

**UNITED STATES BANKRUPTCY COURT**  
**FOR THE DISTRICT OF SOUTHERN DISTRICT CALIFORNIA**  
**THE HONORABLE LOUISE DeCARL ADLER, PRESIDING**  
**WEINBERGER COURTHOUSE CALENDAR**

THURSDAY, AUGUST 23, 2007

HEARING ROOM: DEPARTMENT 2

**10:00 AM**

07-00939-LA11

**The Roman Catholic Bishop of San Diego**

CH: 11

1) **ADV: 3-07-90137**

**Vincent O. vs Defendant Doe 1**

MOTION OF PLAINTIFF(S) FOR ORDER REMANDING STATE LAW ACTION

**Tentative Ruling:** Procedural Rulings:

Evidentiary Objections to Zalkin Declm: Court GRANTS in part; DENIES in part evidentiary objections of Diocese and rules as follows:

Zalkin Dec., p. 2:9: word "horrific" stricken. Balance of objection to para. 2 overruled.

p. 2:19: word "shameful" stricken; balance of objection to para. 4 overruled.

p. 4:5-7: objection overruled.

p. 4:28 to 5:1-4: objection overruled.

p. 5:14-19: objection overruled.

p. 5:24-28: objection overruled.

p. 6:8-12: objection overruled.

p. 6:16-28, p. 7, p. 8, p. 9: objections overruled.

Preliminarily, Court states that 28 U.S.C. Sec. 157(b)(4) and 28 U.S.C. Sec. 1334(c)(1) are irrelevant to the ruling on this motion. The court agrees Sec. 157(b)(4) bars use of mandatory abstention as a statutory ground to send the actions back to state court. Additionally, as a matter of law, the court cannot abstain under 28 U.S.C. Sec. 1334(c)(1) or (c)(2) because there is no parallel proceeding the state court. If there is no parallel state court proceeding, the abstention doctrines are inapplicable. The abstention case law is only relevant to the extent that case law addressing equitable remand has imported the equitable factors for discretionary abstention into the equitable remand analysis for Sec. 28 U.S.C. Sec. 1452(b). See *In re Enron Corp.*, 296 B.R. 505, 508-9 (C.D. Cal. 2003).

Motions to remand GRANTED. Full written opinion to issue. Motions to remand under 28 U.S.C. Sec. 1452(b) may be granted for "any equitable ground." Decision to remand is committed to the sound discretion of the Court. Non-exclusive factors (imported from above-referenced Enron decision) include: Affect on administration of estate; predominance of state law issues; difficult or unsettled state law; presence of related non-bankruptcy proceedings; jurisdictional basis; degree of relatedness to bankruptcy case; feasibility of severing state law claims and remanding only those claims; burden on docket; forum shopping; right to jury trial; presence of non-debtor parties; interests of comity with state court, and prejudice.

In weighing these factors, Court finds the following:

1. That the actions involve solely non-core state law tort claims.
2. State law issues predominate although Diocese has raised some federal Constitutional affirmative defenses which have been addressed previously in both state and federal courts.
3. No basis for federal jurisdiction other than Sec. 1334.
4. Subject matter of lawsuits is matter of compelling state interest.
5. Plaintiffs have demanded jury trials. The only arguably more efficient method of valuing these claims for distribution is claim estimation. However, claim estimation has its own procedural obstacles and is not well-developed, making likely significant disputes and appeals.
6. Loss of jury trial right severely prejudices plaintiffs.

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7. The remanded actions can be efficiently litigated in state court where they have been pending for over 3 years as part of state-wide coordinated proceedings which the Diocese itself requested. All remanded actions have previously been released for trial by the state coordination judge. Five actions are mature and ready for trial; these were cases selected for trial after consultation with the Diocese and the plaintiffs..

8. Pretrial management of all these actions would be a burden on the bankruptcy court (to the extent they were retained here for pretrial proceedings) and a huge burden on the district court to try all of them.

9. Debtor appears to be forum shopping. Offer of settlement in plan is significantly less than statewide average for settlement of cases of this type. Debtor appears to be hoping for a more favorable result in a federal forum than has been achieved at the state level.

10. Although resolution of these claims is central to Diocese' bankruptcy case administration, given debtor's present plan of reorganization offering to pay below the statewide settlement averages, it is highly unlikely a consensual plan will be achieved. Court foresees considerable bankruptcy litigation over these issues, all at the expense of the estate. In contrast, diocese' defense costs in state court are being paid for by insurance such that there is no diversion of debtor's assets to defend these cases there.

**2) ADV: 3-07-90138**

**Edward W. vs Defendant Doe 1**

MOTION OF PLAINTIFF (S) FOR ORDER REMANDING STATE LAW ACTION

**3) ADV: 3-07-90144**

**John Doe vs Defendant Doe 1**

MOTION OF PLAINTIFF(S) FOR ORDER REMANDING STATE LAW ACTION

**4) ADV: 3-07-90146**

**John Doe vs Defendant Doe 1**

MOTION OF PLAINTIFF(S) FOR ORDER REMANDING STATE LAW ACTION

**5) ADV: 3-07-90151**

**Eric Brown vs Defendant Doe 1**

MOTION OF PLAINTIFF (S) FOR ORDER REMANDING STATE LAW ACTION

**6) ADV: 3-07-90165**

**Jane Doe 54 vs Defendant Doe 1**

MOTION OF PLAINTIFF (S) FOR ORDER REMANDING STATE LAW ACTION

**7) ADV: 3-07-90166**

**Elizabeth Hill vs Defendant Doe 1**

MOTION OF PLAINTIFF (S) FOR ORDER REMANDING STATE LAW ACTION

**8) ADV: 3-07-90168**

**Cheryl Gomez vs Defendant Doe 1**

MOTION OF PLAINTIFF (S) FOR ORDER REMANDING STATE LAW ACTION

- 9) **ADV: 3-07-90172**  
**Linda S. vs Defendant Doe 1**  
MOTION OF PLAINTIFF (S) FOR ORDER REMANDING STATE LAW ACTION
- 10) **ADV: 3-07-90173**  
**Amy R. vs Defendant Doe 1**  
MOTION OF PLAINTIFF (S) FOR ORDER REMANDING STATE LAW ACTION
- 11) **ADV: 3-07-90174**  
**John Doe vs Defendant Doe 1**  
MOTION OF PLAINTIFF (S) FOR ORDER REMANDING STATE LAW ACTION
- 12) **ADV: 3-07-90209**  
**Michael S. vs Defendant Doe 1**  
MOTION OF PLAINTIFF (S) FOR ORDER REMANDING STATE LAW ACTION
- 13) **ADV: 3-07-90210**  
**Dan Dameron vs Defendant Doe 1**  
MOTION OF PLAINTIFF (S) FOR ORDER REMANDING STATE LAW ACTION
- 14) **ADV: 3-07-90211**  
**Sandy Graves vs Defendant Doe 1**  
MOTION OF PLAINTIFF (S) FOR ORDER REMANDING STATE LAW ACTION
- 15) **ADV: 3-07-90345**  
**James S., Individually vs Defendants Doe 1**  
MOTION OF PLAINTIFF (S) FOR ORDER REMANDING STATE LAW ACTION
- 16) **ADV: 3-07-90370**  
**Leonard L. vs Defendants Doe 1**  
MOTION OF PLAINTIFF (S) FOR ORDER REMANDING STATE LAW ACTION
- 17) **ADV: 3-07-90103**  
**John Roe 17 vs Diocese, and DOES 2 through 100, inclusi**  
MOTION OF PLAINTIFF (S) FOR ORDER REMANDING STATE LAW ACTION
- 18) **ADV: 3-07-90141**  
**John Roe 16 vs Defendant Doe 1, Diocese**  
MOTION OF PLAINTIFF (S) FOR ORDER REMANDING STATE LAW ACTION
- 19) **ADV: 3-07-90142**  
**John Roe 31 vs Defendant Doe 1, Diocese**  
MOTION OF PLAINTIFF (S) FOR ORDER REMANDING STATE LAW ACTION
- 20) **ADV: 3-07-90143**  
**John Roe 21 vs Defendant Doe 1**  
MOTION OF PLAINTIFF (S) FOR ORDER REMANDING STATE LAW ACTION
- 21) **ADV: 3-07-90147**  
**John Roe 27 vs Defendant Doe 1, Diocese**

MOTION OF PLAINTIFF' (S) FOR ORDER REMANDING STATE LAW ACTION

22) **ADV: 3-07-90154**

**Jane Roe 11 vs Defendant Doe 1**

MOTION OF PLAINTIFF (S) FOR ORDER REMANDING STATE LAW ACTION

23) **ADV: 3-07-90156**

**Jane Roe 3 vs Defendant Doe 1**

MOTION OF PLAINTIFF (S) FOR ORDER REMANDING STATE LAW ACTION

24) **ADV: 3-07-90161**

**Jane Roe 10 vs Defendant Doe 1, Diocese**

MOTION OF PLAINTIFF (S) FOR ORDER REMANDING STATE LAW ACTION

25) **ADV: 3-07-90163**

**Jane Roe 8 vs Defendant Doe 1**

MOTION OF PLAINTIFF (S) FOR ORDER REMANDING STATE LAW ACTION

26) **ADV: 3-07-90175**

**Jane Roe 9 vs Defendant Doe 1, Diocese**

MOTION OF PLAINTIFF (S) FOR ORDER REMANDING STATE LAW ACTION

27) **ADV: 3-07-90104**

**Veronica Budai Rister vs Defendant Doe 1**

MOTION OF PLAINTIFF (S) FOR ORDER REMANDING STATE LAW ACTION

28) **ADV: 3-07-90117**

**Raul Alberto Miranda vs Defendant Doe 1**

MOTION OF PLAINTIFF (S) FOR ORDER REMANDING STATE LAW ACTION

29) **ADV: 3-07-90158**

**Jacob Niel Vasquez vs Defendant Doe 1**

MOTION OF PLAINTIFF (S) FOR ORDER REMANDING STATE LAW ACTION

30) **ADV: 3-07-90153**

**John Doe vs Roman Catholic Bishop of San Diego**

MOTION OF PLAINTIFF(S) FOR ORDER REMANDING STATE LAW ACTION

31) **ADV: 3-07-90167**

**John GH Doe vs Doe 1**

MOTION OF PLAINTIFF(S) FOR ORDER REMANDING STATE LAW ACTION

32) **ADV: 3-07-90169**

**John GM Doe vs Doe 1**

MOTION OF PLAINTIFF(S) FOR ORDER REMANDING STATE LAW ACTION

33) **ADV: 3-07-90208**

**DON P. and ROES 1 through 50 vs Congregation of the Holy Ghost akas and/**

MOTION OF PLAINTIFF (S) FOR ORDER REMANDING STATE LAW ACTION

34) **ADV: 3-07-90162**

**Betty P. vs The Roman Catholic Diocese of San Diego**

MOTION OF PLAINTIFF (S) FOR ORDER REMANDING STATE LAW ACTION

35) **ADV: 3-07-90079**

**Roger Cortez vs The Roman Catholic Bishop of San Diego**

MOTION OF PLAINTIFF(S) FOR ORDER REMANDING STATE LAW ACTION

36) **ADV: 3-07-90078**

**Jacob Olivas vs Diocese of San Diego, Educ & Welfare Cor**

MOTION OF PLAINTIFF (S) FOR ORDER REMANDING STATE LAW ACTION

37) **ADV: 3-07-90102**

**Mary Ann M. vs Archdiocese of Los Angeles**

MOTION OF PLAINTIFF (S) FOR ORDER REMANDING STATE LAW ACTION

38) **ADV: 3-07-90105**

**John B. vs John Doe 1**

MOTION OF PLAINTIFF (S) FOR ORDER REMANDING STATE LAW ACTION

39) **ADV: 3-07-90133**

**Francisco Herrera vs Defendant Doe 1**

MOTION OF PLAINTIFF(S) FOR ORDER REMANDING STATE LAW ACTION

40) **ADV: 3-07-90206**

**Jane Doe vs John Doe 1**

MOTION OF PLAINTIFF (S) FOR ORDER REMANDING STATE LAW ACTION

41) **ADV: 3-07-90207**

**Jane Doe vs Defendant Doe 1 Diocese**

MOTION OF PLAINTIFF(S) FOR ORDER REMANDING STATE LAW ACTION

42) **ADV: 3-07-90136**

**Darryl Gibson vs Does 1 through 150, inclusive**

MOTION OF PLAINTIFF(S) FOR ORDER REMANDING STATE LAW ACTION

ATTORNEY: Andrea Leavitt (Betty P., DON P. and ROES 1 through 50)  
ATTORNEY: Raymond P. Boucher (Amy R., Cheryl Gomez, Dan Dameron, Edward W., Elizabeth Hill, Eric Brown, James S., Individually, Jane Doe 54, John Doe, Leonard L., Linda S., Michael S., Sandy Graves, Vincent O.)  
ATTORNEY: Irwin M. Zalkin (Jane Roe 10, Jane Roe 11, Jane Roe 3, Jane Roe 8, Jane Roe 9, John Roe 16, John Roe 17, John Roe 21, John Roe 27, John Roe 31)  
ATTORNEY: Robert Mezzetti (Jane Doe)  
ATTORNEY: Jean Starcevich (Jane Doe)  
ATTORNEY: Timothy C. Hale (Jacob Olivas, Roger Cortez)  
ATTORNEY: Katherine K. Freberg (Jacob Niel Vasquez, Raul Alberto Miranda, Veronica Budai Rister)  
ATTORNEY: Richard H. Schoenberger (Mary Ann M.)  
ATTORNEY: Devin M. Storey (John Roe 17)  
ATTORNEY: Charles Geerhart (Francisco Herrera)  
ATTORNEY: Jennifer L. Cutler (Jane Doe)  
ATTORNEY: R. Michael Lieberman (Darryl Gibson)  
ATTORNEY: Michele Betti (Raul Alberto Miranda, Veronica Budai Rister)  
ATTORNEY: Venus Soltan (John B., John Doe, John GH Doe, John GM Doe)  
ATTORNEY: Edward D. Chapin (Congregation of the Holy Ghost akas and/)  
ATTORNEY: J. E. Holmes (Defendant Doe 1)  
ATTORNEY: Geraldine A. Valdez (Defendant Doe 1, Defendant Doe 1, Diocese, Defendants Doe 1, Does 1 through 150, inclusive, John Doe 1, Roman Catholic Bishop of San Diego, The Roman Catholic Bishop of San Diego, The Roman Catholic Diocese of San Diego)

**02:00 PM**

**06-01858-LA13**

**Steven T. Tran & Lynn M. Duong**

**CH: 13**

**ADV: 3-06-90453**

**Gregory A. Akers, Chapter 7 Trustee vs Mike T. Tgo**

PRE-TRIAL STATUS CONFERENCE (Fr 6/28/07)

ATTORNEY: Susan C. Stevenson (Gregory A. Akers, Chapter 7 Trustee)

**06-02592-LA7**

**Lanny Moldofsky**

**CH: 7**

**TELE**

**ADV: 3-06-90492**

**Buckeye Retirement Co., L.L.C., Ltd. vs Lanny Moldofsky**

PRE-TRIAL STATUS CONFERENCE

ATTORNEY: Holly Walker (Buckeye Retirement Co., L.L.C., Ltd.) 310-828-4764

ATTORNEY: Bill Parks (Lanny Moldofsky)

**05-13562-LA7**

**Debra J Larsen**

**CH: 7**

APPLICATION FOR COMPENSATION & REIMBURSEMENT OF EXPENSES FOR GERALD H. DAVIS, TRUSTEE CHAPTER 7, PERIOD: 10/14/2005 TO 8/23/2007, FEE: \$ 4,567.86, EXPENSES: \$34.30.

**Tentative Ruling:** Court has reviewed application for compensation and reimbursement of expenses filed by Ch. 7 trustee. The statutory compensation requested is fair and reasonable in light of the services rendered by the trustee. The Court commends the trustee for minimizing professional expenses in recovering the nonexempt assets which will be distributed to the estate's creditors. Court awards the statutory compensation and expense reimbursement requested in full. As this application is unopposed, court excuses attendance of Mr. Davis at this hearing; he may submit an order forthwith.

ATTORNEY: Mark L. Miller (Debra J Larsen)

**06-02219-LA7**

**GARY S. & KUMIKO WETTER**

**CH: 7**

**ADV: 3-07-90089**

**Vincent Consolidated Commodities, Inc. vs GARY S. WETTER**

PRE-TRIAL STATUS CONFERENCE

ATTORNEY: Victor A. Vilaplana (Vincent Consolidated Commodities, Inc.)

ATTORNEY: Ronald J. Pullen (GARY S. WETTER)

- 1) FINAL APPLICATION FOR COMPENSATION & REIMBURSEMENT FOR R. DEAN JOHNSON, ACCOUNTANT, PERIOD: TO, FEE: \$ 880.92, EXPENSES: \$59.92

**Tentative Ruling:** Court has reviewed First and Final Application of Accountant for Ch. 7 trustee and finds services necessary and charges therefor reasonable. All amounts requested will be awarded in full. As this application is unopposed, Court excuses Mr. Johnson from attendance at this hearing; he may submit an order forthwith.

- 2) FINAL APPLICATION FOR COMPENSATION & REIMBURSEMENT FOR FINANCIAL LAW GROUP FEES \$ 3,315.50, PLUS RESERVE UP TO \$500.00; EXPENSES \$58.39

**Tentative Ruling:** Court has reviewed First and Final application of counsel for Ch. 7 trustee and finds services necessary and charges therefor reasonable. Court awards amounts requested in full. Further, Court authorizes the trustee to pay an amount up to \$300 for actual services rendered after the cut off date of the application without need for further application. As this application was unopposed, court excuses Ms. Lissebeck from attendance at this hearing; she may submit an order forthwith.



**02:30 PM**

07-00939-LA11

**The Roman Catholic Bishop of San Diego**

**CH: 11**

HEARING ON FINANCIAL EXPERT REPORT FROM R TODD NEILSON

**Tentative Ruling:** Procedural Ruling: Court will not be considering Comments of Ad Hoc Comm. of Parishioner's to Expert's Report (d.e.#941) filed 8/9/07. Court has previously held that this group has not been conferred standing and has no right to appear and be heard at this time.

ATTORNEY: Gerald P. Kennedy (The Roman Catholic Bishop of San Diego)