000,000, a Claim of Arthur Gallagher in the approximate amount of \$43,000 and certain Unsecured trade/vendor Claims in the approximate amount of \$54,000.

### 6. Class 8: Other Tort and Employee Claims.

The Class 8 Other Tort and Employee Claims are those Unsecured Claims, demands, suits, causes of action, proceedings or any other rights or asserted right to payment heretofore, now or hereafter asserted against the Debtor, whether or not reduced to judgment, based upon or in any manner arising from acts or failure to act by the Debtor which has allegedly resulted in injury asserted against the Diocese for torts, including claims by employees of the Diocese, other than Tort Claims. The holder of each Class 8 Claim, as and when such Claim becomes an Allowed Claim, will be paid solely from the proceeds of any insurance policies applicable to such Other Tort and Employee Claim. These Claims consist of certain "slip and fall" type Claims. There is one other Claim related wrongful discharge or failure to hire because the plaintiff alleged he was a whistleblower. To the extent that such Claims may not be satisfied in full by the foregoing, then such Claims, to the extent not so satisfied, will be Disallowed.

#### 7. <u>Class 9: Tort Claims.</u>

#### (a) Definition of Class 9 Tort Claims.

The Class 8 Tort Claims are all Claims, demands, suits, causes of action, proceedings or any other rights or asserted rights to payment, including, but not limited to: (i) an Claims, demands, suits, or causes of action for personal injuries, including emotional distress; (ii) for damages, including punitive damages; (iii) for attorneys' fees and other expenses, fees or costs, and for any equitable remedy, heretofore, now or hereafter asserted against the Debtor, any Released Parties, any Participating Third Parties, any Settling Insurers or the Litigation Trust, whether or not reduced to judgment, based upon or in any manner arising from or related to: (a) acts of sexual abuse committed by any clergy or other person associated with the Diocese or any Parish, including but not limited to all employees and volunteers; (b) the failure of the Diocese to properly supervise any clergy or any other employee of or person associated with the Diocese or a

Parish, including, but not limited to volunteers; (c) the processing, adjustment, defense, settlement, payment, negotiation or handling of any claims, demands, suits, proceedings or causes of action based upon or relating in any way to the Claims made as a result of any alleged abuse or other Tort Claim asserted by a Tort Claimant; or (d) the failure to warn, disclose or provide information concerning, the alleged sexual abuse and other misconduct of clergy or other employees of or persons associated with the Diocese or the Parishes, including, without limitation, volunteers.

#### (b) Treatment

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The Claim of each Tort Claimant will automatically be determined and treated pursuant to the terms of the Settlement Trust unless such holder of a Tort Claim affirmatively elects to have his or her Claim determined and treated pursuant to the terms of the Litigation Trust. The election of a Tort Claimant to have his or her Claim determined and treated in accordance with the Litigation Trust will be made on the Ballot accompanying the Plan. The election (or failure to elect) will be irrevocable and can only be changed upon a showing of excusable neglect or unavoidable mistake. The Diocese will fund the Settlement Trust and the Litigation Trust with the sum of \$3,200,000 (or such lesser amount if all of the Diocese Real Property has not been sold by the Effective Date) and the proceeds from the sale of the Diocese Real Property if all parcels of Diocese Real Property have not been sold on or before the Effective Date.<sup>23</sup> To the extent the Diocese Real Property has not been sold by the Effective Date, the Diocese will pay the proceeds from the sale of the Diocese Real Property which occurs after the Effective Date to fund the Settlement Trust and the Litigation Trust in the same proportion as the Court determines for the initial funding. The Court, as part of the confirmation process will determine the amount or percentage of the payments to be made by the Debtor, any Participating Third Parties and any Settling Insurers that will be used to fund the Settlement Trust and the Litigation Trust. The

<sup>&</sup>lt;sup>23</sup> It is anticipated that the total funding from the Diocese from its funds and from the sale of the Diocese Real Property will be \$3,200,000.

Settlement Trust and the Litigation Trust may also be funded from funds received from Participating Third Parties, Settling Insurers and Insurance Action Recoveries. The Tort Claims will be determined and satisfied as follows:

#### (i) <u>Determination and Treatment</u> <u>pursuant to the Settlement Trust.</u>

The Settlement Trust will be established on the Confirmation Date and will be funded by the Diocese on the Effective Date in the amounts as determined by the Bankruptcy Court. Settling Tort Claimants will receive payment of their Allowed Claims in accordance with the terms, provisions and procedures contained in the Settlement Trust. The following contains a brief description of the Settlement Trust and the procedure for allowing and treating Claims. For a full description and understanding of the Settlement Trust, any reader of this Disclosure Statement should refer to the Settlement Trust Agreement. If there is any inconsistency between the Settlement Trust Agreement and this Disclosure Statement, the Settlement Trust will control.

There will be a Special Master suggested by the Diocese with input from interested parties and approved by the Bankruptcy Court. The Special Master will hear and consider each Claim of a Settling Tort Claimant in accordance with the provisions of the Settlement Trust Agreement. The Special Master will place each Claim in a Tier based upon whether the nature of the abuse fits within Tier One, Tier Two, Tier Three or Tier Four in accordance with criteria suggested by the Diocese and with input from interested parties and approved by the Bankruptcy Court as part of the confirmation process. The Special Master will have the ability to request additional information from a Settling Tort Claimant if sufficient information is not submitted as part of the Proof of Claim in order for the Settlement Master to fully evaluate the Claim. The Special Master will consider any mitigating or aggravating factors which could result in the Special Master increasing or decreasing the presumptive amount of recovery for a Tort Claimant with an Allowed Claim in a Tier but not beyond the range of recoveries provided for each Tier. In no event, however, will the Special Master be able to increase the Tier One Recovery Amount, the

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Tier Two Recovery Amount, the Tier Three Recovery Amount or the Tier Four Recovery Amount, as applicable, beyond the maximum amount in such Tier, nor will the Special Master have the power to move a Tort Claim into a different Tier to increase the recovery if the acts of abuse do not fit within a particular Tier. The determination of the Special Master will be final and there will be no right of appeal from the determination of the Special Master. A Settling Tort Claimant will have no right to opt out of the Settlement Trust except at the time of voting on the Plan. A Settling Tort Claimant whose Claim is Disallowed pursuant to the claim determination procedures set forth in the Settlement Trust Agreement will receive no distribution under the Plan and will have no further Claim against the Diocese or the Reorganized Debtor.

There may be Tort Claims that are filed and Disallowed because the applicable statute of limitations for bringing such a Claim has run and no circumstances exist whereby such the time for bringing such a Claim was tolled. The Diocese is concerned about such Tort Claimants and wants those Claimants with Barred Tort Claims to have the resources of the Diocese available to them through the VAP. Therefore, if the Claim of a Settling Tort Claimant is Disallowed because it is a Barred Tort Claim, the holder of the Disallowed Tort Claim will be given the opportunity to participate in the VAP.<sup>24</sup>

#### (ii) <u>Claim Amounts in Settlement Trust.</u>

The range of recoveries within a Tier will be determined by the Bankruptcy Court as part of the confirmation process.

#### (iii) Distributions from Settlement Trust.

The Trustees of the Settlement Trust will establish a reserve for future claims based upon a formula determined by the Bankruptcy Court as part of the confirmation process. The Trustees of the Settlement Trust will also establish such other reserves for fees, costs and expenses of the

<sup>&</sup>lt;sup>24</sup> To the extent that any such Tort Claimant is already participating in counseling that is provided by the Diocese other than through the VAP, such Tort Claimant will be given the opportunity to continue such counseling.

Settlement Trust as are required pursuant to its terms. After Allowance of all Claims of the Settling Tort Claimants and establishment of the reserves, the Trustees will pay the Allowed Claims of the Settling Tort Claimants. To the extent that the Settlement Trust has not been fully funded as of the date that all Claims of Settling Tort Claimants have been determined<sup>25</sup>, the Trustees will distribute a Pro Rata share of the funds allocated to the Settlement Trust after a reserve is established for future fees, costs and expenses of the Trustees of the Settlement Trust and the Settlement Master.

#### (iv) Attorney's Fees of Settling Tort Claimants.

The fees and expenses of attorneys representing any of the Settling Tort Claimants who receive payment from the Settlement Trust will be borne by such Claimants based on applicable state law and individual arrangements made between each Settling Tort Claimant and his or her attorneys. In no event will the Diocese, the Reorganized Debtor or the Trustees of the Settlement Trust have any liability for any fees and expenses of attorneys representing any of the Settling Tort Claimants and any such Claims, if any, will be Disallowed.

#### (c) <u>Determination and Treatment of Claims in Litigation Trust</u>

Tort Claimants who opt out of the Settlement Trust ("Non-settling Tort Claimants") will be: (a) subject to the Litigation Protocol; and (b) not receive any payment if (and to the extent) the Claim is Disallowed pursuant to the litigation procedures constituting the Litigation Protocol. To the extent that the Debtor has removed all pending actions to the United Stated District Court, the Non-settling Tort Claimants will be heard and determined in the District Court. All Non-settling Tort Claimants will retain the right to adjudicate their Claims through litigation (including trial by jury), subject however, to the provisions of the Plan and the Litigation Trust Agreement. No payments will be made by the Trustees of the Litigation Trust until all Tort Claims of Non-settling Tort Claimants have been determined. The Trustees in the Litigation Trust as well as the

<sup>&</sup>lt;sup>25</sup> For example, any Insurance Actions may not be finally resolved when the Special Master has determined all Tort Claims of Settling Tort Claimants.

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25 26 any Tort Claimant will retain all appeal rights from any decision by the District Court or a jury to determine the amount of any Tort Claim to be determined pursuant to the Litigation Protocol. All costs and expenses of the Trustees including all attorneys' fees and costs will be paid from the assets of the Litigation Trust prior to any distribution to the Tort Claimants...

#### (i) **Distributions from Litigation Trust**

At such time as all Tort Claims that are part of the Litigation Trust have been determined by entry of a Final Order, the Trustees of the Litigation Trust will distribute the proceeds of the Litigation Trust Pro Rata based upon the total amount of Allowed Tort Claims in the Litigation Trust as determined by the Litigation Protocol. If the amount allocated by the Court to the Litigation Trust as part of the confirmation process is not sufficient to pay all Allowed Tort Claims in the Litigation Trust in full, any amounts remaining unpaid after the Pro Rata distribution will be Disallowed. No Non-settling Tort Claimant will have recourse to the Settlement Trust or the Reorganized Debtor, any Participating Third Party or any Settling Insurer and any such Disallowed portion of the Tort Claim of a Non-settling Tort Claimant will be discharged and released.

#### (ii) Attorney's Fees of Tort Claimants in Litigation Trust.

The fees and expenses of attorneys representing any of the Tort Claimants who opt into the Litigation Trust will be borne by such Claimants based on applicable state law and individual arrangements made between each Tort Claimant and his or her attorneys. In no event will the Diocese, the Reorganized Debtor or the Trustees of the Litigation Trust have any liability for any fees and expenses of attorneys representing any of such Tort Claimants and any such Claims, if any, will be Disallowed.

#### 8. Class 10 - Penalty Claims.

Class 10 Penalty Claims will include any fine, penalty, forfeiture, multiple damages, punitive damages, or exemplary damages not meant to compensate the claimant for actual

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holders of any Penalty Claims

### VIII. Means For Execution of the Plan.

#### A. <u>Creation and Funding of the Settlement Trust and the Litigation Trust</u>

pecuniary loss. No Penalty Claims will be Allowed and there will be no distribution to the

On or before the Effective Date (but after entry of the Confirmation Order), the Reorganized Debtor will, in full release, satisfaction and discharge of all Claims in Class 9 (Tort Claims) cause the following to occur: (a) the execution and delivery of the Settlement Trust Agreement and the Litigation Trust Agreement, which will establish the Settlement Trust and the Litigation Trust; (b) the delivery of the initial funding of each trust based upon the allocation determined by the Bankruptcy Court as part of the confirmation process; and (c) the execution and delivery of any other agreements, assignments or commitments to carry out the terms of the Plan or the funding of the Settlement Trust or the Litigation Trust. Any funds received from the Settling Insurers and Insurance Action Recoveries allocated to the Settlement Trust and the Litigation Trust received as of the Effective Date will also be paid or distributed by the Debtor to the Trustees to be held and distributed in accordance with the Settlement Trust Agreement and the Litigation Trust Agreement. If, on the Effective Date, there remain any Insurance Actions that have not been resolved prior to the Effective Date, the Debtor may assign all rights and interests in the Insurance Actions to the Trustees as determined by the Bankruptcy Court as part of the confirmation process. To the extent the Insurance Actions are assigned to the Trustees, the Trustees will substitute in any Insurance Actions as the real party in interest after the Effective Date.

The Trustees of the Settlement Trust and the Litigation Trust will assume full responsibility for resolving all Tort Claims pursuant to the Settlement Trust Agreement and the Litigation Trust Agreement, as applicable; for making payments to the holders of Allowed Tort Claims that become Allowed under the conditions set forth in the Settlement Trust Agreement or the Litigation Trust Agreement; for collecting, investing and distributing funds for the benefit of

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the holders of Allowed Tort Claims; for fulfilling all other obligations under the Settlement Trust Agreement and the Litigation Trust Agreement; and for paying the costs and expenses of the Settlement Trust and the Litigation Trust, all set forth more fully in the Settlement Trust Agreement and the Litigation Trust Agreement.

#### **B.** Treatment of Executory Contracts.

#### 1. Assumption and Rejection of Executory Contracts.

On the Confirmation Date, except as otherwise provided herein, all Executory Contracts of the Debtor will be deemed rejected in accordance with the provisions and requirements of Bankruptcy Code §§ 365 and 1123 other than those Executory Contracts that: (a) have already been assumed by order of the Bankruptcy Court; (b) are subject to a motion to assume Executory Contracts that is pending on the Confirmation Date; or (c) are subject to a motion to reject an Executory Contract pursuant to which the requested effective date of such rejection is after the Confirmation Date. Approval of any motions to assume Executory Contracts pending on the Confirmation Date will be approved by the Bankruptcy Court on or after the Confirmation Date by a Final Order. Each Executory Contract assumed will revest in and be fully enforceable by the Reorganized Debtor in accordance with its terms, except as such terms are modified by the provisions of the Plan or any order of the Bankruptcy Court authorizing and providing for its assumption or applicable law.

#### 2. Claims Based on Rejection of Executory Contracts.

Every Claim asserted by a Creditor arising from the rejection of an Executory Contract pursuant to the Plan must be filed with the Bankruptcy Court no later than the first Business Day which is thirty (30) days after the Confirmation Date or the first Business Day that is thirty (30) days after entry of the Final Order of the Bankruptcy Court approving rejection if such Final Order is entered after the Confirmation Date. Every such Claim which is timely filed, as and when it becomes an Allowed Claim, will be treated under Class 7 of the Plan. Every such Claim which is not timely filed by the deadline stated above will be forever barred, unenforceable, and

discharged, and the Creditor holding the Claim will not receive or be entitled to any distribution under the Plan on account of such Claim.

#### 3. <u>Effect of Assumption of Executory Contracts.</u>

Any Executory Contracts assumed prior to the Effective Date, whether assumed prior to the Confirmation Date or as part of the confirmation process will be dealt with in accordance with the terms of the Executory Contract.

# C. <u>Funding on the Effective Date</u>.

All payments under the Plan which are due on the Effective Date will be funded from the Cash on hand, from the proceeds of the sale of the Diocese Real Property, from any contributions or settlements with any Participating Third Party and Settling Insurers and from the proceeds of any debtor in possession or exit financing, if any, received by the Debtor during the course of the case or prior to or in conjunction with the Confirmation Hearing.

# D. Funding After the Effective Date.

The funds necessary to ensure continuing performance under the Plan after the Effective Date will be (or may be) obtained from any Cash retained by the Reorganized Debtor after the Effective Date; any Cash generated from the post-Effective Date operations of the Reorganized Debtor; and any other contributions or financing (if any) which the Reorganized Debtor may obtain on or after the Effective Date.

#### E. Procedure for Determination of Claims Other Than Tort Claims.

- (a) <u>Objections to Claims</u>. Notwithstanding the occurrence of the Effective Date, and except as to any Claim that has been Allowed prior to the Effective Date or any Tort Claim, the Reorganized Debtor may object to the allowance of any Claim against the Debtor or seek estimation thereof on any grounds permitted by the Bankruptcy Code by filing an objection within one hundred eighty (180) days after the Effective Date.
- (b) <u>Disputed Claims</u>. No payments or other distributions will be made to holders of Claims unless and until such Claims are Allowed Claims pursuant to a Final Order.

(c) <u>Treatment of Contingent Claims</u>. Until such time as a Contingent Claim or a Contingent portion of an Allowed Claim becomes fixed or absolute or is Disallowed, such Claim will be treated as a Disputed Claim for all purposes related to distributions under the Plan.

#### F. Payments Effective Upon Tender.

Whenever the Plan requires payment to be made, such payment will be deemed made and effective upon tender thereof by the Debtor or the Reorganized Debtor to the Creditor to whom payment is due. If any Creditor refuses a tender, the amount tendered and refused will be held by the Debtor or the Reorganized Debtor for the benefit of that Creditor pending final adjudication of the dispute. However, when and if the dispute is finally adjudicated and the Creditor receives the funds previously tendered and refused, the Creditor will be obliged to apply the funds in accordance with the Plan as of the date of the tender; and while the dispute is pending and after adjudication thereof, the Creditor will not have the right to claim interest or other charges or to exercise any other rights which would be enforceable by the Creditor if the Debtor or the Reorganized Debtor failed to pay the tendered payment.

# G. Preservation of Debtor's Claims, Demands, And Causes of Action.

All claims, demands, and causes of action of any kind or nature whatsoever held by, through, or on behalf of the Debtor and/or the Estate against any other Person, including but not limited to, all Avoidance Actions arising before the Effective Date and all Insurance Actions and which have not been resolved or disposed of prior to the Effective Date, are hereby preserved in full for the benefit of the Reorganized Debtor, except for such claims or causes of action, crossclaims, and counterclaims which have been released hereunder or pursuant to a Final Order prior to the Effective Date. To the extent necessary, the Reorganized Debtor is hereby designated as the estate representative pursuant to and in accordance with Bankruptcy Code § 1123(b)(3)(B). Furthermore, in accordance with Bankruptcy Code § 1123(b)(3), after the Effective Date, the Reorganized Debtor will own and retain, and may prosecute, enforce, compromise, settle, release,

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or otherwise dispose of, any and all claims, defenses, counterclaims, set offs, and recoupments belonging to the Debtor or its Estate. All defenses, counterclaims, Claims and demands related to the Tort Claims are preserved and transferred to the Trustees of the Litigation Trust and the Settlement Trust in accordance with Bankruptcy Code § 1123(b). The Debtor and the Reorganized Debtor will also be entitled to assign their rights under the Plan. On the Effective Date, the Trustees and the Trust are hereby designated as the estate representative pursuant to and in accordance with Bankruptcy Code § 1123(b)(3)(B) with respect to the Insurance Actions to the extent the Insurance Actions are assigned to the Trustees.

# H. Special Provisions Governing Unimpaired Claims.

Except as otherwise provided in the Plan, nothing will affect the Debtor's or the Reorganized Debtor's rights and defenses with respect to any Unimpaired Claims, including, but not limited to, all rights with respect to legal and equitable defenses to or setoffs or recoupments against such Unimpaired Claims.

#### I. Operative Documents.

The Debtor will prepare any documents which the Debtor and the Reorganized Debtor deem are necessary or appropriate to execute the Plan or provided for under the Plan. If there is any dispute regarding the reasonableness or propriety of any such documents after reasonable and good faith efforts by the Debtor to negotiate and obtain approval of the documents by the other affected Person(s), any such dispute will be presented to the Bankruptcy Court for determination at or in conjunction with the Confirmation Hearing.

#### J. Return of Deposits.

To the extent that the Debtor was required to and did pay deposits to any Creditors after the Petition Date as a condition of or as security for continued service after the Petition Date, then, upon satisfaction of the Claims of such Creditor(s) pursuant to the Plan, any such deposits, together with any interest or other income earned thereon, if any, will be refunded to the

Reorganized Debtor within fifteen (15) days of demand by the Reorganized Debtor for return of such deposit(s).

#### **K.** Administrative Claims Bar Date.

All requests for payment of administrative costs and expenses incurred prior to the Effective Date pursuant to Bankruptcy Code §§ 507(a)(1) and 503(b) will be served and filed with the Bankruptcy Court no later than thirty (30) days after the Effective Date. Any such Claim which is not served and filed within this time period will be forever barred. Any Claims for fees, costs, and expenses incurred by any Chapter 11 Professionals after the Effective Date will be treated as part of the fees and expenses of the Reorganized Debtor and need not be submitted to the Bankruptcy Court for approval. After approval of the final fee applications of the Chapter 11 Professionals by the Bankruptcy Court for services provided and costs incurred during the course of administration of the Reorganization Case and prior to the Effective Date, the Chapter 11 Professionals will not be required to submit any further fee applications to the Bankruptcy Court in accordance with Bankruptcy Code § 330.

#### L. Delivery Of Distributions.

Distributions will be made by the Debtor or the Reorganized Debtor with respect to all Claims other than Tort Claims<sup>26</sup> as follows:

- (a) At the addresses set forth in the proofs of Claim filed by holders of Claims (or the last known addresses of such holders if no proof of Claim is filed or if the Debtor or the Reorganized Debtor has not been notified of a change of address);
- (b) At the addresses set forth in written notices of address change delivered to the Debtor or the Reorganized Debtor after the date of any related proof of Claim;

<sup>&</sup>lt;sup>26</sup> Distributions to Tort Claimants will be pursuant to the terms of the Litigation Trust Agreement or the Settlement Trust Agreement although the procedures may be similar or the same as the procedures set forth above.

(c) At the addresses reflected in the Schedules if no proof of Claim has been filed and the Debtor or the Reorganized Debtor has not received a written notice of change of address; or

(d) If any distribution to a holder of an Allowed Claim is returned as undeliverable, no further distributions to such holder will be made unless and until the Debtor or the Reorganized Debtor is notified of such holder's then-current address, at which time all missed distributions will be made to the holder without interest.

All claims for undeliverable or uncashed distributions must be made on or before the first (1st) anniversary of the date applicable to such distribution, or with respect to the a final distribution to a Creditor holding an Allowed Claim, within ninety (90) days thereof. After such date, all such unclaimed property will revert to the Reorganized Debtor for further distribution in accordance with the Plan, and the Claim of any holder or successor to such holder with respect to such property will be discharged and forever barred, notwithstanding any federal or state escheat law to the contrary.

#### M. <u>Limitation on De Minimis Payments</u>.

The Debtor or the Reorganized Debtor will make no distributions of less than \$50 to any Creditor holding an Allowed Claim. If a Creditor holding an Allowed Claim does not receive a distribution due to the provisions of this Section on any date on which is a distribution is to be made to Creditors in the same Class as the Creditor being entitled to such de minimis payment, then the Claim (so long as it is an Allowed Claim) will remain eligible for distributions on any subsequent distribution date, subject to the provisions of this Section. In all events, the Creditor holding an Allowed Claim which has not received a distribution on any previous distribution dates because of this provision, will receive such distribution on the date that final distribution is made to Creditors in the same Class as the Creditor being entitled to such de minimis payment.

#### IX. <u>CONDITIONS TO EFFECTIVE DATE</u>

### A. <u>Conditions To Occurrence Of Effective Date.</u>

Each of the following are conditions to the Effective Date, which conditions must be satisfied or waived by the Debtor.

- (a) The Confirmation Order has been entered by the Bankruptcy Court and the Confirmation Order has become a Final Order.
- (b) The Confirmation Order is in form and substance satisfactory to the Debtor.
- (c) All actions, documents, and agreements necessary to implement the Plan will have been effected or executed.

#### B. <u>Debtor's Obligations to Cause Effective Date to Occur.</u>

Upon satisfaction of the conditions to the Effective Date, the Reorganized Debtor shall pay or make provision for the prompt payment to holders of Allowed Claims to whom payments, pursuant to the Plan, are to be made on the Effective Date. The Reorganized Debtor will also make the transfers required to be made to the Settlement Trust and the Litigation Trust unless such transfers have occurred prior to the Effective Date, and such transfers will be in full release and complete satisfaction and discharge of the Tort Claims.

#### C. Waiver Of Conditions.

The Debtor, in its sole discretion, may waive any of the conditions to the occurrence of the Effective Date including waiver of the Final Order condition any time from and after the Confirmation Date. In that event, the Debtor will be entitled to render any or all of its performance under the Plan prior to what otherwise would be the Effective Date if the above-referenced conditions were not waived, including, but not limited to, the right to perform under any circumstances which would moot any appeal, review, or other challenge of any kind to the Confirmation Order if the Confirmation Order is not stayed pending such appeal, review, or other challenge.

#### D. Effect of Non-occurrence of Conditions.

If the consummation of the Plan does not occur, the Plan will be null and void in all respects and nothing contained in the Plan or this Disclosure Statement will: (a) constitute a waiver or release of any Claims by or against the Debtor; (b) prejudice in any manner the rights of the Debtor; or (c) constitute an admission, acknowledgement, offer, or undertaking by the Debtor in any respect.

#### E. Merger; Choice of Law.

All obligations of the Debtor to all Claimants will be merged into the Plan and the documents executed by the Reorganized Debtor at Closing and delivered to the respective affected Claimants. All such obligations of the Reorganized Debtor will be evidenced by the Plan and such executed and delivered documents. Unless otherwise provided therein, such documents will be governed by and construed in accordance with Arizona law.

# F. Other Obligations of the Reorganized Debtor.

The Reorganized Debtor will review all Claims other than Tort Claims filed against the estate and, if warranted, object to Claims within the time period provided in the Plan; and perform all of its obligations under the Plan Documents, including, without limitation, those obligations provided in the Settlement Trust Agreement and the Litigation Trust Agreement.

#### **G.** Modifications To Plan.

The Plan may be modified by the Debtor or the Reorganized Debtor (as applicable) subject to and in accordance with the provisions and requirements of Bankruptcy Code § 1127.

### X. <u>EFFECT OF CONFIRMATION</u>.

#### A. Discharge.

Except as otherwise expressly provided in the Plan or in the Confirmation Order, on the Effective Date the Debtor will be discharged from and its liability shall be extinguished completely in respect of any Claim and Debt, whether reduced to judgment or not, liquidated or unliquidated, contingent or noncontingent, asserted or unasserted, fixed or not, matured or unmatured, disputed or undisputed, legal or equitable, known or unknown, that arose from any

agreement of the Debtor entered into or obligation of the Debtor incurred before the Confirmation Date, or from any conduct of the Debtor prior to the Confirmation Date, or that otherwise arose before the Confirmation Date, including, without limitation, all interest, if any, on any such Claims and Debts, whether such interest accrued before or after the date of commencement of the Case, and including, without limitation, all Claims and Debts based upon or arising out of Tort Claims and from any liability of the kind specified in Bankruptcy Code §§ 502(g), 502(h), and 502(i), whether or not a proof of claim is filed or is deemed filed und er Bankruptcy Code § 501, such Claim is Allowed under Bankruptcy Code § 502, or the holder of such Claim has accepted this Plan.

#### B. Vesting.

Except as otherwise expressly provided in the Plan or in the Confirmation Order, on the Effective Date the Reorganized Debtor shall be vested with all of the property of the Estate free and clear of all Claims, Liens, encumbrances, charges and other interests of Creditors, and will thereafter hold, use, dispose or otherwise deal with such property and operate its business free of any restrictions imposed by the Bankruptcy Code or by the Court. All Debtor Actions and, except to the extent the same are transferred to the Settlement Trust or the Litigation Trust, all Insurance Actions are hereby preserved for the benefit of the Reorganized Debtor under the respective trust agreements, the proceeds of which shall be used, as necessary for funding obligations to either the Settlement Trust or the Litigation Trust, except as otherwise provided in settlements approved by prior order of the Court or approved by the Court in connection with confirmation of the Plan. Prosecution and settlement of the Debtor Actions and the retained interest in any Insurance Actions shall be the exclusive responsibility of the Reorganized Debtor. The Reorganized Debtor shall have sole and absolute discretion over whether to prosecute or settle such causes of action.

# C. <u>Permanent Injunction Against Prosecution of Released Claims and Claims Against Participating Third Parties and Settling Insurers.</u>

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Except as otherwise expressly provided in the Plan, for the consideration described in the Plan, on the Effective Date all Persons who have held, hold, or may hold Channeled Claims or Claims against the Diocese, whether known or unknown, and their respective agents, attorneys, and all others acting for or on their behalf, shall be permanently enjoined on and after the Effective Date from: (a) commencing or continuing in any manner, any action or any other proceeding of any kind with respect to any Claim against the Parties, the Diocese, the Reorganized Debtor, the Settlement Trust, the Litigation Trust, the Trustees, and their respective predecessors, successors, officials, shareholders subsidiaries, divisions, affiliates, representatives, attorneys, merged or acquired companies or operations or assigns (collectively, the "Parties") or the property of the Parties; (b) seeking the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree, or order against the Parties or the property of the Parties, with respect to any discharged Claim or Channeled Claim; (c) creating, perfecting, or enforcing any encumbrance of any kind against the Parties or the property of the Parties with respect to any discharged Claim or Channeled Claim; (d) asserting any setoff, right of subrogation, or recoupment of any kind against any obligation due to the Parties with respect to any discharged Claim or Channeled Claim; and (e) taking any act, in any manner and in any place whatsoever, that does not conform to or comply with provisions of the Plan, the Settlement Trust Agreement or the Litigation Trust Agreement. Notwithstanding, such provisions in the Plan, each Non-Settling Tort Claimant will be entitled to continue or commence an action against the Trustees of the Litigation Trust (in their capacity as Trustees only and not in their individual capacity) in which the Non-Settling Tort Claimant will be entitled to a jury trial for the sole purpose of obtaining a judgment as permitted by the Litigation Trust Agreement, thereby liquidating such Non-Settling Tort Claimant's Claim so that it may be paid with other Allowed Tort Claims in the ordinary course of the operations of the Litigation Trust, consistent with the provisions of the Litigation Trust Agreement. The holder of any such judgment will be enjoined from executing against the Litigation Trust or its assets. In the event any Person takes any action

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The discharge and injunction provisions of the Plan are integral parts of the Plan.

#### XI. **RETENTION OF JURISDICTION**

Notwithstanding confirmation of the Plan and the occurrence of the Effective Date, the Bankruptcy Court will retain jurisdiction for the following purposes specifically described in the Plan which include, but are not limited to:<sup>27</sup> (i) determine the allowance and payment of any Claims upon any objections thereto (or other appropriate proceedings) other than Tort Claims unless specifically provided for in the Settlement Trust or the Litigation Trust; (ii) determine any dispute which may arise regarding the interpretation of any provision of the Plan; (iii) enforce any provisions of the Plan and any and all documents relating to the Plan; (iv) determine any matter relating to the implementation, effectuation, and/or consummation of the Plan as expressly provided in any provision of the Plan; (v) facilitate the performance of the Plan by entering, consistent with the provisions of the Plan, any further necessary or appropriate order regarding enforcement of the Plan; (vi) facilitate or implement the allowance, disallowance, treatment, or satisfaction of any Claim, or any portion thereof; (vii) adjudicate any dispute or to hear and determine any action taken, proposed, or threatened by any state, federal, or local governmental regulatory agency or unit having or asserting jurisdiction or power over the conduct of the business of the Debtor and/or the Reorganized Debtor; (viii) enter an appropriate final decree in the Bankruptcy Case; (ix) implement and enforce the Confirmation Order and the Plan according to their terms; (x) determine any and all motions regarding assumption or rejection of Executory

However, the continuing and retained jurisdiction of the Court is limited so that any internal disputes between a Parish and the Diocese or any other entity whose dispute should be determined in a church tribunal or in accordance with Canon Law, will be determined in such tribunal and not in the Bankruptcy Court.

Contracts and any and all Claims arising therefrom; (xi) hear and determine any claim or cause of action by or against the Debtor; the Debtor's officers, directors, and employees; the Chapter 11 Professionals; and the Reorganized Debtor; (xii) adjudicate any causes of action or other proceeding currently pending or otherwise referenced here or elsewhere in the Plan, including, but not limited to, the adjudication of the Avoidance Actions and any and all "core proceedings" under 28 U.S.C. §157(b) which may be pertinent to the Reorganization Case and which the Debtor or the Reorganized Debtor may deem appropriate to initiate and prosecute before the Court in aid of the implementation of the Plan; (xiii) modify the Plan pursuant to the provisions of the Plan.

If the Bankruptcy Court abstains from exercising or declines to exercise jurisdiction or is otherwise without jurisdiction over any matter arising out of the Reorganization Case, the provisions regarding retention of jurisdiction by the Bankruptcy Court will not diminish, control, prohibit or limit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such matter.

# XII. GENERAL PROVISIONS

#### A. Extension Of Payment Dates.

If any payment date falls due on any day which is not a Business Day, then such due date will be extended to the next Business Day.

#### B. Notices.

Any notice required or permitted to be provided under the Plan will be in writing and served by regular first class mail, overnight delivery, or hand-delivery.

### C. <u>Closing of the Case</u>.

At such time as the Plan has been fully administered and/or the Plan has been substantially consummated, the Reorganized Debtor will file an application for Final Order showing that the Plan has been substantially consummated. The Reorganized Debtor will file an application for Final Order upon notice to only those Creditors, holders of Interests, and parties that, after the

Effective Date, have specifically requested, after which an order approving the Reorganized Debtor's final report and closing the Reorganization Case may be entered.

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#### D. Interest.

not compounded.

#### E. **Additional Assurances.**

The Debtor, the Reorganized Debtor, and the Creditors holding Claims herein will execute such other further documents as are necessary to implement any of the provisions of the Plan.

Whenever interest is to be computed under the Plan, interest will be simple interest and

#### F. **Confirmation By Nonacceptance Method.**

The Debtor has requested, as part of the Plan, confirmation of the Plan pursuant to Bankruptcy Code § 1129(b) with respect to any impaired Class of Claims which does not vote to accept the Plan.

#### G. Withdrawal Of Plan.

The Plan may be withdrawn or revoked prior to entry of the Confirmation Order.

#### H. Severability And Reformation.

It is the Debtor's intention to comply fully with the Bankruptcy Code and applicable nonbankruptcy law in proposing the Plan. Therefore, if any provision of the Plan is determined by the Bankruptcy Court to be contrary to the Bankruptcy Code or applicable nonbankruptcy law, that provision will be deemed severed and automatically deleted from the Plan, if it cannot be reformed or the provision or its interpretation will be deemed reformed to ensure compliance; provided, however, that nothing contained in this Section will prevent the Debtor from modifying the Plan in any manner whatsoever in accordance with and as set forth in the Plan. Pursuant to any ruling by the Bankruptcy Court regarding the subject matter of this Section, any such

severance or reformation will be stated specifically in the Confirmation Order, which then will control notwithstanding any contrary or inconsistent provisions of the Plan.

#### I. <u>Prohibition Against Prepayment Penalties.</u>

If the Debtor or the Reorganized Debtor chooses, in its sole and absolute discretion, to prepay any obligation on which deferred payments are provided for under the Plan, the Debtor or the Reorganized Debtor will not be liable or subject to the assessment of any prepayment penalty thereon unless otherwise ordered by the Bankruptcy Court.

#### J. Fractional Dollars.

Notwithstanding any other provision of the Plan, no payments or distributions under the Plan of or on account of fractions of dollars will be made. When any payment or distribution of or on account of a fraction of a dollar to any holder of an Allowed Claim would otherwise be required, the actual payment or distribution made will reflect a rounding of such fraction to the nearest whole number (up or down).

### K. Payment Of Statutory Fees And Filing of Quarterly Reports.

All fees payable pursuant to Section 1980 of Title 28 of the United States Code, 28 U.S.C. § 1980, as determined by the Bankruptcy Court at or in conjunction with the Confirmation Hearing, will be paid on or before the Effective Date and, thereafter, in accordance with applicable bankruptcy law. All quarterly reports of disbursements required to be filed by applicable bankruptcy law will be filed in accordance with applicable bankruptcy law.

#### L. Reservation of Rights.

Except as expressly provided in the Plan and this Disclosure Statement, the Plan will have no force or effect unless the Confirmation Order is entered by the Bankruptcy Court and the Effective Date has occurred. None of the filing of the Plan, any statement or provision contained in the Plan or in this Disclosure Statement, or the taking of any action by the Debtor with respect to the Plan will be or will be deemed to be an admission or waiver of any rights of the Debtor with respect to the holders of Claims prior to the Effective Date.

#### M. No Professional Fees or Expenses.

No professional fees or expenses will be paid by the Debtor or the Reorganized Debtor with respect to any Claim except as specified in the Plan or as Allowed by Final Order of the Court.

#### N. Dissolution of Unsecured Committee.

Upon the occurrence of the Effective Date, the Unsecured Committee will dissolve and members will be released from all rights and duties arising from or related to the Reorganization Case.

#### O. Section 1146 Exemption.

Pursuant to Bankruptcy Code § 1146(c), any transfers of property pursuant hereto will not be subject to any document, recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax or other similar tax or governmental assessment in the United States, and the confirmation Order will direct the appropriate state or local governmental officials or agents to forgo the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

### P. <u>Successors and Assigns</u>.

The rights, benefits and obligations of any Person named or referred to in the Plan will be binding upon, and will insure to the benefit of, the heir, executor, administrator, successor or assign of such Person.

## XIII. POST-CONFIRMATION MANAGEMENT AND REORGANIZED DEBTOR

#### 1. The Diocese

The administration of the Reorganized Debtor will continue with the same offices and individuals in those offices as identified in Section IV.B. above.

Bishop Kicanas became Bishop of Tucson on March 7, 2003. He was born in Chicago and was ordained a priest for the Archdiocese of Chicago on April 27, 1967. Bishop Kicanas served in various capacities in the Archdiocese's seminary system for over 25 years. In 1984, he was appointed Rector of Mundelein Seminary at the University of St. Mary of the Lake, Mundelein, Illinois, which is the Theologate graduate level seminary of the Archdiocese. Concurrently, he served as a Lecturer in Community and Organization Development at Loyola University. Bishop Kicanas has a Ph.D. in Educational Psychology, a M.Ed. in Guidance and Counseling from Loyola University, and a Licentiate in Sacred Theology from St. Mary of the Lake Seminary, Mundelein, IL.

#### XIV. FEDERAL TAX CONSEQUENCES.

THE FEDERAL, STATE, LOCAL, AND FOREIGN TAX CONSEQUENCES OF THE PLAN ARE COMPLEX AND, IN MANY AREAS, UNCERTAIN. ACCORDINGLY, ALL HOLDERS OF CLAIMS ARE STRONGLY URGED TO CONSULT THEIR TAX ADVISORS WITH SPECIFIC REFERENCE TO THE FEDERAL, STATE, AND LOCAL TAX CONSEQUENCES OF THE PLAN WITH RESPECT TO SUCH HOLDER. NEITHER THE DEBTOR NOR DEBTOR'S COUNSEL MAKES ANY REPRESENTATIONS REGARDING THE PARTICULAR TAX CONSEQUENCES OF CONFIRMATION AND CONSUMMATION OF THE PLAN AS TO THE DEBTOR OR ANY CREDITOR.

Under the Internal Revenue Code of 1986, as amended (the "Code"), there may be significant federal income tax issues arising under the Plan described in this Disclosure Statement that affect Creditors in the case.

The Settlement Trust and the Litigation Trust is each a "qualified settlement fund" ("<u>QSF</u>") with in the meaning Treasury Regulations enacted under Internal Revenue Code Section 486B(g). Each Trust is characterized as a QSF because:

1. The Trust is established pursuant to an order of, or is approved by, the United States, any state or political subdivision thereof, or any agency or instrumentality

(including a court of law) of any of the foregoing and is subject to the continuing jurisdiction of that governmental authority;

- 2. The Trust is established to resolve or satisfy one or more contested or uncontested claims that have resulted or may result from an event that has occurred and that has given rise to at least one claim asserting liability arising out of, among other things, a tort, breach of contract, or violation of law (but excluding non-tort obligations of the Diocese to make payments to its general trade creditors or debt holders that relates to: a case under title 11 of United States Code, a receivership, foreclosure of similar proceeding in a Federal or State court, or a workout); and
- The Trust is a trust under state law.<sup>28</sup> 3.

The primary tax consequences of the Trust being characterized as a QSF are the following:

- 1. The Trust must use a calendar taxable year and the accrual method of accounting.
- 2. If the Diocese funds the Trust with appreciated property, the Diocese is deemed to sell the property to the Trust. Accordingly, any gain or loss from the deemed sale must be reported by the Diocese.
- 3. The Trust takes a fair market value basis in property contributed to it by the Diocese.
- 4. The Trust's gross income less certain modifications is taxable at the highest federal tax rate applicable to trusts and estates (currently 35%). The Diocese's funding of the Trust with cash and other property is not reported by the Trust as taxable income. However, earnings recognized from, for example, the short-term investment of the Trust's funds will be subject to tax.

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<sup>&</sup>lt;sup>28</sup> Treas. Reg. 1.468B-1(c)

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- 5. The Trust may deduct from its gross income a limited number of administrative expenses; the Trust is not entitled to deduct distributions paid to its beneficiaries.
- 6. The Trust will have a separate taxpayer identification number and will be required to file annual tax returns (which are due on March 15). The Trust will also be required to comply with a number of other administrative tax rules including filing information returns (generally IRS Form 1099) when approved payments are made to claimants.

It is not practicable to present a detailed explanation of every possible federal income tax ramifications of the Plan.

### XV. <u>ACCEPTANCE AND CONFIRMATION</u>.

# A. <u>Voting Procedures</u>.

### 1. <u>Generally.</u>

Only those Classes that are impaired under the Plan are entitled to vote to accept or reject the Plan. The Diocese reserves the right to supplement this Disclosure Statement (if necessary) and to solicit any of those Classes which may prove to be impaired or unimpaired, as the Reorganization Case develops further.

Separate ballots will be sent to the known holders of Claims whether or not such Claims are disputed. However, only the holders of Allowed Claims (or Claims that have been temporarily allowed or have been estimated by the Bankruptcy Court) which are impaired are entitled to vote on the Plan. A Claim to which an objection has been filed is not an Allowed Claim unless and until the Bankruptcy Court rules on the objection and any appeals are determined. The holders of such Disputed Claims are not entitled to vote on the Plan unless they request that the Bankruptcy Court, pursuant to Bankruptcy Rule 3018, temporarily allow the Claims in appropriate amounts solely for the purpose of enabling the holders of such Disputed Claims to vote on the Plan, and the Bankruptcy Court does so.

#### 2. Incomplete Ballots.

Ballots which are signed, dated, and timely received, but on which a vote to accept or reject the Plan has not been indicated, will not be counted as a vote either to accept or to reject the Plan or as a vote cast with respect to the Plan.

#### 3. Withdrawal Of Ballots; Revocation.

Any Creditor holding an impaired Allowed Claim which has delivered a Ballot accepting or rejecting the Plan or opting out of the Settlement Trust may withdraw such acceptance or rejection or election by delivering a written notice of withdrawal to the Diocese at any time prior to the voting deadline. A notice of withdrawal, to be valid, must: (i) contain the description of the Claim to which it relates and the amount of such Claim; (ii) be signed by the voting Creditor, in the same manner as the Ballot; and (iii) be received by the Diocese in a timely manner at the address set forth below. Unless otherwise directed by the Bankruptcy Court, a purported notice of withdrawal of Ballots or change in the Claimants election to opt out of the Settlement Trust which is not received in a timely manner will not be effective to withdraw a previously furnished Ballot.

### 4. Submission Of Ballots.

The form of Ballot for each of the Classes entitled to vote on the Plan will be sent to all Creditors along with a copy of the Court-approved Disclosure Statement and a copy of the Plan. Creditors should read the Ballot carefully. If any Creditor has any questions concerning voting procedures, it may contact:

QUARLES & BRADY STREICH LANG LLP One South Church Avenue, Suite 1700 Tucson, AZ 85701 (520)770-8700 Attention: Suzanne Utter and Sybil Taylor Aytch

Ballot(s) or withdrawals/revocations or changes of election thereof must be returned to the above counsel for the Diocese. Ballots (and withdrawals/revocations and changes of elections of

1	Ballots) must be postmarked no later than, 2004. In addition, Ballots may be		
2	faxed, Attention: Suzanne Utter, (520) 770-2228. To be effective, transmission of the facsimile		
3	must begin no later than 5:00 P.M. on, 2004.		
4	In addition, the Bankruptcy Court will hold a hearing on confirmation of the Plan		
5	commencing on, 2004 at a.m./p.m. in the Bankruptcy Courtroom No.		
6	8219, 110 South Church Avenue, Tucson Arizona 85701. All objection(s), if any, to the		
7	confirmation of the Plan must be in writing; must state with specificity the grounds for any such		
8	objections); and must be filed with the Bankruptcy Court and served upon counsel for the Diocese		
9	at the following address on or before, 2004:		
10	QUARLES & BRADY STREICH LANG LLP		
11	One South Church Avenue Suite 1700 Tucson, Arizona 85701		
12	(520) 770-8700 Attention: Kasey C. Nye, Esq.		
13	B. <u>Feasibility</u> .		
14	The Bankruptcy Code requires, as a condition to confirmation, that the Bankruptcy Court		
15	find that liquidation of the Diocese or the need for future reorganization is not likely to follow		
16	after confirmation. For the purpose of determining whether the Plan meets this requirement, the		
17	Reorganized Debtor's ability to meet its obligations under the Plan has been analyzed. As		
18	discussed previously, the Diocese has prepared projections of the cash flow for the Diocese's		
19	businesses. The projections were prepared by Keegan, Linscott & Kenon and are attached as		
20	Exhibit "8" to this Disclosure Statement. The Diocese reasonably believes that the Debtor will be		
21	able to fund the Plan on the Effective Date and the Reorganized Debtor will be able to make all		
22	payments required to be made pursuant to the Plan.		
23	C. <u>Best Interests Of Creditors And Liquidation Analysis</u> .		

much or more under the Plan than they would receive in a Chapter 7 liquidation of the Diocese.

This analysis is unusually hypothetical in this case, because, as a non profit entity, the Diocese's

Under Bankruptcy Code § 1129(a)(7), the Plan must provide that Creditors receive as

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Reorganization Case cannot be converted to a Chapter 7 without the Diocese's consent under 11 U.S.C. § 1112(c)(disallowing conversion of chapter 11 cases where the debtors is "not a moneyed corporation"). The Diocese submits that the best interest of creditors test in this context is akin to that of a Chapter 9 proceeding.

While the best interests of the creditors test is an elusive standard in Chapter 9] nevertheless the concept is not without meaning.... The concept should be interpreted to mean that the plan must be better than the alternative that creditors have. In the chapter 9 context, the alternative is dismissal of the case, permitting every creditor to fend for itself in the race to obtain the mandamus remedy and to collect the proceeds.... [The courts] must apply the test to require a reasonable effort by the municipal debtor that is a better alternative to the creditors than dismissal of the case.

In re County of Orange, 191 B.R. 1005, 1020 (Bankr. C.D. Ca. 1996)(quoting 4 Collier on Bankruptcy, 943.03(7) (15th ed. 1995)(emphasis added by Judge Ryan). Accordingly, it is the Diocese's position that the best interest of creditors standard be applied to compare this Plan to the true alternative of dismissal and a race to the courthouse which greatly benefits the first to sue over the claims of others. Nevertheless in a hypothetical liquidation, the Diocese asserts that all Creditors will receive more under the Plan than they would in a liquidation. In a liquidation not only would the assets subject to restriction be in dispute, but the Participating Third Parties and Settling Insurers would not voluntarily contribute without the corresponding benefit of putting these claims behind them.

#### D. Confirmation Over Dissenting Class.

In the event that any impaired Class of Claims does not accept the Plan, the Bankruptcy Court may nevertheless confirm the Plan at the request of the Diocese if all other requirements under Bankruptcy Code § 1129(a) are satisfied, and if, as to each impaired Class which has not accepted the Plan, the Bankruptcy Court determines that the Plan "does not discriminate unfairly" and is "fair and equitable" with respect to such non-accepting Classes. Each of these requirements is discussed below.

#### 1. No unfair discrimination.

The Plan "does not discriminate unfairly" if: (a) the legal rights of a dissenting Class are treated in a manner that is consistent with the treatment of other Classes whose legal rights are similar to those of the dissenting Class; and (b) no Class receives payments in excess of those which it is legally entitled to receive for its Claims. The Diocese believes that under the Plan: (i) all Classes of impaired Claims are treated in a manner that is consistent with the treatment of other similar Classes of Claims; and (ii) no Class of Claims will receive payments or property with an aggregate value greater than the aggregate of the Allowed Claims in such Class. Accordingly, the Diocese believes that the Plan does not discriminate unfairly as to any impaired Class of Claims.

### 2. Fair and Equitable Test.

The Bankruptcy Code establishes different "fair and equitable" tests for Secured Claims, Unsecured Claims, and holders of Equity Interests, as follows:

- (a) <u>Secured Creditors</u>. Either (i) each impaired Secured Creditor retains its liens securing a Secured Claim and receives on account of its Secured Claim deferred cash payments having a present value equal to the amount of its Allowed Secured Claim, (ii) each impaired Secured Creditor realizes the "indubitable equivalent" of its Allowed Secured Claim, or (iii) the property securing the Claim is sold free and clear of liens with such liens to attach to the proceeds, and the liens against such proceeds are treated in accordance with clause (i) or (ii) of this subparagraph (a).
- (b) <u>Unsecured Creditors</u>. Either (i) each impaired unsecured Creditor receives or retains under the Plan property of a value equal to the amount of its Allowed Claim, or (ii) the holders of Claims and Equity Interests that are junior to the Claims of the non-accepting Class do not receive any property under the Plan on account of such Claims and Equity Interests.
- (c) <u>Equity Interests</u>. Either (i) each holder will receive or retain under the Plan property of a value equal to or greater than (A) the fixed liquidation preference or

redemption price, if any, of such interest or (B) the value of such interest, or (ii) the holders of interests that are junior to the non-accepting Class will not receive any property under the Plan. The Diocese believes that the Plan satisfies the "fair and equitable" test with respect to all impaired Classes.

As with the best interests of creditors test, the fair and equitable test is applied differently in the Reorganization Case than in most reorganization cases because the Diocese is not a moneyed corporation. This is the case because the members of a non-profit, in this case, the Bishop, have no personal interest in the property of the corporation. Accordingly there is effectively no equity interest in the Diocese. "Thus, what is commonly referred to as the "absolute priority rule" embodied by Bankruptcy Code § 1129(b)(2)(B) does not prevent the debtor here from continuing to operate".

#### XVI. <u>ALTERNATIVES TO THE PLAN</u>.

If the Plan is not confirmed, several different events could occur: (1) the Debtor could propose another plan providing for different treatment of certain Creditors; or (2) the Bankruptcy Court (after appropriate notice and hearing) could dismiss the Reorganization Case if the Debtor is unable to confirm an alternative plan in a reasonable period of time.

#### XVII. RECOMMENDATIONS OF THE DEBTOR AND CONCLUSION.

The Diocese recommends that all Creditors vote to accept the Plan. The Diocese believes that the Plan provides the best possible return to Creditors under the circumstances.

1	DATED: September, 2004.		
2 3		THE ROMAN CATHOLIC CHURCH OF THE DIOCESE OF TUCSON, an Arizona corporation sole	
4		2	
		By + Gerald Kings	
5		The Most Reverend Gerald F. Kicanas, D.D.	
6 7		Responsible Person for the Roman Catholic Church of the Diocese of Tucson	
8	Prepared and Submitted By:		
9	OUARLES & BRADY STREICH LANG LLP One South Church Avenue Suite 1700 Tucson, AZ 85701-1621  By Secret Susan G. Boswell		
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14	Kasey C. Nye		
15	Proposed Attorneys for Debtor The Roman Catholic Church of the Diocese of Tucson		
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