

EXHIBIT “4”

LITIGATION TRUST AGREEMENT

THIS LITIGATION TRUST AGREEMENT ("THIS AGREEMENT") is between The Roman Catholic Church of the Diocese of Tucson, an Arizona corporation sole, (the "**Debtor**" or the "**Reorganized Debtor**"), as trustor, and the Trustee named on the signature pages hereof (the "**Trustee**"), pursuant to the Debtor's Plan of Reorganization, dated as of May 25, 2005, as amended, modified, restated, or supplemented from time to time (the "**Plan**").

RECITALS

- A. The Diocese is a debtor-in-possession in a chapter 11 reorganization case, Case No. 04-04721-JMM (the "**Reorganization Case**"), currently pending before the United States Bankruptcy Court for the District of Arizona (the "**Court**").
- B. The Plan provides, among other things, for the full ~~release~~, satisfaction, and discharge of the all the Tort Claims as that term is defined in the Plan. The Plan has been confirmed by the Court.
- C. The Plan contemplates the creation of a Litigation Trust, the principal purpose of which is to implement the Plan's treatment of Tort Claims asserted by Non-Settling Tort Claimants against the Diocese.
- D. The parties to this agreement intend that the trust created under this Agreement will be a "Qualified Settlement Fund" within the meaning of Section 468B of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder.

NOW, THEREFORE, this Agreement witnesseth and it is hereby declared, in accordance with the Confirmation Order, as follows:

ARTICLE 1 DEFINITIONS

1.1 **Incorporation of Definitions.** All capitalized terms used in this Agreement, and not otherwise defined herein, shall have the meanings assigned to them in the Plan or the Bankruptcy Code, which meanings are incorporated herein by this express reference.

ARTICLE 2 DECLARATION OF TRUST

2.1 **Creation and Name.** There is hereby created a trust, which shall be known as the "**Litigation Trust**."

2.2 **Purposes.** The purposes of the Litigation Trust are:

2.2.1 to serve as the mechanism to implement the Plan's treatment of the Tort Claims of Non-Settling Tort Claimants which become part of the Litigation Trust pursuant to an election made by a Tort Claimant;

2.2.2 to assume all liabilities of the Debtor, its successors in interest, ~~and any Co-Defendants who become Participating Third Parties and any other Settling Parties~~ for the Tort Claims of Non-Settling Tort Claimants;

2.2.3 to defend against, liquidate and resolve the Tort Claims of Non-Settling Tort Claimants;

2.2.4 to issue payments and disburse funds, only entry of a Final Order determining that a Non-Settling Tort Claimant is entitled to payment from the Litigation Trust and in accordance with Article ____ below;

2.2.5 to pay administrative expenses and costs of such liquidation and resolution in accordance with the terms of the Plan and this Agreement, subject to and without exceeding the available assets of the Litigation Trust;

2.2.6 to receive and invest, in accordance with the provisions hereof, the assets transferred to the Litigation Trust pursuant to the Plan so as to enable the Trustee to satisfy the Allowed Tort Claims of Non-Settling Tort Claimants in accordance with and subject to the limitations contained in the Plan; and

2.2.7 to qualify at all times as a non-reversionary Qualified Settlement Fund pursuant to Section 468B of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder.

To accomplish the foregoing, the Litigation Trust hereby:

2.2.7.1 assumes and shall be directly and exclusively liable for any and all liabilities which are made part of the Litigation Trust pursuant to the Plan;

2.2.7.2 agrees to conserve and protect the Litigation Trust estate so as to enable the Trustee to satisfy as fully as possible all Tort Claims assumed by the Litigation Trust in accordance with and as limited by the terms of the Plan and this Agreement;

2.2.7.3 agrees to collect, invest and reinvest amounts due to be transferred to the Litigation Trust;

2.2.7.4 agrees to pay all costs, expenses and fees (including attorneys' fees) of the Litigation Trust ~~incurred in the attorneys' fees, costs and expenses incurred in defending~~ the Tort Claims of Non-Settling Tort Claimants in accordance with this Agreement and the Plan;

2.2.7.5 agrees to assert and defend (and appeal to the highest appellate court willing to hear such appeal any adverse decision regarding) the enforceability of the releases and injunctions referred to in Article 18 of the Plan with respect to the Tort Claims of Non-Settling Tort Claimants only, and, to the extent applicable, the discharge referred to and

described in Article 18 of the Plan; this duty shall terminate in a given jurisdiction when a Final Order of the highest appellate court of competent jurisdiction in that jurisdiction determines that the releases and injunctions or the discharge do not require dismissal of such action or proceeding or are unenforceable; *provided, however*, that this obligation shall be subject to Rule 11 of the Federal Rules of Civil Procedure or similar state rules or laws, as the case may be, and shall only accrue if and to the extent that the Tort Committee or the Reorganized Debtor determine that the Litigation Trust is an indispensable party to such appeal;

2.2.7.6 agrees to manage the Litigation Trust and report on its status and activities in accordance with the provisions set forth herein; and

2.2.7.7 agrees to take such actions and deliver such documentation as may reasonably be required to effectuate, perfect, confirm, and evidence the transfers and assignments to the Litigation Trust of the Trust Assets (defined below) and the validity of such transfers and assignments.

Notwithstanding the foregoing, or anything else contained herein to the contrary, the Litigation Trust shall have no obligation with respect to, and there shall be no indemnification, contribution, subrogation, reimbursement or similar claim assumed or paid by the Litigation Trust with respect to, any criminal action or criminal proceeding brought by a governmental unit (as defined in the Code) (including grand jury proceedings or other investigations brought by a governmental unit to determine whether a crime has been committed) or with respect to any criminal fine, penalty or forfeiture.

2.3 **Transfer of Assets; Beneficiaries.** On or within forty (40) days after the Effective Date, the Trustee of the Settlement Trust will transfer and assign to the Litigation Trust, the Litigation Trust Fund, (together with the income earned thereon, the "**Trust Assets**") to be held in trust, for the ~~holders of Allowed Tort Claims of Non-Settling Tort Claimants with~~ Allowed Tort Claims (each a "**Beneficiary**" and collectively, the "**Beneficiaries**").

2.4 **Trust Assets.** All Trust Assets received by the Litigation Trust shall be held, administered and distributed under the terms of this Agreement and the Plan.

2.5 **2.4 Further Assurances; Cooperation.** The Debtor, the Reorganized Debtor, and the Trustee shall take all actions as are reasonably required with respect to any of the Trust Assets or otherwise in order to effectuate the purposes of this Litigation Trust.

ARTICLE 3 TRUSTEE

3.1.1 **Number.** There shall be one (1) Trustee of the Litigation Trust. The Initial Trustee is the person who is named on and who has executed the signature page hereof.

3.2 Qualifications. Each Trustee must be a natural person of good moral character and independent of the Debtor and the Reorganized Debtor or its successors in interest whose experience and background are appropriate to the responsibilities of a Trustee hereunder.

3.3 Terms of Service.

3.3.1 Each Trustee shall serve for the duration of the Litigation Trust, subject to his or her earlier death, resignation, or, with approval of the Court, removal.

3.3.2 Any Trustee may resign at any time by at least sixty (60) days' prior written notice to the Committee, the Reorganized Debtor and the Court, specifying the date when such resignation shall take effect. Any resigning Trustee shall attempt, where possible, to give notice of resignation not less than ninety (90) days before such resignation is to take effect.

3.3.3 A Trustee may be removed from office by the Court upon its own motion, the motion of any Trustee, the motion of the Debtor or Reorganized Debtor, or the motion of the Committee and a determination by the Court that such removal is appropriate upon good cause shown.

3.4 Appointment of Successor Trustee.

3.4.1 In the event of the death, resignation, incapacity to serve as determined by the Court, or removal of a Trustee prior to the expiration of his or her term in accordance herewith, a successor Trustee shall be nominated by the current Trustee, with notice to the Reorganized Debtor and the Committee, subject to Court approval, within twenty (20) days after such death, resignation or removal. If the current Trustee fails to nominate a successor Trustee that is approved by the Court within such twenty (20) day period, a successor Trustee shall be appointed by the Court.

3.4.2 Upon the acceptance of office by any successor Trustee, all rights, titles, duties, powers and authority of the predecessor Trustee under this Agreement shall be vested in and undertaken by the successor Trustee without any further act being required. No successor Trustee shall be liable personally for any act or omission of his or her predecessor.

3.5 Liability of Trustee. No Trustee shall be liable to the Litigation Trust or to any Beneficiary except for such Trustee's own gross negligence or willful misconduct. No Trustee shall be liable for any act or omission of any Co-Trustee, or any agent or employee of the Litigation Trust unless that Trustee acted with gross negligence or willful misconduct in the selection or retention of such agent or employee. No action, suit or proceeding of any kind may be brought by the Debtor, or any Affiliates of any of them, present or future, against any Trustee, other than as a result of a material loss to the Debtor, or to the Trust, due to such Trustee's having committed one or more of the acts which constituted a basis for removal in Section 3.3.3 hereof. All actions taken and determinations made by the Trustee, unless otherwise provided in (or unless contrary to the provisions of) this Agreement, the Plan, or a Final Order, shall be final and binding upon all Persons having any interest in the Trust. The Trustee shall be entitled to rely upon the advice of counsel or other advisors to the Litigation Trust and information provided by any other Person employed by the Trust.

3.6 Trustee' Compensation; Reimbursement of Expenses. The Trustee shall receive as compensation for his or her services at the rate of _____ Dollars (\$_____) per _____. This compensation may be adjusted from time to time by action of the Trustee, subject to approval of the Court after notice to the Reorganized Debtor and the Committee and a hearing. In addition, each Trustee shall be reimbursed for his or her other reasonable out-of-pocket expenses.

3.7 Indemnification.

3.7.1 Each Trustee or former Trustee who was or is party, or is threatened to be made a party, to any threatened, pending, or completed action, suit or proceeding of any kind, whether civil, administrative or arbitrative, and whether brought by or against the Litigation Trust, with respect to a Trustee, by reason of such Trustee being or having been a Trustee of the Litigation Trust, or by reason of such Trustee serving or having served in any capacity at the request of and on behalf of the Litigation Trust, shall be indemnified by the Litigation Trust against expenses, costs and fees (including attorneys' fees), judgments, awards, costs, amounts paid in settlement, and liabilities of all kinds incurred by such Trustee in connection with or resulting from such action, suit, or proceeding if he or she acted in good faith, and in a manner such Trustee reasonably believed to be in or not opposed to the best interests of the Litigation Trust.

3.7.2 Any indemnification under Section 3.7 of this Agreement shall be made by the Litigation Trust upon a determination that indemnification of such Trustee is proper in the circumstances. Such determination shall be made by application to the Court, upon notice to the Committee and the Reorganized Debtor or by independent legal counsel ordered by the Court to make such determination, or at the election of the Court, by the Court.

3.7.3 Reasonable expenses, costs and fees (including attorneys' fees) incurred by or on behalf of a Trustee in connection with any such action, suit, or proceeding, whether civil, administrative or arbitrative, commenced against such Trustee regarding such Trustee's performance hereunder, may be paid by the Litigation Trust in advance of the final disposition thereof upon receipt of an undertaking by or on behalf of such Trustee to repay such amount unless it shall be determined ultimately that such Trustee is not entitled to be indemnified by the Litigation Trust.

3.7.4 The Trustee shall have the power, generally or in specific cases, to cause the Litigation Trust to indemnify the employees and agents of the Litigation Trust to the same extent as provided in this Section 3.7 with respect to the Trustee.

3.8 The Trustee may purchase and maintain reasonable amounts and types of insurance on behalf of an individual who is or was a Trustee, employee, or agent of the Litigation Trust against liability asserted against or incurred by such individual in that capacity or arising from his or her status as a Trustee, employee, or agent with the consent of the Committee and the Reorganized Debtor.

3.9 Reliance. Any Person dealing with the Litigation Trust may rely in good faith upon any certificate or other instrument signed by at least one Trustee, or upon any certificate or

other instrument signed by an officer or agent of the Litigation Trust whose authority is evidenced by a certificate or other instrument signed by at least one Trustee, without the necessity of further inquiry by such Person into the authority of such Trustee, officer or agent to act on behalf of the Litigation Trust ; *provided, however*, that disbursements or expenditure from the Litigation Trust made in respect of investments in accordance with Section 4.2 hereof and the investment policies duly adopted by the Trustee shall not require the signature of any Trustee; and *provided, further*, that the Trustee may adopt by-laws concerning these matters that are more restrictive than the foregoing.

3.10 Actions by Trustee. Except as otherwise provided in this Agreement or as required by applicable law, all determinations by the Trustee (if there is more than one) shall be made by the vote or consent of a majority of the Trustee then in office, following prior notice to all Trustee.

3.11 Bond. The Trustee shall not be required to post any bond or other form of surety unless otherwise ordered by the Court.

ARTICLE 4 ACCOUNTS AND INVESTMENTS

4.1 Accounts. The Trustee shall establish such funds and accounts with such Persons as he shall, in his discretion, deem necessary or advisable for carrying out the purposes of the Trust.

~~**4.2 Investments.** Investments of monies held in the Litigation Trust estate shall be administered in view of the manner in which individuals of ordinary prudence, discretion and judgment would act in the management of their own affairs, subject to the following limitations and provisions. The Trustee shall cause the monies held in the Litigation Trust to be invested and reinvested in:~~

~~4.2.1 United States Treasury Bills;~~

~~4.2.2 other similar United States government obligations secured by the full faith and credit of the United States, fully guaranteed as to principal and interest by the United States or any agency or instrumentality thereof, including United States Treasury Notes and United States Treasury Bonds;~~

~~4.2.3 federally insured bank certificates of deposit (i) if issued by a bank whose senior long term debt is rated "Aa" or higher by Moody's or "AA" or higher by S&P's, and (ii) if the term to maturity from the date of acquisition does not exceed six (6) months.~~

4.1.1 Investments. Investments of monies held in the Litigation Trust estate shall be administered in view of the manner in which individuals of ordinary prudence, discretion and judgment would act in the management of their own affairs, subject to the following limitations and provisions taking into account the purposes for which the Litigation Trust was created. In determining investments to be held by the Litigation Trust , due regard shall be given by the Trustee to safety of principal and to production of reasonable amounts of current income.

The Trustee shall not be under any obligation to invest the Trust Assets for capital appreciation, in view of the purposes for which the Litigation Trust was created.

ARTICLE 5 POWERS, TRUST ADMINISTRATION

5.1 Trust Powers.

5.1.1 Pursuant to the Confirmation Order, subject to the limitations set forth in this Agreement, and subject to the provisions and limitations of the Plan, all of which are incorporated herein, the Trustee shall have the power to take any and all actions as, in the sole judgment and discretion of the Trustee, are necessary or advisable to effectuate the purposes of the Litigation Trust, including without limitation, each power expressly granted in Section 5.1.3 of this Agreement and any power reasonably incidental thereto, and any trust power now or hereafter permitted under the law of the State of Arizona that is not inconsistent with the provisions of this Agreement.

5.1.2 Except as expressly provided in the Plan or in this Agreement, the Trustee may, but need not, obtain the order or approval of the Court, or any other court in the exercise of any power or discretion conferred hereunder, or account to the Court or to any other court in the absence of a breach of trust.

5.1.3 Without limiting the generality of Section 5.1.1 of this Agreement, and subject to the other provisions of this Agreement, the Trustee shall have the power:

5.1.3.1 to receive and hold the Trust Assets and other additions to the Litigation Trust from any source, provided such additions are made pursuant to the Plan, the Confirmation Order or another order of the Court, and to administer and distribute the same as a part of the Litigation Trust estate;

5.1.3.2 to invest and reinvest the funds of the Litigation Trust as provided in this Agreement;

5.1.3.3 upon entry of a Final Order, to pay the Allowed Claim of a Non-Settling Tort Claimant in accordance with and subject to the limitations contained in the Plan, including, but not limited to, withholding any payment until all of the Tort Claims of Non-Settling Tort Claimants have been determined by a Final Order;

5.1.3.4 to defend against, resolve, liquidate, or otherwise deal with and settle the Non-Settling Claims assumed by the Litigation Trust pursuant to Article _____ hereof subject, however, to the terms of the Plan, and to employ and compensate legal counsel, accountants, financial advisors, expert witnesses, and other parties deemed by the Trustee to be qualified as experts in connection therewith (subject in all respects to the provisions and limitations of this Agreement and the Plan), as the Trustee shall in his sole discretion deem best;

5.1.3.5 to employ and compensate, utilizing Trust Assets, legal, financial, accounting, investment, and other advisors, custodians of assets, agents, the Special Arbitrator, and other parties deemed by the Trustee to be qualified as experts on such matters as may arise

before them, and to delegate to such Persons such powers, authority, and discretion as the Trustee, in his discretion deems advisable or necessary to carry out the terms of the Litigation Trust, and the opinion of such Persons on any matters submitted to them by the Trustee shall be full and complete protection to the Trustee with regard to any action taken by the Trustee hereunder in good faith and in accordance with such opinion;

5.1.3.6 to reimburse, utilizing Trust Assets, the Trustee, subject to Section 3.6 above, such employees, legal, financial, accounting, investment, and other advisors and experts, and agents, described in Section 5.1.3.4 and 5.1.3.5 above, for all properly documented out-of-pocket costs and expenses incurred by such Persons in connection with the performance of his duties hereunder; *provided, however, that* the Trustee shall not incur fees and expenses in excess of a total of \$ _____ without prior notice to the Committee and the Reorganized Debtor and an order of the Court entered prior to the incurrence of such fees and expenses.

5.1.3.7 to make such decisions as they may deem appropriate in connection with the administration of the Litigation Trust of the performance of his duties;

5.1.3.8 to apply to the Court for instructions to the Trustee as he may deem proper or necessary in connection with the administration of the Litigation Trust of the performance of his duties; *provided, however, that*, any such applications shall be on notice to the Committee and the Reorganized Debtor each of whom shall have standing to appear and be heard on any such applications;

5.1.3.9 to indemnify (and purchase insurance indemnifying) its directors, officers, employees, agents, the Special Arbitrator, and representatives in accordance with Section 3.7 above, to the fullest extent that a corporation organized under Arizona law is entitled to indemnify its directors, officers, employees, agents, and representatives subject to approval of the Court upon notice to the Committee and the Reorganized Debtor;

5.1.3.10 to indemnify (and purchase insurance indemnifying) its directors, officers, employees, agents and representatives in accordance with Section 3.7 above, to the fullest extent that a corporation organized under Arizona law is entitled to indemnify its directors, officers, employees, agents, and representatives subject to approval of the Court upon notice to the Committee and the Reorganized Debtor;

5.1.3.11 to delegate any or all of the discretionary powers and authority herein conferred at any time with respect to the investment of the Trust Assets to any one or more recognized individual or institutional advisors or investment managers acceptable to the Trustee, and to compensate and reimburse such advisors and managers for their services;

5.1.3.12 to establish such funds, reserves, and accounts within the Litigation Trust with Trust Assets as may be deemed by the Trustee to be useful or necessary in carrying out the purposes of the Litigation Trust ;

5.1.3.13 to draft and amend from time to time bylaws governing the operation of the administration of the Litigation Trust upon approval of the Court after notice to

the Committee and the Reorganized Debtor, provided that any such bylaws are not inconsistent with any of the provisions contained in this Agreement or the Plan;

5.1.3.14 to enter into such other arrangements with third parties as are deemed by the Trustee to be useful in carrying out the purposes of the Litigation Trust (including, without limitation, (i) engaging a financial institution to act as paying agent, depository, custodian, or trustee with respect to funds, reserves, or accounts created hereby or established pursuant hereto, and (ii) renting or leasing such real and personal properties, as the Trustee may deem necessary or desirable for the proper administration of the Litigation Trust), and to compensate such third parties for their services;

5.1.3.15 to institute any action or proceeding at law or in equity for the collection of any sums due to the Litigation Trust, or otherwise to advance the interests of the Litigation Trust in a manner not inconsistent with the terms of the Plan, prosecute any such action or proceeding to judgment or final decree, enforce any such judgment or final decree, and collect in any manner provided by law the monies adjudged or decreed to be payable; *provided however, that* so long as the Debtor has timely and fully transferred the Trust Assets into the Settlement Trust for allocation to the Litigation Trust, and all assets required to be transferred to the Litigation Trust pursuant to the Plan have been timely and fully transferred into the Litigation Trust, regardless of any deficiency in the Litigation Trust or any other reason, the Litigation Trust may not institute any action or proceeding against the Debtor, the Reorganized Debtor, or against any other Person expressly released pursuant to the terms of the Plan, for collection of any sums in respect of the Tort Claims;

5.1.3.16 to rely upon any affidavit, certificate, letter, notice, telegram, e-mail, or other paper or electronic writing, or upon any telephone conversation or other oral communication, believed by the Trustee to be genuine and sufficient and upon any other evidence believed by the Trustee to be genuine and sufficient, and to be protected and saved harmless in respect of all payments or distributions made hereunder if made in good faith and without actual notice or knowledge of the changed condition or status of any Person receiving payments or other distributions upon a condition.

5.2 Administration.

5.2.1 The Trustee shall conduct the business of the Litigation Trust in accordance with the provisions of this Agreement.

5.2.2 The Litigation Trust shall use a calendar year accounting year and shall utilized the accrual method of accounting.

5.2.3 In the event that the duration of the Litigation Trust exceeds one year, the Trustee shall cause to be prepared and filed with the Court as soon as available and in any event within one hundred twenty (120) days following the end of each fiscal year, an annual report containing financial statements of the Litigation Trust , including without limitation, a balance sheet of the Litigation Trust as of the end of such fiscal year and a statement of operations for such fiscal year ~~audited by a recognized firm of independent certified public accountants~~

~~acceptable to and selected by the Trustee and certified by such firm as to fairness of presentation and consistency.~~

5.2.4 Simultaneously with the earlier to occur of: (i) the Trustee' application to the Court for an order terminating the Litigation Trust, (ii) the delivery of the financial statements referred to in Section 5.2.3 above, and (iii) quarterly, beginning with the first quarter after the funding of the Litigation Trust , the Trustee shall cause to be prepared and filed with the Court a report and accounting containing a summary in reasonable detail of the following information with respect to the period covered by such application or such financial statements, as the case may be:

5.2.4.1 The number of Tort Claims of Non-Settling Tort Claimants remaining to be liquidated;

5.2.4.2 The investment income earned by the Litigation Trust ; and

5.2.4.3 The amount of expenses incurred by the Litigation Trust.

5.3 The Trustee shall cause to be filed timely such income tax and other returns and statements as are required to comply with applicable provisions of the Internal Revenue Code and of any state law and the regulations promulgated thereunder. The Litigation Trust shall be responsible for paying taxes and any other obligations or liabilities of any and all kinds whatsoever which at any time are lawfully levied, assessed upon, or become payable in respect of the Litigation Trust or the Trust Assets. The Trustee shall utilize Trust Assets to pay such taxes, levies, and assessments. The Trustee shall make any election and provide any information as may be necessary to comply with the requirement of a Qualified Settlement Fund under Section 468B of the Internal Revenue Code.

ARTICLE 6

ARTICLE 6

LITIGATION PROTOCOL, ALLOWANCE, AND DISTRIBUTION

6.1 Litigation Protocol.

6.1.1 Scope. The Claims of all Non-settling Tort Claimants shall be resolved under and in accordance with the terms of this Article 6 (the "**Litigation Protocol**") and the Plan. Only those Non-Settling Claims that satisfy the eligibility criteria specified in Section 6.2 below are eligible to receive payment hereunder.

6.2 **Irrevocable Election.** Non-setting Tort Claimants shall resolve their Tort Claims exclusively under the Litigation Protocol and cannot pursue their Claims or the collection thereof under the Litigation Trust or otherwise.

6.3 Eligibility.

6.3.1 Non-Settling Tort Claimants who timely filed a Proof of Claim in the Reorganization Case and whose Tort Claims are not resolved prior to the Effective Date and which are to be determined, in accordance with the terms of the Plan for Non-Settling Tort

Claimants, will be deemed to have the action instituted by the objection, if any, filed to the Tort Claim prior to the Effective Date. The Proof of Claim form and information contained in the Claimant's submission in the Reorganization Case as well as all documents and pleadings relating to any objections filed to such Tort Claim shall be deemed as and shall become the Litigation Trust's files.

6.3.2 In order to be eligible to participate in the Litigation Protocol under this Article 6, a Non-Settling Tort Claimant must satisfy the following criteria:

6.3.2.1 The Tort Claim of a Non-Settling Tort Claimant against the Debtor has not been released (or such Claim been resolved by final judgment, dismissal, or order);

6.3.2.2 The Tort Claim of a Non-Settling Tort Claimant has not been disallowed by the Court;

6.3.2.3 The Tort Claimant has timely elected to opt-out of the Settlement Trust in accordance with the terms provided by the Plan and any Orders of the Court;

6.3.2.4 The Tort Claimant has filed a timely Proof of Claim in the Case or a timely Proof of Claim has been filed on his or her behalf pursuant to Bankruptcy Rule 3005; and

6.3.2.5 The Non-Settling Tort Claimant has not transferred his or her right to recover with respect to the Tort Claim such that the Claim can be asserted by another Person.

6.4 Litigation, Disallowance, Allowance, Liquidation.

6.4.1 **Litigation Trust Sole Real Party in Interest.** The Plan and the Confirmation Order shall provide, among other things, that (i) any and all litigation on behalf of Non-Settling Tort Claimants shall be brought and maintained nominally against the Debtor (not the Reorganized Debtor), (ii) the Litigation Trust shall be the true party in interest in any such litigation, (iii) no other Person may be sued or named as a defendant in such litigation, and (iv) in no event shall the trust form of the Litigation Trust be disregarded.

6.4.2 **Settlement of Litigation.** The Trustee shall aggressively litigate the Non-Settling Tort Claims. The Trustee shall be responsible for negotiating and recommending settlements to the Committee and the Reorganized Debtor when, in his or her judgment, such settlements would facilitate resolution of the Claims of Non-Settling Tort Claimants. A condition to any settlement of a Non-Settling Tort Claim is a general release by the corresponding Non-Settling Tort Claimant of all Released Parties and Settling Parties and their property released and deemed to be released pursuant to Article 18 of the Plan. In no event may a Non-Settling Tort Claimant who has settled his litigation opt back into treatment under the Settlement Trust.

6.4.3 **Dismissal; Withdrawal of Claims.** At any time on written notice to the Trustee a Non-Settling Tort Claimant may withdraw his or her Tort Claim. In that event, such Non-setting Tort Claimant shall simultaneously file with the applicable court appropriate pleadings necessary to have any litigation, in which he asserts his Tort Claim against the Debtor,

dismissed with prejudice. Any Non-Settling Tort Claimant whose litigation against the Debtor is dismissed, whether at the request of such Non-Settling Tort Claimant or otherwise, by the court in which it is pending shall have his Non-Settling Tort Claim disallowed in its entirety. Any such withdrawn or dismissed Non-Settling Tort Claim may at no time be reasserted or treated under the Litigation Trust or the Settlement Trust.

6.4.4 Joint Defense. Certain provisions of the Plan provides the Tort Claims of Non-Settling Tort Claimants are channeled to the Litigation Trust for resolution hereunder. Upon the request of the Trustee, the Participating Third Parties, the Debtor or the Reorganized Debtor, and the Litigation Trust shall negotiate and enter into joint defense agreements, if any, as the Trustee believes appropriate.

6.4.5 Cooperation. Upon request from time to time by the Trustee, the Debtor shall deliver to the Trustee such Non-Settling Tort Claimants' files and documents, privileged and non-privileged, relating to the Tort Claims of Non-Settling Tort Claimants as are necessary for the Trustee to pursue his duties hereunder. The Debtor shall also provide reasonable cooperation to the Trustee, including providing evidence and testimony. The Trustee shall cooperate with and provide to the Reorganized Debtor such information regarding the Tort Claims of Non-Settling Tort Claimants as the Reorganized Debtor may reasonably request from time to time to facilitate the Reorganized Debtor in responding to or attending to matters relating to the Reorganization Case.

6.4.6 Privileged and Confidential Information. All privileged and confidential information provided to the Litigation Trust by the Debtor, the Reorganized Debtor, any Participating Third Party, or any officer, employee, agent of or attorney for the Debtor, Reorganized Debtor, and any Participating Third Party shall be maintained by the Litigation Trust as privileged and confidential. All privileged information provided to the Litigation Trust by the Debtor, the Reorganized Debtor, or Participating Third Parties or any office, employee, agent, or attorney therefor shall continue to be protected under the applicable privilege. The Litigation Trust shall not disclose any privileged and confidential information of the Debtor, the Reorganized Debtor, or any Participating Third Party without the prior written consent of the Debtor, the Reorganized Debtor, or such Participating Third Party.

6.4.7 Debtor's Privilege. The providing of information by the Debtor, the Reorganized Debtor, or any Participating Third Party to the Litigation Trust and the Trustee pursuant to this Agreement shall not be, and shall not be construed to be, a waiver of any applicable privilege. The Litigation Trust is authorized to assert any and all applicable privileges on behalf of the Debtor, the Reorganized Debtor, and any Participating Third Party which has common legal counsel with the Litigation Trust as set forth herein. The Litigation Trust shall not voluntarily waive any privilege available to it, the Debtor, the Reorganized Debtor, or such Participating Third Party. Upon receipt of any subpoena or other discovery request for confidential or privileged information of the Debtor, the Reorganized Debtor, or such Participating Third Party, the Litigation Trust shall promptly notify the Debtor or the Reorganized Debtor, or such Participating Third Party and shall cooperate with the Debtor, the Reorganized Debtor, or such Participating Third Party in objecting to, complying with, or otherwise responding to such subpoena or discovery request. The Debtor, the Reorganized

Debtor, and such Participating Third Parties shall remain the sole owners of their respective privileges; no such privilege shall pass to or be owned by the Litigation Trust.

6.4.8 Litigation Materials. All documents and materials assembled by the Trustee in connection with the Non-Settling Personal Injury Claims, including without limitation documents and information provided by the Debtor or the Reorganized Debtor and produced or preserved as a result of discovery (collectively, "**Litigation Materials**"), shall be maintained by the Trustee until termination of the Litigation Trust in accordance with Section 7.2 below. The Trustee may, during any wind up of the affairs of the Litigation Trust pursuant to Section 7.2.3 below, dispose of the Litigation Materials without the prior written consent of the Debtor or the Reorganized Debtor unless prior to such termination the Committee has received a written request from the Reorganized Debtor to deliver the Litigation Materials to the Reorganized Debtor.

6.4.9 Claims Determination Records. The Trustee shall maintain (but not file with any court) records of all individual determinations and payments with respect to the Non-Settling Tort Claims. The records shall include the determination of the Claim, dates of abuse, the amount and date of payments distributed. Such records shall be redacted to preserve Claimant confidentiality. The Debtor or Reorganized Debtor shall at its request and expense, be afforded access to and permitted to inspect all documentation and other supporting evidence submitted by any Non-Settling Tort Claimant who has been paid as may be necessary for the Debtor or Reorganized Debtor to receive benefits under insurance policies. The Reorganized Debtor shall maintain the confidentiality of the Claims information to protect the identity of the Claimants.

6.4.10 Attorneys' Fees. The Litigation Trust and Non-Settling Tort Claimants shall each bear their own costs, expenses, and attorneys' fees in connection with the Litigation Protocol set forth in this Article 6.

6.5 Payment of Claims.

6.5.1 Disallowed Claim. A Non-Settling Tort Claimant whose Claim is determined pursuant to the Litigation Protocol to be Disallowed shall receive no distribution under this Agreement or the Plan and shall have no further Claim against the Debtor or the Reorganized Debtor and shall have no Claim against the Litigation Trust or the Trustee.

6.5.2 Maximum Distribution. Distributions from the Trust Assets shall not exceed the aggregate amount of the Trust Assets allocated to the Litigation Trust available after payment of all administrative expenses of the Litigation Trust, including all attorneys' fees and costs of defending against the Tort Claims of Non-Settling Tort Claimants, without limitation, costs of legal defense counsel and the Trustee's compensation.

6.5.3 Possible Pro-Rata Payments. In the event that the amount of Trust Assets available for distribution to holders of Allowed Tort Claims of Non-Settling Tort Claimants is not sufficient to pay all such Claims in full, each holder of an Allowed Non-Settling Tort Claim shall receive a pro-rata share based upon the amount of such Allowed Non-Settling Tort Claim in proportion to the total amount of all Allowed Non-Settling Tort Claims subject to

the limitations contained in the Plan, and after deduction of all costs, fees (including attorneys' fees) and expenses incurred in defending any Tort Claims and administering the Litigation Trust or other expenses authorized to be paid pursuant to the terms of this Agreement.

6.5.4 Timing of Payment. There shall be no payment or distribution on account of Allowed Claims of Non-Settling Tort Claimants until after the Claims of all of the Non-Settling Tort Claimants have been determined by a Final Order ~~subject to the provisions of Section _____ below.~~

6.5.5 Discussions; Inadmissibility. Establishment of the Litigation Trust and payments hereunder to Allowed Tort Claims of Non-Settling Tort Claimants do not constitute any admission of fault, liability, or damages. Discussions made in connection with the resolution of a Claim hereunder shall be confidential and shall not be disclosed to other Claimants or their counsel or to any other Person.

~~ARTICLE 7~~

ARTICLE 7

GENERAL PROVISIONS

7.1 Irrevocability. Except as otherwise provided in Section 7.6, the Litigation Trust is irrevocable. Neither the Debtor, nor the Reorganized Debtor, nor its successors in interest, nor any Affiliates thereof, hold or may hold any beneficial interest in the income or corpus of the Litigation Trust .

7.2 Termination.

7.2.1 At such time as all Trust Assets have been fully and finally distributed in accordance with the terms of the Plan and this Agreement, the Trustee shall apply to the Court for an order of the Court terminating the Trust, upon such notice as the Court shall order.

7.2.2 Upon the Court's order terminating the Litigation Trust becoming final, except to the extent otherwise provided in such order, the Litigation Trust shall be terminated, and the Trustee shall be discharged of all responsibilities with respect to the Litigation Trust .

7.2.3 Upon termination of the Litigation Trust, the Trustee shall remain authorized to wind up the affairs of the Litigation Trust and shall be transfer any balance, if any, of funds in the Litigation Trust after payment of or adequate provision for any remaining Litigation Trust expenses to the Settlement Trust to be distributed in accordance with the terms of the Plan.

7.3 Confidentiality. Copies of all documents, notices, statements, reports, motions, or similar documents provided to the Trustee pursuant to this Agreement shall be provided on a confidential basis and shall be kept confidential by the Trustee unless such information is otherwise publicly available.

7.4 Severability. Should any provision of this Agreement be determined to be unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of this Agreement.

7.5 Headings. The headings used in this Agreement are inserted for convenience only and shall not affect the construction of any and all other provisions of this Agreement.

7.6 Amendment. When necessary to carry out the purposes of the Litigation Trust, this Agreement may be amended only by an instrument signed by each of the Trustee then in office; provided, however, that any such amendment must be consistent with the Plan; and provided further, that such amendment shall become effective only with the approval of the Court and after notice and a hearing as the Court may direct.

7.7 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but which counterparts together shall constitute but one and the same instrument.

7.8 Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the Debtor, the Litigation Trust, and the Trustee, and their respective successors and assigns, except that neither the Debtor, nor the Reorganized Debtor, nor the Litigation Trust nor any Trustee may assign or otherwise transfer any of his, her, or its rights or obligations under this Agreement.

7.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

7.10 No Adverse Action. No Trustee shall take any action that will adversely affect the qualification of the Litigation Trust as a "Qualified Settlement Fund" within the meaning of Section 468B of the Internal Revenue Code of 1986, as amended.

7.11 No Execution. All Trust Assets and funds in the Litigation Trust are deemed to be *in custodia legis* until such times as funds have actually been paid to and received by a Non-Settling Tort Claimant. No Non-Settling Tort Claimant or any other Person may execute upon, garnish or attach the Litigation Trust estate in any manner whatsoever or compel payment from the Litigation Trust of any Non-Settling Tort Claim or other Claim. Any and all payments of Non-Settling Tort Claim shall be controlled solely by the Plan and this Agreement. No Non-Settling Tort Claimant or any other person may execute upon, garnish, attach or in any way compel payment from the Settlement Trust.

7.12 Controlling Document. In the event of any conflict between the provisions of this Agreement and the Plan, the Plan shall be the controlling document.

IN WITNESS WHEREOF, the Trustor and the Initial Trustee have caused this Agreement to be duly executed by them or their respective authorized representatives.

Dated: _____

THE ROMAN CATHOLIC CHURCH
OF THE DIOCESE OF TUCSON, an
Arizona corporation sole

By:-

Name: _____

Title: _____

TRUSTEE:

Dated: _____

By: _____

Name:-

Title:-

Document comparison done by DeltaView on Friday, July 08, 2005 10:06:17

Document 1	iManage://TUC-LDMS1/TUC/167351/1
Document 2	iManage://TUC-LDMS1/TUC/167351/2
Rendering set	Standard

Legend	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics	
	Count
Insertions	21
Deletions	23
Moved from	1
Moved to	1
Style change	0
Format changed	0
Total changes	46