

**IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION**

In the matter of	:	Chapter 11
	:	
DIOCESE OF DAVENPORT	:	Case No. 06-02229-lmj11
	:	
Debtor.	:	Honorable Lee M. Jackwig
	:	

**MEMORANDUM OF LAW IN SUPPORT OF DEBTOR’S MOTION
TO APPROVE SETTLEMENT, RELEASE, COVENANT NOT TO
EXECUTE AND POLICY BUY-BACK AGREEMENT**

The Diocese of Davenport, an Iowa non-profit corporation (the “Diocese” or the “Debtor”), by and through its undersigned attorneys, submits this Memorandum of Law in support of the Debtor’s Motion to Approve Settlement, Release, Covenant Not to Execute and Policy Buy-Back Agreement with the Catholic Entities and Travelers,¹ (the “Approval Motion), and respectfully submits as follows:

BACKGROUND

A. The Diocese

On October 10, 2006 (the “Petition Date”), the Diocese commenced the above-captioned Chapter 11 reorganization case (the “Reorganization Case”) by filing a voluntary Chapter 11 petition. The Diocese filed the Reorganization Case in response to the financial risks posed by the unsuccessful defense of a claim for sexual abuse by clergy resulting in a \$1.56 million jury verdict and the risks posed by other pending sexual abuse litigation.

¹ The term “Travelers” and all other capitalized terms used and not defined herein shall have the same meaning as the Agreement. Nothing in the Agreement, the Motion, or this Memorandum shall be construed as an admission of liability by Travelers or a waiver of any of Traveler’s defenses to coverage. All of Travelers’ defenses are preserved, including, without limitation, the issue of whether the Policies exist.

The Diocese was incorporated in Iowa as a non-profit corporation in 1928. The Diocese operates as a 501(c)(3) charitable corporation. The Diocese serves over 100,000 Roman Catholics, and eighty-three (83) Parishes in the Diocese (the “Parishes”) located within 22 southeastern Iowa counties. The Diocese provides services to administer certain insurance and other programs for the benefit of the Parishes and other Catholic Entities. The Diocese acts as the custodian for insurance premiums and other monies paid by these entities to participate in these programs. The funds received by the Diocese are not property of the Diocese but are paid to the Diocese as the manager or administrator of the programs.

B. Insurance Policies

Prior to the Petition Date, numerous claims alleging sexual abuse were filed against the Diocese and various Catholic Entities. Many of these claims were submitted to Travelers under policies (the “Policies”) issued or allegedly issued over the last 50 years. Travelers participated in the defense of certain of these sexual abuse claims and worked with the Diocese to effect various pre-Petition Date settlements. From the beginning, however, Travelers asserted multiple defenses to coverage, and its involvement in these matters was subject to full and complete reservation of all rights to deny coverage.

In November 2007, following four (4) days of intense mediations, an agreement was ultimately reached by and among the Diocese, Catholic Entities, the Committee, the Unknown Claimants Representative and Travelers to resolve the disputes between and among them. The terms of the settlement are reflected in the Plan and the Settlement, Release, Covenant Not to Execute and Policy Buy-Back Agreement (the “Agreement”), which includes a full and final settlement, compromise, mutual release and resolution of any and all claims by and between the Diocese and Catholic Entities, on the one hand, and Travelers, on the other hand, relating to any

and all disputes and disagreements between them. It settles all Contribution Claims and 541 Claims between the Diocese and the Catholic Entities, subject to the terms of a Covenant Not to Execute. It also terminates and releases any and all obligations that Travelers has or ever may have in the future with respect to the Bankruptcy Case, the Tort Claims, and the Policies issued or allegedly issued, known or unknown, to the Diocese or Catholic Entities by Travelers, and effects the sale of the Diocese Policies back to Travelers free and clear of all liens, claims, encumbrances, and interests and the sale of the Catholic Entity Policies back to Travelers free and clear of all liens, claims, encumbrances and interests of the Catholic Entities. In exchange, upon the entry of certain court orders and pursuant to the provisions of the Agreement, Travelers has agreed to pay the sum of \$19.5 million, and the Catholic Entities have agreed to pay the sum of \$5.9 million, which shall be distributed to holders of Tort Claims pursuant to the Plan.

The Committee, the Unknown Claimants Representative, the Debtor, and Catholic Entities separately and cooperatively analyzed the claims against Travelers and support the settlement and sale contemplated in the Agreement. Various issues affect the ultimate amount that could be recovered against Travelers, including, but not limited to: (i) whether the existence and terms of coverage could be proven; (ii) the application of coverage exclusions or limitations; (iii) whether an alleged injury was caused by an “occurrence” or accident; and (iv) the application of various doctrines such as known loss or lack of fortuity that could preclude coverage, in whole or part, for the Tort Claims. In addition, there are various state law defenses that could be asserted against given Tort Claimants.

In light of (i) the significant costs to the Estate and the Catholic Entities to litigate coverage claims against Travelers, and establish the existence and material terms of the Policies; (ii) the considerable time it will take to obtain a final determination of the Debtor’s and Catholic