

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

The Diocese of Buffalo, N.Y.,

Debtor.

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)
) Case No. 20-[10322]
)
) Chapter 11
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)
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**APPLICATION FOR APPOINTMENT
OF STRETTO AS CLAIMS AND NOTICING AGENT
NUNC PRO TUNC TO THE PETITION DATE**

The Diocese of Buffalo, N.Y. (the “Diocese”) hereby submits this application (the “Application”) for the entry of an order substantially in the form attached hereto as *Exhibit A*, appointing Stretto¹ as claims and noticing agent (“Claims Agent”) in the Diocese’s chapter 11 case *nunc pro tunc* to the Petition Date (as defined below). In support of this Application, the Diocese relies upon the *Declaration of Travis K. Vandell in Support of Application for Appointment of Stretto as Claims and Noticing Agent Nunc Pro Tunc to the Petition Date* (the “Vandell Declaration”), which is attached hereto as *Exhibit B* and incorporated by reference herein. In further support of this Application, the Diocese submits as follows:

BACKGROUND

1. On February 28, 2020 (the “Petition Date”), the Diocese filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (11 U.S.C. § 101 *et seq.*, the “Bankruptcy Code”) with the United States Bankruptcy Court for the Western District of New York (the “Court”), commencing the Diocese’s chapter 11 case (this “Chapter 11 Case”). The

¹ Stretto is the trade name of Bankruptcy Management Solutions, Inc. and its subsidiaries.

Diocese continues to operate its business and manage its properties as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for a trustee or examiner has been made in this Chapter 11 Case, and as of the date of this filing, no official committees have been appointed or designated.

2. Information regarding the Diocese's history, business operations and structure, and the events leading up to this Chapter 11 Case is set forth in the *Affidavit of Rev. Peter J. Karalus Regarding Structure and Pre-Filing History of The Diocese of Buffalo and in Support of the Chapter 11 Petition and First Day Pleadings* and the *Affidavit of Charles Mendolera Regarding the Diocese's Assets and Operations and in Support of the Chapter 11 Petition and First Day Pleadings*, each of which was filed on the Petition Date and is incorporated herein by reference.

3. Contemporaneously herewith, the Diocese is filing its *Application for Entry of an Order Authorizing the Employment and Retention of Stretto as Administrative Advisor Nunc Pro Tunc to the Petition Date* (the "Section 327 Application").

JURISDICTION

4. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The statutory and rule-based predicates for the relief requested herein are 28 U.S.C. § 156(c), and section 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the "Bankruptcy Code"), Rule 2002(f) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 2002-1 of the Local Rules of Bankruptcy Procedure of the United States Bankruptcy Court for the Western District of New York (the "Local Rules").

RELIEF REQUESTED

6. By this Application, the Diocese seeks entry of an order appointing Stretto as its Claims Agent, *nunc pro tunc* to the Petition Date, assuming full responsibility for the distribution of notices and the maintenance, processing, and docketing of proofs of claim filed in this Chapter 11 Case.

7. The Diocese has obtained and reviewed engagement proposals from multiple claims and noticing agents to ensure selection through a competitive process. Moreover, the Diocese submits, based on all engagement proposals obtained and reviewed, that Stretto's rates are competitive and reasonable given Stretto's quality of services and expertise. The terms of Stretto's retention are set forth in that certain Engagement Agreement annexed hereto as *Exhibit C* (the "Engagement Agreement"). Through this Application, the Diocese is seeking approval solely of the terms and provisions as set forth herein and the proposed order attached hereto.

BASIS FOR RELIEF

8. Section 156(c) of title 28 of the United States Code, which governs the staffing and expenses of the Court, authorizes the Court to use facilities other than those of the office of the clerk of the bankruptcy court (the "Clerk's Office") for the administration of the bankruptcy cases. Specifically, section 156(c) provides that:

Any court may utilize facilities or services, either on or off the court's premises, which pertain to the provision of notices, dockets, calendars, and other administrative information to parties in cases filed under the provisions of title 11, United States Code, where the costs of such facilities or services are paid for out of the assets of the estate and are not charged to the United States. The utilization of such facilities or services shall be subject to such conditions and limitations as the pertinent circuit council may prescribe.

28. U.S.C. § 156(c).

9. Section 105(a) of the Bankruptcy Code further provides that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

10. The Bankruptcy Court is therefore authorized to utilize outside agents and facilities for notice and claims purposes, provided that the debtor’s estate pays the cost of such services. In fact, in recognition of the efficiency gains provided by such outside agents, several bankruptcy courts have by local rule mandated their use in cases with large numbers of notice parties. *See, e.g., LOCAL RULES FOR THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, Rule 5075-1 Clerk’s Use of Outside Services and Agents; Claims and Noticing Agents* (mandating use of outside notice and claims agents in cases with more than 250 creditors and equity security holders); *LOCAL RULES FOR THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, Rule 2002-1 Notices to Creditors, Equity Security Holders, United States and United States Trustee, Subpart (f) Notice and Claims Clerk* (outside agent required in cases with more than 200 creditors or parties in interest); *LOCAL RULES FOR THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, Rule 1007-2 Claims Registers, Subpart B Claims Agent* (required in cases of more than 500 creditors).

11. Here, the Diocese anticipates that there will be more than 700 creditors or other interested entities to be noticed in these cases, including over 400 individuals whose claims relate to alleged instances of abuse and whose names and other identifying information the Diocese is seeking to maintain under seal out of respect for their privacy. Utilization of a Claims Agent will relieve the Court and the Diocese of a significant administrative burden, and will also provide a mechanism by which proofs of claim can be filed confidentially and by which any party in interest

who wishes to effect notice on all creditors, including those whose names and addresses are filed under seal, may do so without the necessity to disclose any confidential identifying information.

12. The Diocese respectfully submits that authorizing the relief requested herein is in the best interests of the Diocese's estate and all parties in interest, and particularly appropriate in this Chapter 11 Case due to not only the large number of creditors and parties-in-interest involved but also due to the confidential nature of many of the claims and claimants' identities.

13. As set forth more fully in the *Diocese's Motion for an Order Authorizing the Diocese to File Portions of Schedule F, the Master Creditor Mailing Matrix, and Other Pleadings and Documents Under Seal*, filed contemporaneously herewith, the Diocese intends to file confidential information related to claims made against the Diocese relating to alleged instances of abuse under seal. The Diocese proposes that, rather than making the entire creditor matrix publicly accessible, any party wishing to effect notice on such claimants should do so by utilizing, at the sole expense of the party seeking to effect such notice, the services of Stretto who will have access to the full creditor matrix and can thereby provide notice to all creditors and parties in interest without disclosing alleged abuse claimant's names or other identifying information in order to protect their privacy. Without the ability to use a Claims Agent for such notice, the only way to protect abuse claimants' privacy would be to place the burden of providing such notice on either the Clerk's Office or Diocese's counsel, which would result in increased costs of administration and peak-workload issues. Additionally, the Diocese anticipates that it will seek to establish a procedure pursuant to which proofs of claim relating to abuse claims may be filed confidentially. Utilizing a third-party Claims Agent such as Stretto will facilitate that effort as Stretto has systems in place to handle such confidential procedures as opposed to the Clerk's Office

whose electronic case management system is designed to provide public access to the claims register.

14. Courts in this circuit regularly approve the appointment of a Claims Agent in large chapter 11 cases. *See, e.g., In re Leaseway Motorcar Transport Company*, Case No. 06-00107 (MJK) (Bankr. W.D.N.Y., Jan. 27, 2006) [Docket No. 42]; *In re Coyne International Enterprises Corp.*, Case No. 15-31160 (MCR) (Bankr. N.D.N.Y., Aug. 6, 2015) [Docket No. 54]; *In re Agway, Inc.*, Case No. 02-65872 (SDG) (Bankr. N.D.N.Y., Oct. 11, 2002) [Docket No. 38]; *In re Barneys New York, Inc.*, Case No. 19-36300 (CGM) (Bankr. S.D.N.Y., Aug. 7, 2019) [Docket No. 55]; *In re Sizmek Inc.*, Case No. 19-10971 (SMB) (Bankr. S.D.N.Y., April. 4, 2019) [Docket No. 36].

15. In addition, several Diocesan cases with similar facts to this chapter 11 case have utilized the services of a Claims Agent for noticing and claim administration. *See., e.g., In re The Diocese of Rochester*, Case No. 19-20905 (PRW) (Bankr. W.D.N.Y., Nov. 25, 2019) [Docket No. 288]; *In re Archdiocese of Milwaukee*, Case No. 11-20059 (SVK) (Bankr. E.D. Wisc., Jan. 7, 2011) [Docket No. 32]; *Society of Jesus, Oregon Province*, Case No. 09-30938 (ELP) (Bankr. D. Ore., June 25, 2009) [Docket No. 310]; *In re Catholic Diocese of Wilmington, Inc.*, Case No. 09-13560 (CSS) (Bankr. D. Del., Oct. 21, 2009) [Docket No. 32]; *In re The Catholic Bishop of Spokane a/k/a The Catholic Diocese of Spokane*, Case No. 04-08822 (PCW) (Bankr. E.D. Wash., July 6, 2005) [Docket No. 608]; *In re Roman Catholic Archbishop of Portland Oregon*, Case No. 04-37154 (TMB) (Bankr. D. Ore., October 22, 2004) [Docket No. 473].

STRETTO'S QUALIFICATIONS

15. Stretto is a chapter 11 administrator comprised of leading industry professionals with significant experience in both the legal and administrative aspects of large, complex chapter

11 cases. Stretto's professionals have experience in noticing, claims administration, solicitation, balloting and facilitating other administrative aspects of chapter 11 cases and experience in matters of this size and complexity. Stretto's professionals have acted as debtors' legal counsel or as official claims and noticing agent in many large bankruptcy cases nationwide. Stretto has developed efficient and cost-effective methods to handle the voluminous mailings associated with the noticing and claims processing portions of chapter 11 cases to ensure the efficient, orderly and fair treatment of creditors, equity security holders, and all parties in interest.

16. By appointing Stretto as the Claims Agent in this Chapter 11 Case, the distribution of notices and the processing of claims will be expedited, and the Clerk's Office will be relieved of the administrative burden of processing what may be an overwhelming claims process, and from the administrative difficulties of complying with the confidentiality requirements of this case.

SERVICES TO BE PROVIDED

17. The Claims Agent will perform a number of clerical and administrative tasks in this Chapter 11 Case as set forth in the Engagement Agreement and as requested by the Diocese and/or the Clerk's Office, including, without limitation, the following:

- i. Prepare and serve required notices and documents in these cases in accordance with the Bankruptcy Code and the Bankruptcy Rules in the form and manner directed by the Diocese and/or the Court, including (i) notice of any claims bar date, (ii) notices of transfers of claims, (iii) notices of objections to claims and objections to transfers of claims, (iv) notices of any hearings on a disclosure statement and confirmation of the Diocese's plan or plans of reorganization, including under Bankruptcy Rule 3017(d), (v) notice of the effective date of any plan and (vi) all other notices, orders, pleadings, publications and other documents as the Diocese or Court may deem necessary or appropriate for an orderly administration of these cases;

- ii. In accordance with any confidentiality protocols established by the Court, prepare and serve notices on any claimants or parties in interest whose names and addresses or other identifying information is filed under seal at the direction, and sole expense, of any party in interest who wishes to effect service or notice on such parties.
- iii. Maintain an official copy of the Diocese's schedules of assets and liabilities and statements of financial affairs (collectively, "Schedules"), listing the Diocese's known creditors and the amounts owed thereto;
- iv. Maintain (i) a list of all potential creditors, equity holders and other parties-in-interest (the "Creditor Matrix"); and (ii) a "core" mailing list consisting of all parties described in Bankruptcy Rule 2002(i), (j) and (k) and those parties that have filed a notice of appearance pursuant to Bankruptcy Rule 9010; update said lists and, except as otherwise provided in any Order of the Court requiring such materials to be kept confidential or maintained under seal, make said lists available upon request by a party-in-interest or the Clerk;
- v. Furnish a notice to all potential creditors of the last date for the filing of proofs of claim and a form for the filing of a proof of claim, after such notice and form are approved by this Court, and notify said potential creditors of the existence, amount and classification of their respective claims as set forth in the Schedules, which may be effected by inclusion of such information (or the lack thereof, in cases where the Schedules indicate no debt due to the subject party) on a customized proof of claim form provided to potential creditors;
- vi. Maintain a post office box or address for the purpose of receiving claims and returned mail, and process all mail received;
- vii. For all notices, motions, orders or other pleadings or documents served, prepare and file or caused to be filed with the Clerk an affidavit or certificate of service within seven (7) business days of service which includes (i) either a copy of the notice served or the docket numbers(s) and title(s) of the pleading(s) served, (ii) a list of persons to whom it was mailed (in alphabetical order) with their addresses *provided, however*, with respect to any persons whose names and addresses are ordered to be kept confidential and maintained under seal,

such list shall contain only a certification that such service was effected at the addresses listed for such parties on the Creditor Matrix, (iii) the manner of service, and (iv) the date served;

- viii. Process all proofs of claim received, including those received by the Clerk's Office, and check said processing for accuracy, and maintain the original proofs of claim in a secure area;
- ix. Maintain the official claims register for the Diocese (the "Claims Register") on behalf of the Clerk; upon the Clerk's request, provide the Clerk with certified, duplicate unofficial Claims Register; and specify in the Claims Register the following information for each claim docketed, unless such information is required by an order of the Court to be kept confidential and maintained under seal: (i) the claim number assigned, (ii) the date received, (iii) the name and address of the claimant and agent, if applicable, who filed the claim, (iv) the amount asserted, (v) the asserted classification(s) of the claim (*e.g.*, secured, unsecured, priority, *etc.*), and (vi) any disposition of the claim;
- x. If and to the extent directed by an order of the Court, and subject to any confidentiality restrictions set forth therein, provide public access to the Claims Register, including complete proofs of claim with attachments, if any, without charge;
- xi. Implement necessary security measures to ensure the completeness and integrity of the Claims Register and the safekeeping of the original claims;
- xii. Record all transfers of claims and provide any notices of such transfers as required by Bankruptcy Rule 3001(e);
- xiii. Relocate, by messenger or overnight delivery, all of the court-filed proofs of claim to the offices of the Claims Agent, not less than weekly;
- xiv. Upon completion of the docketing process for all claims received to date for each case, turn over to the Clerk copies of the Claims Register for the Clerk's review (upon the Clerk's request);
- xv. Monitor the Court's docket for all notices of appearance, address changes, and claims-related pleadings and orders filed

and make necessary notations on and/or changes to the claims register and any service or mailing lists, including to identify and eliminate duplicative names and addresses from such lists;

- xvi. Identify and correct any incomplete or incorrect addresses in any mailing or service lists;
- xvii. Assist in the dissemination of information to the public and respond to requests for administrative information regarding this Chapter 11 Case as directed by the Diocese or the Court, including through the use of a case website and/or call center;
- xviii. If this case is converted to chapter 7, contact the Clerk's Office within three (3) days of the notice to the Claims Agent of entry of the order converting these cases;
- xix. Thirty (30) days prior to the close of this case, to the extent practicable, request that the Diocese submit to the Court a proposed Order dismissing the Claims Agent and terminating the services of such agent upon completion of its duties and responsibilities and upon the closing of these cases;
- xx. Within seven (7) days of notice to the Claims Agent of entry of an order closing this Chapter 11 Case, provide to the Court the final version of the claims register as of the date immediately before the close of these cases; and
- xxi. At the close of this Chapter 11 Case, (i) box and transport all original documents, in proper format, as provided by the Clerk's Office, to any location requested by the Clerk's Office; and (ii) docket a completed SF-135 Form indicating the accession and location numbers of the archived claims.

18. The Diocese anticipates working with a creditor's committee (once appointed) to establish a procedure pursuant to which certain claims may be filed confidentially. Once such procedure is established and approved by the Court, Stretto will make the Claims Register, with the exception of any portion ordered kept confidential and maintained under seal, open to the public for examination without charge during regular business hours and on a case-specific website maintained by the Claims Agent.

COMPENSATION

19. The Diocese respectfully requests that the reasonable and undisputed fees and expenses incurred by the Claims Agent in the performance of the above services be treated as administrative expenses of the Diocese's estate pursuant to 28 U.S.C. § 156(c) and section 503(b)(1)(A) of the Bankruptcy Code and be paid in the ordinary course of business without further application to or order of the Court. The Claims Agent agrees to maintain records of all services showing dates, categories of services, fees charged and expenses incurred, and to serve monthly invoices on the Diocese, counsel for the Diocese, and, upon request, counsel for any official committees. If any dispute arises relating to the Engagement Agreement or monthly invoices, the parties shall meet and confer in an attempt to resolve the dispute; if resolution is not achieved, the parties may seek resolution of the matter from the Court.

20. Upon entry of an order approving this Application, the Diocese has agreed to provide Stretto a retainer in the amount of \$10,000. Stretto seeks to first apply the retainer to any prepetition invoices, and thereafter, to have the retainer replenished to the original retainer amount, and thereafter, to hold the retainer under the Engagement Agreement during this Chapter 11 Case as security for the payment of fees and expenses incurred under the Engagement Agreement.

21. The Diocese believes that the compensation rates and procedures are reasonable and appropriate for services of this nature and comparable to those charged by other providers of similar services.

22. Stretto will comply with all requests of the Clerk's Office and follow the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c).

STRETTO'S DISINTERESTEDNESS

23. To the best of the Diocese's knowledge, and as disclosed in the Vandell Declaration, Stretto (a) is a "disinterested person" within the meaning of section 101(14) of the Bankruptcy Code, except that Stretto was employed by the Diocese prior to the Petition Date as allowed by section 1107(b) of the Bankruptcy Code, and (b) does not hold or represent an interest materially adverse to the Diocese's estate.

24. The Vandell Declaration represents that, to the best of Stretto's knowledge, Stretto is not materially connected with the Diocese, its creditors, other parties-in-interest, the United States Trustee, or any person employed by the Office of the United States Trustee and that to the best of Stretto's knowledge, after due inquiry, Stretto does not, by reason of any direct or indirect relationship to, connection with, or interest in the Diocese, hold or represent any interest materially adverse to the Diocese, its estate, or any class of creditors or equity interest holders with respect to the matter upon which it is to be engaged.

25. With the possible exception of *de minimis* fees and expenses incurred prior to the Petition Date, Stretto is not a creditor of the Diocese.

26. Should Stretto discover any new relevant facts or relationships bearing on the matters described in this Application during the period of its retention, Stretto will use reasonable efforts to file a supplemental declaration promptly.

27. The Diocese has been informed that Stretto will not share with any person or firm the compensation to be paid for services rendered in these cases, except as among employees of Stretto.

28. In further connection with its retention as Claims Agent, Stretto represents, among other things, that:

- i. Stretto will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as the notice and claims agent in this Chapter 11 Case;
- ii. By accepting employment in this Chapter 11 Case, Stretto waives any rights to receive compensation from the United States government in its capacity as the notice and claims agent in this Chapter 11 Case;
- iii. In its capacity as the notice and claims agent in this Chapter 11 Case, Stretto will not be an agent of the United States and will not act on behalf of the United States; and
- iv. Stretto will not employ any past or present employee of the Diocese in connection with its work as the notice and claims agent in this Chapter 11 Case.

29. For the reasons set forth herein, the Diocese believes that the employment of Stretto to render the types of services requested herein are necessary, appropriate, and in the best interests of the Diocese's estate. By this Application, the Diocese therefore requests authority to employ and retain Stretto on the terms and conditions set forth herein and in the Engagement Agreement attached hereto.

COMPLIANCE WITH CONFIDENTIALITY REQUIREMENTS

30. Stretto represents that it will at all times maintain the confidentiality of any and all information ordered by the Court to be kept confidential and maintained under seal and will not disclose such information to any person or entity except in accordance with an order of the Court providing for such disclosure.

NOTICE

31. Notice of this Application will be given to (i) the Office of the United States Trustee for the Western District of New York, (ii) the Diocese's twenty (20) largest unsecured creditors as set forth in the list filed with the Diocese's petition, (iii) all required governmental agencies and (iv) the Diocese's banks. In light of the nature of the relief requested herein, the Diocese submits that no further notice is required.

NO PRIOR REQUEST

32. No prior request for the relief sought in this application has been made to this or any other court.

WHEREFORE, the Diocese respectfully requests entry of an order, substantially in the form attached hereto as *Exhibit A*: (a) authorizing the Diocese to retain and employ Stretto as noticing and claims processing agent in this case; and (b) granting such other and further relief as is just and proper.

Dated: February 28, 2020
Buffalo, New York

/s/ Charles Mendolera
Charles Mendolera
Executive Director of Financial Administration

Exhibit A

Proposed Order

3500930.2

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

The Diocese of Buffalo, N.Y.,
Debtor.

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) Case No. 20-[10322]
)
) Chapter 11
)
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**ORDER AUTHORIZING RETENTION AND APPOINTMENT OF STRETTO AS
CLAIMS AND NOTICING AGENT *NUNC PRO TUNC* TO THE PETITION DATE**

Upon the *Application for Appointment of Stretto as Claims and Noticing Agent Nunc Pro Tunc to the Petition Date* (the "Application")¹ filed by The Diocese of Buffalo, N.Y. (the "Diocese"); and pursuant to the Vandell Declaration and the Engagement Agreement; and the Court having found that the relief requested is in the best interests of the Diocese's estate, creditors and all other parties-in-interest; and the Court having found that due and sufficient notice of the Application was provided under the circumstances; and the Court having found that it has jurisdiction to consider the Application and grant the relief requested therein; and the Court having reviewed the Application and having determined that the legal and factual bases set forth therein establish just cause for the relief requested, and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Application is granted as set forth herein.
2. The Diocese is authorized to retain and employ Stretto as notice and claims processing agent, *nunc pro tunc* to the Petition Date, and to perform the services set forth in the

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

Application (the “Services”) in accordance with the terms and conditions set forth in the Application and the Engagement Agreement as of the Petition Date. Specifically, Stretto, as Claims Agent will perform the following tasks, as requested by the Diocese and/or the Clerk’s Office:

- i. Prepare and serve required notices and documents in these cases in accordance with the Bankruptcy Code and the Bankruptcy Rules in the form and manner directed by the Diocese and/or the Court, including (i) notice of any claims bar date, (ii) notices of transfers of claims, (iii) notices of objections to claims and objections to transfers of claims, (iv) notices of any hearings on a disclosure statement and confirmation of the Diocese’s plan or plans of reorganization, including under Bankruptcy Rule 3017(d), (v) notice of the effective date of any plan and (vi) all other notices, orders, pleadings, publications and other documents as the Diocese or Court may deem necessary or appropriate for an orderly administration of these cases;
- ii. In accordance with any confidentiality protocols established by the Court, prepare and serve notices on any claimants or parties in interest whose names and addresses or other identifying information is filed under seal at the direction, and sole expense, of any party in interest who wishes to effect service or notice on such parties.
- iii. Maintain an official copy of the Diocese’s schedules of assets and liabilities and statements of financial affairs (collectively, “Schedules”), listing the Diocese’s known creditors and the amounts owed thereto;
- iv. Maintain (i) a list of all potential creditors, equity holders and other parties-in-interest (the “Creditor Matrix”); and (ii) a “core” mailing list consisting of all parties described in Bankruptcy Rule 2002(i), (j) and (k) and those parties that have filed a notice of appearance pursuant to Bankruptcy Rule 9010; update said lists and, except as otherwise provided in any Order of the Court requiring such materials to be kept confidential or maintained under seal, make said lists available upon request by a party-in-interest or the Clerk;

- v. Furnish a notice to all potential creditors of the last date for the filing of proofs of claim and a form for the filing of a proof of claim, after such notice and form are approved by this Court, and notify said potential creditors of the existence, amount and classification of their respective claims as set forth in the Schedules, which may be effected by inclusion of such information (or the lack thereof, in cases where the Schedules indicate no debt due to the subject party) on a customized proof of claim form provided to potential creditors;
- vi. Maintain a post office box or address for the purpose of receiving claims and returned mail, and process all mail received;
- vii. For all notices, motions, orders or other pleadings or documents served, prepare and file or caused to be filed with the Clerk an affidavit or certificate of service within seven (7) business days of service which includes (i) either a copy of the notice served or the docket numbers(s) and title(s) of the pleading(s) served, (ii) a list of persons to whom it was mailed (in alphabetical order) with their addresses *provided, however*, with respect to any persons whose names and addresses are ordered to be kept confidential and maintained under seal, such list shall contain only a certification that such service was effected at the addresses listed for such parties on the Creditor Matrix, (iii) the manner of service, and (iv) the date served;
- viii. Process all proofs of claim received, including those received by the Clerk's Office, and check said processing for accuracy, and maintain the original proofs of claim in a secure area;
- ix. Maintain the official claims register for the Diocese (the "Claims Register") on behalf of the Clerk; upon the Clerk's request, provide the Clerk with certified, duplicate unofficial Claims Register; and specify in the Claims Register the following information for each claim docketed, unless such information is required by an order of the Court to be kept confidential and maintained under seal: (i) the claim number assigned, (ii) the date received, (iii) the name and address of the claimant and agent, if applicable, who filed the claim, (iv) the amount asserted, (v) the asserted classification(s) of the claim (*e.g.*, secured, unsecured, priority, *etc.*), and (vi) any disposition of the claim;

- x. If and to the extent directed by an order of the Court, and subject to any confidentiality restrictions set forth therein, provide public access to the Claims Register, including complete proofs of claim with attachments, if any, without charge;
- xi. Implement necessary security measures to ensure the completeness and integrity of the Claims Register and the safekeeping of the original claims;
- xii. Record all transfers of claims and provide any notices of such transfers as required by Bankruptcy Rule 3001(e);
- xiii. Relocate, by messenger or overnight delivery, all of the court-filed proofs of claim to the offices of the Claims Agent, not less than weekly;
- xiv. Upon completion of the docketing process for all claims received to date for each case, turn over to the Clerk copies of the Claims Register for the Clerk's review (upon the Clerk's request);
- xv. Monitor the Court's docket for all notices of appearance, address changes, and claims-related pleadings and orders filed and make necessary notations on and/or changes to the claims register and any service or mailing lists, including to identify and eliminate duplicative names and addresses from such lists;
- xvi. Identify and correct any incomplete or incorrect addresses in any mailing or service lists;
- xvii. Assist in the dissemination of information to the public and respond to requests for administrative information regarding this Chapter 11 Case as directed by the Diocese or the Court, including through the use of a case website and/or call center;
- xviii. If this case is converted to chapter 7, contact the Clerk's Office within three (3) days of the notice to the Claims Agent of entry of the order converting these cases;
- xix. Thirty (30) days prior to the close of this case, to the extent practicable, request that the Diocese submit to the Court a proposed Order dismissing the Claims Agent and terminating

the services of such agent upon completion of its duties and responsibilities and upon the closing of these cases;

- xx. Within seven (7) days of notice to the Claims Agent of entry of an order closing this Chapter 11 Case, provide to the Court the final version of the claims register as of the date immediately before the close of these cases; and
- xxi. At the close of this Chapter 11 Case, (i) box and transport all original documents, in proper format, as provided by the Clerk's Office, to any location requested by the Clerk's Office; and (ii) docket a completed SF-135 Form indicating the accession and location numbers of the archived claims.

3. Stretto shall serve as custodian of court records and, as such, is designated as the authorized repository for all proofs of claim filed in this Chapter 11 Case and is authorized and directed to maintain the official claims register for the Diocese and to take such other action as may be necessary to comply with all duties set forth in the Application.

4. The Diocese is authorized to compensate Stretto in accordance with the terms of the Engagement Agreement upon the receipt of reasonably detailed invoices setting forth the Services provided by Stretto and the rates charged for each, and to reimburse Stretto for all related reasonable and necessary expenses it may incur, upon the presentation of appropriate documentation, and subject to the procedures set forth below, without the need for Stretto to file fee applications or otherwise seek Court approval for the compensation of its Services and reimbursement of its related expenses.

5. Stretto shall maintain records of all Services showing dates, categories of services, fees charged and expenses incurred, and shall serve monthly invoices on the Diocese, counsel for the Diocese, and, upon request, counsel to any official committees appointed in this Chapter 11 Case.

6. The parties shall meet and confer in an attempt to resolve any dispute which may arise relating to the Engagement Agreement or monthly invoices; provided that the parties may seek resolution of the matter from the Court if resolution is not achieved.

7. Pursuant to section 503(b)(1)(A) of the Bankruptcy Code, the fees and expenses of Stretto under this Order shall be an administrative expense of the Diocese's estate, *provided, however,* that any notice services provided to parties other than the Court, the Diocese, any official committees, or the United States Trustee shall be at the sole expense of the party seeking to provide such notice and *provided, further,* that none of the Services provided by Stretto shall be at the expense of the Clerk's Office or the United States.

8. Stretto's application of its retainer to prepetition invoices is hereby approved and such retainer shall be replenished and held under the Engagement Agreement during this chapter 11 case as security for the payment of fees and expenses incurred under the Engagement Agreement from and after the Petition Date.

9. Stretto shall not be entitled to indemnification, contribution or reimbursement pursuant to the Engagement Agreement for services other than the services provided under the Engagement Agreement, unless such services and the indemnification, contribution or reimbursement therefore are approved by the Court.

10. All requests by Stretto for the payment of indemnification as set forth in the Engagement Agreement shall be made by means of an application to the Court and shall be subject to review by the Court to ensure that payment of such indemnity conforms to the terms of the Engagement Agreement and is reasonable under the circumstances of the litigation or settlement in respect of which indemnity is sought, *provided, however,* that in no event shall Stretto be

indemnified in the case of its own bad faith, self-dealing, breach of fiduciary duty (if any), gross negligence or willful misconduct.

11. In the event Stretto seeks reimbursement from the Diocese for attorneys' fees and expenses in connection with the payment of an indemnity claim pursuant to the Engagement Agreement, the invoices and supporting time records for the attorneys' fees and expenses shall be included in Stretto's own applications, both interim and final, but determined by this Court after notice and a hearing.

12. To the extent that there may be any inconsistency between the terms of the Application, the Engagement Agreement, and this Order, the terms of this Order shall govern.

13. Stretto shall not cease providing claims processing services during this chapter 11 case for any reason without prior order of this Court authorizing Stretto to do so; *provided however*, that Stretto may seek such an order on expedited notice by filing a request with the Court with notice of such request to be served on the Diocese, the Office of the United States Trustee and any official committee of creditors appointed in these cases by facsimile or overnight delivery.

14. In the event Stretto is unable to provide the Services or if the Services are terminated for any reason, and notwithstanding anything to the contrary in the Engagement Agreement, Stretto will immediately notify the Clerk's Office and counsel for the Diocese and will cause all original proofs of claim and computer information to be turned over to the Clerk's Office or another claims agent with the advice and consent of the Clerk's Office and counsel for the Diocese and will return to the Diocese any other data, storage media, programs or other materials furnished to Stretto by the Diocese.

15. Stretto shall comply with all requests of the Clerk's Office and follow the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c).

16. The Diocese and Stretto are authorized to take such other action as is reasonably necessary to comply with all of the duties set forth in the Application and this Order.

17. Notwithstanding any term in the Engagement Agreement to the contrary, the Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

18. Notwithstanding any provision in the Bankruptcy Rules to the contrary, this Order shall be immediately effective and enforceable upon its entry.

Dated: _____, 2020
Buffalo, New York

Hon. Carl L. Bucki
United States Bankruptcy Judge

Exhibit B

Vandell Declaration

3500930.2

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:)

The Diocese of Buffalo, N.Y.,)

Debtor.)

Case No. 20-[10322]

Chapter 11

**DECLARATION OF TRAVIS K. VANDELL IN SUPPORT OF
APPLICATION FOR APPOINTMENT OF STRETTO
AS CLAIMS AND NOTICING AGENT *NUNC PRO TUNC* TO THE PETITION DATE**

Pursuant to 28 U.S.C. § 1746, I, Travis K. Vandell, declare under penalty of perjury that the following is true and correct to the best of my information, knowledge, and belief:

1. I am a Managing Director of Stretto (“Stretto”)¹, and I am authorized to make and submit this declaration (the “Declaration”) on behalf of Stretto. Except as otherwise noted, I have personal knowledge of the matters set forth herein, and if called and sworn as a witness, I could and would competently testify thereto.

2. I submit this declaration in support of the *Application for Appointment of Stretto as Claims and Noticing Agent nunc pro tunc to the Petition Date* (the “Application”),² filed contemporaneously herewith by The Diocese of Buffalo, N.Y. (the “Diocese”).

3. Stretto is a chapter 11 administrator comprised of leading industry professionals with significant experience in both the legal and administrative aspects of large, complex chapter 11 cases. Stretto’s professionals have experience in noticing, claims administration, solicitation,

¹ Stretto is the trade name of Bankruptcy Management Solutions, Inc. and its subsidiaries.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Application.

balloting and facilitating other administrative aspects of chapter 11 cases and experience in matters of this size and complexity. Stretto's professionals have acted as debtors' legal counsel or as official claims and noticing agent in many large bankruptcy cases nationwide. Stretto has developed efficient and cost-effective methods to handle the voluminous mailings associated with the noticing and claims processing portions of chapter 11 cases to ensure the efficient, orderly and fair treatment of creditors, equity security holders, and all parties in interest.

4. As agent and custodian of Court records pursuant to 28 U.S.C. § 156(c), Stretto will perform, at the request of the Clerk's Office, the noticing and claims-related services specified in the Application and the Engagement Agreement, and, at the Dioceses' request, any related administrative, technical and support services as specified in the Application and the Engagement Agreement, subject to 28 U.S.C. § 156(c). In performing such services, Stretto will charge the Dioceses the rates set forth in the Engagement Agreement.

5. Stretto represents, among other things, the following:

- a. With the possible exception of *de minimis* fees and expenses incurred prior to the Petition Date, Stretto is not a creditor of the Diocese;
- b. Stretto will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as the notice and claims agent in this Chapter 11 Case;
- c. By accepting employment in this Chapter 11 Case, Stretto waives any rights to receive compensation from the United States government in its capacity as the notice and claims agent in this Chapter 11 Case;
- d. In its capacity as the notice and claims agent in this Chapter 11 Case, Stretto will not be an agent of the United States and will not act on behalf of the United States;
- e. Stretto will not employ any past or present employee of the Diocese in connection with its work as the notice and claims agent in this Chapter 11 Case;

- f. In its capacity as notice and claims agent in this Chapter 11 Case, Stretto will not intentionally misrepresent any fact to any person;
- g. Stretto shall be under the supervision and control of the Clerk's Office with respect to the receipt and recordation of claims and claim transfers;
- h. Stretto will comply with all requests of the Clerk's Office and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c);
- i. None of the services provided by Stretto as notice and claims agent in this Chapter 11 Case shall be at the expense of the Clerk's Office; and
- j. Stretto will at all times maintain the confidentiality of any and all information ordered by the Court to be kept confidential and maintained under seal and will not disclose such information to any person or entity except in accordance with an order of the Court providing for such disclosure.

6. Stretto is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code, in that Stretto and its professional personnel:

- a. are not creditors, equity security holders, or insiders of the Diocese;
- b. are not and were not, within two years before the date of the filing of this case, directors, officers, or employees of the Diocese; and
- c. do not have an interest materially adverse to the interest of the Diocese's estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the Diocese.

7. I caused to be submitted for review by our conflicts system the names of all known potential parties-in-interest (the "Potential Parties in Interest") in this Chapter 11 Case. The list of Potential Parties in Interest was provided by the Diocese and included, among other parties, the Diocese, its trustees, members, officers and directors, lenders, creditors and vendors, and other parties in interest. The results of the conflict check were compiled and reviewed by Stretto professionals under my supervision. At this time, and as set forth in further detail herein, Stretto

is not aware of any connection that would present a disqualifying conflict of interest. Should Stretto discover any new relevant facts or connections bearing on the matters described herein during the period of its retention, Stretto will use reasonable efforts to file promptly a supplemental declaration.

8. To the best of my knowledge, and based solely upon information provided to me by the Diocese, and except as provided herein, neither Stretto, nor any of its personnel, holds or represents an interest materially adverse to the Diocese's estate nor has a material connection to the Diocese, their creditors, or related parties with respect to any matter for which Stretto will be employed. Stretto may have relationships with certain of the Diocese's creditors as vendors or in connection with cases in which Stretto serves or has served as claims and noticing agent and/or administrative advisor for another chapter 11 debtor. However, to the best of my knowledge, no such relationships are materially related to this Chapter 11 Case.

9. Stretto may have working relationships with certain of the professionals retained by the Diocese and other parties herein but such relationships are entirely unrelated to this Chapter 11 Case. Stretto has and will continue to represent clients in matters unrelated to this Chapter 11 Case, and Stretto and its personnel may have, and will continue to have, relationships personally or in the ordinary course of its business with certain vendors, professionals, financial institutions, and other parties in interest in connection with matters unrelated to this case. Stretto may also provide professional services to entities or persons that may be creditors or parties in interest in this Chapter 11 Case, which services do not directly relate to, or have any direct connection with, this Chapter 11 Case or the Diocese.

10. Stretto and its personnel in their individual capacities regularly utilize the services of law firms, accounting firms, and financial advisors. Such firms engaged by Stretto or its personnel may appear in these cases representing the Diocese or parties-in-interest. All engagements where such firms represent Stretto or its personnel in their individual capacities are unrelated to this Chapter 11 Case.

11. Certain of Stretto's professionals were partners of or formerly employed by firms that are providing or may provide professional services to parties in interest in this case. Except as may be disclosed herein, these professionals did not work on any matters involving the Diocese while employed by their previous firms. Moreover, these professionals were not employed by their previous firms when this Chapter 11 Case was filed.

12. In April 2017, Stretto was acquired by Trident VI Funds, managed by private equity firm Stone Point Capital LLC ("Stone Point"). Stone Point is a financial services-focused private equity firm based in Greenwich, Connecticut. The firm has raised and managed seven private equity funds (the "Trident Funds") with aggregate committed capital of approximately \$19 billion. Stone Point targets investments in the global financial services industry, including investments in companies that provide outsourced services to financial institutions, banks and depository institutions, asset management firms, insurance and reinsurance companies, insurance distribution and other insurance-related businesses, specialty lending and other credit opportunities, mortgage services companies and employee benefits and healthcare companies.

13. The following disclosure is made out of an abundance of caution in an effort to comply with the Bankruptcy Code and Bankruptcy Rules. However, neither the Trident VI Funds nor Stone Point have been identified on the parties in interest list in this Chapter 11 Case as of

the date hereof.

14. Stretto has searched the name of the Diocese and the names of the potential parties-in-interest provided by the Diocese against Stone Point, its funds, and their respective investments as set forth in the list most recently provided to Stretto by Stone Point's internal compliance department. Based solely on the foregoing search, Stretto has determined, to the best of its knowledge, that there are no material connections that require disclosure. To the extent Stretto learns of any material connections between Stone Point, its funds, or investments included in the above-described conflicts search and the Diocese, Stretto will promptly file a supplemental disclosure. Stretto may have had, or may in the future have business relationships unrelated to the Diocese with one or more Stone Point entities including, among others, portfolio companies of Stone Point.

15. Upon information and belief, and upon reasonable inquiry, Stretto does not believe that any of its partners or employees own any debt or equity securities of the Diocese or of any of its affiliates.

16. Subject to Court approval, the Diocese has agreed to compensate Stretto for professional services rendered in connection with this Chapter 11 Case according to the terms and conditions of the Engagement Agreement. Payments are to be based upon the submission of a billing statement by Stretto to the Diocese after the end of each calendar month, which includes a detailed listing of services and expenses. Stretto has agreed to accept from the Diocese a retainer in the amount of \$10,000 upon Court approval of its retention as claims and noticing agent and will apply the retainer first against any outstanding prepetition fees and expenses, which retainer shall then be replenished to the original retainer amount, and thereafter, Stretto

will hold its retainer under the Engagement Agreement during this chapter 11 case as security for the payment of fees and expenses incurred under the Engagement Agreement.

17. Based on the foregoing, I believe that Stretto is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code. Moreover, to the best of the knowledge and belief, neither Stretto nor any of its employees hold or represent any interest materially adverse to the Diocese’s estate with respect to any matter upon which Stretto is to be employed.

Dated: February 28, 2020

**Bankruptcy Management Solutions, Inc.
d/b/a Stretto**

By: /s/ Travis K. Vandell
Travis K. Vandell
Managing Director

Exhibit C

Engagement Agreement

3500930.2

Engagement Agreement

This Engagement Agreement (this "Agreement") is entered into as of February 19, 2020 between Bankruptcy Management Solutions, Inc. d/b/a Stretto ("Stretto") and Diocese of Buffalo (together with its affiliates and subsidiaries, the "Company").¹

In consideration of the promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Services

- (a) Stretto agrees to provide the Company with consulting services regarding legal noticing, claims management and reconciliation, plan solicitation, balloting, disbursements, preparation of schedules of assets and liabilities and statements of financial affairs, communications, confidential online workspaces or data rooms (publication to which shall not violate the confidentiality provisions of this Agreement) and any other services agreed upon by the parties or otherwise required by applicable law, governmental regulations or court rules or orders (all such services collectively, the "Services").
- (b) The Company acknowledges and agrees that Stretto will often take direction from the Company's representatives, employees, agents and/or professionals (collectively, the "Company Parties") with respect to providing Services hereunder. The parties agree that Stretto may rely upon, and the Company agrees to be bound by, any requests, advice or information provided by the Company Parties to the same extent as if such requests, advice or information were provided by the Company.
- (c) The Company agrees and understands that Stretto shall not provide the Company or any other party with legal advice.

2. Rates, Expenses and Payment

- (a) Stretto will provide the Services on an as-needed basis and upon request or agreement of the Company, in each case in accordance with Stretto's Rate Structure. The Company agrees to pay for reasonable out of pocket expenses incurred by Stretto in connection with providing Services hereunder.
- (b) The Rate Structure sets forth individual unit pricing for each of the Services. The Company may request separate Services or all of the Services.
- (c) Stretto will bill the Company no less frequently than monthly. All invoices shall be due and payable upon receipt. Where an expense or group of expenses to be incurred is expected to exceed \$10,000 (e.g., publication notice), Stretto may require advance or direct payment from the Company before the performance of Services hereunder. If any amount is unpaid as of 30 days after delivery of an invoice, the Company agrees to pay a late charge equal to 1.5% of the total amount unpaid every 30 days.
- (d) In the case of a dispute with respect to an invoice amount, the Company shall provide a detailed written notice of such dispute to Stretto within 10 days of receipt of the invoice.
- (e) The undisputed portion of the invoice will remain due and payable immediately upon receipt thereof. Late charges shall not accrue on any amounts disputed in good faith.

¹ The Company shall include, to the extent applicable, the Company, as debtor and debtor in possession in any chapter 11 case, together with any affiliated debtors and debtors in possession whose chapter 11 cases are jointly administered with the Company's chapter 11 case.

- (f) The Company shall pay any fees and expenses for Services relating to, arising out of or resulting from any error or omission made by the Company or the Company Parties.
- (g) The Company shall pay or reimburse any taxes that are applicable to Services performed hereunder or that are measured by payments made hereunder and are required to be collected by Stretto or paid by Stretto to a taxing authority.
- (h) Upon execution of this Agreement, the Company shall pay Stretto an advance of \$15,000. Stretto may use such advance against unpaid fees and expenses hereunder. Stretto may use the advance against all prepetition fees and expenses. Company shall upon Stretto's request, which request may take the form of an invoice, replenish the advance to the original advance amount. Stretto may also, at its option hold such advance to apply against unpaid fees and expenses hereunder.
- (i) Stretto reserves the right to make reasonable increases to the Rate Structure on an annual basis effective on the first business day of each year. If such annual increases represent an increase greater than 10% from the previous year's levels, Stretto shall provide 30 days' notice to the Company of such increases.
- (j) Payments to Stretto under the terms of this Agreement for services rendered, may be remitted by Client using either (or both) of the following methods:

Wire Transmission

Bank Name – Pacific Western Bank

Bank Address – 110 West A Street, Suite 100, San Diego, CA 92101

ABA – 122238200

Account Number – 1000681781

Account Name – Bankruptcy Management Solutions, Inc.

Check

Stretto

c/o Controller, Chris Mok

410 Exchange, Suite 100

Irvine, CA 92602

3. Retention in Bankruptcy Case

- (a) If the Company commences a case pursuant to title 11 of the United States Code (the "Bankruptcy Code"), the Company promptly shall file applications with the Bankruptcy Court to retain Stretto (i) as claims and noticing agent pursuant to 28 U.S.C. § 156(c) and (ii) as administrative advisor pursuant to section 327(a) of the Bankruptcy Code for all Services that fall outside the scope of 28 U.S.C. § 156(c). The form and substance of such applications and any order approving them shall be reasonably acceptable to Stretto.
- (b) If any Company chapter 11 case converts to a case under chapter 7 of the Bankruptcy Code, Stretto will continue to be paid for Services pursuant to 28 U.S.C. § 156(c) and the terms hereunder.

4. Confidentiality

- (a) The Company and Stretto agree to keep confidential all non-public records, systems, procedures, software and other information received from the other party in connection with the Services provided hereunder; provided, however, that if any such information was publicly available, already in the receiving party's possession or known to it, independently developed by the receiving party, lawfully obtained by the receiving party from a third party

or required to be disclosed by law, then the receiving party shall bear no responsibility for publicly disclosing such information.

- (b) If either party reasonably believes that it is required to disclose any confidential information pursuant to an order from a governmental authority, (i) such party shall provide written notice to the other party promptly after receiving such order, to allow the other party sufficient time, if possible, to seek any remedy available under applicable law to prevent disclosure of the information; and (ii) such party will limit such disclosure to the extent the such party's counsel in good faith determines such disclosure can be limited.

5. Property Rights

Stretto reserves to itself and its agents all property rights in and to all materials, concepts, creations, inventions, works of authorship, improvements, designs, innovations, ideas, discoveries, know-how, techniques, programs, systems, specifications, applications, processes, routines, manuals, documentation and any other information or property (collectively, "Property") furnished by Stretto for itself or for use by the Company hereunder. The foregoing definition of Property shall include any and all data, from any source, downloaded, stored and maintained by Stretto's technology infrastructure. Fees and expenses paid by the Company do not vest in the Company any rights in such Property. Such Property is only being made available for the Company's use during and in connection with the Services provided by Stretto hereunder.

6. Bank Accounts

At the request of the Company or the Company Parties, Stretto shall be authorized to establish accounts with financial institutions in the name of and as agent for the Company to facilitate distributions pursuant to a chapter 11 plan or other transaction. To the extent that certain financial products are provided to the Company pursuant to Stretto's agreement with financial institutions, Stretto may receive compensation from such institutions for the services Stretto provides pursuant to such agreement.

7. Term and Termination

- (a) This Agreement shall remain in effect until terminated by either party: (i) on 30 days' prior written notice to other party; or (ii) immediately upon written notice for Cause (as defined herein). "Cause" means (i) gross negligence or willful misconduct of Stretto that causes material harm to the Company's restructuring under chapter 11 of the Bankruptcy Code, (ii) the failure of the Company to pay Stretto invoices for more than 60 days from the date of invoice or (iii) the accrual of invoices or unpaid Services in excess of the advance held by Stretto where Stretto reasonably believes it likely will not be paid.
- (b) If this Agreement is terminated after Stretto is retained pursuant to Bankruptcy Court order, the Company promptly shall seek entry of a Bankruptcy Court order discharging Stretto of its duties under such retention, which order shall be in form and substance reasonably acceptable to Stretto.
- (c) If this Agreement is terminated, the Company shall remain liable for all amounts then accrued and/or due and owing to Stretto hereunder.
- (d) If this Agreement is terminated, Stretto shall coordinate with the Company and, to the extent applicable, the clerk of the Bankruptcy Court, to maintain an orderly transfer of record keeping functions, and Stretto shall provide the necessary staff, services and assistance required for such an orderly transfer. The Company agrees to pay for such Services pursuant to the Rate Structure.

8. No Representations or Warranties

Stretto makes no representations or warranties, express or implied, regarding the services and products sold or licensed to the Company hereunder or otherwise with respect to this Agreement, including, without limitation, any express or implied warranty of merchantability, fitness or adequacy for a particular purpose or use, quality, productiveness or capacity. Notwithstanding the foregoing, if the above disclaimer is not enforceable under applicable law, such disclaimer will be construed by limiting it so as to be enforceable to the extent compatible with applicable law.

9. Indemnification

- (a) To the fullest extent permitted by applicable law, the Company shall indemnify and hold harmless Stretto and its members, directors, officers, employees, representatives, affiliates, consultants, subcontractors and agents (collectively, the "Indemnified Parties") from and against any and all losses, claims, damages, judgments, liabilities and expenses, whether direct or indirect (including, without limitation, counsel fees and expenses) (collectively, "Losses") resulting from, arising out of or related to Stretto's performance hereunder. Without limiting the generality of the foregoing, Losses include any liabilities resulting from claims by any third parties against any Indemnified Party.
- (b) Stretto and the Company shall notify each other in writing promptly upon the assertion, threat or commencement of any claim, action, investigation or proceeding that either party becomes aware of with respect to the Services provided hereunder.
- (c) The Company's indemnification of Stretto hereunder shall exclude Losses resulting from Stretto's gross negligence or willful misconduct.
- (d) The Company's indemnification obligations hereunder shall survive the termination of this Agreement.

10. Limitations of Liability

Except as expressly provided herein, Stretto's liability to the Company for any Losses, unless due to Stretto's gross negligence or willful misconduct, shall be limited to the total amount paid by the Company to Stretto for the portion of the particular work that gave rise to the alleged Loss. In no event shall Stretto be liable for any indirect, special or consequential damages (such as loss of anticipated profits or other economic loss) in connection with or arising out of the Services provided hereunder.

11. Company Data

- (a) The Company is responsible for, and Stretto does not verify, the accuracy of the programs, data and other information it or any Company Party submits for processing to Stretto and for the output of such information, including, without limitation, with respect to preparation of statements of financial affairs and schedules of assets and liabilities (collectively, "SOFAs and Schedules"). Stretto bears no responsibility for the accuracy and content of SOFAs and Schedules, and the Company is deemed hereunder to have approved and reviewed all SOFAs and Schedules filed on its behalf.
- (b) The Company agrees, represents and warrants to Stretto that before delivery of any information to Stretto: (i) the Company has full authority to deliver such information to Stretto; and (ii) Stretto is authorized to use such information to perform Services hereunder and as otherwise set forth in this Agreement.
- (c) Any data, storage media, programs or other materials furnished to Stretto by the Company may be retained by Stretto until the Services provided hereunder are paid in full. The Company shall remain liable for all fees and expenses incurred by Stretto under this

Agreement as a result of data, storage media or other materials maintained, stored or disposed of by Stretto. Any such disposal shall be in a manner requested by or acceptable to the Company; provided that if the Company has not utilized Stretto's Services for a period of 90 days or more, Stretto may dispose of any such materials in a manner to be determined in Stretto's sole reasonable discretion, and be reimbursed by the Company for the expense of such disposition, after giving the Company 30 days' notice. The Company agrees to initiate and maintain backup files that would allow the Company to regenerate or duplicate all programs, data or information provided by the Company to Stretto.

- (d) Notwithstanding the foregoing, if Stretto is retained pursuant to Bankruptcy Court order, disposal of any Company data, storage media or other materials shall comply with any applicable court orders and rules or clerk's office instructions.

12. Non-Solicitation

The Company agrees that neither it nor any of its subsidiaries or affiliates shall directly or indirectly solicit for employment, employ or otherwise retain as employees, consultants or otherwise, any employees of Stretto during the term of this Agreement and for a period of 12 months after termination thereof unless Stretto provides prior written consent to such solicitation or retention.

13. Force Majeure

Whenever performance by Stretto of any of its obligations hereunder is materially prevented or impacted by reason of any act of God, government requirement, strike, lock-out or other industrial or transportation disturbance, fire, flood, epidemic, lack of materials, law, regulation or ordinance, act of terrorism, war or war condition, or by reason of any other matter beyond Stretto's reasonable control, then such performance shall be excused.

14. Choice of Law

The validity, enforceability and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of California.

15. Arbitration

Any dispute arising out of or relating to this Agreement or the breach thereof shall be finally resolved by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction. There shall be three arbitrators named in accordance with such rules. The arbitration shall be conducted in the English language in Irvine, California in accordance with the United States Arbitration Act. Notwithstanding the foregoing, upon commencement of any chapter 11 case(s) by the Company, any disputes related to this Agreement shall be decided by the bankruptcy court assigned to such chapter 11 case(s).

16. Integration: Severability; Modifications: Assignment

- (a) Each party acknowledges that it has read this Agreement, understands it and agrees to be bound by its terms and further agrees that it is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings, agreements and communications between the parties relating to the subject matter hereof.
- (b) If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.

- (c) This Agreement may be modified only by a writing duly executed by an authorized representative of the Company and an officer of Stretto.
- (d) This Agreement and the rights and duties hereunder shall not be assignable by the parties hereto except upon written consent of the other; provided, however, that Stretto may assign this Agreement to a wholly-owned subsidiary or affiliate without the Company's consent.

17. Effectiveness of Counterparts

This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which shall constitute one and the same agreement. This Agreement will become effective when one or more counterparts have been signed by each of the parties and delivered to the other party, which delivery may be made by exchange of copies of the signature page by fax or email.

18. Notices

All notices and requests in connection with this Agreement shall be sufficiently given or made if given or made in writing via hand delivery, overnight courier, U.S. Mail (postage prepaid) or email, and addressed as follows:

If to Stretto: Stretto
 410 Exchange, Ste. 100
 Irvine, CA 92602
 Attn: Sheryl Betance
 Tel: 714.716.1872
 Email: sheryl.betance@stretto.com

If to the Company: The Diocese of Buffalo, N.Y.
 795 Main Street
 Buffalo, NY 14203
 Attn: Charles Mendolera, Executive
 Director of Financial Administration

With a copy to: Bond, Schoeneck & King, PLLC
 One Lincoln Center
 Syracuse, NY 13202
 Attn: Stephen A. Donato

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first above written.


Stretto



By: Travis Vandell

Title: Managing Director

[COMPANY]



By: Charles Mendolera

Title: Executive Director of Financial Administration