

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

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In re:

Case No. 2-19-20905-PRW

THE DIOCESE OF ROCHESTER,

Chapter 11 Case

Debtor.

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**NOTICE OF CONTINENTAL'S MOTION UNDER BANKRUPTCY  
RULE 2004 FOR DISCLOSURE OF CLAIMANT COUNSEL'S  
LITIGATION FINANCING ARRANGEMENTS**

**PLEASE TAKE NOTICE**, that on February 21, 2023, The Continental Insurance Company, successor by merger to Commercial Insurance Company of Newark, New Jersey and Firemen's Insurance Company of Newark, New Jersey ("Continental"), filed a motion under Bankruptcy Rule 2004 for disclosure of claimant counsel's litigation financing arrangements (the "Motion").

**PLEASE TAKE FURTHER NOTICE**, that the Motion will be heard **March 16, 2023 at 11:00 a.m., prevailing Eastern Time**, or as soon thereafter as counsel may be heard, before the Honorable Paul R. Warren, United States Bankruptcy Judge for the Western District of New York.

**PLEASE TAKE FURTHER NOTICE**, that all affidavits and memoranda in opposition to the Motion must be electronically filed with the Court and served upon the counsel listed below, **not less than 72 hours prior to the hearing date and time.**

**PLEASE TAKE FURTHER NOTICE**, that the hearing may be adjourned from time to time without notice to any creditor or other party-in-interest other than by announcement of the adjourned date in open Court on the date of the hearing or any adjourned date thereof.

**PLEASE TAKE FURTHER NOTICE**, that complete copies of the Motion are available from the Clerk of the United States Bankruptcy Court, 100 State Street, Rochester, New York 14614, via Pacer, <http://pacer.psc.uscourts.gov>, or from Barclay Damon LLP.

Dated: February 21, 2023

Respectfully submitted,

By:           /s/Jeffrey A. Dove            
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**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK**

In re:

DIOCESE OF ROCHESTER,

Debtors.

Chapter 11

Case No. 19-20905

**CONTINENTAL'S MOTION UNDER BANKRUPTCY RULE 2004 FOR  
DISCLOSURE OF CLAIMANT COUNSEL'S LITIGATION FINANCING  
ARRANGEMENTS**

The Continental Insurance Company hereby moves the Court for entry of an order, pursuant to Bankruptcy Rule 2004, authorizing Continental to serve document and deposition subpoenas on the law firms (“State Court Counsel”) representing claimants on the Official Committee of Unsecured Creditors (the “Committee”) seeking disclosure of information about any financing arrangements State Court Counsel have with third parties that are secured, in whole or in part, by the firms’ contingency fees on sexual abuse claims against the Debtor. The document subpoenas that Continental seeks authorization to serve are attached as Exhibits A and B.

**Jurisdiction and Venue**

This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408. The predicates for the relief requested herein are Bankruptcy Rule 2004 and § 105 of the Bankruptcy Code.

## Relevant background

The Committee in this case consists of nine individuals who have asserted sexual abuse claims against Debtor. Each Committee member “is and has at all times since the Petition Date been represented in their individual capacity as a Sexual Abuse Claimant by one or more experienced personal injury litigation specialist attorneys (‘State Court Counsel’).”<sup>1</sup> The six State Court Counsel firms are: Jeff Anderson & Associates, P.A. (the “Anderson firm”); Andreozzi & Foote, P.C.; the Law Offices of Mitchell Garabedian; James, Vernon & Weeks, P.A.; Pfau Cochran Vertetis Amala PLLC; and Phillips & Paolicelli, LLP. Debtor asserts that “State Court Counsel who represent Committee Members also collectively represent at least seventy percent (70%) of all Sexual Abuse Claims asserted against the Diocese in its bankruptcy case.”<sup>2</sup>

On information and belief, at least one of the State Court Counsel, the Anderson firm, has entered into a financing arrangement with a third party that is secured by contingency fees the Anderson firm collects on amounts recovered for its clients in connection with their sexual abuse claims in this case. The basis for this assertion is UCC Financing Statement No. 123348900042, dated April 30, 2021 (as amended on December 7, 2021) (the “Anderson UCC”), on which “Jeff Anderson & Associates, P.A.” is named as the debtor.<sup>3</sup>

The Anderson UCC defines the collateral for the secured loan as “All of the Debtor’s right, title and interest in the Net Proceeds . . . received or to be received in connection with certain lawsuits against the Church,” and refers to “that certain Loan and Security Agreement, dated as of November 30, 2020, by and among the Secured Party and the [Anderson

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<sup>1</sup> Dkt. No. 1790 (the “RSA Motion”) at 1 n.2.

<sup>2</sup> *Id.*

<sup>3</sup> The April 30, 2021 UCC Financing Statement and December 7, 2021 UCC Financing Statement Amendment are attached as Exhibits C and D, respectively.

firm] . . . as amended as of December 3, 2021, and as may be further amended.” “Net Proceeds” is defined in the Anderson UCC to mean “all amounts . . . payable to the [Anderson firm] by a Claim Owner . . . under or in connection with any Retention Agreement or otherwise in connection with any Claim.” A “Claim Owner” is a client of the Anderson firm who is asserting a sexual abuse claim, and a “Claim” means “meritorious lawsuits, bankruptcy claims and other bankruptcy proceedings, or other legal proceedings by Claim Owners against the Church.” The Anderson UCC defines “Church” as “the Catholic Church, any dioceses and archdioceses thereof, and any entities affiliated therewith,” which would include the Diocese of Rochester. Finally, a “Retention Agreement” is an engagement agreement between the Anderson firm and a Claim Owner “whereby the [Anderson firm] will conduct legal proceedings in relation to such Claims on behalf of such Claim Owner in return for a share of 30%-40% in any recovery in such proceedings.” The Secured Party is identified as Kensal Green LLC.<sup>4</sup>

### **Relief requested**

Continental seeks entry of an order pursuant to Bankruptcy Rule 2004 authorizing it to serve document and deposition subpoenas on State Court Counsel, including the forms of document subpoenas attached as Exhibits A and B and follow-up deposition subpoenas.

### **Argument**

It is critical for the Court and the parties to know whether the State Court Counsel, who purportedly represent at least 70% of the sexual abuse claimants, have “silent partners” with the express or implied ability to influence, and perhaps control,

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<sup>4</sup> Internet searches for the secured lender, Kensal Green LLC, failed to turn up any information about the company, its owners, its affiliates, its officers, its directors, or its staff.

recommendations being made to claimants concerning settlement of their claims and how they should vote on any plan of reorganization.

Such information arguably must be disclosed by State Court Counsel under Bankruptcy Rule 2019, which promotes transparency and openness in Chapter 11 cases. To forestall any arguments about whether disclosure of litigation financing arrangements are, or are not, within the scope of required disclosures under Rule 2019, Continental is seeking authorization under Rule 2004 to serve each of the State Court Counsel with document subpoenas requiring production of such information. Continental also requests authority to serve document subpoenas on the State Court Counsel, once they produce documents in response to the document subpoenas, to authenticate the produced documents, ask questions about the adequacy of their searches, and ask other questions related to the documents produced and the underlying litigation finance arrangements.<sup>5</sup>

Continental's requested relief is narrowly tailored to reveal any economic interests beyond those disclosed to date, so that the motivations and incentives of key players in this bankruptcy case are out in the open.

**A. Rule 2004 is deliberately broad and authorizes discovery in the nature of a legal fishing expedition.**

Under Rule 2004(b), a party in interest may seek both document discovery and deposition testimony related to “any matter which may affect the administration of the debtor’s estate.” Clearly, knowing (i) the identities of the heretofore undisclosed persons or entities financing State Court Counsel’s pursuit of claims against Debtor and (ii) the terms of any such financing, are matters that may affect the administration of Debtor’s estate. Knowing the

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<sup>5</sup> Continental also reserves the right to seek authorization, under Rule 2004, to serve document and deposition subpoenas on the litigation financiers themselves.

financers' identities and understanding their rights and State Court Counsels' obligations, including any limitations on State Court Counsels' ability to freely advise their clients, is essential for transparency. The Court and all interested parties have a right to know whether State Court Counsels' ability to give unvarnished advice to their clients is affected, in any way, by any contractual obligations or understandings State Court Counsel have with those financing their legal practices and pursuit of their clients' claims.

Rule 2004 discovery was designed for just such a purpose. "Rule 2004 discovery is broader than discovery under the Federal Rules of Civil Procedure. . . . It can be legitimately compared to a fishing expedition."<sup>6</sup> "The scope of such an examination is quite broad, relating to just about anything that deals with the debtor's actions, assets, liabilities or financial affairs, its right to a discharge, or any matter affecting the administration of the bankruptcy estate."<sup>7</sup> Such discovery may be conducted by any party in interest to the bankruptcy, and may properly be directed to parties other than the debtor.<sup>8</sup>

**B. The mediation order remains in effect and resolution of this case depends on understanding the interests and incentives of all involved parties.**

The goal of Chapter 11 is to promote "reorganization plans which deal fairly with

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<sup>6</sup> *In re Drexel Burnham Lambert Grp., Inc.*, 123 B.R. 702, 711 (Bankr. S.D.N.Y. 1991). See also *In re Washington Mut., Inc.*, 408 B.R. 45, 50 (Bankr. D. Del. 2009) ("A Rule 2004 examination is commonly recognized as more in the nature of a fishing expedition"); *In re Coffee Cupboard, Inc.*, 128 B.R. 509, 514 (Bankr. E.D.N.Y. 1991) ("The scope of a Rule 2004 examination is very broad and can be in the nature of a fishing expedition").

<sup>7</sup> *In re Sheetz*, 452 B.R. 746, 748 (Bankr. N.D. Ind. 2011).

<sup>8</sup> *In re Coffee Cupboard*, 128 B.R. at 514 (examinations under Rule 2004 may be conducted by any party in interest, not just the trustee); *In re Ionosphere Clubs, Inc.*, 156 B.R. 414, 432, (Bankr. S.D.N.Y. 1993), aff'd, 17 F.3d 600 (2d Cir. 1994) (because the purpose of Rule 2004 is to further discovery pertaining to Debtor's assets, "any third party who can be shown to have a relationship with the debtor can be made subject to a Rule 2004 investigation").

creditors and which are arrived at openly.”<sup>9</sup> An understanding of the economic incentives of all relevant participants in the case, including State Court Counsel who represent all of the members of the Committee and “at least” 70% of the sexual abuse claimants, is critical to an evaluation of any proposed plan.

Outside financing by third parties can distort the incentives of parties to a litigation. A recent GAO report articulates concerns with third-party litigation funding that may be relevant here, including that litigation financing may deter settlement and increase the duration and cost of litigation.<sup>10</sup> Because third-party litigation funding is expensive, the funded entity “may seek extra money to make up the amount that has to be repaid.”<sup>11</sup> In this case, the State Court Counsel are, on information and belief, the funded entities who, per the GAO Report, may be seeking “extra money” to repay their litigation financiers. The State Court Counsel have considerable influence over their clients. Transparency with respect to the incentives that may be driving the law firms is needed. The proposed discovery sought by this motion would promote the required transparency.

The Anderson firm, for example, signed all of the proofs of claim filed by its 178 clients in this case, suggesting a very high degree of influence. It appears that the Anderson firm’s pursuit of these claims is being financed by a mysterious company with no presence on the internet. While the UCC financing statement filed by its financier, Kensal Green LLC, can be retrieved from public records, the loan agreement and other documents that define the

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<sup>9</sup> *Baron & Budd, P.C. v. Unsecured Asbestos Claimants Comm.*, 321 B.R. 147, 165 (D.N.J. 2005), quoting 9 COLLIER ON BANKRUPTCY ¶ 2019.01).

<sup>10</sup> Third-Party Litigation Financing, U.S. Government Accountability Office Report to Congressional Requesters (Dec. 2022) (the “GAO Report”) at 20-21.

<sup>11</sup> *Id.* at 20.



Anderson firm's obligations to its lender, including any restrictions imposed by the lender on the Anderson firm, are not publicly available. Thus, the interests of transparency can only be served if the discovery sought by this Motion is authorized.

Litigation financing arrangements also raise reasonable concerns about conflicts. The GAO Report warned that third-party funding "may lead to conflicts of interest between attorneys and their clients (for example, if the lawyer were to put the funder's interest ahead of the plaintiff's)."<sup>12</sup> This case already presents the situation of multiple claimants represented by the same counsel, vying for what could be a limited settlement fund. Now it appears that at least some of the lawyers may be subject to undisclosed arrangements with third parties, heightening any conflict concerns. All potential for conflict, including incentives created by third-party funding arrangements, must be disclosed in the interests of transparency.

Finally, there is the issue of control over key decisions. The GAO Report observes "that a funder paying for the litigation may exert control over the case (such as influencing decisions about litigation strategy or whether to settle)."<sup>13</sup> Disclosure of the information sought by Continental's proposed Rule 2004 discovery will permit vetting of the degree of any funders' influence over, or interference with, the "independence and professional judgment" of State Court Counsel.<sup>14</sup> Here, a full airing of all financial arrangements, especially those that may give unknown third parties the right to be consulted about, and the ability to

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<sup>12</sup> *Id.* at 21.

<sup>13</sup> *Id.* at 21. *See also In re Gancker Media LLC*, 2017 WL 2804870, at \*7 (Bankr. S.D.N.Y. June 28, 2017) (concluding that good cause was shown for discovery into litigation financing agreements).

<sup>14</sup> *Cobra Int'l, Inc. v. BCNY Int'l, Inc.*, 2013 WL 11311345, at \*2-3 (S.D. Fla. Nov. 4, 2013). *See also Boling v. Prospect Funding Holdings, LLC*, 771 F. App'x 562, 579-80 (6th Cir. Apr. 25, 2019) (describing agreements that "effectively give [the litigation funders] substantial control over the litigation" and noting that "these kinds of conditions raise quite reasonable concerns about whether a plaintiff can truly operate independently in litigation").

influence or control decisions about, claimants' sexual abuse claims in this bankruptcy, will reveal otherwise unknown impediments to a consensual plan and, ultimately, facilitate resolution in this case.

**C. Disclosure of economic interests vindicates the purpose of Rule 2019.**

The purpose of Rule 2019 is to hold lawyers involved in Chapter 11 bankruptcies “to certain ethical standards and approach all reorganization related matters openly and subject to the scrutiny of the court.”<sup>15</sup> The intent behind Rule 2019 should apply with full force to third-party litigation financing. After all, as the advisory committee notes reveal, Rule 2019 is “intended to be sufficiently broad to cover any economic interest that could affect the legal and strategic positions a stakeholder takes in a chapter 9 or chapter 11 case.”<sup>16</sup> Third-party litigation funders are not subject to Rule 2019, but disclosure of their arrangements is consistent with, and crucial to, carrying out the purpose and intent of Rule 2019.

**D. Ethical rules limit permissible funding arrangements between funder and law firm.**

Disclosure of State Court Counsels' litigation funding arrangements is also necessary for the Court and the parties to understand whether the lawyers are in compliance with New York's professional ethics rules, which bar certain litigation funding arrangements.

The New York Bar Association Committee on Professional Ethics has explained that lawyers ethically may finance their practices only with certain types of loans. For example, the long-standing rule against fee-sharing “does not forbid a traditional recourse loan requiring the lawyer to repay the loan at a fixed rate of interest without regard to the outcome of, or the

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<sup>15</sup> *Baron & Budd*, 321 B.R. at 165 (citations omitted).

<sup>16</sup> Fed. R. Bankr. P. 2019, Committee Notes on Rules—2011 Amendment.

lawyer's receipt of a fee in, any particular lawsuit . . . regardless of whether the loan is or is not secured by some kind of collateral."<sup>17</sup> However,

the fee-sharing rule forbids two alternative arrangements – first, where an entity's funding is not secured other than by the lawyer's fee in one or more lawsuits, so that it is implicit that the lawyer will pay the funder only if the lawyer receives legal fees in the matter or matters; and second, where a lawyer and funder agree, whether in a recourse or non-recourse arrangement, that instead of a fixed amount or fixed rate of interest, the amount of the lawyer's payment will depend on the amount of the lawyer's fees – for example, where the agreement sets a payment rate on a sliding scale based on the total legal fees or total recovery in the case or portfolio of cases.<sup>18</sup>

Without the disclosure sought here, it is unknown whether State Court Counsel entered into financing arrangements that raise ethical concerns. But the Court and the parties have a right to know that information.

### Conclusion

For the reasons stated above, and in the interests of transparency and openness sought to be promoted by Bankruptcy Rule 2019, Continental respectfully requests that the Court enter an order pursuant to Bankruptcy Rule 2004 authorizing it to serve (i) the Anderson firm with the document subpoena attached as Exhibit A, (ii) the other State Court Counsel with the document subpoena attached as Exhibit B, and (iii) once documents are produced, follow-up deposition subpoenas to examine State Court Counsel about their litigation funding arrangements. A proposed form of order is submitted herewith.

DATED: February 21, 2023

Respectfully submitted,

By: /s/ Jeffrey A. Dove  
Jeffrey A. Dove

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<sup>17</sup> Ass'n of the Bar of the City of New York Committee on Professional Ethics, Formal Op. 2018-5 (2018) at 2.

<sup>18</sup> *Id.*

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907012019.1

**EXHIBIT A**

# UNITED STATES BANKRUPTCY COURT

Northern District of New York

In re DIOCESE OF ROCHESTER

Debtor

Case No. Case No. 19-20905

(Complete if issued in an adversary proceeding)

Chapter 11

Plaintiff

v.

Adv. Proc. No. \_\_\_\_\_

Defendant

## SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)

To: Jeff Anderson & Associates, P.A.

(Name of person to whom the subpoena is directed)

**Production: YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Attachment A

PLACE <u>Barclay Damon LLP, 2000 Five Star Bank Plaza, 100 Chestnut Street, Rochester, NY 14604</u>	DATE AND TIME
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**Inspection of Premises: YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

PLACE	DATE AND TIME
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The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: \_\_\_\_\_

CLERK OF COURT

OR

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

\_\_\_\_\_  
*Attorney's signature*

The name, address, email address, and telephone number of the attorney representing (*name of party*) The Continental Insurance Company, who issues or requests this subpoena, are:

Jeffrey A. Dove, Esq., Barclay Damon LLP, Barclay Damon Tower, 125 East Jefferson Street, Syracuse, New York 13202, jdove@barclaydamon.com, 315.413.7112

### Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

**PROOF OF SERVICE**

**(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)**

I received this subpoena for *(name of individual and title, if any)*: \_\_\_\_\_  
on *(date)* \_\_\_\_\_ .

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ \_\_\_\_\_ .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ .

I declare under penalty of perjury that this information is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information concerning attempted service, etc.:

**Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)**  
**(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)**

**(c) Place of compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises, at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

...  
**(g) Contempt.** The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.



## ATTACHMENT A

### Definitions

1. “Anderson firm” means the law firm of Jeff Anderson & Associates, P.A.
2. “Attorney” means the lawyer or lawyers identified in Part 2.b of the Sexual Abuse Proof of Claim (page 5 of the Claim Form) as the Claimant’s attorney.
3. “Chapter 11 Case” means the above-captioned Chapter 11 case.
4. “Claim Form” means the Sexual Abuse Proof of Claim submitted by You on behalf of Your clients in these Chapter 11 Cases.
5. “Communication” means the transmittal of information (in the form of facts, ideas, beliefs, inquiries, documents, or otherwise), including discussions, negotiations, agreements, understandings, meetings, in-person conversations, telephone conversations, records or conversations or messages, telegrams, facsimile transmissions, electronic mail transmission, letters, notes, reports, memos, formal statements, press releases, newspaper stories, or any other form of verbal, written, mechanical, or electronic disclosure. References to Communications with business entities shall be deemed to include all officers, directors, employees, personnel, agents, attorneys, accountants, consultations, independent contractors, or other representatives of such entities.
6. “Continental” means The Continental Insurance Company.
7. “Debtor” means the Diocese of Rochester and each of its attorneys.
8. “Documents” means any writings, recordings, electronic files and mails, or photographs, whether original or duplicate, as defined in Federal Rule of Evidence 1001 and Federal Rule of Civil Procedure 34(a), inclusively, including all documents and information in your possession, custody, or control, and includes: all and any written, recorded, or graphic

material, however produced or reproduced; minutes; summaries; memos; transcripts; tapes or other voice recordings; and all other documents and tangible things, including booklets, brochures, pamphlets, circulars, notices, periodicals, papers, records, contracts, agreements, photographs, minutes, memos, messages, appraisals, analyses, reports, files, interoffice memos, or interoffice communications of any description, calculations, invoices, accounting entries, diary entries, calendars, ledgers, correspondence, emails, phone recordings, instant messages, text messages, telegrams, advertisements, press releases, notes, letters, diaries, working papers, schedules, projections, graphs, charts, films, tapes, print-outs, and all other data, whether recorded by electronic or other means, and all drafts thereof. If a Document was prepared in several copies, or if additional copies were later made, and if any such copies are not identical in all respects or are no longer identical because of subsequent notations or modifications of any kind whatsoever, including notes on the front or back, in the margins, or on any of the pages thereof, then each such non-identical copy is a separate Document and must be produced.

9. “Employee” means a person tasked to perform work by You or at Your direction, including employees, contractors, interns, agents, and volunteers.

10. “Firm” means the law firm with which each Attorney is affiliated, and all other attorneys affiliated with that law firm.

11. “Litigation Funding Agreement” means any agreement, other than the Loan and Security Agreement, pursuant to which You has (i) received a loan, financing, capital advance, or other monetary contribution from a third party or (ii) granted a security interest of any kind to such third party, Relating in any way to any abuse-related claim You have pursued, is pursuing, or may pursue on behalf of a client or clients against Debtor or Debtor’s affiliates.

12. “Loan and Security Agreement” means the Loan and Security Agreement dated as of November 30, 2020 by and among Kensal Green LLC and the Anderson firm.
13. “Person” means an individual, a firm, a corporation, or other entity, as the context requires.
14. “Relating to” means consisting of, reflecting, referring to, regarding, concerning, involving, evidencing, constituting, or having any legal, logical, evidential, or factual connection with (whether to support or to rebut) the subject matter designated in any paragraph of this request. A request for documents “relating to” a specified subject matter always shall include notes and memos (whenever prepared) relating to the subject matter of the request.
15. “Requests” means the Requests for Production of Documents set forth below.
16. “Stretto” means the debtors’ administrative agent in the Chapter 11 Case.
17. “You” or “Your” means the person on whom this discovery is served.

### **Instructions**

For the purposes of this subpoena, these Instructions shall apply:

1. The preceding Definitions apply to each of the Requests.
2. The terms used in these Requests are to be given their most expansive and inclusive interpretation unless otherwise expressly limited in a Request. The terms “all,” “any,” and “each” shall each be construed as encompassing any, all, each, and every. The singular form of a word shall include the plural and vice versa. The terms “and” or “or” shall be both conjunctive and disjunctive. The term “including” means “including without limitation.” The present tense shall be construed to include the past tense, and the past tense shall be construed to include the present tense.

3. These Requests shall be deemed to be continuing in nature. If you become aware of or acquire additional information relating or referring to any of these Requests, such additional information is to be promptly produced.

4. You are required to produce all Documents and all other materials described below in your actual or constructive possession, custody, or control, including in the possession, custody, or control of current or former employees, officers, directors, agents, agents' representatives, consultants, contractors, vendors, or any fiduciary or other third parties, wherever those Documents and materials are maintained, including on personal computers, mobile phones, wireless devices, or web-based email systems such as Gmail, Yahoo, etc.

5. You must produce all Documents in your possession, custody, or control, whether maintained in electronic or paper form and whether located on hardware owned and maintained by You or hardware owned and/or maintained by a third party that stores data on Your behalf.

6. Documents not otherwise responsive to these Requests should be produced: (a) if such Documents mention, discuss, refer to, explain, or concern one or more Documents called for by these Requests; (b) if such Documents are attached to, enclosed with, or accompany Documents called for by these Requests; or (c) if such Documents constitute routing slips, transmittal memos or letters, comments, evaluations, or similar materials.

7. Documents should include all exhibits, appendices, linked Documents, or otherwise appended Documents referenced in, attached to, included with, or part of the requested Documents.

8. If any Document, or any part thereof, is not produced based on a claim of attorney-client privilege, work-product protection, mediation privilege, or any other claimed

privilege or exemption from production, then in answer to such Request or part thereof, for each such Document, you must:

- a. Identify the type, title, and subject matter of the Document;
  - b. State the place, date, and manner of preparation of the Document;
  - c. Identify all authors, addressees, and recipients of the Document, including information about such persons to assess the privilege asserted; and
  - d. Identify the legal privilege(s) and the factual basis for the claim.
9. Documents should not contain redactions unless they are made to protect information subject to the attorney-client privilege, work-product doctrine, or mediation privilege. If any Documents are produced with redactions, a log setting forth the information requested in Instruction 8 above must be provided.
10. If a Document sought below was at one time, but is no longer, in Your actual or constructive possession, custody, or control, state whether it: (a) is missing or lost; (b) has been destroyed; (c) has been transferred to others; and/or (d) has been otherwise disposed of. In each instance, identify the Document, state when it was maintained, state the circumstance and date surrounding authorization for such disposition, identify each person with knowledge of the circumstances of the disposition, and identify each person with possession, custody, or control of the Document. Documents prepared prior to, but which relate or refer to, the period covered by these Requests are to be identified and produced.
11. If any part of the Requests cannot be responded to in full, please respond to the extent possible, specifying the reason(s) for your inability to respond to the remainder and stating whatever information or knowledge you have about the portion to which you do not respond.

12. If You object to any of these Requests, state in writing with specificity the grounds of Your objection(s). Any ground not stated shall be waived. If you object to a particular portion of any Request, you shall respond to any other portions of such Request as to which there is no objection and state with specificity the grounds of the objection.

13. If the identity of Documents responding to a Request is not known, then that lack of knowledge must be specifically indicated in the response. If any information requested is not in Your possession, but is known or believed to be in the possession of another person or entity, then identify that person or entity and state the basis of Your belief or knowledge that the requested information is in such person's or entity's possession.

#### **Manner of Production**

1. All Documents produced in response to this Subpoena shall be provided in either native file ("native") or single-page 300 dpi-resolution group IV TIF format ("tiff") format as specified below, along with appropriately formatted industry-standard database load files and accompanied by true and correct copies or representations of unaltered attendant metadata. When Documents are produced in tiff format, each Document shall be produced along with a multi-page, Document-level searchable text file ("searchable text") as rendered by an industry-standard text extraction program in the case of electronic originals, or by an industry-standard Optical Character Recognition ("OCR") program in the case of scanned paper Documents. Searchable text of Documents shall not be produced as fielded data within the ".dat file" as described below.

2. Database Load Files and Production Media Structure: Database load files shall consist of: (i) a comma-delimited values (".dat") file containing: production Document identifier information, data designed to preserve "parent and child" relationships within

Document “families,” reasonably accessible and properly preserved metadata (or bibliographic coding in the case of paper Documents), custodian or Document source information; and (ii) an Opticon (“:opt”) file to facilitate the loading of tiff images. Load files should be provided in a root-level folder named “Data,” images shall be provided within a root level “Images” folder containing reasonably structured subfolders, and searchable text files shall be provided in a single root-level “Text” folder.

3. Electronic Documents and Data, Generally: Documents and other responsive data or materials created, stored, or displayed on electronic or electro-magnetic media shall be produced in the order in which the Documents are or were stored in the ordinary course of business, including all reasonably accessible metadata, custodian, or Document source information, and searchable text to allow Continental, through a reasonable and modest effort, to fairly, accurately, and completely access, search, display, comprehend, and assess the Documents’ true and original content.

4. Emails and Attachments, and Other Email Account-Related Documents: All Documents and accompanying metadata created and/or stored in the ordinary course of business within commercial, off-the-shelf email systems including, but not limited to, Microsoft Exchange, Lotus Notes, or Novell Groupwise shall be produced in tiff format, accompanying metadata, and searchable text files or, alternately, in a format that fairly, accurately, and completely represents each Document to make the Document(s) reasonably useable, manageable, and comprehensible by Continental.

5. Documents and Data Created or Stored in or by Structured Electronic Databases: With the exclusion of email and email account-related Documents and data, all Documents and accompanying metadata created and/or stored in structured electronic

databases or files shall be produced in a format that enables Continental to reasonably manage and import those Documents into a useable, coherent database. Documents must include reasonably detailed documentation explaining the Documents' content and format, including, but not limited to, data dictionaries and diagrams. Some acceptable formats, only if provided with definitive file(s), table(s), and field level schemas include:

- a. XML format file(s);
- b. Microsoft SQL database(s);
- c. Access database(s); and/or
- d. fixed or variable length ASCII delimited files.

6. Spreadsheets, Multimedia, and Non-Standard File Types: All Documents generated or stored in software such as Microsoft Excel or other commercially available spreadsheet programs, as well as any multimedia files, such as audio or video, shall be produced in their native format, along with an accompanying placeholder image in tiff format indicating a native file has been produced. A "Nativelink" entry shall be included in the .dat load file indicating the relative file path to each native file on the production media. If You have other file types that do not readily or easily and accurately convert to tiff and searchable text, You may elect to produce those files in native format subject to the other requirements listed herein. Native files may be produced within a separate root-level folder structure on deliverable media entitled "Natives."

7. "Other" Electronic Documents: All other Documents and accompanying metadata and embedded data created or stored in unstructured files generated by commercially available software systems (excluding emails, structured electronic databases, spreadsheets, or multimedia) such as but not limited to, word processing files (such as Microsoft Word), image



files (such as Adobe .pdf files and other formats), and text files shall be produced in tiff and searchable text format in the order the files are or were stored in the ordinary course of business.

8. Paper Documents: Documents originally created or stored on paper shall be produced in tiff format. Relationships between Documents shall be identified within the Relativity .dat file utilizing document identifier numbers to express parent Document/child attachment boundaries, folder boundaries, and other groupings. In addition, the searchable text of each Document shall be provided as a multi-page text file as provided for by these Requests for Production.

### **Requests for Production of Documents**

#### **REQUEST NO. 1:**

The Loan and Security Agreement.

#### **REQUEST NO. 2:**

The amendment to the Loan and Security Agreement dated December 3, 2021.

#### **REQUEST NO. 3:**

Any other amendments to the Loan and Security Agreement.

#### **REQUEST NO. 4:**

Any other agreements between Kensal Green LLC and You Relating, in any way, to the provision of financing or loans by Kensal Green LLC to You, including the Loan and Security Agreement, as amended.

#### **REQUEST NO. 5:**

All correspondence or other Documents exchanged between Kensal Green LLC and You Relating, in any way, to the provision of financing or loans by Kensal Green LLC to You,

including the Loan and Security Agreement, as amended.

**REQUEST NO. 6:**

All correspondence or other Documents exchanged between Kensal Green LLC and any other person Relating, in any way, to the provision of financing or loans by Kensal Green LLC to any other person.

**REQUEST NO. 7:**

All Litigation Funding Agreements to which You are or were a party.

**REQUEST NO. 8:**

Documents sufficient to identify the name and address of all parties to the Loan and Security Agreement and each Litigation Funding Agreement.

**REQUEST NO. 9:**

Documents sufficient to show (a) the aggregate amounts received by You and (b) any outstanding amounts You presently owe, under the Loan and Security Agreement and each Litigation Funding Agreement.

**REQUEST NO. 10:**

A copy of (a) any Uniform Commercial Code financing statement (or amendments thereto) filed in any jurisdiction concerning the Loan and Security Agreement and each Litigation Funding Arrangement and (b) any notice, filing, or other document (or amendments thereto) that is or was used to perfect or protect a security interest concerning the Loan and Security Agreement and any Litigation Funding Agreement.

907012042

**EXHIBIT B**

# UNITED STATES BANKRUPTCY COURT

Northern District of New York

In re DIOCESE OF ROCHESTER

Debtor

Case No. Case No. 19-20905

(Complete if issued in an adversary proceeding)

Chapter 11

Plaintiff

v.

Adv. Proc. No. \_\_\_\_\_

Defendant

## SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)

To: State Court Counsel

(Name of person to whom the subpoena is directed)

**Production: YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Attachment A

PLACE <u>Barclay Damon LLP, 2000 Five Star Bank Plaza, 100 Chestnut Street, Rochester, NY 14604</u>	DATE AND TIME
---	---------------

**Inspection of Premises: YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

PLACE	DATE AND TIME
-------	---------------

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: February , 2023

CLERK OF COURT

OR

/s/

\_\_\_\_\_  
Signature of Clerk or Deputy Clerk

\_\_\_\_\_  
Attorney's signature

The name, address, email address, and telephone number of the attorney representing (name of party)

The Continental Insurance Company , who issues or requests this subpoena, are:

Jeffrey A. Dove, Esq., Barclay Damon LLP, Barclay Damon Tower, 125 East Jefferson Street, Syracuse, New York 13202, jdove@barclaydamon.com, 315.413.7112

### Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

**PROOF OF SERVICE**

**(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)**

I received this subpoena for (*name of individual and title, if any*): \_\_\_\_\_  
on (*date*) \_\_\_\_\_ .

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_ on (*date*) \_\_\_\_\_ ; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ \_\_\_\_\_ .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ .

I declare under penalty of perjury that this information is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information concerning attempted service, etc.:

**Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)**  
**(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)**

**(c) Place of compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises, at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

...  
**(g) Contempt.** The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013)

## ATTACHMENT A

### Definitions

1. “Attorney” means the lawyer or lawyers identified in Part 2.b. of the Sexual Abuse Proof of Claim (page 5 of the Claim Form) as the Claimant’s attorney.
2. “Chapter 11 Case” means the above-captioned Chapter 11 case.
3. “Claim Form” means the Sexual Abuse Proof of Claim submitted by You on behalf of Your clients in these Chapter 11 Cases.
4. “Communication” means the transmittal of information (in the form of facts, ideas, beliefs, inquiries, documents, or otherwise), including discussions, negotiations, agreements, understandings, meetings, in-person conversations, telephone conversations, records or conversations or messages, telegrams, facsimile transmissions, electronic mail transmission, letters, notes, reports, memos, formal statements, press releases, newspaper stories, or any other form of verbal, written, mechanical, or electronic disclosure. References to Communications with business entities shall be deemed to include all officers, directors, employees, personnel, agents, attorneys, accountants, consultations, independent contractors, or other representatives of such entities.
5. “Continental” means The Continental Insurance Company.
6. “Debtor” means the Diocese of Rochester and each of its attorneys.
7. “Documents” means any writings, recordings, electronic files and mails, or photographs, whether original or duplicate, as defined in Federal Rule of Evidence 1001 and Federal Rule of Civil Procedure 34(a), inclusively, including all documents and information in your possession, custody, or control, and includes: all and any written, recorded, or graphic material, however produced or reproduced; minutes; summaries; memos; transcripts; tapes or

other voice recordings; and all other documents and tangible things, including booklets, brochures, pamphlets, circulars, notices, periodicals, papers, records, contracts, agreements, photographs, minutes, memos, messages, appraisals, analyses, reports, files, interoffice memos, or interoffice communications of any description, calculations, invoices, accounting entries, diary entries, calendars, ledgers, correspondence, emails, phone recordings, instant messages, text messages, telegrams, advertisements, press releases, notes, letters, diaries, working papers, schedules, projections, graphs, charts, films, tapes, print-outs, and all other data, whether recorded by electronic or other means, and all drafts thereof. If a Document was prepared in several copies, or if additional copies were later made, and if any such copies are not identical in all respects or are no longer identical because of subsequent notations or modifications of any kind whatsoever, including notes on the front or back, in the margins, or on any of the pages thereof, then each such non-identical copy is a separate Document and must be produced.

8. “Employee” means a person tasked to perform work by You or at Your direction, including employees, contractors, interns, agents, and volunteers.

9. “Firm” means the law firm with which each Attorney is affiliated, and all other attorneys affiliated with that law firm.

10. “Litigation Funding Agreement” means any agreement pursuant to which You has (i) received a loan, financing, capital advance, or other monetary contribution from a third party or (ii) granted a security interest of any kind to such third party, Relating in any way to any abuse-related claim You have pursued, is pursuing, or may pursue on behalf of a client or clients against Debtor or Debtor’s affiliates.

11. “Person” means an individual, a firm, a corporation, or other entity, as the context requires.



12. “Relating to” means consisting of, reflecting, referring to, regarding, concerning, involving, evidencing, constituting, or having any legal, logical, evidential, or factual connection with (whether to support or to rebut) the subject matter designated in any paragraph of this request. A request for documents “relating to” a specified subject matter always shall include notes and memos (whenever prepared) relating to the subject matter of the request.

13. “Requests” means the Requests for Production of Documents set forth below.

14. “Stretto” means the debtors’ administrative agent in the Chapter 11 Case.

15. “You” or “Your” means the person on whom this discovery is served.

### **Instructions**

For the purposes of these Requests, these Instructions shall apply:

1. The preceding Definitions apply to each of the Requests.

2. The terms used in these Requests are to be given their most expansive and inclusive interpretation unless otherwise expressly limited in a Request. The terms “all,” “any,” and “each” shall each be construed as encompassing any, all, each, and every. The singular form of a word shall include the plural and vice versa. The terms “and” or “or” shall be both conjunctive and disjunctive. The term “including” means “including without limitation.” The present tense shall be construed to include the past tense, and the past tense shall be construed to include the present tense.

3. These Requests shall be deemed to be continuing in nature. If you become aware of or acquire additional information relating or referring to any of these Requests, such additional information is to be promptly produced.

4. You are required to produce all Documents and all other materials described below in your actual or constructive possession, custody, or control, including in the possession, custody, or control of current or former employees, officers, directors, agents, agents' representatives, consultants, contractors, vendors, or any fiduciary or other third parties, wherever those Documents and materials are maintained, including on personal computers, mobile phones, wireless devices, or web-based email systems such as Gmail, Yahoo, etc.

5. You must produce all Documents in your possession, custody, or control, whether maintained in electronic or paper form and whether located on hardware owned and maintained by You or hardware owned and/or maintained by a third party that stores data on Your behalf.

6. Documents not otherwise responsive to these Requests should be produced: (a) if such Documents mention, discuss, refer to, explain, or concern one or more Documents called for by these Requests; (b) if such Documents are attached to, enclosed with, or accompany Documents called for by these Requests; or (c) if such Documents constitute routing slips, transmittal memos or letters, comments, evaluations, or similar materials.

7. Documents should include all exhibits, appendices, linked Documents, or otherwise appended Documents referenced in, attached to, included with, or part of the requested Documents.

8. If any Document, or any part thereof, is not produced based on a claim of attorney-client privilege, work-product protection, mediation privilege, or any other claimed privilege or exemption from production, then in answer to such Request or part thereof, for each such Document, you must:

a. Identify the type, title, and subject matter of the Document;

- b. State the place, date, and manner of preparation of the Document;
- c. Identify all authors, addressees, and recipients of the Document, including information about such persons to assess the privilege asserted; and
- d. Identify the legal privilege(s) and the factual basis for the claim.

9. Documents should not contain redactions unless they are made to protect information subject to the attorney-client privilege, work-product doctrine, or mediation privilege. If any Documents are produced with redactions, a log setting forth the information requested in Instruction 8 above must be provided.

10. If a Document sought below was at one time, but is no longer, in Your actual or constructive possession, custody, or control, state whether it: (a) is missing or lost; (b) has been destroyed; (c) has been transferred to others; and/or (d) has been otherwise disposed of. In each instance, identify the Document, state when it was maintained, state the circumstance and date surrounding authorization for such disposition, identify each person with knowledge of the circumstances of the disposition, and identify each person with possession, custody, or control of the Document. Documents prepared prior to, but which relate or refer to, the period covered by these Requests are to be identified and produced.

11. If any part of the Requests cannot be responded to in full, please respond to the extent possible, specifying the reason(s) for your inability to respond to the remainder and stating whatever information or knowledge you have about the portion to which you do not respond.

12. If You object to any of these Requests, state in writing with specificity the grounds of Your objection(s). Any ground not stated shall be waived. If you object to a

particular portion of any Request, you shall respond to any other portions of such Request as to which there is no objection and state with specificity the grounds of the objection.

13. If the identity of Documents responding to a Request is not known, then that lack of knowledge must be specifically indicated in the response. If any information requested is not in Your possession, but is known or believed to be in the possession of another person or entity, then identify that person or entity and state the basis of Your belief or knowledge that the requested information is in such person's or entity's possession.

### **Manner of Production**

1. All Documents produced in response to this Subpoena shall be provided in either native file ("native") or single-page 300 dpi-resolution group IV TIF format ("tiff") format as specified below, along with appropriately formatted industry-standard database load files and accompanied by true and correct copies or representations of unaltered attendant metadata. When Documents are produced in tiff format, each Document shall be produced along with a multi-page, Document-level searchable text file ("searchable text") as rendered by an industry-standard text extraction program in the case of electronic originals, or by an industry-standard Optical Character Recognition ("OCR") program in the case of scanned paper Documents. Searchable text of Documents shall not be produced as fielded data within the ".dat file" as described below.

2. Database Load Files and Production Media Structure: Database load files shall consist of: (i) a comma-delimited values (".dat") file containing: production Document identifier information, data designed to preserve "parent and child" relationships within Document "families," reasonably accessible and properly preserved metadata (or bibliographic coding in the case of paper Documents), custodian or Document source information; and (ii) an

Opticon (“opt”) file to facilitate the loading of tiff images. Load files should be provided in a root-level folder named “Data,” images shall be provided within a root level “Images” folder containing reasonably structured subfolders, and searchable text files shall be provided in a single root-level “Text” folder.

3. Electronic Documents and Data, Generally: Documents and other responsive data or materials created, stored, or displayed on electronic or electro-magnetic media shall be produced in the order in which the Documents are or were stored in the ordinary course of business, including all reasonably accessible metadata, custodian, or Document source information, and searchable text to allow Continental, through a reasonable and modest effort, to fairly, accurately, and completely access, search, display, comprehend, and assess the Documents’ true and original content.

4. Emails and Attachments, and Other Email Account-Related Documents: All Documents and accompanying metadata created and/or stored in the ordinary course of business within commercial, off-the-shelf email systems including, but not limited to, Microsoft Exchange, Lotus Notes, or Novell Groupwise shall be produced in tiff format, accompanying metadata, and searchable text files or, alternately, in a format that fairly, accurately, and completely represents each Document to make the Document(s) reasonably useable, manageable, and comprehensible by Continental.

5. Documents and Data Created or Stored in or by Structured Electronic Databases: With the exclusion of email and email account-related Documents and data, all Documents and accompanying metadata created and/or stored in structured electronic databases or files shall be produced in a format that enables Continental to reasonably manage and import those Documents into a useable, coherent database. Documents must include

reasonably detailed documentation explaining the Documents' content and format, including, but not limited to, data dictionaries and diagrams. Some acceptable formats, only if provided with definitive file(s), table(s), and field level schemas include:

- a. XML format file(s);
- b. Microsoft SQL database(s);
- c. Access database(s); and/or
- d. fixed or variable length ASCII delimited files.

6. Spreadsheets, Multimedia, and Non-Standard File Types: All Documents generated or stored in software such as Microsoft Excel or other commercially available spreadsheet programs, as well as any multimedia files, such as audio or video, shall be produced in their native format, along with an accompanying placeholder image in tiff format indicating a native file has been produced. A "Nativelink" entry shall be included in the .dat load file indicating the relative file path to each native file on the production media. If You have other file types that do not readily or easily and accurately convert to tiff and searchable text, You may elect to produce those files in native format subject to the other requirements listed herein. Native files may be produced within a separate root-level folder structure on deliverable media entitled "Natives."

7. "Other" Electronic Documents: All other Documents and accompanying metadata and embedded data created or stored in unstructured files generated by commercially available software systems (excluding emails, structured electronic databases, spreadsheets, or multimedia) such as but not limited to, word processing files (such as Microsoft Word), image files (such as Adobe .pdf files and other formats), and text files shall be produced in tiff and

searchable text format in the order the files are or were stored in the ordinary course of business.

8. Paper Documents: Documents originally created or stored on paper shall be produced in tiff format. Relationships between Documents shall be identified within the Relativity .dat file utilizing document identifier numbers to express parent Document/child attachment boundaries, folder boundaries, and other groupings. In addition, the searchable text of each Document shall be provided as a multi-page text file as provided for by these Requests for Production.

### **REQUESTS FOR PRODUCTION OF DOCUMENTS**

#### **REQUEST NO. 1:**

All Litigation Funding Agreements to which You are a Party, and all Documents Relating to such Litigation Funding Agreements.

#### **REQUEST NO. 2:**

Documents sufficient to identify the name and address of all parties to each Litigation Funding Agreement.

#### **REQUEST NO. 3:**

Documents sufficient to show the aggregate amounts received by You, and any outstanding amounts You owe, under each Litigation Funding Agreement.

#### **REQUEST NO. 4:**

All correspondence or other Documents exchanged between You and any party to any Litigation Funding Agreement to which You are a party.

#### **REQUEST NO. 5:**

A copy of (a) any Uniform Commercial Code financing statement (or amendments

thereto) that has been filed in any jurisdiction concerning each Litigation Funding Arrangement and (b) any notice, filing, or other document (or amendments thereto) that is or was used to perfect or protect a security interest concerning any Litigation Funding Agreement.



**EXHIBIT C**



Filing Number: 1233438900042  
 Date: 04/30/2021  
 Time: 5:00 PM  
 STATE OF MINNESOTA  
 Office: Office of the Minnesota  
 Secretary of State

**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. E-MAIL CONTACT AT FILER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

MN Public Record Specialists, LLC  
 PO Box 273  
 Cottage Grove, Minnesota 55016  
 www.mprslc.net

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here  and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME  
**Jeff Anderson & Associates, P.A.**

OR

1b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

1c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY  
**366 Jackson Street, Suite 100 St. Paul MN 55101 USA**

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here  and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

2c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME  
**Kensal Green LLC**

OR

3b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

3c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY  
**Corporation Trust Center, 1209 Orange St. Wilmington DE 19801 USA**

4. COLLATERAL: This financing statement covers the following collateral:

**All of the Debtor's right, title and interest in the Net Proceeds (as defined in Exhibit I) received or to be received in connection with certain lawsuits against the Church (as such terms is defined in the Loan Agreement), Boy Scouts of America and affiliated entities, and/or other defendants in respect of certain lawsuits, claims and proceedings regarding sexual abuse allegations, as set forth in that certain Loan and Security Agreement, dated as of November 30, 2020, by and among the Secured Party and the Debtor listed in this Financing Statement (as the same may be amended from time to time, the "Loan Agreement").**

Please see Exhibit I to this Financing Statement for the definition of the Net Proceeds and related terms.

5. Check only if applicable and check only one box: Collateral is  held in a Trust (see UCC1Ad, item 17 and Instructions)  being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:  
 Public-Finance Transaction  Manufactured-Home Transaction  A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:  
 Agricultural Lien  Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable):  Lessee/Lessor  Consignee/Consignor  Seller/Buyer  Bailee/Bailor  Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:

**File in MN; Debtor: Jeff Anderson & Associates, P.A.; Secured Party: Kensal Green LLC**

FILING OFFICE COPY — UCC FINANCING STATEMENT (Form UCC1) (Rev. 04/20/11) International Association of Commercial Administrators (IACA)

**EXHIBIT I**

“Net Proceeds” means all amounts, including amounts of Proceeds, payable to the Borrower by a Claim Owner or any other Person (as defined in the Loan Agreement) under or in connection with any Retention Agreement or otherwise in connection with any Claim, including any payment for Claim-Related Expenses payable to the Borrower by a Claim Owner or any other Person. “Net Proceeds” shall also include any and all amounts received or to be received by the Borrower from any Defendant or its Affiliates (as defined in the Loan Agreement) in connection with the pursuit by the Borrower of any Claim, whether or not such amount was paid or received for or on behalf of a Claim Owner, and including if such amount was paid or received in connection with a lawsuit or bankruptcy or other legal proceedings that is similar to, or pertains to the general subject matter of, any Claim (even if not itself a Claim), including any amounts received by Borrower as a “common benefit”.

“Proceeds” means any and all gross, pre-Tax monetary recoveries, payments, amounts, properties, rights, reimbursements, damages, awards, interest, and the value of any other consideration of any type, received or to be received, directly or indirectly, by or on behalf of a Claim Owner, any of its Affiliates, related Persons, agents, estate, heirs, trustees, representatives, or any of their respective successors or assigns (or that otherwise are owed or inure to the benefit of any of the foregoing), in connection with activities covered by each Retention Agreement with each respective Claim Owner, including directly or indirectly from the Defendants, other entities contributing to a settlement, or the Claims, or otherwise in connection with any Claim.

“Claim” or “Claims” means the meritorious lawsuits, bankruptcy claims and other bankruptcy proceedings, or other legal proceedings by Claim Owners against the Church, Boy Scouts of America and affiliated entities, and/or any other Defendant, including those contemplated by the Retention Agreements, all other lawsuits, claims and proceedings by clients of the Borrower based on sexual abuse allegations, and all New Claims, and all efforts or actions by the Borrower on behalf of a Claim Owner or its Affiliates to pursue legal claims in litigation or arbitration, including threatened or actual legal claims, actions, suits, causes of action, or proceedings before any arbitration panel, tribunal or any supranational, national, state, municipal, or local entity or governmental authority, whether located within or outside the United States.

“Claim Owner” means a client of the Borrower and such client’s Affiliates that are parties to a Claim, including as set forth on Exhibit B (Claims and Fees) to the Loan Agreement and including a client and such client’s Affiliates with respect to a New Claim. The definition of Claim Owner includes any additional or successor Person that is subject to any Retention Agreement or from which the Borrower is entitled to receive Proceeds, either directly or indirectly through another law firm with which the Borrower has an agreement related to such Person’s Claim.

“Claim-Related Expenses” means costs and expenses incurred by the Borrower related to the Claims, including fees, costs and expenses of outside counsel and any other costs and expenses, including those to be reimbursed to the Borrower under the Retention Agreements.

“New Claim” means a meritorious lawsuit, bankruptcy claim or other bankruptcy proceeding, or other legal proceeding by a new client of the Borrower (which client shall be deemed a Claim Owner hereunder with respect to such New Claim) in connection with the same general subject matter of the Claims, and with respect to which the Borrower enters into a retention agreement whereby the Borrower will conduct legal proceedings in relation thereto on behalf of such Claim Owners in return for a share in any recovery in such proceedings.

“Defendants” means, individually and collectively, the defendants named in each Claim, as set forth on Exhibit B (Claims and Fees) to the Loan Agreement and in each New Claim, including the Church, Boy Scouts of America, any affiliated debtor or non-debtor entity, local councils, any trust or other entity set up in connection with bankruptcy proceedings (including after the completion of such proceedings), and all of

their respective predecessors, successors, subsidiaries, joint ventures, partnerships, Affiliates, insurers, assigns, and all additional persons against whom (i) legal claims or lawsuits are threatened, alleged, or asserted by the Borrower on behalf of any Claim Owner, or from whom the Borrower receives on behalf of any Claim Owner, directly or indirectly, Proceeds or (ii) against whom any portion of the proceeds of any Advance (as defined in the Loan Agreement) is used. The fact that a legal name has not been included under Exhibit B (Claims and Fees) to the Loan Agreement shall not exclude a Person from being a Defendant under this Agreement.

“Church” means the Catholic Church, any dioceses and archdioceses thereof, and any entities affiliated therewith.

“Referral Firm” means a lawyer or law firm that is not the Borrower, that referred a Claim Owner to the Borrower and is entitled to any share of Proceeds, Net Proceeds or other compensation under a Retention Agreement or other agreement.

“Retention Agreements” means the retention agreements the Borrower has entered into with the Claim Owners that are its clients in respect of each of their respective Claims, whereby the Borrower will conduct legal proceedings in relation to such Claims on behalf of such Claim Owners in return for a share of 30%-40% in any recovery in such proceedings. Upon the entering into a retention agreement with respect to a New Claim, such retention agreement shall also be deemed a Retention Agreement hereunder.

**EXHIBIT D**



# UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS

Filing Number: 1276269200036  
Date: 12/07/2021  
Time: 5:00 PM  
STATE OF MINNESOTA  
Office: Office of the Minnesota  
Secretary of State

A. NAME & PHONE OF CONTACT AT FILER (optional)
B. E-MAIL CONTACT AT FILER (optional)
C. SEND ACKNOWLEDGMENT TO: (Name and Address)
<b>MN Public Record Specialists, LLC</b> <b>PO Box 273</b> <b>Cottage Grove, Minnesota 55016</b> <b>www.mprsllc.net</b>

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE NUMBER <b>1233438900042</b>	1b. <input type="checkbox"/> This FINANCING STATEMENT AMENDMENT is to be filed (for record) in the REAL ESTATE RECORDS Filer: <u>attach</u> Amendment Addendum (Form UCC3Ad) and provide Debtor's name in item 13
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2.  **TERMINATION:** Effectiveness of the Financing Statement identified above is terminated with respect to the security interest(s) of Secured Party authorizing this Termination Statement
3.  **ASSIGNMENT (full or partial):** Provide name of Assignee in item 7a or 7b, and address of Assignee in item 7c and name of Assignor in item 9  
For partial assignment, complete items 7 and 9 and also indicate affected collateral in item 8
4.  **CONTINUATION:** Effectiveness of the Financing Statement identified above with respect to the security interest(s) of Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law

5.  **PARTY INFORMATION CHANGE:**  
Check one of these two boxes:  Debtor or  Secured Party of record  
**AND** Check one of these three boxes to:  CHANGE name and/or address: Complete item 6a or 6b; and item 7a or 7b and item 7c  ADD name: Complete item 7a or 7b, and item 7c  DELETE name: Give record name to be deleted in item 6a or 6b

6. **CURRENT RECORD INFORMATION:** Complete for Party Information Change - provide only one name (6a or 6b)

6a. ORGANIZATION'S NAME			
OR			
6b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

7. **CHANGED OR ADDED INFORMATION:** Complete for Assignment or Party Information Change - provide only one name (7a or 7b) (use exact, full name, do not omit, modify, or abbreviate any part of the Debtor's name)

7a. ORGANIZATION'S NAME	
OR	
7b. INDIVIDUAL'S SURNAME	
INDIVIDUAL'S FIRST PERSONAL NAME	
INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

7c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
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8.  **COLLATERAL CHANGE:** Also check one of these four boxes:  ADD collateral  DELETE collateral  RESTATE covered collateral  ASSIGN collateral  
Indicate collateral:

**All of the Debtor's right, title and interest in the Net Proceeds (as defined in Exhibit I) received or to be received in connection with certain lawsuits against the Church (as such term is defined in the Loan Agreement), Boy Scouts of America and affiliated entities, and/or other defendants in respect of certain lawsuits, claims and proceedings regarding sexual abuse allegations, as set forth in that certain Loan and Security Agreement, dated as of November 30, 2020, by and among the Secured Party and the Debtor listed in this Financing Statement, as amended as of December 3, 2021, and as may be further amended. See attached Exhibit I for a description of Net Proceeds and related terms.**

9. **NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT:** Provide only one name (9a or 9b) (name of Assignor, if this is an Assignment)  
If this is an Amendment authorized by a DEBTOR, check here  and provide name of authorizing Debtor

9a. ORGANIZATION'S NAME <b>Kensal Green LLC</b>			
OR			
9b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

10. **OPTIONAL FILER REFERENCE DATA:**  
**File in MN; Debtor: Jeff Anderson & Associates, P.A.; Secured Party: Kensal Green LLC**

**EXHIBIT I**

Collateral: All of the Debtor's right, title and interest in the Net Proceeds (as defined below) received or to be received in connection with certain lawsuits against the Church (as such term is defined in the Loan Agreement), Boy Scouts of America and affiliated entities, and/or other defendants in respect of certain lawsuits, claims and proceedings regarding sexual abuse allegations, as set forth in that certain Loan and Security Agreement, dated as of November 30, 2020, by and among the Secured Party and the Debtor listed in this Financing Statement, as amended in Amendment No. 1 to Loan and Security Agreement between such parties dated December 3, 2021, and as may be further amended from time to time (the "Loan Agreement").

"Net Proceeds" means all amounts, including amounts of Proceeds, payable to the Borrower by a Claim Owner or any other Person (as defined in the Loan Agreement) under or in connection with any Retention Agreement or otherwise in connection with any Claim, including any payment for Claim-Related Expenses payable to the Borrower by a Claim Owner or any other Person. "Net Proceeds" shall also include any and all amounts received or to be received by the Borrower from any Defendant or its Affiliates (as defined in the Loan Agreement) in connection with the pursuit by the Borrower of any Claim, whether or not such amount was paid or received for or on behalf of a Claim Owner, and including if such amount was paid or received in connection with a lawsuit or bankruptcy or other legal proceedings that is similar to, or pertains to the general subject matter of, any Claim (even if not itself a Claim), including any amounts received by Borrower as a "common benefit".

"Proceeds" means any and all gross, pre-Tax monetary recoveries, payments, amounts, properties, rights, reimbursements, damages, awards, interest, and the value of any other consideration of any type, received or to be received, directly or indirectly, by or on behalf of a Claim Owner, any of its Affiliates, related Persons, agents, estate, heirs, trustees, representatives, or any of their respective successors or assigns (or that otherwise are owed or inure to the benefit of any of the foregoing), in connection with activities covered by each Retention Agreement with each respective Claim Owner, including directly or indirectly from the Defendants, other entities contributing to a settlement, or the Claims, or otherwise in connection with any Claim.

"Claim" or "Claims" means the meritorious lawsuits, bankruptcy claims and other bankruptcy proceedings, or other legal proceedings by Claim Owners against the Church, Boy Scouts of America and affiliated entities, and/or any other Defendant, including those contemplated by the Retention Agreements, all other lawsuits, claims and proceedings by clients of the Borrower based on sexual abuse allegations, and all New Claims, and all efforts or actions by the Borrower on behalf of a Claim Owner or its Affiliates to pursue legal claims in litigation or arbitration, including threatened or actual legal claims, actions, suits, causes of action, or proceedings before any arbitration panel, tribunal or any supranational, national, state, municipal, or local entity or governmental authority, whether located within or outside the United States.

"Claim Owner" means a client of the Borrower and such client's Affiliates that are parties to a Claim, including as set forth on Exhibit B (Claims and Fees) to the Loan Agreement and including a client and such client's Affiliates with respect to a New Claim. The definition of Claim Owner includes any additional or successor Person that is subject to any Retention Agreement or from which the Borrower is entitled to receive Proceeds, either directly or indirectly through another law firm with which the Borrower has an agreement related to such Person's Claim.

"Claim-Related Expenses" means costs and expenses incurred by the Borrower related to the Claims, including fees, costs and expenses of outside counsel and any other costs and expenses, including those to be reimbursed to the Borrower under the Retention Agreements.

"New Claim" means a meritorious lawsuit, bankruptcy claim or other bankruptcy proceeding, or other legal proceeding by a new client of the Borrower (which client shall be deemed a Claim Owner hereunder with

respect to such New Claim) in connection with the same general subject matter of the Claims, and with respect to which the Borrower enters into a retention agreement whereby the Borrower will conduct legal proceedings in relation thereto on behalf of such Claim Owners in return for a share in any recovery in such proceedings.

“Defendants” means, individually and collectively, the defendants named in each Claim, as set forth on Exhibit B (Claims and Fees) to the Loan Agreement and in each New Claim, including the Church, Boy Scouts of America, any affiliated debtor or non-debtor entity, local councils, any trust or other entity set up in connection with bankruptcy proceedings (including after the completion of such proceedings), and all of their respective predecessors, successors, subsidiaries, joint ventures, partnerships, Affiliates, insurers, assigns, and all additional persons against whom (i) legal claims or lawsuits are threatened, alleged, or asserted by the Borrower on behalf of any Claim Owner, or from whom the Borrower receives on behalf of any Claim Owner, directly or indirectly, Proceeds or (ii) against whom any portion of the proceeds of any Advance (as defined in the Loan Agreement) is used. The fact that a legal name has not been included under Exhibit B (Claims and Fees) to the Loan Agreement shall not exclude a Person from being a Defendant under this Agreement.

“Church” means the Catholic Church, any dioceses and archdioceses thereof, and any entities affiliated therewith.

“Referral Firm” means a lawyer or law firm that is not the Borrower, that referred a Claim Owner to the Borrower and is entitled to any share of Proceeds, Net Proceeds or other compensation under a Retention Agreement or other agreement.

“Retention Agreements” means the retention agreements the Borrower has entered into with the Claim Owners that are its clients in respect of each of their respective Claims, whereby the Borrower will conduct legal proceedings in relation to such Claims on behalf of such Claim Owners in return for a share of 30%-40% in any recovery in such proceedings. Upon the entering into a retention agreement with respect to a New Claim, such retention agreement shall also be deemed a Retention Agreement hereunder.



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

In re:

DIOCESE OF ROCHESTER,

Debtors.

Chapter 11

Case No. 19-20905

**ORDER GRANTING MOTION BY CONTINENTAL  
UNDER BANKRUPTCY RULE 2004**

The Court has considered the motion under Bankruptcy Rule 2004 filed by the Continental Insurance Company seeking entry of an order authorizing Continental to serve document subpoenas and deposition subpoenas on the law firms (“State Court Counsel”) representing claimants on the Official Committee of Unsecured Creditors seeking disclosure of information about any financing arrangements State Court Counsel have with third parties seeking. Good cause having been established, IT IS HEREBY ORDERED as follows:

1. The motion is GRANTED.
2. Continental is authorized to serve the Jeff Anderson & Associates law firm with the document subpoena attached as Exhibit A to Continental’s motion.
3. Continental is authorized to serve the other State Court Counsel with the document subpoena attached as Exhibit B to Continental’s motion.
4. Once documents are produced in response to the document subpoenas, Continental is authorized to issue deposition subpoenas to examine any and all State Court Counsel about their litigation funding arrangements.
5. The Court retains jurisdiction with respect to this matter and with respect to the interpretation and enforcement of this Order. Continental may make further application to the

Court to ensure compliance with this Order.

Dated: \_\_\_\_\_, 2023  
Rochester, New York

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Paul R. Warren  
United States Bankruptcy Judge

907031204