UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

The Archdiocese of Saint Paul and Minneapolis,

Debtor.

Case No. 15-30125

Chapter 11

MEMORANDUM IN SUPPORT OF THE MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS SEEKING SUBSTANTIVE CONSOLIDATION OF THE DEBTOR'S ESTATE WITH ITS PARISHES AND CERTAIN OTHER NON-DEBTOR ENTITIES

INTRODUCTION

In the decades preceding its bankruptcy filing, the Debtor alienated more than a billion dollars in assets as a matter of *civil* law by incorporating hundreds of parishes and transferring assets into newly-formed entities. The Debtor then continued to maintain exclusive control over such assets by exercising direct authority and control over the entities holding them. In fact, as a matter of their own regulations and under decrees issued by the Vatican, the Debtor was *required* to continue exercising control over the transferred assets and related entities. The Debtor has even attested to its ongoing supervision and control of its affiliates in certifications to the Internal Revenue Service as a means of securing tax exempt status for their affiliates.

Within the next few days, the Debtor will file a plan of reorganization that (i) seeks to prohibit more than four hundred survivors of clergy sexual abuse from reaching any of the assets that the Debtor alienated as a matter of civil law, but (ii) simultaneously provides more than 200 entities holding such assets with a complete and final release of liability for sexual abuse claims. The Debtor's parishes comprise approximately 190 of the entities seeking a release and, to date,

the parishes have flatly refused to disclose any information about their operations or holdings. Confirming a plan that extends the full benefits of bankruptcy to hundreds of entities without requiring them to disclose their assets or contribute appropriately to the payment of creditor claims would constitute nothing short of a miscarriage of justice and a grave misuse of the bankruptcy process.

Based on the limited information available to it, the Committee estimates that the Archdiocese and its parishes hold approximately $1.4 billion in assets, and that the other Consolidation Parties hold at least an additional $300 million in assets.[1] The Committee further expects that the Archdiocese will seek to contribute approximately 1% of that amount to pay creditor claims in connection with its plan of reorganization.[2] The Committee also anticipates that the Debtor will vastly undervalue its Cathedral property and its interests in the Benilde-St. Margaret, DeLaSalle, and Totino Grace High Schools (the "High Schools"). In reality, the Debtor's interest in the Cathedral is worth approximately $20 million[3] and the Debtor's aggregate interests in the High Schools are worth nearly $30 million.

The Committee expects that the Debtor's parishes will fund an even smaller percentage of the plan than the Archdiocese in exchange for their broad and permanent releases from liability for sexual abuse claims despite the fact that, upon information and belief, the Debtor's parishes held net assets valued at approximately $1.4 billion in 2010. The Committee also understands that the Catholic Community Foundation of Minnesota and the Catholic Finance Corporation (both of which are controlled by the Archbishop) are holding more than $300 million in the aggregate. All of these assets are being *intentionally* sheltered from the scrutiny of the Debtor's

[1] Anderson Aff. Exs. 1–11.

[2] The Committee anticipates that the Debtor and its parishes will also contribute the proceeds of their insurance policies, but the value of the insurance policies are not factored into the Committee's estimate of assets held by the Debtor and the Consolidation Parties.

[3] The Debtor's own parish financial data valued the Cathedral property at $26 million in 2006.

bankruptcy process while the Debtor simultaneously plans to seek broad and unqualified releases for the entities holding such assets.

By this motion, the Official Committee of Unsecured Creditors (the "Committee"), comprised of five survivors of clergy sexual abuse and representing 434 similarly-situated claimants who collectively hold claims of up to, and potentially in excess of $1 billion, respectfully asks the Court to give legal effect to real-world circumstances that already exist. Specifically, the Committee asks this Court to substantively consolidate the assets and liabilities of the Archdiocese of St. Paul and Minneapolis (the "Debtor" or "Archdiocese") with the assets and liabilities of: (i) each of the Debtor's parishes and related schools and cemeteries; (ii) consolidated parish schools; (iii) the Catholic Community Foundation of Minnesota; (iv) the Francophone African Chaplaincy; (v) Segrado Corizon de Jesus; (vi) the Chaplaincy of Gichitwaa Kateri; (vii) the Catholic Finance Corporation; (viii) The Catholic Cemeteries; (ix) Totino Grace High School; (x) DeLaSalle High School; and (xi) Benilde-St. Margaret High School (collectively the "Consolidation Parties"). If this motion is granted, the result will be legal recognition of the actual unity of the Archdiocese, its parishes, its schools, and other entities.

FACTS

The factual basis for this memorandum is set forth in the accompanying Motion and in the affidavits filed in support of it, and the Motion and each of the affidavits filed in support, along with all related exhibits, are hereby incorporated into this memorandum as if fully set forth herein.

LEGAL STANDARD

Substantive consolidation refers to a bankruptcy court's equitable powers to pool "the assets and liabilities of two or more related entities" and to satisfy the liabilities of all consolidated entities "from the common pool of assets created by consolidation." *Eastgroup Properties v. Southern Motel Assoc., Ltd.*, 935 F.2d 245, 248 (11th Cir. 1991). The court's general equitable powers, embodied in 11 U.S.C. § 105(a), give the court the authority to order substantive consolidation. *Sampsell v. Imperial Paper & Color Corp.*, 313 U.S. 215, 219, 61 S.Ct. 904, 907, 85 L.Ed. 1293, 1298 (1941).

In analyzing the propriety of substantive consolidation, courts in the Eighth Circuit focus on the relationship among debtors as opposed to focusing on relationships between debtors and their creditors. In the Eighth Circuit, courts should grant substantive consolidation if (i) the interrelationship amongst the entities necessitates consolidation; (ii) the benefits of consolidation outweigh the harm to creditors; and (iii) prejudice would result from not consolidating the debtors. *In re Giller*, 962 F.2d 796, 799 (8th Cir. 1992) (citing *In re N.S. Garrott & Sons*, 48 B.R. 13 (Bankr. E.D. Ark. 1984)). A proponent of substantive consolidation has the burden of producing evidence that demonstrates its necessity. *In re Huntco Inc.*, 302 B.R. 35, 39 (Bankr. E.D. Mo. 2003).

Some circuits also consider the reliance of creditors on the interrelatedness of the debtors as a factor weighing in favor of substantive consolidation, but the Eighth Circuit was silent on this issue when establishing the circuit standard in *Giller*. *WestLB AG v. Kelley*, 514 B.R. 287, 294 (D. Minn. 2014). According to the *WestLB* court, "[i]t is certainly reasonable to interpret the Eighth Circuit's silence as an indication that the Eighth Circuit does not intend that creditor reliance be treated as a major consideration." *Id*. Finally, under *Giller*, consolidation may still be

deemed necessary even if creditors relied on the separateness of a particular debtor if there is a showing of substantial identity among related debtors via the presence of relevant factors (i.e., commingling of assets and liabilities, difficulty in segregating assets and liabilities, control over one entity by another, etc.). *In re Petters Co., Inc.*, 506 B.R. 784, 800 (Bankr. D. Minn. 2013).

Although substantive consolidation typically refers to the consolidation of the estates of several existing debtors, "[c]ourts have permitted the consolidation of non-debtor and debtor entities in furtherance of the equitable goals of substantive consolidation." *In re Bonham*, 229 F. 3d 750, 765 (9th Cir. 2000) (citing *In re. Auto-train*, 810 F.2d 270, 275 (D.C. Cir. 1987); *In re Munford*, 115 B.R. 390, 395–96 (Bankr. N.D. Ga. 1990); *In re Tureaud*, 59 B.R. 973, 974, 978 (N.D. Okla. 1986)); *see also In re United Stairs Corp.*, 176 B.R. 359, 368–69 (Bankr. D.N.J. 1995) (citing *Sampsell v. Imperial Paper & Color Corp.*, 313 U.S. 215, 219, 61 S.Ct. 904, 907, 85 L.Ed. 1293, 1298 (1941); *In re 1438 Meridan Place, N.W., Inc.*, 15 B.R. 89 (Bankr. D.D.C. 1981); *In re Crabtree*, 29 B.R. 718 (Bankr. E.D. Tenn. 1984)).

The substantive consolidation analysis is a fact-intensive undertaking and the relevant factors vary from case to case. *In re Eagle-Picher Industries, Inc.*, 192 B.R. 903, 905 (S.D. Ohio 1996). Many cases have relied on a set of factors articulated in *In re Vecco* to aid in framing arguments in favor of consolidation: (i) the presence or absence of consolidated financial statements; (ii) the unity of interests and ownership between various corporate entities; (iii) the existence of parent and intercorporate guarantees on loans; (iv) the degree of difficulty in segregating and ascertaining individual assets and liabilities; (v) the existence of transfers of assets without formal observance of corporate formalities; (vi) the commingling of assets and business functions; and (vii) the profitability of consolidation at a single physical location. *In re*

Vecco Construction Industries, Inc., 4 B.R. 407, 410 (Bankr. E.D. Va. 1980) (compiling factors from several district and appellate court decisions).

The Eleventh Circuit expanded on the *Vecco* factors to consider also: "(i) the parent owning the majority of the subsidiary's stock; (ii) the entities having common officers or directors; (iii) the subsidiary being grossly undercapitalized; (iv) the subsidiary transacting business solely with the parent; and (v) both entities disregarding the legal requirements of the subsidiary as a separate organization." *Eastgroup Properties v. S. Motel Ass'n, Ltd.*, 935 F.2d 245, 250 (11th Cir. 1991); *see also In re Affiliated Foods, Inc.*, 249 B.R. 770, 777 (Bankr. W.D. Mo. 2000) (citing both the *Vecco* and additional *Eastgroup* factors).

The foregoing are merely examples of factors that might aid the court in determining the interrelatedness of relevant entities and whether harm to creditors will result from a failure to consolidate and "[n]o single factor is likely to be determinative in the court's inquiry." *Id.* "The factors merely provide the framework to assist the Court's inquiry …" *In re Creditors Service Corp.*, 195 B.R. 680, 690 (Bankr. S.D. Ohio 1996)). Notwithstanding any deficiencies in the record with respect to any one or more particular factors, "it is well accepted that substantive consolidation is a flexible concept and that a principal question is whether creditors are adversely affected by consolidation and, if so, whether the adverse effects can be eliminated." *In re Jennifer Convertibles, Inc.*, 447 B.R. 713, 723–24 (Bankr. S.D.N.Y. 2011).

ARGUMENT

The standard applicable in the Eighth Circult is satisfied in this case because (i) the interrelationship amongst the Debtor and the Consolidation Parties necessitates consolidation, (ii) the benefits of consolidation will outweigh any harm to creditors, and (iii) prejudice will

result from failing to consolidate the Debtor's estate with the Consolidation Parties. *Giller*, 962 F.2d at 799.

I. THE INTERRELATIONSHIP BETWEEN THE ARCHDIOCESE AND THE CONSOLIDATION PARTIES NECESSITATES CONSOLIDATION.

The Archdiocese and the Consolidation Parties, and possibly many other entities within the Archdiocese,[4] function as a single, interrelated operation subject to the Debtor's direct control and authority through the Archbishop. The consolidation sought by the Committee is necessary given the history of the American Catholic Church, the Code of Canon Law (the rules by which the Debtor must conduct its activities), and, most importantly, the history and conduct of this specific Archdiocese.

For more than a century, consistent with directives from the Pope and the requirements of Canon Law, the Archdiocese has pursued a two-pronged strategy that has impacted fundamentally the structure, organization, and operations of the Catholic Church in St. Paul and Minneapolis. On the one hand, the Archdiocese has required its parishes and schools to incorporate separately to ensure that third parties (both inside and outside of the Archdiocese) could not exercise control over church assets held by non-Debtor entities. On the other hand, the Archdiocese created a structure, consistent with Vatican directives that ensured the Archbishop would continue to exercise ultimate dominion, control, and authority over virtually every operational and financial aspect of the Consolidation Parties and other Catholic entities within the Archdiocese. Relevant facts and evidence make clear that, within this structure, the Archdiocese holds complete, exclusive authority and treats and interacts with its parishes and the

[4] The Consolidation Parties do not necessarily constitute a comprehensive listing of all entities that function as a single operational unit with the Debtor. Nothing in this memorandum, or in the related Motion, is intended to suggest that additional entities within the Archdiocese should not be consolidated with the Debtor's estate as well. Given the complexity of the Debtor's organization, as evidenced by, among other things, the large number of entities listed in the Archdiocese's Catholic Directory, the Committee chose to limit materially the scope of its initial investigation in the interests of time and to conserve estate resources.

other Consolidation Parties as mere departments of one complex, but completely interrelated organization.

A. The Debtor Represents to the Internal Revenue Service that It Exercises Control and Supervision over Every Entity Listed in its Catholic Directory.

The Archdiocese certifies annually to the Internal Revenue Service that the Consolidated Parties are subordinate, interrelated entities under its control and subject to its governance. The annual certification is necessary to maintain the group-tax exempt status afforded to the Archdiocese and the Consolidated Parties through the Archdiocese's affiliation with the United States Conference of Catholic Bishops ("USCCB").[5] The Archdiocese has benefited from this group tax-exempt structure since the IRS first approved the arrangement in 1946.[6]

IRS Publication 4573 identifies and explains issues related to group tax exemption eligibility, stating that to qualify for a group tax exemption, a central organization and its subordinate entities must have a defined relationship meeting certain specific criteria. The criteria, according to the publication, requires subordinates to be:

a. Affiliated with the central organization;

b. Subject to the central organization's general supervision or control; and

c. Exempt under the same paragraph of IRC 501(c), though not necessarily the paragraph under which the central organization is exempt.[7]

To establish its annual group tax-exempt status, the Archdiocese certifies to the USCCB, who in turn certifies to the IRS, that the entities identified in the most current version of the *Official Catholic Directory* accurately reflect the agencies and instrumentalities subject to its control and governance, thereby meeting the IRS's standard for group tax-exempt status.[8]

[5] Haselberger Aff. ¶¶ 53 –59, Ex 7; *see also* Caldie Aff. Ex. 16.
[6] *Id.*
[7] Caldie Aff. Ex. 16
[8] Haselberger Aff. ¶¶ 53 –59, Ex 7; *see also* Caldie Aff. Ex. 1.6

In 2015, the following entities, among others, were listed in the *Official Catholic Directory* as being affiliated with the Archdiocese:

a. Each of the parish corporations;
b. Catholic Cemeteries;
c. Catholic Charities;
d. Catholic Senior Services;
e. Society for the Propagation of the Faith (d.b.a Center for Mission);
f. St. John Vianney Seminary;
g. The Chaplaincy of Gitchitwaa Kateri;
h. Saint Thomas Academy;
i. DeLeSalle High School;
j. Totino-Grace High School;
k. Hill Murray School;
l. Benilde-St. Margaret's School;
m. The Catholic Services Appeal Foundation;
n. Growing in Faith Capital Campaign;
o. Sagrado Corazon de Jesus; and
p. Catholic Finance Corporation.[9]

Other organizations – such as FOCUS, the Aim Higher Minnesota Foundation, and Commonbond Communities – were listed in the annual directory as being subordinate to the Debtor through 2014. The Catholic Community Foundation appeared in the annual directory as being subject to the Archdiocese's governance and control through 2013.[10]

The IRS continues to rely on the interrelatedness of the Consolidated Parties affiliated with the Archdiocese in the *Official Catholic Directory* when issuing determination letters as to

[9] *Id.*
[10] *Id.*

whether to extend group tax exempt status. Donors also rely on this to establish the deductibility of contributions made to Catholic organizations for their own federal income tax purposes.[11]

B. The Debtor Exercises Direct Authority and Control over its Parishes Pursuant to Corporate Governance Structures and Canon Law.

Each of the Archdiocese's parishes is incorporated under Minn. Stat. § 315.15. All entities incorporated under Minn. Stat. § 315.15 are required to maintain a specific constitution of members that includes: (i) the Archbishop of the Archdiocese, (ii) the Vicar General of the Archdiocese, (iii) the pastor of the parish (who is appointed by the Archdiocese), (iv) and two lay trustees.[12] This mandated corporate governance structure is the result of a long-term struggle by the Catholic Church to avoid dilution of the power and control held by bishops.[13] The governance structure mandated by Minn. Stat. § 315.15 was specifically designed to ensure that authority and control over incorporated parishes, as well as their respective operations and property, would continue to rest in the hands of the bishop or archbishop assigned to each diocese or archdiocese in a manner consistent with the requirements of the Code of Canon Law and decrees issued by the Vatican.[14]

This mandated governance structure provides the Debtor with a controlling majority on the board of every parish.[15] The Archbishop also serves as the President of each parish and the parish pastor serves as Vice President.[16] It is also common for the Vicar General to serve simultaneously as pastors of a separately-incorporated entity.[17] During his seventeen-year tenure

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[11] *Id.*
[12] Minn. Stat. § 315.15 (2015).
[13] Doyle Aff. ¶¶ 37 – 39; Haselberger Aff. ¶¶ 20 – 22.
[14] *Id.*
[15] Although parish pastors are paid by the parishes to which the Debtor assigns them, the salaries of parish pastors are mandated by the Archdiocese and the Archdiocese has exclusive control over the assignment, removal, transfer, and discipline of all priests within the Archdiocese, including all priests who serve as parish pastors. Haselberger Aff. ¶¶24, 85; Fitzpatrick Aff.
[16] Haselberger Aff. ¶ 26; *see also Id.* Ex. 2.
[17] *Id.* ¶ 66.

as the Archdiocese's Vicar General, Father Kevin McDonough simultaneously served as both Vicar General and as pastor on seventy-five separate parish corporation boards for varying lengths of time, giving the Archdiocese even greater direct control over three of the five board seats of those parishes.[18] Further, although Minn. Stat. § 315.15 gives authority to a parish to elect its lay trustees to serve on the parish board, in practice, the lay members are commonly elected by the Archbishop, the Vicar General, and the parish's pastor.[19] In practice, the pastor submits the names of lay members to the Archbishop and the Vicar General requesting their votes for selection.[20] Thus the Archdiocese not only controls three of five seats on each parish board, it also directly controls the selection and removal of the other two members.

The Archdiocese's authority and control over the governance of its parishes is not just theoretical. The Archdiocese exercises such control and wields such authority widely and consistently. In fact, the Archdiocese's control has become so ingrained in the operational practices of the interrelated entities that parishes rarely, if ever, hold board meetings at all and in-person board meetings with the full board present (which are technically required to take place at least once a year) have been virtually abandoned. [21]

In lieu of board meetings and votes, the Archdiocese requires parishes to apply to the Archdiocese for written permission to take any action of consequence.[22] If permission is granted by the Archdiocese for a given request, the Archbishop and Vicar General issue and sign a written "proxy" permitting the parish to take the requested action.[23] Under normal circumstances, the term "proxy" might suggest that the Archbishop and Vicar General were providing the parish

[18] *Id.* ¶ 69.
[19] *Id.* ¶ 26; *see also Id.* Ex. 2.
[20] *Id.*
[21] Fitzpatrick Aff. ("I was never aware of any meeting of the corporate board of any parish that I served."); *see also* Haselberger Aff. ¶ 94; *Id.* Ex. 2.
[22] *Id.* ¶ 26; *Id.* Ex. 2.
[23] *Id.* ¶ 25.

with authority to vote on their behalf in favor of a measure at a board meeting. Within the parishes, however, such meetings and votes virtually never take place. And even if board meetings did take place, the permission of the Archdiocese would still be required for the parish corporation to take the desired action. As a result of these unusual realities, proxies issued by the Archdiocese are treated as permission slips as opposed to true "proxies."

The control exercised by the Archdiocese over its parishes is not surprising when viewed through the lens of the Catholic Church's history, the requirements of the Code of Canon Law, and decrees issued by the Pope.[24] The Archbishop's power is defined by the Code of Canon Law and, like all other bishops, the Archbishop reports directly to the Pope.[25] The Archbishop is required to hold all power and control within the Archdiocese subject only to (i) limitations contained in the general law of the Catholic Church and (ii) the authority of the Pope. The government of the Archdiocese is thus hierarchical and, in practice, it is ruled by one person – the Archbishop.[26]

As one former priest and retired parish administrator characterizes it:

> In my time as a priest and a Parish Administrator, I never felt or believed that the parishes had control over their own assets and operations. The Bishop and Archbishop always maintained direct and ultimate control. It was as if the parishes were merely departments in the Diocese or Archdiocese organization, or as if the Bishop and Archbishop were Generals and the parishes were platoons serving the Generals' army.[27]

[24] Doyle Aff. ¶¶ 11–16.
[25] *Id.*
[26] *Id.*
[27] Fitzpatrick Aff. ¶ 20.

C. The Debtor Exercises Authority and Control over All Aspects of the Consolidation Parties' Finances and Operations and the Debtor and the Consolidation Parties Thus Function as a Single, Interrelated Entity.

The interrelatedness of the Archdiocese and the Consolidation Parties extends far beyond corporate governance structure and representations of control and supervision to the IRS. Consistent with its 150 year history in Minnesota and the structure of the Catholic Church, and as mandated by the Code of Canon Law and decrees issued by the Vatican, the Archdiocese's operations are fully-integrated with the operations of the Consolidation Parties such that the Archdiocese and the Consolidation Parties function as a single, interrelated entity to achieve the Archdiocese's purposes.

i. The Archdiocese Exercises Direct Control over the Assets and Operations of the Consolidation Parties.

The Archdiocese exercises control over the assets, actions, and operations of the Consolidation Parties at all levels. For example, the Archdiocese strictly requires its parishes to obtain written permission (in the form of a "proxy") from the Archbishop and the Vicar General before any parish can: purchase any interest in real property; transfer or rezone any interest in real property; enter into any loan; grant any mortgage on parish property; establish any line of credit; consolidate or refinance any existing loan; modify any existing mortgage, loan, or line of credit; purchase personal property for $25,000 or more; enter a lease of any kind for a term of longer than one year; enter any agreement for the use of parish property for a period of longer than one year; grant contracts for deed; build any new structure on parish property; renovation or restore any existing parish improvements; make any significant change to worship spaces; establish cemeteries, columbaria, or engage in feasibility studies therein; initiate maintenance projects costing $25,000 or more; approve construction change orders that increase costs by $5,000 or more; contract with planners, architects, or fundraising consultants or engage in

feasibility studies for expansion, renovation, or a building project; initiate a capital fund campaign in which the total projected annual expenses exceed $25,000; or establish any endowment.[28]

To apply for proxies, pastors are required to submit detailed requests regarding the proposed action.[29] For example, to sell property owned by the parish corporation, the parish is required to submit to the Archdiocese: the legal description of the property; the name of the buyer; the sale price; a statement that the parish sees no use for the property in the foreseeable future; evidence of review of purchase documents by competent counsel including consideration of environmental matters and title defects; and transfer documents that restrict future use of the property in compliance with the doctrine of the Roman Catholic Church.[30] Currently, proxy requests are submitted to and reviewed by the Archdiocese's CFO Thomas Mertens and Chancellor for Civil Affairs Joe Kueppers, i.e., employees of the Archdiocese with no position on parish boards.[31] If the Debtor approves the requested action or expenditure by issuing a written "proxy," the parish may proceed.[32] If the Debtor does not approve the request, the parish may not proceed. In other words, parish-level boards do not meet and vote to make most parish decisions. Instead, the Debtor makes such decisions for them. [33]

Parish Articles of Incorporation (which must be adopted in a form mandated by the Archdiocese) must also contain provisions prohibiting the parish from: selling, mortgaging, encumbering, or disposing of real estate belonging to the parish without the consent of *all* of the members of the corporation; establishing debt limitations that may not be surpassed without the

[28] Haselberger Aff. ¶ 26; Haselberger Aff. Ex. 2.
[29] *Id.*
[30] *Id.*
[31] *Id.* ¶ 25; *see also Id.* Ex. 3.
[32] *Id.* ¶ 25.
[33] *Id.*

President's (i.e., the Archbishop's) consent; and allowing amendments to the Articles of Incorporation and Bylaws only after a unanimous vote by the members of the corporation.[34]

The High Schools must also adhere to a host of guidelines and restrictions unilaterally imposed by the Archdiocese.[35] For example, the Archbishop retains control over significant curriculum decisions within the High Schools.[36] The Archdiocese also has a representative on the board of directors for each of the High Schools, and the High Schools must obtain written approval from the Archdiocese for a broad range of actions *even after the High School's purportedly-independent board votes in favor of such actions*.[37] For example, the High Schools cannot make any loan or transfer any interest in real property without express approval from the Archdiocese.[38]

The Archdiocese also unilaterally required two of the High Schools (Totino Grace and DeLaSalle)[39] to enter into extended leases in advance of the Archdiocese's bankruptcy filing[40] and, upon information and belief, those High Schools were not permitted to make any material changes to the form of the lease documents imposed by the Archdiocese. Despite the fact that the Archdiocese unilaterally imposed all material terms of the new lease documents on the two High Schools, the rent required of Totino Grace and DeLaSalle under the existing leases is just $1 per year.[41] The rent term under the long-term lease entered into by Benilde-St. Margaret High School

[34] *Id.* Ex. 2.
[35] *Id.* ¶ 52.
[36] *Id.*
[37] *Id.*
[38] Moua Aff. Ex. H.
[39] Unlike DeLaSalle and Totino Grace, Benilde-St. Margaret High School was already subject to a long-term lease with the Archdiocese.
[40] Meeting of Creditors, Feb. 24, 2015, pp. 44–45.
[41] *Id.*

is also just $1 per year.[42] The Committee anticipates that the Debtor will attempt to use the existence of its (self-imposed) long-term leases with the High Schools to justify its assignment of a negligible liquidation value to the Archdiocese's interest in the High Schools' real property in connection with the Debtor's plan of reorganization. In any event, the Archdiocese's imposition of unilateral influence in lease negotiations with Totino Grace and DeLaSalle High Schools, coupled with the Archdiocese's willingness to enter into long-term leases in exchange for rent far below market value, is further evidence of its deep interrelatedness with the High Schools.

ii. The Archdiocese Exercises Control and Influence Over the Legal Representation of, and Legal Strategies for the Parishes and Schools.

The Archdiocese has exercised direct control over legal strategies and choices regarding legal representation in multiple matters involving the parishes and parish schools. As set forth in greater detail in the Committee's accompanying motion, on one or more occasions, the Archdiocese has: (i) apparently directed its legal counsel to treat the Archdiocese and one of its parishes as a single client despite diverging interests;[43] (ii) provided guidance and explanations to parishioners regarding the Archdiocese's reflections, strategies, and anticipated plans with respect to legal issues solely involving the parishes;[44] (iii) negotiated, resolved, and funded at least one significant settlement relating to parish legal liabilities that did not implicate the Archdiocese itself;[45] and (iv) involved high-ranking Archdiocesan employees in organizational meetings regarding the legal representation of parishes in this case.[46] Because parishes are also required to obtain written consent from the Archdiocese before entering into any professional services agreement, parishes must obtain the Archdiocese's permission before engaging any

[42] *Id.*

[43] Caldie Aff. Ex. 9.

[44] Jennifer Haselberger, *Do Not Be Afraid?*, Canonical Consultation and Services, L.L.C. (April 1, 2016), http://canonicalconsultation.com/1/post/2016/04/do-not-be-afraid.html.

[45] Caldie Aff. Ex. 11.

[46] Caldie Aff. Ex. 12.

attorney or law firm.[47] Absent a significant interrelatedness between the Archdiocese and its parishes, it would make little sense for the Archdiocese to invest substantial time and resources to address (and, in some instances, direct strategy with respect to) legal issues relating to the parishes.

iii. The Archdiocese Exercises Direct Control over the Employees and the Employment Policies and Benefits of the Consolidation Parties.

The Archdiocese mandates employment policies and employee benefits programs and exercises direct control over a wide range employment and training issues relating to the Consolidation Parties. Among other things, the Archdiocese:

- exercises exclusive control over the compensation, benefits, appointment, training, removal, transfer, and discipline of all priests (including pastors) within the Archdiocese;[48]
- unilaterally mandates the procedure for background checks for all lay employees within the Archdiocese;[49]
- routinely posts job openings for lay employees of separately-incorporated entities on the Archdiocese website;[50]
- defines and administers training programs for teachers and principals at parish schools;[51]
- defines and administers (both directly and through the Catholic Finance Corporation) training for business administrators within separately-incorporated entities;[52]
- appoints Chaplains at the High Schools;[53]

[47] Haselberger Aff. ¶ 26.
[48] Fitzpatrick Aff., ¶ 10 d – f; 12, 13
[49] *Id.*
[50] Moua Aff. Ex. A.
[51] Fitzpatrick Aff. ¶ 14 ("The Archdioces trained parish school teachers, parish school principals, and parish administrators.); Moua Aff. Ex. H.
[52] Caldie Aff. Ex. 19.
[53] Haselberger Aff. ¶ 52.

- exercises control over curriculum at the High Schools and, in some instances, mandates the incorporation of curriculum over passionate objections;[54]

- sponsors a wide range of benefit programs including life insurance, health insurance, dental insurance, long-term disability, long-term care, and flexible spending accounts for full-time employees at parishes, parish schools, the High Schools, and other separately-incorporated entities within the Archdiocese;[55]

- established and administered a "Pension Plan for Lay Employees *of the Archdiocese of St. Paul and Minneapolis*" (emphasis added) that included as beneficiaries approximately 6,835 teachers, parish staff, and retirees from schools, parishes, and other separately-incorporated entities throughout the Archdiocese;[56]

- unilaterally froze the lay employee pension plan in 2011 thereby materially impacting the rights and retirement of literally thousands of employees of separately-incorporated entities;[57]

- currently sponsors a retirement program for lay employees throughout the Archdiocese (including in separately-incorporated entities), including a 403(b) plan, and offers investment education and retirement planning seminars to assist employees in planning for future financial needs;[58]

- unilaterally mandated the use of multiple employee benefits programs (including those relating to health insurance and pensions) for lay employees of separately-incorporated entities throughout the Archdiocese;[59] and

- unilaterally mandated the broad implementation of fundamental and controversial employment policies by parishes and other separately-incorporated entities throughout the Archdiocese.[60]

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[54] *Id.*; Jon Tevlin, *Tevlin: DeLaSalle kids have a few words with archdiocese at marriage talk*, Star Tribune (Apr. 3, 2012), http://www.startribune.com/tevlin-delasalle-kids-have-a-few-words-with-archdiocese-at-marriage-talk/146031865/.

[55] Moua Aff. Ex. B.

[56] Caldie Aff. Ex. 7; Moua Aff. Ex. C.

[57] *Id.*

[58] Moua Aff. Ex. B.

[59] Fitzpatrick Aff. ¶ 15. This change led to an immediate and material increase in the cost of employee insurance for many entities within the Archdiocese. *Id.*

[60] *Id.* This change cost many entities within the Archdiocese additional money as well, but again they deferred to the Archdiocese's authority. *Id.*

In addition to the above, the Archdiocese took the extraordinary, unilateral step of *mandating* fundamental changes to the employment policies of all parishes and many other entities within the Archdiocese by requiring compliance with versions of its "Justice in Employment" policy. [61] In connection with the policy, the Archdiocese mandated – in the face of significant opposition – that all parishes and many other entities within the Archdiocese change the status of all lay employees from "at will" employees to employees that could only be terminated "for cause."[62] This sweeping change to the employment policies of two hundred or more separately-incorporated entities caused many such entities to incur additional costs and liabilities, but each of them deferred to the Archdiocese's authority and the Archdiocese's mandated policy remains in place today. In a written statement explaining this action, then-Archbishop Flynn stated, "These policies apply to all employees of the Archdiocesan Corporation, parishes within this archdiocese, and their related schools, as well as those institutions specifically designated by me."[63] The Archdiocese mandates that each of the Consolidation Parties comply with the Justice in Employment policy.[64]

The Archdiocese's long-term, deep involvement in employee hiring, training, management, benefits, termination standards, and compensation with respect to employees of the Consolidation Parties further demonstrates the extensive interrelatedness of the Debtor with such parties and provides another illustration of the fact that they function as a solitary entity with the Archdiocese.

[61] Caldie Aff. Ex. 8 ("I mandate these policies as the spiritual and religious leader of all Catholics in this diocese.").)
[62] *Id.*
[63] *Id.*
[64] Haselberger Aff. ¶ 84, n23.

D. The History and Operational Realities of the Catholic Finance Corporation Reflect Its Interrelationship with the Archdiocese.

The Archdiocese supervises and directs the activities of the Catholic Finance Corporation as if it were a department of the Archdiocese. The Archdiocese also maintains authority and control over funds managed by the Catholic Finance Corporation, despite its attempts to conceal this reality in the lead up to, and following the Archdiocese's bankruptcy filing.

The Catholic Finance Corporation was created by the Archdiocese in the year 2000 and, originally, it had only one member – the Archbishop.[65] The Archdiocese funded the Catholic Finance Corporation's start-up costs and also raised $28,000,000 in *donations* from the Catholic community through its Growing in Faith capital campaign ostensibly *to seed the Catholic Finance Corporation's loan fund*. It is not entirely clear whether the Catholic Finance Corporation actually extends loans, however, and even if it does, given the charitable source of its loan funds, it stands to reason that the Catholic Finance Corporation might provide very favorable terms to its borrowers (i.e., provide loans on terms that are less than arm's length).

On information and belief, the Growing in Faith capital campaign was led by the Archbishop. Funds collected through the Growing in Faith campaign were administered through the Catholic Community Foundation of Minnesota instead of through the Archdiocese itself to shield the funds from creditors. The Archdiocese's development office oversaw and administered all aspects of the Growing in Faith campaign because they had already created all of the money-raising contacts and methods necessary to raise funds for the campaign. Although the Archdiocese's development office performed all of the work necessary to raise money for, and administer the Growing in Faith campaign, employees working on the Growing in Faith campaign were always paid by the Archdiocese. The development employees for the

[65] Calide Aff. Ex. 22.

Archdiocese also used the Archdiocese's facilities, office supplies, and other resources for their work on behalf of the Growing in Faith campaign. The Growing in Faith campaign did not provide any payment or other consideration to the Archdiocese in exchange for its use of Archdiocese employees, facilities, and other resources.

On information and belief, the Catholic Finance Corporation was established to assume responsibility for functions formerly performed by the Archdiocese, such as the guaranteeing of loans for entities within the Archdiocese and the provision of financial assistance and counseling for such entities. The Catholic Finance Corporation's purpose was initially articulated in its Articles of Incorporation as performing services for "The Archdiocese of Saint Paul and Minneapolis (the "Archdiocese") and other organizations under the supervision and control of the Archdiocese." [66] In July 2015, however, following the Archdiocese's bankruptcy filing, the purpose clause in the Catholic Finance Corporation's Articles of Incorporation was amended to state that the Catholic Finance Corporation provides services for "The Archdiocese of Saint Paul and Minneapolis (the "Archdiocese") and Catholic Parishes and Catholic Schools within the geographical boundaries of the Archdiocese, diocese, archdioceses, Catholic Parishes and Catholic Schools outside The Archdiocese of Saint Paul and Minneapolis and within the United States."[67]

The Catholic Finance Corporation functions as an integral part of the Archdiocese's finance department, working with the Archdiocese's Chief Financial Officer to manage the Archdiocese's financial planning, analysis, and strategy as well as serving as the Archdiocese's representative in communications with the Parishes, Schools, and other entities. [68] The Catholic Finance Corporation takes direction from the Archbishop, and the Archbishop allows the

[66] Caldie Aff. Ex. 22.
[67] Caldie Aff. Ex. 22.
[68] Aong Aff. Exs. I, J, K.

Archdiocese's finance department to establish Catholic Finance Corporation's priorities and directs the Catholic Finance Corporation to troubleshoot with parishes on its behalf.[69]

Other factors further reflect the Archdiocese's control over, and interrelatedness with the Catholic Finance Corporation:

- The Catholic Finance Corporation and the Archdiocese acknowledged and, in fact, *attest to* the Archdiocese's supervision of, and control over the Catholic Finance Corporation when the Catholic Finance Corporation utilizes the Archdiocese's Group Tax-Exempt Ruling and the Archdiocese lists the Catholic Finance Corporation in its Catholic Directory (as it continues to do).

- The Catholic Finance Corporation is subject to sweeping policy changes mandated by the Archbishop relating to the status of lay employees and other issues.

- The Archdiocese sponsors a wide range of benefit programs that benefit lay employees in the Catholic Finance Corporation, including life insurance, health insurance, dental insurance, long-term disability, long-term care, and flexible spending accounts for full-time employees.

- For the first several years of its existence, the Catholic Finance Corporation operated out of the Archdiocese's facilities while making use of a broad range of the Archdiocese's resources, and the Archdiocese never received any remuneration or other consideration in exchange.

- The assets within the Catholic Finance Corporation were never properly alienated as a matter of Canon Law. As a result, they are still under the authority and control of the Archdiocese through the Archbishop.

From the very start, the purpose of the Catholic Finance Corporation was to continue initiatives and activities formerly administered directly by the Archdiocese while simultaneously moving related funds outside the reach of creditors. The facts and analysis set forth above demonstrate that the Archbishop and the Archdiocese exercise direct authority and control over the activities and assets of the Catholic Finance Corporation and that the operations of the

[69] *Id.*

Archdiocese and the Catholic Finance Corporation are otherwise materially interrelated. The substantive consolidation of the Catholic Finance Corporation is necessary.

E. The History and Operational Realities of the Catholic Community Foundation of Minnesota Reflect Its Interrelationship with the Archdiocese.

In 1992, a jury awarded a sexual abuse survivor $3.5 million in a case against the Archdiocese.[70] A large portion of this judgment was, for the first time in the history of sexual abuse claims against the Catholic Church, awarded as *punitive* damages.[71] In 1993, the Archdiocese of Saint Paul and Minneapolis created the Catholic Community Foundation.[72]

The Archdiocese formed the Archdiocese of Saint Paul and Minneapolis Catholic Community Foundation for the purpose of protecting substantial assets from sexual abuse claimants in the wake of the first-ever punitive damages award against the Church.[73] Upon forming the Foundation, however, the Archdiocese intentionally neglected to alienate the Foundation and its assets for several years. Without a proper alienation of the assets under Canon Law, the Archbishop necessarily continued to maintain control over the Foundation and its assets. This ongoing control by the Archdiocese was purposeful.[74]

The board of the Catholic Community Foundation initially consisted of the Archbishop, Vicar General, Chancellor, Debtor CFO, three auxiliary bishops of the Debtor, and the rector of the Cathedral, who was appointed by the Archbishop.[75] Dissolution of the entity required Archbishop approval and all assets were to revert back to the Archdiocese upon the entity's

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[70] Jean Hopfensperger & Jennifer Bjorhus, *Minn. Archdiocese transfer of assets may protect it from bankruptcy creditors*, Star Tribune (Feb. 2, 2015), http://www.startribune.com/archdiocese-shifted-assets-before-filing-bankruptcy/290400991.

[71] *Id*

[72] *Id.*

[73] In fact, Father McDonough, who was the Archdiocese's Vicar General at the time of Catholic Community Foundation's incorporation, has testified that the Foundation was established to shield money from sexual abuse survivors- CITE McDonough deposition testimony.

[74] Haselberger Aff. ¶¶ 37, 41.

[75] *Id.* ¶ 35; *see also id.* Ex. 5.

dissolution.[76] The Catholic Community Foundation's registered address was located on property owned by Archdiocese.[77]

The Archdiocese provided the initial "seed money" for the Catholic Community Foundation by transferring approximately $11.5 million into the entity for no consideration in exchange.[78] On information and belief, despite this transfer, the Archdiocese remained the beneficiary of the $14 million transferred. Over the following ten years, the Catholic Community Foundation's articles of incorporation were amended to change the name to the "Catholic Community Foundation in the Archdiocese of Saint Paul and Minneapolis, "remove the requirement for Archdiocese's approval for dissolution, and add four voting members: the Archbishop, the Vicar General, the Archdiocese's Chancellor, and the Vice President of the Catholic Community Foundation's board.[79] While the bylaws of the Catholic Community Foundation are not available, they likely state that the Archbishop has control over the appointment of the Catholic Community Foundation's board, including the Vice President.[80]

In May 2013, the Minnesota state legislature temporarily lifted the statute of limitations on child sex abuse cases.[81] Months later, the Archdiocese was removed as the receiver of assets upon dissolution in the Catholic Community Foundation's Articles of Incorporation.[82]

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[76] Jean Hopfensperger & Jennifer Bjorhus, *Minn. Archdiocese transfer of assets may protect it from bankruptcy creditors*, Star Tribune (Feb. 2, 2015), http://www.startribune.com/archdiocese-shifted-assets-before-filing-bankruptcy/290400991.

[77] Haselberger Aff. ¶ 35; *see also id.* Ex. 5

[78] Jean Hopfensperger & Jennifer Bjorhus, *Minn. Archdiocese transfer of assets may protect it from bankruptcy creditors*, Star Tribune (Feb. 2, 2015), http://www.startribune.com/archdiocese-shifted-assets-before-filing-bankruptcy/290400991.

[79] Haselberger Aff. ¶ 35; *see also id.* Ex. 5

[80] *Id.*

[81] CIVIL ACTIONS—SEXUAL ABUSE—LIMITATION PERIOD, 2013 Minn. Sess. Law Serv. Ch. 89 (H.F. 681) (May 24, 2013).

[82] Haselberger Aff. ¶ 36; *see also* Haselberger Aff. Ex. 5.

On information and belief, the Family in Faith Endowment was formed at roughly the same time as the Catholic Community Foundation. The purpose of the Family in Faith Endowment was to raise funds for the Catholic Community Foundation of Minnesota from the Catholic community at large. The Archbishop of the Archdiocese oversaw and administered the fund-raising efforts.

On information and belief, the Archdiocese's development employees performed all work for the Catholic Community Foundation of Minnesota for a significant time after the Foundation's formation, but the employees were paid only by the Archdiocese. Specifically, Archdiocese employees performed all central functions relating to donor outreach, facilitated and performed all donor record keeping, managed all donations and deposits, had direct access to the Catholic Community Foundation's accounts, and maintained the books and records of the Catholic Community Foundation. The development employees for the Archdiocese also used the Archdiocese's facilities, office supplies, and other resources for their work on the Catholic Community Foundation. James Mullin served as the Catholic Community Foundation's Executive Director, but he was also the Archdiocese Development Director, and he was paid exclusively by the Archdiocese. The Catholic Community Foundation did not provide any payment or other consideration to the Archdiocese in exchange for its use of Archdiocese employees, facilities, and other resources.

Other factors further reflect the Archdiocese's control over, and interrelatedness with the Catholic Community Foundation:

- The Catholic Community Foundation and the Archdiocese acknowledged and, in fact, *attested to* the Archdiocese's supervision of, and control over the Catholic Finance Corporation when the Catholic Finance Corporation utilized the Archdiocese's Group Tax-Exempt Ruling and the Archdiocese listed the Catholic Finance Corporation in its Catholic Directory for several years.

- The Catholic Community Foundation was one of the entities made subject to sweeping policy changes mandated by the Archbishop relating to the status of lay employees and other issues.

- The Archdiocese sponsors a wide range of benefit programs that benefit lay employees in the Catholic Community Foundation, including life insurance, health insurance, dental insurance, long-term disability, long-term care, and flexible spending accounts for full-time employees.

- For the first several years of its existence, the Catholic Community Foundation operated out of the Archdiocese's facilities while making use of a broad range of the Archdiocese's resources, and the Archdiocese never received any remuneration or other consideration in exchange.

The Catholic Community Foundation was formed to move material funds outside the reach of sexual abuse survivors and reserve those funds for the Archdiocese. The Archdiocese then reserved control over the Catholic Community Foundation for several years by (i) failing to alienate the Foundation or its assets as required by Canon Law, (ii) controlling all aspects of the governance and operations of the Foundation, and (iii) reserving a right to receive all assets in the Foundation upon its dissolution (which, in turn, could be executed by the Archdiocese). The interrelatedness of the Archdiocese and the Catholic Community Foundation require their substantive consolidation.

F. The Histories and Operational Realities of the High Schools Reflect the High Schools' Interrelationship with the Archdiocese.

The High Schools operate like an educational and community outreach department for the Archdiocese and, not surprisingly, the Archdiocese thus retains material control over the High Schools' curriculum, teachers, Chaplains, finances, and operations. The Archdiocese has also provided significant funding and subsidization to the High Schools for little or no consideration in exchange.

- Even decisions made by the corporate boards of the High Schools remain strictly subject to (i) rules and regulations unilaterally promulgated and

published by the Archdiocese,[83] and (ii) in many cases, written permission from the Archdiocese for board-authorized actions.[84] For example, the High Schools cannot make any loan or transfer any interest in real property without express approval from the Archdiocese regardless of board approval.[85]

- Both the High Schools and the Archdiocese acknowledged and, in fact, *attested to* the Archdiocese's supervision of, and control over the High Schools when the High Schools utilized the Archdiocese's Group Tax-Exempt Ruling and the Archdiocese listed each of the High Schools in its Catholic Directory.

- The Archdiocese maintains a representative on each of the High Schools' boards of directors.[86]

- The Archdiocese appoints and directly supervises Chaplains at the High Schools.[87]

- The Archdiocese sponsors a wide range of benefit programs that benefit lay employees in the High Schools, including life insurance, health insurance, dental insurance, long-term disability, long-term care, and flexible spending accounts for full-time employees.

- The Archdiocese unilaterally imposed non-negotiable, long-term lease terms on the Totino-Grace and DeLaSalle High Schools.

- Financial assistance programs for the High Schools are materially subsidized with Archdiocesan funds. For example, each of the High Schools uses a company called Tuition Aid Data Services, which provides financial need evaluation services. Tuition Aid Data Services "is used by all the Catholic high schools in the Archdiocese to help disburse Archdiocesan funds, as well as funds from the individual high schools."[88]

- The Archdiocese remains in control of major curriculum decisions within the High Schools and the Archdiocese can (and, in fact, *has*) imposed curriculum on the High Schools over their objection.

- The High Schools were all subject to sweeping changes to employment policies mandated by the Archdiocese that, among other things, required a change in the status of all lay employees from "at will" employees to employees who could only be terminated "for cause."

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[83] Moua Aff. Ex. F.
[84] Moua Aff. Ex. H.
[85] *Id.*
[86] Moua Aff. Exs. F, G, H.
[87] Haselberger Aff. ¶ 52.
[88] Moua Aff. Ex. E.

- The retirement benefits of many High School employees are defined by the Archdiocese. Such employees had their pension plan unilaterally frozen by the Archdiocese in 2011 and now have a new 403(b) retirement plan.

- Teachers and principals at the High Schools receive training that is defined and administered by the Archdiocese.

- The Archdiocese guaranteed loans for Benilde-St. Margaret and Totino Grace High Schools for no material consideration in exchange.

- For decades, each of the High Schools has enjoyed the unfettered use of Archdiocesan real property worth millions of dollars while providing little or no consideration in exchange.

The interrelatedness of the High Schools and the Archdiocese is so significant that they function as component parts of a single entity. For this reason, and others outlined above, the assets and liabilities of the High Schools must be substantively consolidated with the Archdiocese's estate.

G. The Catholic Cemeteries Operates as a Fully-Integrated Department or Division of the Archdiocese.

The Catholic Cemeteries, like the Catholic Finance Corporation and the Catholic Community Foundation of Minnesota, was established for the purpose of limiting the availability of assets to creditors. Prior to the Archdiocese's bankruptcy filing, Catholic Cemeteries was consistently treated and held out as operating cemeteries *owned by the Archdiocese*. For example, in the training materials for the July 2013 Parish Business Administrator Orientation Seminar, Catholic Cemeteries is described as a "corporation of the Archdiocese of Saint Paul and Minneapolis that coordinates the management of the six Archdiocesan-owned cemeteries."[89] Similarly, in Catholic Cemeteries' purchase agreements, the entity is described as a corporation "in accordance with and subject to the rules and discipline of the Roman Catholic Church and the rules and regulations of The Catholic Cemeteries now and hereafter existing for the government

[89] Caldie Aff. Ex. 3.

of Catholic cemeteries, as decided, or interpreted, by the Ordinary of The Archdiocese of Saint Paul and Minneapolis." [90] The "Ordinary" is another term for the Archbishop. This clause clearly demonstrates the Archdiocese's attempt to alienate the cemeteries as a matter of civil law only, while continuing to exercise exclusive control of its assets as a matter of Canon Law.

The Catholic Cemeteries were advertised similarly to the public at large. While Catholic Cemeteries previously maintained a public listing of its board of directors identifying the Archbishop as the chairperson, and identifying both the Debtor's CFO and Chancellor as board members, that listing was taken down following the Debtor's bankruptcy filing, even though the constitution of the board of directors remained the same.[91] On January 15, 2015, Catholic Cemeteries' website's heading stated "Welcome to The Catholic Cemeteries of the Archdiocese of Saint Paul and Minneapolis." [92] By March 15, 2015, following the Debtor's bankruptcy filing, the website only read "Welcome to The Catholic Cemeteries." [93] All of the cemeteries managed by Catholic Cemeteries also once advertised themselves as part of the Archdiocese of Saint Paul and Minneapolis. [94] However, following the Debtor's bankruptcy filing, the Archdiocese's name was literally painted over on the signs of each of the cemeteries.[95]

In addition to the foregoing, the assets of Catholic Cemeteries were never properly alienated as a matter of Canon Law, and like the other Consolidation Parties,[96] Catholic Cemeteries was required to implement sweeping employment policies unilaterally imposed by the Archdiocese, participate in insurance and/or benefits programs imposed by the Archdiocese, was subject to the direct control and authority of the Archdiocese at all times, and continues to be

[90] Anderson Aff., Exs. 12–17.
[91] *Id.*
[92] *Id.*
[93] *Id.*
[94] *Id.*
[95] *Id.*
[96] Haselberger Aff. ¶¶ 37–40.

identified as an entity subject to the control and supervision of the Archdiocese in certifications to the Internal Revenue Service.

H. The Francophone African, Newman Center and Chapel, Sagrado Corizon, and Gichitwaa Kateri Chaplaincies Operate as Fully-Integrated Departments or Divisions of the Archdiocese.

The chaplaincies—including the Francophone African Chaplaincy, Newman Center and Chapel, Sagrado Corizon de Jesus and the Chaplaincy of Gichitwaa Kateri (collectively, the "Chaplaincies")—were established under Minnesota Statute 317A to limit Archdiocese liability. The formation process for chaplaincies includes the establishment of corporations with requisite supervision and control by the Archdiocese to be included in the group tax-exempt ruling and a requirement that the Chaplaincies utilize the Archdiocese's Parish Accounting Service Center for all its accounting needs. The Chaplaincies participate in the Archdiocese's employee benefits programs and were each subject to the sweeping, unilateral changes to employment policies mandated by the Debtor.

The Francophone African and Gichitwaa Kateri Chaplaincies each operate out of Debtor-owned properties and do not appear to pay anything for doing so. Also, in many cases, the salaries of the chaplains of the chaplaincies and other expenses of the organizations have been paid directly by the Archdiocese through its operating account. In 2012, for example, Father Timothy Cloutier was assigned as parochial administrator of the Gichitwaa Kateri Chaplaincy, but the Archdiocese continued to pay his salary. Similarly, when the Francophone African Chaplaincy was established in 2011, the Archdiocese paid the salary and housing of its Chaplain. When the Francophone African Catholic community failed to meet the fundraising targets set by the Archdiocese, the Archbishop unilaterally removed the Chaplain and replaced

him with an Archdiocesan employee. The Francophone African corporation then stopped providing any ministry, but the civil corporation continues to exist.

The Chaplaincies are operated like a department of the Archdiocese with no meaningful distinction between the governance of the Archdiocese and the Chaplaincies or any distinction between the assets and liabilities of the Archdiocese and the Chaplaincies. The Chaplaincies should thus be substantively consolidated.

I. Additional Factors Reflecting the Interrelatedness of the Archdiocese and the Consolidation Parties Underscore the Necessity of Substantive Consolidation.

Additional factual circumstances present in this case also weigh heavily in favor of substantive consolidation. As discussed above, the Committee is not required to demonstrate the presence of any particular factor(s). Nevertheless, the following factors have been relied upon by other courts and their presence in this case further demonstrates the interrelatedness of the Debtor with the Consolidation Parties.

i. A lack of independent corporate governance.

The Archdiocese dominates the boards of the parishes and has an effective veto power over many (if not all) of the boards of the Consolidation Parties with respect to a wide range of specific issues. It is also clear that the role of corporate boards within the Archdiocese is minimized or disregarded entirely. Parish boards rarely, if ever, meet in full and the Consolidation Parties consistently and routinely treat mandates from the Archdiocese as their ultimate authority. Examples that illustrate a lack of independent corporate governance on the part of the Consolidation Parties are set forth in the Motion at paragraphs 31 through 44 and 87 through 95.

ii. Intermingling of assets and resources.

Dozens of parishes consistently owe past due debts to the Archdiocese for unpaid assessments, funds owed to the inter-parish loan fund, or missed payments to the benefit trust at any given time. No legal action has ever been commenced against a parish by the Archdiocese to recover outstanding amounts due despite the purported separateness of the entities. In fact, the Archdiocese has forgiven outstanding such debts on multiple occasions.[97] The Archdiocese has also provided benefits to parish employees on multiple occasions even when parishes have failed to make their payments to secure such benefits. The Archdiocese also oversees and funds services on behalf of its parishes and their schools, subsidizes or funds some the salaries of employees for the Consolidation Parties on occasion, and provides the use of Archdiocesan real property, Archdiocesan employees, and other Archdiocesan resources while receiving little or no consideration in exchange. Parishes also commonly intermingled assets with other entities within the Archdiocese. A more detailed discussion of the intermingling of Archdiocesan assets with those of the Consolidation Parties can be found in the Motion at paragraphs 102 and 119 through 126.

iii. The existence of intercorporate guarantees.

At one point, the Debtor guaranteed over $150 million in loans for certain of the Consolidation Parties.[98] In 2005 and 2006, the Debtor guaranteed roughly $113 million in loans for some of the Consolidation Parties and several other affiliated entities. The Archdiocese also guaranteed loans for the Benilde-St. Margaret and Totino Grace High Schools. In each instance, the Archdiocese received little or no consideration in exchange for its guaranty of loans for Consolidation Parties.

[97] *See, e.g,* Archdiocese Finance Council Minutes, May 3, 2012.
[98] JH Aff., pg 27.

iv. The Consolidation Parties would have substantially no "business" without the Archdiocese.

Pursuant to Canon Law, in the Archdiocese, it is the relationship with the Archbishop that makes a parish or an organization "Catholic" and thus allows a lay member to exercise his or her religion according to the tenets of the faith within that parish or organization. Although Catholics can fulfill most of their religious obligations at any Catholic parish, they cannot satisfy the requirement at a Lutheran Church, for instance, or even a church that identifies itself as Catholic but is not sanctioned by the relevant Diocese or Archdiocese within which it sits.

v. The Archdiocese and the Consolidation Parties engage in the uncompensated use of one entity's employees for another entity.

The Archdiocese sets the compensation for all priests, including parish pastors, and also oversees all aspects of training and supervision for such priests. The priests serve and perform the work of the Archdiocese within each parish, but each parish is required to pay the priests' salaries and benefits. Similarly, Archdiocesan employees have frequently held positions in parishes while being paid only by the Archdiocese. For example, the former Vicar General, Father Kevin McDonough, served as parish pastor on seventy-five occasions over seventeen years, but never drew a salary or received other remuneration or benefits from any parish for providing such services. The Archdiocese also subsidizes or, in some instances, entirely funds the salaries and benefits of employees within the Francophone, Newman Center and Chapel, Sagrado Corizon, and Gichitwaa Kateri Chaplaincies.

vi. The Archdiocese pays the expenses or losses of the Consolidation Parties.

The Archdiocese has often sold or leased real property to the Consolidation Parties at prices below fair market value, subsidized benefits payments on behalf of struggling parishes, and forgiven parish debts. The Archdiocese has also outright paid the obligations of parishes. For

example, when the Church of St. Bernard in St. Paul incurred a $459,218 tax liability, the Archdiocese paid the bill.[99] As noted in the prior subsection, the Archdiocese also subsidizes or funds entirely the salaries and benefits of employees in the Chaplaincies.

vii. Directors and Officers of the Consolidation Parties do not act in their own interests, but instead take direction from the Archdiocese.

On several occasions, the Archdiocese has imposed mandates that require the Consolidation Parties to act in a manner inconsistent with their best interests to comply with Archdiocese directives. Despite opposition in each instance, the Archdiocese: merged dozens of parishes against their will, mandated that Consolidation Parties switch over to a specific employee benefits program, unilaterally required all parishes to discontinue liability insurance programs and participate in the General Property and Liability Insurance Program, required all parishes to alter their pension and retirement programs, unilaterally froze pension programs, imposed controversial curriculum on the High Schools, and unilaterally mandated sweeping changes to the employment policies of Consolidation Parties in a manner that imposed additional liabilities.

viii. The Archdiocese exercises domination and control over the operations, assets, and finances of the Consolidation Parties.

The Archdiocese controls almost every aspect—finance, operations, governance—of the entities. Each of the Consolidation Parties has, for at least a period of several years, been included in the Archdiocese's group tax-exempt certification and thereby acknowledged that it is subject to the Archdiocese's control and governance. Further, the Archdiocese controls every parish board, the Archbishop serves as President of each parish corporation, the parishes and other Consolidation Parties must obtain written approval from the Archdiocese before engaging

[99] Annual Report of the Gambling Control Board, Fiscal Year 1999.

in a large number of financial and/or operational actions, and the Archdiocese has dictated material provisions of corporate governance documents for the parishes and other Consolidation Parties. The Archdiocese also unilaterally dictates the salaries and benefits for all parish priests, exercises control over the curriculum of the High Schools and the benefits of the Consolidation Parties' lay employees, dictates accounting practices, and has unilaterally mandated far-reaching employment policies that the Consolidation Parties are required to implement and follow. Although the foregoing list of examples is long, it is not comprehensive. Several additional illustrations of the control and authority that the Archdiocese exercises over the Consolidation Parties are set forth in preceding sections and in the Motion.

ix. The Assets and Liabilities of the Archdiocese and the Consolidation Parties Are Inextricably Intertwined.

Due to the complexity of the Archdiocese's overall organization, the overlapping interests in much of the property held by the Archdiocese and the Consolidation Parties, and the rules of alienation, it is not possible for the Committee and other parties in interest to gain a clear picture of the collective assets relevant to this case without substantive consolidation. The Archdiocese has engaged in a dualistic approach to categorizing its asset holdings. On the one hand, the Archdiocese incorporated hundreds of existing parishes, and also transferred material assets into new entities, and thus alienated hundreds of millions of dollars in assets as a matter of civil law. On the other hand, Canon Law, federal tax law, and decrees by the Vatican authorize and *require* the Archdiocese to continue exercising authority over the assets that it civilly alienated, and the Archdiocese has in fact continued to exercise control and authority over such assets. When viewed through the lens of these realities, the Debtor's assets become indistinguishable from those of the Consolidation Parties. Substantive consolidation is necessary given the complexities and ambiguities inherent to the Debtor's interest in, and control over property.

The liabilities of the Archdiocese and the Consolidation Parties are also inextricably intertwined. More than a hundred of the Archdiocese's parishes have been served with lawsuits based on allegations of clergy sexual abuse. All or nearly all of the claims asserted against such parishes have also been asserted against the Archdiocese.

x. The Archdiocese and the Consolidation Parties do not observe corporate formalities.

The Archdiocese has, among other things, imposed dozens of parish mergers absent any parish board action, required entry into agreements or dictated the terms of agreements between the Archdiocese and Consolidation Parties, failed to comply with corporate governance requirements for a period of years, such as the requirement to participate in annual board meetings with entities incorporated under Minn Stat. § 315.15, and either paid or guaranteed the debts of dozens of separately-incorporated entities without receiving consideration in return. The Consolidation Parties have engaged in a similar disregard for corporate formalities. Examples that further illustrate a failure to observe corporate formalities on the part of the Archdiocese and the Consolidation Parties are set forth in the Motion at paragraphs 86 through 118.

II. THE BENEFITS OF SUBSTANTIVE CONSOLIDATION OUTWEIGH ANY HARM TO CREDITORS.

The benefits of substantive consolidation outweigh any potential harm to creditors. Substantive consolidation will increase in the pool of assets available to pay claims, eliminate issues that would otherwise require litigation, and create significant efficiencies in the administration of the estate. Moreover, most creditors will not be harmed, but rather will benefit, from consolidation. The creditor pool in this case is dominated by claims of the survivors of clergy sexual abuse. In the aggregate, their claims could easily exceed $1 billion. The Committee anticipates that the proposed substantive consolidation could bring hundreds of millions of

additional dollars into the estate and thus materially increase the likelihood that sexual abuse claimants will realize a meaningful recovery. Granting the relief proposed would create a potentially-dramatic upside for the primary creditor group in this case and it will not have any meaningful impact on the interests of other creditors.

A. Substantive Consolidation Will Increase Estate Assets, Negate the Need for Costly and Protracted Litigation, and Create Administrative Efficiencies.

The most readily evident benefit of substantive consolidation is the increase in the pool of assets available to creditors. *See In re Affiliated Foods, Inc.*, 249 B.R. 770, 781 (Bankr. W.D. Mo. 2000) (citing the increase in assets as an obvious benefit of consolidation). The Committee estimates that consolidation of the Parishes could result in a net gain to the estate of approximately $1.392 billion. In addition, consolidation of CCF may result in a net gain of $280 million and consolidation of CFC could net the estate another $30 million. The benefit to creditors in having such assets, as well as the assets of the other Consolidated Parties, in the estate is so obvious that the proposition does not require elaboration.

i. Substantive consolidation will negate the need for costly litigation.

Substantive consolidation would also eliminate issues that would otherwise require interested parties to litigate. Indeed, there are 187 parishes and dozens of related entities. Even a cursory examination of the Debtor's operation evidences numerous insider transfers flowing in all directions between entities not operating at arm's length. The Committee anticipates the Debtor's plan will greatly undervalue avoidance actions while seeking finality as to the transfers and channeling injunctions for the transferees. The Committee could not accept such provisions without a thorough examination of all transfers. The Committee anticipates that a significant number of the transfers would need to be litigated.

Further, if the Parishes refuse to disclose financial information, the plan confirmation process will be significantly contested. An embattled plan confirmation process would be expensive and time consuming. Substantial discovery would be required, with hundreds of written discovery requests exchanged, thousands of pages of documents disclosed, and multiple depositions taken. Such a process would substantially add to the administrative costs and burdens necessary to examine and administer the estate effectively. A contested confirmation process would also inevitably lead to major delays to permit examination of the value of transfers, the scope and propriety of the channeling injunctions, and the value of contributions from those entities receiving channeling injunctions.

Litigation of the hundreds of sexual abuse lawsuits against the Parishes would be immediately stayed by substantive consolidation, which would benefit creditors by preserving parish assets and unifying the numerous individual actions against each of them into one forum. Since the vast majority of such tort claims are based upon theories and claims that are already being addressed in this case, consolidation would lead to very real efficiencies by consolidating all claim-related issues into one unified and uniform process.

ii. Substantive consolidation will enhance the efficiency of administration.

Substantive consolidation would focus and harmonize the interests of the Debtor and the Parishes. Any internal disagreement between the Archdiocese and its Parishes would be removed from the public forum and the unification of the claims process would avoid delay, litigation, related complications and substantial expense.

Parties opposing the Committee's Motion may argue that substantive consolidation would complicate the case or cause undue delay. The case is already complicated and it will become more complicated as the plan confirmation process moves forward. Moreover, because it is

anticipated the Debtor will seek channeling injunctions, much, if not all, of the additional work and analysis that would be required after substantive consolidation will necessarily have to take place anyway as the parties analyze the assets and exposure of parties receiving channeling injunctions and determine if their contributions to the process are sufficient to warrant the releases they seek. In fact, substantive consolidation likely would streamline the plan confirmation process because it will negate the need for channeling injunctions when the assets and liabilities of the Debtor and the Consolidated Parties would be unified.

B. Substantive Consolidation Will Have No Material Impact on the Rights of Other Creditors.

The members of the Committee do not expect their constituency to experience any harm as a result of substantive consolidation. The parishes, to the extent they are creditors due to their potential indemnification and contribution claims against the Archdiocese, would also not be harmed. Following consolidation, all claims by the Committee against the Debtor, parishes and the schools will be treated as singular claims against the consolidated estate. Accordingly, the contingent indemnification and contribution claims mentioned in the proofs of claims of certain parishes and schools would be rendered moot as against the Debtor but the result would be the same – such schools and parishes would have claims against them resolved and paid, at least in part, by the assets of the Archdiocese.

A similar result is reached with regard to anticipated claims by parishes and schools relating to alleged insurance premium overpayments. Consolidation would eliminate the need to litigate these claims, thereby creating efficiency in the administration of the estate along with considerable costs savings.

More significantly, however, Parishes and Schools would not be harmed as they lack a legal or equitable interest in the premiums contributed to the General Insurance Fund ("GIF").

The interested parties have already conceded that the GIF does not create an express trust. Thus, the sole remaining consideration is whether the GIF constitutes a constructive or resulting trust, and it does not under Minnesota law.[100]

Additionally, to the extent any creditors to be consolidated assert claims relating to loan guaranties or similar contingent liabilities, substantive consolidation will result in no harm. By virtue of consolidation, the assets and liabilities of the Debtor and the consolidated creditors would be effectively combined. As a consequence, the Debtor would bear responsibility for the particular liability, but it would also possess the reciprocal benefit of an interest in the asset at issue, practically and effectively resulting in a wash. Such a circumstance would cause no harm to creditors.

In the end, substantive consolidation would result in little, if any, harm to creditors and, if substantive consolidation occurs, the pool of assets becoming available for distribution to creditors, coupled with the reduction in litigated claims between interrelated entities and the overall efficiencies created, would generate actual and significant benefits for all interested parties.

[100] Under Minnesota law, a constructive trust is "an equitable remedy imposed to prevent unjust enrichment and is completely dissimilar to an express or resulting trust." *Dietz v. Dietz*, 70 N.W. 2d 281, 285 (Minn. 1955). To establish a constructive trust under Minnesota law, "the claimant must prove, by clear and convincing evidence, the existence of 'a fiduciary relation and the abuse ... of confidence and trust bestowed under it to plaintiff's harm.'" *Chiu v. Wong*, 16 F.3d 306, 309 (8th Cir. 1994) (quoting *Dietz v. Dietz*, 244 Minn. 330, 70 N.W.2d 281, 285 (1955)). Because the parishes and schools do not maintain an individualized legal or equitable interest in their payment contributions under the GIF, and the Debtor was not unjustly enriched by the submission of insurance premium payments, no constructive trust over these funds could be established. Similarly, the GIF also does not constitute a resulting trust. According to Minn. Stat. § 501B.07, "if a transfer of property is made to one person and the purchase price is paid by another, a resulting trust is presumed to arise in favor of the person by whom the purchase price is paid." "The key inquiry is into the intent, or implied intent of the parties on whether a trust or a debt is created." *In re BMC Indus., Inc.*, 328 B.R. 792, 797 (Bankr. D. Minn. 2005). The GIF brochure provides that any excess premium payments will be reinvested to offset the administration of future claims and to fund the purchase of insurance in the future rather than held for or returned to the individual Parishes and Schools. Thus, the Parishes and Schools were made expressly aware that their contributions would go toward administering claims and purchasing insurance coverage, and they cannot successfully argue that the GIF should be considered a resulting trust.

III. SURVIVORS OF CLERGY SEXUAL ABUSE WILL LIKELY SUFFER EXTREME PREJUDICE ABSENT SUBSTANTIVE CONSOLIDATION.

Later this week, the Debtor will file a plan seeking to pay sexual abuse claimants a very small percentage of the value of their claims. The Committee anticipates that payments under the plan will come from three sources: (i) assets currently deemed to fall within the Debtor's estate; (ii) contributions from insurance companies; and (iii) a negligible contribution from the Debtor's parishes. The Committee further expects that, in its plan, the Debtor will also seek to secure unqualified third-party releases for more than 200 affiliated entities, including each of the Debtor's parishes, in the form of channeling injunctions.

The Debtor's plan is a shell game designed to smuggle well over $1 billion in assets through the bankruptcy process while paying creditors less than five percent of what they are owed and less than five percent of the actual value of the fully-integrated, $1.7 billion organization[101] over which the Debtor exercises complete authority and control.

Absent a voluntary settlement, the Debtor's game has only three possible outcomes:

OUTCOME 1: The Debtor's affiliates voluntarily disclose the value of their assets and either (a) pay creditor claims in full, or (b) contribute the liquidation value of their assets to the Debtor's plan to fund the payment of creditor claims.

OUTCOME 2: The Court grants the Committee's Motion for substantive consolidation and creates the same outcome regardless of whether the Debtor's affiliates agree to disclose the value of their assets voluntarily.

OUTCOME 3: The Court denies the Committee's Motion seeking substantive consolidation, the Debtor's affiliates (continue to) refuse to disclose the value of their assets and, because the established standard for granting third-party releases cannot be satisfied, the case must be dismissed.

[101] The Debtor will likely argue that a substantial portion of the value of its organization's assets is comprised of donor-specified funds and, thus, such funds cannot be made available to pay creditor claims. The Committee acknowledges this theoretical possibility, but the character of the assets in the Debtor's estate must be analyzed fully and openly before such a conclusion can be reached responsibly. Among other things, the parties will have to assess whether donated funds are truly "donor-specified" and whether the Debtor has treated such funds in a manner consistent with donor intent throughout its history.

A. The First Outcome Is Unlikely.

More than five months ago, the Committee requested financial information relating to the Debtor's parishes to allow it to analyze the propriety of third-party injunctions. The Committee also sent an explanatory correspondence to counsel for the Parish Committee and counsel for the Parish Group to provide context for its request. After receiving a negative initial response from both the Debtor and the parishes, and no responsive production was made by either, the Committee sent a follow-up letter on March 3, 2016, again to counsel for the Parish Group and the Parish Committee. The Committee's March letter made clear that it would not agree to channeling injunctions for any parish unless the Committee had at least 120 days to review detailed financial information relating to such parish's before such an injunction was granted.

To date, the Committee has not received any information responsive to its requests. On the contrary, counsel for the parishes has indicated that they have no intention of producing the information requested. Unfortunately, the Committee does not believe it is prudent to expect the parishes to produce their financial information voluntarily. Based on the information available to the Committee, the reticence of the Debtor and its parishes might make sense. It appears that, in the aggregate, the Debtor's parishes likely hold well in excess of $1 billion in net assets.

B. The Second Outcome (i.e., Granting the Committee's Motion) Would Create Certainty and Ensure Clarity and Fairness.

The Debtor's plan will, in effect, seek to substantively consolidate the *liabilities* of the Consolidation Parties (and others) without substantively consolidating their assets or even exposing the Consolidation Parties' financial information to the light of day. If the Consolidation Parties did not have substantial assets, and other parties in interest were permitted an opportunity to confirm that fact, the proposed plan might be feasible. The reality of the Consolidation Parties' asset picture, however, is very different.

Based on the limited information available to it, the Committee estimates that the Archdiocese and its parishes hold approximately $1.4 billion in assets, and that the other Consolidation Parties hold an additional $300 million in assets.[102] The Committee further estimates that the Archdiocese and its parishes, in the aggregate, will seek to contribute approximately 2.5% of the total amount of claims filed by sexual abuse survivors.[103]

By granting the Committee's Motion, the court will simply take more control of the case and level the playing field. Instead of permitting the parties seeking channeling injunctions to obtain the benefits of a bankruptcy without making the disclosures and contributions mandated by Congress through the bankruptcy code, all parties in interest will have a fulsome opportunity to analyze the assets and vet the contributions of parties obtaining releases. Before a chapter 11 debtor can confirm a plan, it must either pay creditor claims in full or contribute the liquidation value of its assets to funding a plan of reorganization.[104] There is nothing unfair about requiring parties that seek the same relief as a chapter 11 debtor to: (i) disclose the same information that a chapter 11 debtor is required to disclose, and (ii) make the same level of contribution that a chapter 11 debtor is required to make.

C. The Third Outcome (i.e., Dismissal) Would Materially Prejudice Creditors.

The standard that must be satisfied to secure channeling injunctions (to the extent they are available at all) is formidable.[105] The agreement of a substantial majority of creditors is

[102] CITE TO JEFF ANDERSON AFFIDAVIT AND RELATED EXHIBIT(S).

[103] The Committee anticipates that the Debtor and its parishes will also contribute the proceeds of their insurance policies, but the value of the insurance policies are not factored into the Committee's estimate of assets held by the Debtor and the Consolidation Parties.

[104] 11 U.S.C. § 1129(b).

[105] United States Courts of Appeals for the Fifth, Ninth, and Tenth Circuits have all interpreted 11 U.S.C. § 524(e)—which states that "discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt"—as prohibiting non-consensual third-party releases because such releases implicate the liability of an entity other than the debtor. *In re Zale Corp.* 62 F.3d 746, 760 (5th Cir. 1995); *In re Lowenschuss*, 67 F.3d 1394, 1401–02 n. 6 (9th Cir. 1995); *In re W. Real Estate Fund, Inc.* 922 F.2d 592, 601 (10th

considered "the single most important factor," and courts have rejected releases absent the affirmative assent from affected creditors. *In re Master Mortg. Inv. Fund, Inc.*, 168 B.R. 930 (Bankr. W.D. Mo. 1994); *see also, e.g., In re Quincy Med. Ctr., Inc.*, 11-16394-MSH, 2011 WL 5592907, at *4 (Bankr. D. Mass. Nov. 16, 2011) (considering a third-party release binding only on those creditors who voted in favor of the plan). Courts have held that the full payment of creditor claims is required to obtain a release, *see, e.g., In re Wool Growers Cent. Storage Co.*, 371 B.R. 768, 777 (Bankr. N.D. Tex. 2007), and other courts have refused to rule that non-debtors have "substantially contributed" without an analysis of the non-debtor's assets and ability to pay. *In re Mahoney Hawkes, LLP*, 289 B.R. 285, 302 (Bankr. D. Mass. 2002).

The Committee's constituency holds the vast majority of claims in this case, whether such claims are measured by number of claims or by dollar amount. The Committee will not consent to channeling injunctions for the Consolidation Parties unless it can confirm that the Consolidation Parties are contributing a material and appropriate amount for the payment of creditor claims. As a result, without the consent of the Committee's constituency, under the established standard followed in all jurisdictions that actually permit channeling injunctions, the third-party releases sought for the Consolidation Parties and others cannot be granted.

The Committee has been told expressly by both the Debtor and its insurers that, unless channeling injunctions are provided to at least the Debtor's parishes, any plan of reorganization cannot be feasible. If the Debtor cannot confirm a plan (whether by means of a cramdown or voluntary agreement), eventually the only option available will be dismissal of the case. If the

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Cir. 1990). Courts that do allow channeling injunctions typically consider five factors: (1) the existence of an identity of interest between the debtor and the third party; (2) whether the non-debtor contributed substantial assets to the reorganization; (3) whether the injunction is essential to reorganization; (4) whether a substantial majority of the creditors agree to such injunction; (5) whether the plan provides a mechanism for the payment of all, or substantially all, of the claims of the class affected by the injunction. *In re Master Mortg. Inv. Fund, Inc.*, 168 B.R. 930 (Bankr. W.D. Mo. 1994).

case is dismissed, the substantial funds invested in the bankruptcy process will be lost, hundreds of lawsuits will be filed against the Debtor, the existing lawsuits against the parishes will proceed, and claimants will wait years or even decades to receive compensation for the abuses perpetrated against them. Substantive consolidation is necessary to avoid very serious harm to creditors.

CONCLUSION

Because the interrelationship amongst the Debtor and the Consolidation Parties necessitates consolidation, the benefits of consolidation will clearly outweigh any harm to creditors, and significant prejudice will result from failing to consolidate the Debtor's estate with the Consolidation Parties, the Committee respectfully asks the court to grant its motion.

Dated: May 23, 2016

/s/ Robert T. Kugler

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