

1  
2 SHAUN M. CROSS  
3 GREGORY J. ARPIN  
4 MICHAEL J. PAUKERT  
5 DANIEL J. GIBBONS  
6 PAINE HAMBLLEN LLP  
7 717 West Sprague Avenue, #1200  
8 Spokane, WA 99201  
9 Tele: (509) 455-6000  
10 Attorneys for Debtor  
11

12 UNITED STATES BANKRUPTCY COURT  
13 EASTERN DISTRICT OF WASHINGTON  
14

15 In re: )  
16 ) No. 04-08822-PCW-11  
17 THE CATHOLIC BISHOP OF )  
18 SPOKANE, a/k/a THE CATHOLIC ) **SURREPLY TO COWLES**  
19 DIOCESE OF SPOKANE, a ) **PUBLISHING'S MOTION**  
20 Washington corporation sole, ) **FOR ACCESS TO**  
21 ) **COMPLETED CLAIMS**  
22 Debtor. ) **[Docket No. 1868]**  
23

24  
25 The Catholic Bishop of Spokane a/k/a The Catholic Diocese of Spokane, a  
26 Washington corporation sole (the "Debtor") submits this Surreply to Cowles  
27 Publishing Company's (the "Spokesman-Review") Motion for Access to  
28 Completed Claims. Filed herewith is the Affidavit of Daniel J. Gibbons, the  
Affidavit of Shaun M. Cross and the Affidavit of Mary Green. For the reasons  
discussed below, the Spokesman-Review's Motion for Access to Claims should be  
denied.

1  
2  
3 **1. The Spokesman-Review's Motion Remains Ambiguous and**  
4 **Misdirected.**

5 Even after receiving the joint objection from the Debtor, TLC, TCC, FCR,  
6 the Executive Committee of the Association of Parishes and certain tort claimants  
7 (the "Joint Objection") and the Debtor's objection stating that the relief requested  
8 was muddled and ambiguous, the Spokesman-Review still cannot articulate the  
9 relief it is requesting. In the first paragraph of its reply, the Spokesman-Review  
10 identifies the relief requested as "the limited scope of the relief requested – namely,  
11 that the public be given access to court records related to claims that are paid under  
12 the plan, with the names and identifying information of the victims redacted."  
13 Reply p. 1, ll. 26 - p. 2., ll. 4. The Spokesman-Review then refers, presumably to  
14 the Bar Date Order, and states the "Protocol approved by the Court required the  
15 Debtor to redact claims so that the identities of victims would not be apparent  
16 when claims were transmitted to the persons with approved access." Reply, p. 3, ll.  
17 10- 14. The Reply concludes "The Spokesman-Review respectfully requests that  
18 the Court require the Debtor to publicly file copies of claims regarding which the  
19 determination has been made that the Debtor will make payment, with the names  
20 and identifying information of the victims redacted." Reply p. 98, ll. 7-11. What,  
21 exactly, is the Spokesman-Review seeking? Until the relief requested is made  
22 clear, the Debtor and all other parties opposing this motion cannot provide a  
23  
24  
25  
26  
27  
28

1 meaningful response. The Spokesman-Review's motion should be denied due to  
2 its ambiguity.

3  
4 The Spokesman-Review appears to be demanding that the Debtor file  
5 unidentified court records pertaining to claims that will be paid. As pointed out in  
6 the Debtor's Response and the Joint Response, the Debtor does not have possession  
7 or control over such documents. The Spokesman-Review still has not reviewed the  
8 confirmed Plan, and has not directed its motion to the correct parties. The  
9 confirmed Plan provides that the TCR, not the Debtor, determines which claims  
10 will be paid and the amount of such claims, and the Plan Trust, not the Debtor,  
11 pays claims. For these reasons alone, the Spokesman-Review's Motion should be  
12 denied.  
13  
14  
15

16 **2. The Record is Clear that Victims Desire Absolute Confidentiality.**

17 The Spokesman-Review's assertion that the record lacks sufficient evidence  
18 to maintain sealed records is ridiculous. The only party that has ever sought any  
19 confidentiality measure short of sealing records is the Spokesman-Review. The  
20 Bar Date Order requires that claims be sealed. Article 11.12 of the confirmed Plan  
21 requires that all information pertaining to Tort Claims shall be confidential.  
22 (Docket No. 1774). The Plan, including the confidentiality provision found in  
23 Article 11.12 was approved by one hundred percent of the Tort Claimants that filed  
24 ballots. (Docket No. 1879). The victims have spoken through the numerous  
25  
26  
27  
28

1 confidentiality measures approved by this court, and by their own votes in  
2 accepting the confirmed Plan.<sup>1</sup>  
3

4 **3. The Spokesman-Review Has Failed to Cite Any Legal Authority**  
5 **Supporting Whatever Relief It Seeks.**

6 As stated in the Debtor's Response, Section 1127(b) precludes the  
7 Spokesman-Review from seeking modification of the confirmed Plan. Only a  
8 proponent of a reorganization plan has standing to modify a confirmed plan. The  
9 Debtor considers compliance with the Bankruptcy Code a substantive matter. The  
10 Spokesman-Review has failed to set forth any authority that would allow it to  
11 modify Article 11.12 of the confirmed Plan.  
12  
13

14 Furthermore, the claims resolution process set forth in the confirmed Plan is  
15 essentially equivalent to binding arbitration. The so-called "court records" which  
16 the Spokesman-Review seeks are not court records at all. The working papers and  
17 documents utilized by an arbitrator in confidential, binding arbitration are not court  
18 records. The Spokesman-Review has failed to cite any legal authority which  
19 supports any right of access to working papers and documents used in confidential,  
20 binding arbitration. With no legal authority supporting this requested relief, the  
21 motion must be denied.  
22  
23  
24  
25  
26  
27

---

28 <sup>1</sup> If the Court determines that further evidence is necessary, the Debtor requests that a  
evidentiary hearing be scheduled.

1 **4. The Spokesman-Review's Motion Decreases the Amount of Funds**  
2 **Available to Victims.**

3 Although the relief requested by the Spokesman-Review is unclear, it is  
4 quite clear that the Spokesman-Review expects someone else to pay for it.  
5 Collecting, redacting, filing and providing copies of whatever documents the  
6 Spokesman-Review is requesting will require time, effort and money. The  
7 Spokesman-Review seeks to impose these costs on the Debtor, Plan Trustee and/or  
8 TCR, and ultimately the holders of Tort Claims.  
9

10  
11 As the Court is aware, the confirmed Plan provides that the Debtor is  
12 responsible for creating a pool of funds to settle claims. That pool has already  
13 been decreased by the attorney's fees incurred in drafting the Debtor's Response  
14 and the Joint Response to this motion, and will be further decreased by any fees  
15 incurred by the TCR or Plan Trustee in producing whatever information the  
16 Spokesman-Review is seeking. In addition to failing to provide any authority  
17 holding that a media outlet may obtain working papers and documents used in  
18 confidential, binding arbitration, the Spokesman-Review has also failed to set forth  
19 any authority that allows it to impose the cost of providing access to such  
20 information on other parties. Yet again, the Court should deny the Spokesman-  
21 Review's motion for failure to cite any legal authority supporting the relief  
22 requested.  
23  
24  
25  
26  
27  
28

1 **5. The Spokesman-Review has Disregarded this Court's Orders.**

2 It is noteworthy that a considerable portion of the Spokesman-Review's  
3 reply is devoted to convincing the Court it has not violated any of this Court's  
4 orders and it is complying with the law. The doctrine of unclean hands does not  
5 require a party to engage in illegal actions to be barred from relief. The  
6 Spokesman-Review's inequitable conduct and bad faith in this matter, including the  
7 disregard of this Court's Bar Date order, allows the Court to invoke the doctrine of  
8 unclean hands. Precision Instrument Mfg. Co. v. Automotive Maintenance  
9 Machinery, 324 U.S. 806, 814-15 (1945).  
10  
11  
12

13 The Spokesman-Review had obtained copies of the confidential claims filed  
14 in this matter, and was preparing to print an article regarding the same by May 3,  
15 2007. Aff. of Shaun M. Cross, ¶¶ 3-5, Exhibit A. These actions were taken after  
16 the Court explicitly told the Spokesman-Review that the proper way to obtain  
17 access to the confidential claims was to file a motion seeking to modify the Bar  
18 Date Order. (Verbatim Report/Transcript, Docket No. 1989, pages 13-14). No  
19 such motion was ever filed. The Spokesman-Review simply decided to disregard  
20 this Court's Order and obtain claims by its own means. Disregard of this Court's  
21 Bar Date Order is sufficient inequitable conduct and bad faith to invoke the  
22 doctrine of unclean hands. The Spokesman-Review's motion should be denied.  
23  
24  
25  
26  
27  
28

1  
2  
3 **6. The Spokesman-Review's Reply and the Declaration of Mr. Stucke**  
4 **Contain Incorrect Information.**

5 The Spokesman-Review states in the opening paragraph of its reply "The  
6 issues is not whether victims should be identified; no party, including The  
7 Spokesman-Review, has sought access to that confidential information." As  
8 discussed above, this statement is simply not true. At page 4, ll. 14-18, the  
9 Spokesman-Review admits "Indeed, though The Spokesman-Review obtained  
10 claim information, including victims names . . . ." Later, the reply states such  
11 information was obtained from "confidential sources". Reply at p. 7, l. 3.  
12 Furthermore as stated in the articles appearing in the Spokesman-Review on May  
13 5, 2007, the Spokesman-Review did seek, and obtained copies of the confidential  
14 claims filed in this case.

15 The next inaccuracy is the Spokesman-Review's accusation that Bishop  
16 Skylstad revealed confidential information to non-authorized persons, and that  
17 such information must have come from confidential claims. Reply, p. 3, ll. 16-21.  
18 However, the document referenced in no way states that information concerning  
19 the abuse came from confidential claims, or that victims names were disclosed.  
20 The Spokesman-Review has apparently forgotten that several years of litigation  
21 and discovery preceded this bankruptcy case. The Court should see this argument  
22  
23  
24  
25  
26  
27  
28

1 for what it is, another maneuver designed to deflect the Spokesman-Review's  
2 inequitable conduct and disregard of this Court's orders elsewhere.

3  
4 Next, Mr. Stucke's Declaration states that the Debtor posted unredacted  
5 objections to claims on its website. Docket No. 1998, ¶ 5. This statement is not  
6 true. All objections to claims posted on the Diocese website were redacted. Aff.  
7 of Daniel J. Gibbons filed herewith, ¶ 3. Presumably, Mr. Stucke means that he  
8 was able to hack through the redactions to obtain confidential information as he did  
9 with pleadings on the Court's PACER system.  
10  
11

12 Mr. Stucke then testifies in Paragraphs 8, 11, under penalty of perjury, that  
13 he informed the Diocese that he hacked the pleadings located on the Diocese  
14 website and obtained confidential information. No such information was ever  
15 provided to the Debtor. Mr. Stucke only informed the Debtor that he was able to  
16 hack through the redacted pleadings on the Court's PACER website. Aff. of Shaun  
17 M. Cross, ¶¶ 5 & 6. Mr. Stucke's May 5, 2007 article entitled "Technical flaw  
18 allows online access to names", attached as Exhibit C to the Affidavit of Daniel J.  
19 Gibbons filed May 9, 2007, (Docket No. 1962), states only that Mr. Stucke hacked  
20 pleadings located on the Court's PACER system. Moreover, the Spokesman-  
21 Review's May 7, 2007, editors meeting makes no mention of Mr. Stucke obtaining  
22 information from the Diocese website. Editor Carla Savalli explicitly stated that  
23 the information was obtained from the Court's PACER system. Aff. of Shaun M.  
24 Cross, ¶¶ 7 & 8. Mr. Stucke's Declaration is the first time he had informed anyone



1 that he had hacked through redactions on pleadings located on the Diocese website.  
2 Aff. of Shaun M. Cross, ¶ 6. False testimony certainly constitutes inequitable  
3 conduct and bad faith necessary to invoke unclean hands.  
4

5 The Spokesman-Review's accusation that the Debtor is broadcasting  
6 confidential information to the world over the internet is patently untrue. During  
7 the spring and summer of 2006, the Debtor did post redacted objections to claims  
8 on its website. On or about August 1, 2006, the Debtor was alerted that a  
9 confidential claimant was able to locate a claims objection on the Diocese website  
10 by conducting an internet search using the claimant's name. Aff. of Daniel J.  
11 Gibbons, ¶¶ 3-5. This was possible because, although names of claimants had  
12 been redacted from claims objections and supporting pleadings, claimant's names  
13 were still present in electronic form.  
14  
15  
16

17 From August 1, 2006 onward no claims objections or supporting pleadings  
18 were posted on the Diocese website, and all claims objections and supporting  
19 pleadings had been removed from the Diocese website. Aff. of Daniel J. Gibbons,  
20 ¶ 6. As shown in Exhibit A to the Affidavit of Daniel J. Gibbons, no link to any  
21 claim objection or supporting pleading can be found on the Diocese Chapter 11  
22 webpage as of May 29, 2007.  
23  
24

25 Exactly how Mr. Stucke accessed redacted copies of pleadings after August  
26 1, 2006 is unclear. As best as the Debtor has been able to determine, Mr. Stucke  
27 was using a particular search term, such as the victim's name, to find redacted  
28

1 copies of pleadings that may still have been located on the Diocese web server,  
2 even though links to such pleadings had already been removed from the Diocese  
3 website. Or, Mr. Stucke may have been viewing "cached" versions of pleadings  
4 from an internet search engine. Search engines often "cache" documents or web  
5 pages in order to speed up internet searches. Aff. of Mary Green, ¶ 7. The  
6 Diocese's website administrator contacted major internet search engines during  
7 August of 2006 to instruct those search engines to remove pleadings from their  
8 caches. The Diocese has recently repeated this process. The corrective actions  
9 taken by the Debtor pertaining to the Diocese website are explained in the  
10 Affidavit of Mary Green.  
11  
12  
13

14 DATED this 6th day of June, 2007.

15  
16 PAINE HAMBLÉN LLP

17  
18 By: /s/ Shaun M. Cross  
19 SHAUN M. CROSS  
20 GREGORY J. ARPIN  
21 MICHAEL J. PAUKERT  
22 DANIEL J. GIBBONS  
23 Attorneys for the Debtor

24 I:\Spodocs\33029\00005\plead\00509647.DOC