UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re: ROMAN CATHOLIC CHURCH OF THE DIOCESE OF GALLUP, a New Mexico corporation sole, Debtor.	Chapter 11 Case No. 13-13676-t11 **Jointly Administered with:**
Jointly Administered with: BISHOP OF THE ROMAN CATHOLIC CHURCH OF THE DIOCESE OF GALLUP, an Arizona corporation sole. This pleading applies to: ☒ All Debtors. ☐ Specified Debtor.	Case No. 13-13677-t11 Hearing Date: August 14, 2015 Hearing Time: 9:00 a.m. MDT Location: Hearing Room 13102 U.S. Bankruptcy Court Dennis Chavez Federal Building 500 Gold Avenue, SW, 13th Floor Albuquerque, NM 97102

OBJECTION TO MOTIONS FOR RELIEF FROM AUTOMATIC STAY

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

The Roman Catholic Church of the Diocese of Gallup ("**RCCDG**") and the Bishop of the Roman Catholic Church of the Diocese of Gallup (the "**Arizona Entity**," and together with RCCDG, the "**Debtors**"), the Debtors and Debtors-in-possession in the above-captioned, jointly administered cases (the "**Reorganization Cases**"), submit this Objection to each "Motion for Relief from Automatic Stay" filed by Jane L.S. Doe [Dkt. No. 396] ("**Jane Doe Motion**"), Alfred Moya [Dkt. No. 397] ("**Moya Motion**"), and John M.H. Doe [Dkt. No. 398] ("**John Doe Motion**") (collectively, the "**Motions**"), and the "Official Committee of Unsecured Creditors' Memorandum in Support of Stay Relief Motions" [Dkt. No. 402] (the "**Memorandum**") filed by the Official Committee of Unsecured Creditors (the "**Committee**").

The Motions[1] should be denied, because there is no "cause" for stay relief; instead, there are a number of compelling reasons why the Movants' litigation should remain subject to the automatic stay. The Movants and the Committee (through its filing of the Memorandum supporting the Motions) attempt to justify expensive, dilatory litigation that will negatively impact the ability to resolve these Reorganization Cases. The request is based on the assertion that liquidation of the Movants' claims will encourage the Debtors' insurers to assist in resolving the Reorganization Cases. The assertion is directly belied by the actual facts: (i) the claim of Movant Moya is entirely uninsured;[2] (ii) the claims of the Doe Movants are insured by the New Mexico Property Casualty and Insurance Guaranty Fund ("**NMPCIGA**") with statutorily proscribed limitations on the amount of coverage; (iii) NMPCIGA asserts coverage defenses that will lead to more litigation over the nature and extent of coverage of the claims insured by NMPCIGA;[3] and (iv) none of these cases are ready for trial and any resolution will take years. When the Motions and Memorandum are held up against the actual facts of these cases,

[1] As explained further below, the Motions of Moya and John Doe are procedurally defective. Those adversary cases are currently pending before this Court, and the proceedings are merely held in abeyance by virtue of this Court's Orders as set forth in detail below. Even if appropriately brought as stay relief motions, they should be denied. There is no prepetition lawsuit pending against the Debtors in the Jane Doe case. One was commenced by Jane Doe in violation of the automatic stay and was only dismissed when counsel for Jane Doe was threatened with sanctions for a willful violation of the automatic stay.

[2] Contrary to the Committee's assertion that the Debtors need not defend uninsured claims brought relating to "credibly accused" abusers, such failure would not only breach the Debtors' fiduciary duties to all the creditors (including the other survivors) but seriously affect the Debtors' ability to reorganize for the benefit of the survivors, the creditors, and the communities the Debtors serve.

[3] Although counsel for Jane Doe and the Committee have suggested that Jane Doe's claim implicates some coverage under the Catholic Mutual Relief Society ("**CM**") policies, at best there is confusion over this issue which will likely result in additional coverage litigation—additional facts completely ignored by Movants.

including the limited resources of the Debtors,[4] the limitations in insurance coverage, and the delay, any jury award is not only irrelevant in moving the cases forward but will actually be detrimental to all creditors. When the true facts underlying the Motions are measured against the stated "benefit" from allowing these claims to go forward, there is only one conclusion—the Motions must be denied.[5]

In Movants' and the Committee's attempt to justify these unwarranted and unsupportable Motions, the Movants and the Committee breached the mediation privilege in their statements of why, in their view, the first mediation failed. As the Debtors advised the Court at the July 17, 2015 hearing (the "**7/17 Hearing**"), if the Committee and the Movants are prepared to waive the privilege, the Debtors are more than happy to advise the Court as to the "facts" of what happened. However, apparently only wanting to give the Court their view, they did not take the Debtors up on their offer but hide behind the privilege when it is convenient and skirt or breach it when they know the Debtors cannot respond.

Moreover, the Movants' assertions and the Committee's Memorandum provide conflicting requests for relief. Which is to be believed? The Memorandum, which alleges a need to show the Debtors and the insurers how much these claims are worth, or the statements of Movants' state court counsel, Robert Pastor, when he told the Court at the 7/17 Hearing, that these cases are not about money but are about the survivors being able to tell their stories. "For

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[4] The Committee acknowledges that the Debtors have extremely limited resources. [*See* Transcript of July 17, 2015 hearing, pertinent excerpts of which are attached hereto as **Exhibit A**, at p. 16, lines 10-16, p. 18, lines 7-8.]

[5] The Committee's active support of the Motions (one might say primary mover given the nature of the pleadings) is directly contrary to—and evidences a breach of their fiduciary duty to represent—the interests of the other Tort Claimants and other unsecured creditors in these Reorganization Cases. Their filing of the Memorandum comes at the expense of the estates and is to the detriment of the Committee's constituency.

them, this is not about money, because no amount of money is going to change their life," he said. [Exhibit A at p. 20, lines 5-6.] "[F]or my clients who have been waiting since 2009, they want their story told." [*Id.*, lines 17-18.]

Although the Motions should be denied outright at the preliminary hearing, the Debtors request an evidentiary hearing in the event the Court is inclined to entertain the Motions. There is considerable dispute regarding the facts that are salient to the Motions, and the relief requested in the Motions requires factually-intensive analysis. Therefore, the Court should set an evidentiary hearing if it determines that the Motions may survive the preliminary hearing.

I. FACTUAL BACKGROUND.

Prior to the filing of the Reorganization Cases, thirteen (13) claimants had filed lawsuits against RCCDG, including Movants Moya and John Doe. There were numerous additional claims that had been noticed to RCCDG but had not yet resulted in filed lawsuits. There is no dispute regarding the limited insurance coverage available for sex abuse claims. Prior to 1965, the Debtors lacked any insurance. From 1965 to 1977, they were insured by The Home Insurance Company ("**Home**"), which is insolvent and was placed in receivership in 2003. Those claims are now the responsibility of NMPCIGA, a statutorily created entity that is funded by New Mexico public money, and pursuant to which there is a statutory limit on the amount of coverage on a per claim or per occurrence basis.[6] Beginning on December 1, 1977, the Debtors obtained insurance for claims such as the sex abuse claims asserted in these Reorganization Cases from CM. In 1990, all such policies were written on a "claims-made" basis.

After filing the Reorganization Cases, the Debtors obtained a claims bar date, which resulted in approximately 57 tort claims being filed in the Reorganization Cases. On February 6,

[6] Debtors reserve all rights with respect to interpretation of these terms.

2014, the Debtors removed all lawsuits then pending against them, which included the Moya and John Doe lawsuits, to the Arizona Bankruptcy Court, and pursuant to the Debtors' motion, venue of the removed cases was transferred to this Bankruptcy Court. The Moya case is now pending before this Court as Adversary No. 14-01034-t and the John Doe case is now pending before this Court as Adversary No. 14-01033-t.

Moya and John Doe never moved to remand their cases. The deadline to do so expired on March 10, 2014.[7] Moya and John Doe stipulated to the Court entering Orders in each of the adversary cases—each "Stipulated Order Regarding Abeyance of Adversary Proceeding and Reservation of Rights" entered on June 6, 2014 provided:

> The Adversary Proceeding shall be held in abeyance, and any and all deadlines shall be stayed.
>
> To the extent that either Plaintiff or Defendant wishes to reinitiate this Adversary Proceeding, such party may file a Motion with this Court notifying the Court and the parties that it no longer wants this Adversary Proceeding held in abeyance, and asking the Court to reinitiate the Adversary Proceeding.

[14-01034-t, Dkt. No. 26 at p. 3 (as to Moya); 14-01033-t, Dkt. No. 21 at p. 3 (as to John Doe) (the "**Abeyance Order**").]

The Debtors and Committee have worked closely in identifying and clarifying the Debtors' assets, including the Debtors providing the Committee with significant discovery. In addition, the Committee has received, reviewed, and analyzed all the insurance coverage that is available to contribute to payment of sex abuse claims. Therefore, there is no mystery about the very limited resources of the Debtors and the limited number of insured claims which makes the

[7] *See* 28 U.S.C. § 1447(c); NM LBR 5011-2(b); *Daleske v. Fairfield Comms. Inc.*, 17 F.3d 321, 324 (10th Cir. 1994).

Case 13-13676-t11 Doc 422 Filed 08/03/15 Entered 08/03/15 19:16:43 Page 5 of 24

Motions and the Committee's enthusiastic support of the Motions all the more suspect. A brief review of the status of the Movants' claims illustrates this point graphically.

A. Jane Doe.

There are inconsistencies in Jane Doe's claim as to when the abuse occurred. Most, if not all, of the abuse occurred during the NMPCIGA coverage period and there are serious questions as to whether any of it extended into the first year of CM's coverage period. In addition, as the Court was advised at the 7/17 Hearing, NMPCIGA believes it has coverage defenses that, if successful, could result in no insurance available during the relevant times that the Debtors were insured by Home.[8] [*See* Transcript of April 20, 2015 hearing, pertinent excerpts attached hereto as **Exhibit B**, at p. 57, lines 9-21; Exhibit A at p. 34, lines 11-17, *see also* p. 24, line 10 to p. 28, line 16.] Accordingly, not only will the Jane Doe case result in increased delay, cost, and expense but it is likely to trigger more litigation over NMPCIGA's coverage which is additional cost to the Debtors and could have far reaching consequences to all the claimants (a fact completely ignored by the Committee).

The Jane Doe case is not even pending against the Debtors, so allowing her claim to proceed to trial means that any resolution of the Reorganization Cases will be delayed for years.

B. John Doe.

John Doe's claim falls under the NMPCIGA coverage period and is therefore subject to the defined statutory limit. While John Doe's case was filed prepetition, nothing other than the complaint and answer had been filed before the Reorganization Cases were filed. Therefore, as with the Jane Doe claim, allowing the John Doe claim to proceed[9] will result in increased delay,

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[8] The Debtors reserve all their rights with respect to the coverage disputes and the interpretation of the policies at issue.

[9] If John Doe actually files a proper motion as ordered in the Abeyance Order.

cost, and expense and similarly will trigger more litigation over NMPCIGA's coverage at additional cost, expense, and delay for the Debtors, the estates, and the creditors.

Moreover, contrary to the Movants' statements about their cases being heard in the Arizona state court, at least as to John Doe and Moya, their cases will be tried (if at all) in the United States District Court. According to the website of the United States District Court for the District of New Mexico, cases take an average of two years from the time they are filed to reach their trial phase. *See* **Exhibit C** at p.2.

C. Moya.

Moya's claim is uninsured. While it was the one case where some pretrial proceedings and discovery had occurred before the Reorganization Cases were filed, it is a totally uninsured claim, meaning that all defense costs are borne by the Debtors. The Moya case is pending before this Court as Adversary No. 14-01034-t. However, contrary to the implications of the Movants and the Committee, there is still significant discovery to be done before trial—including the Debtors having to retain at least one medical expert to, among other things, conduct a medical evaluation of Mr. Moya and other discovery on damages. Experts do not work for free, so in addition to the Debtors' attorneys' fees and costs, the Debtors will incur all the additional costs of the expert(s). All of this to be paid for by the Debtors from their limited resources.[10]

The Committee asserts that trial of Moya's case may "expose" the Diocese of Corpus Christi to claims for contribution and indemnity [Memorandum at p. 9]; however, the Committee well knows that the Diocese of Corpus Christi has fought every effort to assist the Debtors. In addition, the Committee fails to inform the Court that when the Moya case was pending in state court, prepetition, Moya dismissed the Diocese of Corpus Christi with prejudice voluntarily from

[10] See note 4 above.

the case. *See* **Exhibit D**. So what the Committee is really saying is that its efforts will assist the Debtors in expending even more money in fees and costs to the detriment of their entire constituency and without any likelihood that it will result in a corresponding benefit to the estates.

II. LEGAL ARGUMENT.

A. Movants Moya and John Doe are Judicially Estopped From Pursuing the Relief They Request in the Motions, and Carry the Burden of Showing that Such Relief is Proper.

As a preliminary matter, Moya and John Doe's Motions are improper because they are entirely inconsistent with the positions taken by the Movants in the adversary cases. In June, 2014, the Movants and Debtors agreed, and the Court ordered, that if "either Plaintiff or Defendant wishes to reinitiate this Adversary Proceeding, such party may file a Motion with this Court notifying the Court and the parties that it no longer wants this Adversary Proceeding held in abeyance, and asking the Court to reinitiate the Adversary Proceeding." [Abeyance Order at p. 3.] Now, without having filed the Motion that Moya and John Doe agreed to and the Court required in order to re-initiate the Moya and John Doe litigation, the Movants are requesting the Court undertake an entirely different process than that the Movants agreed to in the Abeyance Order.

The Movants are judicially estopped from undertaking this collateral attack on the Abeyance Order. The doctrine of judicial estoppel exists "to protect the integrity of the judicial process by prohibiting parties from deliberately changing positions according to the exigencies of the moment." *Eastman v. Union Pac. R. Co.*, 493 F.3d 1151, 1156 (10th Cir. 2007) (internal citation and quotations omitted). A party will be judicially estopped from taking positions contrary to its prior assertions when the current position is "clearly inconsistent" with its former

position. *Id.* "Next, a court should inquire whether the suspect party succeeded in persuading a court to accept that party's former position." *Id.* Finally, the court should examine whether the party asserting the inconsistent position "would gain an unfair advantage in the litigation if not estopped." *Id.*

In this case, Movants Moya and John Doe accepted the removal to this Court of the adversary proceedings. *See* 28 U.S.C. § 1447(c); NM LBR 5011-2(b); *Daleske v. Fairfield Comms. Inc.*, 17 F.3d 321, 324 (10th Cir. 1994). Then Movants Moya and John Doe agreed in a written and binding stipulation to hold the adversary proceedings in abeyance, and requested that the Court enter an order—which it did—enforcing that agreement and providing a specific process by which a party could request the litigation recommence.[11] Now, approximately 18 months after the removal, the Movants have filed Motions that are clearly inconsistent with the Abeyance Order. The Motions carefully avoid any mention of the Abeyance Order and seek an entirely different remedy than they agreed to, and induced the Court to order, in the Abeyance Order. It appears that the Movants have done so to gain an unfair advantage. By attempting to circumvent the Abeyance Order, the Movants are seeking to shift the burden in proving the litigation should go forward (which would be entirely theirs, were the Motions properly styled as motions for relief from the Abeyance Order to re-initiate the adversary proceedings) to one of requiring the Debtors to prove the litigation should remain held in abeyance. *See* 11 U.S.C. § 362(g); Memorandum at p. 7. Therefore, if allowed to go forward, the Movants will gain an unfair advantage. Additionally, the Movants have requested abstention in their Motions, a request which is untimely given that Movants did not previously timely file any request for

[11] The Committee was not a party to the Abeyance Order; nor is it a Movant (nor can it be, since the Movants, not the Committee, are the real parties in interest alleging claims against the Debtors).

remand. Again, the Movants seek to gain an unfair advantage with this request, which is contrary to their earlier positions and strategies. For these reasons, Moya and John Doe should be judicially estopped from proceeding with their Motions.

B. Stay Relief is Not Warranted.[12]

If considered on the merits, stay relief is inappropriate, and the Motions (including the Jane Doe Motion) should be denied, for a number of reasons. When such reasons are examined in the context of the multi-factor test to determine whether cause exists for stay relief, it is apparent that no cause exists.

Most courts, including those in the Tenth Circuit, apply the factors articulated in the case of *In re Curtis*, 40 B.R. 795 (Bankr.D.Utah 1984) in considering stay relief motions. *In re Sunland, Inc.*, 508 B.R. 739, 743 (Bankr.D.N.M. 2014) (adopting the *Curtis* factors). The factors relevant to this case include analysis of the Movants' request to litigate the abuse actions as to: (1) whether such litigation will result in partial or complete resolution of the issues; (2) whether such litigation will lack any connection with or interfere with the bankruptcy case; (3) whether such litigation should to be heard in a specialized tribunal established to hear such matters and with particular expertise in such cases; (4) whether the debtor's insurance carrier has assumed full responsibility for defending the litigation; (5) whether litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties; (6) the interest of judicial economy and the expeditious and economical determination of litigation for the parties; (7) whether the litigation has progressed to the point where the parties are

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[12] While the Debtors address the stay relief factors as to all the Motions, the Debtors do not waive the argument that the Moya and John Doe Motions are procedurally improper, that stay relief is not the issue and all the Debtors' arguments are specifically preserved.

prepared for trial; and (8) the impact of the stay on the parties and the "balance of hurt". *Curtis* at 799-801.

This Court examined the *Curtis* factors in the *Sunland* case, a Chapter 11 case with factual circumstances very similar to the case at bar.[13] In *Sunland*, the debtor had a number of similarly situated creditors, one of whom had sued the debtor and sought to liquidate its claim in order to reach the debtor's insurance. 508 B.R. at 741-42. The insurer, however, disputed coverage of the claims. *Id.* at 742. After analyzing the *Curtis* factors, the Court concluded that the stay should remain in place for a variety of reasons, which are discussed below. As in *Sunland*, the *Curtis* factors overwhelmingly weigh in favor of maintenance of the stay in these Reorganization Cases, to protect all creditors equally and prevent a state court race to the courthouse over extremely limited insurance proceeds and assets.

1. Stay Relief Will Not Even Partially Resolve the Issues in these Reorganization Cases.

Stay relief will not resolve—not even partially—the issues in these Reorganization Cases—in fact it will impede resolution. Litigation of the Movants' claims will merely create new issues to resolve, as described herein. As previously stated, the Movants (and the Committee) seek to litigate claims that are either uninsured or for which insurance is tightly circumscribed. Money spent on such litigation is money that could—and should—go to

[13] The Committee's reference to the Diocese of Wilmington as a case similar to the Debtors' is a baffling non sequitur. [Memorandum at pp. 5-6.] Stay relief was never granted against the Diocese of Wilmington as debtor; rather, the stay the Committee discusses was a preliminary injunction imposed to protect third parties in that case from litigation. [*Id.* at p. 6.] Moreover, the Diocese of Wilmington and the third parties at issue in its case had millions of dollars worth of property. These Debtors do not, and stay relief is not going to create millions of dollars worth of property out of thin air.

compensate all the claimants.[14] It is highly unlikely that the Debtors' insurers will be persuaded by values of claims resulting from trials—such as the uninsured Moya trial or the Doe trials where the coverage is very limited. Moreover, having the litigation move forward will force the declaratory judgment action between NMGCIGA and the Debtors, again at significant expense to the Debtors.

Apart from the unnecessary expenditure of estates' funds, stay relief as to the select three Movants will also result in three claimants obtaining judgments—and thereby liquidating their claims while the other fifty-four (54) claimants have unliquidated claims. As this Court pointed out in *Sunland*, where one creditor is allowed to proceed with a lawsuit at the expense of other similarly situated claimants, "[t]his would be contrary to the purpose of the automatic stay, which is to provide for equality of distribution among creditors and to protect creditors by averting a scramble for the debtor's assets." 508 B.R. at 744 (internal punctuations and citations omitted).

In addition, as this Court aptly pointed out at the 7/17 Hearing, the Reorganization Cases turn on the money (mostly, insurance policy limits) available to pay the claims, not the value of the claims in a vacuum. Among the real issues in the Reorganization Cases (just as in the *Sunland* case) are the coverage defenses NMPCIGA has raised. These are not defenses to the claims themselves (or the value of the claims). Stay relief would place the Debtors in the "difficult position" of having to resolve the coverage issues and administer the estates, all while

[14] "As fiduciaries, [committee] counsel and committee members have obligations of fidelity, undivided loyalty and impartial service in the interest of the creditors they represent." *In re Mesta Machine Co.*, 67 B.R. 151, 156 (Bankr.W.D.Penn. 1986). "If a creditor serving on the committee has an impermissible conflict of interest, it may give rise to a breach of fiduciary duty." *In re Fas Mart Convenience Stores, Inc.*, 265 B.R. 427, 432 (Bankr.E.D.Va. 2001). "A committee member violates his fiduciary duty by using his position to further self interest" at committee's constituency's expense. *Mesta* at 157. The Debtors expressly reserve all their rights and arguments with respect to this issue.

defending the litigation with respect to the Movants. *See Sunland*, 508 B.R. at 743-44. In addition, stay relief could interfere with the Debtors' ability to negotiate policy buybacks and other elements of insurance settlements which are critical to the resolution of these religious entities' cases. *See id.* at 745.

2. The Litigation is Integrally Bound to the Reorganization Cases and Will Distract the Debtors if Permitted to Proceed.

Another factor favoring a stay of litigation is the inextricable manner in which it is tied to the Reorganization Cases and will interfere with their administration. Of all the *Curtis* factors, this is "[t]he most important factor . . . . Even slight interference with the administration may be enough to preclude relief in the absence of a commensurate benefit." *Curtis*, 40 B.R. at 806. The Movants' claims, and particularly the existence of uninsured litigation which could eliminate any recovery for any of the Debtors' other creditors, are inextricably linked to the Reorganization Cases, and were among the factors that precipitated the filing.

The Committee states the Debtors need not defend the uninsured litigation (the litigation with the most possibility to deplete the estates at other creditors' expense) at all because the claims relate to "credibly accused" priests. The Committee overlooks the Debtors' fiduciary duty to all creditors, which requires the Debtors to maximize the value of the estates. The Committee also overlooks the other issues in these cases such as statute of limitations or damages—all of which impact ultimate distribution to claimants, even in a settlement scenario. To suggest that the Debtors ignore those issues and let the chips fall where they may is most curious since under a confirmed plan, a neutral fiduciary (selected by the Committee) will be appointed to examine each claimant's damage amount and statute of limitations issues. Yet the

Movants and the Committee suggest that these issues be ignored even if it is to the detriment of the remaining claimants.[15]

The sheer expense of the litigation cannot be extracted from the Reorganization Cases, nor can the delay, increased administrative expenses, and the diversion of the time and energy of the Debtors it will cause. To suggest otherwise is just not credible.

3. No Specialized Tribunal Exists in Which to Try the Litigation; and Although the District Court is Well-Equipped to Hear the Movants' Claims, the Litigation Should Remain in Abeyance.

Because there is no "special forum" like a tax court or comparable tribunal in which to try the Movants' claims, this factor is not applicable (or at least does not favor stay relief). *See Curtis*, 40 B.R. at 800 (listing examples of specialized tribunals). However, the Committee alleges that the "state court is best equipped to hear the issues," and therefore, somehow the "specialized tribunal" analysis militates in favor of stay relief—even though the state court is not a specialized tribunal. [Memorandum at p. 10.] This is simply not true, and the Debtors address the issue to refute the assertion and clear up certain misconceptions that the Committee appears to harbor regarding the status of the Movants' cases.

The Memorandum wrongly asserts that the Moya case "is assigned to Presiding Judge Mark Moran of the Coconino County Superior Court." [Memorandum at p. 11.] In fact, the Moya case is pending before this Court; Coconino County Superior Court has no jurisdiction over it or over any of the removed cases. *See Vigil v. Mora Independent Schools*, 841 F.Supp.2d 1238, 1240 (D.N.M. 2012) ("after removal, the jurisdiction of the state court absolutely ceases and the state court has a duty not to proceed any further in the case . . . . Any subsequent proceedings in state court on the case are generally void *ab initio*").

[15] It should also not be ignored that Moya is a member of the Committee.

The only case the Committee cites for its proposition that this factor favors stay relief, *In re White*, No. 03-15860 HRT, 2004 WL 825847 (Bankr.D.Colo., Mar. 12, 2004), confirms that state court is not a "specialized tribunal." *White* at *4. That case is inapplicable because it involved the litigation of state real estate law in an Illinois state court. Here, the Bankruptcy Court would not be hearing state law issues or jury trial issues; the District Court would. *See* 28 U.S.C. § 157(b)(5).

4. <u>Litigation Would Prejudice the Interests of the Other Creditors, Committee, and Interested Parties</u>.

The Committee's analysis of this factor is further evidence of the deep conflict of interest that exists between the Movants and other members of the Committee and its constituents. The Movants' assertion that undertaking prolonged, uninsured litigation would not prejudice the bankruptcy estates or interfere with the bankruptcy proceeding is shocking in its inaccuracy.

For the numerous reasons stated in other sections of this Objection, jury verdicts valuing the Doe and Moya claims are largely irrelevant. But the Movants and the Committee want this Court to engage in expensive conjecture that somehow letting some cases go to trial at significant delay, expense, and harm to the estates will move the needle. Even assuming that statement had any rational basis and could be supported, the next question is how much will the needle move—$1, $100, $1,000, $10,000, nothing? How much should the Court gamble with the Debtors' limited resources and reduce potential recovery to the creditors in playing the game of "what if?" The answer is **not at all**. *See Sunland*, 508 B.R. at 745.

5. <u>Debtor's Insurance Carrier Has Not Assumed Financial Responsibility for Defense of All the Movants' Claims</u>.

The Committee's assertion that the Doe claims should be tried because they fall within NMPCIGA's coverage period is nonsensical. The Committee admits that the "adequacy of

insurance" is a relevant factor in determining whether to lift the stay. *In re Krank*, 84 B.R. 372, 375 (Bankr.E.D.Pa. 1988).[16] Many courts refuse "to grant stay relief to one claimant where, as here, the available insurance coverage was inadequate to compensate other similarly situated claimants. *See Sunland*, 508 B.R. at 744 (listing cases).

Insurance coverage is of paramount importance in these Reorganization Cases. A jury verdict placing a different value on the Doe claims will not change the value or availability of NMPCIGA's coverage. That issue will be determined either through litigation between NMPCIGA and the Debtors in a declaratory judgment action or settlement. A trial on the merits of the claims will have no bearing on the amount of coverage. And if Jane Doe is trying to reach CM coverage that will certainly involve coverage disputes about whether any part of her claim falls within any CM coverage period—more time—more expense—more delay—and to what end?

6. Stay Relief Will Waste Judicial Economy and Will Delay the Bankruptcy Cases.

This factor also weighs heavily against stay relief. The interests of judicial economy will not be served by trying the Movants' cases at all—regardless of which court hears them. There is simply no reason to liquidate the Movants' claims (and there are many reasons not to). Any time or fees spent on the litigating the Movants' cases cannot be replaced. Moreover, the administrative costs that would accrue in the Reorganization Cases, which would be stalled

[16] The other case cited by the Committee in support of Movants' request for stay relief, *In re Glunk*, has nothing to do with the instant factual situation. 342 B.R. 717, 740 (Bankr.E.D.Pa. 2006). In that case, it was undisputed that the debtor had adequate insurance. Moreover, the court was concerned with "aging of evidence [and] loss of witnesses" if the automatic stay were to remain in place. *See id.* Neither of those factors is an issue in the Movants' cases, which lay dormant for several decades.

waiting for the Movants' cases to conclude (possibly through appeal), would be prohibitive.[17] *See Sunland*, 508 B.R. at 745-746 (noting that where litigation will be lengthy, claimants are better off having their claims administered through the bankruptcy case in a timely manner). The Debtors' estates must not be forced to bear years more of reorganization fees as well as time diverted from the mission and ministry as they wait for the Movants' claims to be resolved in the District Court (and perhaps through appeal), nor should their creditors.

The cases the Committee cites in support of its argument all involve cases in which significant proceedings had been undertaken in courts other than the bankruptcy court prior to the time the debtors filed their cases. [Memorandum at pp. 14-15.] These situations are not similar to the Debtors. No discovery was undertaken in the John Doe case prior to the time the Reorganization Cases were filed, and Jane Doe does not even have a lawsuit pending against the Debtors. Most of the proceedings in the Moya case involved the voluntary dismissal by Moya of third parties such as the Diocese of Corpus Christi, and litigation over a motion to dismiss filed by the Archdiocese of Santa Fe. Some discovery disputes were brought before the state court, but no substantive motions or pre-trial proceedings as between Moya and the Debtors occurred, and every dollar spent on defense of the Moya claim is a dollar less to go to the fund a plan for the benefit of all the claimants who suffered abuse.

7. Parties Are Not Ready for Trial.

Although the Committee alleges that significant discovery had been undertaken in the Moya case, such discovery was undertaken by Moya, not the Debtors, which had attempted to save costs in defending the uninsured claim because of the impending Chapter 11 cases and lack

[17] The administrative costs in the Reorganization Cases are already high (none of which have been paid) and are going to be an issue in resolution of the cases—yet the Movants and the Committee want to increase those costs!

of funds. The status of the case has been discussed previously and need not be repeated here. The bottom line is that there is much more to be done in the Moya case and nothing has been done in the other two cases; accordingly, contrary to the Movants' and the Committee's unsupported assertion, none of these cases are ready for trial.

8. Impact of Stay and Balance of Harms Tilts in Debtors' (And Other Creditors' Favor).

This factor is essentially an amalgam of all the other factors, and very clearly indicates why the stay must remain in place. The Committee's description of the horrors of sex abuse evidence the very reason why the creditors in this case—not the lawyers—should be the ones who benefit. That means all creditors, not just those who fall into the Debtors' insurance coverage nor those who have aggressive state court counsel. Although the Committee states that the Movants wish to "confront those whose despicable actions and cover-up allowed them to be sexually abused," there are ways to do that without incurring the delay and cost which is what granting these Motions will do. The Debtors have stated publicly and privately that they will work with the Committee for a process by which those claimants who wish to tell their story, publicly or privately, will have an opportunity to do so. That does not mean that the only way to accomplish that is before a jury in a negligent supervision case.

The real harms the Court must balance in the context of the Motions are the harms to the creditors if stay relief is granted. *See Sunland*, 508 B.R. at 745. Astonishingly, the Committee's Memorandum undertakes no analysis of the gross disparity of treatment most of its members, both tort and non-tort creditors alike, will receive if the stay is lifted. This conflict of interest between the Movants and the remaining members of the Committee seems irreconcilable. The Committee never explains why all the Debtors' assets should be spent on litigation of Moya's uninsured claim and the two Doe claims—which are subject to insurance limits—rather than in

attempting to compensate the other holders of uninsured claims (not to mention the unsecured non-tort creditors in these cases). The Committee also never explains what would happen if the stay were lifted and the Reorganization Cases later dismissed, when Moya and the Does would have obtained special priority under state law over other deserving claimants in the race to judgment—a result the Committee should be resisting not supporting.

The balance of harms clearly tips in favor of maintenance of the stay.

C. Abstention Is Inappropriate; and In All Events, This Argument is Not Ripe Until the Movants' Litigation is Authorized to Proceed.

Movants' argument that the Bankruptcy Court should abstain from hearing the Moya and John Doe adversary proceedings is misplaced. To the extent the Movants' litigation goes forward, it will do so in the New Mexico District Court. That is the appropriate forum in which the Movants can try to argue for abstention, because that is the court that would actually hear the litigation. As long as the Movants' litigation is held in abeyance or stayed, the time is not ripe for the Court to consider abstention.

In all events, the Movants' abstention argument is made untimely. The Movants failed to timely move for remand. 28 U.S.C. § 1447(c); NM LBR 5011-2(b); *Daleske v. Fairfield Comms. Inc.*, 17 F.3d 321, 324 (10th Cir. 1994). They may not now attempt to accomplish the remand that they themselves waived more than 18 months ago.

Even if the Movants can convince a court to hear their abstention motion "[a]bstention is an extraordinary and narrow exception to the duty of the federal courts to adjudicate controversies which are properly before it." *In re Commercial Fin. Servs., Inc.*, 251 B.R. 414, 429 (Bankr.N.D.Okla. 2000) (internal quotations and citations omitted), *other aspects of decision reconsidered at* 255 B.R. 68 (Bankr.N.D.Okla. 2000). It is "the exception rather than the rule," and the party requesting abstention bears the burden of showing that it is appropriate. *Id.*

Applying the twelve abstention factors recognized in the Tenth Circuit,[18] and considering the facts of these cases, there is no basis for a federal court with jurisdiction to abstain from its unflagging duty to exercise its jurisdiction in hearing the Movants' proceedings, if the Court were to allow them to go forward. Simply put this issue (i) is not raised timely, (ii) is not in good faith, and (iii) is not properly before the Court; therefore, the Debtors reserve all their rights to brief this issue and request an evidentiary hearing, should either this Court or the New Mexico District Court decide to entertain Moya's and John Does' request for abstention.[19]

[18] These "well-worn" factors include (1) the effect that abstention would have on the efficient administration of bankruptcy estate; (2) the extent to which state law issues predominate; (3) the difficulty or unsettled nature of applicable state law; (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court; (5) the federal jurisdictional basis of the proceeding; (6) the degree of relatedness of the proceeding to the main bankruptcy case; (7) the substance of asserted "core" proceeding; (8) the feasibility of severing the state law claims; (9) the burden the proceeding places on the bankruptcy court's docket; (10) the likelihood that commencement of the proceeding in bankruptcy court involves forum shopping by one of parties; (11) the existence of a right to jury trial; and (12) the presence of nondebtor parties in the proceeding. *Id.* at 429.

[19] Any claim by the Movants and the Committee regarding abstention with respect to the Jane Doe claim is premature at best since that action has not been filed and would similarly be subject to removal when filed. Fed. R. Bankr. P. 9027.

III. **CONCLUSION.**

For the foregoing reasons, the Motions should be denied. If the Court does wish to hear further regarding the merits of the Motions, the Debtors request the Court set an evidentiary hearing prior to entering any decision on these important and fact-intensive matters.

RESPECTFULLY SUBMITTED this 3rd day of August, 2015.

/s/ *Elizabeth S. Fella*

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CERTIFICATE OF SERVICE

Pursuant to F.R.C.P. 5(b)(3), F.R.B.P. 9036 and NM LBR 9036-1(b), I hereby certify that service of the foregoing "Objection to Motions for Relief from Automatic Stay" was made on August 3, 2015 via e-mail and the notice transmission facilities of the Bankruptcy Court's case management and electronic filing system on the below listed parties, and via U.S. Mail to all additional parties on the Debtors' List of Creditors Holding 20 Largest Unsecured Claims.

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/s/ *Elizabeth S. Fella*
Elizabeth S. Fella

EXHIBIT "A"

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re: ROMAN CATHOLIC CHURCH OF THE DIOCESE OF GALLUP (TA) EXPEDITED STATUS HEARING	CH: 11	13-13676-t11

U.S. Bankruptcy Court
Dennis Chavez Federal Building
and United States Courthouse
500 Gold Avenue SW, Tenth Floor
P.O. Box 546
Albuquerque, NM 87103-0546

July 17, 2015
10:33 a.m.

BEFORE THE HONORABLE DAVID T. THUMA, Judge

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1 some of the cases have started out with a contested plan, they
2 have all ultimately settled. I am not aware of any decision by
3 a Court on a cramdown plan in a religious entity case.
4 THE COURT: Okay. Mr. Scharf?
5 MS. BOSWELL: But you may be the first.
6 MR. SCHARF: Sure. Your Honor, the issue here, and
7 I'm going to focus on the big issue that we have in reaching a
8 settlement here, is the value of the damages here. The
9 amount -- the number -- the dollar figure you're going to put
10 on the damages. And we, on the Committee side, especially
11 given the fact that most of our committee members live within
12 the diocese or close to the diocese, and still have many
13 contacts in the diocese, certainly appreciate the value of the
14 diocese's assets.
15 And the concern we have with the valuation I think is
16 not with respect to us looking at the diocese's assets. There
17 is insurance coverage available for many of the claims, and I'm
18 speaking in very broad terms because I'm really trying to avoid
19 getting into breaching the mediation privilege, and if I stray
20 too far, just tell me, Your Honor.
21 But, Your Honor, the concern we have is that people
22 on that side of the table, entities on that side of the table,
23 do not view the value of the claims in the same universe that
24 we're looking at them. And the way we're looking at them is
25 based on trial lawyers' experience in various areas around the

1 were two mediation sessions to finalize a plan. Or, really,
2 one -- sorry, there was one mediation with all the parties, and
3 a couple of mediation sessions with just counsel. But these
4 things can happen quickly; they can take longer.
5 The stay has been lifted in a couple of cases. And
6 again, the purpose is not to get huge dollar verdicts and then
7 say, oh, now you're busted, diocese. We know the diocese is
8 busted. It's really to inform everybody of what the value of
9 the claims are so that if we're looking for third parties to
10 contribute, they have a clear understanding and we're all
11 talking in the same ball park.
12 Your Honor asked about what's the alternative. We
13 have a plan, a cramdown plan. We're not proposing that that's
14 the route that makes sense. We would like to have the lift
15 stay motions granted in order to facilitate a settlement, not
16 as an alternative to a settlement.
17 And, Your Honor, a nonconsensual plan in this case
18 would be extremely ugly because everything is on the table, and
19 all the litigation goes forward against, you know -- you have
20 coverage actions against insurers, and it becomes ugly for all
21 parties involved. So, again, we're not trying to force a
22 cramdown or grab the Debtors' assets and claims and march off
23 on our own.
24 We think that granting the stay, and we'll talk about
25 this, I guess, on August 3rd when we have that hearing,

1 And I tell a lot of my clients when I meet with them, I say,
2 you know, there's a little kid inside of you that wants to be
3 believed. There's a little kid that's screaming out and wants
4 to be protected.
5 For them, this is not about money, because no amount
6 of money is going to change their life. No amount of money is
7 going to fix what happened to them in the past. The clients
8 who have agreed and said, you know what, put my case up for
9 trial, have told me they have the courage. They say, you know
10 what? I want to go into the public courtroom. I want to tell
11 my story. I don't care if I get a piece of paper that's
12 meaningless, because I want to hold that piece of paper up and
13 I want to say, you know what? It did happen to me. They did
14 do it to me. And it wasn't my fault.
15 And so, I know that Mr. Stang and Mr. Scharf and
16 Ms. Boswell, you know, lifting the stay is to get value. And
17 certainly, that's one of the purposes. But for my clients who
18 have been waiting since 2009, they want their story told. They
19 don't want to hide in the shadows anymore.
20 And if they get a piece of paper that's meaningless,
21 I'm pretty confident that they will hold up that piece of paper
22 and say, you know what? I stood up for myself finally, and I
23 said, you know what? You're not going to take advantage of me
24 again. You're not going to rape me again. And they're going
25 to stand up for once in their life and say, I am not a victim

1 Since the mediation, we have continued -- the
2 Guaranty Association has continued to discuss the issues with
3 the Debtor's counsel on the insurance coverage issues that we
4 have. We've continued to analyze our claims, we've continued
5 to -- or the claims, we've continued to research and analyze
6 lots of issues, and I think that we've made a lot of progress,
7 Judge, and that we're on the right track now. And I think that
8 everybody's made a lot of progress since before the prior --
9 before the first mediation.
10 Now, one thing that -- you know, I don't want to
11 breach the mediation privilege either, and I don't think I am,
12 by any means, because this has already been discussed, but, you
13 know, one of the difficulties that we have, Your Honor, is that
14 we have coverage issues, and we have policy limit issues, and
15 we have discreet issues that depend on interpretation of a
16 contract, not factual issues, not valuing claims, we have
17 discreet legal issues. And we have worked on those issues,
18 like I said with the Debtor's counsel, but I have not been
19 engaged or communicating with, in any meaningful context, these
20 coverage issues with the Claimants' counsel, or with counsel
21 for the Plaintiffs.
22 And the Plaintiffs' counsel stated that, you know, he
23 -- they have a different view of valuing the claims, and they
24 believe that stay relief will facilitate settlement
25 discussions, because they'll get an idea as to what their

1 claims are worth. Well, I think that understanding the
2 insurance policies, and the limits and the scope of the
3 policies would also significantly help them in determining what
4 was the best course of action for their clients.
5 Now, I spoke with the proposed Mediator -- and I have
6 a proposal for you, Judge, and my -- in my discussions with the
7 Mediator, I mentioned that we spent a significant amount of
8 time on coverage issues and that we weren't able to make a lot
9 of progress, because we were spending so much time on coverage
10 issues. And I told them I had some ideas, and I asked if he
11 had any ideas on how to best address those issues, and the
12 Mediator said, well, yeah, I do have some ideas. I've done
13 this before. I think you all need to have a mediation on the
14 coverage issues of the insurance policies with the correct
15 parties there, and then later on we could have a subsequent
16 mediation as to -- you know, with all the parties involved that
17 need to be there, with regards to how much you're going to be
18 putting into this pot for the Claimants.
19 So, Judge, I think that makes a lot of sense, and I
20 don't think the Debtor disagrees with that, and Ms. Boswell can
21 correct me if I'm wrong, but we've spoken about this and that
22 seems to make a lot of sense, because if there are certain
23 policy limits or if there are certain coverage issues that bar
24 claims or significantly affect the value of the claims or what
25 the Claimant could receive from the insurance company, those

Case 13-13676-t11 Doc 422-1 Filed 08/03/15 Entered 08/03/15 19:16:43 Page 7 of 12

1 issues need to be addressed, and they need to be figured out,
2 and then we'll be in a position to go to a more meaningful
3 mediation with all of the parties involved.
4 And, like I said, the Mediator, he thinks that is a
5 very good idea. I think it's a good idea. I think it makes a
6 lot of sense from our perspective, and I think that it would be
7 the most efficient way for us to proceed with the greatest
8 likelihood of a successful mediation.
9 And, Judge, there's a lot of issues here. There's a
10 lot of moving parts. Not everybody has the same issues that my
11 client has and, you know, the issues are very distinct, but if
12 we're able to make progress on a group of issues -- if the
13 Debtor and everybody is able to settle with the Franciscans, or
14 if everybody is able to settle with the Guaranty Association,
15 or Catholic Mutual, I mean the more pieces we can knock off,
16 the easier this case is going to get.
17 And so, simply because we can't have a global
18 resolution or people may argue that we may not be able to have
19 global resolution at another mediation, doesn't mean that it
20 would not be useful, and it would not be productive, and it
21 would not generate a significant benefit for the parties that
22 are going to the mediation. The --
23 THE COURT: Mr. Mazel, let me ask you something just
24 for my understanding. Let's say -- take a claim that seems
25 like it's the most likely to have insurance, are there policy

1 limits and is there -- are there stacks of policies and kind of
2 umbrella coverage? You know, could you -- let's say you won a
3 $50 million judgment, is there any way that you could actually
4 collect that from insurance proceeds in any case or are there,
5 you know million dollar limits, or is it murky, and you can't
6 really say?
7 MR. MAZEL: Well, Judge, Ms. Boswell may be in a
8 better position to address some of those questions, but I can
9 tell you that my understanding is the Home Insurance Company --
10 well, I'll tell you with respect to my client. The Home
11 Insurance Company was an insurer of the Diocese for four
12 three-year policies from 1965 to 1977. It is the only insurer
13 -- it is my understanding it is the only insurer of the Debtor
14 during that timeframe, and it's after that timeframe, Catholic
15 Mutual became the Debtor's insurer.
16 Now, to my knowledge -- and this is where Ms. Boswell
17 could correct me -- there is no umbrella policy. And with
18 respect to the limits, Your Honor, there is a statutory limit
19 for the Guaranty Association of $100,000 per Claimant. So
20 ignore the occurrence issues. What does an occurrence mean?
21 It doesn't matter. Okay. Per person, there's $100,000 limit.
22 And so, if the -- you know, I'm -- we haven't had
23 robust discussions with the Claimants' coverage counsel on
24 those issues. We have very much so with the Debtor, but it's
25 kind of an awkward situation, Judge. We're dealing with our

Case 13-13676-t11 Doc 422-1 Filed 08/03/15 Entered 08/03/15 19:16:43 Page 9 of 12

1 insured more than we're dealing with the Claimants. And I
2 don't think that's a bad thing. I like Ms. Boswell's
3 participation in that process, and I think it's been very
4 helpful, but I think that we need to get those -- the
5 Claimants' coverage counsel involved, and we need to pursue
6 those.
7 So, to answer your question, I don't think there is
8 any big pot of insurance money, but Catholic Mutual can address
9 whatever their limits are, but I'll tell you with respect to
10 the Guaranty Association, there is not. There is a statutory
11 limit, and we also assert that there is an aggregate limit per
12 policy period, and that's one of our disputes with the Debtor
13 and with the other parties, and that's one of the issues that I
14 would want the Mediator to determine at the outset. What is --
15 is there an aggregate or is there not? What does an occurrence
16 mean under the definition in this policy? Let's get some
17 clarity on some of those issues, and then we'll be in a better
18 position to proceed to a meaningful mediation.
19 THE COURT: Okay. Can I hear from Catholic Mutual
20 counsel about the policy limits issue that I asked about?
21 MR. CYGAL: Sure. Thank you, Your Honor. Everett
22 Cygal, again, on behalf of Catholic Mutual. I'll start in 1986
23 through 1990, Catholic Mutual issued four policies. Each have
24 a per occurrence limit of $100,000, and an aggregate limit of
25 $100,000. So, obviously, those years there is -- the limits

1 THE COURT: Okay. Anyone else want to be heard?
2 Mr. Ish.
3 MR. ISH: Good morning, Your Honor.
4 THE COURT: Good morning.
5 MR. ISH: I appreciate the opportunity to address the
6 Court. I will tell Your Honor that I'm not a bankruptcy lawyer
7 in the first instance, so I feel somewhat like a fish out of
8 water, but I did want to give you a slight --
9 THE COURT: Oh, come on, it's fun to be in Bankruptcy
10 Court.
11 MR. ISH: -- well, I do want to give the Court a
12 little perspective about my understanding, maybe, of where we
13 are. Even though the Guaranty Association has limits that are
14 statutory, and we have the Home Insurance Company limits -- and
15 I'll tell the Court that that's a $250,000 limit that could be
16 read in the aggregate for every three years, the Guaranty
17 Association, nonetheless, has a number of coverage defenses.
18 Although we have asserted those in our discussions with the
19 Diocese, we are nonetheless committed here to help the Diocese
20 in this process.
21 We do believe in mediation, we do believe that there
22 was some benefit that was obtained from the first mediation,
23 and I think that there is a potential benefit going forward
24 with a second mediation as Ms. Boswell has outlined. I have a
25 personal issue on August 6 and 7 that really makes it difficult

Case 13-13676-t11 Doc 422-1 Filed 08/03/15 Entered 08/03/15 19:16:43 Page 11 of 12

1 THE COURT: Okay. Now, hold firm on a date that
2 you're comfortable with, Mr. Scharf, I'll back you up.
3 MR. SCHARF: Thank you, Your Honor.
4 THE COURT: All right. Okay. Thanks, everyone.
5 MS. BOSWELL: Thank you, Your Honor.
6 THE COURT: We'll be in recess.
7 THE CLERK: All rise.
8 (Proceedings Concluded)
9
10
11 I certify that the foregoing is a correct transcript from
12 the record of proceedings in the above-entitled matter.
13
14 Dated: July 27, 2015

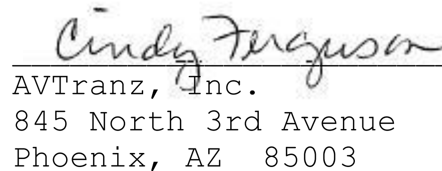

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EXHIBIT "B"

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:		
ROMAN CATHOLIC CHURCH OF THE DIOCESE OF GALLUP	CH: 11	13-13676-t11
STATUS CONFERENCE		

U.S. Bankruptcy Court
Dennis Chavez Federal Building
and United States Courthouse
500 Gold Avenue SW, Tenth Floor
P.O. Box 546
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April 20, 2015
10:32 a.m.

BEFORE THE HONORABLE DAVID T. THUMA, Judge

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Victor R. Ortega
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1 MR. MAZEL: We believe so.

2 THE COURT: If you just -- let's say that Mr. Spector

3 is right that your liability is limited to the period after

4 your certificate was issued. How many claims are you dealing

5 with?

6 MR. MAZEL: Judge, I think we have -- I mean, my best

7 recollection is somewhere around 15 claims. It may have been

8 18, but somewhere around there.

9 But our coverage issue is a little bit different.

10 It's not whether we are covering claims that were asserted for

11 a pre-coverage time period. Our coverage issue is -- and there

12 may be some of those coverage issues as well, Judge. But one

13 of our bigger coverage issues seems to be whether the conduct

14 falls within the scope of the covered acts in the policy.

15 And so, for instance, if a certain priest had a

16 disposition and it was known to the Debtor that the priest had

17 a disposition for abusing minors or abusing anybody, there is

18 an argument, if not a very strong position, Judge, that those

19 are intentional acts and, therefore, are not covered by the

20 policies that the Guaranty Association has stepped in to

21 cover.

22 And so that is a bigger coverage issue. And that's

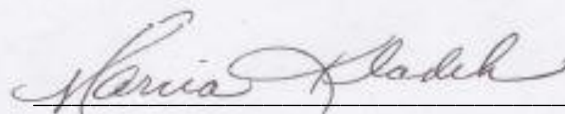
23 where the priest files go to, Judge, and so that's one of the

24 reasons why we wanted the priest files.

25 THE COURT: Okay. Well, it doesn't sound to me like

Case 13-13676-t11 Doc 422-2 Filed 08/03/15 Entered 08/03/15 19:16:43 Page 3 of 4

1 are consistent with his understanding, and we'll proceed.
2 MR. STANG: Your Honor, I have his number. I'll give
3 it to your clerk.
4 THE COURT: Okay. Good.
5 All right. Well, thank you, everyone. I appreciate
6 it. And we'll be in recess.
7 (Proceedings Concluded)
8
9
10 I certify that the foregoing is a correct transcript from
11 the record of proceedings in the above-entitled matter.
12
13 Dated: May 4, 2015



AVTranz, Inc.
14 845 North 3rd Avenue
Phoenix, AZ 85003
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EXHIBIT "C"

Table N/A–U.S. District Courts–Combined Civil and Criminal Federal Court Management Statistics (September 30, 2014)

U.S. District Courts—Federal Court Management Statistics–Comparison Within Circuit—During the 12-Month Period Ending September 30, 2014

(PDF, 124.37 KB)

(/FILE/14013/DOWNLOAD)

(XLS, 86.5 KB)

(/FILE/14014/DOWNLOAD)

Reporting Period End Date: September 30, 2014

Publication Name: Federal Court Management Statistics (/report-name/federal-court-management-statistics)

Topic(s): Civil (/data-table-topics/civil), Criminal (/data-table-topics/criminal), Trials (/data-table-topics/trials), Petit Jury (/data-table-topics/petit-jury), Judgeships (/data-table-topics/judgeships)

Current Table Number: N/A (/data-table-numbers/na)

Comparison of Districts Within the Tenth Circuit — 12-Month Period Ending September 30, 2014

			CO	KS	NM	OK,N	OK,E	OK,W	UT	WY
Overall Caseload Statistics	Filings		4,280	2,362	6,272	1,174	676	1,922	2,029	671
	Terminations		4,369	2,476	6,258	1,137	656	1,857	2,235	733
	Pending		3,189	2,174	2,952	1,019	676	1,557	2,030	665
	Percent Change in Total Filings Current Year	Over Last Year	1.2	-5.8	6.1	-0.5	-5.3	-4.4	-15.0	-7.8
		Over 2009	8.1	-1.6	12.8	5.3	2.4	-0.7	-14.1	-14.7
	Number of Judgeships		7	6	7	3.5	1.5	6	5	3
	Vacant Judgeship Months [1]		0.0	12.2	0.0	0.0	0.0	12.0	9.9	0.0
Actions per Judgeship	**Filings**	Total	611	394	896	335	451	320	406	224
		Civil	510	238	173	227	368	238	224	88
		Criminal Felony	71	116	624	85	62	54	124	83
		Supervised Release Hearings	31	40	99	23	21	28	58	53
	Pending Cases		456	362	422	291	451	260	406	222
	Weighted Filings [1]		642	366	598	316	399	307	415	189
	Terminations		624	413	894	325	437	310	447	244
	Trials Completed		20	21	15	11	15	23	17	12
Median Time (Months)	From Filing to Disposition	Criminal Felony	9.1	9.3	1.1	6.3	8.5	6.0	7.1	5.2
		Civil [1]	6.3	9.6	10.4	9.7	14.0	8.4	10.8	11.0
	From Filing to Trial [1] (Civil Only)		29.1	21.0	24.8	-	-	18.3	38.7	-
Other	Number (and %) of Civil Cases Over 3 Years Old [1]		55 2.2	131 9.6	66 5.0	20 2.5	5 0.9	33 2.8	108 7.3	2 0.9
	Average Number of Felony Defendants Filed per Case		1.4	1.4	1.1	1.3	1.4	1.3	1.2	1.4
	Jurors	Avg. Present for Jury Selection	35.3	45.8	44.5	45.3	31.5	28.5	50.2	34.2
		Percent Not Selected or Challenged	44.6	38.8	23.5	27.4	19.3	35.1	33.1	30.8

NOTE: Criminal data in this profile count defendants rather than cases and therefore will not match previously published numbers.

[1] See "Explanation of Selected Terms."

EXHIBIT "D"

1\23

DEBORAH YOUNG, CLERK
BY [signature] DEPUTY
12 JAN 24 AM 9:37
FILED

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Attorneys for Defendant
The Roman Catholic Church of the Diocese of Corpus Christi

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF COCONINO

ALFRED A. MOYA, a single man,

Plaintiff,

vs.

THE ROMAN CATHOLIC CHURCH OF THE DIOCESE OF GALLUP, a corporation sole; THE ROMAN CATHOLIC CHURCH OF THE ARCHDIOCESE OF SANTA FE, a corporation sole; THE ROMAN CATHOLIC CHURCH OF THE DIOCESE OF CORPUS CHRISTI, a corporation sole; OUR LADY OF GUADALUPE CHURCH & PARISH, an Arizona corporation; THE ESTATE OF FATHER CLEMENT A. HAGEMAN, deceased; JOHN DOE I-X; JANE DOE I-X; and BLACK 7 WHITE CORPORATIONS I-X,

Defendants.

Case No. CV2010-00713

ORDER OF DISMISSAL WITH PREJUDICE

(Assigned to: Honorable Mark Moran)

Having reviewed the *Stipulation for Dismissal With Prejudice* submitted by Plaintiff and Defendants The Roman Catholic Diocese of Corpus Christi and The Roman Catholic Archdiocese of Santa Fe, and good cause appearing therefor,

SCANNED

IT IS ORDERED dismissing all of Plaintiff's claims against Defendant The Roman Catholic Diocese of Corpus Christi, whether express or implied, in their entirety, and with prejudice;

IT IS FURTHER ORDERED dismissing all of Plaintiff's claims against Defendant The Roman Catholic Archdiocese of Santa Fe, whether express or implied, in their entirety, and with prejudice;

IT IS FURTHER ODERED by entering the Stipulation and allowing entry of the order of dismissal with prejudice, Plaintiff has waived any and all rights he has or may have to appeal the Court's ruling granting Corpus Christi's Motion to Dismiss and the Motion to Dismiss and Motion for Summary Judgment of the Archdiocese of Santa Fe and that said order shall be final as to these defendants; and

IT IS FURTHER ORDEED that each party will bear its own attorneys' fees and costs incurred in this action.

IT IS FURTHER ORDEED pursuant to Rule 54(b), Ariz.R.Civ.P., that there is no just reason to delay entry of judgment in favor of Defendants Roman Catholic Diocese of Corpus Christi and the Roman Catholic Archdiocese of Santa Fe and therefore directs that the same be entered.

DATED this 23 day of Jan, 2012.

Mark Moran
Judge, Coconino Superior Court

1/25/12
Polsinelli
Hawalson Miller
Manly Stewart
Ricker Bustamante
Stelzner Winter
Ramirez

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