

**UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF NEW YORK**

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In re:

Case No.: 19-20905

The Diocese of Rochester,

Chapter 11

Debtor.

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The Diocese of Rochester,

Plaintiff,

Adversary Proceeding

No.: 19-ap-02021

v.

The Continental Insurance Company, Certain Underwriters at Lloyd's, London, Certain London Market Companies, The Dominion Insurance Company Limited, Stronghold Insurance Company Limited, CX Reinsurance Company Limited, Markel International Insurance Company Limited, Tenecom Limited, National Surety Corporation, Interstate Fire & Casualty Company, Colonial Penn Insurance Company, and HDI Global Specialty SE,

Defendants.

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**DECLARATION OF JAMES R. MURRAY**

I, James R. Murray, declare as follows:

1. I am a partner at the law firm Blank Rome LLP, which is Special Insurance Counsel to The Diocese of Rochester ("Diocese") in this case. This Declaration is filed in support of its motion for entry of an order approving the Settlement Agreement and Release (the "Agreement") between the Diocese and Certain Underwriters at Lloyd's, London and Certain London Market Companies (collectively, "LMI") and Interstate Fire & Casualty Company and National Surety Corporation (collectively, "Interstate"). *See* Motion [ECF No. 99], *Diocese of*

*Rochester v. Cont'l Ins. Co. (In re Diocese of Rochester)*, Adversary Proceeding No.: 19-ap-02021 (Bankr. W.D.N.Y.). As detailed in the Agreement, LMI and Interstate (collectively, “LMI/Interstate Insurers”) will make an aggregate settlement payment in the amount of \$35 million for the benefit of abuse survivors. In addition, the Agreement includes, among other things, the “buy back” by LMI and Interstate (collectively, “LMI/Interstate Insurers”) of insurance policies that cover the Diocese free and clear of interests. This “buy back” and settlement, including the amount of payment, is contingent on successful confirmation of a plan of reorganization.

2. The United States Bankruptcy Court for the Western District of New York (the “Bankruptcy Court”) appointed Blank Rome LLP as Special Insurance Counsel for the Diocese by Order dated November 27, 2019. *See* Order [ECF No. 300], *In re Diocese of Rochester*, Case No.: 19-20905 (Bankr. W.D.N.Y.). I have been personally and directly involved with the insurance coverage litigation and the negotiations that led to the settlement that the Agreement memorializes.

3. On September 12, 2019, the Diocese filed for Chapter 11 bankruptcy. Approximately 475 individuals filed proofs of claims in the bankruptcy, asserting that they were sexually abused by priests and, among other claims, the Diocese was negligent in supervising these priests. The Diocese tendered certain proofs of claims to LMI and/or Interstate (the “Claims”).

4. In the bankruptcy proceedings, the Diocese initiated an adversary action on November 14, 2019 against the LMI/Interstate Insurers and certain other insurance companies that either sold or are responsible for general liability insurance policies that the Diocese contended covered the Claims.

5. The LMI/Interstate Insurers contend, for a variety of reasons, some of which are set forth below, that they owe little or no insurance coverage in connection with the Claims. The Diocese disagrees with the LMI/Interstate Insurers' positions, but given the time and financial resources it would take for the parties to litigate the insurance coverage issues to completion, the risks of litigation, and the potential for appeals to further delay recoveries to the estate, it is in the Diocese's best interest to reach a consensual resolution of the disputes regarding the availability of insurance coverage for the Claims.

6. Over the past eighteen months, the Diocese and the LMI/Interstate Insurers have engaged in extensive mediation activities regarding the coverage available for the Claims.

7. The Diocese contended that LMI was responsible for certain primary and excess general liability insurance policies with policy periods from June 1, 1977 to July 1, 1988. The Diocese also contended that Interstate was responsible for certain excess policies with policy periods from September 1, 1978 to July 1, 1986. The Diocese tendered 166 claims to LMI and 143 claims to Interstate.

8. The Diocese contended that the foregoing policies provided coverage for those Claims implicating the LMI/Interstate Insurers' policy periods. For example, the Diocese contended that (1) each act of abuse triggered a separate per occurrence limit, (2) the per occurrence limits were annualized, and (3) the self insured retentions ("SIRs") are subject to aggregate limits. Moreover, the Diocese contended that no exclusions or other limitations in the policies applied to preclude coverage.

9. The LMI/Interstate Insurers acknowledged the relevant policies, but nevertheless asserted numerous coverage defenses. For example, the LMI/Interstate Insurers argued that the Diocese was responsible for paying an SIR with respect to each occurrence. As the SIR is

\$75,000 each occurrence during the periods from June 1, 1977 to July 1, 1986, the LMI/Interstate Insurers therefore contended that the Diocese would potentially have to pay tens of millions of dollars to satisfy the SIRs. LMI also asserted that certain policies with policy periods from July 1, 1986 to July 1, 1988 provided claims made coverage and would not be implicated because the claims at issue were not made during those periods. LMI also contended that those policies contained sexual misconduct exclusions. In addition, LMI contended that their liability is reduced because their subscription to certain policies is only 80% or 90%, and some insurers that subscribed to the LMI policies are insolvent. The LMI/Interstate Insurers also disputed whether certain Claims alleged abuse during their policy periods and that a significant number of Claims in their periods were of low or no value or filed after the proof of claim deadline.

10. The LMI/Interstate Insurers also contended that coverage for certain Claims was barred in whole or in part by certain terms, conditions, limitations, and exclusions under some or all the policies. For instance, the LMI/Interstate Insurers asserted that the Diocese had the burden of proving, among other things, that the abuse was caused by an “occurrence” under the policies. According to the LMI/Interstate Insurers, certain Claims alleged injuries that were not caused by an “occurrence” to the extent the Diocese might have been aware of the alleged perpetrator’s propensity for or history of molesting children prior to or during the alleged abuse, and failed to take appropriate action in response. The Diocese disputed the LMI/Interstate Insurers’ contentions. Nonetheless, if the LMI/Interstate Insurers’ contentions were upheld, there could be a reduction in any recovery by the Diocese, consequently limiting any recovery by the claimants.

11. The settlement between the Diocese and the LMI/Interstate Insurers benefits the claimants. If no settlement had been reached with the LMI/Interstate Insurers and litigation

ensued, the Diocese faced a risk that the Bankruptcy Court would ultimately rule against the Diocese on one or more of the disputed issues, any one of which could limit coverage. Even if the Bankruptcy Court ruled in the Diocese's favor on one or more of the issues, the Diocese would likely have had to go to trial to resolve disputed factual issues, such as whether the Claims alleged abuse that was sufficiently accidental from the perspective of the Diocese to constitute an "occurrence" covered by the policies. At trial, the LMI/Interstate Insurers may have attempted to take the position that no "occurrence" existed and thus the Diocese was not entitled to any coverage, by contending that, among other things, the Diocese was allegedly aware that priests sexually abused minors, allowed abusers to return from treatment to their parishes without informing the parishioners, and did not supervise or have any policies or procedures regarding the supervision of priests.

12. The trial would likely have been followed by post-trial motions and appeals. On appeal, the District Court could have reversed any rulings by the Bankruptcy Court in favor of the Diocese. In addition to prolonging the final determination of the coverage issues possibly for years, with no certainty that the Diocese would prevail, the Diocese would continue to incur costs throughout the process, which would erode the value of the Diocese's estate and the resources available from the Diocese's estate to pay the Claims. Meanwhile, the LMI/Interstate Insurers' ability to pay claims could decrease over time if, for example, additional insurers that subscribe to the LMI policies become insolvent.

13. In light of (1) the costs to the Diocese's estate to litigate its coverage claims against the LMI/Interstate Insurers, (2) the time it will take to obtain a final determination of the Diocese's rights and claims under the insurance policies, (3) the risk that the Diocese may not prevail in litigation of the issues, (4) the likelihood that the losing party would appeal any

judgment, thus delaying ultimate resolution of the dispute potentially for years, and (5) the desire to obtain the maximum value promptly from the LMI/Interstate Insurers under the policies to use toward the resolution of Claims, the Diocese determined that it is in the best interest of its estate and its creditors to reach a negotiated resolution of the dispute between the Diocese and the LMI/Interstate Insurers.

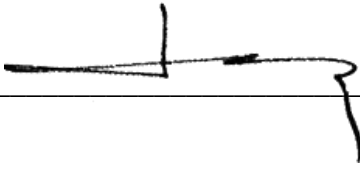
14. In addition to the settlement amount from the LMI/Interstate Insurers, other insurers are implicated by proofs of claims. For example, the Diocese purchased policies for which CNA is responsible. The Diocese contends that the number of proofs of claims that implicate the CNA policies is more than twice the number of claims that implicate the LMI/Interstate Insurers' policies. The \$35 million settlement amount from the LMI/Interstate Insurers will likely be part of a larger pot of insurance funds available to compensate survivors.

15. Given the above factors, including the risks of litigation and the interests of the creditors, I believe that the settlement of \$35 million is within the range of reasonableness and should be approved by the Court.

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

Dated: June 18, 2021

By:



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