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Former Counsel for
Organization of Parishes

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

IN RE

THE ROMAN CATHOLIC BISHOP OF SAN DIEGO,
A CALIFONRIA CORPORATION, SOLE,

Debtor.

CASE No. 07-00939-LA 11

CHAPTER 11

**DECLARATION OF JEFFRY A. DAVIS
IN RESPONSE TO ORDER TO SHOW
CAUSE RE CONTEMPT OR OTHER
SANCTIONS**

Date: April 11, 2007

Time: 2:00 p.m.

Dept: 3

Judge: Hon. Louise DeCarl Adler

I, Jeffry A. Davis, declare:

1. I am a member of the law firm of Mintz Levin Cohn Ferris Glovsky and Popeo, P.C. and can testify to the following on my own personal knowledge.

2. On or about February 27, 2007, I was contacted to serve as counsel for an ad- hoc committee of church pastors to represent the 98 parishes of the diocese of San Diego in this Chapter 11 case.

3. On March 1, 2007, I attended, on behalf of the parishes, the hearing on the debtor's first day motions, including the debtor's Motion for Order (a) Authorizing Continued use of Debtor's Cash Management System; (b) Authorizing Maintenance of Debtor's Existing Bank Accounts and Continued Use of its Business Forms; (c)

1 Waiving Compliance with 11 U.S.C. §345(b) and; (d) For Other Relief (the
2 “Motion”). During that hearing it was brought to the Court’s attention that although
3 each of the parishes maintained bank accounts separate and apart from the diocese,
4 most of the parishes utilized the diocese employer identification number (“EIN”).
5 Counsel for the claimants, in discussing reporting requirements for the parish bank
6 accounts stated, “If the service party wishes to get its own tax ID number, that they
7 [sic] take it outside the reporting obligation”. See Reporter’s Transcript of
8 Proceedings, Thursday March 1, 2007 (“Transcript”) p.20, lines 1-3.¹ Later in the
9 hearing, the court asked me to respond to the issues involving the parish bank
10 accounts. I stated to the Court that the parish bank accounts were derived from the
11 weekly collection basket and the accounts were used for parish expenses such as
12 utilities and maintenance. The Court then inquired “Mr. Davis, I guess my question
13 might be this -- and maybe you can answer this question for me. How difficult and
14 disruptive would it be for the Parishes to get their own taxpayer ID number?”
15 Transcript, p.28, l. 20-23. I understood the Court’s comment to be a prompt to correct
16 a prior deficiency, in the same way an employer might say to an employee, “How
17 difficult would it be to get your reports in on time?” or as a parent might say to a
18 child, “How difficult would it be to be nice to your brother?” I took the Court’s
19 comments as an indication that the Court would not have a problem with a prospective
20 change to individual parish EINs. I indicated to the Court that “it’s a good question,
21 and it’s something that should be looked into, and we will proceed to look into it as
22 soon as possible.”² (Transcript, p.29, l.3-5) The Court then confirmed that it was not
23 making any decision as to whether the monies in the bank account or the “Parishes’
24 money or the Diocese’s money”. (Transcript, p.29, l.9-10)

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27 ¹ To avoid burdening the Court clerk’s office with multiple copies of the Transcript, only the cited pages of the
Transcript are attached.

28 ² The comment that I would “look into it as soon as possible” evidences my understanding. If I had understood that
changing EINs was a problem for the Court, there would be no reason “to look into it as soon as possible.”,

1 4. My understanding of the Court's comments to me, at that time, and
2 continuing through today, was that the Court was recommending that the parishes get
3 their own tax identification number if to do so was not "difficult and disruptive." In
4 fact, in discussing the results of the hearing with Susan Boswell, counsel for the
5 diocese, after the hearing, we both understood that obtaining EIN's for the parishes
6 was something that the Court would prefer. We both agreed that if questioned at the
7 March 7 hearing the parishes would want to be in a position to inform the Court that
8 they had initiated the process, and would be well along with the process by the further
9 hearing the Court initially set for April 4, 2007.

10 5. In light of the Court's statements during the March 1, 2007 hearing, I
11 determined that obtaining an EIN for each parish involved the mere filing of a form
12 with the Internal Revenue Service. Based upon this determination, and in light of the
13 Court's statements, the parishes were advised to obtain their own EIN's and to inform
14 their banks to change the EIN on their existing parish bank accounts.

15 6. There was never any intention that the parish bank accounts be used in any
16 other fashion than in the ordinary course of parish business. There was absolutely no
17 intent at any time that the funds be removed from the jurisdiction of this Court and the
18 Court's anticipated future determination as to whether such funds were or were not of
19 the Diocese's bankruptcy estate. If there was any intent to do so, certainly the
20 parishes would not have maintained their existing bank accounts where they were able
21 to do so.

22 7. On March 9, 2007, the pastors from the dioceses' 98 parishes met and voted
23 to form the Organization of Parishes ("Organization"). The purpose of the
24 Organization is to represent the interests of the parishes in the dioceses' Chapter 11
25 case and to avoid the additional expense and waste of additional resources which
26 would occur if each parish had to represent its own interests.

27 8. During the early part of the week following the March 9, 2007 meeting of
28 the pastors, various pastors called me indicating that Union Bank was not willing to

1 change the EIN's on the parish bank accounts. On or about March 14, 2007, the
2 Organization advised pastors to place a hold on further efforts to change EIN's on
3 parish bank accounts until an agreement could be worked out with Union Bank and
4 other institutions.

5 9. I ceased being counsel to the Organization of Parishes on March 16, 2007.

6 10. At no time during my representation did the parishes, the Organization of
7 Parishes, any pastor (to my knowledge) or I suggest any effort to conceal funds or
8 transfer funds out of the bankruptcy estate (to the extent the Court after an appropriate
9 proceeding may determine the funds to be property of the estate). The changing of
10 EINs was done on the basis of my understanding of the Court's comments.

11 11. It was made very clear at the March 1, 2007 hearing that most parishes
12 were using debtor's EIN for their parish bank accounts as of the date of the filing of
13 the debtor's bankruptcy petition. Nothing that was done after that date would in any
14 way change that fact. Instead, the parishes were merely attempting to comply with this
15 Court's suggestion and to act promptly in doing so.

16 I declare under penalty of perjury that the foregoing is true and correct.

17 Executed this 10th day of April, 2007 at San Diego, California.

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Jeffrey A. Davis

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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

JUDGE LOUISE DECARL ADLER, PRESIDING

IN THE MATTER OF:)
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)
)
THE ROMAN CATHOLIC BISHOP OF) CASE NO. 07-00939-LA
SAN DIEGO)
)

- 1) **FIRST-DAY MOTION NO. 1:** DEBTOR'S MOTION FOR ORDER (A) AUTHORIZING CONTINUED USE OF DEBTOR'S CASH MANAGEMENT SYSTEM; (B) AUTHORIZING MAINTENANCE OF DEBTOR'S EXISTING BANK ACCOUNTS AND CONTINUED USE OF ITS BUSINESS FORMS; (C) WAIVING COMPLIANCE WITH 11 USC SECTION 345(b); AND, (D) FOR OTHER RELIEF
- 2) **FIRST-DAY MOTION NO. 2:** DEBTOR'S MOTION FOR ORDER UNDER 11 USC SECTIONS 105, 363 AND 507 AUTHORIZING DEBTOR TO PAY PREPETITION WAGES, TO HONOR CERTAIN EMPLOYEE BENEFITS AND OTHER CONTRACTUAL OBLIGATIONS
- 3) **FIRST-DAY MOTION NO. 3:** DEBTOR'S MOTION UNDER 11 USC SECTIONS 105, 363 AND 541 FOR AUTHORITY TO HONOR CERTAIN WORKERS' COMPENSATION OBLIGATIONS
- 4) **FIRST-DAY MOTION NO. 4:** DEBTOR'S MOTION UNDER 11 USC SECTION 366 FOR ORDER DETERMINING THAT UTILITIES ARE ADEQUATELY PROTECTED; AND PROHIBITING UTILITY SERVICE PROVIDERS FROM ALTERING, REFUSING OR DISCONTINUING SERVICE
- 5) **FIRST-DAY MOTION NO. 5:** DEBTOR'S EX PARTE MOTION FOR AN ORDER UNDER 11 USC SECTION 107, FRBP 1007(J) AND 9018 AUTHORIZING DEBTOR TO FILE PORTIONS OF SCHEDULE F, THE MASTER MAILING LIST AND OTHER PLEADINGS AND DOCUMENTS UNDER SEAL, AND RELATED RELIEF
- 6) **FIRST-DAY MOTION NO. 6:** DEBTOR'S MOTION FOR ORDER ESTABLISHING OFFICIAL SERVICE LIST AND LIMITING NOTICE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

SAN DIEGO, CALIFORNIA

THURSDAY, MARCH 1, 2007

U.S. COURTHOUSE
DEPARTMENT NO. 2
325 WEST F STREET
SAN DIEGO, CA 92101

FEDERAL COURT REPORTERS
BY PATRICIA A. CALLIHAN
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1 US trustee reports. If the service party wishes to get
2 its own tax ID number, that they take it outside the
3 reporting obligation. But so long as the debtor has
4 some relationship to that account -- and frankly I don't
5 understand what the implications are of having your tax
6 ID number on someone else's account, but it must mean
7 something; and so long as it may mean something, I think
8 we should at least know what's going on in the accounts.

9 MS. LEAVITT: Andrea Leavitt, your Honor.

10 Your Honor, I'm sure that the Court might wish
11 to have Ms. Boswell amplify on this one issue. My
12 concern addresses specifically the construction issue
13 that was just addressed a moment ago. And I guess what
14 I would like would be clarification as to whether the
15 construction monies possibly expended are for another
16 entity's property that the diocese is expending or
17 whether it is property that the diocese or the estate is
18 claiming as its own property. Thank you.

19 THE COURT: Ms. Carroll, anything further with
20 respect to this motion?

21 MS. CARROLL: Thank you, your Honor.

22 I think with this order -- and I appreciate
23 Mr. Stang's request to have the US trustee guidelines
24 specified as to which ones they will not be complying.
25 I did not ask for that, but I do think it needs to be

1 because I don't think it's any secret that when
2 something like this happens, people are concerned about
3 where their money is going to go.

4 THE COURT: Absolutely.

5 MS. BOSWELL: And there are two choices: They
6 either give it and say it's restrictive or they want
7 assurance it's restricted, or they don't give it at all;
8 and if they don't give it at all and the debtor then is
9 using unrestricted funds to support to this program, it
10 would seem to me that is more harmful than to continue
11 to accept gifts and to give donors assurances that they
12 want to make sure that their money is going to support
13 programs.

14 THE COURT: Okay.

15 MS. BOSWELL: With that, your Honor, I have no
16 more comments on Motion No. 1.

17 THE COURT: Mr. Davis, did you have any
18 comment on the taxpayer ID entity issue or the service
19 recipients issue in terms prepaids that were required?
20 Anything further on that?

21 MR. DAVIS: Nothing further. As far as the
22 issue of advances. We understand that the diocese is
23 not going to advance any funds to the parishes, and
24 that's the way it is, we understand.

25 As far as the tax ID accounts, your Honor, the

1 parishes maintain -- and I don't want to get into issues
2 that are not yet before the Court that we anticipate
3 being before the Court. But it's the parishes' view
4 that those funds belong to them in the parish accounts
5 in the name of the parishes. They collected from the
6 collection basket that goes through the pews each week.
7 They are used for parish expenses -- keeping the lights
8 on, sweeping the floors, things of that nature -- and
9 they're not -- they don't belong to the diocese; they're
10 used at the local parish level. Further, your Honor,
11 there are over 700 accounts as set forth in the --

12 THE COURT: Yes. I saw the list.

13 MR. DAVIS: We're talking about an
14 administrative nightmare here as far as reporting. The
15 parishes are not the debtor entity, and to require them
16 to report would be not only, I believe -- I won't say
17 beyond the jurisdiction of this Court, but stretching
18 the jurisdiction of this Court, and also will create an
19 administrative nightmare.

20 THE COURT: Mr. Davis, I guess my question
21 might be this -- and maybe you can answer this question
22 for me. How difficult and disruptive would it be for
23 the parishes to get their own taxpayer ID number?

24 MR. DAVIS: Your Honor, that is something that
25 we have to look into. I have not had an opportunity to

1 look into it. I have been involved now for about 48
2 hours and so I have not been able to look into that. I
3 think it's -- it's a good question, and it's something
4 that should be looked into, and we'll proceed to look
5 into it as soon as possible. In the meantime, your
6 Honor, I just wanted to --

7 THE COURT: But you do understand the Court's
8 not making today -- does not intend to make any decision
9 as to whether this is the parishes' money or the diocese
10 money. That's one of the things Mr. Stang had asked the
11 Court to reserve as a question if in fact we get to the
12 question, but it's not to be decided today.

13 MR. DAVIS: I fully understand that, your
14 Honor. I definitely understand that.

15 THE COURT: Okay. All right, Mr. Stang, are
16 the assurances then sufficient at this point? Do you
17 have some resolution here?

18 MR. STANG: Yes, your Honor. Regarding the
19 disbursements on those services, the only additional
20 item -- not additional -- follow-up comment I would make
21 is that I believe I understand what this indemnity is
22 about. I would like a chance to talk to Ms. Boswell
23 about it. I certainly would not expect that Union Bank
24 or anyone else would allow, after a final hearing, to go
25 back and redo the interim relief that was granted. I