

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA**

In re:

The Diocese of New Ulm,

Debtor.

Case No.: 17-30601
Chapter 11 Case

**NOTICE OF HEARING AND MOTION UNDER SECTION 1121(D)(1) OF THE
BANKRUPTCY CODE TO FURTHER EXTEND EXCLUSIVE PERIODS FOR
DEBTOR TO FILE AND OBTAIN ACCEPTANCES OF A CHAPTER 11 PLAN**

To: The parties specified in Local Rule 9013-3(a)(2).

1. The Diocese of New Ulm (the “Diocese”) moves this Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at **10:00 a.m. on Thursday, February 22, 2018, in Courtroom 8 West, U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota.**

3. Any response to the motion must be filed and served not later than Friday, February 16, 2018, pursuant to the Federal Rules of Bankruptcy Procedure and Local Rules. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005, and Local Rule 1070-1. This is a core proceeding. The petition commencing this chapter 11 case was filed on March 3, 2017 (the “Filing Date”). The case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 1121(d)(1) and is filed under Local Rules 9013-1 through 3. The Diocese requests an order of the Court: (a) extending the period

within which the Diocese has the exclusive right to file a chapter 11 plan until June 26, 2018; and (b) extending the exclusive period in which the Diocese may obtain acceptances of such plan until August 25, 2018.

BACKGROUND

6. On the Filing Date, the Diocese filed a voluntary petition for relief pursuant to chapter 11 of the Bankruptcy Code. The Diocese continues to operate its business as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Diocese's chapter 11 case.

7. Additional background information about the Diocese and this case is set forth in the Declaration of Monsignor Douglas L. Grams in Support of Debtor's First Day Motions [dkt. no. 19]. The additional facts set forth below are verified by Thomas J. Holzer, as evidenced by the attached verification.

8. On March 3, 2017, the Diocese filed a Motion for Order (I) Granting Expedited Relief; (II) Establishing Deadlines for Filing Proofs of Claim; (III) Approving Sexual Abuse Proof of Claim Form; (IV) Approving Form and Manner of Notice; and (V) Approving Confidentiality Procedures [dkt. no. 17]. On March 8, 2017, the Court entered an Order granting the requested relief and establishing the deadline for filing proofs of claim [dkt. no. 33].

9. Pursuant to that Order, the last day for governmental units to timely file a proof of claim in this case was August 30, 2017. The last day for all other claimants, including sexual abuse claimants, to timely file a proof of claim in this case was July 10, 2017.

10. On March 3, 2017, the Diocese filed a Motion for Order Directing Mediation and Appointing the Honorable Gregg W. Zive to Serve as Mediator [dkt. no. 16]. On March 23,

2017, the Court entered an Order Directing Mediation and Appointing Mediator [dkt. no. 41]. In accordance with that Order, mediation has commenced as directed by Judge Zive.

11. Specifically, a two-day mediation session was held on January 8 and 9, 2018. At the mediation session, the Diocese and the other parties agreed to a protocol for exchanging additional information and agreed to continue to mediate after the exchange of information. Accordingly, while progress is being made, the mediation process and related negotiations remain ongoing. The Diocese expects that the next mediation session will not occur until the spring of 2018.

12. The Diocese expects that any plan it proposes will be greatly informed and influenced by the mediation process, which will afford the opportunity to continue negotiating with key parties, including related to the terms of a plan.

13. Pursuant to 11 U.S.C. § 1121, the original exclusive period that the Diocese had to file a plan would have ended on July 1, 2017, and the exclusive period to obtain acceptances of a plan would have ended on August 30, 2017. Mediation was not expected to commence by July 1, 2017. Accordingly, on June 15, 2017, the Diocese filed the Motion Under Section 1121(d)(1) of the Bankruptcy Code to Extend Exclusive Periods for Debtor to File and Obtain Acceptances of a Chapter 11 Plan [dkt. no. 105]. That motion sought an extension of the exclusive periods for 120 days, through and including October 29, 2017 and December 28, 2017, respectively. On June 29, 2017, the Court granted the motion by the Order Extending Exclusive Periods for Debtor to File and Obtain Acceptances of a Chapter 11 Plan [dkt. no. 111]. Due to scheduling and other issues that delayed the start of mediation, the Diocese filed a Motion Under Section 1121(d)(1) of the Bankruptcy Code to Further Extend Exclusive Periods for Debtor to File and Obtain Acceptances of a Chapter 11 Plan [dkt. no. 147]. That motion sought an

extension of the exclusive periods for an additional 120 days, through and including February 26, 2018 and April 27, 2018, respectively. On October 19, 2018, the Court granted the motion by the Order Extending Exclusive Periods for Debtor to File and Obtain Acceptances of a Chapter 11 Plan [dkt. no. 148].

14. Since the filing of this bankruptcy case, the Diocese has attempted to pave the way for a successful mediation, including by negotiating various issues with the Committee and counsel for certain sexual abuse claimants, and undertaking communications and information-sharing efforts with various insurance companies.

15. The Diocese is continuing these efforts, including under the protocol agreed to at the January mediation session, and is hopeful that progress will continue to be made. However, the next mediation session likely will not commence until the spring of 2018—after the end of the current exclusive period for the Diocese to file a plan. In addition, even if the next mediation session is held in the spring, it may take more than one additional sessions to achieve resolutions with all or most parties involved.

16. The Diocese is paying its bills as they become due.

17. Prior to filing this motion, the Diocese's counsel discussed the extension requested herein with counsel for the Official Committee of Unsecured Creditors, who indicated that the Committee has no objection to the relief requested.

RELIEF REQUESTED

18. Currently, pursuant to 11 U.S.C. § 1121 and the previous extension granted by this Court, the exclusive period that the Diocese has to file a plan will end on February 26, 2018, and the exclusive period to obtain acceptances of a plan will end on April 27, 2018. The Diocese requests an order extending each of these dates for 120 days, through and including June 26,

2018 and August 25, 2018, respectively. The Diocese believes that cause exists for such an extension based on the status of the case and progress towards a consensual resolution.

19. Pursuant to Local Rule 9013-2, this motion is accompanied by a memorandum of law, proposed order, and proof of service.

20. Pursuant to Local Rule 9013-2, the Diocese gives notice that it may, if necessary, call Thomas J. Holzer to testify at the hearing on the Motion regarding the facts set out herein. The witness's business address is 1421 6th Street North, New Ulm, Minnesota 56073.

WHEREFORE, the Diocese respectfully requests that the Court enter an order:

A. Extending the time in which the Diocese has the exclusive right to file a plan through June 26, 2018;

B. Extending the time within which the Diocese may obtain acceptances of such plan through August 25, 2018; and

C. Granting such other and further relief as the Court deems just and equitable.

Dated: February 6, 2018

/e/ Sarah M. Olson

James L. Baillie (#0003980)

James C. Brand (#387362)

Sarah M. Olson (#390238)

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**ATTORNEYS FOR THE DIOCESE OF
NEW ULM**

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VERIFICATION

I, Thomas J. Holzer, am the Director of Operations and Finance of the Diocese. Based upon my personal information and belief, I declare under penalty of perjury that the facts set forth in the preceding Motion to Further Extend Exclusive Periods for Debtor to File and Obtain Acceptances of a Chapter 11 Plan are true and correct, according to the best of my knowledge, information, and belief.

Dated: 2-6, 2018

Signed: 
Thomas J. Holzer

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA**

In re:

The Diocese of New Ulm,

Debtor.

Case No.: 17-30601
Chapter 11 Case

**MEMORANDUM OF LAW IN SUPPORT OF MOTION UNDER SECTION 1121(D)(1)
OF THE BANKRUPTCY CODE TO FURTHER EXTEND EXCLUSIVE PERIODS FOR
DEBTOR TO FILE AND OBTAIN ACCEPTANCES OF A CHAPTER 11 PLAN**

The above-captioned debtor (the “Diocese”), as debtor in possession, submits this memorandum in support of its Motion to Further Extend Exclusive Periods for Debtor to File and Obtain Acceptances of a Chapter 11 Plan.

BACKGROUND

The facts referenced in this memorandum are drawn from the Diocese’s verified motion. All capitalized terms have the meaning ascribed to them in the motion.

LEGAL ANALYSIS

I. The Exclusive Periods to File a Plan and Obtain Acceptance Thereof May Be Extended for Cause.

The Bankruptcy Code provides a debtor a limited time to propose a chapter 11 plan and obtain acceptance of that plan without interference from a competing plan. The exclusive period to file a plan extends through the first 120 days of a chapter 11 case. *See* 11 U.S.C. § 1121(b). If the debtor files a plan within the 120-day period, the Bankruptcy Code affords the debtor an additional 60 days (up to 180 days after the filing date) to obtain acceptance of the plan before any other party in interest may file a competing plan. *See* 11 U.S.C. § 1121(c)(3).

Section 1121(d) of the Bankruptcy Code allows the exclusive periods to file a plan and to obtain acceptances to be extended for cause:

[o]n request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.

11 U.S.C. § 1121(d)(1). In recognition of this provision, courts have held that certain situations require longer exclusivity periods. *See, e.g., Bunch v. Hoffinger Indus., Inc. (In re Hoffinger Indus., Inc.)*, 292 B.R. 639, 643 (B.A.P. 8th Cir. 2003).

Extensions of the exclusive periods are routinely granted when the circumstances of the case indicate that it would be beneficial to the reorganization process. *In re Hoffinger Indus., Inc.*, 292 B.R. at 644; *In re Dow-Corning Corp.*, 208 B.R. 661, 662, 670 (Bankr. E.D. Mich. 1997); *In re Express One Intern, Inc.*, 194 B.R. 98, 99 (Bankr. E.D. Tex. 1996). Indeed, courts have granted repeated extensions of these periods. *See, e.g., In re Wisconsin Barge Line, Inc.*, 78 B.R. 946, 948 (Bankr. E.D. Mo. 1977) (granting the debtor a fifth extension of the exclusivity periods).

When determining whether to extend the exclusive periods, courts consider a number of factors including:

- the size of the debtor and the consequent difficulty in formulating a plan of reorganization for a large debtor with a complex financial structure,
- the necessity of sufficient time to permit the debtor to negotiate a plan of reorganization and prepare adequate information,
- the existence of good faith progress toward reorganization,
- the existence of an unresolved contingency,
- the fact that the debtor is paying its bills as they come due,
- the length of previous extensions of exclusivity,

- breakdowns in plan negotiations, such that the continuation of the debtor's exclusivity periods would result in the debtor having an unfair bargaining position over creditors, and
- the debtor's failure to resolve fundamental reorganization matters essential to its survival.

In re Hoffinger, 292 B.R. at 643-44; *see also In re Dow-Corning Corp.*, 208 B.R. at 664-65. No one factor is dispositive, and a bankruptcy court is not restricted to counting factors. *Dow Corning*, 208 B.R. at 669.

II. Cause Exists to Extend the Diocese's Exclusive Periods.

The concept of "exclusivity" was incorporated into the Bankruptcy Code to provide a debtor with a full and fair opportunity to prepare a plan, and to solicit acceptances to such a plan, without the dislocation and disruption of a debtor's business that would be caused by the filing of competing proposed plans by other parties in interest. One of the objectives of a chapter 11 case is the development, formulation, confirmation and consummation of a consensual plan. Typically, that process requires negotiations with key parties, and is aided by the claims deadline having passed, such that the debtor and other parties in interest understand the universe of asserted claims.

The status of this case and the factors identified above support the conclusion that an extension of the exclusivity period and solicitation period is warranted in the Diocese's case, including because:

- The Diocese actively sought the appointment of a mediator and an order for mediation, which the Diocese hopes will result in a negotiated, consensual framework for a plan. Mediation has commenced, and progress is being made. However, additional time is required for parties to exchange information. Absent the requested extension, the exclusive period for filing a plan would expire prior to when the next mediation session is expected to be held, which could force the Diocese to prematurely prepare a plan without the benefit of the full mediation process and its forum for negotiations with key parties.

- As of the filing of this Motion, only approximately 11 months have passed since the Diocese filed for relief under chapter 11. Given that the Bankruptcy Code allows for extensions up to 18 months after the petition date, the Diocese's requested extension of 120 days is reasonable.
- The Diocese has managed the bankruptcy case in good faith. In the time since the case was filed, the Diocese has devoted substantial time and effort to dealing with many matters, including but not limited to: (a) preparing and presenting first day motions; (b) finalizing and filing the schedules of assets and liabilities, and statement of financial affairs; (c) obtaining court approval of deadlines for filing timely proofs of claim and related claim procedures; (d) distribution of notice thereof; (e) retaining multiple professionals; (f) obtaining the Order for mediation; (g) negotiating various issues with the Committee and counsel for certain sexual abuse claimants; (h) undertaking communications with various insurance companies; (i) working with various parties to obtain nondisclosure agreements such that information may be shared to aid in the mediation process; (j) obtaining potential mediation dates from parties; (k) preparing for and participating in the first mediation session; and (l) commencing mediation follow-up work.
- The extension is not being sought in order to pressure creditors. Indeed, the Diocese's creditors will best be served by additional time to negotiate and by avoiding the cost and delay of competing plans. Counsel for the Official Committee of Unsecured Creditors has indicated that the Committee has no objection to the requested extension.
- Postpetition payments have been made as they have become due.

In sum, the Diocese believes that the extensions sought in the motion will be beneficial to it as well as creditors and other parties in interest; will provide time to proceed with the mediation and attempt to reach a consensus regarding plan terms; will allow the plan to be based on more accurate information because the claims deadline will have passed; and will result in a more efficient use of its assets for the benefit of all creditors.

The requested extensions of the exclusive period and solicitation period are essential to allow the Diocese to proceed with the plan process as contemplated by the Bankruptcy Code. Moreover, the possibility of multiple plans would inevitably lead to unnecessary and costly adversarial confrontations that would likely cause a dramatic increase in the professional fee burden borne by the Diocese and a concomitant deterioration in asset values. The Diocese

recognizes that the value of its assets will be adversely affected by any unnecessary delay in the chapter 11 process and would be prejudicial to all parties in interest.

The Diocese is hopeful that mediation will proceed expeditiously and that a plan can be developed within the requested extensions of the exclusivity period and solicitation period, but reserves the right to request additional extensions based on further developments in the case, including in the mediation.

The Diocese's request for an extension is modest, and does not impermissibly extend the dates for filing and solicitation past the time periods provided for in section 1121(d)(2)(A) and (B) of the Bankruptcy Code. Accordingly, the exclusivity period and solicitation period should be extended to afford the Diocese a full and fair opportunity to negotiate, propose, and seek acceptance of a plan.

CONCLUSION

For the foregoing reasons, the Diocese respectfully requests that this Court grant the relief requested in the motion.

Dated: February 6, 2018

/e/ Sarah M. Olson

James L. Baillie (#0003980)

James C. Brand (#387362)

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**ATTORNEYS FOR THE DIOCESE
OF NEW ULM**

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA**

In re:

The Diocese of New Ulm,

Debtor.

Case No.:17-30601

Chapter 11 Case

CERTIFICATE OF SERVICE

Sarah M. Olson, under penalty of perjury, states that on February 6, 2018, she caused to be served:

1. Notice of Hearing and Motion Under Section 1121(D)(1) of the Bankruptcy Code to Further Extend Exclusive Periods for Debtor to File and Obtain Acceptances of a Chapter 11 Plan;
2. Memorandum of Law in Support of Motion Under Section 1121(D)(1) of the Bankruptcy Code to Further Extend Exclusive Periods for Debtor to File and Obtain Acceptances of a Chapter 11 Plan;
3. Certificate of Service; and
4. Proposed Order Extending Exclusive Periods for Debtor to File and Obtain Acceptances of a Chapter 11 Plan

to the parties on the attached service list by U.S. Mail, ECF, or email, as indicated on the service list.

Dated: February 6, 2018

/e/ Sarah M. Olson
Sarah M. Olson

Served via U.S. Mail, except those parties whose contact information includes an email address were served via ECF or e-mail (with consent), as indicated.

<p align="center"><u>US TRUSTEE AND OTHER REQUIRED PARTIES</u></p>	<p align="center"><u>LARGEST UNSECURED CREDITORS</u></p>	<p>Blank Rome LLP James R. Murray James Carter 1825 Eye St NW Washington, DC 20006 202-420-3409 jmurray@blankrome.com (via ecf)</p>
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**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA**

In re:

The Diocese of New Ulm,

Debtor.

Case No.: 17-30601
Chapter 11 Case

**ORDER EXTENDING EXCLUSIVE PERIODS FOR DEBTOR
TO FILE AND OBTAIN ACCEPTANCES OF A CHAPTER 11 PLAN**

This case is before the court on the motion of the Diocese of New Ulm to extend the exclusive time granted to the debtor to file a plan and disclosure statement and obtain confirmation of a plan pursuant to 11 U.S.C. § 1121.

Based on the motion and file,

IT IS ORDERED:

1. The motion is granted.
2. The period within which the debtor has the exclusive right to file a chapter 11 plan pursuant to 11 U.S.C. § 1121(b) is extended through June 26, 2018.
3. The period within which the debtor has the exclusive right to obtain acceptances of such plan pursuant to 11 U.S.C. § 1121(c)(3) is extended through August 25, 2018.

Dated:

Robert J. Kressel
United States Bankruptcy Judge