

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

In re:

ARCHDIOCESE OF MILWAUKEE,

Debtor.

Case No. 11-20059-svk

Chapter 11

Hon. Susan V. Kelley

**DEBTOR'S MOTION FOR AN ORDER AUTHORIZING,
BUT NOT DIRECTING, DEBTOR TO CONTINUE ITS PARTICIPATION IN THE
MULTIPLE EMPLOYER PARTIALLY-INSURED HEALTH INSURANCE PROGRAM**

Archdiocese of Milwaukee, debtor and debtor in possession (the "Debtor" or the "Archdiocese"), hereby submits this Motion (the "Motion") for the entry of an order authorizing, but not directing, the Debtor, at its discretion and in accordance with its stated policies, to continue its participation in the multiple employer partially-insured health insurance program covering Debtor's employees and their dependents (the "St. Raphael Health Plan"), and to pay any monthly premiums and costs incident to plan participation. In support of this Motion, the Debtor respectfully states as follows:

Jurisdiction and Statutory Authority

1. The 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 of this proceeding is proper in this District and before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

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2. The statutory basis for relief is authorized herein is §§ 105(a), 363, 507(a)(5) and 541(d) of Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”).

Background

3. On January 4, 2010 (the “Petition Date”), the Debtor commenced its reorganization case (the “Reorganization Case”) by filing a voluntary petition for relief under the Bankruptcy Code.

4. The Debtor is continuing in possession of its property and is operating and managing its business, as a debtor in possession, pursuant to §§ 1107 and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or an examiner, and no official committee has been established.

5. For a description of the Archdiocese and its operations, the Debtor respectfully refers the Court and the parties in interest to the *Description of Debtor and Pre-filing History Affidavit of John J. Marek* (the “Marek History Affidavit”) and the *Affidavit of John J. Marek in Support of First Day Pleadings* (the “Marek First Day Affidavit”), both filed contemporaneously herewith, and incorporated herein by reference.

Relief Requested

6. The Archdiocese seeks authority to continue its participation in the St. Raphael Health Plan and to pay any monthly premiums and costs incident to plan participation.

7. As of the Petition Date, the Debtor employed approximately one hundred twenty (120) salaried employees, fifty-seven (57) hourly employees, and six (6) counselors paid on a commission basis (collectively the “Employees”). Approximately one hundred and fifty-nine (159) Employees and their dependents participate in the St. Raphael Health Plan (the “Participating Employees”). The Employees’ skills and their specialized knowledge and understanding of the Debtor’s mission and operations are essential to the administration of this

case, the preservation of the Debtor's assets, and the Debtor's ability to consummate a successful reorganization. Without the Employees, the Debtor would not be able to provide resources, spiritual leadership, direction, support, planning, programming, leadership development and other services to individuals of the Roman Catholic faith, parish corporations, and schools in the Region and would not be able to provide necessary support for a plan of reorganization that will benefit all creditors.

Facts Related to This Motion

8. The Debtor is the sponsoring employer and a participating employer (a "Participating Employer") in the multi-employer St. Raphael Health Plan where each employer is a separate participant. Other Participating Employers are those Parish Corporations and Catholic-based social and community service organizations that operate in the Region (collectively the "Non-Debtor Catholic Entities") that have elected to participate in the St. Raphael Health Plan. The St. Raphael Health Plan is a partially-insured health plan for the exclusive benefit of the employees of the Participating Employers, their spouses and dependants, and is administered by UnitedHealthcare Insurance Company ("UnitedHealthcare"), a third party administrator. Johnson Bank serves as trustee of the St. Raphael Health Plan Trust, established to efficiently pay health insurance premiums and claims, as well as other reasonable expenses associated with the administration of the St. Raphael Health Plan.

9. Claims for services received under the St. Raphael Health Plan are processed as follows: Participating Employees of the St. Raphael Health Plan submit claims to UnitedHealthcare. If approved, UnitedHealthcare notifies Johnson Bank to pay the claims out of the St. Raphael Health Plan Trust.

10. Each Participating Employer pays a monthly premium for its participation in the St. Raphael Health Plan to UnitedHealthcare which periodically disburses payments received to

the St. Raphael Health Plan Trust. Monthly premiums for the Participating Employers were established by UnitedHealthcare based upon the average projected claims of the participating employees of the Participating Employers and corresponding administrative costs. As a multiple employer plan, individual claims are paid out of the pooled money in the St. Raphael Health Plan Trust. The Debtor's monthly premium payment to the St. Raphael Health Plan, which includes contributions of Employee Participants, is approximately \$130,000, and the premium payment for January was made, as is the Debtor's customary practice, prior to the start of the month, and therefore prior to the Petition Date. Future premium payments are obligations to the St. Raphael Health Plan and are not direct payments to any employee.

11. The St. Raphael Plan differs from a plan that is fully self-insured in that the plan has a stop-loss which protects the Debtor and the participating Non-Debtor Catholic Entities from claims above a certain threshold.

12. Monthly premiums paid by Participating Employers to the St. Raphael Health Plan are used to fund prior and future claims. Consequently, if previous month(s) claims against the St. Raphael Health Plan Trust were larger than anticipated, it is possible that current premiums paid by Participating Employers could pay for incurred-but-not-reported ("IBNR") claims from a previous period. Thus, it is conceivable that some portion of the Debtor's monthly premium payments to the St. Raphael Health Plan Trust made in the postpetition period could be for prepetition IBNR claims.

Basis for Relief

13. The Archdiocese's continued participation to the St. Raphael Health including the potential payment of certain prepetition IBNR claims is warranted under section 507(a)(5) of the

Bankruptcy Code and case law in this District and elsewhere.

Amounts Owed to Employee Benefit Plans Enjoy Priority Status Under the Bankruptcy Code

14. Under section 507(a)(5) of the Bankruptcy Code, employee benefit plans are granted a priority claim for:

allowed unsecured claims for contributions to an employee benefit plan —

(A) arising from services rendered within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first; but only

(B) for each such plan, to the extent of —

(i) the number of employees covered by each such plan multiplied by \$11,725; less

(ii) the aggregate amount paid to such employees under paragraph (4) of this subsection, plus the aggregate amount paid by the estate on behalf of such employees to any other employee benefit plan.

15. In addition, the costs of administering employee benefits programs are also entitled to priority under section 507(a)(5) of the Bankruptcy Code. *See Allegheny Int'l, Inc. v. Metro. Life Ins. Co.*, 145 B.R. 820, 822-23 (W.D. Pa. 1992). In *Allegheny*, the court ruled that the prepetition claims of a medical benefits plan administrator for, among other things, fees charged for performing administrative, actuarial and claims services in connection with the medical benefits plans of a chapter 11 debtor were entitled to priority under former Section 507(a)(4) of the Bankruptcy Code. The court stated that “[i]t would be useless to prioritize expenses for contributions to an employee benefit plan and not prioritize the expenses necessary to administer those plans.” *Id.* The court has held that contributions to both insured and self-insured plans were eligible for priority. *Id.*

16. In this case, it is theoretically possible though highly unlikely, that up to \$130,000 of current premiums paid by the Archdiocese could pay for some prepetition IBNR claims. In any event, the total amount of payments the Debtor will make to the St. Raphael Health Plan that may be used to pay IBNR claims will not approach the aggregate sum permitted under section 507(a)(5) of the Bankruptcy Code. Section 507(a)(5) of the Bankruptcy Code grants priority for contributions to an employee health plan up to a cap of \$11,725 for each employee participating in the plan, less any payments made under section 507(a)(4) of the Bankruptcy Code. The Debtor has one hundred and fifty-nine (159) Participating Employees, so the maximum amount of health plan payments that are entitled to priority is \$11,725 multiplied by 159, or \$1,864,275. In the Debtor's employee compensation motion (the "Employee Compensation Motion"), filed contemporaneously herewith, the Debtor seeks authority to pay prepetition compensation under section 507(a)(4) of the Bankruptcy Code in an amount that is estimated to be significantly less than \$400,000. Therefore, even if the Court grants this Motion and the Employee Compensation Motion, the Debtor estimates that only \$530,000 of total prepetition employee compensation and health plan obligations will be granted priority, far short of the \$1,864,275 of prepetition employee and health plan claims that are afforded priority pursuant to section 507(a)(5) of the Bankruptcy Code.

17. The fact that certain Employees may have received payment, even a maximum payment, pursuant to section 507(a)(4) of the Code does not diminish the right to establish, as a priority, amounts that may be owed on their behalf with regard to contributions to an employee benefits plan. *See, In re Braniff, Inc.* 218 B.R. 628, 635 (Bankr. M.D. Fla. 1998), and *In re New England Cartage Corp.* 220 B.R. 503, 504 (Bankr. D.Mass. 1998) ("Section 507(a)(4)(B) [now Section 507(a)(5)] is an aggregate limitation. It limits the total claims that can be paid under

fourth [now 5th] priority, not the amount than can be paid to or on account of an individual employee.”) Thus, despite the prior payments to some Employees, in the aggregate, the Debtor has the right to pay prepetition health plan benefits as a priority on behalf of all Employees.

Request for Authority for Banks to Honor and Pay Checks Issued to Pay Prepetition Employee Health Benefit Plan Expenses and Associated Processing Costs.

18. In addition, by this Motion, the Debtor requests that Johnson Bank be authorized and directed, when requested by the Debtor in the Debtor’s sole discretion, to receive, process, honor and pay any and all checks payable to UnitedHealthcare, and to honor all fund transfer requests made by the Debtor related to the St. Raphael Health Plan, whether such checks were presented or fund transfer requests were submitted prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.

19. The Debtor represents that it has sufficient funds on hand to pay monthly premiums to the St. Raphael Health Plan, which may include some prepetition IBNR claims, to the extent described herein, as such amounts become due in the ordinary course of its business.

20. Nothing contained herein is intended or should be construed as: (a) an admission as to the amount, validity or priority of any claim against the Debtor; (b) a waiver of the Debtor’s rights to dispute any claim on any grounds; (c) a promise to pay any claim; (d) an implication or admission that any particular claim is a claim for benefits under the St. Raphael Health Plan; or (e) a request to assume any executory contract or unexpired lease, pursuant to section 365 of the Bankruptcy Code.

Request for Waiver of Stay

21. Pursuant to Rules 6003(b) and 6004(h) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), the Debtor seeks (a) immediate entry of an order granting

the relief sought herein and (b) a waiver of any stay of the effectiveness of such an order. As noted above, Bankruptcy Rule 6003(b) provides, in relevant part,

[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, grant relief regarding . . . a motion to pay all or part of a claim that arose before the filing of the petition.

Fed. R. Bankr. P. 6003(b). Accordingly, where the failure to grant any such requested relief would result in immediate and irreparable harm to the debtor's estates, the Court may allow the debtor to pay all or part of a claim that arose before the petition date prior to the twenty-first day following the petition date. Bankruptcy Rule 6004(h) provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise."

22. The payment of the St. Raphael Health Plan premiums, which may include some prepetition IBNR claims, is necessary to prevent the immediate and irreparable damage to employee morale, commitment and support that is essential to the Debtor's efforts to administer this case, preserve its assets and pursue and consummate a reorganization in an expedited manner. Accordingly, the Debtor submits that ample cause exists to justify (a) a finding that the requirements of Bankruptcy Rule 6003(b) have been satisfied and that the immediate entry of an order granting the relief sought herein is appropriate and (b) a waiver of the ten (10) day stay imposed by Bankruptcy Rule 6004(h), to the extent that it applies.

Notice

23. The Debtor will serve notice of this Motion by electronic mail or facsimile as well as overnight delivery on the parties identified on the attached notice list (the “Notice List Recipients”).

24. Within three (3) business days of the entry of the order, notice of the Order will be given to the Notice List Recipients and those persons who have requested notice pursuant to Rule 2002 of the Bankruptcy Rules. In light of the nature of the relief requested, the Debtor submits that no further notice is required, pursuant to Bankruptcy Rules 9006(c)(1) and 9007, and asks the court to approve the same.

WHEREFORE, the Debtor respectfully request that this Court: (i) enter an order granting the relief sought herein; and (ii) grant such other and further relief to the Debtor as the Court may deem proper.

Dated the 4th day of January, 2011.

ARCHDIOCESE OF MILWAUKEE
Debtor and Debtor-in-Possession
by its counsel,
Whyte Hirschboeck Dudek S.C.

By: /s/ Daryl L. Diesing

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Notice List

<p><i>Debtor and Debtor in Possession:</i> Archdiocese of Milwaukee 3501 S. Lake Dr. Milwaukee, WI 53207 Attn: John Marek, CFO Phone: 414-769-3334 Facsimile: 414-769-3408 Email: marekj@archmil.org</p>	<p><i>Counsel to Debtor and Debtor in Possession:</i> Whyte Hirschboeck Dudek S.C. 555 E. Wells St., Ste. 1900 Milwaukee, Wisconsin 53202-3819 Attn: Daryl L. Diesing Phone: 414-273-2100 Facsimile: 414-223-5000 Email: ddiesing@whdlaw.com barnold@whdlaw.com mgosman@whdlaw.com</p>
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<p><i>Debtor's Notice and Claims Agent:</i> Kurtzman Carson Consultants LLC 2335 Alaska Ave. Los Angeles, CA 90245 Attn: Travis Vandell Phone: 310-823-9000 Facsimile: 310-751-1559 Email: tvandell@kccllc.com</p>	<p><i>Counsel to Certain Creditors listed on Debtor's 20 Largest:</i> Jeff Anderson & Associates P.A. 366 Jackson St., Ste 100 St. Paul, MN 55101 Attn: Jeff Anderson Phone : 651-227-9990 Facsimile : 651-297-6543 Email: jeff@andersonadvocates.com</p>
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<p>Mr. Val Thomas IRS, Central Insolvency Unit 545 Zor Shrine Pl, Stop 5301 MSN Madison, WI 53719 Phone: 608-829-8127 Facsimile:</p>	<p>Wisconsin Department of Revenue Special Procedures Unit PO Box 8901 Madison, WI 53708-8901 Attn: Hiram F. Cutting Phone: 608-266-2772 Facsimile: 608-267-1037 Email: hirma.cutting@revenue.wi.gov</p> <p>2135 Rimrock Road 5-SPU Madison, WI 53713</p>
<p>Wisconsin Department of Justice Office of the Attorney General P.O. Box 7857 Madison, WI 53707-7857 Facsimile: 608-267-2779</p>	<p>Department of Workforce Development, Division of Unemployment Insurance PO Box 8914 Madison, WI 53708 Facsimile: 608-266-8221</p>
<p><i>Counsel to Any Official Committee(s):</i> To be included after such committee is appointed and counsel is retained</p>	<p>Milwaukee Laborer's Local 113 Attn: Anthony Niera, Business Manager 6310 W. Appleton Ave. Milwaukee, WI 53210 Phone: 414-873-4520 Facsimile: 414-873-5155 Email: contactus@milwlaborers113.org</p>

<p><i>Johnson Bank:</i> Johnson Bank Attn: Jill Chapman 333 E. Wisconsin Ave. Milwaukee, WI 53202 Phone: 414-287-6472 Facsimile: 414-287-6458 Email: jchapman@johnsonbank.com</p>	
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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

In re:

ARCHDIOCESE OF MILWAUKEE,

Debtor.

Case No. 11-20059-svk

Chapter 11

Hon. Susan V. Kelley

**ORDER AUTHORIZING DEBTOR TO CONTINUE ITS PARTICIPATION IN THE
MULTIPLE EMPLOYER PARTIALLY-INSURED HEALTH INSURANCE PROGRAM**

Upon the Motion (the "Motion")¹ of Archdiocese of Milwaukee, as debtor and debtor-in-possession (the "Debtor"), seeking entry of an order granting the authority to continue its participation in the multiple employer partially-insured health insurance program covering Debtor's employees and their dependents (the "St. Raphael Health Plan"), and to pay any monthly premiums and costs incident to plan participation, and it appearing that this court has jurisdiction over this matter pursuant to 28 U.S.C. §§157 and 1334; and it appearing that this

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

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Motion is a core proceeding pursuant to 28 U.S.C. §157; and adequate notice of the Motion having been given; and it appearing that no other notice need be given; and after due deliberation and sufficient cause appearing therefore:

It is hereby ordered:

1. The Motion is hereby GRANTED.
2. The Debtor is authorized to continue its participation in the St. Raphael Health Plan.
3. The Debtor is authorized to pay any monthly premiums and costs incident to plan participation.
4. Pursuant to Bankruptcy Rule 6004(h), this Order shall be immediately effective and enforceable upon its entry.
5. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation and enforcement of this Order.

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