

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Case No. 15-30125

The Archdiocese of Saint Paul and
Minneapolis,

Chapter 11

Debtor.

**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**

1. The Official Committee of Unsecured Creditors (the "Committee") of The Archdiocese of Saint Paul and Minneapolis (the "Debtor" or the "Archdiocese") hereby moves (the "Motion") for the substantive consolidation of the Debtor, its (i) parishes, (ii) consolidated 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) Newman Center and Chapel (viii) the Catholic Finance Corporation; (ix) The Catholic Cemeteries; (x) Totino Grace High School; (xi) DeLaSalle High School; and (xii) Benilde-St. Margaret High School.

2. The court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334, this is a core proceeding pursuant to 28 U.S.C. §§ 157(b), and venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The petition commencing this Chapter 11 case was filed by the Debtor on January 16, 2015. The case is now pending before this court.

4. The court will hold a hearing on this motion on **June 16, 2016, at 9:00 a.m. central time**, or as soon thereafter as counsel may be heard, before the Honorable Robert J.

Kressel at the U.S. Courthouse, Courtroom 8 West, 8th Floor, 300 South 4th Street, Minneapolis, Minnesota, 55415.

5. **Any response to this Motion must be filed and served no later than June 11, 2016**, which is at least five days before the time set for the Hearing (including Saturdays, Sundays, and holidays). **UNLESS A RESPONSE OPPOSING THIS MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

6. This Motion arises under 11 U.S.C. §§ 105(a), 363(b), 541, and 542. This Motion is filed under Bankruptcy Rule 9014 and Local Rule 9013. The Committee requests an order substantively consolidating the Debtor with (i) each of the Debtor's parishes and related schools and cemeteries (collectively the "Parishes"); (ii) consolidated 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) Newman Center and Chapel (viii) the Catholic Finance Corporation; (ix) The Catholic Cemeteries; (x) Totino Grace High School; (xi) DeLaSalle High School; and (xii) Benilde-St. Margaret High School (collectively the "Consolidation Parties"). A full list of the Consolidation Parties is attached as **Exhibit 1**.

RELEVANT FACTS

7. The Debtor operates the Consolidation Parties, along with other entities, as interdependent departments of the Archdiocese.

8. This intentional structure is a natural consequence of both (i) the relevant history of the Catholic Church in the United States, and (ii) the requirements of internal rules that govern the Catholic Church, i.e., the Code of Canon Law ("Canon Law").

9. Dioceses (like the Archdiocese) are defined geographically by areas, or districts, and they are also socio-political entities within the Roman Catholic Church.¹ The Archdiocese was established in 1850 and raised to the dignity of an archdiocese in 1888.²

10. The government of a diocese is hierarchical and, in practice, it is run by one person – the bishop assigned to the diocese.³ The bishop’s power is defined by the Canon Law and each bishop reports directly to the pope. The bishop of the diocese holds all power in the diocese, subject only to (i) any limitations contained in the general law of the Catholic Church and (ii) the authority of the pope.⁴

11. A diocese may exist without being incorporated pursuant to the civil law requirements of the country in which it exists.⁵ The concept of civil incorporation is relatively recent when viewed in the context of the Catholic Church’s two-thousand-year history.⁶

12. Catholic entities—such as dioceses, parishes, colleges, and schools—are sometimes civilly incorporated to protect the entity’s property.⁷ As detailed below, the structure of corporate governance mandated by relevant statutes (including Minn. Stat. § 315.15) was designed and intended to reserve *for the bishop* direct operational and financial control of incorporated entities and their assets.

1. The History of Catholic Church Governance Structures in the United States

13. Following the American Revolution, multiple states passed laws governing the incorporation of religious societies.

¹ Doyle Aff. ¶¶ 11, 13.

² *Id.* ¶ 9.

³ *Id.* ¶¶ 11, 12.

⁴ *Id.* ¶ 15.

⁵ *Id.* ¶ 17.

⁶ *Id.* ¶ 34.

⁷ *Id.* ¶ 32.

14. The laws, which commonly included the appointment of lay trustees, led to controversies between bishops and the lay trustees regarding many issues, including the appointment of pastors, the details of religious traditions and ceremonies, and the control of local property.⁸

15. In 1822, as more American bishops were forced to wrestle control of property from lay trustees, Pope Pius VII issued a written brief condemning attempts by lay trustees to exercise control of diocesan property in contravention of the authority of diocesan bishops.⁹

16. The Catholic bishops then met in plenary council in Baltimore in 1829 and focused on issues of property tenure.¹⁰ The Baltimore council essentially reiterated the Pope's 1822 condemnation and ordered:

Since lay trustees have too often abused the power given them by the civil law, to the great detriment of religion, we greatly desire that in the future no church shall be built or consecrated unless it shall have been assigned, by written instrument to the bishop in whose diocese it is to be built, wherever this can be done.¹¹

17. A strong movement thus began against ceding control of Catholic Church property to lay trustees.¹²

18. The civil concept of *Corporation Sole* began to be favored broadly as a means of holding church property.¹³ Under this concept, the bishop constituted the sole member of the corporation of any entity that was to be incorporated according to the civil law of the governing

⁸ *Id.* ¶ 35.

⁹ Haselberger Aff. ¶ 20.

¹⁰ Doyle Aff. ¶ 36.

¹¹ Haselberger Aff. ¶ 20.

¹² Doyle Aff. ¶ 36.

¹³ *Id.*

jurisdiction. The Holy See¹⁴ favored this concept at the time because it was similar to the canonical method of property tenure.¹⁵

19. By the time the Archdiocese was established in 1850, the role of lay trustees had been nearly abolished.¹⁶

20. A wave of anti-Catholic sentiment soon resulted in changes to some state incorporation laws. Initial versions of such laws, such as the one passed in New York in 1855, threatened to undermine the Catholic Church's control of its property, pastors, and religious traditions by, among other things, reinstating a more meaningful governance role for lay trustees.¹⁷

21. Ultimately, the Catholic Church was able to broker an amendment to the New York law (among others). Although the amendment still required the involvement of lay trustees, the role of trustees was again diminished to suit the needs of the Catholic hierarchy.¹⁸

22. The revised version of the New York law became the model for the 1876 statute (originally Chapter 34, and now Minn. Stat. § 315.15) under which parishes and other Debtor-related entities could be incorporated in Minnesota.¹⁹

23. In 1911, the Holy See issued a decree stating that no property could be purchased or sold on behalf of the Catholic Church without consent from the bishop assigned to the district in question and that the membership of all church-affiliated corporations was to consist of the bishop, vicar general, pastor, and two lay trustees.²⁰

¹⁴ The Holy See is the administrative arm of the pope. Haselberger Aff. ¶ 20 n.2.

¹⁵ Doyle Aff. ¶ 36.

¹⁶ Haselberger Aff. ¶ 20.

¹⁷ *Id.* ¶ 21.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Doyle Aff. ¶ 37.

24. Consistent with the pope's 1911 decree, every incorporation of a diocese or parish under civil law requires this corporate structure (which structure continues to be required), which ostensibly surrenders control to the duly-appointed officials of the Catholic Church and ownership of the corporation and its assets to the institutional church's canonical governing structure.²¹

25. This governance structure of governance was designed to maintain and enhance each bishop's control over church property in localities throughout his diocese.²²

26. Bishops were thus vested by the pope (and remain vested today) with complete authority and responsibility over entities and property within their diocese, and they are not permitted to divest themselves of such authority by turning over ownership or control of church property or operations to lay trustees or others.²³

2. The Archbishop Has Authority and Control Over All Parishes Within His Archdiocese and Has Power and Control Over Many Other Catholic Entities

27. Section 315.15 of Minnesota Statutes provides the requirements for the establishment and governance of each of the Debtor's parish corporations. Consistent with the written brief of Pope Pius VII in 1822, the written order of the First Provincial Counsel of Baltimore in 1829, and the Holy See's decree in 1911, Minn. Stat. § 315.15 permits the Archdiocese, through the Archbishop, to exercise direct control over all material property and all operational aspects of each Debtor-related corporation incorporated thereunder.

28. Also consistent with Minn. Stat. § 315.15, and the Holy See's 1911 decree designed to maximize the control of each bishops over all entities and properties within their diocese: (i) the Archbishop, the vicar general, and a pastor designate two lay members and

²¹ *Id.* ¶¶ 38, 39..

²² Haselberger Aff. ¶ 22.

²³ Doyle Aff. ¶ 39.

together they form a new corporation; (ii) the Archbishop, the vicar general, pastor, and two lay members then serve as members of the corporation's governance board; and (iii) the Archbishop serves as president of each of the Archdiocese's affiliated corporations.

29. The Archbishop thus continues to exercise direct and ultimate control over all entities and properties within the Archdiocese. He also wields authority to establish and maintain faith communities and entrust each community with a pastor *on his behalf*.²⁴

30. The Archdiocese controls almost every aspect of the Consolidated Parties – including finance, operations, governance. As one former priest and parish administrator stated:

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 in the Generals' army.²⁵

a. Parishes Lack Independent Corporate Control Over Their Own Administration.

31. The Archdiocese dictates the governance structure of the Parishes by requiring them to adopt and file uniform Articles of Incorporation and corporate Bylaws.²⁶ Additionally, Parishes are not permitted to amend such documents without express written approval from the Archdiocese.²⁷ In the event that any of the Parishes fail to expressly adopt the uniform Articles of Incorporation and Bylaws, the Debtor compels the officials of the Parishes to act in accordance with the uniform documents, and to disregard the requirements of any governance documents actually on record for that entity.²⁸

²⁴ Caldie Aff. Ex. 1, 12 (emphasis added).

²⁵ Fitzpatrick Aff., ¶ 20.

²⁶ Haselberger Aff. ¶ 26; *see also id.* Ex. 2.

²⁷ *Id.* ¶ 26; *see also id.* Ex. 2.

²⁸ *Id.* ¶ 26, ¶ 26 n.5.

32. The Archbishop is the president of every parish board, and the vicar general²⁹ serves in one of the other four parish board positions for every parish.³⁰

33. The Archdiocese also appoints the pastor of each parish, who serves as its vice president.³¹

34. While a parish corporation's pastor is often compensated by the parish, the appointment, termination, and all decisions relating to the placement and reassignment of the pastor rests exclusively with the Debtor through the Archbishop.³²

35. Parish pastors thus can be and, in fact, have been removed or reassigned due to their failure to comply with the requirements or wishes of the Debtor.³³ For example, priests and pastors have been removed for complaining of loneliness, considering joining a religious order, suing parishioners, sexual misconduct, arrest and theft.³⁴ The Debtor has threatened priests with removal for failing to participate in the Justice in Employment-mandated arbitration process, not entering into a Financial Cooperation Agreement with the Catholic Finance Council, witnessing illicit marriages (especially outdoor weddings), redirecting monies from parish accounts to foreign charities, requesting reimbursement from parishes for undocumented expenses, blessing same-sex unions, supporting the Catholic Coalition on Church Reform, and unapproved liturgical innovations.³⁵ The Archdiocese's complete power over pastors gives it effective control over each pastor's board vote.

²⁹ The vicar general is appointed by the Archbishop and cannot validly act in any manner contrary to the will of the Archbishop. *Id.* ¶ 26.

³⁰ *Id.* ¶ 24; *see also id.* Ex. 2.

³¹ *Id.* ¶ 24; *see also id.* Ex. 2.

³² *Id.* ¶ 24; Fitzpatrick Aff.

³³ Haselberger Aff. ¶ 85.

³⁴ *Id.* ¶ 85.

³⁵ *Id.* ¶ 86.

36. It is also common for the vicar general to serve simultaneously as pastor of a separately-incorporated entity.³⁶ During his 17-year tenure as vicar general, Father Kevin McDonough served as both vicar general and as pastor on 75 separate parish corporation boards for varying lengths of time, giving the Debtor even greater direct control over three of the five board seats of those parishes.³⁷ Although the appointment as pastor of a parish carries with it many canonical obligations, Father McDonough only fulfilled those obligations at one of these 75 parishes.³⁸ For example, Father McDonough was appointed pastor of a parish whose church had been taken for a public works project and whose parishioners were absorbed by a neighboring parish.³⁹ Father McDonough's appointment was solely for the purpose of executing a transfer of funds from the parish to the Debtor.⁴⁰

37. Two parishioner members, referred to as lay trustees, also serve on the board of directors of each parish, typically as treasurer and secretary.⁴¹ The lay trustees are supposed to be elected by the Archbishop, the vicar general, and the parish's pastor.⁴² In practice, the pastor submits the names of proposed lay trustees to the Archbishop and the vicar general requesting their approval for the selection.⁴³ Thus the Archdiocese not only has two of five seats on each parish board, it also directly controls the selection and removal of the other three members.

38. The Archdiocese also trains and instructs the lay trustees during the course of their service on parish boards. The Debtor organizes annual meetings that pastors, trustees,

³⁶ *Id.* ¶ 66.

³⁷ *Id.* ¶ 69.

³⁸ *Id.* ¶ 69.

³⁹ *Id.* ¶ 70; *see also supra* ¶ 104.

⁴⁰ *Haselberger Aff.* ¶ 70; *see also supra* ¶ 104.

⁴¹ *Haselberger Aff.* ¶ 24; *see also id.* Ex. 2.

⁴² *Id.* ¶ 24; *see also id.* Ex. 2.

⁴³ *Id.*

parochial vicars and parochial administrators are compelled by the Debtor to attend.⁴⁴ At these meetings, lay trustees are instructed on their role.⁴⁵ The instruction is very thorough and includes presentations on Canon Law, administration, and finance.⁴⁶ Lay trustees are instructed by the Debtor that each parish is "first and foremost ... an ecclesiastical entity that must act in communion with the Archbishop."⁴⁷ Lay trustees also receive instruction on how to fulfill their parish's obligation to provide detailed financial and operational information regarding the parish to the Debtor.⁴⁸

39. In addition to effectively controlling each parish board, the Archdiocese controls all material aspects of parish operations. The Archdiocese prohibits the Parishes from taking any significant action without written consent from the Archbishop and vicar general.⁴⁹

40. Specifically, the Archdiocese strictly requires the Parishes to obtain written permission (in the form of a proxy vote) from the Archbishop and the vicar general before any parish may:

- a. Purchase any interest in real property;
- b. Transfer or rezone any interest in real property;
- c. Enter into any loan;
- d. Grant any mortgage;
- e. Establish any line of credit;
- f. Consolidate or refinance any existing loan;
- g. Modify any existing mortgage, loan, or line of credit;

⁴⁴ *Caldie Aff. Ex. 2.*

⁴⁵ *Caldie Aff. Ex. 3* (describing parish board meetings as consisting of a meeting between the pastor and the two lay trustees).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Haselberger Aff. ¶ 24; Id. Ex. 2.*

- h. Purchase personal property of \$25,000 or more;
- i. Enter a lease of any kind for a term of longer than one year;
- j. Enter any agreement for the use of parish property for a period of longer than one year;
- k. Grant contracts for deed;
- l. Build any new structure on parish property;
- m. Renovate or restore any existing parish improvements;
- n. Make any significant change to worship spaces;
- o. Establish cemeteries, columbaria, or engage in feasibility studies therein;
- p. Initiate maintenance projects of \$25,000 or more;
- q. Approve construction change orders that increase costs by \$5,000 or more;
- r. Contract with planners, architects, or fundraising consultants or engage in feasibility studies for expansion, renovation, or a building project;
- s. Initiate a capital fund campaign in which the total projected annual expenses exceed \$25,000; or
- t. Establish any endowment.⁵⁰

41. Parish Articles of Incorporation (which are adopted in a form mandated by the Archdiocese) must also contain provisions prohibiting the Parishes from:

- a. Selling, mortgaging, encumbering, or disposing of real property belonging to the parish without the consent of *all* of the members of the corporation;
- b. Establishing debt limitations that may not be surpassed without the President's (i.e., the Archbishop's) consent; and
- c. Allowing amendments to the Articles of Incorporation and Bylaws only absent a unanimous vote by the corporation's members.⁵¹

⁵⁰ *Id.* ¶ 26; *Id.* Ex. 2.

⁵¹ *Id.* ¶ 25; *see also id.* Ex. 2.

42. To apply for proxies, pastors are required to submit detailed requests regarding the proposed action.⁵² For example, to sell property owned by a parish corporation, the parish is required to submit to the Archdiocese:

- a. The legal description of the property;
- b. The name of the buyer;
- c. The sale price;
- d. A statement that the parish sees no use for the property in the foreseeable future;
- e. Evidence of review of purchase documents by competent counsel including consideration of environmental matters and title defects; and
- f. Transfer documents that restrict future use of the property in compliance with the doctrine of the Roman Catholic Church.⁵³

43. Currently, proxy requests are submitted to, and reviewed by, the Archdiocese's CFO Thomas Mertens and its Chancellor for Civil Affairs Joe Kueppers, i.e., Debtor employees with no position on parish boards.⁵⁴

44. Where the Debtor approves the requested action or expenditure by issuing a written "proxy," the parish may proceed,⁵⁵ however, where the Debtor does not approve the request, the parish must refrain from taking the action or making the expenditure. In other words, parish-level boards neither meet nor vote on most parish decisions. Instead, the Debtor makes them.⁵⁶

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.* ¶ 25; *see also id.* Ex. 3.

⁵⁵ *Id.* ¶ 25.

⁵⁶ *Id.*

b. The Debtor Hires and Trains Parish and School Employees and Controls Their Salaries and Benefits.

45. All priests within the Archdiocese are subject to the direct control of the Archbishop regardless of whether they are compensated by a parish.⁵⁷

46. Only the Archbishop has authority to approve an individual for ordination, or the priesthood, and only the Archbishop has authority to assign, transfer, remove, suspend, otherwise discipline, or retire a priest within his Archdiocese.⁵⁸

47. The Debtor also determines a priest's salary, health benefits, and vacation, and the Debtor has sole and exclusive authority over decisions regarding priest placement, discipline, removal, or transfer.⁵⁹ For example, an associate priest assigned to Guardian Angels Catholic Church in Oakdale was unwilling to work.⁶⁰ Even though Guardian Angels paid the priest's salary, it lacked authority over the priest and its only recourse was to request the Debtor to remove him from the parish.⁶¹

48. The Archdiocese also controls significant aspects of the employment process for lay employees within Parishes and schools. For example, the Archdiocese mandates background checks for all new hires, mandates the use of a specific third party service for such background checks, and posts notices for lay job vacancies.⁶²

49. The Archdiocese also defines and controls the employment benefits available to lay employees of the Consolidation Parties. The Debtor's Office of Human Resources/Benefits states that it offers a variety of programs and services to employees at parishes Catholic schools,

⁵⁷ See *infra* ¶¶ 33–35.

⁵⁸ Fitzpatrick Aff., ¶ 10 d – f; 12, 13

⁵⁹ Caldie Aff. Ex. 4–6; see also Fitzpatrick Aff., ¶¶ 10 d – f; 12, 13.

⁶⁰ Fitzpatrick Aff. ¶ 13.

⁶¹ Fitzpatrick Aff. ¶ 13.

⁶² Fitzpatrick Aff., ¶ 10(i); Moua Aff. Ex. A.

archdiocesan offices and certain other Catholic entities within the Archdiocese of Saint Paul and Minneapolis.⁶³ These programs include retirement, health, dental and other benefits.⁶⁴ Prior to being unilaterally frozen by the Archdiocese in 2011, the “Pension Plan for Lay Employees of the Archdiocese of St. Paul and Minneapolis” included as beneficiaries approximately 6,835 teachers, parish staff, and retirees from schools, parishes, and other separately-incorporated entities throughout the Archdiocese.⁶⁵ The Archdiocese now currently sponsors a retirement program for lay employees, including a 403(b) plan, and offers investment education and retirement planning seminars to assist employees in planning for future financial needs.⁶⁶ Parishes, chaplaincies, schools – including Totino-Grace, Benilde-St. Margaret, and DeLaSalle, and Catholic Finance Corporation are among the entities that are included in the Archdiocese-mandated lay employee pension programs, benefit programs, and retirement programs.⁶⁷

50. The Archdiocese also mandates changes to Consolidation Parties’ employee benefits program at will.⁶⁸ The changes often cause immediate and unbudgeted increases in costs to the Parishes, but they lack any voice in the decision.⁶⁹ For example, when the Debtor required all Consolidation Parties to shift to a new benefits provider, the decision increased costs to Saint Alphonsus Catholic Church in Brooklyn Center approximately \$100,000 annually.⁷⁰

51. The Archdiocese also oversees many aspects of job training for the Parish and school employees. For example, the Archdiocese organizes the Annual Catholic School Teacher

⁶³ Moua Aff. Ex. B.

⁶⁴ *Id.*

⁶⁵ Caldie Aff. Ex. 7; Moua Aff. Ex. C.

⁶⁶ *Id.*

⁶⁷ Haselberger Aff. ¶ 84, n23.

⁶⁸ Fitzpatrick Aff. ¶ 15.

⁶⁹ *Id.* ¶ 15.

⁷⁰ *Id.* ¶ 15.

days to provide continuing education for teachers at all catholic schools within the Archdiocese.⁷¹ The Archdiocese also mandates and administers periodic educational programs for the Consolidation Parties' staff, such as an employment law seminar held every spring and an annual insurance day.⁷²

52. The Debtor also drafts and enforces employment policies for the Consolidation Parties. The *Justice in Employment* policy, mandated by the Archbishop, applies to “all employees of the Archdiocesan Corporation, parishes within this archdiocese, and their related schools, as well as those institutions specifically designated by me [Archbishop Flynn].”⁷³ The organizations required to follow the policy include the Parishes, chaplaincies, schools – including Totino-Grace, Benilde-St. Margaret, and DeLaSalle, Catholic Finance Corporation, the Catholic Community Foundation, the Catholic Cemeteries, and the Minnesota Catholic Conference.⁷⁴ The policy dictates detailed aspects of employment-related policies, including the materials in employee orientation packets, as well as significantly altering the dynamic of the employment relationship by creating a just cause discharge policy.⁷⁵ Another aspect of the policy, referred to as the just cause policy, was implemented to diminish the ability of the individual entities to choose their own staff by increasing the standard required to replace an employee.⁷⁶

⁷¹ *Id.* ¶ 14 (“The Archdiocese trained parish school teachers, parish school principals, and parish administrators.”); Moua Aff. Ex. H.

⁷² Fitzpatrick Aff. ¶ 14.

⁷³ Caldie Aff. Ex. 8 (“I mandate these policies as the spiritual and religious leader of all Catholics in this diocese.”).

⁷⁴ Haselberger Aff. ¶ 84, n23.

⁷⁵ *Id.*

⁷⁶ *Id.* ¶ 84, n23.

53. Many Parishes strongly opposed the implementation of the *Justice in Employment* policy, but the Archdiocese forced each entity that the Archbishop, in his sole discretion, deemed subject to the policy to implement the policy.⁷⁷

c. The Archdiocese Either Controls or Exerts Substantial Influence Over the Legal Strategy for, and Legal Representation of, the Parishes and Schools

54. The Archdiocese has exercised direct control over legal strategies and choices regarding legal representation in matters involving the Parishes and schools.

55. Parishes must receive the Archbishop's approval prior to entering into service contracts for legal assistance.⁷⁸ Therefore, anytime Parishes wish to seek legal advice, including regarding their status in this bankruptcy proceeding, they must do so in a manner proscribed by the Archdiocese.⁷⁹

56. The letter attached to the Affidavit of Edwin Caldie as **Exhibit 9** reflects a communication from attorney Andrew J. Eisenzimmer to counsel hired through a parish's insurance company.⁸⁰

57. In the letter, Mr. Eisenzimmer explains that he is defense counsel for both the relevant parish and the Archdiocese.⁸¹

58. Although the letter discusses other issues related to conflicts, Eisenzimmer fails to address the potential legal conflicts that could arise by representing both the parish and the Archdiocese.⁸² Eisenzimmer's assertion demonstrates the Debtor and Parishes' attitude that only

⁷⁷ Fitzpatrick Aff. ¶ 10.

⁷⁸ Haselberger Aff. ¶ 26.

⁷⁹ *Id.*

⁸⁰ Caldie Aff. Ex. 9.

⁸¹ *Id.*

⁸² *Id.*

one client existed as opposed to viewing the Archdiocese and Parishes as separate entities with adverse interests.

59. Recently, in anticipation of the initiation of lawsuits against the Parishes based on claims of clergy sexual abuse, the Archdiocese sent written correspondence to parishioners providing information and talking points about the lawsuits and explaining what the *Archdiocese* is doing to address the situation, although the lawsuits named only the Parishes as defendants.⁸³

60. When the Church of St. Bernard, St. Paul incurred a \$459,218 tax bill for selling pull tabs, the Archdiocese stepped in, handled all negotiations with the tax authorities, and ultimately paid the outstanding tax bill.⁸⁴

61. Shortly before the Debtor's bankruptcy filing, and after the Debtor had already hired its bankruptcy counsel, two Archdiocesan priests sent a written correspondence to each of the 187 Parishes in St. Paul and Minneapolis recommending them to retain a specific bankruptcy attorney to represent their aggregate interests in the Debtor's bankruptcy case.⁸⁵ The same attorney was then introduced to parish representatives by Joseph Kueppers, the Chancellor for Civil Affairs for the Debtor, at one or more organizational meetings arranged by Archdiocesan priests to address the role of the parishes in the Debtor's bankruptcy case.⁸⁶ According to a filing by St. Stephen's Catholic Church in the Debtor's case (*see* Docket No. 234), the Parishes were all "urged to hire" the attorney introduced by the Archdiocese officials at these organizational

⁸³ 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>.

⁸⁴ *Caldie Aff. Ex. 11.*

⁸⁵ *Id. Ex. 12*

⁸⁶ *Id.*

meetings.⁸⁷ The attorney introduced to the parishes at those meetings now represents more than 100 parishes in the Debtor's bankruptcy case.⁸⁸

d. The Debtor Exercises Direct Control Over the Finances of Parishes and Schools

62. The Archdiocese dictates Parishes and schools' accounting practices, and even manages, pays for, and oversees the implementation of the accounting programs used by the Parishes and schools.⁸⁹

63. Parishes must obtain advanced, written consent from the Archdiocese before committing to any financial transaction in excess of \$25,000.⁹⁰

64. In addition, Parishes are prohibited from purchasing or transferring any real property rights without advanced, written authorization from the Debtor.⁹¹

65. Parishes are not even allowed to establish a line of credit, obtain any other kind of loan, modify any existing loan, undertake renovations, build new structures or materially modify existing structures on parish real property, or enter change orders to approved construction or renovation plans that exceed \$5,000 without express, written approval from the Debtor.⁹²

66. Regarding written approvals, they are often far from a mere rubber stamping of corporate action. Proxy requests by Parishes are carefully reviewed and regularly denied, at

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *See, e.g.,* Caldie Aff. Ex. 13 (dictates audit procedures and requires forwarding of all audits or reviews to the Archdiocese); *Id.* Ex. 14 (a form letter provided by the Archdiocese for parishes to use when transmitting their financial statements to the Archdiocese).

⁹⁰ Can. 1292 § 1 (“[W]hen the value of the goods whose alienation is proposed falls within the minimum and maximum amounts to be defined by the conference of bishops for its own region. . . the competent authority is the diocesan bishop with the consent of the finance council, the college of consultors, and those concerned.”); *see also* Caldie Aff. Ex. 15.

⁹¹ *Id.*

⁹² *Id.*

times without ever reaching the Archbishop or vicar general.⁹³ For example, the Church of St. Pascal Baylon of St. Paul was denied its request to sell its townhouse on a contract for deed.⁹⁴

67. Even after a Parish is granted permission to sell property, the Archdiocese exerts control over how the proceeds from that sale are used. For example, in 2009 the Newman Center sold its building in Minneapolis for approximately \$2.5 million, but Archbishop Nienstadt refused to release the funds to the Director of the Newman Center and instead kept those funds under Archdiocesan control.⁹⁵

e. The Debtor Utilizes Canon Law to Maintain Control Over Property Transferred to Other Entities

68. The assets of the Consolidation Parties and the Debtor are intertwined due to the Debtor's selective use of the alienation processes under Canon Law. Canon Law dictates that in order for an organization to be properly formed and property to be properly conveyed, certain requirements must be met.⁹⁶ Absent compliance, the organization simply does not exist and/or the Archdiocese remains the property owner.⁹⁷

69. This concept was explained and summarized by the National Conference of Catholic Bishops (now the United States Conference of Catholic Bishops, "USCCB")⁹⁸ as follows:

Just as the creation of a canonical juridical person is given no automatic recognition in American civil society, so too, an act of civil incorporation has no immediate effect upon canonical status. This is evident in regard to the civil incorporation of dioceses, parishes, and religious institutes; civil incorporation, designed to achieve civil recognition and status for these ecclesiastical entities, in no way affect their previously acquired canonical status.

⁹³ Haselberger Aff. ¶ 25.

⁹⁴ *Id.* ¶ 25 n.4.

⁹⁵ *Id.* ¶ 50.

⁹⁶ *Id.* ¶¶ 37–40.

⁹⁷ *Id.*

⁹⁸ The National Conference of Catholic Bishops (now the USCCB) has the authority to set binding policies and procedures for all dioceses in the U.S. and U.S. territories. Haselberger Aff. ¶ 40 n.10.

So, too, the civil incorporation of an educational or charitable institution that already enjoyed canonical status as the apostolic work of a sponsoring religious institute or diocese, has no immediate effect upon that status. The civilly-incorporated institution remains, under canon law, simply an expression of the apostolate of the sponsor, and the assets of the civilly-incorporated institution remain, canonically, the property of the sponsor.⁹⁹

70. Staff for both the Debtor and Consolidation Parties are regularly informed of the need to complete the necessary canonical steps to recognize entities and complete property transfers.¹⁰⁰ Further, the Debtor's staff and board members of the Consolidation Parties have been repeatedly reminded that the canonical process for alienation of property must be observed in order to truly guarantee autonomy and liability protection, and that the acquisition of further property must be done without reference to the Archdiocese.¹⁰¹ Failing to comply with the necessary canonical processes allows a diocese to retain control over that property while giving the appearance of separation under civil law.¹⁰²

71. The Newman Center and Chapel was established in 1966 as a civil corporation, but only a semi-public oratory – an organization that is not canonically recognized as a separate entity and therefore any property in its name is canonically owned by the Archdiocese.¹⁰³ Thus, when the Center's property was sold in 2009 in excess of \$2.5 million, the proceeds were not distributed to the Newman Center and Chapel but were instead retained and kept under Archdiocesan control.¹⁰⁴

72. Prior to April 30, 2013, note one of the following organizations had been "established" according to canonical processes and the transfers of assets they received from the

⁹⁹ Haselberger Aff. ¶ 40.

¹⁰⁰ *Id.* ¶ 41.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.* ¶ 50.

¹⁰⁴ *Id.*

Debtor had not been properly alienated according to Canon Law procedures: the Catholic Cemeteries, incorporated in 1969; Commonbond Communities, incorporated in 1974; the Catholic Charities, incorporated in 1977; the Catholic Community Foundation, incorporated in 1992; the Friends of the Basilica of Saint Mary Foundation, incorporated in 1993; the Catholic Finance Corporation, incorporated in 2000; the Cathedral Heritage Foundation, incorporated in 2007; and the Aim Higher Minnesota Foundation, incorporated in 2011.¹⁰⁵

73. Absent strict adherence to canonical alienation procedures, the assets of these above organizations would still have been the control of the Debtor.¹⁰⁶

f. Debtor Attests to Its Control Over Entities to Third-Parties, Such As the Internal Revenue Service

74. Catholic entities in the United States receive tax-exempt status through group tax-exempt provisions of the Internal Revenue Code.¹⁰⁷

75. IRS Publication 4573 identifies and explains issues related to group tax exemption eligibility, stating that to qualify for a group tax exemption, the central organization and its subordinate entities must have a defined relationship.¹⁰⁸

76. The publication further states that the defined relationship, and, ultimately eligibility for group tax-exempt status, 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.¹⁰⁹

¹⁰⁵ *Id.* ¶¶ 37, 41.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* ¶ 53.

¹⁰⁸ *Id.* ¶ 54; *see also* *Caldie Aff. Ex. 16.*

77. To establish group tax-exempt status for the USCCB and its subordinates, the USCCB must annually certify to the IRS that the then-most current version of the *Official Catholic Directory* accurately reflects the "agencies and instrumentalities and the educational, charitable, and religious institutions operated by the Roman Catholic Church in the United States, its territories, and possessions" that constitute its subordinate organizations within the meaning of the IRS's defined relationship standard.¹¹⁰

78. To ensure compliance with the IRS requirements, the USCCB developed a three-part test that examines whether the subordinate organization:

- a. Is controlled by a diocese, parish, religious order, or other Church entity;
- b. Has a governing board that includes individuals who also serve on the governing board of, or serve in a governing capacity with respect to, a diocese, parish, religious order, or other Church entity; and
- c. Has some of the following characteristics:
 - i. Ex officio board members holding other Church offices;
 - ii. Indirect control by Church entity;
 - iii. Reserved powers in a bishop, diocese, parish, religious order, or other Church entity;
 - iv. Veto power by a bishop, diocese, parish, religious order, or other Church entity;
 - v. A formal policy of adherence to Church teachings/practices as determined by diocesan bishop;

¹⁰⁹ Haselberger Aff. ¶ 54; *see also* Caldie Aff Ex. 16.

¹¹⁰ Haselberger Aff. ¶¶ 55–56; *Id.* Ex 7.

- vi. Assets distributed on dissolution to diocese, parish, religious order, other Church entity;
- vii. Status under Canon Law as a public juridic person; or
- viii. Some other relationship to the Church.¹¹¹

79. Thus, to be included in the *Official Catholic Directory*, and, by extension eligible for the USCCB's group tax exemption, an organization must positively establish that it is under the control of a diocese, parish, religious order, or other Catholic entity.¹¹²

80. As part of the USCCB's annual group tax-exempt status audit, the Debtor and every other diocese, including the Archdiocese, is required to review and certify that the subordinate organizations that fall under its listing in the *Official Catholic Directory* have met the requisite requirements.¹¹³

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

- 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;

¹¹¹ *Id.* ¶¶ 55–56; *Id.* Ex 7.

¹¹² *Id.*

¹¹³ *Id.* ¶ 57.

- 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.¹¹⁴

82. 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 2014.¹¹⁵ The Catholic Community Foundation appeared in the annual directory as being subordinate to the Debtor through 2013.¹¹⁶

83. The IRS relies on the interrelatedness of the subordinate organizations affiliated with the Debtor in the *Official Catholic Directory* when issuing determination letters as to 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.¹¹⁷

84. The Debtor grants approval for organizations to be included in the *Official Catholic Directory* when it wishes to exercise control, and it refuses to endorse or otherwise support an organization, even when the organization has a Catholic purpose or intent, if the necessary control is not present or the organization acts in an independent manner.¹¹⁸ For

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.* ¶ 58.

¹¹⁸ *Id.* ¶ 59.

instance, the Archdiocese repeatedly refused to approve the Labourne Society, which exists to provide financial assistance to individuals considering the priesthood or religious life.¹¹⁹ The Archdiocese refused to allow the organization to claim to be a part of the Archdiocese or to have its endorsement or support, and the organization therefore could not be listed in the *Official Catholic Directory* or included under the Archdiocese's group ruling.¹²⁰

g. The Archdiocese Controls the Consolidation Parties' Catholic Identity

85. To be a member of the Catholic faith in good standing, an adult is required to fulfill certain religious tenets, including attending Mass on Sundays and other Holy Days, receiving the Sacraments, seeing that his or her children are baptized and educated in the Catholic faith, and providing material support to the Catholic Church.¹²¹ These obligations can only be fulfilled at a *Catholic* parish, chapel, oratory, or school in communion with and under the control of the relevant Diocese or Archdiocese.¹²² Catholics can fulfill most of these obligations at any Catholic parish, but 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.¹²³ Within 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 in accordance with Canon Law.¹²⁴

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.* ¶ 60.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

3. The Debtor, its Parishes, and its Schools Do Not Adhere To Corporate Formalities

86. The Debtor's actions and written requirements clearly reflect the fact that the Debtor retains and exercises operational and financial control over the separately-incorporated entities within the Archdiocese.

a. The Archdiocese Unilaterally Determines Whether Entities Will Continue to Exist

87. The Archdiocese, primarily through the Archbishop, routinely makes unilateral decisions regarding whether (i) schools will remain open or close, (ii) parishes will merge or remain in operation, and (iii) organizations will maintain their “independent” existence.

88. Over the past 30 years, the number of Parishes has diminished from 225 to 187. The majority of the 38 parishes that have ceased to exist had no control over, or meaningful voice in, the decision regarding their closure or merger. The same is true of schools closed by the Archdiocese.

89. On at least 21 occasions in the past six years alone, the Debtor, by means of the Archbishop's authority to exercise ultimate control over Catholic Church properties within the Archdiocese, unilaterally proceeded with the merger of parishes despite substantial opposition and did so without holding a parish board meeting prior to the announcement.¹²⁵

90. In 2010, the Archdiocese published a Strategic Plan for the Archdiocese of Saint Paul and Minnesota.¹²⁶ In the plan, the Archdiocese called for 21 parishes and four schools to close.¹²⁷ The plan further dictated which parishes on its list of mergers would continue to exist

¹²⁵ *Id.* ¶ 72.

¹²⁶ *Caldie Aff. Ex. 1.*

¹²⁷ *Id.*

and operate and which parishes would not. Although the Plan references consultations with local leaders, Archbishop John Nienstedt made clear that the final decisions came from him alone.¹²⁸

91. Not one of the 21 parish boards subject to closure voted on the merger imposed by the Archdiocese prior to the Archbishop's public announcement (let alone voted in favor of it).¹²⁹ Additionally, Archdiocese staff members were present at parish meetings where the merger decisions were explained because they, and not the parish leadership, were the ones who made the decisions and could explain them.¹³⁰ Several pastors and lay trustees actively opposed the mergers:

- a. Father George Welzbacher, formerly the pastor of the Church of Saint John of St. Paul, opposed the merger of his parish.¹³¹ Father Welzbacher was joined in his opposition by at least one of the parish's lay trustees, who pointed out that the parishioners had not been consulted about the merger prior to the decision being made.¹³² The merger went forward and, on June 30, 2013, the final mass was said at the Church of Saint John of St. Paul and the building was sold in June 2014.¹³³
- b. Father Tom Fitzgerald, pastor of the Church of Saint Genevieve in Centerville, also opposed a parish merger to no avail.¹³⁴ Father Fitzgerald was actually pastor of both of the parishes to be merged.¹³⁵ The Archbishop determined that Father Fitzgerald's retirement would become effective June 15, 2012, and the parishes were merged July 1, 2012.¹³⁶
- c. The merger of the Church of Saint Austin in Minneapolis was also executed by the Archdiocese in the face of opposition.¹³⁷ Both the lay trustees and the parish council, an advisory governance body, objected to the merger, noting that the parish was financially viable and current

¹²⁸ *Caldie Aff. Ex. 17.*

¹²⁹ *Haselberger Aff. ¶ 70.*

¹³⁰ *Id. ¶ 74.*

¹³¹ *Id. ¶ 75.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id. ¶ 76.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id. ¶ 77.*

in its payments to the Debtor, and therefore did not meet the Debtor's stated criteria for mergers.¹³⁸ Despite the opposition, the parish was merged in January 2012.¹³⁹

- d. The parishioners from the Church of Columbkil, Belle Creek submitted a petition opposing the Archdiocese's merger of their parish.¹⁴⁰ The petition was written by the parish council and contained seven pages of signatures.¹⁴¹ The Archdiocese went forward with the merger despite parishioner opposition.¹⁴²
- e. In another contentious merger under the 2010 Strategic Plan, the Church of Saint Hedwig in Minneapolis was to be merged with the Church of the Holy Cross in Minneapolis.¹⁴³ Both of the lay trustees of Saint Hedwig opposed the merger, in part because the parish was financially viable due to a relationship with Catholic Eldercare that would be disrupted by the merger with potentially financially disastrous results.¹⁴⁴ The merger was also opposed by at least one lay trustee and the business administrator at Holy Cross.¹⁴⁵ Saint Hedwig originally secured a concession from Archbishop John Nienstedt that the parish corporation would not be merged, but the Archbishop later reneged on that promise when it became apparent that changing the canonical decree of merger would increase the time period for which the merger decision could be appealed.¹⁴⁶ The pastor of Saint Hedwig was then encouraged by the Debtor's staff to keep the parishioners unaware of the parish's status as a merged corporation.¹⁴⁷
- f. Many parishes also staged affirmative protests against the Archdiocese's merger decision and, when those protests were unsuccessful, four of the 21 parishes appealed to the Vatican to reverse the Archdiocese's decisions.¹⁴⁸ In each instance, the appeals were overruled.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.* ¶ 78.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ Rose French, *It's closing time for St. Philip*, Star Tribune (June 8, 2011), <http://www.startribune.com/it-s-closing-time-for-st-philip/123203858/> (quoting one pastor as saying "they didn't, like, submit it to a vote 00 'do you want your church to close?"); Rupa Shenoy, *Parishioners at Polish church protest merger plans*, MPRnews (Aug. 6, 2011), <http://www.mprnews.org/story/2011/08/06/church-closing-protest>.

92. Although occasionally couched in different terms to avoid negative publicity, the Debtor also imposes decisions regarding school closings on parishes.¹⁴⁹ For example, the parish school at Our Lady of the Lake in Mound was informed by the Archdiocese that it must close.¹⁵⁰ The parishioners began collecting signatures on a petition criticizing the Archdiocese, noting the fact that members of the parish council and school advisory committee were not consulted, or even advised of, the potential closure.¹⁵¹ After publication of these facts, the school received a reprieve.¹⁵²

93. A school that was not as fortunate was St. Bernard's in St. Paul.¹⁵³ St. Bernard's owed the Debtor \$3.5 million in interparish loans and missed payments for employee benefits.¹⁵⁴ Due to the debt, the Debtor became a "financial partner" in the operation of the parish and its school.¹⁵⁵ The Archdiocese announced the school would close unless the parishioners raised \$1.5 million in less than a year, a goal parishioners, students, and alumni attempted but failed to meet.¹⁵⁶ Ultimately, the Archdiocese closed the elementary, middle and high schools.¹⁵⁷ When the closing was announced, all school staff were required to sign a separation agreement and release to be eligible for severance payments.¹⁵⁸ The agreement released claims against not just the parish but the Archdiocese as well.¹⁵⁹

94. The Debtor has also merged or dissolved entities other than parishes and schools. The Catholic Bulletin Publishing Company was incorporated as a Minnesota nonprofit under

¹⁴⁹ Haselberger Aff. ¶ 82.

¹⁵⁰ *Id.* ¶ 83.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.* ¶ 84.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

Minnesota Statute 317 in 1957.¹⁶⁰ For 55 years it operated as its own civil organization, although it was never recognized as a separate entity under Canon Law,¹⁶¹ and it produced a bimonthly publication of the Archdiocese, the Catholic Spirit.¹⁶² In 2012, the Debtor announced that it would "absorb" the organization, taking over responsibility for publishing the Catholic Spirit.¹⁶³ In timing that coincided with the expiration of the Catholic Spirit's union contract, the Debtor folded the Catholic Spirit organization into its Office of Communications.¹⁶⁴ Using his power as the sole member of the organization, the president of its board of directors, and his role in appointing a majority of the other directors, the Archbishop dissolved the Catholic Spirit, allowing the Debtor to obtain the Spirit's assets as the beneficiary of its dissolution clause.¹⁶⁵

95. The forced mergers of parishes, closures of schools, and absorption of the Catholic Spirit reflect the Debtor's disregard for the separate corporate existence of the Consolidation Parties. The Consolidation Parties also disregard their separate corporate existence by, among other things, accepting the Archdiocese's decisions, rather than taking action to protect their right to self-governance.

b. The Entities Do Not Follow Their Corporate Bylaws or Act in a Manner Consistent with Their Separate Corporate Existences

96. Under the uniform bylaws mandated by the Debtor, each parish board is required to meet annually.¹⁶⁶ The boards, however, rarely meet at all and virtually never meet in full.¹⁶⁷ It would be a practical impossibility for the Archbishop and vicar general to meet with 187 parish

¹⁶⁰ Caldie Aff. Ex. 18.

¹⁶¹ See *infra* ¶¶ 68–73.

¹⁶² Doug Grow, *Sunday rally to protect archbishop's decision to disband Catholic Spirit union*, MinnPost (June 22, 2012), <https://www.minnpost.com/politics-policy/2012/06/sunday-rally-protest-archbishop%E2%80%99s-decision-disband-catholic-spirit-union>.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ Haselberger Aff. ¶ 51.

¹⁶⁶ *Id.* ¶ 94; see also *id.* Ex. 2.

¹⁶⁷ Fitzpatrick Aff. (“I was never aware of any meeting of the corporate board of any parish that I served.”).

boards annually. There is no actual expectation that this annual meeting requirement will be satisfied.¹⁶⁸ In fact, no real effort is even expended to satisfy it.¹⁶⁹ Even for orders of business such as approving articles of merger, the Archbishop does not attend the parish board meetings.¹⁷⁰

97. No importance is placed on maintaining proper board membership, unless circumstances arise in which a transaction might be subject to scrutiny.¹⁷¹ In the lead up to the 2010 Strategic Plan announcement, many priests serving Parishes as parochial administrators¹⁷² were named pastor, giving them authority to execute documents on behalf of the parish corporation.¹⁷³ Lay trustee positions are often left vacant for years without any notice.¹⁷⁴ Occasionally, staff of the Parishes or the Debtor are used to fill board positions.¹⁷⁵

98. Prior to Archbishop Hebda's recent installation, after the previous Archbishop and vicar general both resigned, the Apostolic Administrator¹⁷⁶ served in the Archbishop's role on parish boards, even though he was *not* the Archbishop and—according to the uniform parish Articles of Incorporation—lacked authority to serve in that role.¹⁷⁷ The Debtor instructed the Parishes as to this arrangement, and further explained that until a new vicar general was appointed, the vicar general's seat on each board should remain empty.¹⁷⁸ These instructions disregarded the provisions in some parish Articles of Incorporation, which mandate that the

¹⁶⁸ *Caldie Aff. Ex. 19* (describing parish board meetings as consisting of a meeting between the pastor and the two lay trustees); *Haselberger Aff.* ¶ 94.

¹⁶⁹ *Id.*

¹⁷⁰ *Haselberger Aff.* ¶ 94.

¹⁷¹ *Id.* ¶ 95.

¹⁷² A parochial administrator is a priest who is assigned to take over temporary management of the parish but has not been given the powers of a pastor. *Id.* ¶ 95 n.24.

¹⁷³ *Id.* ¶ 95.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ The individual acting as Archbishop until a new Archbishop has been formally appointed.

¹⁷⁷ *Id.* ¶ 26; *Id. Ex. 3.*

¹⁷⁸ *Id.*

administrator of the Archdiocese and the chancellor of the Archdiocese should fill the vacated positions of the Archbishop and vicar general.¹⁷⁹

99. Corporate governance structures are also not followed in the execution of legal documents. For example, Reverend Leo Schnider, parochial administrator of the Church of the Holy Name of Minneapolis, Minnesota, committed his parish to a mortgage of \$3 million and signed the mortgage documents as the vice president of the corporation, despite the fact that he had no position on the corporate board.¹⁸⁰ In some cases, temporary (lay) parish administrators have even signed legal documents on behalf of the parish corporation, although they had not been appointed to the role of pastor by the Archbishop.¹⁸¹

100. In another example of disregard for corporate formalities, in the September 2000 transfer of property to St. Mary's Church of Belvidere, Minnesota, the pastor of the parish and vice president of the parish corporation signed the conveyance instrument as "Peter Njoku, Pastor and President," while one of the lay trustees signed the same documents, "Leo Heppelman, Treasurer and Vice President."¹⁸² These characterizations of their position were plainly inaccurate.

101. Entities other than parish corporations also disregard corporate formalities, and in some instances, the corporations are established with structures that are impossible to fulfill. For example, the entity Chaplain of Sagrado Corazon de Jesus requires that a chaplain for Hispanic Ministry of South Minneapolis be named and that two additional members of the corporation be recommended by the chaplain or the vicar bishop of Hispanic Ministries.¹⁸³ In 2000, the vicariate

¹⁷⁹ *Id.* ¶ 26, ¶ 26 n.5.

¹⁸⁰ *Id.* ¶ 95.

¹⁸¹ *Id.*

¹⁸² *Id.* ¶ 96.

¹⁸³ Haselberger Aff. ¶ 99; *see also* Caldie Aff. Ex. 20.

system, and consequently the vicar bishop of Hispanic Ministries, was extinguished but Sagrado's articles of incorporation were never amended to reflect the change.¹⁸⁴

102. Separate corporations within the Archdioceses sometimes operate as a single parish or intermingle their finances:

- a. In 1998, the Archdiocese was concerned that the liberal, non-student Catholics who patronized the Newman Center, the Catholic ministry at University of Minnesota in Minneapolis, were asserting too much control and taking the ministry in a direction contrary to the Archbishop's will.¹⁸⁵ The Archdiocese, therefore, announced that the Newman Center would merge with the nearby St. Lawrence parish.¹⁸⁶ The Newman Center and St. Lawrence parish were each separately incorporated organizations and this announcement was made by the Archdiocese—as in so many other instances—absent any board meeting or vote by either of the organizations to be merged.¹⁸⁷ Despite the collection of 830 signatures and over 200 letters opposing the merger, the Archdiocese moved forward.¹⁸⁸ However, the Archdiocese merged only the *operations* of the two entities (i.e., the very thing that opponents did not want them to do) and kept the corporate distinction intact.¹⁸⁹ The public name is now St. Lawrence Catholic Church & Newman Center, but both entities continue to exist independently.¹⁹⁰ Once Newman Center services moved to St. Lawrence, Newman Center rented out its former facility to the University of Minnesota and used the proceeds from the rental of Newman Center's property—still a separate, corporate entity—to refurbish St. Lawrence's property.¹⁹¹
- b. Sagrado Corazon de Jesus wished to rent out part of its property to a charter school, but needed to make certain repairs to its property before doing so. Sagrado lacked the funds to make necessary repairs and the real property did not have sufficient value to allow

¹⁸⁴ *Id.*

¹⁸⁵ *Id.* ¶ 50.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ Andrew Donohue, *Newman closing*, Minnesota Daily (Dec. 4, 1998), <http://www.mndaily.com/1998/12/04/newman-closing>.

¹⁸⁹ Haselberger Aff. ¶ 50.

¹⁹⁰ *Id.*; see also Andrew Donohue, *Newman closing*, Minnesota Daily (Dec. 4, 1998), <http://www.mndaily.com/1998/12/04/newman-closing>.

¹⁹¹ Haselberger Aff. ¶ 50.

Sagrado to obtain a mortgage to fund the repairs.¹⁹² Father Kevin McDonough was the Chaplain of Sagrado Corazon de Jesus at the time.¹⁹³ Father McDonough was then named pastor/vice president of a separate entity, the Church of Incarnation.¹⁹⁴ To address Segrado's need to make property repairs, Father McDonough signed a promissory note in the amount of \$2,520,000 on behalf of the Church of Incarnation and the resulting funds were used to make the repairs at Sagrado.¹⁹⁵

- c. Although Saint Peter and Saint Joseph in Delano were separate parish corporations, they began operated jointly as the Delano Catholic Community in the early 2000s.¹⁹⁶ The two parish corporations had a single finance council, a common budget (including subsidies for the St. Peter's school), and entered into no formal agreements—such as leases—for the use of each other's building or restricted funds.¹⁹⁷ They even took out a joint line of credit for necessary maintenance on just one of the parishes' properties.¹⁹⁸

103. At other times, supposedly merged entities maintain their individual corporations, with the Debtor typically completely taking over one of the entities. For example, the Church of Saint Philip of Minneapolis found itself in serious financial difficulties and unable to pay for maintenance or repair of its boiler.¹⁹⁹ Consequently, the Archdiocese decided to merge Saint Philip with a neighboring parish, the Church of the Ascension of Minneapolis.²⁰⁰ Ascension's pastor opposed the merger because his also financially struggling parish would have to, per typical merger conditions imposed on numerous other parishes at that time, assume the obligation of St. Philip's property.²⁰¹ The Ascension pastor negotiated a deal with the Archdiocese wherein the canonical and publically acknowledged merger took place on July 1,

¹⁹² Haselberger Aff. ¶ 99.

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.* ¶¶ 79–81.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* ¶¶ 90–92.

²⁰⁰ *Id.*

²⁰¹ *Id.*

2011, but the parish corporations were not merged.²⁰² The Archdiocese assumed responsibility for the upkeep and eventual sale of the property.²⁰³ To give the appearance of maintaining corporate formalities, Archdiocesan staff were appointed to serve as the lay trustees.²⁰⁴ When the sale of property occurred, over a year after the “merger,” and the time came to complete the merger of the parish corporations, Natalie McKliget, an administrator for the Archdiocesan benefits plan, signed the Articles of Merger as the secretary of the St. Philip’s parish corporation.²⁰⁵

104. In another instance, the Church of Saint Elizabeth of Minneapolis, ceased operations when its property was taken by the state for a public works project.²⁰⁶ The St. Elizabeth parish records were transferred to Saint Albert the Great, a neighboring parish, following the typical protocols in instances when parish corporations are merged.²⁰⁷ The St. Elizabeth corporation, however, continued to exist in order to receive compensation in exchange for the surrendered land and buildings.²⁰⁸ Father Kevin McDonough, the then-vicar general, was appointed pastor of St. Elizabeth’s and executed a transfer of the funds to the Debtor, rather than the parish that received St. Elizabeth’s former parishioners.²⁰⁹

c. Entities Openly Share Information that They Contend Is Confidential Despite Separate Incorporations and Policies to the Contrary

105. According to a Code of Conduct published by the Archdiocese, and required to be followed by the Parishes and schools, the records and information of each entity is "solely the

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.* ¶ 70.

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.* ¶¶ 70–71.

property of the respective entity."²¹⁰ Parishes and schools, however, are regularly *required* to share records with the Archdiocese and other entities within the Archdiocese.

106. For example, in 2015 the Catholic Services Appeal Foundation ("CSAF") sent an e-mail to parish business administrators instructing them to upload their donor records to a program called Sharefile so that CSAF could have access to the records.²¹¹ The Catholic Services Appeal was an annual fundraiser organized by the Archdiocese, but the CSAF was established in 2013 following the Minnesota legislature's passage of the Child Victims Protect Act.²¹² From the Parishes' perspective, a request from the CSAF was equivalent to a request from the Archdiocese, and the instruction must be followed.²¹³

107. The Archdiocese also routinely shared parish financial information with the Catholic Finance Corporation ("Catholic Finance"), which handled troubleshooting with parishes on the Debtor's behalf.²¹⁴

108. Many of the parishes also use ParishSoft, a software program hosted by the Archdiocese for tracking finances and membership,²¹⁵ which, on information and belief, allows the Archdiocese direct access to all of the user-parishes' records. Parishes also use accounting software, Logos, which is hosted by the Archdiocese, and accounting services through the Archdiocese's Parish Accounting Service Center ("PASC"), both of which provided the Archdiocese with access to parish financial information.²¹⁶ Upon information and belief, the

²¹⁰ Jennifer Haselberger, *The Church and 'Big Data'*, Canonical Consultation and Services, L.L.C. (July 23, 2015), <http://canonicalconsultation.com/1/post/2015/07/the-church-and-big-data.html>.

²¹¹ *Id.*

²¹² CIVIL ACTIONS—SEXUAL ABUSE—LIMITATION PERIOD, 2013 Minn. Sess. Law Serv. Ch. 89 (H.F. 681) (May 24, 2013); CSAF AoI.

²¹³ Haselberger Aff. ¶ 93.

²¹⁴ *Id.* ¶ 93.

²¹⁵ Caldie Aff. Ex. 3

²¹⁶ Moua Aff. Ex. D.

Archdiocese aggressively pushed, and occasionally forced, the parishes to utilize the Logos software and PASC.

109. The Debtor also maintains voluminous legal and general files relating to each of the Parishes and schools, and each of the Parishes is required by the Debtor to produce detailed financial information to the Debtor annually.²¹⁷ The Committee has requested copies of parish-related information from the Debtor on multiple occasions, but the Debtor has refused to provide it. The basis for the Debtor's refusal has been consistent: the Parishes claim that the information requested is confidential and that the Debtor has a fiduciary duty to maintain its confidentiality.

110. Despite the apparent sensitivity and alleged confidentiality of this parish-related information, the Debtor routinely compels the Parishes and schools to provide such information to the Debtor, and the Parishes and schools categorically comply with such requests.²¹⁸

111. Debtor's development staff perform donor record-keeping and donation tracking functions for all Archdiocese fundraising campaigns, regardless of which entity is supposedly the recipient of the funds. For example, on information and belief, the Growing in Faith capital campaign was run through the Catholic Community Foundation. The funds were ultimately used to, among other things, start the Catholic Finance Corporation. Debtor development staff oversaw and administered all aspects of the campaign in order to utilize their donor information and the staff had direct access to the Catholic Community Foundation's account. Throughout the entire campaign, information was thus shared freely between all three entities.

²¹⁷ Haselberger Aff. Ex. 2 ("By Church law, Pastors are required to make periodic reports of the parish finances to the Archbishop. In this Archdiocese we ask that they be submitted to the Chancery within one hundred and twenty days after the close of the fiscal year. Reports must be completed in the format prescribed by the Chancery. **All** financial assets, liabilities, revenues and expenses are to be listed in the report.")

²¹⁸ Fitzpatrick Aff., ¶ 11.

d. The Archdiocese, Parishes, and Schools Routinely Transact with Each Other in a Manner Contrary to Their Individual Best Interests

112. The Archdiocese regularly enters into lease agreements with Parishes and schools for the use of its real property in exchange for little to no consideration. For example, the Archdiocese has leased property to Benilde-St. Margaret High School, Totino-Grace High School, and De La Salle High School (collectively the “High Schools”) for a *de minimum* amount.²¹⁹

113. The Archdiocese also sells real property to Parishes and schools significantly below fair market value. For example, in 2005 the Sisters of St. Benedict ceased their involvement in the operation of Hill-Murray High School. At the time, the Sisters owned 51 percent of the school’s property and the Archdiocese owned the other 49 percent.²²⁰ Two payments, one for \$2.5 million and one for \$600,000 were recorded in association with the sale.²²¹ These amounts were drastically below the fair market value of the property, which is currently over \$25 million.²²²

114. The Archdiocese also pays the debts of Parishes or other non-debtor Catholic entities without receiving equivalent consideration in return. When the Church of St. Bernard in St. Paul incurred a \$459,218 tax bill for selling pull tabs, the Archdiocese stepped in on the parish's behalf, handled negotiations with tax authorities, and paid the outstanding bill.²²³

²¹⁹ Martin Moylan, *Archdiocese bankruptcy will include search for assets*, MPRnews (Feb. 24, 2015), <http://www.mprnews.org/story/2015/02/24/church-bankruptcy-assets>.

²²⁰ Haselberger Aff. ¶ 43 n.13.

²²¹ Property Tax and Value Lookup – Sale Information, Ramsey County, <http://rrinfo.co.ramsey.mn.us/public/characteristic/Parcel.aspx?scrn=Sale&pin=132922430002&cnt=5>

²²² Property Tax and Value Lookup – Sale Information, Ramsey County, <http://rrinfo.co.ramsey.mn.us/public/characteristic/Parcel.aspx?scrn=Value&pin=132922430002&cnt=6>

²²³ Caldie Aff. Ex. 11.

115. Parishes also provide services and beneficial property rights (or property use) to other parishes or other Catholic non-debtor entities without receiving equivalent consideration in exchange. For example:

- a. Third-parties often operate senior living facilities on Parish property and pay a *de minimum* amount to the Parish for use of its property.²²⁴
- b. Similarly, the University of St. Thomas rents space to the Archdiocese Office of Vocations rent-free.²²⁵

116. The Debtor subsidizes Parishes and other Catholic non-debtor entities without receiving consideration in exchange.²²⁶ School financial assistance programs are materially subsidized with Archdiocesan funds.²²⁷

117. On information and belief, the Debtor forgives parishes' non-payment of assessments and failure to make loan payments without receiving consideration in exchange.

118. The Parishes frequently follow Debtor instructions, even if it is not in the best financial interest of their individual parishes.

- a. The Archdiocese mandated all parishes to pay for a specific employee benefits program from a specific carrier.²²⁸ The shift cost many parishes significantly more money annually, for example Saint Alphonsus Catholic Church in Brooklyn Center was forced to spend approximately \$100,000 more annually.²²⁹
- b. The Archdiocese unilaterally required all Parishes to discontinue liability insurance programs and participate in the General Property and Liability Insurance Program protests from many parishes.²³⁰

²²⁴ Haselberger Aff. ¶ 64

²²⁵ Haselberger Aff. ¶ 64.

²²⁶ See, e.g., *infra* ¶ 0; *supra* ¶ 125.

²²⁷ Moua Aff. Ex. E. (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 individual high schools”).

²²⁸ Fitzpatrick Aff. ¶ 15

²²⁹ *Id.*

²³⁰ *Id.* ¶ 16.

- c. The Archdiocese also required all parishes to change their pension program for law employees over the objection of several parishes.²³¹ This change cost many parishes additional money from their previous pension payments.²³²

4. The Assets and Liabilities of the Archdiocese and Its Parishes Are Inextricably Intertwined

a. The Assets of the Archdiocese and Parishes and Schools Are Intermingled

119. Throughout the past six years, an average of 30 to 40 parishes had past due debts to the Archdiocese for unpaid assessments, funds owed to the inter-parish loan fund, or missed payments to the benefit trust.

120. According to the Debtor's schedules, Parishes owe the Debtor approximately \$4 million in unpaid assessments and another \$1 million to the Inter-Parish Loan Fund, operated through the Debtor.²³³

121. The only action the Debtor has taken to collect outstanding balances was to direct pastors of parishes that were identified as being delinquent in assessments and benefits and insurance payments to work Catholic Finance Corporation and, if they refused, such pastors were frequently threatened with removal or transfer to coerce compliance and so a cooperative pastor could be put in their place.²³⁴

122. In fact, on information and belief when parishes fall too far behind in their payments, the Archdiocese forgives their debts, in whole or part. When parishes fail to make payment to benefits programs administered through the Archdiocese, such as the lay employee pension benefits program the Archdiocese mandated all parishes to participate in, the

²³¹ *Id.* ¶ 17.

²³² *Id.*

²³³ *See* Debtor's Amended Schedules, Schedule B at ¶ 16 [ECF No. 142].

²³⁴ *Haselberger Aff.* ¶ 86.

Archdiocese provides the benefits regardless of whether the parishes pay for them.²³⁵ For example the Church of St. Agnes in St. Paul refused to implement the changes in the pension benefits program that the Archdiocese mandated.²³⁶ Despite St. Agnes's failure to make the payments associated with the pension program, its employees still received the benefits.²³⁷

123. The Archdiocese also oversees and funds services on behalf of Parishes and Schools. For example, the Archdiocese contracts with ParishSoft, a finance and membership tracking software, and hosts the software on behalf of the parishes.²³⁸ On information and belief, aside from obtaining access to parish financials, the Archdiocese does not receive any consideration in exchange for hosting of these software services.

124. The Archdiocese also contracts with TeamWorks International, a consultant that evaluates parish operations and suggest improvements.²³⁹ On information and belief, the Archdiocese unilaterally decides which parishes TeamWorks would evaluate (occasionally over the protests of the parish at issue), pays for TeamWork's services, and directly receives TeamWork's report for parish operational changes at the end of the evaluation.

125. The Archdiocese subsidizes or completely funds some Consolidation Parties employees' salaries.²⁴⁰

126. Parishes also commonly intermingled assets with other Parishes and Consolidation Parties. For example, see above.

²³⁵ Fitzpatrick Aff. ¶ 18.

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ Caldie Aff. Exs. 3, 19.

²³⁹ Caldie Aff. Ex. 21.

²⁴⁰ Haselberger Aff. ¶¶ 48, 100.

b. The Debtor Guarantees School and Parish Loans

127. The Debtor also frequently guarantees parish, school, and entity loans.²⁴¹ The Debtor does not receive any consideration in exchange for its guaranty.²⁴² As an example, the Debtor guaranteed loans for the Church of Saint Joseph in West Saint Paul and Saint Richard's Catholic Church of Richfield.²⁴³ The Debtor also renegotiated the loan on behalf of Saint Richard's Catholic Church of Richfield.²⁴⁴

128. At one point, the Debtor guaranteed over \$150 million in loans.²⁴⁵ On June 20, 2006, the Debtor was guaranteeing 40 loans, for a cumulative value of approximately \$100 million.²⁴⁶ The Debtor had guaranteed loans for parishes, Catholic Eldercare, Benile-St. Margaret High School, and Holy Family High School.²⁴⁷ The Debtor has also guaranteed loans for Totino-Grace High School.²⁴⁸

129. The Archdiocese never received consideration in exchange for these guarantees.²⁴⁹

c. The Archdiocese Takes Excess Funds From Some Parishes and Gives Them to Others

130. On information and belief, if Parishes have excess funds, they are required to give the funds to the Archdiocese for the Inter-Parish Loan Fund. The Archdiocese then decides if a parish may receive a loan from the fund. Loans are given at zero percent interest. Parishes

²⁴¹ *Id.* ¶ 101.

²⁴² *Id.* ¶ 101.

²⁴³ Fitzpatrick Aff., ¶ 8.

²⁴⁴ *Id.* ¶ 9.

²⁴⁵ Haselberger Aff. ¶ 101.

²⁴⁶ Anderson Aff., Ex. 1–11.

²⁴⁷ *Id.*

²⁴⁸ Haselberger Aff. ¶ 101.

²⁴⁹ Haselberger Aff. ¶ 101.

receive great leeway in making payments on the loans they receive from the Archdiocese. Many loans are simply written off and never repaid.

d. Archdiocese, Parish, and School Liabilities Are Impossible to Segregate

131. The Debtor, the Parishes and the schools each have significant legal exposure arising from hundreds of claims of clergy sexual abuse that have been asserted against them, and the allocation of respective liability on these claim is not clear.

132. The General Insurance Fund is funded by parish contributions and, by its terms, it can be used to pay costs associated with clergy sexual abuse claims despite the fact that not all Parishes have exposure for clergy sexual abuse claims.

133. It is also unclear – to say the least – whether any of the Parishes have a right to the contents of the General Insurance Fund.

134. The complex interactions and extensive financial and operational overlap between the Archdiocese and the Parishes, only portions of which are described above, make certain that a significant number of transfers between the entities took place in the months and years preceding the Archdiocese's bankruptcy filing. Such transfers will require examination under 11 U.S.C. §§ 547 and 548, among other things, particularly given that many of them may not have been executed in a truly arm's length manner. These issues will make the assets and liabilities of the Debtor and its Parishes even more difficult to segregate reliably.

135. Representatives from the Parishes have repeatedly expressed their desire to resolve all clergy abuse claims through this bankruptcy.

136. If the Parishes and schools – and possibly dozens of other non-debtor entities are provided channeling injunctions through the Debtor's plan, the liabilities of all of these entities will have been substantively consolidated.

137. To date, the creditors of all of these non-debtor entities (hundreds of whom are survivors of sexual abuse) have not been given access to information regarding such entities' assets and other information that would be required to be disclosed if the entities were substantively consolidated with the Debtor.

5. The Debtor Has Taken Actions to Prejudice Creditors By Shifting Assets Into Other Entities Over Which Debtor Still Maintains Control.

138. In timing that coincides with major events exposing the Debtor to liability for its role in clergy sexual abuse, over the past twenty-five years, and particularly the past five, the Debtor has shifted assets into newly created “independent entities” and revised the bylaws of entities to remove references to the Debtor:

- 1992: The Archdiocese of Saint Paul and Minneapolis Catholic Community Foundation was founded, the same year a jury awarded a sexual abuse survivor \$3.5 million.²⁵⁰ The Debtor transferred approximately \$11.5 million to the Catholic Community Foundation with the intent of preventing sexual abuse survivors from accessing the funds.²⁵¹
- 2000: Catholic Finance was created.²⁵² The Debtor paid Catholic Finance's start-up costs and raised \$28,000,000 through its Growing in Faith capital campaign for Catholic Finance's loan fund.²⁵³
- 2011: The Chaplaincy of Gichitwaa Kateri (formerly the Office of Indian Ministry) was incorporated.²⁵⁴ Gichitwaa is housed in a building owned by the Debtor, for which no lease agreement exists.²⁵⁵ The Francophone African Chaplaincy was also incorporated.²⁵⁶ Their offices were in Debtor's offices

²⁵⁰ 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>.

²⁵¹ *Id.*; Caldie Aff. Ex. 22.

²⁵² Caldie Aff. Ex. 30.

²⁵³ 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>.

²⁵⁴ Caldie Aff. Ex. 23.

²⁵⁵ *Id.*

²⁵⁶ Caldie Aff. 24.

and the salary of the Chaplaincy's staff was paid by the Debtor.²⁵⁷ The Aim Higher Minnesota Foundation was also incorporated in 2011.²⁵⁸

- May 2013: The Minnesota state legislature temporarily lifted the statute of limitations on older clergy abuse cases.²⁵⁹
- October 2013: The Debtor was removed as the receiver of assets upon dissolution in the Catholic Community Foundation's Articles of Incorporation.²⁶⁰
- December 2013: The Catholic Services Appeal Foundation was incorporated.²⁶¹ The Catholic Services Appeal Foundation assumed the work previously done by the Debtor of running the annual Catholic Services Appeal. Earlier in 2013, Debtor's training materials for Parish Business Administrators discussed the Catholic Services Appeal as continuing to be organized by the Debtor with no mention of a new entity.²⁶² The Catholic Services Appeal Foundation's offices were in Debtor's offices.²⁶³
- 2014: The Catholic Charities of the Archdiocese of Saint Paul and Minneapolis removed the Debtor as the beneficiary in its dissolution clause.²⁶⁴
- January 15, 2015: Debtor filed for bankruptcy.
- March 2015: Catholic Cemeteries removed the Archdiocese of St. Paul and Minneapolis from its title and removed references to its board, of which the Archbishop is the president, from its website.²⁶⁵
- April 2015: Catholic Services Appeal Foundation moved its office away from Debtor's offices.²⁶⁶
- July 2015: Catholic Finance's purpose clause was amended to state that Catholic Finance 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,

²⁵⁷ *Id.*

²⁵⁸ *Caldie Aff.* 25.

²⁵⁹ CIVIL ACTIONS—SEXUAL ABUSE—LIMITATION PERIOD, 2013 Minn. Sess. Law Serv. Ch. 89 (H.F. 681) (May 24, 2013).

²⁶⁰ *Caldie Aff. Ex.* 29

²⁶¹ *Id. Ex.* 26.

²⁶² *Id. Ex.* 3.

²⁶³ *Id. Ex.* 26.

²⁶⁴ *Id. Ex.* 28.

²⁶⁵ *Anderson Aff. Ex.* 12–17.

²⁶⁶ *Caldie Aff. Ex.* 26.

Catholic Parishes and Catholic Schools outside The Archdiocese of Saint Paul and Minneapolis and within the United States.”²⁶⁷

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

139. Upon information and belief, Catholic Finance Corporation was established in 2000 to assume responsibility for functions formerly performed by the Archdiocese, such as guaranteeing loans and helping parishes with their financial needs. The Debtor paid Catholic Finance Corporation’s start-up costs and raised \$28 million through its Growing in Faith capital campaign for Catholic Finance Corporation’s loan fund.²⁶⁸ Originally, Catholic Finance Corporation had one member – the Archbishop.²⁶⁹ Catholic Finance Corporation’s purpose was listed 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.”²⁷⁰

140. 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, on information and belief, employees working on the

²⁶⁷ *Id.* Ex. 30.

²⁶⁸ Jean Hopfensperger & Jennifer Bjorhus, *Minn. Archdiocese transfer of assets may protect it from bankruptcy creditors*, Star Trib., Feb. 2, 2015, <http://www.startribune.com/archdiocese-shifted-assets-before-filing-bankruptcy/290400991> (quoting Michael P. Schaefer, Catholic Finance Corporation’s founding executive director).

²⁶⁹ *Caldie Aff.* Ex. 30.

²⁷⁰ *Id.*

Growing in Faith campaign were always paid by the Archdiocese. On information and belief, the development employees for the Archdiocese also used the Archdiocese's facilities, office supplies, and other resources for their work on behalf of the Growing in Faith campaign. On information and belief, 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.

141. 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.

142. In July 2015, following the Debtor's filing for bankruptcy, the purpose clause in Catholic Finance Corporation's Articles of Incorporation were amended to state that 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."²⁷¹

143. Catholic Finance Corporation functions as an integral part of the Debtor's finance department, working with the Debtor's chief finance officer to manage the Debtor's financial planning, analysis, and strategy as well as serving as the Debtor's representative in communications with the Parishes, schools, and other entities.²⁷² Catholic Finance Corporation takes direction from the Archbishop, and the Archbishop allows the Archdiocese's finance

²⁷¹ *Id.*

²⁷² Moua Aff. Ex. I, J, K.

department to establish Catholic Finance Corporation's priorities and directs Catholic Finance Corporation to trouble-shoot with parishes on its behalf.²⁷³

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

144. In 1992, a jury awarded a sexual abuse survivor \$3.5 million in a case against the Archdiocese. On information and belief, 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. Also in 1992, the Archdiocese of Saint Paul and Minneapolis Catholic Community Foundation was founded.²⁷⁴ Father McDonough, the vicar general at the time of Catholic Community Foundation's incorporation, has testified that the foundation was established in order to hide money from sexual abuse survivors.²⁷⁵ The quinquennial report,²⁷⁶ regularly described the Catholic Community Foundation as a public charity created to establish civil title to endowment funds entrusted to the Archbishop's care, and noted this separate incorporation provides legal protection for those funds, including ones that were originally held by the Debtor.²⁷⁷ This "separate" corporation was housed on Debtor's property.²⁷⁸ The original board consisted of the Archbishop, vicar general, five other Debtor employees and the rector of the Cathedral, who was appointed by the Archbishop.²⁷⁹ The Catholic Community Foundation's original dissolution clause required Debtor approval to dissolve and reverted all assets to the Debtor.²⁸⁰

²⁷³ *Id.*

²⁷⁴ Jean Hopfensperger & Jennifer Bjorhus, *Minn. Archdiocese transfer of assets may protect it from bankruptcy creditors*, Star Trib., Feb. 2, 2015, <http://www.startribune.com/archdiocese-shifted-assets-before-filing-bankruptcy/290400991> (quoting Michael P. Schaefer, Catholic Finance Corporation's founding executive director).

²⁷⁵ *Caldie Aff. Ex. 22.*

²⁷⁶ A report the Debtor submits to the Holy See roughly every five years. *Haselberger Aff.* ¶ 33.

²⁷⁷ *Haselberger Aff.* ¶ 33.

²⁷⁸ *Id.* ¶ 34; *see also id. Ex. 5.*

²⁷⁹ *Id.*

²⁸⁰ *Id.*

145. From 1994 to 1996 alone, the Debtor transferred approximately \$11.5 million to the Catholic Community Foundation.²⁸¹ On information and belief, despite this transfer, the Archdiocese remained beneficiary of the funds.

146. Over the next 10 years, the Catholic Community Foundation's articles of incorporations were amended to change the name to the Catholic Community Foundation in the Archdiocese of Saint Paul and Minneapolis, remove the requirement for Debtor's approval for dissolution, and add four voting members: the Archbishop, vicar general, chancellor, and the vice president of the Catholic Community Foundation's board.²⁸² While the bylaws of the Catholic Community Foundation are not available, it is likely that they specify that the Archbishop has control over the appointment of the Catholic Community Foundation's board, including the vice president.²⁸³

147. In May 2013, the Minnesota state legislature temporarily lifted the statute of limitations on child sex abuse cases.²⁸⁴ Months later, the Debtor was removed as the beneficiary in Catholic Community Foundation's dissolution clause.²⁸⁵ At that same time, references to Canon Law and the Roman Catholic Church were removed and the reserved powers of the Archbishop were voided, however the Archbishop, the vicar general, and the Archdiocese CFO remain *ex officio* Board members.²⁸⁶

148. 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

²⁸¹ Jean Hopfensperger & Jennifer Bjorhus, *Minn. Archdiocese transfer of assets may protect it from bankruptcy creditors*, Star Trib., Feb. 2, 2015, <http://www.startribune.com/archdiocese-shifted-assets-before-filing-bankruptcy/290400991> (quoting Michael P. Schaefer, Catholic Finance Corporation's founding executive director).

²⁸² Haselberger Aff. ¶ 35; *see also id.* Ex. 5.

²⁸³ *Id.* ¶ 35.

²⁸⁴ CIVIL ACTIONS—SEXUAL ABUSE—LIMITATION PERIOD, 2013 Minn. Sess. Law Serv. Ch. 89 (H.F. 681) (May 24, 2013).

²⁸⁵ Haselberger Aff. ¶ 36; *see also id.* Ex. 5.

²⁸⁶ *Id.*

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.

149. 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. On information and belief, 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. On information and belief, 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.

c. The Histories and Operational Realities of the Chaplaincies Reflect the Chaplaincies' Interrelationship with the Archdiocese

150. The chaplaincies—including the Francophone African Chaplaincy, Newman Center and Chapel, Segrado Corizon de Jesus and the Chaplaincy of Gichitwaa Kateri—were established under Minnesota Statute 317A to limit Debtor liability.²⁸⁷

151. Chaplaincies are a loose category of 317A corporations that are, in the Catholic sense, a particular community or group of the Christian faithful.²⁸⁸ In 2011, the Archdiocese

²⁸⁷ *Id.* ¶ 47.

created a repeatable process for the establishment or recognition of chaplaincies.²⁸⁹ The process included the establishment of corporations with the requisite control to be included in the group tax-exempt ruling and a requirement that the chaplaincy must utilize the Debtor's Parish Accounting Service Center for all its accounting needs.²⁹⁰

152. On information and belief, the Francophone African and Gichitwaa Kateri Chaplaincies each operate out of Debtor-owned properties and do not pay anything for doing so.

153. The many cases, the salaries of the chaplains of the chaplaincies and other expenses of the organizations were paid directly by the Debtor through operating account.²⁹¹ In 2012, for example, Father Timothy Cloutier was assigned the parochial administrator of Gichitwaa Kateri, although the Debtor continued to pay his salary.²⁹² When the Francophone African Chaplaincy was established in 2011, the Debtor paid for the salary and housing of the chaplain.²⁹³ When the Francophone African Catholic community failed to meet the fundraising targets set by the Debtor, the Archbishop removed the chaplain and replaced him with an Archdiocesan employee, Auxiliary Bishop Piche, who did not speak French and the corporation became dormant—meaning no ministry would take place but the civil corporation would continue to exist.²⁹⁴

d. The Histories and Operational Realities of the Catholic Cemeteries Reflect the Catholic Cemeteries's Interrelationship with the Archdiocese.

154. Catholic Cemeteries—like Catholic Finance Corporation, the Catholic Community Foundation, and the Chaplaincies—was established to limit Debtor liability.

²⁸⁸ *Id.*

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ *Id.* ¶ 48.

²⁹² *Id.* ¶ 48 n.15.

²⁹³ *Id.* ¶ 49.

²⁹⁴ *Id.*

155. Prior to the Debtor filing for Bankruptcy, Catholic Cemeteries was consistently held out as being part of the Archdiocese and/or operating cemeteries owned by the Archdiocese.

156. As an 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.”²⁹⁵

157. In Catholic Cemeteries’s 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 of Catholic cemeteries, as decided, or interpreted, by the Ordinary²⁹⁶ of The Archdiocese of Saint Paul and Minneapolis.”²⁹⁷

158. Catholic Cemeteries was similarly advertised to the public at large. On January 15, 2015, Catholic Cemeteries website’s heading stated “Welcome to The Catholic Cemeteries of the Archdiocese of Saint Paul and Minneapolis.”²⁹⁸ By March 15, 2015, following the Debtor’s bankruptcy filing, the website only read “Welcome to The Catholic Cemeteries.”²⁹⁹ While Catholic Cemeteries had previously publically listed its board of directors, including the Archbishop as the chairperson, and the Debtor’s CFO and Chancellor holding seats on the board, that listing was taken down following the Debtor’s bankruptcy filing, even though the board of directors remained the same.³⁰⁰

²⁹⁵ *Caldie Aff. Ex. 3*

²⁹⁶ Another term for the Archbishop.

²⁹⁷ *Anderson Aff., Exs. 12–17.*

²⁹⁸ *Id.*

²⁹⁹ *Id.*

³⁰⁰ *Id.*

159. All of the cemeteries managed by Catholic Cemeteries also once advertised themselves as part of the Archdiocese of Saint Paul and Minneapolis.³⁰¹ However, following the Debtor's bankruptcy filing, the Archdiocese's name was painted over on the signs of each of the cemeteries.³⁰²

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

160. Several high schools are also 317A corporations under the Debtor's control.³⁰³ DeLaSalle's 1971 Articles of Incorporation notes that the school's purpose is to "operate as an educational institution supervised by the Archdiocese of Saint Paul and Minneapolis."³⁰⁴

161. The Archdiocese maintains a representative on each of the high school's boards of trustees.³⁰⁵ Additionally, decisions made by the Totino-Grace board, and likely the other two boards, are subject to the "rules and regulations" of the Debtor.³⁰⁶

162. The high schools, like the Parishes and other schools, require Debtor permission before taking out loans or transferring any interest in real property.³⁰⁷ All of the high schools lease Archdiocese-owned property for a *de minimus* amounts that is rarely, if ever, actually paid. On information and belief, the Archdiocese unilaterally imposed non-negotiable, long-term lease terms on the Totino-Grace and DeLaSalle High Schools.³⁰⁸ The Archdiocese also guarantees loans for Benilde-St. Margaret and Totino Grace High Schools for no material consideration in exchange.³⁰⁹

³⁰¹ *Id.*

³⁰² Anderson Aff., Ex. XX.

³⁰³ Haselberger Aff. ¶ 52.

³⁰⁴ Haselberger Aff. ¶ 52.

³⁰⁵ Moua Aff. Exs. F, G, H.

³⁰⁶ *Id.* Ex. F.

³⁰⁷ *Id.* Ex. H.

³⁰⁸ Benilde-St. Margaret was already subject to a long-term lease with the Debtor.

³⁰⁹ Haselberger Aff. ¶ 101.

163. Financial assistance programs for the high schools are subsidized materially 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.”³¹⁰

164. In 2011, the Archbishop began appointing priest chaplains to Totino-Grace, De La Salle, and Benilde, regardless of whether he had the authority to do so under the high schools’ operating documents.³¹¹

165. The Archbishop also retains control over significant curriculum decisions within the schools.³¹²

Dated: May 23, 2016

/s/ Robert T. Kugler

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³¹⁰ Moua Aff. Ex. E.

³¹¹ Haselberger Aff. ¶ 52.

³¹² *Id.* ¶ 52; Fitzpatrick Aff., ¶ 10(i).