

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: BISHOP OF THE ROMAN CATHOLIC CHURCH OF THE DIOCESE OF GALLUP, an Arizona corporation sole. This pleading applies to: <input checked="" type="checkbox"/> All Debtors. <input type="checkbox"/> Specified Debtor.	Jointly Administered with: Case No. 13-13677-t11
Roman Catholic Church of the Diocese of Gallup, Debtor(s). John M.H. Doe, Plaintiff, v. Roman Catholic Church of the Diocese of Gallup, et al., Defendant(s).	Case No.: 13-13676-t11 Adversary No.: 14-01033-t Date: November 10, 2015 Time: 9:00 a.m. Place: Hearing Room 13102 U.S. Bankruptcy Court Dennis Chavez Federal Building 500 Gold Avenue, S.W., 13 th Floor Albuquerque, NM 97102
Roman Catholic Church of the Diocese of Gallup, Debtor(s). Alfred A. Moya, Plaintiff, v. Roman Catholic Church of the Diocese of Gallup, et al., Defendant(s).	Case No.: 13-13676-t11 Adversary No.: 14-01034-t Date: November 10, 2015 Time: 9:00 a.m. Place: Hearing Room 13102 U.S. Bankruptcy Court Dennis Chavez Federal Building 500 Gold Avenue, S.W., 13 th Floor Albuquerque, NM 97102

REMAND MEMORANDUM

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**OFFICIAL COMMITTEE OF UNSECURED CREDITORS' MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT OF (1) MOTION OF ALFRED A. MOYA
TO REMAND ACTION TO STATE COURT AND (2) MOTION OF JOHN M.H. DOE
TO REMAND ACTION TO STATE COURT**

The Official Committee of Unsecured Creditors (the “Committee”) submits this memorandum of points and authorities in support of the motions filed by two survivors of clergy sex abuse which seek to remand the state court lawsuits they initiated pre-petition against the Roman Catholic Church of the Diocese of Gallup so that they may proceed to judgment in state court.

I.

INTRODUCTION

When the Roman Catholic Church of the Diocese of Gallup (the “Diocese”) and the Bishop of the Roman Catholic Church of the Diocese of the Gallup (collectively, the “Debtor”) sought the protection of the United States Bankruptcy Court, thirteen sex abuse survivors had lawsuits pending in state court in Arizona and numerous other survivors had advised the Debtor of their as yet unfilled claims. According to Bishop James Wall (the “Bishop”), he decided to file these chapter 11 cases because it was “the only way to equitably and mercifully deal with the mounting sex abuse claims.”¹ Yet, almost two years later, survivors have still not received an equitable or merciful resolution of their claims. Accordingly, two survivors--former altar boys violated in Arizona by two of the thirty-one priests the Bishop has identified as being credibly accused of child sexual abuse—ask this Court to remand their pre-petition lawsuits to state court so they may finally have their day in court.²

¹ See Letter to Parishioners dated November 11, 2013, <http://www.voicesofthesouthwest.org/2013/11/11/diocese-to-file-for-chapter-11-reorganization-on-november-12> (last visited Sept. 23, 2015), a true and correct copy of which is attached hereto as **Exhibit A**.

² See List of Credibly Accused Clergy, <http://www.doiceseofgallup.org/credibly-accused> (last visited Sept. 23, 2015), a true and correct copy of which is hereto as **Exhibit B**.

II.

FACTUAL BACKGROUND³

A. The Diocese Exports Its Pedophile Priests to Arizona.

1. Moya v. The Roman Catholic Church of the Diocese of Gallup, Our Lady of Guadalupe Church & Parish, the Estate of Charles Hageman, et al.

The Bishop of Gallup assigned Clement Hageman (“Hageman”) to Our Lady of Guadalupe Church & Parish in Holbrook, Arizona, where he sexually abused Alfred Moya. On August 12, 2010, Mr. Moya sued the Diocese, Our Lady of Guadalupe and Hageman’s estate in the Superior Court in the State of Arizona (Coconino County) (Case No. CV2010-00713).⁴ All of the abuse perpetrated by Hageman took place in Arizona, and all of Mr. Moya’s causes of action (sexual assault/sex abuse/molestation, breach of fiduciary duty, intentional infliction of emotional distress, intentional/negligent misrepresentation, negligent supervision/retention, child abuse and assault & battery) arise under Arizona statutory and common law. Mr. Moya was not Hageman’s only victim. Former Bishop Donald Pelotte identified Hageman as one of the two “most abusive priests of the diocese.”⁵ He is the named perpetrator in eighteen of the fifty-seven abuse claims filed against the Debtor in the bankruptcy case.

After extensive pre-trial proceedings before the state court, the *Moya* case was set for trial in February 2014. Prior to the Debtor’s bankruptcy filing, the trial court had ruled on dispositive motions and had heard ten discovery motions, which either requested an order compelling the Debtor to turn over evidence or requested an order denying the Debtor’s request

³ The facts in this Memorandum are supported by the Declaration of Robert Pastor (the “Pastor Declaration”) and the Declaration of James I. Stang (the “Stang Declaration”), which were filed concurrently herewith.

⁴ A true and correct copy of the Plaintiff’s First Amended Complaint is attached as Tab 2 to the *Debtors’ Notice of Filing Superior Court Pleadings Pursuant to Fed. R. Bankr. P. 9027(e)(2)* [Adv. Doc. No. 9].

⁵ See Dan Frosch, *Accusations of Abuse by Priest Dating to Early 1940’s*, N.Y. Times (July 10, 2011), http://www.nytimes.com/2011/07/11/us/11priest.html?_r=0, a true and correct copy of which is attached hereto as Exhibit C.

for a protective order. In one discovery fight, the state court found that Mr. Moya had established a prima facie case for imposing punitive damages, stating, “The court concludes that the Plaintiff has met his burden of presenting clear and convincing evidence that a reasonable jury could find that the Defendant possessed an evil mind when they breached their duty to plaintiff.” *See Moya v. Gallup*, Order (Feb. 2, 2012).⁶ After months of motion practice, the state court trial judge appointed a special Discovery Master to resolve discovery disputes. The Discovery Master issued numerous ruling compelling the Debtor to produce evidence, including the files of other priests who sexually abused children. The Discovery Master also ruled that delaying important depositions would prejudice the plaintiff. The orders of the trial court and Discovery Master gave way to the discovery of thirty-one priests and lay personnel accused of sexual abuse in the Diocese and the production of information regarding the Diocese’s assets. Except for a few items of outstanding discovery, the *Moya* case is ready for trial.⁷

2. **John M.H. Doe v. The Roman Catholic Church of the Diocese of Gallup, Father Raul Sanchez, et al.**

The Diocese assigned Raul Sanchez (“Sanchez”) to Madre de Dios Church in Winslow, Arizona, where he sexually abused John M.H. Doe. Sanchez is a former Chancellor of the Diocese and is a fugitive in Mexico. On May 30, 2013, Mr. Doe sued the Diocese and Sanchez in the Superior Court in the State of Arizona (Coconino County) (Case No. CV2013-00361).⁸ All of the abuse perpetrated by Sanchez took place in Arizona, and all of Mr. Doe’s causes of action (sexual assault/sex abuse/molestation, breach of fiduciary duty, intentional infliction of

⁶ A true and correct copy of the Order is attached hereto as **Exhibit D**.

⁷ The remaining discovery is: (1) the Debtor’s independent medical exam of Mr. Moya (which had been scheduled prior to the bankruptcy), (2) Mr. Moya’s deposition of the examining physician and (3) the Debtor’s deposition of Mr. Moya’s expert psychologist. Mr. Moya’s outstanding discovery request regarding the Debtor’s financial condition, related to a claim for punitive damages, may be moot in light of the subordination of punitive damage claims for “best interest test” purposes.

⁸ A true and correct copy of the Complaint is attached as Tab 2 to the *Debtors’ Notice of Filing Superior Court Pleadings Pursuant to Fed. R. Bankr. P. 9027(e)(2)* [Adv. Doc. No. 5].

emotional distress, intentional/negligent misrepresentation, negligent supervision/retention, child abuse and assault & battery) arise under Arizona statutory and common law. Mr. Doe was not Sanchez's only victim. He is the named perpetrator in two abuse claims filed against the Debtor in the bankruptcy case, and the Bishop admits Sanchez is a credibly accused abuser.

B. The Debtor Files For Protection Under The United States Bankruptcy Code and Removes the State Court Actions to Federal Court.

On November 12, 2013 (the "Petition Date"), the Debtor filed petitions under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The automatic stay imposed by Bankruptcy Code section 362(a)(1) prevented Mr. Moya, Mr. Doe (collectively, the "Movants") and the plaintiffs in eleven other lawsuits that were pending in Arizona state court against the Diocese from continuing to prosecute their cases.⁹

On February 6, 2014, the Debtor removed all thirteen of the lawsuits pending in Arizona state court to the United States Bankruptcy Court for the District of Arizona. It removed the *Moya* case by filing a *Notice of Removal Pursuant to 28 U.S.C. § 1452 and Federal Rule of Bankruptcy Procedure 9027* (AZ Adversary No. 2:14-ap-00109-EPB).¹⁰ The *Moya* adversary proceeding was transferred to the United States Bankruptcy Court for the District of New Mexico on March 25, 2014 (NM Adversary No. 14-01034-t), and on August 9, 2014, Mr. Moya timely filed a proof of claim.¹¹

The Debtor removed the *Doe* case by filing a *Notice of Removal Pursuant to 28 U.S.C. § 1452 and Federal Rule of Bankruptcy Procedure 9027* (AZ Adversary No. 2:14-ap-00119-

⁹ The *Moya* case and the *Doe* case shall be referred to collectively as the "State Court Actions."

¹⁰ A true and correct copy of the Notice of Removal is attached hereto as **Exhibit E**.

¹¹ The Committee asks the Court to take judicial notice of the confidential proof of claim that was filed by Movant under seal which is identified as Claim No. 54.

EPB).¹² The *Doe* adversary proceeding was transferred to the United States Bankruptcy Court for the District of New Mexico on March 25, 2014 (NM Adversary No. 14-01033-t), and on August 8, 2014, Mr. Doe timely filed a proof of claim.¹³

On June 6, 2014, this Court approved the *Stipulated Order Regarding Abeyance of Adversary Proceeding and Reservation of Rights* (the “Stipulation”) under which the Debtor and each plaintiff in the removed lawsuits (including Mr. Moya and Mr. Doe) agreed, “The Adversary Proceeding shall be held in abeyance, and any and all deadlines shall be stayed.” *See* Stipulation, ¶ 1, at 2.¹⁴ Each Stipulation further provides, “To the extent that either Plaintiff or Defendant wishes to reinitiate this Adversary Proceeding, such party may file a Motion with the 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.” *Id.* ¶ 2, at 3.

C. Mediation Fails And Plaintiffs Move For Relief From Stay.

On April 27, 2015, the Court ordered the major parties-in-interest in the chapter 11 case to begin mediation. The Debtor, the Committee, The Catholic Mutual Relief Society of America and The Catholic Relief Insurance Company of America (“Catholic Mutual”), the New Mexico Guaranty Fund (“NMGF”), St. Bonaventure Indian School and Mission, representatives of certain parishes, the Province of St. John the Baptist of the Order of Friars Minor (the “Franciscans”) participated. The Committee worked diligently to make sure all of the parties were fully informed when they came to the negotiation table. Prior to commencement of the mediation on June 10, 2015, the parties completed substantial due diligence of the Debtor’s assets and liabilities. The Committee, working with the Debtor, identified all of the Debtor’s real

¹² A true and correct copy of the Notice of Removal is attached hereto as **Exhibit F**.

¹³ The Committee asks the Court to take judicial notice of the confidential proof of claim that was filed by Movant under seal which is identified as Claim No. 48.

¹⁴ True and correct copies of the Stipulations with Mr. Moya and Mr. Doe are attached hereto as **Exhibit G** and **Exhibit H** respectively.

property and valued some of those properties through appraisals and broker opinions. The Debtor and the Committee investigated the existence of liability insurance with the assistance of professional insurance archeologists. The Committee, the Debtor and (presumably) the Franciscans evaluated liability coverage after consideration of written exchanges with Catholic Mutual and NMGF regarding coverage defenses. The Committee worked closely with state court counsel representing childhood sex abuse survivors to value the filed proofs of claims of represented and *pro se* survivors.

To insure the Debtor, its insurance carriers and the Franciscans had the information needed to evaluate the claims, state court counsel made themselves and their respective clients available for questioning before mediation. Catholic Mutual, NMGF and the Franciscans either deposed or had the opportunity to depose, survivors before the mediation. Specifically, Catholic Mutual completed interviews and depositions of all of the survivors with claims within its policy periods and the Franciscans deposed at least the two survivors whose claims are covered by insurance. The NMGF decided not to have a representative present at any of the depositions; nor has it requested copies of depositions. The Debtor provided documents regarding abuse claims to Catholic Mutual and NMGF. The parties also participated in a second round of mediation with a new mediator. In total, the parties have participated in four days of mediation.

The parties failed to reach a mediated settlement of the chapter 11 case, the Committee believes, because the Debtor and its insurance carriers, despite sworn depositions of individual survivors of clergy sex abuse conducted no fair, independent claims evaluation. Given the failure of mediation and the need to resolve the sex abuse claims to facilitate a resolution of these chapter 11 cases, Mr. Moya and Mr. Doe determined that the State Court Actions should go forward and the Committee concurred. Mr. Moya and Mr. Doe notified the Court of their desire

to do so by filing their *Motions for Relief from Stay* (the “Stay Motions”) on July 8, 2015.¹⁵ The Court held a preliminary hearing on the *Stay Motions* on August 14, 2015; a final hearing is scheduled for November 10, 2015.

When they filed their *Stay Motions*, neither Mr. Moya, nor Mr. Doe, nor counsel to the Committee recalled that the Debtor had removed the State Court Actions to the bankruptcy court. On September 28, 2015, Mr. Moya and Mr. Doe each filed a *Motion to Remand Action to State Court* (the “Remand Motions”), pursuant to which they seek to have their cases remanded to state court where they will go forward should the Court grant the *Stay Motions*.¹⁶

III.

ARGUMENT

A. Equitable Grounds Warrant Remanding the State Court Actions to State Court.

The State Court Actions are personal injury tort cases that are before this Court solely because they are “related to” the Debtor’s bankruptcy case. *See* 28 U.S.C. § 1334(b).¹⁷ They are non-core proceedings for purposes of distribution. *See* 28 U.S.C. § 157(b)(2)(B).¹⁸ Furthermore, Mr. Moya and Mr. Doe have a right to a jury trial under state law which is unaffected by the Bankruptcy Code. *See* 28 U.S.C. § 1411. Absent remand, personal injury tort claims must be

¹⁵ Mr. Moya’s *Motion for Relief from Stay* was filed in the main bankruptcy case as Docket No. 397. Mr. Doe’s *Motion for Relief from Stay* was filed in the main bankruptcy case as Docket No. 398.

¹⁶ An order remanding a case to state court or abstaining does not by itself serve as a ruling on whether the automatic stay should be modified to permit that state court action to proceed. To proceed in state court, relief from stay must also be obtained. *See In re Phoenix Environmental, LLC*, 2012 WL 5305988, at *3 (Bankr. D.N.M. Oct. 26, 2012).

¹⁷ Section 1334(b) of title 28 of the United States Code provides in pertinent part, “[T]he district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.” 28 U.S.C. § 1334(b). A proceeding is “related to” a bankruptcy if the outcome of the proceeding could conceivably have an effect on the bankruptcy estate. *See Gardner v. United States (In re Gardner)*, 913 F.2d 1515, 1518 (10th Cir. 1990).

¹⁸ Section 157(b)(2)(B) of title 28 of the United States Code specifically excludes “the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims” from core proceedings. 28 U.S.C. § 157(b)(2)(B). *See also Gardner v. United States*, 913 F.2d at 1518 (holding that core proceedings are those which have no existence outside of bankruptcy).

tried by the district court in the district in which the bankruptcy case is pending or the district in which the claim arose, as determined by the district court. *See* 28 U.S.C. § 157(b)(5).¹⁹

The Debtor removed the State Court Actions solely under section 1452(a) of title 28 of the United States Code (the so-called “bankruptcy removal statute”) which provides, “A party may remove any claim or cause of action in a civil action . . . to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.” 28 U.S.C. § 1452(a). As noted by one court:

There are fundamental differences between removal to federal district court under 28 U.S.C. § 1441 and removal to bankruptcy court under 28 U.S.C. § 1452. Removal of cases from state to federal court is a matter of right where the case a defendant seeks to remove meets the statutory requirements. . . . Bankruptcy removal is different in that there need be no federal question or diversity of parties to support federal jurisdiction in the bankruptcy court. What must be present is bankruptcy jurisdiction under 28 U.S.C. § 1334 and some good reason to pull litigation that has already been commenced in a state court forum into a new bankruptcy court forum. The other major distinction is the discretionary nature of removal jurisdiction in the bankruptcy court. For one thing, a bankruptcy court “may remand such claim or cause of action on any equitable ground.”. 28 U.S.C. § 1452(b). For another, remand orders under § 1452 are not reviewable on appeal.

In re Wolf, 2011 WL 4915841, at *1 (Bankr. D. Colo. Oct. 17, 2011).

A federal court to which actions are removed on the basis of their relationship to a bankruptcy case may remand such actions “on any equitable ground.” *See* 28 U.S.C. § 1452(b).

As Judge Adler noted when she remanded forty-two sex abuse cases to state court after the Bishop of San Diego removed them to the bankruptcy court, “The ‘any equitable ground’

¹⁹ Section 157(b)(5) of title 28 of the United States Code provides, “The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as is determined by the district court in which the bankruptcy case is pending.” 28 U.S.C. § 157(b)(5)).

standard is an unusually broad grant of authority; it subsumes and reaches beyond all of the reasons for remand under the nonbankruptcy removal statutes.” *See In re Roman Catholic Bishop of San Diego*, 374 B.R. 756, 761 (Bankr. S.D. Cal. 2007). In that case, Judge Adler flatly rejected the Bishop of San Diego’s argument that the court could only remand personal injury tort cases under “exceptional circumstances,” but also noted, “[E]ven if the broad grant of discretion were fettered by ‘exceptional circumstances,’ clearly this tsunami of child sexual abuse cases against Roman Catholic clergy would qualify as ‘exceptional.’” *Id.* at 761. The State Court Actions the Movants seek to remand are part and parcel of that tsunami.

The standards used to determine whether equitable remand is warranted under section 1452(b) are virtually identical to those used to determine whether discretionary abstention is merited under section 1334(c)(1) of title 28 of the United States Code. *See Oakwood Acceptance Corp. v. Tsinigini (In re Oakwood Acceptance Corp.)*, 308 B.R. 81, 87 (Bankr. D. N.M. 2004). Those factors are: (1) the effect of remand on the efficient administration of the estate; (2) the extent to which state law issues predominate over bankruptcy issues; (3) the difficult or unsettled nature of the applicable law; (4) the presence of a related proceeding commenced in state court or other non-bankruptcy court; (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334; (6) the degree of relatedness of the proceeding to the bankruptcy case; (7) the substance rather than the form of an asserted “core” proceeding; (8) the feasibility of severing state law claims from core bankruptcy matters; (9) the burden on the bankruptcy court’s docket; (10) the likelihood that the proceeding involves forum shopping; (11) the existence of a right to jury trial, and (12) the presence of non-debtor parties. *Id.* at 87-88.

In addition to “discretionary abstention” factors, the Court should also consider whether remand serves principles of judicial economy, whether there is prejudice to parties not removed,

whether the remand lessens the possibilities of inconsistent results, and whether the court in which the action originated has greater expertise. *Id. at 88*. Virtually every relevant factor strongly supports remanding the State Court Actions.

1. **Effect of remand on the efficient administration of the estate.**

To determine whether allowing a case to proceed in state court will adversely affect the administration of the bankruptcy case, courts consider the status of the proceeding in state court prior to removal, such as whether discovery has been commenced. *See El Llano Co. v. Summit Investment Co. (In re Potter)*, 2007 WL 1672181, at *7 (Bankr. D.N.M. June 6, 2007). As was set forth above, in the *Moya* case, the state court had ruled on pre-trial motions, discovery was substantially complete and the case was set for trial in February 2014. The advanced state of the proceedings in state court prior to removal strongly favor remand.

Furthermore, remanding the State Court Actions to state court will facilitate a possible settlement of this case, the conclusion of this chapter 11 case and the payment of creditors. Civil trials taken to verdict will inform the insurers and the other parties on the value of childhood sexual abuse claims in Arizona. Even if the prosecution of the State Court Actions results in expense to the estate, it will be money well spent because the parties in interest to this bankruptcy case must understand the value of the sex abuse claims, a value that can and should be fixed by state courts in Arizona. By knowing the worth of these abuse claims and the cost to litigate the claims, all parties in interest will have more information to utilize in resolving the bankruptcy case.

In fact, a trial in state court may facilitate a settlement of the entire case. The chapter 11 case of the Diocese of Wilmington (Delaware) illustrates that trials of abuse claims is a constructive way to break logjams. There, the debtor had obtained a bankruptcy stay of abuse

litigation against non-debtor affiliates. While the stay was in effect, the official committee of unsecured creditors obtained a ruling that \$120 million of pooled investment funds was property of the estate. *See Official Committee of Unsecured Creditors v. Catholic Diocese of Wilmington, Inc. (In re Catholic Diocese of Wilmington, Inc.)*, 432 B.R. 135 (Bankr. D. Del. 2010), *reconsideration denied*, 437 B.R. 488 (Bankr. D. Del. 2010). Notwithstanding that ruling, the parties still could not settle. In the summer of 2010, Bankruptcy Judge Sontchi refused to renew the stay for certain cases, the first of which, *John Vai v. St. Elizabeth's Parish*, resulted in a multi-million state court verdict against the parish in December of 2010.²⁰ Settlement of the entire chapter 11 case came quickly on the heels of that verdict.²¹

If not settled, the claims in the State Court Actions must be litigated. The defense of these cases will not distract the Debtor to the undue prejudice of the bankruptcy proceedings. First, the Debtor is defended by a firm other than Quarles & Brady (or by Quarles & Brady attorneys other than its bankruptcy counsel). If defense counsel must consult with a bankruptcy attorney on a matter of law, Quarles & Brady has nearly forty bankruptcy attorneys. Second, Bishop Wall is not a percipient witness in the cases. To the extent he would be a witness about the credibility of the abuse charges against Hageman and Sanchez, the Diocese, during his tenure, admitted that Hageman and Sanchez are credibly accused abusers, and Bishop Wall has no role in the assessment of the damages these survivors are asserting. Finally, except for the sale of some parcels of real property at auction and continued mediations that have not resulted in a settlement, the chapter 11 case is at a near dead stop until the parties get verdicts, which will inform the value of the abuse claims.

²⁰ See Laurie Goodstein, *\$30 Million Is Awarded Over Abuse by Priest*, N.Y. Times (Dec. 1, 2010), http://www.nytimes.com/2010/12/02/us/02church.html?_r=0, a true and correct copy of which is attached hereto as **Exhibit I**.

²¹ True and correct copies of excerpts from the Disclosure Statement in *In re Catholic Diocese of Wilmington, Inc.* are attached as **Exhibit J**.

Remand will not increase the costs of litigating these claims. Where a claim will have to be liquidated either in state court or bankruptcy court, it is unreasonable to presume that litigating the state law claims in state court will be more expensive. *See In re Rabin*, 53 B.R. 529, 531-32 (Bankr. D.N.J. 1985). The Debtor should not incur material legal fees in the State Court Actions. Mr. Doe's claims are covered by policies that do not contain burning limits provisions, meaning that the insurance policy limits are not eroded by the expenditure of legal defense costs. The Debtor's litigation costs in the cases should be minimal because the Debtor has admitted that two abusers (Hageman, deceased and Sanchez, a fugitive) are credibly accused and neither of the Movants are aware of any witnesses to their abuse that would contradict their testimony. The Committee cannot foresee that the Debtor could justify defending the liability aspects of the claims.

2. **Extent to which state law claims predominate.**

The clergy child sexual abuse claims at the heart of these actions are state law tort claims all arising in Arizona and they should be heard by the state court. As the Ninth Circuit Court of Appeals has noted in the abstention context, "A clear congressional policy exists to give state law claimants a right to have claims heard in state court." *In re Castlerock Properties*, 781 F.2d 159, 163 (9th Cir. 1986). *See also Walsh v. Brush*, 79 B.R. 28, 29 (D. Nev. 1987) ("This case includes only state law claims. Therefore, the state court is particularly well suited to handle the issues raised."); *Allen County Bank & Trust Co. v. Valvmatic Int'l Corp.*, 51 B.R. 578, 582 (N.D. Ind. 1985) ("The state court has expertise in the resolution of this type of case, presenting state law questions and is better able to adjudicate this action.").

3. **Difficult or unsettled issues of state law.**

There are no difficult or unsettled issues of state law presented by the State Court Actions.

4. **Presence of related proceedings in state court.**

There are no related proceedings in state court.

5. **Jurisdictional basis, if any, other than 28 U.S.C. § 1334.**

There appears to be no basis for federal jurisdiction other than section 1334 because the Committee is aware of no cases where complete diversity or federal question jurisdiction exist.

6. **Degree of relatedness of the state court proceeding to the bankruptcy case.**

The State Court Actions are personal injury tort cases which are in federal court solely by virtue of the Debtor's bankruptcy filing. *See* 28 U.S.C. § 1334(b). Verdicts will merely fix liability amounts against the Debtor. The cases are not related in any way that bears on the Debtor's day-to-day operations.

7. **Substance rather than form of the asserted core proceeding.**

The State Court Actions are not core proceedings either in form or substance. *See* 28 U.S.C. § 157(b)(2)(B).

8. **Feasibility of severing state law claims from core bankruptcy matters.**

Given that the matters being litigated are all state law claims and none are core, there is no issue of feasibility. *See Rodriguez v. Brutsche (In re Brutsche)*, 2012 WL 4903663, at *4 (Bankr. D.N.M. Oct. 15, 2012).

9. **Burden on the court's docket.**

Unless remanded, the State Court Actions must be referred to federal district court for trial. 28 U.S.C. § 157(b)(5). The burden on the district court that must try these actions is

manifest. As the Tenth Circuit has observed, “ It is obvious . . . that the bankruptcy court will save considerable time, effort, and money by awaiting the outcome of the liability proceeding and reviewing the facts there presented to liquidate and determine dischargeability of the debt.” *In re Olmstead*, 608 F.2d 1365, 1368 (10th Cir. 1979). The heavy caseload of the United States District Courts is reflected in the median time it takes for a civil case to go from filing to a jury verdict—27.4 months.²² The State Court Actions can be litigated in state court, with all the benefits of the existing pre-trial proceedings, or the cases can be dumped on the federal district court with no background in these matters or in the factual and state law legal issues they have engendered to begin anew and prepare for trial. Not a single advantage of federal jurisdiction is apparent.

10. **Likelihood of forum shopping.**

No defensible purpose was served by removing the State Court Actions, and referring the cases to federal district court will allow the Diocese to shop for another forum and reward the Bishop for employing a litigation tactic that was designed to prevent the disclosure of additional information on the clergy sexual abuse crisis that has been mounting since the 1980’s. Indeed, it appears that the Debtor is attempting to impair the Movants’ right to a jury trial by moving these cases to federal court. Section 1411 of title 28 of the United States Code provides, “[T]his chapter and title 11 do not affect any right to trial by jury that an individual has under applicable nonbankruptcy law with regard to a personal injury or wrongful death tort claim.” 28 U.S.C. § 1411(b). Unless these actions are remanded, the Movants’ rights to a jury trial **will** be detrimentally affected. In federal court, a jury’s verdict must be unanimous. *See* Fed. R. Civ. P.

²² See *U.S. District Courts, Table C-5, Median Time From Filing to Disposition of Civil Cases, by Action Taken—During the 12-Month Period Ending December 31, 2014*, <http://www.uscourts.gov/statistics-reports/statistical-tables-federal-judiciary-december-2014> (last visited September 7, 2015). A true and correct copy is attached hereto as **Exhibit K**.

48 (b)(“Verdict. Unless the parties stipulate otherwise, the verdict must be unanimous and must be returned by a jury of at least 6 members.”). By contrast, under Arizona law, unanimity is not required. *See* Az. R. Civ. Pro. 49(a) (“When eight jurors have been impaneled to try the action, and if there has been no stipulation as provided in Rule 48 entered in the minutes of the trial as provided by A.R.S. § 21-102, the concurrence of six or more jurors shall be sufficient to render a verdict therein.”). Under state law, therefore, the Movants have a right to a trial by a jury that need not reach a unanimous verdict, which right cannot be “affected” by title 28 or title 11. This factor alone justifies remand.

11. **Right to a jury trial.**

The Movants are entitled – under both the Bankruptcy Code and state law – to have their cases tried before juries in trials presided over by an Arizona state court judge or an Article III federal judge.

12. **Presence of non-debtor parties.**

There are non-debtor parties in both of the State Court Actions and remand is appropriate to insure that the cases go forward as to all parties simultaneously.

13. **Whether remand serves principles of judicial economy.**

The Debtor filed its chapter 11 after significant discovery and pre-trial proceedings in the *Moya* case and just after the parties had scheduled his independent medical exam. Where parties have extensively litigated a matter in state court, it is a waste of judicial resources to force the parties to “retrace” the same path in federal court. As this Court noted in *In re Brutsche*:

Should this adversary proceeding remain with this Court, there will need to be a catch-up period for the Court to become more acquainted with the details of the issues. Indeed, if motions for summary judgment are raised again in the hopes of a different outcome, the case may have to be tried virtually from the beginning. On the other hand, as the record of the proceedings in the State Court Action filed by Defendants makes clear, the action was commenced . . . over a year and half

before the filing of the chapter 11 petition, and the State Court had set a non-jury trial for September 19, 2011. It is apparent that the State Court can try this matter in a timely fashion.

2012 WL 4903663, at *5. *See also In re Saunders*, 103 B.R. 298, 299 (Bankr. N.D. Fla. 1989)

(“[T]he parties have spent two years litigating in state court before this action was filed. The court can perceive no rationale for curtailing these efforts, only to allow this Court to retrace the same path.”).

14. **Whether there is prejudice to parties not removed.**

There are non-debtor defendants who are parties to the State Court Actions, but the Committee believes that none would be prejudiced by remand. Our Lady of Guadalupe Church & Parish is a defendant in the *Moya* case. As it is located in Arizona, presumably trying the action there will benefit that defendant.

15. **Whether remand will lessen the possibilities of inconsistent results.**

All of the claims in the State Court Actions are based on Arizona law, and the *Moya* court has already issued rulings that might bear on the *Doe* case. The State Court Actions, if remanded, will completely resolve of all the claims in a single forum, including those claims against non-debtor defendants. Mr. Moya’s case is assigned to Presiding Judge Mark Moran of the Coconino County Superior Court, who could consolidate the State Court Actions for pretrial proceedings to ensure there is uniformity in all pre-trial proceedings.²³ Not only will coordinated proceedings before the state court reduce the possibility of inconsistent results, it will be vastly more efficient.

²³ The Movants will agree that they will file a motion to consolidate pretrial proceedings if this Court makes that a condition of remand or stay relief.

16. **Whether the court where the action originated has greater expertise**

While a federal district court has experience as a trial court, it still must apply Arizona law. Surely the Arizona Superior Court has more expertise in applying Arizona tort law than a federal district court sitting in New Mexico.

17. **Interests of comity.**

Where matters of state concern predominate, issues of comity weighs heavily in favor of deferring to the state court. *See Phase One Landscapes, Inc. Hook (In re Smith)*, 2007 WL 4227256, *3 (B.A.P. 10th Cir. Dec. 3, 2007) (upholding the bankruptcy court's decision to abstain based on comity and stating, "The decision to abstain will allow a state court, one which has already presided over discovery and pretrial issues and set the matter for trial, to continue to preside over a case consisting solely of state law issues."). While society at large has an interest preventing the sexual abuse of children and ensuring that abuse survivors receive just compensation for their injuries, the state in which the abuse occurred has a compelling interest in the protection of its children which justifies deferring to the state court in this case.²⁴ Judge Adler recognized this compelling state interest in the *Bishop of San Diego* case when she held, "[T]he subject matter of the pending actions (*protection of children from sexual predators*) is a matter of compelling state interest. . . . As such, comity strongly favors the state court forum over the federal court." *In re Roman Catholic Bishop of San Diego*, 374 B.R. at 764. In this case, the state in which the perpetrators carried out their evil deeds has a compelling interest in seeing justice done; the state in which the children lived when they were victimized has a compelling

²⁴ As the U.S. Supreme Court has explained, the "sexual abuse of a child is a most serious crime and an act repugnant to the moral instincts of a decent people." *Ashcroft. v. Free Speech Coal*, 535 U.S. 234, 244-45 (2002). *See also Coy. v. Iowa*, 487 U.S. 1012, 1022 (1988) ("Child abuse is a problem of disturbing proportions in today's society."); *Fortin v. Roman Catholic Bishop of Portland*, 871 A.2d 1208, 1230 (Me. 2005) ("In matters concerning the protection of children from physical and sexual abuse, societal interests are at their zenith."); *J.S. v. R.T.H.*, 714 A.2d 924, 931 (N.J. 1998) (noting "the enormous public interest in protecting society from the threat of potential molestation, rape, or murder of women and children.").

interest in seeing justice done; the state that failed to protect its children from sexual predators has a compelling interest in seeing justice done. That state is in Arizona, not New Mexico. The people of Arizona have a right to decide just compensation for the unspeakable acts of violence committed against their children.

18. **Case law in other national clergy sex abuse cases also supports remand.**

In *In re Roman Catholic Archbishop of Portland in Oregon*, 338 B.R. 414 (Bankr. D. Ore. 2006), the debtor had removed approximately 60 actions from state courts. Other claims were filed in the bankruptcy case. Ultimately, 111 claimants sought remand or abstention and 58 others did not. *Id.* at 416-17. Judge Perris acknowledged that the claims were personal injury tort claims under 28 U.S.C. § 157 and could not be liquidated in the bankruptcy court. *Id.* at 417. The debtor argued that the 58 claims would remain in federal court regardless, and thus it would be inefficient to send the other 111 claims to state court. It also argued that the claims presented “core issues” despite their state law basis, *e.g.*, awarding punitive damages would require a court to determine the debtor’s net worth, which it argued only the bankruptcy court may do. *Id.* at 418. There, the bankruptcy court rejected the debtor’s argument that a federal forum would be more efficient, deciding that “the advantages of the state court outweigh the debtor’s arguments in favor of the federal forum.” *Id.* at 419. It ruled that to the extent the moving claimants sought only compensatory damages, their motions would be granted. *See also Andreotti v. Andreotti (In re Andreotti)*, 2005 WL 1837083 (E.D. Cal. 2005) (remanding child sexual abuse case removed to bankruptcy court).²⁵

²⁵ In the *Archbishop of Portland* case, Judge Perris decided to retain jurisdiction over those claims in which punitive damages were sought. The court expressed a concern that unless a single forum handled punitive damages in a coordinated way, such damages could be excessive and that the state jury would have to value the debtor’s net worth. The Committee (and other courts) respectfully disagree with Judge Perris. By statute, a bankruptcy judge cannot liquidate personal injury tort claims or deem them excessive. 28 U.S.C. §§ 157(b)(2)(B), 157(b)(5). Retaining control over actions to limit state law punitive damage awards is an inappropriate basis for exercising bankruptcy jurisdiction. *See In re Roman Catholic Bishop of San Diego*, 374 B.R. at 764 (“The Court disagrees with

19. **The Remand Motions are Timely.**

The Debtor removed the State Court Actions solely under 28 U.S.C. § 1452(b), the bankruptcy removal statute, not 28 U.S.C. § 1441, the general removal statute. Neither section 1452(b), nor its implementing rule, Federal Rule of Bankruptcy Procedure 9027, impose any time limit on moving to remand. When a general civil proceeding has been removed to federal court, a motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days under 28 U.S.C. § 1447(c). Courts have concluded, however, this thirty-day deadline to seek remand under § 1447(c) is inapplicable to a request for remand from the bankruptcy court “on any equitable ground” under section 1452(b). *See Cargill, Inc. v. Man Fin., Inc. (In re Refco, Inc.)*, 354 B.R. 515, 520 (B.A.P. 8th Cir. 2006); *Staker v. American Home Mortgage Acceptance (In re Staker)*, 2012 WL 5055477, *2 (Bankr. D. Utah Oct. 18, 2012) (“There is no 30 day time limit to remand matters removed from state court under § 1452.”), *appeal dismissed as moot*, 498 B.R. 391 (B.A.P. 10th Cir. 2013); *Exeter Holding, Ltd. v. AFC Real Estate, LLC (In re Exeter Holding, Ltd.)*, 2013 WL 1084548, *8 (Bankr. E.D.N.Y. Mar. 14, 2013); *In re Potter*, 2007 WL 1672181, at *4 (Bankr. D.N.M. June 6, 2007); *In re Ciclon Negro, Inc.*, 260 B.R. 832, 835-36 (Bankr. S.D. Tex. 2001); *Billington v. Winograde (In re Hotel Mt. Lassen, Inc.)*, 207 B.R. 935, 939 (Bankr. E.D. Cal.1997). Timing is but one equitable factor the Court may consider when deciding whether or not to remand, and the

Roman Catholic Archbishop of Portland on this point. The Court is not persuaded the fact that a state court jury, as part of its determination in awarding punitive damages, may have to pass upon issues of the Debtor's “net worth” requires retention of the actions by the bankruptcy court. Punitive damages is a state law issue and any court that decides this issue would have to apply state law. The judge in *Roman Catholic Archbishop of Portland* recognized the jury's punitive damages determination would *not* be *res judicata* on the bankruptcy court's determination of what constitutes property of the debtor's estate. *Id.* at 419, n. 5. Likewise, this Court will be making its own determination of what constitutes property of the Debtor's bankruptcy estate.”). Finally, the concern over runaway punitive damage awards is unfounded. The United States’ Supreme Court has determined that the due process clause of the Fourteenth Amendment to the United States Constitution places limits on state courts' awards of punitive damages. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003)

question is whether any delay was “unreasonable.” *In re Hotel Mt. Lassen, Inc.*, 207 B.R. at 939. There was no unreasonable delay in this case.²⁶

All of the major constituencies have been engaged in settlement negotiations, which culminated in the recent unsuccessful mediation. The Movants and the Debtor agreed, under the Stipulations, to a standstill of the removed State Court Actions while that process went forward. The last in-person mediation ended on June 11, 2015. On July 8, 2015, the Movants brought their *Stay Motions* and subsequently the *Remand Motions*. There is no unreasonable delay when the parties are engaged in settlement discussions. *See Joremi Enterprises, Inc. v. Hershkowitz (In re New 118th LLC)*, 396 B.R. 885, 893 (Bankr. S.D.N.Y. 2008) (where the parties were engaged in settlement negotiations, a motion to remand made eight months after removal was timely).²⁷

For all of the foregoing reasons, the Court should remand the State Court Actions.

B. Abstention Would Be Required or Appropriate.

Section 1334(c) of title 28 of the United States Code provides for two types of abstention: permissive and mandatory. Under section 1334(c)(1) (permissive abstention), “[N]othing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law from abstaining from hearing a particular proceeding arising under title 11 or related to a case under title 11.” 28 U.S.C. § 1334(c)(1). As noted above, the factors governing equitable remand are substantially the same as the factors governing abstention. *In re*

²⁶ The Debtor cites *Daleske v. Fairfield Communities, Inc.*, 17 F.3d 321 (10th Cir. 1994), *cert. denied*, 511 U.S. 1082 (1994), for the proposition that a motion to remand a case that has been removed pursuant to section 1452(b) must be made within the thirty day time limit applicable to cases removed under 28 U.S.C. § 1441. This case does not remotely address that issue. At best, *Daleske v. Fairfield* stands for the proposition that where removal under section 1441 would be possible (and it is not in this case), the attorneys fees provision of 1447(c) applies even though the case was actually removed pursuant to 1452(b).

²⁷ *See also In re Smith*, 2007 WL 4227256, *4 (B.A.P. 10th Cir. Dec. 3, 2007) (noting in the context of permissive abstention, “[A] timely motion is expressly required pursuant to 28 U.S.C. § 1334(c)(2) for mandatory abstention, but not under 28 U.S.C. § 1334(c)(1) for discretionary abstention.”).

Smith, 2007 WL 4227256, *3 (B.A.P. 10th Cir. Dec. 3, 2007). For the reasons set forth above, the Court should abstain from hearing the State Court Actions.²⁸

With respect to mandatory abstention, section 1334(c)(2) provides:

Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

28 U.S.C. § 1334(c)(2). Actions against the Debtor for “the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims *against the estate* for purposes of distribution in a case under this title” are, however, excluded from the mandatory abstention provisions. 28 U.S.C. § 157(b)(2)(B) and (b)(4) (emphasis added). Nonetheless, no such exclusion applies for claims against nondebtors, which claims are included in the State Court Actions. If a bankruptcy court has only “related to” jurisdiction over the removed proceeding, the bankruptcy court must remand if it must abstain under 28 U.S.C. § 1334(c)(2)(the mandatory abstention provision). *In re Midgard Corp.*, 204 B.R. at 775; *In re Oakwood Acceptance Corp.*, 308 B.R. at 86.²⁹

Congress’ clear intent to carefully circumscribe which state law cases are to be heard in federal court and the constitutional concerns addressed by the abstention provisions of section 1334 require that state law actions be evaluated on a claim by claim basis for purposes of making

²⁸ This court can (and should) abstain from hearing the State Court Actions in spite of the fact that there are no parallel proceedings presently pending in state court due to their removal. *See Personette v. Kennedy (In re Midgard Corp.)*, 204 B.R. 764, 775-76 (B.A.P. 10th Cir. 1997) (“Abstention may apply to proceedings removed to a bankruptcy court. If abstention is required under section 1334(c)(2), a court may remand the proceeding to state court under 28 U.S.C. § 1452(b) . . . or under its general discretionary powers. 11 U.S.C. § 105(a)”).

²⁹ Our Lady of Guadalupe Church & Parish, a defendant in the Moya case, did not file a proof of claim in the bankruptcy case. Nor has it otherwise consented to the jurisdiction of the bankruptcy court.

core/ non-core determinations and the related abstention and jurisdictional issues. *See Halper v. Halper*, 164 F.3d 830, 839 (3d Cir. 1999). The requirements for mandatory abstention on the claims against non-debtor defendants are met: (a) the motion is timely, *i.e.*, abstention motions have been timely made before any prejudicial actions have taken place in this Court;³⁰ (b) at most, there is only “related to” jurisdiction under 28 U.S.C. § 1334, and (c) the claims can be timely adjudicated in state court. The phrase “timely adjudication” is not defined in the Bankruptcy Code. Courts interpreting this phrase have focused on whether allowing an action to proceed in state court will have any unfavorable effect on the administration of a bankruptcy case. *In re Midgard Corp.*, 204 B.R. at 778. In that regard, the Bankruptcy Appellate Panel for the Tenth Circuit has noted:

In considering whether allowing a case to proceed in state court will adversely affect the administration of a bankruptcy case, courts have considered some or all of the following factors: (1) backlog of the state court and federal court calendar; (2) status of the proceeding in state court prior to being removed (*i.e.*, whether discovery had been commenced); (3) status of the proceeding in the bankruptcy court; (4) the complexity of the issues to be resolved; (5) whether the parties consent to the bankruptcy court entering judgment in the non-core case; (6) whether a jury demand has been made; and (7) whether the underlying bankruptcy case is a reorganization or liquidation case.

Id., at 778-79.

Here, extensive proceedings already have occurred in state court in the *Moya* case. As was set forth above, it may take as much as 27 months to get to a jury trial in federal district

³⁰ Section 1334(c)(2) does not define what constitutes a “timely motion” for abstention, nor does Federal Rule of Bankruptcy Procedure 5011. Local Bankruptcy Rule 5011-2 provides, “A motion to abstain shall be deemed timely filed as follows . . . (b) In an adversary proceeding, if filed by the deadline to respond under BR 7012 or, if the proceeding was removed to the bankruptcy court, within 21 days after the notice of removal was filed.” NM LBR 5011-2. The Debtor removed the State Court Actions to the United States Bankruptcy Court for the District of Arizona on February 6, 2014. Twenty-one days, they were still pending as adversary proceedings in the bankruptcy court in Arizona. Accordingly, this rule could not have applied to an abstention motion. There is no such rule in the Local Bankruptcy Rules for the District of Arizona.

court in New Mexico and it is clear that timely adjudication of the State Court Actions in state court is feasible. Until the Movants filed their Stay Motions, the adversary proceedings had been at a standstill so neither this Court, nor the District Court have invested any time in these cases. Finally, the plaintiffs do not consent to the bankruptcy court's jurisdiction and are entitled to a jury trial. With the case for mandatory abstention clear and the same factors being applicable, remand is appropriate.

IV.

CONCLUSION

For all of the foregoing reasons, the Committee respectfully requests that the Court remand and /or abstain and remand as to the State Court Actions and grant such other and further relief as the Court deems just.

Dated: October 9, 2015

Respectfully submitted,

PACHULSKI STANG ZIEHL & JONES LLP

By /s/ James I. Stang

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EXHIBIT A



CHAPTER 11: Latest Updates

DIOCESE TO FILE FOR CHAPTER 11 REORGANIZATION ON NOVEMBER 12

Posted by: Suzanne Hammons on November 11, 2013 in Chapter 11 Filing, Media Releases, News 0 Comments

The Diocese of Gallup wishes to announce that it will formally file for Chapter 11 reorganization on Tuesday, November 12 in the United States Bankruptcy Court in Albuquerque. Please find below Bishop James Wall's letter regarding the filing:

"Dear Sisters and Brothers in Christ Jesus:

In early September I told you that I had made the decision that the only way to equitably and mercifully deal with the mounting sex abuse claims, still meet our commitment to you and continue the outreach mission of the Church was to file a Chapter 11 reorganization in the United States Bankruptcy Court. Since that time, we have been preparing for the filing. I wanted to tell you that the Chapter 11 filing will occur on Tuesday, November 12.

There is a section on the Diocese's website that is devoted to information about the Chapter 11 filing. That can be found at <http://voiceofthesouthwest.org/category/media-releases/chapter-11-filing/>. We will regularly post information about the Chapter 11 to keep you informed of the ongoing process.

As I said in my letter to you in September, the process of Chapter 11 will open our Diocese to unprecedented public scrutiny which I believed would be a good thing. I am firmly convinced that as we embark on this journey to bring healing to all who have been harmed and to our Diocese.

Please continue to pray. Let us continue to pray that in all we say and do Jesus Christ might be made known.

Sincerely yours in Christ,

Bishop Wall"

For further questions, comments, or concerns, please contact Suzanne Hammons, media liaison for the Diocese, by way of the following:
Phone: (505)863-4406 ext. 15
email: media@dioceseofgallup.org

Comments

0 comments

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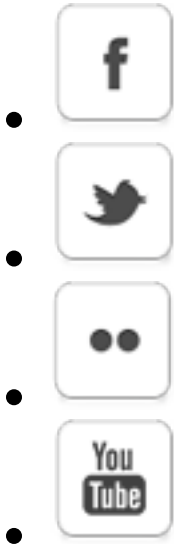
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I'm in!

EXHIBIT B



The Roman Catholic
Diocese of Gallup



[Menu](#)

Credibly Accused

To the Laity, Religious and Clergy of the Diocese of Gallup

Dear Sisters and Brothers in Christ Jesus:

When I became the Bishop of the Diocese of Gallup, I committed to ensuring that the children in this Diocese and in the Parishes, Missions or Schools that operate within the Diocese were protected. The Diocese published names of those working within the Diocese against whom there were credible allegations of sexual abuse of a minor. In my ongoing commitment to protection of children and to further my goal of transparency within this Diocese, we have determined that there are additional priests against whom there have been credible allegations of child abuse who worked in various places within the Diocese. I have sent letters to each Parish, Mission or School within the territory of the Diocese of Gallup where each of the priests or others served advising them that there was a priest who was ministering in that Parish, Mission or School against whom we have determined there were credible allegations of sexual abuse of a minor.

As part of my ongoing commitment, we are now putting all the names, places and dates of service of credibly accused priests here on the Diocese's website. This list will include the priests previously named as well as those who are being named now.

The publication of these additional names does not mean that our vigilance and continued investigation ends here. The investigations remain ongoing. The survivors who have come forward should be commended for

their bravery and courage, and I express my deepest apologies for the actions of those who violated the trust of the survivors and the parishioners within the Diocese by committing these terrible acts. I reaffirm my commitment to protect our children and my commitment to continue to assist those who have been harmed.

If you or a loved one were harmed by the sexual misconduct of an employee or clergy within the Diocese of Gallup, we strongly encourage you to contact law enforcement. We also welcome you to contact the victim assistance coordinator at the Diocese, at 505-906-7357.

Sincerely yours in Christ,

Bishop James S. Wall

The following is a list of clergy identified by the Diocese of Gallup as having credible allegations of sexual misconduct made against them.

Para los laicos, religiosos y el clero de la Diócesis de Gallup

Queridos hermanos y hermanas en Cristo Jesús:

Cuando me convertí en el Obispo de la Diócesis de Gallup, me comprometí a proteger a los niños de esta Diócesis y en las Parroquias, Misiones o Escuelas que operan dentro de la Diócesis. La Diócesis publicó los nombres de las personas que trabajan dentro de la Diócesis con acusaciones creíbles de abuso sexual de un menor. En mi continuo compromiso para proteger a los niños y promover mi objetivo de transparencia dentro de esta Diócesis, hemos determinado que hay sacerdotes adicionales con denuncias creíbles de abuso de niños en contra de ellos que trabajaron en varios lugares dentro de la Diócesis. He enviado cartas a cada Parroquia, Misión o Escuela dentro del territorio de la Diócesis de Gallup donde sirvieron estos sacerdotes, avisándoles que había un sacerdote que estaba ministrando en esa Parroquia, Misión o Escuela en contra de quien hemos determinado que habían acusaciones creíbles de abuso sexual de un menor.

Como parte de mi compromiso permanente, ahora estamos poniendo todos los nombres, lugares y fechas de servicio de los sacerdotes acusados creíblemente aquí en la página web de la Diócesis. Esta lista incluirá los sacerdotes anteriormente nombrados, así como los que están siendo nombrados ahora.

La publicación de estos nombres adicionales no significa que nuestra vigilancia y nuestros esfuerzos de investigación terminan aquí. Las investigaciones siguen en curso. Los sobrevivientes que se han presentado deben ser celebrados por su valentía y valor, y expreso mis más sinceras disculpas por las acciones de aquellos que violaron la confianza de los sobrevivientes y de los feligreses de la Diócesis con la comisión de estos actos terribles. Reafirmo mi compromiso de proteger a nuestros niños y mi compromiso de seguir ayudándoles a los que han sido dañados.

Si usted o un ser querido fue dañado por la mala conducta sexual de un empleado o el clero de la Diócesis de Gallup, le recomendamos ponerse en contacto con la policía. También les damos la bienvenida a comunicarse con el coordinador de asistencia a las víctimas en la Diócesis, al 505-906-7357.

Sinceramente suyo en Cristo,

Obispo James S. Wall

La siguiente es una lista de clero identificados por la Diócesis de Gallup que tienen denuncias creíbles de abusos sexuales hechos en contra de ellos.

Fr. William Allison (Deceased)

Assignments:
Our Lady of Guadalupe Parish, Holbrook AZ (1958)
Our Lady of Guadalupe Parish, Flagstaff AZ (08/1958 - 12/1961)

Fr. Michael Aten (Deceased)

Assignments:
St. Bonaventure Mission, Thoreau NM (06/01/1976)
St. Mary Parish, Pinetop AZ (03/1977 - 1978)
St. Joseph Parish, Winslow AZ (07/01/1978 - 01/01/1978)
St. John the Baptist Parish, St. Johns AZ (04/1979 - 07/1986)

Fr. Michael Baca, OFM (Deceased)

Assignments:
Immaculate Conception Parish, Cuba NM (1953)
St. Joseph the Worker Parish, San Fidel NM (1961)
Our Lady of Fatima Parish, Chinle AZ (1978)

Fr. George Baz (Deceased)

Assignment:
St. Joseph Parish, Winslow AZ (07/1968-09/1968)

Fr. John Boland

Assignments:
Our Lady of Guadalupe Parish, Holbrook AZ (1975)
St. Philip Parish, Church Rock NM (1977)
Immaculate Heart of Mary Parish, Page AZ (1978)
Madre de Dios Parish, Winslow AZ (1980-1983)
St. Jerome Parish, Gallup NM
St. Mary Parish, Bloomfield NM (1987)
Sacred Heart School Chaplain, Farmington NM (1994)
Our Lady of Sorrows Parish, Cebolleta NM (1995)
Our Lady of Light Mission, Cubero NM (1995)
St. Joseph the Worker School Chaplain, San Fidel NM (1995)
St. Paul Parish, Crownpoint NM (1999)
Risen Savior Mission, Bluewater NM (1999)
Immaculate Conception Parish, Cuba NM (2002)

Fr. James Burns (Deceased)

Assignments:

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Our Lady of Guadalupe Parish, Flagstaff AZ (07/1962 - 1963)
Nativity of the Blessed Virgin Mary Parish, Flagstaff AZ (1963)
Our Lady of Guadalupe Parish, Holbrook AZ (08/01/64)
St. Lawrence Parish, Humbolt AZ (12/01/65)
St. Peter Parish, Springerville AZ (07/01/1968 - 1972)
St. Mary of the Angels Parish, Pinetop AZ (09/05/1974 - 1981)
St. Anthony Parish, McNary AZ (05/01/1975 - 1981)
Immaculate Heart of Mary Parish, Page AZ (02/01/1981) St. Joseph Parish, Winslow AZ (07/1982 - 1989)
St. Mary's Parish, Bloomfield NM (11/01/90)
St. Rose Parish, Blanco NM (12/1990 - 06/1993)

Brett Candelaria (Lay CCD Teacher)

Assignment:
Holy Trinity Parish, Flora Vista, NM (1991-1992)

Fr. Santino Casimano (Deceased)

Assignments:
St. Paul Parish, Crownpoint NM (1975 - 1976)

Fr. Charles Cichanowicz, OFM

Assignments:
St. Michaels Parish, St. Michaels AZ (1980)
Christ the King Parish, Shiprock NM (1983)

Fr. David Clark, CMF (Deceased)

Assignment:
Sacred Heart, Prescott AZ (06/1960 - 07/1960)

Fr. Timothy Conlon

Assignments:
St. John the Baptist Parish, St. Johns AZ (11/2011 - 12/2013)
San Rafael Parish, Concho AZ (11/2011 - 12/2013)

Fr. Joseph Coutu

Assignments:
St. Mary Parish, Farmington NM (05/1981 - 12/1981)
Our Lady of Guadalupe Parish, Holbrook AZ (12/1981 - 1983)
Sacred Heart Cathedral, Gallup NM (1983 - 06/1984)

Fr. John Degnan (Deceased)

Assignments:
St. Mary, Kingman AZ (1951)
St. Cecilia, Clarksdale AZ (1952 - 1961)
St. Ann, Ash Fork AZ (1952 - 1961)
Madre de Dios Parish, Winslow AZ (06/1961 - 09/1961)

Fr. Clement Hageman (Deceased)

Assignments:

- Mission Center for Navajo Indians, Smith Lake and Thoreau NM (1939)
- Our Lady of Guadalupe Parish, Holbrook AZ (08/1942 - 11/1952)
- St. Mary's Parish, Kingsman AZ (01/1953 - 11/1963)
- St. Lawrence Parish, Humboldt AZ (08/01/64)
- Madre de Dios Parish, Winslow AZ (08/1965 - 07/1975)

Fr. Julian Hartig (Deceased)

Assignments:

- St. Francis of Assisi Parish, Gallup NM (1955)
- St. Francis of Assisi Mission, Lumberton NM (1961 - 1964)

Fr. Robert J. Kirsch (Deseased)

Assignments:

- Our Lady of Guadalupe, Flagstaff AZ (1957)
- Santo Nino de Atocha Parish, Aragon NM (1958 - 1959)
- St. Francis, Seligman AZ (1959 - 1962)
- Madre de Dios Parish, Winslow AZ (1963 - 1964)

Fr. Bruce MacArthur (Deceased)

Assignment:

- Ex-Priest of Sioux Falls who volunteered at shelters in Gallup, NM (2003)

Fr. Douglas McNeill

Assignments:

- St. Joseph and Madre de Dios Parishes, Winslow AZ (1969 - 1970)
- Our Lady of Guadalupe Parish, Holbrook AZ (1969, 1970-1971)
- Our Lady of Guadalupe Parish, Holbrook AZ and Office of Religious Education (1973 - 1974)
- St. Bonaventure Mission, Thoreau NM (1974 - 1994)

Fr. Rene Messier (Deceased)

Assignments:

- St. Mary Mediatrix of all Graces, Yarnell AZ (1961-1963)
- St. Anne, Ashfork AZ (1963)

Fr. Lucien Meurnier (Deceased)

Assignment:

- St. Joseph Parish, Winslow AZ (08/1972 - 06/1973)

Fr. Francis Murphy (Deceased)

Assignments:

- Retired to live in Cuba, NM (no faculties given) (1995 - ?)

Fr. John Newton, CPPS (Deceased)

Assignments:

- St. Joseph Parish, Winslow AZ (10/1955 - 1957)
- St. Peter Parish, Springerville AZ (05/1957 - 1959)

Fr. Jose Rodriguez

Assignments:

- Santo Niño Parish, Aragon NM (1975)
- St. Joseph Parish, Winslow AZ (09/01/1975 - 02/1976)
- Good Shepherd Mission, Pinehaven NM (1976)
- St. Jerome Parish, Gallup NM (1976 - 12/01/1977)
- St. John the Baptist Parish, St. Johns AZ (12/01/1977 - 12/01/1978)
- St. Peter Parish, Springerville AZ (12/01/1978 - 06/01/1979)
- St. Rita Parish, Show Low AZ (06/01/1979 - 07/01/1988)
- San Rafael Parish, San Rafael NM (06/01/1988 - 12/01/1988)
- Good Shepherd Mission, Pinehaven NM (12/01/1988 - 1990)
- St. Patrick's Mission, Chichiltah NM (12/01/1988 - 1990)
- Our Lady of Guadalupe Parish, Holbrook AZ (06/01/1990 - 1992)
- St. Mary Parish, Farmington NM (03/01/1992 - 1994)
- Our Lady of the Snows Parish, Snowflake AZ (06/01/1994 - 2000)
- Our Lady of the Assumption Parish, Overgaard AZ (06/20/05)

Fr. William Roper, CMF (Deceased)

Assignment:

- Sacred Heart, Prescott AZ (1964-1965)

Fr. Conran Runnebaum, OFM (Deceased)

Assignments:

- St. Teresa of Avila Parish, Grants NM (06/29/55 - 07/1958)
- Sacred Heart Parish, Farmington NM (07/1958 - 07/1964)
- St. Joseph the Worker Parish, San Fidel NM (07/1964 - 1973)
- Sacred Heart Parish, Farmington NM (07/1975 - 1978)

Fr. Raul Sanchez

Assignments:

- Madre de Dios Parish, Winslow AZ (07/1975 - 10/1976)
- Chancellor, Gallup Diocese (1979 - 11/1986)

Fr. Lawrence Schreiber, OFM

Assignments:

- St. Isabel Parish, Lukachukai AZ (1961 - 1962)
- St. Michaels Parish, St. Michaels AZ (1962 - 1963)
- Our Lady of the Blessed Sacrament Parish, Ft. Defiance AZ (1963 - 1968)
- Christ the King Parish, Shiprock NM (1968 - 1969)
- St. Jude Parish, Tuba City AZ (1969 - 1976)
- Christ the King Parish, Shiprock NM (1977 - 1981)

St. Isabel Parish, Lukachukai AZ (1981 - 1983)
St. Michaels Parish, St. Michaels AZ (1983 - 1986)
Sacred Heart Parish, Farmington NM (1986 - 1990)
Our Lady of the Blessed Sacrament Parish, Ft. Defiance AZ (1990 - 1991)

Fr. John Sullivan (Deceased)

Assignments:
Madre de Dios Parish, Winslow AZ (07/1961 - 1962)
St. Francis Parish, Seligman AZ (1963 - 1964)
St. Mary's Parish, Kingman AZ (1965 - 1968)

Carl Todaro (Former Seminarian - incorrectly listed as a priest)

Assignment:
Mount St. Mary's of the West Seminary (1951 - 1952)

Fr. David Enrique Viramontes (Deceased)

Assignments:
Santo Niño de Atocha Parish, Aragon NM (06/1957 - 06/1958)
Our Lady of Guadalupe, Flagstaff AZ (06/1958 - 07/1959)
St. Joseph Parish, Winslow AZ (07/1959 - 07/1960)
Our Lady of Guadalupe Parish, Holbrook AZ (07/1960 - 01/1961)
St. Pius X, Flagstaff AZ (01/1961)

Fr. Samuel Wilson (Deceased)

Assignments:
Church of the Nativity, Flagstaff AZ (1952)
Santo Niño de Atocha Parish, Aragon NM (08/1952 - 1957)
Church of the Nativity, Flagstaff AZ (1958)
St. John the Baptist Parish, St. Johns AZ (10/1958 - 1960)
Our Lady of Guadalupe Parish, Holbrook AZ (1961)
St. Cecelia Parish, Clarkdale AZ (07/1961 - 1962)
Immaculate Conception, Cottonwood AZ (07/1961 - 1962)
St. Francis Cabrini, Camp Verde AZ (1962 - 1964)
St. Lawrence, Humboldt AZ (1963 - 1964)
St. Joseph, Mayer AZ (1963 - 1964)
Madre de Dios Parish, Winslow AZ (08/1964 - 12/1965)
Our Lady of Guadalupe Parish, Flagstaff AZ (09/1968 - 1969)
Tolani Lake Indian, Leupp AZ (1970 - 1971)
San Rafael Parish, San Rafael NM (1972)
Our Lady of Sorrows Mission, Cebolleta NM (1973)
St. Rita Parish, Show Low AZ (1974 - 1975)
St. Catherine Parish, Cibecue AZ (1976 - 1979)
St. Anthony Parish, McNary AZ (1980)
RMCH and GIMC Hospitals; McKinley Manor, Gallup NM (1985-1986)

- [505-906-7357](tel:505-906-7357)
- victimsassistance@dioceseofgallup.org

Contact:

Fr. Matthew Keller

- [505-722-6644](tel:505-722-6644)
- vicargeneral@dioceseofgallup.org

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EXHIBIT C

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July 10, 2011

Accusations of Abuse by Priest Dating to Early 1940s

By DAN FROSCH

WINSLOW, Ariz. — Alfred Moya was stopping at a restaurant in rural Gallup, N.M., on his way home to Phoenix in the summer of 2007 when he happened to glance at a newspaper article about children who had been sexually abused by a priest.

Suddenly, his thoughts flashed to his own days as an altar boy in nearby Holbrook, Ariz., and the town's charismatic priest, the Rev. Clement A. Hageman. "And then I started remembering," he would later recount, according to court documents.

Over the past few years, a growing number of predominantly Hispanic men from the string of dusty towns along Route 66 in Arizona have stepped forward, alleging that Father Hageman sexually abused them as boys when he worked in local parishes from the early 1940s until his death in 1975.

A recent study commissioned by the nation's Roman Catholic bishops found the rise of sexual abuse in the church coincided with the social and sexual tumult of the 1960s and '70s. But the story of Father Hageman, as told through recently released church documents chronicling his troubles, begins much earlier.

Indeed, the priest has long haunted the deeply Catholic Hispanic communities around Holbrook, Winslow and Kingman, Ariz. His accusers said that he was "dumped" in impoverished, nonwhite communities by church officials to avoid scandal, an assertion that has emerged in other recent abuse cases.

"The premise we've been hearing is that the evidence is dead, the people are dead and that this was a problem of the '60s and '70s," said Patrick Wall, a former priest and canon lawyer who investigated abuse cases for the church and now helps victims. "This case cracks open a door that has been closed for 60 years."

Mr. Moya, 70, is believed to be the first to file a lawsuit against the Catholic Church over the priest's alleged abuse, which dates to a time when the poor pockets of Mexican-Americans who lived here dared not question the local priest. His lawyer, Robert E. Pastor, said he expected to file a second suit next month on behalf of at least two more local men who say they, too, were abused by the priest. And Mr. Pastor said nine others settled with the Diocese of Gallup, N.M., over claims involving Father Hageman.

"This priest was so proficient, he abused everywhere he went," Mr. Pastor said.

Filed in Coconino County Superior Court last August, Mr. Moya's lawsuit names the Diocese of Gallup, which oversaw the churches where Father Hageman spent much of his career, as a defendant. It also names the Diocese of Corpus Christi, Tex., and the Archdiocese of Santa Fe, N.M., which the lawsuit contends were involved in the priest's placements.

The suit alleges that Father Hageman started sexually abusing Mr. Moya when he was 12 and that church officials in all three dioceses covered up the priest's behavior.

The Corpus Christi and Santa Fe dioceses have sought to have the lawsuit dismissed, arguing they were not responsible for supervising Father Hageman after he was transferred to Arizona. In a statement, the Corpus Christi Diocese said that the accusations did not involve any current member of the clergy or church worker associated with them.

The Gallup Diocese, meanwhile, responded in court filings that it lacked "sufficient knowledge or information" to know if Mr. Moya's accusations were true. Moreover, the diocese argued that Mr. Moya's claims against it should be barred because Father Hageman's alleged abuse was "completely outside the scope of his employment as a Roman Catholic priest."

Robert P. Warburton, a lawyer for both the Archdiocese of Santa Fe and the Gallup Diocese, declined to discuss the case, stating in a letter last week that further files on the priest, requested by Mr. Pastor, do not exist.

Father Clem, as parishioners called him, was born in Glandorf, Ohio, and ordained at age 25. He spent much of his life working at six rural parishes in New Mexico and Arizona, and church records recall him as popular.

But there are other memories.

"We'd all be playing on the playground, and he'd come walking, point at one of us, and move his

finger to come with him inside the rectory,” recalled Joseph Baca, a Winslow man who says he was raped and molested repeatedly by Father Hageman and whose claims were detailed in an affidavit taken during settlement negotiations with the Gallup Diocese. “At first, I thought I was the only one.”

After Mr. Baca came forward, Bishop Donald E. Pelotte of Gallup apologized in 2005 for crimes committed by clergy members, calling Father Hageman and another clergyman two of the “most abusive priests of the diocese,” according to news reports at the time.

Mr. Pastor pointed to the recently released documents on Father Hageman as evidence that diocesan officials knew the priest was troubled.

In one letter from December 1940, the bishop of Gallup asked a colleague his opinion of the priest and relayed the archbishop of Santa Fe’s concern that Father Hageman “was guilty of playing with boys.”

In another, to the bishop of Gallup in 1952, Father Hageman describes being confronted by two men over his actions: “I had been drinking and perhaps while under the influence of liquor, I might have been imprudent in my dealings with boys.”

The release of such extensive documents, which came during the lawsuit, is unusual, according to experts on abuse in the church. “I believe this is the most extensive and longest sex abuse file that has ever been made public by the Catholic Church,” said Joelle Casteix, Western regional director for the Survivors Network of Those Abused by Priests.

Recently in Winslow, Mr. Baca was joined by three middle-age Hispanic men who spoke of being abused by the priest. The men once attended Madre de Dios, a tiny church on the edge of town where Father Hageman worked that is ringed by ramshackle homes and a vacant field.

All but one said they had reached settlements with the Gallup Diocese. None would disclose the amount. The men also told of living broken lives in the shadow of what they said happened to them.

That afternoon, Mr. Baca and some of the men walked the grounds of their old church. One, who gave only his first name, Paul, because he had not spoken publicly about his case, motioned toward a door to the church’s sacristy. After Mass, Father Hageman locked it so the altar boys could not leave, Paul recalled.

“I don’t come here anymore,” he said.

EXHIBIT D

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF COCONINO

Mark R. Moran, Presiding Judge

Division 3

Date: February 2, 2012

Carla D. Baber, Judicial Assistant

ALFRED A. MOYA, a single man,

Plaintiff,

vs.

THE ROMAN CATHOLIC CHURCH
OF THE DIOCESE OF GALLUP, a
corporation sole; et al.,

Defendants.

Case No. CV 2010-00713

UNDER-ADVISEMENT RULING

Re: Plaintiff's Motion to Amend Complaint
Defendant's Motion to Continue the Temporary Protective Order
Plaintiff's Motion for Appointment of a Special Master

I. MOTION TO AMEND COMPLAINT

The rules of civil procedure state, "Leave to amend shall be freely given when justice requires." Ariz. R. Civ. P. 15(a). Amendments to pleadings should be liberally granted. *Dewey v. Arnold*, 159 Ariz. 65, 68, 764 P.2d 1124, 1127 (App.1988). However, if a proposed amendment would be futile, a trial court does not abuse its discretion in denying a motion to amend a complaint. *Bishop v. State*, 172 Ariz. 472, 474-75, 837 P.2d 1207, 1209-10 (App.1992). A request for leave to amend a complaint may be denied if there has been undue delay, bad faith or dilatory motive. *Hayden Business Center condominiums Ass'n v. Pegasus Dev. Corp.*, 209 Ariz. 511, 105 P.3d 157 (Ct. App. 2005).

Counsel for Defendant argued that the motion to amend should be denied on the grounds of delay and that some of the new counts on the proposed amended complaint would be futile.

The original complaint was filed on 8/13/10. The amended complaint was filed on 8/02/11. The reason given for the delay in filing the amended complaint by the Plaintiff was, "the amendments track admissions and/or discovery responses by all Defendants with regard to basic facts that establish liability under the amended and additional Counts." [Plaintiff's Motion to Amend, p. 2]. The word "undue" means, "exceeding what is appropriate or normal; excessive." American Heritage Dictionary, p. 1398 (1969). The Court also notes that there has

been extensive motion practice but little formal discovery due to the need for the Court to address the pending motions. Based upon the entire record and the procedural posture of the case, the Court concludes that a one year delay in filing the proposed amended complaint does not constitute undue delay, and that the delay that has occurred has not resulted in any prejudice to the Defendant.

(A) New Counts

The Court must examine each of the proposed amendments to decide if it would be futile for the Court to grant the motion.

Defendant argued that counts VI, VII and VIII should be stricken as futile. Count VI alleges endangerment, count VII alleges child abuse, and count VIII alleges assault and battery. Defendant argued that the statutes upon which the counts are based had not been enacted at the time of the alleged abuse to the Plaintiff. Prior to the enactment of the 1978 Criminal Code, the crimes of endangerment and child abuse did not exist. Assault was in existence prior to the enactment of the 1978 Code. Therefore, as to count VIII, assault, the amendment would not be futile as that offense did exist under a different code section at the time the alleged torts were committed by Defendant. The Court must also examine whether counts VI and VII existed under the common law.

(B) Common Law

The ancient law of England was based upon the principles and rules of action embodied in case law. Anglo-American common law traces its roots to the medieval idea that the law as handed down from the king's courts represented the common custom of the people. Judges would move from town to town (in "circuit") hearing disputes and applying the king's law. (Jokinen, Anniina, *Common Law*, Luminarium, 13 Apr. 2009; *Canadian Tort Law*, Introduction, Wikibooks.org).

At the beginning the king's law, or common law, was not very developed. If the dispute was not an area within the jurisdiction of the judge, then the judge could not decide the dispute. The way to know if the dispute was an area within the jurisdiction of the judge was to read certain pre-approved "writs". If the writ described the circumstances of the dispute, then the dispute could be heard. Each writ developed its own rules on how disputes of that kind should be resolved. One of the most often used writs was known as "trespass vi et armis." "The primary notion underlying the action of trespass is therefore easily perceived, namely, the conception of damage done by direct and wrongful application of physical force." (Thomas A. Street, A.M., LL.B., *The Theory and Development of Common-Law Actions* at p.224 (1906)(Reprinted 1999)). As the king had a monopoly on the legal use of force, the king wished to punish anyone who used force without his authorization. English common law did not recognize a separate legal action in tort; they recognized "trespass" for direct injuries. *Id.* "The term 'trespass' (old French *trespasser*) primarily means any act which transcends or passes beyond the bounds of legal right. In this broad sense it is the equivalent of *transgression*, the Latin word used by Bracton and other early writers on English law to convey the same idea. Both 'trespass' and 'transgression' are therefore terms either of which might

well have been used in English law as the name of that legal wrong (not being a breach of contract) which is redressable in an action for civil damages;” Id.

When Arizona became a state, it adopted the common law of England as the “rule of decisions” in our courts. *Fernandez v. Romo*, 132 Ariz. 447, 448, 646 P.2d 878, 879 (1982)[citing A.R.S. 1-201].

The history of the common law adopted by the state at the time of the enactment of the Arizona Constitution is discussed in *Boswell v. Phoenix Newspapers, Inc.*, 152 Ariz. 9, 730 P.2d 186 (1986). Specifically, the court discussed the scope of the constitutional protection of Article 18, section 6, which states: “The right of action to recover damages for injuries shall never be abrogated, and the amount recovered shall not be subject to any statutory limitation.” Arizona Constitution, Article 18, section 6. The court traced this provision back to the Constitutional Convention of 1891, which included an open court provision, Article 2, section 15 which stated: “All courts shall be open, and every person for an injury done him in his lands, goods, person, or reputation, shall have remedy by due course of law.” Id. Although this proposal did not go into effect, a later version was included in the 1910 Constitutional Convention as follows: “The courts of justice of the state shall be open to every person, and speedy and certain remedy afforded for every injury to person, property or reputation...” Id. at 12. The court also found that 37 other states have open court or certain remedy provisions, and that the provision had its roots in the Magna Carta. Id. at 13.

The issue the court wrestled with was what types of actions and damages the framers intended to constitutionalize. Did the framers intend to limit the protection of art. 18, section 6 to negligence cases in which bodily injury was sustained or to extend it to all actions recognized at common law? In reaching its decision that the article was meant to be viewed expansively, the court quoted Chief Justice Struckmeyer who wrote: “There is no room for quibbling. The language of Section 6 is simple, explicit and all-inclusive. It cannot be misunderstood. Without limitation it confers the right to recover damages for injuries as existing under the common law.” Id. at 14 [citing: *Kilpatrick v. Superior Court*, 105 Ariz. 413, 419, 466 P.2d 18, 24 (1970)]. The court held that, “we conclude that the framers did not intend the protection of art. 18, section 6 to extend only to actions for negligent torts involving bodily injury claims. We hold, therefore, that art. 18, section 6 protects the right to recover damages for injury to reputation.” Id. at 17. The court went on to explain that, “Although art. 18, section 6 preserves common law rights, our common law is not frozen as of 1912. The constitutional protection extends to wrongs recognized at common law, but it is not limited to those elements and concepts of particular actions which were defined in our pre-statehood case law. Article 18, section 6 protects the *right of the people to seek ‘remedy by due course of law’* for injury to their ‘lands, goods, person, or reputation.” Id. at 18 (citations omitted; emphasis original). Common law can change based upon the circumstances and conditions of the time; the State Legislature has the power to regulate the incidents of common-law actions, but it is prevented from, “closing the courthouse door to those claiming to have suffered a wrong recognized by the common law.” Id.

The Court concludes that it must apply the common law expansively to include any action that is not specifically barred by statute that would encompass the alleged acts of the defendant which resulted in injury to the Plaintiff. Even though there was no separate tort of

child abuse recognized at common law, the broad definition of trespass as defined in common law and adopted by this state would encompass an action for child abuse as alleged in the plaintiff's pleadings. However, the same cannot be said of endangerment. There is no historical precedent in the common law for the modern crime of endangerment, and it was not criminalized by Arizona until 1978. The definition of trespass at common law does not encompass endangerment. Therefore, as to count VI only, the Court concludes that motion to amend the complaint should be denied as the amendment would be futile.

The Court grants the motion to amend as to Counts VII and VIII, with the exceptions noted below. [see: Part III., Motion to Strike].

II. PUNITIVE DAMAGES/PROTECTIVE ORDER

A Court can award punitive damages in tort actions to punish the wrongdoer and deter others from acting similarly. *Linthicum v. Nationwide Life Ins.Co.*, 150 Ariz. 326, 330, 723 P.2d 675, 679 (1986). These damages are available in only the most egregious cases. *Id.* at 331, 723 P.2d at 680. A trier of fact may award punitive damages only if clear and convincing evidence exists that the tortfeasor possessed an "evil mind" while engaging in aggravated and outrageous conduct. *Id.* Additionally, the conduct at issue must have proximately caused harm to the plaintiff. *Saucedo ex rel. Sinaloa v. Salvation Army*, 200 Ariz. 179, 182-83, 24 P.3d 1274, 1277-78 (App. 2001). A defendant acts with an evil mind if he "Should be consciously aware of the evil of his actions, of the spitefulness of his motives or that his conduct is so outrageous, oppressive or intolerable in that it creates a substantial risk of tremendous harm to others..." *Linthicum*, 150 Ariz. at 330, 723 P. 2d at 679.

To determine whether sufficient evidence exists of an evil mind, a court examines factors such as the reprehensibility of the conduct, the severity of harm that was actually or potentially imposed and the defendant's awareness of it, the duration of the misconduct, and any concealment of the risk of harm. *Thompson v. Better-Bilt Aluminum Prods. Co.*, 171 Ariz. 550, 556, 832 P. 2d 203, 209 (1992). Mere gross negligence or even reckless disregard of circumstances does not support an award of punitive damages. *Volz v. Coleman Co., Inc.*, 155 Ariz. 567, 570, 748 P.2d 1191, 1194 (1987).

The applicable jury instruction on punitive damages is Personal Injury Damages 4. The jury can award punitive damages if it finds by clear and convincing evidence that defendant acted with an evil mind. The jury is provided with three different standards to choose from when making a decision as to whether plaintiff has met his burden of proving defendant's evil mind. There are three paragraphs of options for the determination of defendant's state of mind. The third paragraph is the one relevant to the facts in this case. It states two different state of mind standards as follows: "[Defendant] acted to serve his own interests, having reason to know and consciously disregarding a substantial risk that his conduct might significantly injure the rights of others. [Defendant] consciously pursued a course of conduct knowing that it created a substantial risk of significant harm to others." Revised Arizona Jury Instructions (Civil), 4th, Personal Injury Damages 4, para. 3. The note to the instruction states that the court should choose whichever option is most appropriate for the case. [Use Note 1.].

The issue before the Court is whether the facts accepted as true by Court for the purposes of ruling on the Defendants' motions to dismiss meet the threshold for sustaining a claim for punitive damages. [see minute entry order of the Court, November 28, 2011]. During the discovery process the Plaintiff served on Defendant certain subpoenas seeking financial information about the Defendant. In this way, the issue of whether the Plaintiff had presented a *prima facie* case on the claim for punitive damages came before the Court on Defendant's motion for a protective order as to discovery by Plaintiff of the finances of the Defendant. The Court previously granted a temporary protective order on the discovery on this issue. [Court minute entry order, September 26, 2011]. The Court must decide whether the Plaintiff has provided sufficient evidence to sustain a *prima facie* case for punitive damages. A *prima facie* case is one that, "consists of sufficient evidence in the type of case to get plaintiff past a motion for directed verdict in a jury case or motion to dismiss in a non-jury case; it is the evidence necessary to require defendant to proceed with his case." Black's Law Dictionary, p. 1189-90 (6th ed. 1990). The Court's ruling therefore is made for the limited purpose of facilitating discovery and to determine whether specific requests propounded by the parties are relevant.

The Court must review the facts presented to determine whether a reasonable jury could find the Defendant possessed the required state of mind for punitive damages, that is, an "evil mind."

The Court concludes that the Plaintiff has met his burden of presenting clear and convincing evidence that a reasonable jury could find that the Defendant possessed an evil mind when they breached their duty to the Plaintiff.

Based on all of the above, IT IS ORDERED vacating the Court's earlier order staying discovery relevant to the issue of punitive damages.

The Court cannot properly decide the merits of a claim on a motion to amend a complaint. *Hernandez v. Maricopa County Superior Court*, 108 Ariz. 422, 501 P.2d 6 (1972). The merits of a claim can be challenged on a motion to dismiss or a motion for summary judgment. *Id.*

The Court makes no ruling on the issue of whether Father Hageman was the agent of the Diocese of Gallup in 1952 when the alleged torts occurred. This issue is more properly addressed through a motion to dismiss or motion for summary judgment.

III. MOTION TO STRIKE

Part of the Defendant's response to the motion to amend was a motion to strike (i.e., deny the motion to amend) the proposed amended complaint as to paragraphs 57-61 and 86-107.

The Court grants the motion as to paragraphs 57-61 because the facts do not support the allegations made in the complaint. The Plaintiff is free to petition the Court at a later time to add these counts should discovery produce evidence that supports these allegations.

The Court grants the motion to strike as to paragraphs 85-98 based upon the Court's earlier ruling denying the Plaintiff's motion to amend the complaint to add an allegation alleging endangerment.

The Court denies the motion to strike as to paragraphs 99-102, 104, and 106-107. The Court grants the motion to strike paragraph 103 because it alleges a count of endangerment which was stricken for the reasons set forth supra. The Court grants the motion in part as to paragraph 105 in that it alleges that Defendant "endangered" Plaintiff; the motion to strike the remainder of the paragraph is denied. Plaintiff should also change the proposed amendments to reflect that two of the original Defendants have been dismissed from the case.

IV. OUR LADY OF GUADALUPE CHURCH

Defendant Gallup filed a motion to strike Our Lady of Guadalupe Church from the heading of this case, asserting that the church is not a separate legal entity apart from the Diocese of Gallup. Plaintiff did not respond. The only motion before the Court is the motion to amend the complaint. Therefore, the Court makes no ruling on this request. Gallup may file a separate pleading requesting that the church be stricken as a separate Defendant on the heading of the case.

V. SPECIAL MASTER

Pursuant to Rule 26, and the Court's authority to regulate discovery, the Court grants the Plaintiff's motion to appoint a special master to resolve any discovery disputes. Each of the parties shall share equally in the cost for the special master. The parties shall meet and confer to attempt to stipulate to the person to be appointed special master. If the parties are unable to agree as to the special master, the parties shall submit the names of two individuals each to the Court for the Court to determine the special master. Plaintiff shall submit an order to the Court for the Court to review for the formal appointment. Defendant shall have 10 days to review the proposed order and object thereto.

Hon. Mark R. Moran

cc: Robert E. Pastor, 2800 N. Central Ave., Suite 840, Phoenix, AZ 85004
Keith Ricker, 4530 E. Shea Blvd, Suite 150, Phoenix, AZ 85028
Robert P. Warburton, 302 8th St., N.W. Suite 200, P.O. Box 528, Albuquerque, NM 87103-0528

EXHIBIT E

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4 Susan G. Boswell (004791)
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5 Lori L. Winkelman (021400)
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6 Attorneys for Defendant Roman Catholic
7 Church of the Diocese of Gallup

8 **IN THE UNITED STATES BANKRUPTCY COURT**
9 **FOR THE DISTRICT OF ARIZONA**

10 ALFRED A. MOYA, a single man,
11 Plaintiff,
12 vs.

13 THE ROMAN CATHOLIC CHURCH
14 OF THE DIOCESE OF GALLUP, a
corporation sole; THE ROMAN CATHOLIC
15 CHURCH OF THE ARCHDIOCESE OF
SANTA FE, a corporation sole; THE ROMAN
16 CATHOLIC CHURCH OF THE DIOCESE OF
CORPUS CHRISTI, a corporation sole; OUR
17 LADY OF GUADALUPE CHURCH & PARISH,
an Arizona corporation; THE ESTATE OF
18 FATHER CLEMENT A. HAGEMAN,
deceased; JOHN DOE 1-100; JANE DOE 1-100;
19 and Black & White Corporations 1-100,
20 Defendants.

Adversary No. 2:14-ap-00109

(formerly Coconino County Superior
Court Case No. CV2010-00713)

(Chapter 11 case pending in the United
States Bankruptcy Court for the District
of New Mexico, Case No. 13-13676-t11)

NOTICE OF REMOVAL

21 **NOTICE OF REMOVAL PURSUANT TO 28 U.S.C. § 1452 AND**
22 **FEDERAL RULE OF BANKRUPTCY PROCEDURE 9027**

23 PLEASE TAKE NOTICE THAT the Roman Catholic Church of the Diocese of Gallup
24 (“**Debtor**”), a New Mexico corporation sole and the debtor and debtor-in-possession in the
25 Chapter 11 reorganization case (the “**Reorganization Case**”), currently pending in the United
26 States Bankruptcy Court for the District of New Mexico (the “**Bankruptcy Court**”), pursuant to

1 28 U.S.C. § 1452(a), FED. R. BANKR. P. 9027, and LBR 9027-1, hereby removes to this Court the
2 above-captioned action (the “**Pending Action**”) now pending in the Superior Court of the State
3 of Arizona, in and for the County of Coconino (the “**State Court**”).¹

4 As grounds for removal of the Pending Action, Debtor states as follows:

5 1. Debtor is a defendant in the Pending Action.

6 2. Debtor is the debtor and debtor-in-possession in the Reorganization Case, which
7 was commenced by filing a voluntary petition on November 12, 2013 (the “**Petition Date**”).
8 Debtor filed the Reorganization Case in order to reorganize its financial affairs pursuant to a plan
9 of reorganization that will, among other things, fairly, justly and equitably compensate the
10 victims of sexual abuse by clergy or others associated with Debtor while allowing Debtor and the
11 canonical entity, Diocese of Gallup, to continue its ministry and mission, and to attempt to finally
12 bring healing to victims, parishioners and others affected by the past acts of sexual abuse
13 committed by clergy and others.

14 3. Prior to the Petition Date, on or about August 12, 2010, Plaintiff filed the
15 Complaint in the Pending Action, seeking damages based on allegations that Debtor is liable to
16 the Plaintiff for personal injuries, including claims for emotional distress, because the Plaintiff
17 was sexually abused by clergy or others associated with Debtor.

18 4. The Pending Action affects matters concerning the administration of Debtor’s
19 bankruptcy estate; affects the distribution of assets of Debtor’s estate or the adjustment of the
20 debtor-creditor relationship; and affects the allowance of claims under the Bankruptcy Code.

21 _____
22 ¹ Pursuant to LBR 9027-1, Debtor has at least 30 days from the date of this Notice to file with the
23 clerk, in chronological order, copies of all process, minute entries, and orders filed in the
24 litigation prior to removal, together with a copy of the docket of the removed action from the
25 court where the removed litigation was pending. Debtor will file such documents within the
26 required time. However, Debtor intends to immediately move for a transfer of venue from this
Court to the United States Bankruptcy Court for the District of New Mexico (the “**Home
Court**”), where the Reorganization Case is pending. If the motion to change venue is granted
within 30 days, Debtor will file the necessary documents from the Pending Action with the Home
Court.

1 5. Removal of the Pending Action is proper because the Pending Action arises in and
2 relates to “core proceedings” over which this Court has jurisdiction under 28 U.S.C. §§ 1334(b)
3 and 157(b)(2) and, to the extent the Pending Action is or is determined to be non-core, the Debtor
4 consents to entry of a final judgment by the Bankruptcy Court.

5 6. The Pending Action was commenced prior to the Petition Date, and this Notice
6 has been filed within 90 days after entry of the order for relief.

7 7. Removal is timely because the Removed Action was pending prior to the Petition
8 Date and this Notice of Removal has been filed within 90 days of the Petition Date.

9 8. This Notice has been served on all parties to the Pending Action through their
10 counsel of record.

11 9. A copy of this Notice has been filed with the Clerk of the Court in the Pending
12 Action.

13 DATED this 6th day of February, 2014.

14 QUARLES & BRADY LLP
15 One S. Church Ave., Suite 1700
16 Tucson, Arizona 85701-1621

17 By /s/ Susan G. Boswell
18 Susan G. Boswell
19 Lori L. Winkelman

20 Attorneys for Defendant Roman Catholic
21 Church of the Diocese of Gallup
22
23
24
25
26

COPIES of the foregoing sent
via e-mail and first-class mail
this 6th day of February, 2014, to:

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Discovery Master

/s/ Kelly Webster

EXHIBIT F

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susan.boswell@quarles.com
5 Lori L. Winkelman (021400)
lori.winkelman@quarles.com

6 Attorneys for Defendant Roman Catholic
7 Church of the Diocese of Gallup

8 **IN THE UNITED STATES BANKRUPTCY COURT**
9 **FOR THE DISTRICT OF ARIZONA**

10 JOHN M.H. DOE, a single man,

11 Plaintiff,

12 vs.

13 THE ROMAN CATHOLIC CHURCH OF THE
DIOCESE OF GALLUP, a corporation sole;
14 FATHER RAUL SANCHEZ, a single man;
15 JOHN DOE 1-100; JANE DOE 1-100; and Black
& White Corporations 1-100,

16 Defendants.

Adversary No. 2:14-ap-00119

(formerly Coconino County Superior
Court Case No. CV2013-00361)

(Chapter 11 case pending in the United
States Bankruptcy Court for the District
of New Mexico, Case No. 13-13676-t11)

NOTICE OF REMOVAL

17 **NOTICE OF REMOVAL PURSUANT TO 28 U.S.C. § 1452 AND**
18 **FEDERAL RULE OF BANKRUPTCY PROCEDURE 9027**

19 PLEASE TAKE NOTICE THAT the Roman Catholic Church of the Diocese of Gallup
20 (“**Debtor**”), a New Mexico corporation sole and the debtor and debtor-in-possession in the
21 Chapter 11 reorganization case (the “**Reorganization Case**”), currently pending in the United
22 States Bankruptcy Court for the District of New Mexico (the “**Bankruptcy Court**”), pursuant to
23 28 U.S.C. § 1452(a), FED. R. BANKR. P. 9027, and LBR 9027-1, hereby removes to this Court the
24
25
26

1 above-captioned action (the “**Pending Action**”) now pending in the Superior Court of the State
2 of Arizona, in and for the County of Coconino (the “**State Court**”).¹

3 As grounds for removal of the Pending Action, Debtor states as follows:

4 1. Debtor is a defendant in the Pending Action.

5 2. Debtor is the debtor and debtor-in-possession in the Reorganization Case, which
6 was commenced by filing a voluntary petition on November 12, 2013 (the “**Petition Date**”).
7 Debtor filed the Reorganization Case in order to reorganize its financial affairs pursuant to a plan
8 of reorganization that will, among other things, fairly, justly and equitably compensate the
9 victims of sexual abuse by clergy or others associated with Debtor while allowing Debtor and the
10 canonical entity, Diocese of Gallup, to continue its ministry and mission, and to attempt to finally
11 bring healing to victims, parishioners and others affected by the past acts of sexual abuse
12 committed by clergy and others.

13 3. Prior to the Petition Date, on or about May 30, 2013, Plaintiff filed the Complaint
14 in the Pending Action, seeking damages based on allegations that Debtor is liable to the Plaintiff
15 for personal injuries, including claims for emotional distress, because the Plaintiff was sexually
16 abused by clergy or others associated with Debtor.

17 4. The Pending Action affects matters concerning the administration of Debtor’s
18 bankruptcy estate; affects the distribution of assets of Debtor’s estate or the adjustment of the
19 debtor-creditor relationship; and affects the allowance of claims under the Bankruptcy Code.
20

21 _____
22 ¹ Pursuant to LBR 9027-1, Debtor has at least 30 days from the date of this Notice to file with the
23 clerk, in chronological order, copies of all process, minute entries, and orders filed in the
24 litigation prior to removal, together with a copy of the docket of the removed action from the
25 court where the removed litigation was pending. Debtor will file such documents within the
26 required time. However, Debtor intends to immediately move for a transfer of venue from this
Court to the United States Bankruptcy Court for the District of New Mexico (the “**Home
Court**”), where the Reorganization Case is pending. If the motion to change venue is granted
within 30 days, Debtor will file the necessary documents from the Pending Action with the Home
Court.

1 5. Removal of the Pending Action is proper because the Pending Action arises in and
2 relates to “core proceedings” over which this Court has jurisdiction under 28 U.S.C. §§ 1334(b)
3 and 157(b)(2) and, to the extent the Pending Action is or is determined to be non-core, the Debtor
4 consents to entry of a final judgment by the Bankruptcy Court.

5 6. The Pending Action was commenced prior to the Petition Date, and this Notice
6 has been filed within 90 days after entry of the order for relief.

7 7. Removal is timely because the Removed Action was pending prior to the Petition
8 Date and this Notice of Removal has been filed within 90 days of the Petition Date.

9 8. This Notice has been served on all parties to the Pending Action through their
10 counsel of record.

11 9. A copy of this Notice has been filed with the Clerk of the Court in the Pending
12 Action.

13 DATED this 6th day of February, 2014.

14 QUARLES & BRADY LLP
15 One S. Church Ave., Suite 1700
16 Tucson, Arizona 85701-1621

17 By /s/ Susan G. Boswell
18 Susan G. Boswell
19 Lori L. Winkelman

20 Attorneys for Defendant Roman Catholic
21 Church of the Diocese of Gallup
22
23
24
25
26

COPIES of the foregoing sent
via e-mail and first-class mail
this 6th day of February, 2014, to:

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Attorneys for Plaintiff

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Email: jmanly@manlystewart.com
Attorneys for Plaintiff

/s/ Kelly Webster

EXHIBIT G



IT IS ORDERED

Date Entered on Docket: June 6, 2014

The Honorable David T. Thuma
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

ROMAN CATHOLIC CHURCH OF THE
DIOCESE OF GALLUP, a New Mexico
corporation sole,

Debtor.

ALFRED A. MOYA, a single man,

Plaintiff,

vs.

THE ROMAN CATHOLIC CHURCH OF THE
DIOCESE OF GALLUP, a corporation sole; THE
ESTATE OF FATHER CLEMENT A.
HAGEMAN, deceased; OUR LADY OF
GUADALUPE CHURCH & PARISH; JOHN
DOE I-X; JANE DOE I-X; and Black & White
Corporations I-X,

Defendants.

Chapter 11

Case No. 13-13676-t11

Adv. No. 14-01034-t

(formerly Coconino County Superior
Court Case No. CV2010-00713)

STIPULATED ORDER REGARDING ABEYANCE OF ADVERSARY
PROCEEDING AND RESERVATION OF RIGHTS

The Roman Catholic Church of the Diocese of Gallup (the “**Debtor**” or the “**Defendant**”), the debtor and debtor-in-possession in the above-captioned bankruptcy case (“**Bankruptcy Case**”) and the Defendant in the above-captioned adversary proceeding (“**Adversary Proceeding**”), and Alfred A. Moya (“**Plaintiff**”), each by and through their undersigned counsel, hereby stipulate to the following:

A. The Plaintiff initiated a lawsuit captioned CV2010-00713 (the “**State Court Proceeding**”) in the Superior Court for the State of Arizona in and for the County of Coconino (the “**State Court**”) on or about August 13, 2010.

B. The Debtor filed a petition on November 12, 2013.

C. The Debtor/Defendant filed a Notice of Removal with the Bankruptcy Court pursuant to 28 U.S.C. § 1452 and Federal Rule of Bankruptcy Procedure 9027, thereby removing the State Court Proceeding from the State Court to the United States Bankruptcy Court for the District of Arizona (the “**Arizona Bankruptcy Court**”).

D. Notice of the Notice of Removal was served on all parties to the State Court Proceeding.

E. No objections were timely filed.

F. Shortly thereafter, on February 7, 2014 the Debtor/Defendant filed a Motion to Transfer the Pending Action from the Arizona Bankruptcy Court to this Bankruptcy Court.

G. No objections were timely filed.

H. On March 21, 2014 the Arizona Bankruptcy Court entered its Order Granting Motion to Transfer Venue, transferring the Adversary Proceeding to this Bankruptcy Court.

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED AND STIPULATED by and between the parties hereto, that:

1. The Adversary Proceeding shall be held in abeyance, and any and all deadlines shall be stayed.

2. To the extent that either Plaintiff or Defendant wishes to reinstate 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 reinstate the Adversary Proceeding.

3. The hearing currently scheduled for June 9, 2014 at 10:00 a.m. is hereby vacated.

XXX END OF ORDER XXX

Submitted, Stipulated and Agreed by:

/s/ Lori L. Winkelman

Susan G. Boswell (AZ Bar No. 004791)
Lori L. Winkelman (AZ Bar No. 021400)
Elizabeth S. Fella (AZ Bar No. 025236)
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-and-

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Counsel for the Debtor and Defendant

-AND-

/s/ Robert E. Pastor

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Counsel for the Plaintiff

EXHIBIT H¶



IT IS ORDERED

Date Entered on Docket: June 6, 2014

The Honorable David T. Thuma
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

ROMAN CATHOLIC CHURCH OF THE
DIOCESE OF GALLUP, a New Mexico
corporation sole,

Debtor.

JOHN M.H. DOE, a single man,

Plaintiff,

vs.

THE ROMAN CATHOLIC CHURCH OF THE
DIOCESE OF GALLUP, a corporation sole;
FATHER RAUL SANCHEZ, a single man; JOHN
DOE 1-100; JANE DOE 1-100; and Black &
White Corporations 1-100,

Defendants.

Chapter 11

Case No. 13-13676-t11

Adv. No. 14-01033-t

(formerly Coconino County Superior
Court Case No. CV2013-00361)

STIPULATED ORDER REGARDING ABEYANCE OF ADVERSARY
PROCEEDING AND RESERVATION OF RIGHTS

The Roman Catholic Church of the Diocese of Gallup (the “**Debtor**” or the
“**Defendant**”), the debtor and debtor-in-possession in the above-captioned bankruptcy case

(“**Bankruptcy Case**”) and the Defendant in the above-captioned adversary proceeding (“**Adversary Proceeding**”), and John M.H. Doe (“**Plaintiff**”), each by and through their undersigned counsel, hereby stipulate to the following:

A. The Plaintiff initiated a lawsuit captioned CV2013-00361 (the “**State Court Proceeding**”) in the Superior Court for the State of Arizona in and for the County of Coconino (the “**State Court**”) on or about May 30, 2013.

B. The Debtor filed a petition on November 12, 2013.

C. The Debtor/Defendant filed a Notice of Removal with the Bankruptcy Court pursuant to 28 U.S.C. § 1452 and Federal Rule of Bankruptcy Procedure 9027, thereby removing the State Court Proceeding from the State Court to the United States Bankruptcy Court for the District of Arizona (the “**Arizona Bankruptcy Court**”).

D. Notice of the Notice of Removal was served on all parties to the State Court Proceeding.

E. No objections were timely filed.

F. Shortly thereafter, on February 7, 2014 the Debtor/Defendant filed a Motion to Transfer the Pending Action from the Arizona Bankruptcy Court to this Bankruptcy Court.

G. No objections were timely filed.

H. On March 21, 2014 the Arizona Bankruptcy Court entered its Order Granting Motion to Transfer Venue, transferring the Adversary Proceeding to this Bankruptcy Court.

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED AND STIPULATED by and between the parties hereto, that:

1. The Adversary Proceeding shall be held in abeyance, and any and all deadlines shall be stayed.

2. To the extent that either Plaintiff or Defendant wishes to reinstitute 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 reinstitute the Adversary Proceeding.

3. The hearing currently scheduled for June 9, 2014 at 10:00 a.m. is hereby vacated.

XXX END OF ORDER XXX

Submitted, Stipulated and Agreed by:

/s/ Lori L. Winkelman

Susan G. Boswell (AZ Bar No. 004791)
Lori L. Winkelman (AZ Bar No. 021400)
Elizabeth S. Fella (AZ Bar No. 025236)
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-and-

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Counsel for the Debtor and Defendant

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repastor@mjpattonneys.com

Counsel for the Plaintiff

EXHIBIT I¶

U.S.

\$30 Million Is Awarded Over Abuse by Priest

By LAURIE GOODSTEIN DEC. 1, 2010

A jury in Delaware on Wednesday awarded \$30 million in compensatory damages to a man who said he was sexually abused more than 100 times by a Roman Catholic priest — the largest such award granted to a single victim in a clergy abuse case, victims’ advocates said.

In an unusual outcome, the jury decided that the parish where the abuse occurred, St. Elizabeth in Wilmington, must pay \$3 million of the damages, while the perpetrator is liable for the rest. Parishes have previously been held liable in only one or two cases involving abuse by Catholic priests, according to records kept by an advocacy group for victims known as bishopaccountability.org.

It is usually the diocese or the religious order, not the parish, that is held responsible for damages. But the Diocese of Wilmington, which covers all of Delaware, declared bankruptcy last year just as the lawsuit was going to trial, so this lawsuit as well as more than 100 pending lawsuits against the diocese was frozen.

The jury is set to hear evidence on punitive damages on Monday. Thomas S. Neuberger and Stephen J. Neuberger, father-son lawyers for the plaintiffs, say they have saved the most damning evidence for this phase, and that the award to the plaintiff could grow substantially beyond the compensatory damages.

“window” laws in recent years that temporarily lifted the statutes of limitations, allowing old cases like this one to be filed. Catholic dioceses in several other states, including New York, have successfully lobbied against such laws.

The plaintiff, John M. Vai, is one of seven people who have filed lawsuits alleging abuse by Francis DeLuca, a former priest whose defrocking was announced by the diocese in 2008.

St. Elizabeth parish is a large church with an elementary school, a high school, and three resident priests. The Rev. Norman Carroll, the parish pastor, said he could not talk about the case because it was continuing. Mr. Vai, the plaintiff, testified that the parish was negligent in his abuse. He said that when he was a small boy being hauled up the stairs to his abuser’s bedroom in the rectory, he was spotted by another parish priest, who is now a diocesan official. The official, Msgr. Thomas Cini, testified that he was unaware of the abuse.

Another witness testified that other priests in the parish were aware of Mr. DeLuca’s behavior.

The Rev. Thomas Doyle, a Catholic priest who was an expert witness for the plaintiff in this case and many others, said, “This was egregious because of the level of direct knowledge imputed to priests who lived there at the time.”

The bishop of Wilmington, W. Francis Malooly, apologized in a statement to Mr. Vai and other victims. But he said that the bishop of the diocese, not the parishes, should be held responsible for the actions of priests.

“It is unfortunate that the parish community of St. Elizabeth’s is being made to pay for the criminal and sinful acts of someone who was assigned by the diocesan bishop at the time to be one of their priests,” he said.

But Thomas Neuberger said that the diocese had so far promised in bankruptcy proceedings only \$2 million toward settlements with victims.

A version of this article appears in print on December 2, 2010, on page A19 of the New York edition with the headline: \$30 Million Is Awarded Over Abuse By Priest.

EXHIBIT J¶

Administrative Claims in the ordinary course post-petition. However, upon establishment of the Administrative Claim Bar Date, it is possible that additional Administrative Claims may be filed.

In sum, filed Claims as of the date hereof (exclusive of Professional Claims), are as follows:

Secured		Administrative		Priority		General Unsecured	
	\$ Amount		\$ Amount		\$ Amount		\$ Amount
16	\$14,462,689	0	\$0	1,118	\$97,489,436	73	\$191,160,883

A number of these claims, particularly pension claims, are duplicative and assert as liquidated amounts what are in fact contingent, unliquidated claims that would need to be estimated for allowance purposes. In addition, the Debtor believes that all, or substantially all, of the Claims filed as secured or priority status are in fact general unsecured Claims. The foregoing table is by way of summary only. The Debtor's estimates as to the ultimate Allowed amount and priority of filed Claims are set forth above and in the hypothetical liquidation analysis attached hereto as Exhibit C.

7. Litigation

During the Chapter 11 Case, the Debtor has been involved in three adversary proceedings and several contested matters.

a. *Extension of Automatic Stay to Non-Debtor Parish Corporations*

On October 19, 2009, the Debtor commenced adversary proceeding no. 09-52275 (the "TRO Adversary Proceeding") against certain CVA plaintiffs (the "TRO Defendants") by filing a complaint [Adv. Docket No. 1] pursuant to which the Debtor sought certain declaratory and injunctive relief against the Defendants. On the same day, the Debtor also filed in the TRO Adversary Proceeding a motion for a temporary restraining order [Adv. Docket No. 3] (the "TRO Motion"). Pursuant to the TRO Motion, the Debtor sought to obtain a temporary restraining order against the TRO Defendants to enjoin the prosecution of their respective personal injury actions against certain Parish Corporations.

On November 2, 2009, the Bankruptcy Court commenced an evidentiary hearing on the TRO Motion and related papers. The hearing was continued to November 6, 2009. Prior to November 6, 2009, the Creditors Committee, the Debtor, and the TRO Defendants, through their respective counsel, engaged in settlement negotiations over the relief sought in the TRO Motion and matters related thereto in the Chapter 11 Case and the pending state court litigation between the TRO Defendants and certain non-debtor parties to such litigation. At the start of the hearing on November 6, 2009, counsel for the Debtor, the TRO Defendants, the Creditors Committee, and State Court Counsel⁴¹ (i) advised the Bankruptcy Court that a proposed

⁴¹ "State Court Counsel" consists of Manly & Stewart, the Law Office of Bart Dalton and counsel for the TRO Defendants, i.e., The Neuberger Firm, P.A. and Jacobs & Crumplar, P.A.

settlement (the "Settlement") had been reached among the Debtor, the Creditors Committee, the Defendants, State Court Counsel, and the Parish Corporations, (ii) set forth the material terms of the Settlement on the record, and (iii) advised the Bankruptcy Court that the parties would be submitting a written stipulation and proposed form of order memorializing the Settlement by way of certification of counsel. The Bankruptcy Court "So Ordered" the record to immediately effectuate the Settlement subject to receiving the proposed form of order.

On December 7, 2009, as directed by the Bankruptcy Court, the Debtor submitted a fully executed stipulation [Adv. Docket No. 27] (the "Stipulation") which provided, among other things, that the Debtor could file, and the Creditors Committee and State Court Counsel would not oppose, a motion to extend the automatic stay to the Parish Co-Defendant Cases. On November 13, 2009, in accordance with the terms of the Settlement and the Stipulation, the Debtor filed a motion [Docket No. 116] to extend the automatic stay to all pending actions arising under the CVA in which the Debtor and a Parish Corporation are co-defendants (collectively, the "Parish Co-Defendant Cases") until sixty (60) days after the deadline for creditors to file prepetition claims in the Bankruptcy Case. On February 4, 2010, the Court entered an order [Docket No. 321] (the "Parish Stay Order") extending the automatic stay to the Parish Co-Defendant Cases until sixty (60) days after the deadline for creditors to file prepetition claims in the Bankruptcy Case – the "Bar Date" – which was subsequently fixed as April 15, 2010. Thus, in accordance with the Parish Stay Order, the consensual extension of the automatic stay with respect to the Parish Co-Defendant Cases was originally set to expire on June 14, 2010.

On April 19, 2010, the Bankruptcy Court ordered the Debtor, Creditors Committee and other interested parties (the "Mediation Parties") to meet and confer with respect to appointing a mediator and establishing mediation procedures. The Mediation Parties conferred on April 28, 2010 but were unable to reach a consensus on an appropriate mediator and how to proceed with mediation of the Bankruptcy Case (the "Mediation"). On June 1, 2010, the Bankruptcy Court entered an order [Docket No. 514] which, among other things: (i) appointed the Honorable Kevin Gross and former Judge Thomas Rutter as the co-mediators of the Mediation; and (ii) renewed the existing extension of the stay applicable to the Parish Co-Defendant Cases through and including July 30, 2010.

At the direction of the Mediators, the Mediation Parties participated in mediation sessions on June 25-27 and July 2-3, 2010, with the goal of negotiating a consensual chapter 11 plan. While these initial mediation sessions did not result in a negotiated plan, progress was made on several fronts, and the Mediators reconvened the Mediation on August 31, 2010 and September 1, 2010. On July 28, 2010, in the hope that the August 31 and September 1, 2010 sessions would result in a consensual resolution of the pending abuse cases, the Debtor filed a motion [Docket No. 604] (the "Renewed Stay Extension Motion") for an order renewing the existing extension of the automatic stay to the Parish Corporations to stay the Parish Co-Defendant Cases and the Non-Debtor Insurance Case (as such term is defined therein) in their entirety until ninety (90) days after the conclusion of the Mediation.

On August 12, 2010, the Bankruptcy Court commenced an evidentiary hearing on the Renewed Stay Extension Motion. At the conclusion of the hearing, the Bankruptcy Court granted in part and denied in part the Renewed Stay Extension Motion. As set forth on the record, the Bankruptcy Court ordered that the stay previously imposed was further extended with

respect to most of the Parish Co-Defendant Cases through and including September 3, 2010. The Bankruptcy Court also held, among other things, that the stay no longer applied to certain Parish Co-Defendants Cases, which had already been scheduled for trial. Thereafter, on September 3, 2010, the Bankruptcy Court held a hearing at which time it, among other things, renewed the existing extension of the automatic stay to the Parish Co-Defendant Cases through and including September 24, 2010 [Docket No. 731].

On September 22, 2010, the Debtor filed its initial chapter 11 plan and a motion [Docket No. 766] for an order (i) renewing the existing extension of the automatic stay to the Parish Corporations and (ii) imposing a stay of litigation against certain Parish Corporations in cases in which the Debtor was not named a defendant, but was expected to be named a third-party defendant by the Parish Corporation (the "Parish-Only Cases"). On September 24, 2010, the Bankruptcy Court held a hearing at which time it, among other things renewed the existing extension of the automatic stay to the Parish Co-Defendant Cases through and including the earlier of (i) the conclusion of the Confirmation Hearing and (ii) December 31, 2010 [Docket No. 778].

In early December 2010, Creditors Committee member John Vai, whose abuse litigation against St. Elizabeth Roman Catholic Church had been permitted to go forward by the Bankruptcy Court, obtained a verdict of \$3,000,001 against St. Elizabeth (\$3 million compensatory damages, \$1 punitive damages). Vai has requested that the Superior Court impose pre-judgment interest from January 1, 1967, on the \$3 million compensatory damages award, which request is opposed by St. Elizabeth and is currently under advisement by the Superior Court. To the extent that Vai's verdict stands and is collectible, a portion presumably will be satisfied by insurance proceeds which would otherwise be available for contribution to the Plan Trust, as the Debtor was a co-insured with St. Elizabeth.

In early January 2011, survivor-claimant Joseph Curry, whose abuse litigation against St. Dennis Roman Catholic Church had been permitted to go forward by the Bankruptcy Court, reached a settlement with St. Dennis that would have required payment of approximately \$1.7 from insurance policies under which the Debtor was a co-insured. St. Dennis sought relief from the automatic stay to access the insurance proceeds [Docket Nos. 1002 & 1031], which was opposed by the Creditors Committee [Docket No. 1018]. The Bankruptcy Court held a hearing on January 3 and 4, 2011, to consider the stay relief request. At this hearing, the Bankruptcy Court clarified that its prior ruling permitting certain lawsuits to go forward against non-debtor Parish Corporations did not authorize the satisfaction of survivor claims using property of the Debtor's bankruptcy estate outside a chapter 11 plan. St. Dennis's request for stay relief was denied without prejudice [Docket No. 1044].

On December 30, 2010, the Debtor filed a motion to renew the existing extension of the automatic stay to the Parish Co-Defendant Cases through and including the earlier of (i) the conclusion of the Confirmation Hearing and (ii) June 30, 2011 [Docket No. 1029]. This motion was granted without objection on January 21, 2011 [Docket No. 1077].

b. *The Pooled Investment Account*

(1) The PIA Motion

On November 11, 2009, the Debtor filed its *Motion for (I) Interim and Final Orders (A) Authorizing the Debtor to Use its Pooled Investment Account and Process Withdrawal Requests from Non-Debtor Pooled Investors in the Ordinary Course, (B) Waiving Section 345 Deposit Guidelines, (C) Scheduling a Final Hearing, and (D) Granting Related Relief; and (II) a Final Order Authorizing the Debtor to Take All Actions Necessary or Appropriate to Transfer Possession of Pooled Investment Funds to One or More Non-Debtor Fiduciaries* [Docket No. 96] (the "PIA Motion"). In the PIA Motion, the Debtor sought (i) interim and final waiver of the deposit guidelines of § 345 of the Bankruptcy Code, (ii) interim authority to honor limited requests for withdrawals of Pooled Investment Funds by Non-Debtor Pooled Investors in the ordinary course pursuant to §§ 363 and 105 of the Bankruptcy Code, and (iii) final authority pursuant to §§ 541(b)(1) and (d) to process all withdrawal requests and, ultimately, to transition non-debtor Pooled Investment Funds to one or more non-debtor fiduciaries. The basis for the relief requested in the PIA Motion was twofold: first, that the honor of withdrawal requests by Non-Debtor Pooled Investors was within the ordinary course for the Debtor, and thus was permissible under § 363(c) of the Bankruptcy Code; second, that the Non-Debtor Pooled Investors' interests in the PIA were not property of the Debtor's Estate because the Debtor held such interests as trustee for the benefit of the Non-Debtor Pooled Investors. The PIA Motion was joined by certain of the Non-Debtor Pooled Investors [Docket No. 115], who briefly explained their need for access to their Pooled Investment Funds to sustain their operations in the near term.

The Creditors Committee objected to the PIA Motion [Docket No. 127], and on November 11, 2009, the Bankruptcy Court held a telephonic hearing to discuss matters related to the PIA Motion. To resolve the ultimate "property of the estate" issue, the Court suggested the Committee commence an adversary proceeding seeking a declaratory judgment. In the meantime, on November 20, 2009, the Bankruptcy Court entered a consensual order granting, in part, the relief requested in the PIA Motion on an interim basis [Docket No. 141], and authorizing distribution of \$530,000 in the aggregate of Pooled Investment Funds to certain Non-Debtor Pooled Investors. Since that time, the Court has entered eighteen further orders granting, in part, the relief requested in the PIA Motion on an interim basis [Docket Nos. 285, 347, 362, 387, 394, 423, 455, 526, 562, 568, 753, 810, 846, 897, 1022, 1104, 1148, and 1209], and authorizing distribution of an additional \$3,974,738 in the aggregate of Pooled Investment Funds to certain Non-Debtor Pooled Investors.

(2) The PIA Adversary

On December 18, 2009, the Creditors Committee commenced an adversary proceeding against the Debtor and certain Non-Debtor Pooled Investors (Adv. Proc. No. 09-52866) (the "PIA Adversary") seeking (i) declaratory relief with respect to ownership of the Pooled Investment Funds and (ii) substantive consolidation of the non-debtor defendants with the Debtor. The Court bifurcated the PIA Adversary into two phases, the first ("Phase I") addressing solely the Second and Fourth Claims for Relief in the complaint, concerning, respectively, (i) the existence of a trust relationship between the Debtor and defendant Non-Debtor Pooled Investors

and (ii) the ability to identify and trace the investments of the defendant Non-Debtor Pooled Investors in the PIA. The Court held a trial on Phase I of the PIA Adversary on June 2-8, 2010, and issued a written opinion on June 28, 2010 (the "Phase I Opinion"), confirming that a trust relationship existed between the Debtor and the Non-Debtor Defendants, but finding that, with the exception of St. Ann's Roman Catholic Church, the Non-Debtor Pooled Investors' investments were not identifiable or traceable under federal law. Accordingly, with the exception of St. Ann's fractional interest in the PIA, the entire PIA constituted property of the Debtor's bankruptcy estate, subject to the right of any non-defendant, Non-Debtor Pooled Investors to come forward and prove their trust funds are identifiable and traceable.⁴² The Bankruptcy Court went on to find that the Non-Debtor Defendants had claims against the Debtor for their lost investments (the "PIA Investment Claims").

The defendant Non-Debtor Pooled Investors, joined by the Debtor, moved for reconsideration of the Phase I Opinion, which was denied by opinion and order dated July 21, 2010. The defendant Non-Debtor Pooled Investors and the Debtor (collectively, the "Appellants") timely filed Notices of Appeal from the Phase I Opinion, the opinion on reconsideration, and the related orders and judgment on August 2, 2010.

On August 19, 2010, over the objection of the Creditors Committee, the Bankruptcy Court certified the appeals directly to the Third Circuit Court of Appeals pursuant to 28 U.S.C. § 158(d)(2)(A)(ii) and (iii) and Bankruptcy Rule 8001(f). The Appellants timely filed petitions with the Third Circuit for permission to seek direct appeal, which petitions were granted by the Third Circuit. Briefing of the appeals is currently underway, but has been stayed pending confirmation of the Plan.

On September 22, 2010, the defendant Non-Debtor Pooled Investors filed a motion for judgment on the pleadings with respect to the second phase of the PIA Adversary. The debtor joined in this motion and also moved for judgment on the pleadings. Following an initial round of briefing and oral argument, and supplemental briefing, the Bankruptcy Court has taken the matter under advisement.

c. *The Lay Pension Litigation*

On January 4, 2011, the Lay Employees Committee commenced an adversary proceeding against the Debtor (Adv. Proc. No. 11-50022) (the "Lay Pension Litigation") seeking declarations that the Lay Pension Fund is held in trust for the benefit of lay pensioners and is not property of the Debtor's bankruptcy estate, and that the Debtor breached duties to lay pensioners in its management of the Lay Pension Plan.

Given that the Plan, if confirmed as a Settlement Plan, would provide for distribution of the Lay Pension Fund to the Lay Pension Plan Trust for the benefit of lay pensioners, the Lay Employees Committee has agreed to extend the deadline for responding to the Lay Employees Committee's complaint to a date to be determined. The Creditors Committee

⁴² If the Plan is confirmed as a CDOW-Only Plan, the Debtor expects that certain Non-Debtor Pooled Investors would come forward to establish that their funds are identifiable by the same reasoning applied by the Bankruptcy Court to St. Ann's.

EXHIBIT K¶

Table C-5.
U.S. District Courts—Median Time Intervals From Filing to Disposition of Civil Cases
Terminated, by District and Method of Disposition,
During the 12-Month Period Ending December 31, 2014

Circuit and District	Total Cases		No Court Action		Court Action					
	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Before Pretrial		During or After Pretrial		Trial	
					Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months
TOTAL	198,998	8.5	41,328	5.1	128,688	8.5	26,410	12.8	2,572	25.3
DC	1,792	7.6	824	5.4	933	8.9	11	34.6	24	53.6
1ST	6,246	12.4	1,324	5.1	3,436	13.8	1,404	14.5	82	25.4
ME	456	8.0	138	5.7	297	8.7	11	18.8	10	25.5
MA	2,559	9.2	636	3.0	768	7.9	1,109	14.3	46	25.3
NH	481	8.4	85	3.7	235	7.3	154	14.2	7	-
RI	1,867	23.3	304	16.1	1,520	26.8	38	15.0	5	-
PR	883	13.4	161	6.6	616	14.1	92	19.2	14	29.8
2ND	20,261	9.3	3,285	4.6	11,986	9.2	4,710	12.4	280	33.6
CT	1,726	9.8	552	5.2	672	9.4	463	18.4	39	39.4
NY,N	1,263	10.8	208	3.2	678	12.1	355	14.2	22	33.8
NY,E	6,163	8.8	1,409	5.6	3,256	8.4	1,409	11.7	89	35.0
NY,S	9,468	9.0	883	3.6	6,055	8.4	2,413	11.7	117	29.1
NY,W	1,415	11.1	219	4.0	1,120	12.4	66	17.2	10	42.4
VT	226	10.4	14	4.2	205	10.6	4	-	3	-
3RD	21,787	6.8	2,574	4.1	14,557	5.4	4,417	13.5	239	28.1
DE	1,879	10.9	538	6.9	1,104	11.9	196	15.2	41	34.2
NJ	6,962	7.6	454	3.7	3,665	4.6	2,792	16.3	51	36.4
PA,E	9,057	4.7	791	3.3	6,885	3.7	1,285	9.2	96	19.2
PA,M	1,744	10.0	377	5.8	1,271	10.9	72	17.0	24	27.7
PA,W	1,923	7.2	278	3.0	1,616	8.0	14	22.6	15	28.0
VI	222	13.5	136	13.1	16	11.4	58	12.7	12	38.2
4TH	14,287	6.9	2,326	6.4	10,561	6.2	1,261	10.4	139	18.6
MD	3,047	7.4	510	7.3	1,884	5.5	626	12.5	27	19.1
NC,E	1,091	9.5	371	8.7	707	10.1	5	-	8	-
NC,M	733	12.7	426	9.0	270	18.8	33	21.6	4	-
NC,W	895	8.8	197	6.7	620	8.7	65	15.1	13	25.1
SC	2,362	9.5	202	2.8	2,095	10.3	41	9.8	24	27.8
VA,E	2,083	5.5	396	4.3	1,227	4.4	419	7.6	41	11.9
VA,W	630	9.9	146	5.8	429	11.2	45	10.3	10	17.9
WV,N	492	10.9	60	8.3	421	11.0	6	-	5	-
WV,S	2,954	0.7	18	2.4	2,908	0.7	21	17.2	7	-

Table C-5. (December 31, 2014)

Circuit and District	Total Cases		No Court Action		Court Action					
	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Before Pretrial		During or After Pretrial		Trial	
					Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months
5TH	19,081	8.3	5,244	5.8	11,389	8.3	2,124	12.2	324	23.0
LA,E	2,351	9.7	90	2.8	1,206	7.1	1,002	12.6	53	17.8
LA,M	632	12.7	59	8.6	505	11.5	48	23.9	20	33.1
LA,W	1,043	12.2	344	7.9	598	12.9	85	22.1	16	30.2
MS,N	552	9.8	144	7.5	248	10.0	144	12.1	16	22.2
MS,S	1,278	11.1	705	10.2	507	11.6	37	19.2	29	22.6
TX,N	3,294	6.9	647	5.2	2,601	7.4	4	-	42	25.9
TX,E	3,126	8.3	961	5.8	2,105	9.5	22	21.0	38	25.9
TX,S	4,518	6.9	1,626	4.4	2,129	7.9	682	8.7	81	22.2
TX,W	2,287	6.7	668	6.0	1,490	6.3	100	15.9	29	22.9
6TH	16,600	10.4	5,332	6.7	7,630	11.0	3,432	12.5	206	27.0
KY,E	1,059	9.1	120	6.1	920	9.3	14	18.4	5	-
KY,W	1,033	8.7	183	4.8	807	9.0	33	16.5	10	23.1
MI,E	3,913	8.8	932	3.5	1,297	6.2	1,641	13.3	43	25.9
MI,W	970	8.3	153	3.2	615	8.4	195	12.1	7	-
OH,N	3,846	12.8	1,581	11.9	1,415	17.7	824	9.7	26	19.2
OH,S	2,262	9.4	1,061	5.7	545	11.4	628	12.4	28	15.4
TN,E	1,276	12.8	476	10.2	679	13.0	79	18.5	42	55.5
TN,M	1,338	13.5	219	12.1	1,090	13.5	2	-	27	25.7
TN,W	903	10.9	607	10.5	262	10.2	16	23.2	18	31.0
7TH	21,451	13.5	3,985	4.9	15,225	17.9	2,059	12.1	182	27.6
IL,N	7,962	7.0	2,206	4.6	5,184	7.6	473	10.4	99	33.7
IL,C	683	10.5	303	7.8	368	12.5	4	-	8	-
IL,S	7,271	40.5	544	15.9	6,711	41.3	7	-	9	-
IN,N	1,749	9.8	269	3.3	963	8.7	497	16.1	20	26.1
IN,S	1,966	9.1	256	4.3	869	6.4	821	11.4	20	27.1
WI,E	1,113	6.0	230	3.0	847	7.1	24	11.6	12	27.3
WI,W	707	8.1	177	3.2	283	7.1	233	11.0	14	18.5
8TH	11,096	10.7	3,792	6.0	6,068	12.2	1,057	13.4	179	24.8
AR,E	1,305	13.1	361	25.5	908	12.2	6	-	30	18.4
AR,W	895	12.6	164	13.1	712	12.4	2	-	17	21.0
IA,N	415	8.2	81	7.1	327	8.2	2	-	5	-
IA,S	461	9.9	88	4.3	204	8.1	161	14.8	8	-
MN	3,267	10.0	1,018	2.1	1,464	20.6	753	12.8	32	23.7
MO,E	1,904	8.6	833	6.0	1,039	10.1	0	-	32	24.3
MO,W	1,918	10.2	1,123	8.1	671	12.6	110	13.3	14	35.3
NE	476	9.7	52	3.8	386	9.7	15	20.9	23	29.7
ND	245	11.8	6	-	231	11.7	3	-	5	-
SD	210	14.9	66	8.1	126	15.6	5	-	13	30.0

Table C-5. (December 31, 2014—Continued)

Circuit and District	Total Cases		No Court Action		Court Action					
	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Before Pretrial		During or After Pretrial		Trial	
					Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months
9TH	32,917	7.3	8,385	4.4	20,850	7.4	3,177	13.5	505	23.5
AK	242	8.1	51	7.7	185	8.1	1	-	5	-
AZ	2,312	7.8	147	2.6	1,629	6.2	502	14.0	34	27.5
CA,N	4,555	7.9	890	4.3	2,244	6.6	1,353	13.1	68	31.0
CA,E	2,696	7.9	935	5.1	1,663	9.3	68	16.8	30	33.9
CA,C	11,800	5.5	3,911	4.4	7,523	5.8	192	14.2	174	19.3
CA,S	2,171	6.7	339	3.0	1,105	5.3	699	13.0	28	33.6
HI	648	7.1	341	4.6	263	8.4	32	20.7	12	18.0
ID	336	12.0	17	2.4	239	11.1	70	15.7	10	23.4
MT	412	9.9	126	5.9	140	8.1	131	13.6	15	24.5
NV	2,154	9.4	202	4.4	1,835	10.2	99	8.1	18	32.2
OR	1,991	11.1	541	7.7	1,393	12.0	9	-	48	20.8
WA,E	736	11.0	239	6.1	476	12.4	7	-	14	32.3
WA,W	2,820	7.4	622	2.5	2,141	8.1	10	16.7	47	18.8
GUAM	24	24.1	9	-	10	23.5	4	-	1	-
NMI	20	13.2	15	10.6	4	-	0	-	1	-
10TH	8,491	9.0	1,899	4.1	5,284	9.6	1,163	13.1	145	26.1
CO	2,742	6.3	854	4.1	1,778	7.5	61	18.3	49	29.9
KS	1,221	9.5	323	5.5	785	9.9	87	20.2	26	23.5
NM	1,025	10.9	64	1.9	448	8.8	497	13.0	16	27.4
OK,N	623	10.0	69	3.2	540	10.8	11	18.2	3	-
OK,E	428	12.9	26	2.5	394	13.8	3	-	5	-
OK,W	1,077	8.2	282	4.0	432	8.1	343	10.2	20	16.0
UT	1,149	11.3	215	5.3	852	12.4	66	23.3	16	35.4
WY	226	11.4	66	4.1	55	11.3	95	13.0	10	22.9
11TH	24,989	7.1	2,358	4.5	20,769	6.9	1,595	12.8	267	21.4
AL,N	3,182	17.6	44	1.7	3,091	17.6	25	25.5	22	22.9
AL,M	662	9.9	70	4.9	555	9.9	27	18.5	10	22.5
AL,S	454	8.1	80	3.9	358	8.2	12	16.6	4	-
FL,N	1,118	7.4	40	4.0	1,043	7.3	15	11.6	20	14.3
FL,M	6,631	7.6	574	6.9	5,835	7.4	142	15.4	80	23.5
FL,S	7,424	4.7	851	3.9	6,410	4.8	84	9.0	79	14.9
GA,N	3,996	6.6	322	2.6	2,363	4.4	1,276	12.2	35	30.2
GA,M	932	12.4	200	8.7	712	12.5	7	-	13	28.3
GA,S	590	9.6	177	8.7	402	9.9	7	-	4	-

NOTE: Median time intervals are not computed when fewer than 10 cases reported. This table excludes land condemnations, prisoner petitions, deportation reviews, recovery of overpayments, and enforcement of judgments. Includes cases filed in previous years as consolidated cases that thereafter were severed into individual cases. For fiscal years prior to 2001, this table included data on recovery of overpayments and enforcement of judgments.