

SOME REFLECTIONS ON LABOR AND EMPLOYMENT RAMIFICATIONS OF DIOCESAN BANKRUPTCY FILINGS

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INTRODUCTION

It is impossible to overstate the damage done by sexual predators. Most pernicious are sex crimes committed by clergy upon children.¹ In the Roman Catholic Church in the United States, thousands² of crimes perpetrated over several decades³

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¹ Of course, other agents of the Catholic Church, including compensated and volunteer laypersons, have also committed sex crimes. See Bruce Lambert, *Case Highlights Sex Abuse at Church, Beyond Priests*, N.Y. TIMES, May 15, 2007, at B4 (discussing a suit involving a youth minister volunteer who abused minors, resulting in a jury verdict of more than \$11 million); David Staba, *Despite New Church Rules, Sex Abuse in Catholic School Went Unreported*, N.Y. TIMES, Aug. 23, 2007, at B3 (discussing crimes by a part-time computer teacher in a Catholic middle school).

² See Lambert, *supra* note 1. The multi-year study by the John Jay College of Criminal Justice of the City University of New York surveyed every diocese in the nation, and found that 10,667 people had brought complaints against 4,392 priests and deacons from 1950 to 2002. *Id.* The study did not examine or report the number of such complaints brought against any other agents, ranging from nuns through ushers, choir members, youth ministers, readers ("lectors") at liturgies, and lay Eucharistic ministers, for example. See *id.* Of course, there is no evidence that Catholic priests have a higher incidence than any other persons, say, teachers, of sexual abuse of children. See *id.* For example:

Charol Shakeshaft, a Hofstra University professor who in 2004 issued a

have come to the light of day since 2002.⁴ The burgeoning commentary on the many dimensions of the crisis will certainly continue to proliferate.⁵ Tragically, despite recently instituted

report analyzing numerous studies of abuse in public schools for the federal Department of Education, said there was no data showing whether sexual abuse was more prevalent in the Catholic Church than in other areas of society. "We just don't know," Professor Shakeshaft said.

Id.; see also *Data Shed Light on Child Sexual Abuse by Protestant Clergy*, N.Y. TIMES, June 16, 2007, at A11 (stating that three insurance companies for a majority of Protestant churches receive over 260 annual reports of sexual abuse allegations of children by Protestant clergy); Lisa W. Foderaro, *Between Teacher and Student: The Suspicions Are Growing*, N.Y. TIMES, June 20, 2007, at B1 (noting a marked increase in the number of public school teachers in New York charged with sexual impropriety in recent years); Jon Hurdle, *School Crossing Guard Is Charged with 1,000 Counts of Child Molesting*, N.Y. TIMES, June 22, 2007, at A14 (describing numerous allegations of child sexual abuse against a local crossing guard).

³ See Michael Rubino, *Long Dead, a Revered Small-Town Priest Is Disgraced*, N.Y. TIMES, Aug. 30, 2007, at A20. A priest and founding pastor serving Jasper, Indiana for his entire fifty year career, dying in 1986, apparently abused more children than any other priest predator in the history of the seventy-parish Diocese of Evansville. See *id.* The priest never had a complaint against him, civil or criminal, and, thus far, no law suit has been filed. See *id.* Bishop Gettelfinger is "sure the abuse occurred," eleven years after the Bishop first learned of the priest, dead eight years at the time. *Id.*

⁴ The Boston Globe ran a month-long series of investigative articles in 2002, won the Pulitzer Prize, and spurred a wave of lawsuits. See generally INVESTIGATIVE STAFF OF THE BOSTON GLOBE, BETRAYAL: THE CRISIS IN THE CATHOLIC CHURCH (2002) (chronicling the sexual abuse of children by priests in the Catholic Church). The Archdiocese of Boston eventually settled claims of 552 victims for \$85 million. Laurie Goodstein, *Deal Reported in Abuse Cases in Los Angeles*, N.Y. TIMES, July 15, 2007, at A1.

⁵ No law review article thus far has focused primarily on the labor and employment consequences of these tactical bankruptcy filings. There are many aspects of sex crimes against minors that are beyond the scope of this Article. There is an understandable proliferation of law review articles on the myriad of aspects of the clergy sex crimes and their consequences. Some of the leading articles are John A. Alesandro, *A Study of Canon Law: Dismissal from the Clerical State in Cases of Sexual Misconduct*, 36 CATH. LAW. 201 (1996); Michael F. Aylward, *Constitution, Crime, Clergy: First Amendment Implications of Sexual Abuse Claims*, 70 DEF. COUNS. J. 196 (2003); Stephen M. Bainbridge & Aaron H. Cole, *The Bishop's Alter Ego: Enterprise Liability and the Catholic Priest Sex Abuse Scandal*, 46 J. CATH. LEGAL STUD. 65 (2007); John S. Baker, Jr., *Prosecuting Dioceses and Bishops*, 44 B.C. L. REV. 1061 (2003); Kelly W.G. Clark, Kristian Spencer Roggendorf & Peter B. Janci, *Of Compelling Interest: The Intersection of Religious Freedom and Civil Liability in the Portland Priest Sex Abuse Cases*, 85 OR. L. REV. 481 (2006); John J. Coughlin, *The Clergy Sexual Abuse Crisis and the Spirit of Canon Law*, 44 B.C. L. REV. 977 (2003); Thomas P. Doyle & Stephen C. Rubino, *Catholic Clergy Sexual Abuse Meets the Civil Law*, 31 FORDHAM URB. L.J. 549 (2004); Constance Frisby Fain & Herbert Fain, *Sexual Abuse and the Church*, 31 T. MARSHALL L. REV. 209 (2006); Jo Renee Formicola, *The Further Legal Consequences of Catholic Clerical Sexual Abuse*, 49 J. CHURCH & ST. 445 (2007); Scott C. Idleman, *Tort Liability, Religious*

Entities, and the Decline of Constitutional Protection, 75 IND. L.J. 219 (2000); Jonathan C. Lipson, *When Churches Fail: The Diocesan Debtor Dilemmas*, 79 S. CAL. L. REV. 363 (2006); Ira C. Lupu & Robert W. Tuttle, *Sexual Misconduct and Ecclesiastical Immunity*, 2004 BYU L. REV. 1789 (2004); Adam E. Lyons, *Here Is the Church, Now Who Owns the Steeple? A Revised Approach to Church Property Disputes*, 15 WM. & MARY BILL RTS. J. 963 (2007); Timothy D. Lytton, *Clergy Sexual Abuse Litigation: The Policymaking Role of Tort Law*, 39 CONN. L. REV. 809 (2007); Raymond C. O'Brien, *Clergy, Sex and the American Way*, 31 PEPP. L. REV. 363 (2004); James T. O'Reilly & Joann M. Strasser, *Clergy Sexual Misconduct: Confronting the Difficult Constitutional and Institutional Liability Issues*, 7 ST. THOMAS L. REV. 31 (1994); Theresa J. Pulley Radwan, *Keeping the Faith: The Rights of Parishioners in Church Reorganizations*, 82 WASH. L. REV. 75 (2007); Roundtable Discussion, *Religious Organizations Filing for Bankruptcy*, 13 AM. BANKR. INST. L. REV. 25 (2005); Patrick J. Schiltz, *The Impact of Clergy Sexual Misconduct Litigation on Religious Liberty*, 44 B.C. L. REV. 949 (2003); James A. Serritella, *Insurance Coverage Issues in Cases of Clergy Misconduct*, 39 CATH. LAW. 55 (1999); Jesse Belcher-Timme, Note, *Unholy Acts: The Clergy Sex Scandal in Massachusetts and the Legislative Response*, 30 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 243 (2004); Jesse J. Cooke, Comment and Note, *Beyond an Unfortunate "Occurrence": Insurance Coverage and the Equitable Redress of Victims of Sexual Predator Priests*, 36 ARIZ. ST. L.J. 1039 (2005); Ryan J. Donohue, Comment, *Thou Shalt Not Reorganize: Sacraments for Sale*, 22 EMORY BANKR. DEV. J. 293 (2005); Timothy Liam Epstein, Note, *Surviving Exemption: Should the Church Exemption to ERISA Still Be in Effect?*, 11 ELDER L.J. 395 (2003); Diana L. Grimes, Note, *Practice What You Preach: How Restorative Justice Could Solve the Judicial Problems in Clergy Sexual Abuse Cases*, 63 WASH. & LEE L. REV. 1693 (2006); Ashling A. Lyons, Note, *Thou Shalt Not Make This Plaintiff Whole: First Amendment Implications and Possible Solutions to the New Jersey Supreme Court's McKelvey Decision in the Wake of the Sexual Abuse Scandal*, 35 RUTGERS L.J. 1217 (2004); Daniel J. Marcinak, Comment, *Separation of Church and Estate: On Excluding Parish Assets from the Bankruptcy Estate of a Diocese Organized as a Corporation Sole*, 55 CATH. U. L. REV. 583 (2005); Felicia Anne Nadborny, Note, *"Leap of Faith" into Bankruptcy: An Examination of the Issues Surrounding the Valuation of a Catholic Diocese's Bankruptcy Estate*, 13 AM. BANKR. INST. L. REV. 839 (2005); Joel C. Norwood, *Commentary Introduction: Clergy Sexual Abuse*, 39 CONN. L. REV. 807 (2007); Janna Satz Nugent, Note, *A Higher Authority: The Viability of Third Party Tort Actions Against a Religious Institution Grounded on Sexual Misconduct by a Member of the Clergy*, 30 FLA. ST. U. L. REV. 957 (2003); Kathleen R. Robertson, Note, *Dark Days for the Church: Canon Law and the Response of the Roman Catholic Church to the Sex Abuse Scandals*, 4 WASH. U. GLOBAL STUD. L. REV. 161 (2005); Joseph A. Rohner IV, Comment, *Catholic Diocese Sexual Abuse Suits, Bankruptcy, and Property of the Bankruptcy Estate: Is the "Pot of Gold" Really Empty?*, 84 OR. L. REV. 1181 (2006); Laura Russell, Note, *Pursuing Criminal Liability for the Church and Its Decision Makers for Their Role in Priest Sexual Abuse*, 81 WASH. U. L.Q. 885 (2003); Michael J. Sartor, Note, *Respondent Superior, Intentional Torts, and Clergy Sexual Misconduct: The Implications of Fearing v. Bucher*, 62 WASH. & LEE L. REV. 687 (2004); Emily C. Short, Comment, *Torts: Praying for the Parish or Preying on the Parish? Clergy Sexual Misconduct and the Tort of Clergy Malpractice*, 57 OKLA. L. REV. 183 (2004); Allison Walsh Smith, Comment, *Chapter 11 Bankruptcy: A New Battleground in the Ongoing Conflict Between Catholic Dioceses and Sex-Abuse Claimants*, 84 N.C. L. REV. 282 (2005); Beth Wilbourn, Note, *Suffer the Children: Catholic Church Liability for the Sexual Abuse Acts of Priests*, 15 REV. LITIG. 251 (1996).

comprehensive prevention efforts,⁶ these crimes continue to occur. The Archdiocese of Los Angeles avoided otherwise probable bankruptcy by achieving a settlement of the claims of 508 victims for \$660 million dollars in mid-July of 2007, two days before the start of the trials wherein Cardinal Mahony would have been required to testify.⁷ This is the largest class settlement of the Catholic clergy sexual abuse claims to date—including prior settlements of eighty-six claims for \$114 million, the Archdiocese of Los Angeles will pay \$774 million.⁸ The extraordinary risks of going to civil trial on the tort claims brought by the victims of the crimes are thoroughly untenable.⁹

⁶ Perhaps the best of the analyses offered thus far is *Before Dallas: The U.S. Bishops' Response to Clergy Sexual Abuse of Children* (2008), authored by Professor Nicholas Cafardi, the former Dean of the Duquesne Law School, who has a doctorate in canon law and was an original member of the National Review Board established by the Bishops in June 2002. Upon the completion of a multi-year study by John Jay College of the City of New York, the Bishops of the United States promulgated the Charter for the Protection of Children and Young People, a comprehensive document adopted by the United States Conference of Catholic Bishops. See generally UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, *Charter for the Protection of Children and Young People* (2005). Among its salient features is a requirement that sexual abuse allegations that come to the attention of Church authorities will be reported to secular governmental authorities. *Id.* art. 4. Individual dioceses have instituted thorough background and record checks. See Lambert, *supra* note 1 (“[I]n the past several years, the church started prevention programs across the country. On Long Island, the Rockville Centre Diocese says that it has conducted background checks on 64,000 employees and volunteers.”).

⁷ Laurie Goodstein, *Deal Reported in Abuse Cases in Los Angeles*, N.Y. TIMES, July 15, 2007, at A1 [hereinafter Goodstein, *Deal Reported*].

⁸ See Laurie Goodstein, *After Abuse Settlement, an Apology to Victims*, N.Y. TIMES, July 16, 2007, at A9 [hereinafter Goodstein, *After Abuse Settlement*]; Laurie Goodstein, *Payout Is Bittersweet for Victims of Abuse*, N.Y. TIMES, July 17, 2007, at A15.

⁹ In addition to legitimate, compelling claims, there is likely to be some percentage of specious, extortionate claims—an especially pernicious, evil ramification. Priests understandably fear being falsely accused, and some believe that they are, de facto, presumed guilty and utterly abandoned by their Bishops.

Concomitantly, some plaintiffs' attorneys are working vigorously in lobbying state legislatures to remove all statutes of limitations from clergy sexual abuse cases. See Terry Carter, *Collaring the Clergy*, 93 A.B.A. J., June 2007, at 38, 41 (2007). In 2003, California removed its statute of limitations for filing such civil claims for one year. *Id.* at 40. Thus, hundreds of time-barred claims were given a one-year window of opportunity to proceed. See *id.* A prominent proponent for removing the statute of limitations vis-à-vis law suits against the Catholic Church in the sexual abuse cases is Professor Marci A. Hamilton, author of *God vs. the Gavel: Religion and the Rule of Law* (2005) and of the forthcoming book, *Justice Denied: What America Must Do to Protect Its Children* (2008). For a review of the former, see Douglas Laycock, *A Syllabus of Errors*, 105 MICH. L. REV. 1169 (2007) (book review). The state legislatures of Colorado in 2006 and Delaware in 2007 attempted

Thus far, the Catholic Church has paid more than \$1.5 billion in settlements.¹⁰ The total direct costs to the Church may approach \$3 billion.¹¹ These liabilities, even if substantially covered by insurance,¹² must inexorably take a toll—direct and indirect—upon the many positive services that the Church could otherwise initiate. The Archdiocese of Los Angeles announced that the headquarters of the Archdiocese and dozens of other properties—but no schools or churches—will have to be sold to raise funds necessary to effectuate the \$774 million settlement.¹³

This Article will take a somewhat different approach to the complex,¹⁴ multi-faceted, multi-generational consequences of the

unsuccessfully to remove the statute of limitations for sexual abuse committed by persons working for private (e.g., the Catholic Church) institutions, while retaining the statute of limitations vis-à-vis public institutions (e.g., public school teachers). These patently discriminatory anti-Catholic measures, targeting the Catholic Church while exempting public schools and the entire public sphere, failed to pass muster. The Catholic League for Religious and Civil Rights vigorously opposed the bifurcation of the removal of the statute of limitations vis-à-vis the private Catholic Church while retaining it for allegations against public school teachers. In full disclosure, the author of this Article, Professor Gregory, is the General Counsel pro bono for the Catholic League.

¹⁰ See Goodstein, *Deal Reported*, *supra* note 7. The leading settlement is that by the Archdiocese of Los Angeles, with \$774 million paid to settle the claims of almost 600 persons. See Goodstein, *After Abuse Settlement*, *supra* note 8. In addition, “[i]n California, the Diocese of Orange paid \$100 million for 90 abuse claims in 2004 and the Diocese of Oakland paid \$56 million to 56 people in 2005. The Diocese of Covington, in Kentucky, paid about \$85 million to about 350 people.” Goodstein, *Deal Reported*, *supra* note 7. Although beyond the scope of this Article, the Catholic Church in the United States has also been afflicted by pervasive embezzlement. A study by Villanova University concluded in 2006 that embezzlement from Sunday collections occur in approximately eighty-five percent of all parishes. Laurie Goodstein, *Survey Finds Embezzlement in Many Catholic Dioceses*, N.Y. TIMES, Jan. 5, 2007, at A11; see, e.g., Christopher Maag, *Cleveland Diocese Accused of Impropriety as Embezzlement Trial Nears*, N.Y. TIMES, Aug. 20, 2007, at A8 (discussing a former assistant treasurer of the Diocese of Cleveland charged with money laundering and tax evasion and noting that a class action suit, which was ultimately dismissed, was filed against the Bishop “for allowing his top deputies to embezzle \$2 million from the church”).

¹¹ Bainbridge & Cole, *supra* note 5.

¹² For example, \$227 million of the \$660 million settlement in July 2007 of 508 claimants’ suits for sexual abuse involving the Archdiocese of Los Angeles will be paid by the insurers of the Archdiocese. Goodstein, *After Abuse Settlement*, *supra* note 8.

¹³ Suzanne Sataline, *Diocese to Sell Properties for Sex-Abuse Settlement*, WALL ST. J., July 16, 2007, at A6.

¹⁴ Goodstein, *Deal Reported*, *supra* note 7 (“The Los Angeles cases have been particularly complex because they involve so many victims, multiple insurance companies, many Catholic religious orders whose own priests and brothers stand accused, and a prominent archbishop, Cardinal Roger M. Mahony . . .”).

Church's sexual abuse crisis. I will examine, and reflect upon, some of the salient labor and employment ramifications of, thus far, five, diocesan bankruptcy filings. Five dioceses have filed for bankruptcy since 2004, and as of December 3, 2007—with the emergence of the Diocese of Davenport, Iowa from bankruptcy following a \$37 million settlement of the claims of 156 persons—all five of the dioceses that filed have emerged from bankruptcy.¹⁵ First, a synoptic chronology and brief overview of the five filings is necessary.

I. THE FIVE DIOCESAN BANKRUPTCY FILINGS: 2004–PRESENT

A. *The Archdiocese of Portland*

The Archdiocese of Portland, Oregon was the first Catholic diocese or archdiocese to file for Chapter 11 bankruptcy in the United States, on July 6, 2004.¹⁶ The Portland Archdiocese, with approximately 356,000 parishioners, filed after paying \$53 million to settle 133 claims brought by individuals abused by diocesan priests, including \$21 million in 2004 alone.¹⁷ The filing halted a pair of sex abuse trials, in which two plaintiffs were seeking more than \$155 million in damages.¹⁸

At the time of filing, the Portland Archdiocese faced approximately \$338 million in tort claims and \$22 million in trade creditors claims.¹⁹ By December 2006, the archdiocese had already paid approximately an additional \$15 million to cover its legal expenses. At their peak, the claims against the archdiocese reached \$500 million,²⁰ from approximately 175 claimants who alleged sexual misconduct by clergy in the Portland Archdiocese.²¹

¹⁵ Dan Frosch, *Diocese in Iowa Settles with Abuse Victims for \$37 Million*, N.Y. TIMES, Dec. 4, 2007, at A24.

¹⁶ Alan Cooperman, *Archdiocese of Portland, Ore., Declares Bankruptcy*, WASH. POST, July 7, 2004, at A1.

¹⁷ Janet I. Tu & Stuart Eskenazi, *Archdiocese in Portland Declares Bankruptcy*, SEATTLE TIMES, July 7, 2004, at A1.

¹⁸ *Id.*

¹⁹ Christina M. Davitt, *Whose Steeple Is It? Defining the Limits of the Debtor's Estate in the Religious Bankruptcy Context*, 29 SETON HALL LEGIS. J. 531, 532 (2005).

²⁰ *Portland Archdiocese Settles Sex-Abuse Claims*, OREGONIAN, Dec. 11, 2006, http://www.oregonlive.com/weblogs/print.ssf?mtlogs/olive_oregonian_news/archives/print214297.html.

²¹ *In re Roman Catholic Archbishop of Portland in Or.*, No. 04-37154-elp11, slip

The archdiocese contended in its bankruptcy filings that it possessed approximately \$10 million in assets.²² However, this accounting excluded parish property, and consisted solely of diocesan property. The plaintiff/claimants alleged gross underrepresentation of the archdiocese's true assets. Real estate records in Oregon indicated that the value of parish properties exceeded \$400 million.²³ Plaintiffs averred in a complaint filed on August 11, 2004 that the properties should be included as assets of the archdiocese, since the Portland archdiocese holds legal title to them. In response, the archdiocese contended that under canon law, these properties belonged to the parishes, and the archdiocese merely holds legal title to them in trust.²⁴

On December 30, 2005, U.S. Bankruptcy Judge Elizabeth Perris held that the archdiocese, and not the individual parishes, owned the parish properties.²⁵ This was a significant defeat for the archdiocese, which sought to exclude the parish properties from the archdiocesan assets. Judge Perris, however, left open the question of whether the sale of individual church properties could constitute an unfair burden on the practice of religion under the Religious Freedom and Restoration Act of 1993. She indicated that her decision did not automatically mean that the parish properties were part of a future bankruptcy settlement.

In June 2006, the archdiocese announced \$1.9 million in budget and staff cuts.²⁶ These cuts came three years after the archdiocese initially made \$2 million in similar reductions. All of these reductions were in the direct wake of the bankruptcy proceedings, and in planning the debt service for paying tort claims for sexual abuse committed by clergy.²⁷ The June 2006 staff cuts totaled 14.25 full-time equivalent positions, in addition

op. at 2–3 (Bankr. D. Or. Apr. 13, 2007).

²² *Portland Archdiocese Lists \$10 Million in Assets*, CATH. WORLD NEWS, Aug. 2, 2004, <http://www.cwnews.com/news/viewstory.cfm?recnum=31225>.

²³ *Id.*

²⁴ *Id.*

²⁵ *Tort Claimants Comm. v. Roman Catholic Archdiocese of Portland*, 335 B.R. 842, 866, 868 (Bankr. D. Or. 2005); William McCall, *Judge Rules Portland Church Property Subject to Bankruptcy Settlement*, SAN DIEGO UNION-TRIB., Dec. 30, 2005, <http://www.signonsandiego.com/news/nation/20051230-2039-portlandarchdiocese.html>.

²⁶ News Release, Archdiocese of Portland in Or., Archdiocese Announces Budget and Staff Cuts (June 1, 2006), available at <http://www.archdpx.org/bankruptcy/news/staff-cuts06.html>.

²⁷ *Id.*

to 20 positions cut in 2003.²⁸ Some employees were notified that their positions were eliminated, some had the number of days they worked reduced, and others were transferred to other duties. Outplacement assistance was provided to those losing their jobs.²⁹

After two rounds of mediation of the tort claims over a period of more than two years, a settlement was agreed to by all but three claimants.³⁰ Global mediation began in September 2006; on April 13, 2007, Judge Perris's signed confirmation memorandum was filed.³¹ The settlement consisted of a \$75 million payment to claimants, which included a fund of approximately \$20 million reserved for future claims. Insurance covered \$52 million.³² The funds not provided by insurance came from assets controlled by the archdiocese, but not those of its parishes and schools.³³ In order to gain approval of the plan, the archdiocese proved that it had access to \$40 million in cash from Allied Irish Bank, as well as additional unrestricted assets on which it could draw if necessary, all of which were sufficient to satisfy all of the financial obligations provided for in the plan.³⁴

In September 2007, the Archdiocese emerged from bankruptcy "after it settled 153 claims of sexual abuse for \$51 million, with an additional \$20 million allotted for possible future victims."³⁵

B. *Diocese of Tucson*

The second Catholic diocese in the United States to file for Chapter 11 protection was also the first to successfully emerge from bankruptcy. The Diocese of Tucson, Arizona, which consists of 75 parishes and over 300,000 parishioners throughout nine counties, filed for bankruptcy on September 20, 2004 as a result

²⁸ *Id.*

²⁹ *Id.*

³⁰ *In re* Roman Catholic Archbishop of Portland in Or., No. 04-37154-elp11, slip op. at 1–2 (Bankr. D. Or. Apr. 13, 2007).

³¹ *Id.* at 2–3.

³² Ashbel S. Green, *Archdiocese Outlines \$75 Million Settlement*, OREGONIAN, Dec. 19, 2006, at A1.

³³ *Id.*

³⁴ *In re* Roman Catholic Archbishop of Portland in Or., No. 04-37154-elp11, slip op. at 17–18 (Bankr. D. Or. Apr. 13, 2007).

³⁵ Frosch, *supra* note 15.

of existing debt and the imminent litigation of clerical sex abuse cases.³⁶

Prior to the bankruptcy filing, the diocese had already paid \$17 million in costs related to the abuse scandal.³⁷ In 2002, it had reached settlements with 16 plaintiffs, for approximately \$14 million.³⁸ In order to provide funds sufficient for the settlements, the diocese had to borrow \$4.7 million from its parishes. Prior to the settlements, the diocese had paid \$155,000 to eight other claimants in the 1990s.³⁹ At the time of its bankruptcy filing, 22 more lawsuits with 34 plaintiffs had been filed against the Tucson Diocese.⁴⁰

At the time of filing, the diocese listed \$16.6 million in assets and \$20.7 million in liabilities, but that did not include assets of parishes or its fund-raising arm, the Catholic Foundation for the Diocese of Tucson.⁴¹ The diocese's parishes each retained their own bankruptcy attorneys.⁴²

On July 11, 2005, U.S. Bankruptcy Judge James Marlar confirmed the diocese's reorganization plan. The diocese agreed to make available \$22.2 million for settlements of claims of sexual abuse by priests and church workers.⁴³ In the "tiered" system plan for distribution, \$15.7 million was made available to more than 50 victims under the settlement agreement.⁴⁴ More than 24 victims received \$200,000 to \$600,000 each, based on tiers related to the acts of abuse and injuries suffered. Five parents of victims received \$21,250 to \$30,000 each. Of the total amount, \$5 million was set aside to pay minors and future

³⁶ Arthur H. Rotstein, *Tucson Diocese Files for Bankruptcy*, WASH. POST, Sept. 21, 2004, at A22.

³⁷ Sheryl Kornman, *Tucson Diocese Seeks Bankruptcy Protection*, USA TODAY, Sept. 21, 2004, http://www.usatoday.com/news/nation/2004-09-20-tucson-bankrupt_x.htm.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Stephanie Innes, *Diocese: Parishes Separate*, ARIZ. DAILY STAR, Dec. 10, 2004, at B.

⁴² *Id.*

⁴³ Arthur H. Rotstein, *Tucson Diocese Emerges from Chapter 11 Protection*, ARIZ. REPUBLIC, Sept. 21, 2005, <http://www.azcentral.com/arizonarepublic/local/articles/0921diocese21.html>.

⁴⁴ *Id.*

claimants.⁴⁵ The balance was to be divided among already authorized, identified victims.⁴⁶

The \$22.2 million was derived from several sources. It included \$14.8 million from insurers and approximately \$2 million from the parishes.⁴⁷ In addition, the diocese provided \$5.58 million of the settlement amount, all but \$300,000 of that coming from an auction of its real estate holdings.⁴⁸

C. *Diocese of Spokane*

Exactly five months after the Diocese of Portland filed for bankruptcy, the Diocese of Spokane followed suit on December 6, 2004.⁴⁹ The move by the diocese, which consists of 82 parishes, 17 schools, and 93,000 parishioners, came one month before the start of a sex abuse trial, and one month after five of the diocese's insurance carriers filed suit, arguing that they should not have to pay any settlements or judgments in sex abuse cases, in part because Church officials knew about the abuses but did nothing.⁵⁰ The filing also brought the issue of diocesan bankruptcy back to the forefront of media attention, as the Bishop of the Spokane Diocese, William Skylstad, vice president of the U.S. Conference of Catholic Bishops, became President of the Conference.⁵¹

The move to Chapter 11 protection came after settlement talks involving 28 plaintiffs allegedly abused by Rev. Patrick O'Donnell, a former Spokane priest, collapsed.⁵² However, the diocese stated that it knew of 125 people, half of whom had retained counsel, who said they had been abused by priests in Eastern Washington.⁵³ The settlement that was ultimately approved resulted in payments to approximately 150 claimants.⁵⁴

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Arthur H. Rotstein, *Bankruptcy Judge OKs Tucson Diocese Plan to Reorganize*, ARIZ. REPUBLIC, July 12, 2005, <http://www.azcentral.com/arizona-republic/local/articles/0712tucsondiocese12.html>.

⁴⁸ *Id.*

⁴⁹ Janet I. Tu, *Spokane Diocese Files for Bankruptcy*, SEATTLE TIMES, Dec. 7, 2004, at B1.

⁵⁰ *Id.*

⁵¹ See Jonathan Martin & Janet I. Tu, *Catholic Diocese of Spokane to File for Bankruptcy*, SEATTLE TIMES, Nov. 11, 2004, at A1.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ John K. Wiley, *Diocese's Bankruptcy Plan to Be Approved*, AP ONLINE

Liabilities arising from the claims were estimated by the diocese in its bankruptcy filing to be approximately \$80 million.⁵⁵ By the time the diocese filed for bankruptcy, it had paid only \$272,500 in settlements to five victims between 1999 and 2004.⁵⁶

In the bankruptcy filing, the diocese listed \$11.1 million in assets.⁵⁷ Additionally, “the diocese ha[d] between \$15 million and \$19 million in insurance coverage related to the O’Donnell claims.”⁵⁸ As with the other diocesan bankruptcy filings, however, the plaintiffs alleged that the exclusion of parish assets significantly diminished the real value of the diocese’s assets, which they estimated to be closer to \$80 million.⁵⁹ In August 2005, a U.S. Bankruptcy Court judge held that individual parishes within the Spokane Diocese, along with some other Catholic institutions, should be included in the pool of assets available to victims.⁶⁰ This decision, however, was overturned by U.S. District Court Judge Justin Quackenbush, who held that “while the Spokane bishop held the deeds to individual parishes, the parishioners paid for the properties and, therefore, the bishop was only holding the properties in trust.”⁶¹

The diocese put forward an initial \$45.7 million settlement proposal for 75 identified victims of abuse.⁶² That proposal was rejected by the U.S. Bankruptcy Court judge, stating that “it [was] unfair to specify an amount for those 75 victims but not for others who [had not yet] filed lawsuits or [otherwise] come forward.”⁶³ An eventual settlement was reached, however, with only a minor increase in the offer. On April 24, 2007, the Bankruptcy Court judge confirmed a reorganization plan to allow the Diocese of Spokane to emerge from bankruptcy and pay

REGIONAL, Apr. 24, 2007, at 1.

⁵⁵ See Nicholas K. Geranios, *Diocese Cites Abuse Claims in Wash. Bankruptcy Filing*, BOSTON GLOBE, Dec. 7, 2004, http://www.boston.com/news/nation/articles/2004/12/07/diocese_cites_abuse_claims_in_wash_bankruptcy_filing/.

⁵⁶ Martin & Tu, *supra* note 51.

⁵⁷ Geranios, *supra* note 55.

⁵⁸ Martin & Tu, *supra* note 51.

⁵⁹ See Nicholas K. Geranios, *Can Spokane Diocese Survive Bankruptcy? Ruling May Expose More Assets to Abuse*, COLUMBIAN (Vancouver, Wash.), July 11, 2005, at C2.

⁶⁰ See Janet I. Tu, *Judge: Spokane Diocese Can’t Sell Parishes*, SEATTLE TIMES, June 16, 2006, at B1.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

victims of sex abuse \$48 million.⁶⁴ The settlement was unanimously⁶⁵ approved by the parties, with each of the 150 plaintiffs receiving between \$15,000 to \$1.5 million, depending on the extent of the abuse they had suffered.⁶⁶ The plan also included the creation of a \$1 million fund for future claims. Of the money distributed, \$20 million came from insurance settlements, \$10 million came from the 82 parishes in the diocese, and the remainder came from the sale of church property.⁶⁷ Shortly after the announcement of the settlement, the diocese began a Chapter 11 Settlement Campaign, which asked every Catholic household in the diocese to contribute funds in order to meet the \$10 million obligation of the parishes.⁶⁸ The diocese indicated that participation in the Settlement Campaign was voluntary, though the parishes were obligated to deposit a total of \$10 million in the bankruptcy plan's trust by December 31, 2007.⁶⁹ The settlement also required Spokane Bishop William Skylstad, President of the U.S. Conference of Catholic Bishops, despite the Chapter 11 filing, to advocate an end to statutes of limitations for sex abuse crimes and also to write letters of apology to abuse victims and their families.⁷⁰

D. Diocese of Davenport

On October 11, 2006, the Diocese of Davenport became the fourth United States Catholic diocese to file for Chapter 11 protection. The filing came in response to 25 claims of sexual abuse against four priests of the diocese; it was also triggered by prospective future claims of persons who had yet to come forward, according to Bishop William Franklin.⁷¹

⁶⁴ Wiley, *supra* note 54.

⁶⁵ Four wealthy Catholic businessmen, however, deemed the settlement a "disaster," and called on the Bishop to resign. *Bishop Skylstad Asked to Resign*, 43 NAT'L CATH. REP., May 4, 2007, at 3.

⁶⁶ Wiley, *supra* note 54.

⁶⁷ *Id.*

⁶⁸ Robert Hailey & Father Michael Savelesky, *From Justice to Healing and Renewal: The Chapter 11 Settlement Campaign*, INLAND REGISTER, May 3, 2007, http://www.dioceseofspokane.org/Communications/IR_2007/ir050307/campaign.htm.

⁶⁹ *Id.*

⁷⁰ Wiley, *supra* note 54.

⁷¹ Thomas Geyer, *Davenport Diocese Files for Bankruptcy*, QUAD-CITY TIMES, Oct. 11, 2006, <http://www.qctimes.com/articles/2006/10/11/news/local/doc452c25cbc994c696535369.txt>.

The diocese filed for bankruptcy twenty-two days after a jury awarded \$1.5 million to a Davenport man who claimed he was sexually abused by a priest in the Davenport Diocese nearly fifty years ago.⁷² Prior to this award, the diocese had reached settlements in 2004 and 2005 totaling \$10.5 million.⁷³ The diocese estimated in its bankruptcy filings that 25 pending claims, along with those that may yet be brought by future litigants, presented up to \$100 million in future liabilities to the diocese.⁷⁴

The estimated liabilities from sex abuse-related claims vastly outweighed the diocese's assets. However, the diocese's assets were significantly greater than its current liabilities. In its bankruptcy filing, the diocese reported approximately \$7 million in assets, which were offset by approximately \$1.6 million in liabilities, related in large part to the recent \$1.5 million award.⁷⁵ The assets included \$4.49 million in investments and \$2.53 million in real estate.⁷⁶ The liabilities did not include any factors relating to the estimated \$100 million in losses the diocese anticipated from future claims. The diocese also insisted, relying on federal District Judge Justin Quackenbush's decision in the *Diocese of Spokane*, that the assets of its parishes would not be incorporated into the lawsuit, as the Diocese of Davenport asserted that it does not own the parishes it serves.

The Diocese's bankruptcy lawyer, Richard Davidson, stated that the diocese anticipated that its employees would not suffer any financial loss by the time the bankruptcy was resolved.⁷⁷ Davidson also filed a motion to enable the diocese to maintain its payroll for its employees throughout the bankruptcy proceedings.⁷⁸

On December 3, 2007, the Diocese emerged from bankruptcy, as it announced it settled for \$37 million the claims of 156

⁷² Barb Arland-Fye, *Diocese of Davenport Files for Bankruptcy*, CATH. NEWS SERV., Oct. 11, 2006, <http://www.catholicnews.com/data/stories/cns/0605777.htm>.

⁷³ *Id.*

⁷⁴ Voluntary Petition for Chapter 11 Bankruptcy, *In re Diocese of Davenport*, No. 3:06-BK-02229-LMJ (Bankr. S.D. Iowa Oct. 10, 2006).

⁷⁵ See *id.*; Tom Saul, *Davenport Diocese Bankruptcy: An Inside Glimpse at the Books*, QUAD-CITY TIMES, Oct. 15, 2006, <http://qctimes.com/articles/2006/10/15/news/local/doc4531c7f74d727956636129.txt>.

⁷⁶ Saul, *supra* note 75.

⁷⁷ *Id.*

⁷⁸ *Id.*

persons alleging they had been abused as far back as the 1930s.⁷⁹ Some of the money will be set aside, in the event of future claims by other persons. The settlement was achieved at 1:00 a.m. on December 3rd, after four days of intense mediation in Chicago.

E. Diocese of San Diego

On February 27, 2007, in the most recent instance of diocesan reorganization, the United States' fifth largest Catholic Diocese filed for Chapter 11 protection.⁸⁰ The Diocese filed, literally, "at midnight before the first trial was supposed to start."⁸¹

The Diocese of San Diego is the largest American diocese to file for bankruptcy protection as a consequence of lawsuits alleging sexual abuse.⁸² The Diocese of San Diego covers San Diego and Imperial counties, consists of ninety-eight churches and fifty schools, and is home to almost one million parishioners.⁸³ There are forty-five Catholic grade schools, with a total enrollment of 13,619, and five Catholic high schools, with a total enrollment of 4,138.⁸⁴

According to the diocese, there were 166 allegations of sexual abuse by priests and other ministers in the Diocese of San Diego pending at the time it filed for Chapter 11 protection.⁸⁵ Of the 166 claims, 126 stem from the 1950s to 1970s.⁸⁶ There were 143 consolidated sex abuse claims that the diocese faced as it filed for Chapter 11 protection.⁸⁷

The estimated liability from those 143 claims is approximately \$200 million dollars. This estimate is derived

⁷⁹ See Frosch, *supra* note 15.

⁸⁰ Mark Sauer, *S.D. Catholic Diocese Files for Bankruptcy*, SAN DIEGO UNION-TRIB., Feb. 28, 2007, at A1.

⁸¹ Brian Baxter, *Back on Solid Ground: Floodwaters are Receding for the San Diego Diocese*, AM. LAW., Oct. 2007, at 30, 30.

⁸² Sauer, *supra* note 80.

⁸³ *Bishop: San Diego Diocese Plans Bankruptcy Filing*, USA TODAY, Feb. 28, 2007, http://www.usatoday.com/news/religion/2007-02-27-sd-church_x.htm?csp=34.

⁸⁴ DIOCESE OF SAN DIEGO, DIOCESAN CHAPTER 11 REORGANIZATION—JUST FOR THE RECORD . . . ON CATHOLIC SCHOOLS AND TAX DOLLARS (2007) (on file with author).

⁸⁵ DIOCESE OF SAN DIEGO, DIOCESAN CHAPTER 11 REORGANIZATION—HISTORICAL OVERVIEW OF CLAIMS (2007) (on file with author).

⁸⁶ *Id.*

⁸⁷ *Bankruptcy Judge Orders Catholic Diocese to Disclose Parish Accounts*, CATH. ONLINE, Apr. 13, 2007, http://www.catholic.org/national/national_story.php?id=23761.

from the average settlement figure in California for similar cases. In 2006, the Archdiocese of Los Angeles settled forty-five of more than 500 pending cases for \$60 million, or an average of about \$1.3 million each.⁸⁸ In 2004, the Diocese of Orange County settled ninety abuse claims for \$100 million, or \$1.11 million each.⁸⁹ From these settlements it is estimated that the San Diego Diocese faces up to \$200 million in potential liability.

The total value of the assets of the diocese is a matter of significant controversy; there have been claims of fraud and deceit. The diocese faced a possible contempt charge by a federal bankruptcy judge and was ordered to undergo an external audit. Judge Adler threatened to hold Bishop Brom, two parish priests, and the diocesan counsel in contempt.⁹⁰ Initially, the diocese had submitted a listing of assets that included real estate property worth more than \$95.7 million and personal property of \$60.4 million.⁹¹ If the estimated value of all liabilities actually reached the \$200 million figure, the diocese's total assets clearly were dwarfed by its liabilities.

Plaintiffs' attorneys, however, made several arguments that the diocese's assets actually far exceeded the figures it presented to the bankruptcy court. They contended that two high schools should be considered among the diocese's major assets.⁹² The campus of the University of San Diego High School ("San Diego High"), was about to be sold, before the bankruptcy proceedings, for \$65 million to a developer who planned to build condominiums.⁹³ The property was not listed by the diocese as an asset in its bankruptcy filings, which claimed that the property was owned by the Catholic Secondary Education–Diocese of San Diego Corporation ("Secondary Education Corp."), a separate incorporated entity, formed by the diocese to raise public money for the construction of the school.⁹⁴ The property was transferred to Secondary Education Corp. in October 2004,

⁸⁸ See Sauer, *supra* note 80.

⁸⁹ *Id.*

⁹⁰ Baxter, *supra* note 81, at 30.

⁹¹ Mark Sauer, *Legal Fight over Diocese Assets Zeroes in on Campus*, SAN DIEGO UNION-TRIB., Mar. 16, 2007, at A1.

⁹² See *id.*

⁹³ *Id.*

⁹⁴ *Id.*

and a bid in 2004 in Los Angeles Superior Court by alleged abuse victims failed to stop the transfer.⁹⁵

The Cathedral Catholic High School (“Cathedral”), in Carmel Valley, also listed by the diocese as owned by the Secondary Education Corp.,⁹⁶ is an \$80 million facility of 2,000 students. It is the largest Catholic secondary school in the county.⁹⁷ Plaintiffs argued that its transfer was an attempt to shield the asset, and that Cathedral, like San Diego High, is actually owned by the diocese through the diocese’s ownership of Secondary Education Corp.

The San Diego Diocese was also accused of excluding 770 parish accounts from its general accounting in its bankruptcy filing.⁹⁸ Bankruptcy Judge Louise DeCarl Adler, ordered an external audit of the Diocese of San Diego, and threatened the diocese with contempt for misrepresenting facts and possibly violating bankruptcy laws.⁹⁹ The diocese responded by arguing that it had no control over the assets in the parish accounts.

Furthermore, Zalkin & Zimmer, LLP, a leading firm representing some of the claimants, argued that the diocese actually had \$600 million worth of real property, based solely on tax assessor’s values.¹⁰⁰ It also contended that through the Catholic Mutual Group, the diocese’s insurance protected it from \$250 thousand up to \$20 million per person for each abuse claim.

In March of 2007, the diocese proposed a \$95 million settlement schedule for victims that would offer each plaintiff anywhere from \$10,000 to \$800,000.¹⁰¹ This range fell short of comparative settlements in California, which averaged around \$1.11 million to \$1.3 million. The dramatic discrepancy between this parsimonious range and that of the comparatively more substantial settlements in California, coupled with the numerous

⁹⁵ See *Bid to Freeze Assets of San Diego Diocese Rejected*, CATH. NEWS AGENCY, Oct. 7, 2004, <http://www.catholicnewsagency.com/new.php?n=2148>.

⁹⁶ Sauer, *supra* note 90.

⁹⁷ *Id.*

⁹⁸ See *Sexual Abuse: Federal Bankruptcy Judge Orders External Audit of San Diego Diocese Accounts*, CATH. NEWS AGENCY, Apr. 13, 2007, <http://www.catholicnewsagency.com/new.php?n=9095>.

⁹⁹ *Id.*

¹⁰⁰ Press Release, Zalkin & Zimmer, LLP, Response to Pastoral Statement from Bishop Robert Brom of San Diego Diocese (Feb. 18, 2007), available at <http://www.signonsandiego.com/news/metro/20070218-1416-response.html>.

¹⁰¹ Allison Hoffman, *California Diocese Threatened with Contempt*, ABC NEWS, Apr. 11, 2007, <http://abcnews.go.com/print?id=3029537>.

acrimonious allegations of dishonesty and asset shifting, resulted in a very cold reception and summary rejection of the proposed settlement by the plaintiffs.

In April of 2007, Judge Adler ordered an audit of the Archdiocese, whose records she called “the most Byzantine accounting system I’ve ever seen.”¹⁰² Some parishes were moving around tens of thousands of dollars involving hundreds of bank accounts.

On June 24, 2007, Bishop Robert Brom announced that the diocese would continue its effort to exclude parish assets from the bankruptcy lawsuit, citing canon law that holds that parish assets are entirely separate from diocesan assets.¹⁰³

Pursuant to Judge Adler’s order of an audit in April, the 175-page first audit report by R. Todd Neilson, a forensic CPA, was issued on July 30, 2007. The report analyzed forty-eight of ninety-three parishes and twenty-six of forty-three schools. The audit report:

singled out peculiarities at several parishes, ranging from a parish presented as impoverished that had \$1.2 million in its bank accounts, to two parishes that apparently moved cash out of accounts at the time of the bankruptcy filing, putting checks for tens of thousands of dollars into parish safes, where the amounts would not be factored into data included in the bankruptcy material.¹⁰⁴

R. Todd Neilson, the court-appointed expert auditor, said that some parishes had “engaged in openly questionable activities,” but he also said that he could not recall an assignment where he had “more complete and positive cooperation” from a subject.¹⁰⁵

In late August of 2007, Judge Adler ordered more than forty sex abuse cases against the diocese to proceed immediately to trial; trials for five cases had been suspended since February, when the diocese filed for bankruptcy on the evening before the trials were scheduled to commence on the morning of February 28th.¹⁰⁶ Judge Adler opined earlier in August that the diocese was concealing assets:

¹⁰² *Audit of Diocese Finds “Byzantine Accounting,”* AMERICA, Aug. 13–20, 2007, at 8.

¹⁰³ DIOCESE OF SAN DIEGO, DIOCESAN CHAPTER 11 REORGANIZATION—A PASTORAL UPDATE FROM BISHOP ROBERT (2007) (on file with author).

¹⁰⁴ *Audit of Diocese Finds “Byzantine Accounting,”* *supra* note 102.

¹⁰⁵ Brian Baxter, *supra* note 81, at 30.

¹⁰⁶ *California: Sex-Abuse Trials to Go On*, N.Y. TIMES, Aug. 25, 2007, at A11.

Some parishes are actively and deliberately hiding assets . . . or inappropriately designating donations as restricted to circumvent or evade the direction of the diocese and/or the court. . . . Bank accounts have not been fully disclosed on the diocese's bankruptcy schedules . . . The diocese failed to disclose material facts to the court with respect to its cash-management system. . . . [The] diocese has persisted in reporting its assets at assessed valuation, rather than fair-market value as required by all debtors in bankruptcy proceedings.¹⁰⁷

Thus, ignominiously, the largest Archdiocese to file thus far for bankruptcy has been labeled as fundamentally dishonest by the federal bankruptcy court.

Despite the numerous accusations of fraud and dishonesty, and the mounting frustrations of the bankruptcy court, the diocese reached a settlement with 144 of the claimants on September 7, 2007, and the settlement will be presented to Judge Adler for approval.¹⁰⁸ At \$198.1 million, it is the second largest settlement made by a Catholic diocese in connection with the sexual abuse scandal after the Archdiocese of Los Angeles, which had its \$660 million settlement approved two months earlier.¹⁰⁹ Under the agreement, the diocese will pay approximately \$107 million, the Diocese of San Bernardino will contribute approximately \$15 million, and insurance will pay approximately \$76 million.¹¹⁰

In order to fund its contribution to the settlement agreement, the diocese will likely look toward its significant property holdings throughout San Diego County. While the diocese has not indicated exactly how it will fund its portion of the settlement, the chancellor of the diocese, Rodrigo Valdivia, stated that the diocese had no plans to close any parishes or schools as a consequence of the settlement agreement.¹¹¹ As of early December 2007, the diocese faces a \$25 million shortfall.¹¹²

¹⁰⁷ Order to Show Cause Why Case Should Not Be Dismissed, *In re Roman Catholic Bishop of San Diego*, No. 07-00939-A11 (Bankr. S.D. Cal. Aug. 10, 2007).

¹⁰⁸ See Randal C. Archibold, *San Diego Diocese Settles Lawsuit for \$200 Million*, N.Y. TIMES, Sept. 8, 2007, at A8.

¹⁰⁹ See *id.*

¹¹⁰ See *id.*

¹¹¹ See *id.*

¹¹² Frosch, *supra* note 15.

II. A SYNOPSIS OF MAJOR LEGAL ISSUES

Of all of the issues presented by the diocesan reorganizations, perhaps the most crucial are the methods used by the Church and by the bankruptcy courts to account for a diocese's assets.¹¹³ Much turns on whether a bankruptcy court can include, or must exclude, the assets of a diocese's individual parishes when accounting for the total assets of the diocese. The majority of the assets of the five dioceses that filed for bankruptcy were contained in the individual parishes; the bulk of a diocese's assets is usually in the real estate of the parishes. Accordingly, the total amount a diocese is forced to pay out to claimants under a bankruptcy settlement could be vastly increased if the court holds that the value of all of the parishes' properties should be included in the assets of the diocese, and if, as appears likely in San Diego, the court determines that the parishes were complicit with the diocese in subterfuge.

Whether parishes are considered within the asset pool of the diocese also implicates core First Amendment questions. The dioceses that filed for bankruptcy claimed that canon law strictly separates the assets of the diocese from the assets of the individual parishes. According to canon law, the diocese merely holds the properties in trust. Consequently, they should not be accounted as assets in any bankruptcy reorganization plan. To do so would trigger unconstitutional excessive entanglement of the federal bankruptcy court in the internal theology of the Church. Plaintiffs/creditors counter this defense by arguing that since the bishop of a diocese holds title to all of the properties, the bankruptcy court should not unilaterally exclude any of the assets of a diocese. And, since the diocese voluntarily invoked the protections of the bankruptcy law, it cannot concurrently invoke canon law to avoid selective application of the federal bankruptcy law by the federal bankruptcy court.

The day-to-day management of the estate—of the diocese—once a diocese enters bankruptcy, has many important constitutional dimensions. The bishop is potentially wholly conflicted when he functions as a debtor in possession. Normally, the duties of a debtor in possession go toward the estate's

¹¹³ The landmark article, written decades before the sex crimes came to light in 2002, is perhaps, Charles M. Whelan, S.J., *Current Attitudes of the Courts Toward Church Properties and Liabilities*, 26 CATH. LAW. 219 (1981).

creditors. However, in a diocesan reorganization, the debtor in possession—the bishop—has an inviolable allegiance to the Church. A settlement requiring the Bishop to proselytize for removal of the statute of limitation for bringing claims of sexual abuse supplants the pastoral leadership of the Bishop with that of the federal courts. If the creditors are not satisfied with a bishop as a debtor in possession, this conflict can quickly metastasize as to whether the court can appoint a Chapter 11 trustee, rather than the bishop of the diocese, for a religious entity debtor, directly triggering the most essential First Amendment concerns.

Chaos reigns, and, given the deterioration in San Diego, threatens to exponentially accelerate. Each of the bankruptcy judges to pronounce on these issues has charted their own course in the five diocesan reorganizations thus far. There are obviously contradictions among the various opinions and orders. For example, in the *Diocese of Spokane*, the Bankruptcy Court judge held that individual parishes within the Spokane Diocese, along with some other Catholic institutions, should be included in the pool of assets available to satisfy victims' claims.¹¹⁴ That decision, however, was overturned by District Judge Justin Quackenbush.¹¹⁵ Similarly, in the Archdiocese of Portland, Bankruptcy Judge Elizabeth Perris held that the archdiocese, and not the individual parishes, owned the parish properties.¹¹⁶ Perris left open, however, the question of whether this could pose an unconstitutional burden on the practice of religion under the Religious Freedom and Restoration Act of 1993. She then indicated that her holding did not automatically mean that the parish properties could be included as part of any future bankruptcy settlement.¹¹⁷

These are all critically important issues and questions, and are sure to command attention over the course of the next several decades, as other dioceses are likely to enter into the bankruptcy regime.

¹¹⁴ *In re Catholic Bishop of Spokane*, 329 B.R. 304, 330–31 (Bankr. E.D. Wash. 2005).

¹¹⁵ *Comm. of Tort Litigants v. Catholic Diocese of Spokane*, 364 B.R. 81, 95 (Bankr. E.D. Wash. 2006).

¹¹⁶ *In re Roman Catholic Archbishop of Portland in Or.*, 335 B.R. 842, 867–68 (Bankr. D. Or. 2006).

¹¹⁷ *Id.* at 866.

III. LABOR AND EMPLOYMENT RAMIFICATIONS OF THE DIOCESAN BANKRUPTCY FILINGS

A. *Some Empirical Data*

Surprisingly, only three of the five dioceses to seek the protection of bankruptcy law have experienced a decline in the number of lay teachers, according to the Official Catholic Directory¹¹⁸ for 2002 and 2006.¹¹⁹

The most striking decline in lay teachers among the five dioceses occurred in Davenport, Iowa. As of January 1, 2002, the diocese had 730 lay teachers. By January 1, 2006, that number was down to 298 lay teachers. Yet, only one of the seven high schools was closed. Meanwhile, the parish elementary schools actually increased in number from eighteen to twenty during those four years. Only one parish closed between 2002 and 2004 in Davenport, leaving eighty-four parishes remaining in 2006.

Since 2002, San Diego lost more than one-third of its lay teachers, falling from 1,591 to only 1,051 in 2006, despite opening the second of two elementary schools in the diocese. The number of diocesan and parish high schools remained the same (three), as did the number of private high schools (two). There were forty-three diocesan and parish schools throughout the four year period. The years 2002 and 2006 both began with ninety-eight parishes and sixteen missions in the diocese. The only marked loss in this portrait of consistency is the dramatic decline in lay teachers.

Portland lost more than ten percent of its lay teachers between 2002 and 2006, falling from 1,383 to 1,203. The number of diocesan and parish high schools has remained at three, and the number of private high schools has remained at seven, since 2002. Only one of the diocesan and parish elementary schools has closed since 2002, leaving forty. The two private elementary schools in the diocese in 2002 have not, as of 2006, been affected. There was one less parish in Portland at the start of 2006 (124) compared to four years prior (125). Diocesan missions

¹¹⁸ See THE OFFICIAL CATHOLIC DIRECTORY (2002); THE OFFICIAL CATHOLIC DIRECTORY (2006). The Official Catholic Directory is published annually. Unless otherwise noted, the following statistics are drawn from these two publications.

¹¹⁹ See THE OFFICIAL CATHOLIC DIRECTORY 341, 1021, 1207, 1289, 1364 (2002); THE OFFICIAL CATHOLIC DIRECTORY 347, 1032, 1218, 1301, 1377 (2006).

experienced minimal declines, from twenty-six in 2002 to twenty-four in 2006.

The bankrupt diocese showing expansion in the number of lay teachers since 2002 is Tucson, Arizona. There were 363 lay teachers in 2002, and 472 in 2006. The four diocesan and parish high schools in 2002 became private institutions, leaving only private high schools by 2006. As a result of this shift, there were six private high schools in 2006, increasing from two in 2002. The number of both kinds of elementary schools increased during the four-year period that started in 2002. There were twenty diocesan and parish elementary schools in 2002, and twenty-two of them in 2006. The number of private elementary schools increased from two to three during that period. The diocese of Tucson's growth during this period was not only in education, but in the number of parishes as well, which increased from seventy-one to seventy-four, and in the number of missions, which expanded from thirty to forty, a thirty percent increase during those four years.

The fifth American diocese in bankruptcy, and the second in that group of five to have increased the number of its lay teachers between 2002 and 2006, is Spokane, Washington, with 291 lay teachers in 2002, and 301 in 2006. In 2006, there was still only one diocesan and parish high school, just as in 2002, but there were two private high schools, an increase of one from 2002. There are still no private elementary schools, but there was one less diocesan and parish elementary school in 2006, down to fifteen from the sixteen that existed in 2002. There were also four more parishes in 2006, eighty-two, compared to 2002, but one less diocesan mission (two in 2006).

The total number of lay teachers in all American Catholic dioceses was 164,704 in 2002, declining to 163,672 in 2006. According to the National Catholic Education Association, however, in its *Annual Statistical Report on Schools, Enrollment and Staffing*, there were 152,071 lay teachers in elementary and secondary schools for the 2006–2007 school year.¹²⁰ During those four years, the number of diocesan and parish high schools declined from 786 to 782, but private high schools increased from 557 to 572. A similar trend occurred among grammar schools.

¹²⁰ NAT'L CATHOLIC EDUC. ASS'N, UNITED STATES CATHOLIC ELEMENTARY AND SECONDARY SCHOOLS 2006–2007: ANNUAL STATISTICAL REPORT ON SCHOOLS, ENROLLMENT AND STAFFING, <http://www.ncea.org/news/AnnualDataReport.asp>.

Diocesan and parish elementary schools plummeted from 6,623 to 6,148, while private schools increased from 326 to 363. The total number of parishes also declined, from 19,496 to 18,992, as did the number of missions, 3,036 to 2,889.

The complete impact of the sex abuse litigation, and the bankruptcy proceedings, is not fully borne out in these data. Nor do these statistics on the five dioceses account for those changes directly attributable to the bankruptcy of those dioceses.

B. Impacts on Individual Workers

The greatest toll is that taken on the body and the soul of the victim of the sexual abuse. Some of these victims were employees of the Church when they were abused.¹²¹ Some, abused as volunteers, such as altar boys, or as students or seminarians, later went on to become priests.¹²² Auxiliary Bishop Thomas Gumbleton of the Archdiocese of Detroit eloquently spoke about how he was himself abused as a minor by a priest.¹²³ Some of the abused themselves became abusers.¹²⁴ Many are scarred for life, making viable employment and productive career prospects quite difficult and problematic, if not entirely elusive.¹²⁵

The abusers, in almost all instances, were themselves the employees and agents of the Church. Despite the infamous statement of accomplished canon lawyer Edward Cardinal Egan, when he was the Bishop of the Diocese of Bridgeport, Connecticut, that priests were independent contractors, and not the employees of the Diocese,¹²⁶ there is no doubt that priests are,

¹²¹ See Paul A. Long, *Diocese of Covington Settles Sex Lawsuit*, CINCINNATI POST, June 17, 2003, at A9 (discussing a lawsuit filed by two employees of the Diocese of Covington over sexual assaults and harassment).

¹²² See Richard Lezin Jones, *Priest Who Saw Abuse from Other Side Becomes Watchdog*, N.Y. TIMES, July 7, 2002, § 1 (Late Edition), at 43.

¹²³ Jodi Wilgoren, *Bishop Backs Bill Allowing Old Abuse Cases*, N.Y. TIMES, Jan. 12, 2006, at A20.

¹²⁴ Gill Donovan, *Priest Says He Also Was a Victim of Clerical Abuse*, NAT'L CATH. REP., Jan. 17, 2003, http://www.natcath.com/NCR_Online/archives/011703/011703m.htm.

¹²⁵ *Deliver Us from Evil* is an Academy Award-nominated documentary directed by Amy Berg, which focuses on Oliver O'Grady, a Catholic priest in northern California who was convicted of sexually abusing children, and is believed to have possibly abused hundreds of children.

¹²⁶ Laurie Goodstein, *Scandal in the Church: The Cardinals; On a Mission to Restore Credibility*, N.Y. TIMES, Apr. 21, 2002, § 1 (Late Edition), at 30.

in fact, employees, and not independent contractors. Negligence, rather than vicarious liability or respondeat superior, is the principal cause of action, since the priest-abusers are clearly engaged in malevolent activity completely outside the scope of their employment. Thus, in most instances, the Church as employer is responsible for the torts of negligently training, hiring, ordaining, retaining, supervising, and, in some instances transferring, priest-abusers.¹²⁷ The mortal sins of the abusers distort all that they do, warping the product of all of their perhaps otherwise legitimate labors.

Those accused of sexual abuse, and especially those falsely accused, are entitled to due process protections according to both canon law and secular law.¹²⁸ Understandably, they must be removed from active employment upon credible accusations, while concurrently entitled to due process—indeed, one of the most pernicious dimensions of the sex crimes are the widespread perception, and perhaps the reality in at least some situations, that priests accused of committing abuse were transferred by bishops and allowed to remain active as priests—and to have opportunities to continue to abuse new victims.

Suspension from active ministry upon credible allegation, while the charges are further investigated and prosecuted, should usually accord with sufficient due process. This is generally analogous to the status of a labor union-represented employee grievant in a classic unpaid suspension/discipline/discharge case. The general operational norm is that the employee is removed from pay status, disciplined by an unpaid suspension, or terminated, by the employer, while the employer subsequently bears the burden of proving the charges before a neutral third-party arbitrator, pursuant to the grievance and arbitration mechanisms of the parties' collective bargaining agreement.

The due process dynamic, however, becomes especially problematic when the Bishops honor it in form, but vitiate it in substance. When persons are falsely accused, they

¹²⁷ See DAVID L. GREGORY, *The Road from Negligence to Negligence in Employment*, in NEGLIGENCE IN EMPLOYMENT LAW 1, 8–15 (Alfred G. Feilu & Weyman T. Johnson eds., 2002); see also Bainbridge & Cole, *supra* note 5, at 68.

¹²⁸ I have explored the due process dimensions of applied Catholic social teaching in the sexual abuse context, in David L. Gregory, *Reflections on Current Labor Applications of Catholic Social Teaching*, 1 J. CATH. SOC. THOUGHT 647, 658–64 (2004).

understandably seek to clear their good names as soon as possible. If the process to do so becomes completely opaque and seemingly endless, while the accused is in an internal exile approaching professional solitary confinement, the innocent who are falsely accused are deeply, perhaps irreparably, wounded. A suicide by an accused priest was reported in August 2007.¹²⁹

It is absolutely imperative that the Church be both efficient and thorough, and that the accused be treated with fundamental fairness and timely due process.

All volunteers, ranging from the choir to the youth ministry to Eucharistic ministers and lectors and altar servers, seminarians, and all employees must be subject to thorough background checks—arguably marginally somewhat intrusive, but certainly prudent, and, in the wake of the sexual abuse tsunami, de facto, if not de jure, mandatory.

C. *Impact on Faculty in Catholic Schools*

In addition to logical inferences of omission—with finite resources committed to payment of claims to settle sex abuse litigation—there are apostolates that must necessarily be reduced, suspended, terminated, and potential future apostolates put indefinitely on hold or cancelled outright. The Catholic schools present perhaps the center stage for assessing the likely ramifications for labor. For, as Archbishop Brom of San Diego unequivocally stated in his Sunday, April 22, 2007, Pastoral Update on Diocesan Reorganization to the Pastors and People of the Diocese of San Diego:

¹²⁹ Paul Likoudis, *Friends of Late Priest Chronicle Last Months*, WANDERER, Aug. 16, 2007, at 2. Likoudis reported:

A priest in our diocese [Altoona-Johnstown, Pennsylvania], who is now 64 years old, was accused of sexual impropriety with a minor male 37 years ago. The priest, who has always obeyed all rules and has always done what was asked of him, was asked to leave his parish in early March [2007] while the allegations against him was being investigated. He left the parish, as requested. There was virtually no communications with him from the diocese until about a month ago when the acting vicar general, without any notice before hand, appeared at his door and demanded that he resign as pastor of his parish. He did so, without consulting anyone and without the benefit of any advice from a canon lawyer.

Id.

The Bishop's letter was read publicly at Sunday Masses at the five parishes where the priest had served over the course of 38 years, informing the audience that the priest had been accused of impropriety and urging anyone with evidence to contact diocesan authorities. Shortly thereafter, the priest committed suicide.

Catholic education is at the heart of our mission . . . we are making every effort to see that money designated for the construction and operation of Catholic schools will not be used for any other purpose, and will continue to make Catholic education available to families with limited financial resources.¹³⁰

Indeed, the Archdiocese of Los Angeles unequivocally stated that no schools or churches would be closed as a result of its \$774 million settlement of almost 600 claims in July 2007, also situating Catholic education at the heart of the mission.

Although the Catholic labor encyclicals and the Bishops' Pastoral Letters eloquently proclaim the rights of workers to unionize,¹³¹ most teachers in Catholic schools are not unionized. This notorious paradox flows from *NLRB v. Catholic Bishop of Chicago*,¹³² wherein the United States Supreme Court held that the First Amendment of the Constitution prohibited the excessive entanglement of secular government and of secular law, such as the National Labor Relations Act and the National Labor Relations Board, in the internal governance and theology of the Church.¹³³ Consequently, as a matter of federal law, teachers in Catholic primary and secondary schools do not have the right to form labor unions and to bargain collectively with their employer. Neither do faculty at Catholic colleges have any such rights. The United States Supreme Court held in *NLRB v. Yeshiva University*¹³⁴ that faculty are supervisors and managers, not employees, and thus are not within the protections of the National Labor Relations Act.¹³⁵

¹³⁰ ARCHBISHOP ROBERT BROM, PASTORAL LETTER *UPDATE ON DIOCESAN REORGANIZATION* (Archdiocese of San Diego, Apr. 23, 2007) (on file with author).

¹³¹ I have written extensively on Catholic social teaching regarding labor and employment. See generally David L. Gregory, *Catholic Labor Theory and the Transformation of Work*, 45 WASH. & LEE L. REV. 119 (1988); David L. Gregory, *Catholic Social Teaching on Work*, 49 LAB. L.J. 912 (1998); David L. Gregory, *The Right to Unionize as a Fundamental Human and Civil Right*, 9 MISS. C. L. REV. 135 (1988).

¹³² 440 U.S. 490 (1979). I have criticized this decision. See David L. Gregory & Charles J. Russo, *The First Amendment and the Labor Relations of Religiously-Affiliated Employers*, 8 B.U. PUB. INT. L.J. 449, 456–59 (1999).

¹³³ *Catholic Bishop of Chicago*, 440 U.S. at 507.

¹³⁴ 444 U.S. 672 (1980). I have criticized this decision. See David L. Gregory & Charles J. Russo, *Overcoming NLRB v. Yeshiva University by the Implementation of Catholic Labor Theory*, 41 LAB. L.J. 55 (1990).

¹³⁵ *Yeshiva Univ.*, 444 U.S. at 686–90.

After a diocese files for bankruptcy, however, the legal landscape necessarily changes, including, potentially, its labor-management relations.¹³⁶ In those particular situations where a diocese may not have invoked its secular prerogatives under the *Chicago Bishop* decision, and continues to recognize and negotiate with its faculty in the collective union model, any such diocese considering bankruptcy filing may deem it preemptively prudent, although contrary to Catholic teaching on the rights of workers, to invoke the *Chicago Bishop* decision and to withdraw recognition of the faculty union. Otherwise, for such a diocese in bankruptcy, its collective bargaining will fall under Section 1113 of the Federal Bankruptcy Code, mandating extensive good faith bargaining with the union about employer proposals for modifications in wages and benefits “necessary to permit the reorganization of the debtor [the employer]”¹³⁷ before filing an application with the bankruptcy court for the court’s permission to abrogate the labor contract. The federal bankruptcy court will approve such an application to reject the collective bargaining agreement only after finding that the debtor employer meticulously complied with all of the precise statutory requirements that the union rejected the employer’s proposal to modify the contract “without good cause,” and that the balance of the equities “clearly favors” rejection of the labor contract.

How might such scenarios play out? Today, a diocese generally has the prerogative to close schools and churches, unilaterally and independent of any governmental oversight or approval. While this can understandably trigger heart-wrenching emotions among the affected parishioners, there is little recourse that can be had by the parishioners or the parish church per se.

If a parish or diocesan school is closed and teachers are laid off, the protections of a labor union and a collective bargaining agreement may constrain, or at least contour, such managerial

¹³⁶ I have written extensively about the intersection of labor and bankruptcy law. See generally David L. Gregory, *Labor Contract Rejection in Bankruptcy: The Supreme Court’s Attack on Labor in NLRB v. Bildisco*, 25 B.C. L. REV. 539 (1984); David L. Gregory, *Legal Developments Since NLRB v. Bildisco: Partial Resolution of Problems Surrounding Labor Contract Rejection in Bankruptcy*, 62 DENV. U. L. REV. 615 (1985); David L. Gregory, *The Congressional Response to NLRB v. Bildisco and the Constitutional Subtleties of the Nondelegation Doctrine*, 62 U. DET. MERCY L. REV. 245 (1985).

¹³⁷ 11 U.S.C. § 1113 (2000).

actions via, say, negotiation of transfer rights of senior teachers to other schools in the diocese, and adequate severance. While the decision to close a school or a parish church is a fundamental decision at the heart of entrepreneurial control, and thus not a subject of bargaining with the labor union, the effects of the closing are mandatory subjects of bargaining—such as transfer or bumping to another school, and severance pay.¹³⁸ Without a union and a labor contract, however, a senior teacher with forty years of exemplary service may be summarily laid off when the local parish school is closed, while newly-hired, junior teachers fresh out of college teach at a wealthy parish school a few miles away; the laid off senior teacher, absent a contract, generally has no legal basis or right to “bump” a junior teacher at the wealthy parish school a few miles away. This, obviously, is fundamentally unfair.

The Archdiocese of Los Angeles unequivocally and publicly pledged that it would not close any schools or parishes, “nor will their essential ministries be affected” by the sale of the chancery and fifty other properties in order to pay the \$774 million in settlement.¹³⁹ Not all of the five dioceses that filed for bankruptcy, however, have been able to make such an unequivocal and public commitment—making the above hypothetical scenario more than a moot hypothetical, perhaps.

CONCLUSION

With the most recent settlements in the fall of 2007 by the San Diego and Davenport, Iowa Dioceses, all five of the dioceses that filed for bankruptcy have reemerged. Whether they have reemerged “successfully”—whatever “success” may mean in these difficult circumstances—remains to be seen. Whether the tactical or strategic resort by the dioceses to the federal bankruptcy regime was worth the effort will be debated for years. In all probability, other dioceses are virtually certain to enter the federal bankruptcy arena as a result of the enormous money damage liability flowing from clergy sex crimes.

The myriad ramifications of the phenomenon of the Catholic diocese invoking bankruptcy law, and the incredible dynamic of

¹³⁸ First Nat'l Maint. Corp. v. NLRB, 452 U.S. 666 (1981).

¹³⁹ Dennis Coday, *L.A. Archdiocese Announces Settlement*, NAT'L CATH. REP., Aug. 3, 2007, at 8.

bishops and dioceses subjecting themselves to the federal bankruptcy judges, merit the most searching analysis. The consequences are profound for everyone.

The list of those negatively impacted by the clergy sexual abuse scandal, and the subsequent bankruptcy filings of the five dioceses, is unfortunately impressively long. The consequences this situation will have on labor in particular may prove to be extensive, and may last well beyond December 2007, with the emergence of the fifth and last diocese, Davenport, Iowa, from bankruptcy.

One potential consequence may be a catalyst spurring employees of the Catholic dioceses, and in particular Catholic school teachers, to more aggressively pursue unionization to better secure their otherwise inherently unstable positions. A focal point of where the diocesan bankruptcies will have the most noticeable impact on labor will be in the Catholic schools. Dioceses such as San Diego have suffered a significant decrease in faculty positions as a consequence of the sexual abuse scandal; the trend began well prior to the recent announcement of the \$198 million settlement agreement. In its effort to pay its share of the agreement, the San Diego Diocese will have to make further unpleasant decisions, and despite its claim that it has no “current plans” to close any parishes or schools, it is not unforeseeable that in the future more faculty positions may be eliminated to save money, and more schools may be sold. The adverse consequences upon employees appear inexorable. Consider the inevitability of the consequences of the 2006–2007 settlements of claims upon the Archdiocese of Los Angeles, as summarized by the editors of *Commonweal*:

[T]hree-quarters of a billion dollars is a huge amount of money, even for a diocese as large and financially secure as Los Angeles is. The archdiocese will pay \$250 million in cash, insurance will cover \$227 million, and religious orders will be responsible for the rest. To put this in context, in 2006 the assets of the archdiocese totaled \$494 million, its liabilities were \$415 million, meaning its net assets were \$79 million. Considering that the archdiocese spent a total of \$35 million on its many programs in '06 (social services, evangelization, education, etc.), no one should harbor any illusions about the damage the

settlement will do to the church's ability to carry out its mission.¹⁴⁰

And, inexorably and predictably, innocent priests have been "asked" to contribute one month's salary (\$1,485–\$1,535), and retired priests asked to contribute whatever they are able, to help pay the almost \$200 million in recent settlements in San Diego: "We cannot ask of others what we are unwilling to do ourselves," San Diego Bishop Robert Brom said in a memo to diocesan priests. Parishioners will be asked for 'a generous contribution' as well."¹⁴¹

Where does this leave the teachers who find their positions about to be eliminated, and perhaps equally important, where does this leave those teachers who are witness to their colleagues losing their jobs as a result of the diocesan scandals and bankruptcy filings? Clearly, the faculty members who are witnessing the national decrease in Catholic school teachers are not likely to stand idly by. Perhaps there will be more aggressive unionization.

This potential initiative faces the obvious hurdle, namely the *Chicago Bishop* decision that allows a diocese to not recognize a teachers' union in a Catholic school. As the case was decided nearly three decades ago, however, litigation that may flow today from the bankruptcy filings will face courts decidedly more skeptical of the institutional employer Church's defenses. While the sexual abuse problem existed in the Catholic Church twenty-eight years ago, it was not widely known, save among insiders. Today, that problem has brought the Church to the forefront of the media, and quite squarely into the federal bankruptcy court. It may be much more difficult for a diocese to contend that it stands behind the inviolable curtain of canon law and is insulated from government regulation by the First Amendment, when, at the same time, it freely enters bankruptcy protection. The Church has become so interwoven in the legal system over the past half-decade, as evidenced through the five diocesan bankruptcies, that some courts may correctly perceive that that Church has acquiesced in allowing itself to be governed by more than just canon law. As it has allowed its liabilities to be regulated and determined by federal bankruptcy law, it is

¹⁴⁰ *\$660 Million*, COMMONWEAL, Aug. 17, 2007, at 5.

¹⁴¹ *Priests Asked to Help Pay*, NAT'L CATH. REP., Oct. 19, 2007, at 3.

certainly plausible that the courts may, in the near future, determine that there is no compelling First Amendment prohibition of the labor law rights of Catholic school teachers.

Future litigation regarding the potential unionization of Catholic school teachers may find a more favorable reception in federal court than did the teachers in *Chicago Bishop*. Simply consider the wildly heterogeneous decisions rendered by bankruptcy judges involved in the diocesan reorganizations. Some judges have held that parish property could be included in a reorganization settlement, while other judges have held that parish properties must be excluded from a settlement plan due to the First Amendment. Such volatility among the bankruptcy court decisions auger a possible repudiation of *Chicago Bishop*.

Where does this leave Catholic school teachers? On the immediate horizon, as the settlements continue, and perhaps more dioceses pursue filing for bankruptcy protection, unionization will have the clear effect of placing teachers in a far better position when facing a diocese that is quick to pull the layoff trigger. As the dioceses eventually return to a state of normalcy, the gains labor may achieve during this crisis may remain. The culture of Catholic school teachers will shift, for better or for worse, and the Church may more fully recognize the merits of unionization by one of the Church's most faithful and important constituencies.

As Los Angeles and San Diego begin to deal with the massive settlements they have agreed to, the employees of the Catholic Church nationwide will observe how the two dioceses treat their employees, and in particular, their teachers. While a new and aggressive push toward unionization faces its fair share of legal obstacles such as *Chicago Bishop*, recent decisions by the bankruptcy courts have demonstrated that such impediments may not be as strong as they originally were, and the nation, and the Church in the United States, may be eventually be introduced to a new, and unionized, Catholic school teacher labor force.