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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re THE CATHOLIC DIOCESE OF SPOKANE a/k/a THE CATHOLIC DIOCESE OF SPOKANE, a Washington corporation sole Debtor.	CASE NO. 04-08822-PCW11 Chapter 11 **REPLY TO UNITED STATES TRUSTEE'S OBJECTION TO FEES OF PACHULSKI, STANG ET. AL. [Docket No.723]**

Pachulski, Stang, Ziehl, Young, Jones & Weintraub P.C. (the "Firm"), counsel for the Tort Litigant Committee ("TLC"), hereby replies (the "Reply") to the objection (the "Objection") [Docket No. 723] filed by the United States Trustee (the "UST") to the Firm's first interim fee application (the "Fee Application") [Docket No. 430].

The Court should allow the Firm's fees and expenses as set forth in the Fee Application. The UST's objections are not well founded. The UST seeks to supplant the Firm's professional judgment and the TLC's business judgment as to the formulation and implementation of strategy decisions that have greatly enhanced the size and value of the bankruptcy estate, at least as the estate is depicted by the Diocese and its parishes. Other aspects of the Objection ignore the necessities of communication between counsels to efficiently represent the TLC. Aside from these fundamental flaws in the underpinnings of the Objection, the balance of the issues raised encompasses a minute amount of the fees and expenses sought in the Application.

As in every case, the Firm and its co-counsel are ever-mindful of the impact of fees and expenses on the return to creditors. The very nature of the survivors' claims adds personal and emotional elements to the representation that additionally ensure that the two firms provide efficient services. The Firm objects to the notion that its fees and expenses imposed a burdensome impact on the return to creditors. The Diocese and the Parishes are committed to excluding significant assets from the reach of creditors. In the face of that commitment, the Firm and its co-counsel have provided effective and efficient services to the TLC.

The UST seeks disallowance of certain fees based on the following:

(1) certain services rendered by counsel for the TLC and counsel for the Tort Claimants Committee (the "TCC") are duplicative;

(2) the motion for assignment of the avoidance actions (the "Avoidance Action Motion") was premature and unnecessary;

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(3) the TLC should not have intervened in the insurance action;

(4) the estate did not derive any benefit in reviewing matters related to other dioceses;

(5) paralegal time spent copying and printing documents should not be compensated;

(6) dual billing for multiple review of the critical dates memo;

(7) the time spent on the cash management order is excessive;

(8) dual billing for meetings and review of pleadings; and

(9) certain time entries are not clear.[1]

The UST is requesting a disallowance of $40,000 on account of these objections.

A. <u>Counsel Did Not Duplicate Services</u>

Implicit in the UST's decision to appoint two committees was recognition that their constituencies had sufficiently different interests to warrant separate committees. As separate parties, each committee is entitled to independent and adequate representation of those different interests. Given those acknowledged differences, the selection of separate counsel is understandable. When the two committees work on the same subject matter and appear at a particular hearing, the services are not, by definition, duplicative. If the UST's view is that the separate counsel's services are necessarily and largely duplicative because of the overlap of interests between the committees, the UST should have resolved the controversies related to committee formation either by sticking with its original committee formulation or reconstituting the committee membership.

The Firm and its co-counsel are aware that, on certain issues, their client's interests could be consistent with the interests of the TCC. However, the dynamic between the two committees at the early stages of the case required that the two sets

[1] The Firm believes that the critical and harsh tone of the objection is unwarranted. This reply will focus on the substance, rather than the tenor, of the Objection.

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of counsel pursue certain courses of action independently of one another. Again, such separate paths did not necessarily constitute duplicative services as each committee addressed certain issues from different perspectives.

However, the UST's insinuation that the committees did not cooperate sufficiently is belied by the facts. For example, the TLC took a comparatively minor role in the negotiation of the cash management order. By the time the UST appointed the TLC, the TCC, the Diocese and the Parishes had reached a nearly definitive draft of the order. The TLC did not attempt to force the parties to start over again because it was the new kid on the block. The TLC's counsel focused on the preservation of issues related to the property dispute and worked within the framework of the negotiated document.

Understandably, the ability to work together required a certain airing of differences on tactics and strategies. For example, the TCC initially approached the parish property dispute by attempting to address the issue in discussions with the Diocese and other parties. The TLC approached the issue with the belief that the Diocese and the Parishes would not compromise on the issue and it immediately commenced the declaratory relief action (the "Declaratory Relief Action") after its appointment. The TLC is not trying to resurrect old antipathies by recounting this history but rather is trying to illustrate that the differences between the committees resulted in different approaches. As the case has progressed, counsel for the TCC and TLC have spent a considerable amount of time cooperatively addressing issues and concerns; however, the committees sometimes agree to disagree. Again, this is not duplication but more in the nature of coexistence. While such efforts were less fruitful at the inception of the relationship, the cooperation is attaining a certain momentum. As additional examples of the increasing cooperation between the committees and the Future Claims Representative since his appointment, the parties are cooperating on drafting pleadings and the employment of professionals.

The UST contends that the initial mistrust between the two committees

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cannot excuse contentiousness between counsels. The law firms representing the two committees have tried and largely succeeded in acting professionally with one another. However, their professionalism cannot and should not mask the legitimate differences that arise between the committees. When parties are opposed to one another, counsel would be violating the rules of professional conduct to communicate ideas and strategies with opposing counsel. As professionals, the Firm and its co-counsel addressed the TLC's concerns and worked to calming the TLC's anxieties about the TCC whenever possible. However, at certain stages of the case when parties are in legitimate opposition to one another, there is no such thing as sharing research and holding joint strategy meetings.

The UST's Objection presumes that such tensions and opposition were not legitimate expressions of the differences between the committees. The UST's appointment of two committees is inapposite to the presumption that no meaningful differences existed between the two groups. The ups and downs of the relationship between the two committees validates the UST's perception of the conflicts that led to the appointment of two committees and the fact that the two committees can sometimes agree and must sometimes disagree.

B. <u>The Filing of the Avoidance Action Motion was Necessary</u>

Just as the TLC timely filed the Declaratory Relief Action, the Avoidance Action Motion was timely and necessarily filed. The TLC viewed the Avoidance Actions as the other side of the Declaratory Relief Action "coin"; if the Parishes were not separate from the Diocese, the Declaratory Relief Action would succeed and the TLC would thereby expand the assets of the estate. On the other side of the coin, if the Parishes were separate entities, they would lose their interest in the properties by virtue of the strong-arm claims. The TLC believed that the Diocese and Parishes had to understand that they had a losing litigation position regardless of how the Parishes were characterized. Thus, the Avoidance Action Motion was brought at the same time as the Declaratory Relief Action to demonstrate to the

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Diocese and the Parishes that they were taking untenable positions. The UST is entitled to dispute this strategy but the strategy is eminently reasonable and counsel should not be monetarily sanctioned simply because the UST disagrees with it. The TLC of course realizes that the Court determined (before it had the benefit of the briefing and argument of the summary judgment motion) that the status of the Parishes should initially be resolved. However, the TLC's strategy was validated by the Court's ruling in its memorandum decision that the Parishes' claimed interest in the properties was avoidable under the strong arm powers.

In seeking the denial of the fees, the UST does not argue that the filing of the Avoidance Action Motion or the assertion of the strong-arm powers was not reasonably likely to benefit the estate as is required by Section 330(a)(4)(A). The UST demeans the TLC's decision to file the Avoidance Action Motion as "premature" "aggressive" and "largely based upon case authority of such assignment being allowed pursuant to a plan." The representation of the survivors of childhood sexual abuse against the party responsible for such abuse is not a courtship. This is the same UST who stated that the filing of the Declaratory Relief Action was "disrespectful" as compared to the Court's subsequent comment at a status conference that it had been waiting for someone to raise the property dispute. The TLC and the UST are entitled to disagree about case strategy but the TLC's counsel should not be sanctioned because of that disagreement. The Firm took, and will continue to take, the steps necessary to protect and represent the interest of its clients.

Ultimately, the Court appears to have agreed with the TLC's approach to the avoidance actions and their interrelationship with the Declaratory Relief Action. The connection between the two was validated by the Court, which stated, "[t]he debtor has the rights of a bona fide purchaser under § 544(A) (3) and could set aside any beneficial interests claimed by the other members of the diocesan family. Indeed, the power to exercise the rights of a bona fide purchaser under § 544(A) (3)

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and void those interests **could be granted to the plaintiff's committee."** (Memo. Op. at 49) (emphasis added).

C. The TLC Had the Right to, And Should Have, Intervened in the Insurance Action

The UST seeks to disallow the Firm's fees for the intervention in the insurance coverage action. The UST asserts that because the Debtor would, "within its fiduciary duty", advocate the most insurance coverage; therefore, there was no need for the TLC to intervene. Again, the UST overlooks the dynamics of this case and decries the TLC's right to pursue reasonable strategies.

This Debtor, in an egregious violation of its fiduciary duty, has sought to minimize the value of the estate by excluding real and personal property of the estate. While the TLC appreciates the Court's statements that the Diocese was, as an alleged trustee, entitled to defend the alleged trust, it nonetheless took sides as between that role and its role a fiduciary to creditors. Thus, it was the TLC's duty to keep the Debtor honest whenever such conflict might arise.

The insurance coverage dispute is one potential area of conflict. For example, the insurance carriers might make a settlement offer that the Debtor may consider too low. However, the TLC may consider the number reasonable when considered in conjunction with the value of the Debtor's assets. In such a situation, the TLC may choose to strike a deal with the insurance carriers and present that to the Court. If the TLC is not a party, the TLC would never learn of such a settlement offer, it might not have standing to propose the settlement to the Court and the Debtor would be able to continue with the litigation.

D. The Review of the Other Diocese Cases Is Material to This Case

The UST's objection to the fee for monitoring of other diocesan cases is extremely shortsighted. Throughout this case, the Debtor has made comparisons and drawn analogies to events in the Tucson and Portland cases. Since those cases have been pending longer than this case, a refusal to consider what can be learned

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from those proceedings is wholly unreasonable; in fact, consideration of those proceedings should be encouraged. In the initial memorandum of points and authorities on the motion for partial summary judgment, the Firm borrowed (with permission) a substantial section of the Portland committee's brief on the First Amendment issues. The Firm is certain that this estate thereby realized a substantial savings. If the Court adopted the UST's perspective, the Firm would have reinvented the wheel and charged the estate for it.

The Firm's research regarding non-debtor diocese also is reasonable and beneficial to this estate. There are numerous dioceses across the United States who have opted for settlement rather than litigation and bankruptcy. An understanding of the facts and circumstances surrounding such settlements could facilitate settlement in this case.

E. <u>The Services Rendered by the Paralegals are More than Clerical</u>

In order to administer this case on a cost efficient basis, the Firm designated one paralegal to monitor the pleadings and to maintain a central "critical dates memo" designating all the deadlines and hearing dates in the main case and related adversary proceedings. The paralegal checks the docket on a daily basis, reviews new pleadings, updates the critical dates memo accordingly, and circulates the updated critical dates memo to the Firm's attorneys and the TLC. Thus, the services rendered by the paralegal are more than just clerical tasks.

The services rendered by the paralegal in this regard alleviate the need for each attorney to log-on to Pacer to check the docket on a daily basis and print the documents that need to be reviewed and maintain a separate calendar of the deadlines in the case. Based on the Firm's experience in hundreds of chapter 11 cases, this process is the most efficient manner of monitoring the case.

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F. The Fees Incurred in Connection with the Critical Dates Memo Are Reasonable

Since the TLC was not appointed until this case was well on its way, the preparation of the critical dates memo required the Firm to review all previously filed pleadings to determine the upcoming deadlines and related hearing dates. Ms. McKeown was the paralegal who was assigned to this task under the supervision of Mr. Rafatjoo. Ms. McKeown prepared an initial draft of the critical dates memo which was reviewed and revised by Mr. Rafatjoo. The initial set-up of the critical dates memo was a labor intensive project which required both Ms. McKeown's and Mr. Rafatjoo's involvement. At the time the critical dates memo was being created, there were numerous removed actions pending before the Court with pending hearings and deadlines. In light of the large backlog of pleadings that were reviewed, the fees incurred in connection with the critical dates memo are not excessive.

After Ms. McKeown's departure from the Firm, Mr. Rojas became the paralegal assigned to this case. As indicated by the UST's chart included in the Objection, Mr. Rafatjoo's involvement in the preparation of the critical dates memo significantly decreased after the initial draft of the critical dates memo was finalized and Mr. Rojas was appointed as the paralegal to the case. Thus, the Firm did not duplicate efforts in the preparation of the critical dates memo. In light of the disclosures set forth herein, such fees should be allowed.

G. The Fees Incurred in Connection with the Cash Management Order Are Not Excessive

The UST's objection to the Firm's fees in connection with the work done on the Cash Management Order is vague. The UST states that the fees for all the firms are excessive (while acknowledging that the Firm's fees were only $5,840) and blithely asserts that the total fees for the project should be reduced to $10,000.

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The UST grossly understates the importance of the Cash Management Order. It was the first substantive pleading to address the central issue in this case: the relationship between the Diocese and the Parishes relating to property of the estate. The property of the estate issue is not limited to the real property but also includes the Deposit and Loan Fund and the Debtor's weekly collections at the parishes. It took a complaint, cross-motions for summary judgment, multiple hearings, and hundreds of thousands of dollars in legal fees to address the real property issue. The fact that the parties were able to negotiate a Cash Management Order dealing with the cash should be commended rather than criticized. The UST throws out the $10,000 budget for the resolution of the Cash Management Order without any explanation as to why that is the appropriate figure. As noted above, the TLC did not interfere with the work already accomplished by the other parties but rather focused on its specific interest in maintaining the estate's claims to the cash. The Firm believes that its fees for this matter were extremely low in light of the number of conflicting interests and parties that were involved in the negotiations.

H. <u>The Fees for Meetings and Review of Pleadings Were Necessary</u>

In the Objection, the UST contends that all fees for multiple attorneys attending meetings or reviewing pleading should be denied. The UST fails to state that there are numerous occasions where only one of the Firm's attorneys has billed for a meeting.

The UST's objection applies to $16,727.50 in fees which represents less than 10% of the Firm's total bills for the applicable fee period. In a case involving first impression issues raised in the general chapter 11 case and the Declaratory Relief Action, the attorneys should have strategy meetings, debate the novel legal issues, discuss the status of the case and resolve the division of tasks. The results achieved in the Declaratory Relief Action alone merit overruling the UST's objections.

The conferences between the attorneys within the Firm and with Mr. Campbell are an integral part of the process. The attorneys representing the TLC

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cannot operate in a vacuum and should not refrain from discussing their projects. The issues in this case are highly interrelated and one attorney attending a meeting or a hearing should consult with other attorneys working on other aspects of the matter. Such discussions are necessary to the effective and proper representation of a client.

The TLC meets telephonically on a weekly basis. Often, Mr. Stang, Mr. Rafatjoo, and Mr. Campbell participate in the conference calls not only to report on the status of their projects but also to learn of the status of the other attorneys projects. When it was not necessary to have all counsel participate in the call, Mr. Campbell or Mr. Rafatjoo would excuse themselves. However, at the inception of the case, which is the fee period covered by the Application, there were numerous meetings and conference calls with multiple counsels because the TLC was establishing its working relationship with its counsel and counsel was working out responsibilities as between themselves.

The Firm cannot effectively represent the TLC without Mr. Campbell's involvement. His experience before this Court and his familiarity with the other parties involved is an integral part of the strategic and tactical decision making process. He also has handled substantive matters in both the general case and the Declaratory Relief Action. The Firm and Mr. Campbell cannot properly represent the TLC without interoffice conferencing and, on occasion, having multiple attorneys attend meetings.

I. The Firm Has Provided Additional Explanations for the Time Entries the UST Deems Unclear

In addition to the objections set forth above, the UST objects to certain time entries which can be summarized and addressed in the following five categories:

1. Time Incurred Reviewing the Charter for the Protection of Children

In the pleadings filed in the first few months of the case, the Debtor regularly included approximately six pages of boilerplate background regarding its work in

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preventing sexual abuse of children. The Debtor's tactic was to reinforce an impression that it had adequately addressed the sex abuse crisis in the Diocese. By focusing on its present programs, the Diocese shifts the parties' attention away from historical conduct and the claims that arose from it and minimizes the injury suffered by survivors. The Debtor also attempts to establish that no administrative claims based on abuse could possibly be arising.

The TLC reviewed the Charter for the Protection of Children to compare its requirements against those allegedly put in place by the Diocese and to determine the sufficiency of the Diocese's compliance. This is critical not only to understand the Debtor's public relations tactic but also to ascertain the financial feasibility of a plan that is premised on the Diocese's ability and willingness to police its employees' ongoing conduct. The report also was reviewed in connection with the Motion for Summary Judgment (the "MSJ") to determine whether information could be utilized on the issue of the public interest in protecting children from sexual abuse.

2. Time Spent on the Removal Complaints

The UST objects to counsel's $1,080 in fees incurred in connection with the removed actions. The UST asserts that such work is not within the scope of the counsel's or the committee's duties and that Dillon Jackson's representation of certain litigants is sufficient. The UST's objection again assumes that counsel can represent the TLC in a vacuum without even the need to conduct a preliminary review and analysis of documents filed in the adversary actions. The UST is wrong in this regard.

The Firm needed to advise the TLC in connection with the removed actions. Strategic decisions needed to be made regarding remand issues. Such decision involved the parties represented by Mr. Jackson but it also involved parties who were not represented by Mr. Jackson who are members of the TLC. Incurring

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$1,080 in fees in connection with such services is not excessive and does not warrant an objection.

3. Time Spent Reviewing Websites

As noted above, the issue of the Debtor's personal property is significant as is the issue of the Debtor's real property. The personal property includes the Deposit and Loan Fund and the Debtor's weekly collections at the parishes. Prior to the petition date and thereafter, Bishop Skylstad had encouraged parishioners to make restricted gifts to ensure that the same would not become property of the bankruptcy estate. The TLC has objected to the same as a breach of fiduciary duty.

The Firm assigned its paralegal Mr. Rojas to review the websites of the Debtor and the individual parishes to obtain information regarding the restricted gift instructions being provided to the parishioners. In addition, the Debtor's and the parishes websites, as well as the websites of other organizations, were reviewed in order to find information regarding the Debtor and its assets.

4. Time Spent Drafting Motion Practice Rules

The Firm drafted a proposed modification of Local Bankruptcy Rule 9073-1(e) in order to provide the parties with more than seven (7) days notice in connection with evidentiary support being submitted at hearings. Seven days is not sufficient if opposing counsel wishes to depose the declarant or otherwise conduct discovery.

The Firm believed that its proposal would prevent the need for scheduling conferences on discovery schedules and would prevent the "forced" continuance of hearings due to the need to depose declarants. The proposal was made but was ultimately rejected. Nonetheless, the Firm believes that it was reasonable to incur $960 in fees in attempting to streamline the process in this case.

5. Travel Time

The travel time was included in the Fee Application in error. The Firm has agreed to withdraw its fee request for $4,600 of travel time.

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J. Conclusion

Based on the foregoing, the TLC respectfully requests that the Court overrule the UST's Objection to the Fee Application and approve the Fee Application in full.

Dated: November 2, 2005

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