

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

In re:

Roman Catholic Diocese of Burlington,
Vermont,¹

Case No.: 24-10205-HZC
Chapter 11 Case

Debtor.

**EMERGENCY MOTION AND MEMORANDUM FOR AN ORDER (I) AUTHORIZING
THE CONTINUED MAINTENANCE OF THE DEBTOR'S INSURANCE PROGRAM
AND (II) AUTHORIZING PAYMENT OF PREPETITION OBLIGATIONS IN
RESPECT THEREOF**

The Roman Catholic Diocese of Burlington, Vermont (the “Diocese”) requests that this Court enter, on an emergency basis, an order, substantially in the form of the proposed order attached hereto, (i) authorizing the Diocese to continue to maintain its insurance program for the benefit of the Diocese (the “Self-Insurance Program”) and (ii) authorizing, but not directing, the Diocese to pay any prepetition claims, premiums, obligations and other administrative costs of the Self-Insurance Programs (the “Motion”). As the relief sought in this Motion seeks to prevent disruptions in the Diocese’s operations that would adversely affect its reorganization, the Court should grant the Motion.

The Diocese conferred with the Office of the United States Trustee (the “UST”) prior to filing this Motion.

JURISDICTION, VENUE, AND STATUTORY BASIS FOR RELIEF

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334

¹ In accordance with Fed. R. Bankr. P. 2002(n) and 1005 and 11 U.S.C. § 342(c), as applicable, the Diocese’s address is 55 Joy Drive, South Burlington, Vermont 05403, and its Employer Identification Number (EIN) is 03-0180730.

and Rule 5005 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The petition commencing this Chapter 11 case was filed on September 30, 2024 (the “Petition Date”). The case is currently pending before this Court.

3. This Motion arises under 11 U.S.C. §§ 105, 107, and 363 and Bankruptcy Rules 6003, 6004, and 9018. This Motion is filed under Bankruptcy Rules 9013 and 9014 and Local Rules 9013-1 to -6 and 9014-1. Emergency relief is requested pursuant to Bankruptcy Rule 9006(c) and Local Rule 9075-1. Notice of this Motion is provided pursuant to Bankruptcy Rule 2002 and Local Rules 9013-3 and 9013-4.

GENERAL BACKGROUND

4. On the Petition Date, the Diocese filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). The Diocese continues to operate its business as debtor in possession pursuant to 11 U.S.C. §§ 1107(a) and 1108. There is presently no pending request or motion for appointment of a trustee or examiner, and no official committee of unsecured creditors has been appointed.

5. The Diocese is a Catholic Diocese serving the entire State of Vermont. Further background information regarding the Diocese may be found in the Affidavit of Bishop John J. McDermott in Support of Initial Pleadings and Pursuant to Local Rule 1007-1 (the “McDermott Affidavit”).

RELEVANT BACKGROUND TO MOTION²

6. In the ordinary course of its operations, the Diocese maintains a Self-Insurance

² The facts contained in this Motion are verified in the McDermott Affidavit.

Program currently administered by Arthur J. Gallagher Risk Management Services, LLC (“Arthur Gallagher”). Arthur Gallagher provides property, liability, crime, cyber, equipment breakdown, sexual misconduct, and workers’ compensation insurance for the Diocese and the parishes within the Diocese (each, a “Parish” and, collectively, the “Parishes”) with a special retention endorsement, commonly referred to as self-insurance. All assets relating to a Parish are held in separate charitable trusts with separate employees for each trust. As a result, each charitable trust owns and manages its own property and assets and keeps its own books and records. In addition, each charitable trust has its own employees and each Parish has its own employer identification number. Each charitable trust pays its own employees, files the necessary tax and other reporting forms, and pays its own other operating expenses from its own bank accounts. The charitable trusts are not debtors in this or any other chapter 11 case.

7. Under the Self-Insurance Program, the Diocese is self-insured up to certain claim limits and maintains insurance policies to cover costs of claims that exceed the self-insured limits. The Diocese is billed annually for its Self-Insurance Program. The Diocese pays all insurance premiums in a lump sum. Non-debtor entities or persons that are additional insureds under the Self-Insurance Program are billed by the Diocese on an annual basis. The Diocese is responsible for paying all claims for losses up to a retained or deductible limit with any excess amount paid by Arthur Gallagher, up to the policy limits.

8. The Diocese’s insurance policies range in coverage limits from \$150,000 to \$250,000,000. The present policies are in effect from July 1, 2024, to July 1, 2025, and the total cost of premiums for these policies is \$1,306,848.

9. The Self-Insurance Program provides a practical, cost-effective way to manage risk for the Diocese under a single, comprehensive insurance program. If the Self-Insurance

Program is not continued, the Diocese will be forced to purchase separate insurance policies covering each entity/person and their respective properties. This would result in the Diocese incurring substantially higher costs to obtain their own individualized insurance (with or without a retention or deductible) than what they are currently assessed under the Self-Insurance Program. Moreover, without the broad collective risk profile provided by the Insurance Program, certain types of coverage and available coverage limits may simply not be available on an individualized basis or on commercially reasonable terms.

RELIEF REQUESTED

10. Pursuant to 11 U.S.C. §§ 105, 107, and 363, the Diocese seeks authority, in its sole discretion, to continue maintenance of the Diocese's Self-Insurance Program and pay prepetition obligations related to the same.

BASIS FOR RELIEF

11. The Diocese requires ongoing insurance coverage and its continued participation in, and maintenance of, the Self-Insurance Program is within the ordinary course of the Diocese's business. Pursuant to 11 U.S.C. § 363(c), which authorizes the Diocese to continue operating in the ordinary course of business, the Diocese may continue its Self-Insurance Program with no court authorization. However, to the extent the transactions involved are considered outside the ordinary course of business, they should be authorized pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code and relevant case law.

12. This Court has authority to grant the relief requested herein pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code. Section 363(b)(1) provides that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Use or sale of property of the estate, other than in the

ordinary course of business, is authorized “when a sound business purpose dictates such action.” *Stephens Industries, Inc. v. McClung*, 789 F.2d 386, 390 (6th Cir. 1986); *see also In re Channel One Communications, Inc.*, 117 B.R. 493, 496 (Bankr. E.D. Mo. 1990). Courts generally approve transactions involving property of the estate that are outside of the ordinary course of business as long as the Diocese’s decision is supported by some articulated business justification. *Four B v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 567 (8th Cir. 1997); *Fulton State Bank v. Schipper (In re Schipper)*, 933 F.2d 513, 515 (7th Cir. 1991). When applying the business judgment rule, the courts give deference to the debtor’s decision making. *In re GSC, Inc.*, 453 B.R. 132, 174 (Bankr. S.D.N.Y. 2011); *see also In re LeBlanc*, 299 B.R. 546, 552 (Bankr. N.D. Iowa 2003). As stated by the court in the *Ionosphere Clubs* case:

Section 363(b) gives the court broad flexibility in tailoring its orders to meets a wide variety of circumstances. However, the debtor must articulate some business justification, other than mere appeasement of major creditors, for using, selling or lease property out of the ordinary course of business, before the court may permit such disposition under section 363(b).

In re Ionosphere Club, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989); *see also Comm. of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983).

13. The business judgment standard has been applied in other diocesan bankruptcy cases to permit the use of estate property for the continued maintenance of diocesan self-insurance programs. *See, e.g., In re the Diocese of Tucson*, Case No. 04-4721, ECF No. 44 (Bankr. D. Ariz. Sept 29, 2004) (order granting motion to honor certain self-insurance claims); *In re Diocese of Davenport*, Case No. 06-2229-11, ECF No. 23 (Bankr. S.D. Iowa, October 16, 2006); *In re Archdiocese of Saint Paul and Minneapolis*, Case No. 15-30125, ECF No. 47 (Bankr. D. Minn. January 20, 2015); *In re Diocese of Duluth*, Case No. 15-50792, ECF No. 23 (Bankr. D. Minn. Dec. 17, 2015).

14. Moreover, Section 105(a) allows the Code section 105(a) provides, in relevant part, that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). This is generally referred to as the “necessity of payment rule” or the “doctrine of necessity.” See *In re NVR, L.P.*, 147 B.R. 126, 128 (Bankr. E.D. Va. 1992); *In re Colad Grp., Inc.*, 324 B.R. 208, 213 (Bankr. W.D.N.Y. 2005); *In re Ionosphere*, 98 B.R. at 177; accord *In re Financial News Network, Inc.*, 134 B.R. 732, 736 (Bankr. S.D.N.Y. 1991) (pre-petition claims may be paid when so doing is “critical to the debtor’s reorganization”); *In re Eagle-Pitcher Indus.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (payment must be “necessary to avert a serious threat to the Chapter 11 process”); *In re Structurlite Plastics Corp.*, 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988) (payment necessary to “permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately”) (quoting *In re Chateaugay Corp.*, 80 B.R. 279, 287 (S.D.N.Y. 1987)).

15. Courts have recognized that the “necessity of payment rule” is “well-established in bankruptcy common law.” *In re NVR*, 147 B.R. at 127 (also stating that, under Bankruptcy Code section 105(a), a court “can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the Debtor”); *In re Just for Feet, Inc.*, 242 B.R. 821, 824-25 (D. Del. 1999) (holding that Bankruptcy Code section 105(a) provides a statutory basis for the payment of prepetition claims under the doctrine of necessity and noting that “[t]he Supreme Court, the Third Circuit and the District of Delaware all recognize the court’s power to authorize payment of prepetition claims when such payment is necessary for the debtor’s survival during chapter 11”); *In re Ionosphere*, 98 B.R. at 175 (stating that a bankruptcy court’s use of its equitable powers to “authorize the payment of pre-petition debt when such payment is needed to facilitate the

rehabilitation of the debtor is not a novel concept”) (citing *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 528 (1984)).

16. The Diocese needs to maintain its Self-Insurance Program and pay claims and other obligations under the Program in the ordinary course to support its reorganization efforts and minimize disruption to its business from uncovered liabilities arising during this bankruptcy case. This, in turn, will maximize the value of the Diocese’s estate for the benefit of its creditors. Granting the Diocese authority to maintain the Self-Insurance Program and honor any outstanding claims gives the Diocese the ability to preserve an advantageous insurance program and ultimately preserve assets of the estate. This relief is in the best interests of the estate, the creditors, and other parties in interest.

17. Similar relief has been granted in multiple diocesan cases. *See, e.g., The Roman Catholic Diocese of Albany, New York*, Case No. 23-10244 (REL), ECF Nos. 41, 146, 193 (Bankr. N.D.N.Y. 23); *The Norwich Roman Catholic Diocesan Corp.*, Case No. 21-20687 (JJT), ECF Nos. 180 & 236 (Bankr. D. Conn. 2021); *The Roman Catholic Diocese of Syracuse, New York*, Case No. 20-30663 (WAK), ECF No. 76 (Bankr. N.D.N.Y. 2020); *In re The Diocese of Buffalo, N.Y.*, Case No. 20-10322 (CLB) (Bankr. W.D.N.Y. May 29, 2020) [ECF No. 253]; *In re Diocese of Rochester, N.Y.*, Case No. 19-20905 (PRW), ECF No. 199 (Bankr. W.D.N.Y. Nov. 8, 2019).

18. Thus, the Diocese respectfully requests authorization (but not direction) to fully retain in place the existing Self-Insurance Program and to honor prepetition obligations related thereto. The Diocese further respectfully requests authorization to renew or obtain replacement insurance coverage in its discretion with respect to the continued maintenance of the Self-Insurance Program.

EMERGENCY RELIEF

19. Local Rule 9075-1 permits the Court to “deem a matter an ‘emergency matter’ only if the movant demonstrates that the need for immediate relief is necessitated by circumstances beyond the movant’s control and that there is not sufficient time to give the notice required by the Code and the Bankruptcy Rules.” Because the filing of this bankruptcy case and provision of full notice of this Motion would otherwise interrupt the Diocese’s normal insurance coverage and require it to seek new coverage, all while risking disruption in its business from lack of insurance, the Diocese requests emergency relief on this Motion. The Diocese’s reorganization cannot afford to lose its insurance coverage and incur uncovered liabilities as that may make the Diocese unable to fund its operations and its Chapter 11 plan. Thus, the Diocese seeks emergency relief so that its current Self-Insurance Program can continue without interruption.

**WAIVER OF NOTICE REQUIREMENTS AND STAY
UNDER BANKRUPTCY RULE 6004**

20. To implement the foregoing successfully, the Diocese seeks a waiver of the notice requirements under Bankruptcy Rule 6004(a) and any stay of an order granting the relief requested herein pursuant to Bankruptcy Rules 6004(h), 7062, 9014 or otherwise.

21. Further, to the extent applicable, the Diocese requests that this Court find that the provisions of Rule 6003 of the Federal Rules of Bankruptcy Procedure are satisfied because the relief requested in this Motion is immediately necessary for the Diocese to be able to continue to operate its business as a going concern and preserve the value of its estate for the purpose of reorganization. Bankruptcy Rule 6003 provides that a bankruptcy court may approve a motion to “use, sell, [or] lease” property of the estate, or to “pay all or part of a claim that arose before the filing of the petition,” prior to twenty-one (21) days after the filing of the petition, “to the extent that relief is necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003.

Immediate and irreparable harm exists where, as is the case here, the absence of relief would impair a Debtor's ability to reorganize or threaten the Debtor's future as a going concern. *See In re Ames Dep't. Stores, Inc.*, 115 B.R. 34, 36 n.2 (Bankr. S.D.N.Y. 1990) (discussing the elements of "immediate and irreparable harm" in the context of Bankruptcy Rule 4001). The Diocese submits that this is a sufficient basis for the Court to find that there would be immediate and irreparable harm from waiting until twenty-one (21) days after the Petition Date before honoring payroll and related obligations.

NOTICE AND SERVICE

22. Notice of this Motion and all related papers were served on the following parties on the date and manner set forth in the certificate of service related to this Motion: (a) the Office of the United States Trustee, (b) the Debtor's secured creditors or, if applicable, to counsel representing them, (c) the non-insider holders of the 20 largest unsecured claims against the Debtor or, if applicable, to counsel representing such holders, (d) applicable federal and state taxing authorities, and (e) to the extent not included in the foregoing, the applicable state and federal regulatory agencies.

CONCLUSION

23. The Diocese respectfully requests that this Court enter an order:
- a. Granting emergency relief;
 - b. Authorizing the Diocese to continue to maintain its Self-Insurance Program for the benefit of the Diocese;
 - c. Authorizing, but not directing, the Diocese to pay any prepetition claims, premiums, obligations and other administrative costs of the Self-Insurance Program; and

- d. Granting the Diocese such other and further relief as the Court deems necessary and proper.

Dated: September 30, 2024

/s/ Raymond J. Obuchowski

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**PROPOSED ATTORNEYS FOR ROMAN
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**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF VERMONT**

In re:

Roman Catholic Diocese of Burlington,
Vermont,

Case No.: 24-10205-HZC
Chapter 11 Case

Debtor.

**ORDER (I) AUTHORIZING THE CONTINUED MAINTENANCE OF THE DEBTOR'S
INSURANCE PROGRAM AND (II) AUTHORIZING PAYMENT OF PREPETITION
OBLIGATIONS IN RESPECT THEREOF**

Upon the consideration of the Emergency Motion for an Order (I) Authorizing the Continued Maintenance of the Debtor's Insurance Program and (II) Authorizing Payment of Prepetition Obligations in Respect Thereof (the "Motion") filed by the Roman Catholic Diocese of Burlington, Vermont (the "Diocese"), and this Court having jurisdiction to enter this Order and finding that entry of this Order is in the best interest of the Diocese, its estate, and its creditors, and good cause having been demonstrated to this Court, it is hereby **ORDERED**, **ADJUDGED**, and **DECREED** as follows:

1. The Diocese's Motion is **GRANTED** as set forth in this Order;
2. The Diocese's request for emergency relief is granted;
3. The Diocese is authorized to maintain its self-insurance program;
4. The Diocese is authorized to pay from the self-insurance fund all claims, premiums, and administrative expenses payable under the self-insurance program whether incurred prepetition or postpetition;
5. Authorizing all applicable banks and other financial institutions to receive, process, honor, and pay any and all checks, drafts, wires, check transfer requests or automated clearing

house transfers evidencing amounts paid by the Diocese pursuant to this Order whether presented prior to or after the filing date to the extent the debtor has sufficient funds in the relevant account. Such banks and financial institutions are authorized to rely on the representations of the debtor as to which checks are issued or authorized to be paid pursuant to this order without any duty of further inquiry and without liability for following the debtor's instructions;

6. Notwithstanding the provisions of Bankruptcy Rule 6004(h), this Order is deemed effective and immediately enforceable upon its entry.

Dated:
Rutland, Vermont

Honorable Heather Z. Cooper
United States Bankruptcy Judge