

1 UNITED STATES BANKRUPTCY COURT
2 FOR THE DISTRICT OF DELAWARE
3 Case No. 09-13560 (CSS), Adv. Proc. No. 09-52866 (CSS)

4 - - - - -x

5 In the Matter of:

6 CATHOLIC DIOCESE OF WILMINGTON, INC.,

7 a Delaware Corporation,

8 Debtor.

9 - - - - -x

10 OFFICIAL COMMITTEE OF UNSECURED CREDITORS,

11 Plaintiff,

12 -against-

13 CATHOLIC DIOCESE OF WILMINGTON, INC., et al.,

14 Defendants.

15 - - - - -x

16 U.S. Bankruptcy Court
17 824 North Market Street
18 Wilmington, Delaware

19 June 3, 2010

20 9:28 a.m.

21 B E F O R E:

22 HON. CHRISTOPHER S. SONTCHI

23 U.S. BANKRUPTCY JUDGE

24

25 ECR OPERATOR: LESLIE MURIN

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HEARING re Motion of the Official Committee of Unsecured
Creditors for Order Pursuant to Rule 2004 of the Federal Rules
of Bankruptcy Procedure for Production of Documents and
Examination of Witnesses Regarding Debtor (Capuchin Franciscan
Friars, Province of the Sacred Stigmata (Corp.)) [D.I. 439;
4/19/10]

HEARING re Motion of the Official Committee of Unsecured
Creditors for Order Pursuant to Rule 2004 of the Federal Rules
of Bankruptcy Procedure for Production of Documents and
Examination of Witnesses Re Debtor (Oblates of St. Francis De
Sales, Inc.) [D.I. 440; 4/19/10]

HEARING re Motion of the Official Committee of Unsecured
Creditors to Disband Lay Employee Committee [D.I. 469; 5/7/10]

HEARING re Catholic Charities' Motion to Strike the Joinder of
the Official Committee of 91 State Court Abuse Survivors in the
Motion of the Official Committee of Unsecured Creditors to
Disband Lay Employee Committee [D.I. 476; 5/13/10]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HEARING re Motion for Order Further Extending the Period Within
Which the Debtor May Remove Actions Pursuant to 28 U.S.C.
Section 1452 and Federal Rules of Bankruptcy Procedure 9006 and
9027

HEARING re Complaint for Declaratory Relief and Substantive
Consolidation [Adv. Pr. No. 09-52866; D.I. 1; 12/18/09]

Transcribed By: Esther Accardi

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S:

YOUNG CONAWAY STARGATT & TAYLOR, LLP

Attorneys for the Debtor

1000 West Street

17th Floor

Wilmington, DE 19899

BY: JOHN T. DORSEY, ESQ.

NEILLI MULLEN WALSH, ESQ.

PATRICK A. JACKSON, ESQ.

MARY F. DUGAN, ESQ.

PACHULSKI STANG ZIEHL & JONES LLP

Attorneys for the Official Committee of Unsecured

Creditors

150 California Street, 15th Floor

San Francisco, CA 94111

BY: KENNETH H. BROWN, ESQ.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S: (continued)

PACHULSKI STANG ZIEHL & JONES LLP

Attorneys for the Official Committee of Unsecured
Creditors

10100 Santa Monica Boulevard, 11th Floor
Los Angeles, CA 90067

BY: GILLIAN N. BROWN, ESQ.

PACHULSKI STANG ZIEHL & JONES LLP

Attorneys for the Official Committee of Unsecured
Creditors

919 North Market Street, 17th Floor
Wilmington, DE 19899

BY: KATHLEEN MAKOWSKI, ESQ.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S: (continued)

ASHBY & GEDDES, P.A.

Attorneys for Nondebtor Defendant

500 Delaware Avenue

Wilmington DE 19899

BY: PHILIP TRAINER, JR., ESQ.

STEPHEN E. JENKINS, ESQ.

TONI-ANN PLATIA, ESQ.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

THE COURT: Good morning.

ALL: Good morning, Your Honor.

THE COURT: Ms. Walsh.

MS. WALSH: Your Honor, good morning. Neilli Walsh
for Young Conaway on behalf of the debtor.

Our next witness is Monsignor J. Thomas Cini.

THE COURT: All right, thank you. Please take the
stand, sir.

(Witness is sworn)

THE CLERK: State your name and spell your name for
the record.

THE WITNESS: J., J period. And Thomas, T-H-O-M-A-S.
Cini, C-I-N-I.

THE CLERK: Please be seated.

DIRECT EXAMINATION

BY MS. WALSH:

Q. Good morning, Monsignor.

A. Good morning.

Q. Monsignor, you are a priest of the Diocese of Wilmington?

A. I am.

Q. How long have you been a diocesan priest?

A. Forty-two years this past May.

Q. Over the course of your forty-two years as a diocesan
priest have you held a variety of different positions with the

1 diocese?

2 A. Yes.

3 Q. Could you just explain for us what those positions have
4 been over the course of time?

5 A. I was a parish priest for four years. Then I was a school
6 principal for seven. And then in 1977 I was appointed the
7 Episcopal vicar for administration for the diocese. 1996 vicar
8 general, appointed by Bishop Santorelli. And then reappointed
9 by Bishop Malooly in 2008; vicar general.

10 Q. Monsignor, are you currently a pastor of a parish, as
11 well?

12 A. I'm the pastor at St. Ann's parish.

13 Q. You mentioned in 1977 you were appointed vicar for
14 administration. What were the responsibilities for that
15 position, Monsignor?

16 A. To assist the bishop in administrative matters throughout
17 the diocese, and to also coordinate the work of the diocesan
18 central offices and ministries.

19 Q. And how about as your position as vicar general; which is
20 your current position, as I understand it?

21 A. It is my current position. As vicar general I am an
22 assistant to the bishop, I have his delegated authority to act
23 on his behalf throughout the diocese. And as vicar general for
24 administration I also continue to coordinate the activities of
25 the central offices and agencies called the curia.

1 Q. Monsignor, do you hold any positions with any of the
2 affiliate organizations of the diocese?

3 A. I'm on the board of trustees.

4 Q. Is that of every one of the affiliate organizations?

5 A. Yes. Yes.

6 Q. Monsignor, your positions as both vicar for administration
7 and vicar general of the diocese, is that a position within
8 what we'll call the ecclesiastical entity known as the Diocese
9 of Wilmington, or is that a position for the debtor?

10 A. Position for the ecclesiastical organization; the church.

11 Q. I think at this point it might be helpful if we talked a
12 little bit about the ecclesiastical entity known as the diocese
13 on one hand, and the Catholic Diocese of Wilmington, Inc., the
14 debtor, on the other.

15 First of all, could you define or explain for us what is
16 the ecclesiastical entity known as the Diocese of Wilmington?

17 A. Diocese of Wilmington as defined by Canon law is a portion
18 of the people of God, the universal church led by its bishop
19 who is his chief teacher, pastor, and ruler. For the Diocese
20 of Wilmington it includes the three counties of Delaware and
21 the nine counties on the eastern shore of Maryland.

22 Q. And does that encompass the parishes?

23 A. The parishes are all part of the Diocese of Wilmington,
24 yes.

25 Q. How many parishes are there in total in the Diocese?

1 A. Fifty-eight parishes.

2 Q. Now, could --

3 MS. WALSH: Well, strike that.

4 Q. Is there a distinction between the Diocese of Wilmington,
5 the ecclesiastical entity and the corporate entity; the debtor,
6 in this case?

7 A. There is a distinction.

8 Q. And what is that distinction?

9 A. The debtor is the civil corporation set up to handle the
10 temporal affairs of ecclesiastical organization.

11 Q. Could you just briefly explain for us the structure of the
12 ecclesiastical organization known as the Diocese of Wilmington?

13 A. It is as we said composed of the counties in Delaware and
14 the nine counties of the eastern shore of Maryland and all the
15 parishes. The bishop is assisted in his role as pastor of the
16 diocese by a number of organizations or ministries and officers
17 which is known as the diocesan curia, or we also call them the
18 diocesan central offices and agencies. And I'm the moderator
19 of that curia.

20 Q. And what are those agencies within the diocesan curia?

21 A. They're divided into six departments. The pastoral
22 concerns department handles issues such as services, pastoral
23 services to people. Example would be chaplains for
24 institutions, hospitals, prisons, ministries for people of
25 specific ethnic origin; for example Hispanic ministry, that

1 type of work.

2 Then there's the Department of Catholic Education,
3 including Catholic Schools Office, the Office for Religious
4 Education, CYM; Catholic Youth Ministry, Catholic Charities
5 which handles most of the charitable work with the poor and the
6 needy for the Catholic Diocese of Wilmington, a communications
7 department which includes the Office of Public Relations and
8 the dialogues, newspaper and, of course, the finance office,
9 and the development office which is involved in raising funding
10 for the diocese.

11 Q. Monsignor --

12 MR. BROWN: Your Honor, this -- I'd like to just
13 reserve the objection. We're not going to object to the
14 testimony coming in but we don't think this is relevant to
15 phase one. It certainly is relevant to phase two, and at that
16 time we would be controverting this testimony or dealing with
17 it. But I just want to reserve our objections based on
18 relevance, and that we think this is more appropriately dealt
19 with at phase two, rather than the issues here, about whether a
20 trust exist and whether the funds can be traced.

21 MS. WALSH: Your Honor, this is simply foundation
22 testimony. And I think it is helpful and also necessary to
23 understand some of the documents we'll be seeing, both on
24 Monsignor's direct as well as his cross-examination.

25 THE COURT: All right. Well, I'll allow the testimony

1 and reserve your rights to argue its applicability perhaps
2 during closing as to whether it's relevant.

3 Q. Monsignor, in describing the organizational structure of
4 the Diocese of Wilmington, the ecclesiastical entity, you
5 mentioned organizations such as Catholic Charities, CYO, and
6 the like. Are those what are known as the affiliated
7 organizations?

8 A. Some of them, yes. Catholic Charities, CYM.

9 Q. And are those organizations separately incorporated?

10 A. They are.

11 Q. You mentioned the bishop's role as the head of the
12 ecclesiastical entity, the diocese, is he -- is the terminology
13 that's used in describing his position that of ordinary?

14 A. That's correct, that's a term found in Canon law.

15 Q. And what is the Bishop's position with respect to the
16 debtor in this case?

17 A. He's the president of the debtor.

18 Q. And does the bishop serve in any capacity with respect to
19 the affiliate organizations?

20 A. President of the trustees of those affiliates.

21 Q. Do each of the affiliate organizations have boards of
22 trustees?

23 A. They do.

24 Q. And what is the function or purpose of those boards?

25 A. To conduct the business of the corporations.

1 Q. Monsignor do you have -- hold any positions for the
2 debtor, the Diocese of Wilmington, Inc.?

3 A. Yes.

4 Q. And what is that position?

5 A. Secretary.

6 Q. Monsignor, I just want to do a little bit of cleanup or
7 touchup from Mr. Corsini's testimony yesterday. He described
8 for the Court the Diocesan Finance Council and its purpose and
9 role. Is that council a product of Canon law?

10 A. It is, it's mandated by Canon law.

11 Q. And for how long a period of time has Canon law required
12 that a finance council exists at -- within the diocese?

13 A. Since the Code of Canon Law -- the revised Code of Canon
14 Law was promulgated in 1983.

15 Q. Was there any similar body that functioned in a similar
16 role prior to 1983 when the Canon mandated that there be a
17 finance council?

18 A. The Diocese of Wilmington had what is known as a finance
19 committee which functioned in many ways such as the finance
20 council currently functions.

21 THE COURT: I'm sorry, that was 1983?

22 MS. WALSH: Yes, Your Honor.

23 THE COURT: Thank you.

24 Q. Monsignor, does the Diocesan Finance Council or its
25 investment committee have the authority to dictate to the

1 foundation, the affiliates or the parishes what to do with
2 their investments?

3 A. It does not.

4 Q. Does it have the authority to dictate to them how to
5 structure their investments in whatever vehicle they have
6 chosen?

7 THE COURT: Just to be clear for the record, at this
8 point are you talking about ecclesiastical issues, or you're
9 talking about corporate issues?

10 MS. WALSH: Your Honor, the finance council is
11 actually a council of the ecclesiastical entity known as the
12 Diocese of Wilmington.

13 THE COURT: Thank you.

14 MS. WALSH: So it functions for the diocese, not for
15 the debtor.

16 THE COURT: Okay, thank you. Maybe you should repeat
17 the question?

18 MS. WALSH: Yes, thank you, Your Honor.

19 Q. Monsignor, the question was whether the finance council or
20 its investment committee has the authority to dictate to either
21 the foundation, the affiliates or the parishers how to
22 structure their investments, wherever those investments may be
23 held?

24 A. The council may recommend but it does not have the
25 authority to dictate, no.

1 Q. Monsignor, I mentioned the foundation can you please
2 explain to us what the foundation is?

3 A. It's a separate organization from the Diocese of
4 Wilmington, incorporated I believe in 1928, and founded for the
5 purpose of advancing Catholic religion, Catholic charity and
6 Catholic education within the Diocese of Wilmington.

7 Q. Is it correct that it is not an affiliated organization of
8 the diocese?

9 A. It is not.

10 Q. Monsignor, Mr. Corsini testified yesterday --

11 THE COURT: You're going to need -- if you're going to
12 continue to educate me on ecclesiastical versus corporate
13 distinction, fine. You're going to need to be very clear in
14 your questions what you're talking about. Because you're
15 talking -- when you just said authority -- excuse me, when you
16 just said affiliate that has a corporate meaning as actually
17 defined under Bankruptcy Code, and it perhaps has an
18 ecclesiastical meaning. So I need to know where you are.

19 MR. BROWN: I was -- you beat me to the punch, Your
20 Honor, in terms of Mr. Cini testifying as to whether or not
21 foundation was affiliated with the diocese. I'm going to
22 object on the grounds that, number one, it's a legal
23 conclusion, and number two, there's been no foundation as to
24 what is meant by the term affiliate.

25 THE COURT: Well, let's clarify that, please?

1 MS. WALSH: I was simply asking, Your Honor, whether
2 the foundation falls within the organizational structure of the
3 ecclesiastical entity known as the Diocese of Wilmington, or
4 whether it is an entity separate and apart from the diocese
5 which is what Monsignor indicated in his answer.

6 THE COURT: All right. You agree based on that that
7 your answer holds?

8 THE WITNESS: Yes, Your Honor.

9 THE COURT: Very good, thank you.

10 Q. Mr. Corsini, Monsignor, testified yesterday that his title
11 was that of chief financial officer, is he considered chief
12 financial officer of the debtor or the Diocese of Wilmington,
13 the ecclesial entity?

14 A. He's the chief financial officer of the ecclesial entity;
15 Diocese of Wilmington, it's a mandated by Canon law.

16 Q. And what does Canon law require specifically, Monsignor?

17 A. That a person who has experience and background to handle
18 and manage the financial affairs of the ecclesial organization;
19 the diocese.

20 Q. Monsignor, I'd like to move now to what is the subject of
21 this litigation, which is the Mellon pooled investment account.
22 Are you familiar with the Mellon account?

23 A. Yes.

24 Q. Do you have a general understanding of what the account is
25 composed of?

1 A. Yes. It's composed of investments of the diocese, of the
2 affiliate corporations, and of some parishes.

3 Q. Now, for clarification purposes, when you say investments
4 of the diocese?

5 A. I'm sorry, debtor.

6 Q. Thank you. What is your understanding of the purpose of
7 the pooled investment account?

8 A. It enables those investors to have access to vehicles that
9 they perhaps would not have on their own. It reduces costs in
10 terms of fees.

11 Q. Do you have an understanding as to who owns the assets,
12 the affiliates, the parishes, and the foundation have
13 contributed to the pooled investment account?

14 A. They are the owner of the assets that they have
15 contributed.

16 Q. And, Monsignor, what is the basis for your understanding?

17 A. Whenever we have -- when we found the pooled investment
18 program it was clearly stated that any organization that can
19 participate in it, that those funds remained theirs, they had
20 control over them.

21 Q. Monsignor, have you, yourself, in any of your various
22 capacities, ever made representations about the ownership of
23 the assets that were contributed by the nondebtor entities to
24 the pooled investment account?

25 A. Yes, I have.

1 Q. And can you explain for us the circumstances under which
2 you made those representations and what those representations
3 were?

4 A. Well, certainly in communications with pastors of parishes
5 and their finance councils, along with advisory boards to the
6 affiliated ecclesial -- or pardon me, the corporations. And
7 also in reference to my own parish, for we also participate,
8 indicated to them what I've already testified, that the assets
9 continue to be theirs, they have access to them, they can
10 determine the mix, and they can withdrawal.

11 Q. Monsignor, are you familiar with the mechanics of how
12 nondebtor funds are invested in the PIA and accounted for?

13 A. Somewhat, yes.

14 MS. WALSH: Your Honor, I have a binder containing
15 some exhibits which are part of the greater binders of exhibits
16 that I'll be calling Monsignor's attention to. And if I could
17 now provide him a copy and also provide the Court a copy and
18 counsel?

19 THE COURT: Yes.

20 (Pause)

21 THE COURT: Thank you.

22 (Pause)

23 Q. Monsignor, did you submit a declaration in connection with
24 the debtor's Chapter 11 filing?

25 A. I did.

1 Q. And if you would turn please, Monsignor, to the first
2 document in this binder which is Exhibit Number 381. And can
3 you please identify what is Exhibit 381 for the record?

4 A. It's a declaration of Reverend Monsignor J. Thomas Cini in
5 support of a Chapter 11 petition and first day relief.

6 Q. And did you sign this declaration, Monsignor?

7 A. I did.

8 Q. I'd like you to turn, please, to paragraph 49 in the
9 declaration.

10 (Pause)

11 Q. And I'd like to specifically turn your attention to the
12 second sentence of that paragraph. Could you please read that
13 out loud?

14 A. "Pooled investment funds are sent to the CDOW which holds
15 them in its general operating account, the operating account,
16 pending transfer to the pooled investment account."

17 Q. Monsignor, as --

18 THE COURT: I'm sorry. I apologize, Ms. Walsh, what
19 page are we on?

20 MS. WALSH: Your Honor, it is page 20.

21 THE COURT: Thank you. And is a paragraph?

22 MS. WALSH: And paragraph 49.

23 THE COURT: Thank you, I'm sorry. You may proceed.

24 MS. WALSH: Your Honor, would you like him to re-read
25 that?

1 THE COURT: Yes, please.

2 Q. Okay. Would you mind rereading that sentence, Monsignor?

3 A. Sure. "Pooled investment funds are sent to the CDOW which
4 holds them in its general operating account (the operating
5 account) pending transfer to the pooled investment account."

6 Q. Monsignor, as you sit here today, do you believe that that
7 is an accurate statement?

8 A. I do believe that we've corrected it in deposition as well
9 as --

10 MR. BROWN: Objection, Your Honor. The answer is
11 nonresponsive.

12 Q. Monsignor, perhaps you could --

13 THE COURT: Let's break it down into pieces.

14 Q. Monsignor --

15 THE COURT: He can -- he doesn't need to answer
16 yes/no, he can explain.

17 MR. BROWN: I know, but he wasn't answering the
18 question.

19 THE COURT: I understand, Mr. Brown, I agree.

20 Q. Monsignor, just a yes or no first. Do you believe as you
21 sit here today that that statement that you just read out loud
22 is an accurate statement?

23 A. It is not.

24 Q. And at the time you signed this declaration, did you
25 understand that it was not accurate?

1 A. Not at the time of the signing of the declaration, no.

2 Q. Was this particular statement in the declaration based
3 upon your personal knowledge?

4 A. Many of the -- much of the information contained herein
5 was relied upon the advice of others, including counsel.

6 Q. Monsignor, we talked a little bit about the Mellon pooled
7 investment account, I'd just like to kind of educate the Court
8 a little bit about the history of the debtor's pooled
9 investment program. Do you have an understanding of the
10 debtor's pooled investment program?

11 A. I have an understanding, yes.

12 Q. And how did it come about, Monsignor?

13 A. In 1972 the Diocese of Wilmington was incorporated. At
14 that time began discussions, which continued probably through
15 the early part of 1973, about establishing a common fund for
16 investment purposes, which would -- both the diocese and the
17 foundation, would participate in that fund.

18 Q. Monsignor, if you could, please, turn to the second tab of
19 the exhibit binder, which is Exhibit Number 128.

20 A. Yes.

21 Q. And if you could, Monsignor, take a look at that document
22 and identify it for the record, please?

23 A. The minutes of the Diocesan Finance Committee on October
24 the 26th, 1971.

25 Q. And what do these minutes reflect?

1 A. It's a discussion of the common fund.

2 MR. BROWN: Objection, Your Honor. I'm not sure this
3 witness is competent to testify on a document that was
4 generated -- objection, lack of foundation. This witness is
5 not competent to testify on the contents of a document from
6 1971. The debtor wants to move this in evidence on some basis,
7 that's fine, but I don't understand what this can add to a
8 document that he wasn't around for when it was created.

9 THE COURT: Ms. Walsh.

10 MS. WALSH: Your Honor, I'm just asking him what the
11 document is and is the common fund discussed in this document
12 for the purposes of just laying out the dates when this all
13 came about and when this program was established.

14 THE COURT: Well, I mean, the document speaks for
15 itself. But for purposes of summarizing it to the Court, I'm
16 okay with these questions and answers. But, obviously, the
17 document is what it is.

18 MS. WALSH: I understand, Your Honor, and I wasn't
19 going to ask him any substantive questions about the document.

20 Q. Monsignor --

21 THE COURT: I'm sorry, so the answer was your
22 understanding of the document is it's a discussion of the
23 common fund?

24 THE WITNESS: Yes, Your Honor.

25 THE COURT: Thank you.

1 Q. And, Monsignor, if you could please turn to --

2 (Pause)

3 Q. If you could please turn to the next exhibit, which is
4 Exhibit 74.

5 MR. BROWN: Your Honor, same objection.

6 THE COURT: All right, and it's preserved.

7 Q. And could you identify that, please, for the record?

8 A. Minutes of the Catholic Diocese Foundation of September
9 14, 1972.

10 Q. And does that also have a section dealing with the
11 establishment of the common fund?

12 A. It does.

13 Q. And then, Monsignor, the next document, which is Exhibit
14 73, could you please identify that for the record?

15 THE COURT: 63?

16 Q. 63, pardon me.

17 A. "Minutes of the Catholic Diocese Foundation, February 8,
18 1973."

19 Q. And if you can turn to the last page of that document,
20 which is page 3. Does that also contain a discussion of the
21 common fund?

22 A. It does. It speaks about the contract with Wilmington
23 Trust, establishing the common fund.

24 Q. You mentioned Wilmington Trust, was Wilmington Trust the
25 custodian of the common fund?

1 A. Yes, Wilmington Trust was.

2 Q. And do you have an understanding of what the original
3 purpose of the common fund was?

4 A. Again, as we --

5 MR. BROWN: Objection, Your Honor, lack of foundation.
6 Mr. Cini wasn't around at this time.

7 THE COURT: Ms. Walsh.

8 MS. WALSH: Your Honor, he is the vicar general of the
9 Diocese of Wilmington, and has --

10 THE COURT: Well, wait a minute, don't testify. Can
11 you lay a foundation as to what the basis for any understanding
12 would be?

13 MS. WALSH: Sure, that's fine.

14 Q. Monsignor, what is the basis for your understanding about
15 the purpose of the common fund?

16 A. To make available --

17 Q. No, Monsignor, I'm asking first how have you come to have
18 knowledge about the purpose of the common fund?

19 A. I've read about it in documentation, but it also was
20 explained to me when I first began as the Episcopal vicar for
21 administration, and participated in conversations and meetings
22 with, first, the finance committee, and then the finance
23 council.

24 THE COURT: Okay.

25 MR. BROWN: Objection, Your Honor, his testimony is

1 hearsay.

2 THE COURT: I'll allow the testimony not for the truth
3 of the matter asserted, which what is the actual purpose. But
4 I'll allow it for what the Monsignor's understanding of what
5 the purpose is.

6 MS. WALSH: That's fine, Your Honor, thank you.

7 Q. Monsignor, what is your understanding of what the purpose
8 of the common fund was?

9 A. To provide those participating in it an opportunity to
10 have access to vehicles of investment that would assist in the
11 return vehicles that perhaps they would not have access given
12 their own limit to the funds. It also enabled them to save
13 some money in terms of fees, sharing in the fees.

14 Q. Thank you.

15 MS. WALSH: Your Honor, at this time I'd like to --
16 we've mentioned a few documents, move the admission of Joint
17 Exhibit Numbers 381, 128, 74, and 63.

18 THE COURT: Any objection?

19 MR. BROWN: No, Your Honor.

20 THE COURT: No objection, it's admitted without
21 objection.

22 (Debtor's Exhibit 381, 128, 74 and 63 were hereby received in
23 evidence for identification, as of this date.)

24 Q. Monsignor, to your knowledge over time did other entities
25 join the debtor's pooled investment program?

1 A. They did.

2 Q. And did the affiliates at some point come on board and
3 invest their funds in the program?

4 A. They did.

5 Q. Do you have -- or do you know approximately when the
6 affiliates participated -- began participating in the pooled
7 investment program?

8 A. Some in the 1970s and others in the 1980s.

9 Q. With respect to the affiliates do you know who made the
10 decision to invest their funds in the pooled investment
11 account?

12 A. The board of trustees for each of the affiliates.

13 Q. Once the various affiliates elected to participate in the
14 pooled investment program; invest their assets in the program,
15 do you know whether they retained decision-making power over
16 the mix of investments within the account?

17 A. They did retain that, yes.

18 Q. Have some affiliates to your knowledge delegated that
19 authority to the finance council through its investment
20 committee?

21 A. Some of them have, yes.

22 Q. Do you know how this delegation was accomplished?

23 A. Normally, the board of trustees would have communicated
24 with the finance council that they would rely on them in
25 determining the mix.

1 Q. Without a board resolution to defer or delegate decisions
2 regarding the mix of investments to the finance council, could
3 the finance council have dictated to the affiliates what their
4 investment mix within the pooled investment account would be?

5 A. The mix is left up to the participants in the fund. And
6 if they delegate the investment committee to make those
7 decisions for them, that's how it's done.

8 Q. Monsignor, we've talked about affiliate participation in
9 the pooled investment account, did the parishes ultimately
10 begin investing their funds in the account?

11 A. Some parishes did begin to invest their funds, yes.

12 Q. Do you recall about the time that that started occurring?

13 A. The 1990s for the most part.

14 Q. You've mentioned some parishes, have some parishes elected
15 not to participate in the debtor's pooled investment program?

16 A. Yes. Some parishes have elected not to.

17 Q. With respect to the parishes, who would have made the
18 decision to invest a particular parish's funds in the pooled
19 investment account?

20 A. It would have been the pastor with the advice of his
21 parish finance council.

22 Q. The parishes have separate finance councils?

23 A. Each does, yes.

24 Q. Monsignor, you, yourself, are a pastor you mentioned of
25 St. Ann's, has your parish elected to participate in the pooled

1 investment program?

2 A. We did in 2004.

3 Q. And how was that process accomplished?

4 A. The finance council discussed the options for investment
5 and decided to invest with the diocesan pooled investment
6 program.

7 Q. Monsignor, you mentioned that Wilmington Trust was the
8 original custodian of what was then called the common fund, did
9 Wilmington Trust stay on as custodian until Mellon, or have
10 their been other custodians between the time that Wilmington
11 Trust served and Mellon took over?

12 A. There have been others who were the trustee banks.

13 Q. Do you recall who, in particular, has served as custodian
14 of the pooled investment program over time?

15 A. Following our termination of the agreement with Wilmington
16 Trust we made an agreement with Delaware Trust and then the
17 successor banks. I believe it was Meridian and then
18 CoreStates, and then First Union.

19 Q. So just other machinations of Delaware Trust?

20 A. Yes.

21 Q. Okay. Do you know why there was a change of custodianship
22 from Wilmington Trust Company to Delaware Trust?

23 A. I think there was some dissatisfaction with service.

24 Q. Monsignor, I'd now like to talk about withdrawing of funds
25 form the PIA. Does the foundation require the permission of

1 the bishop in any of his capacities, either as ordinary of the
2 diocese, president of the debtor, or in his function as
3 president of the foundation to withdraw its funds from the
4 pooled investment account?

5 A. No.

6 Q. If a nondebtor investor wanted to withdraw all their funds
7 from the PIA because they simply weren't satisfied with how it
8 was performing, could they do so?

9 A. They could, yes.

10 Q. And has that, in fact, happened on occasion?

11 A. It has on occasion, yes.

12 Q. Could the bishop, in any of his capacities, either as
13 ordinary of the diocese, president of the debtor or president
14 of the various affiliates, decide to liquidate a nondebtor's
15 assets in a pooled investment account for use by the debtor?

16 A. No, he could not.

17 Q. Why not?

18 A. Both Canon and civil law would prevent him from doing
19 that.

20 Q. Now, Monsignor, does the bishop in his role as ordinary of
21 the diocese, the ecclesial entity, have any oversight over
22 spending either at the parish or affiliate level?

23 A. Yes, he does, as bishop.

24 Q. Could you explain that to us a little bit more?

25 A. One of his roles as bishop is to take special care that

1 the temporal goods of the diocese, it's parishes, and
2 institutions are used well, preserved and then if at all
3 possible increased, but also used very well.

4 Q. And when you said used well, what do you mean by that
5 specifically?

6 A. For purposes of the -- that's in line with the mission of
7 an institution and the church.

8 Q. Does the bishop have this oversight responsibility
9 regardless of the source of this spending, where the monies are
10 coming from?

11 A. He does.

12 Q. And if he believes expenditure is not in line with the
13 mission of the organization or the diocese as a whole, can he
14 withhold approval for a particular project?

15 A. He can, yes.

16 Q. Does he have to consult with anyone before making these
17 decisions?

18 A. Normally he would, yes.

19 Q. And who would that be?

20 A. Finance council would be one of them. There are other
21 consultative groups that he concurs with with regard -- for the
22 expenditure of funds.

23 Q. If an affiliate or parish wanted to withdraw funds -- some
24 of its funds from the pooled investment account for the
25 purposes of a capital expenditure would they need the bishop's

1 approval to do that in his role as ordinary of the diocese?

2 A. What the bishop would be doing in that sense would be
3 approving the spending or agreeing to the spending of the funds
4 regardless of where they were.

5 Q. So would it matter whether that funds was in the in PIA or
6 a checking account, or savings account or CD?

7 A. It would not matter.

8 Q. Monsignor, I'd like to turn your attention to some
9 documents that were shown to you during the course of your
10 deposition. And if we could, Monsignor, please turn to Exhibit
11 Number 390.

12 A. Thank you.

13 Q. And I believe this document may have been shown to Mr.
14 Corsini in the course of his testimony here yesterday. Can
15 you, just if you could, Monsignor, identify this particular
16 document for the record?

17 A. This is a letter from the -- to the principal of Saint
18 Mark's Hospital, Mr. Mark Freund, dated April the 25th, 2002.

19 Q. And what specifically is the subject of this letter,
20 Monsignor?

21 A. Mr. Freund had asked permission to spend substantial
22 dollars from the capital replacement fund of the school to
23 replace some air conditioning equipment.

24 Q. And was he asking to make a draw from Saint Mark's
25 investments in the pooled investment account in order to fund

1 that expenditure?

2 A. He was, yes.

3 Q. And you indicated here in the second paragraph, "as for
4 drawing down from the capital replacement fund, the school has
5 permission to do so if needed." We've talked about the issue
6 of permission, what do you mean by that here? What permission
7 were you giving Mr. Freund?

8 A. The approval of the bishop to let the spending on this
9 project go forward.

10 Q. And, again, if the spending on this project were not going
11 to be spending which would be financed from the pooled
12 investment account, but another investment vehicle that Saint
13 Mark's held outside this investment account, would the bishop
14 have the same oversight over the spending for the project?

15 A. Yes, he would.

16 MS. WALSH: Your Honor, I believe this document has
17 already been introduced into evidence.

18 MR. TRAINER: Your Honor, it's 421 also, I believe.
19 It was introduced yesterday.

20 MS. WALSH: Yes, there were duplicates, Your Honor.

21 THE COURT: All right.

22 MS. WALSH: But it is the same document.

23 MR. BROWN: I think I talked to Mr. Corsini about this
24 document yesterday.

25 THE COURT: Well, all right. Do you want to introduce

1 it again?

2 MS. WALSH: No, Your Honor.

3 THE COURT: Okay.

4 MS. WALSH: I'm just mentioning that for the record,
5 so you know why I'm not introducing it.

6 THE COURT: Very good.

7 Q. Okay, Monsignor, I'd then like to turn your attention to a
8 document marked Exhibit Number 391.

9 A. Yes.

10 Q. And, Monsignor, if you could take a look at that and
11 please identify that document for the record?

12 A. It's a memorandum from me to the then bishop of the
13 diocese, Bishop Michael Santorelli, dated January the 26th,
14 2006. And the subject matter is Saint Mark's High School
15 Capital Campaign.

16 Q. And what was the capital campaign at issue that's
17 discussed in this memorandum?

18 A. The principal had put forward a plan after having
19 consultation with his own advisory boards at Saint Mark's to
20 expand the facilities; which included athletic fields, as well
21 as some buildings.

22 Q. And if you would turn, Monsignor, please, to page 3 of
23 this document which is marked with a Bates stamped number of
24 BKY2412093.

25 A. Thank you.

1 Q. And if you look at the bullet points, the fourth bullet
2 point down, could you read that sentence, please?

3 A. The top section?

4 Q. Just the fourth bullet point, starting with the word
5 request?

6 A. "Request the Diocese of Wilmington to allow the school to
7 draw down 350,000 dollars from its capital replacement fund for
8 field development."

9 Q. Okay. Now, was the Diocese of Wilmington, what is
10 referred to there as the Diocese of Wilmington?

11 A. The ecclesiastical organization.

12 Q. And it refers to a capital replacement fund, is that a
13 fund of Saint Mark's within the pooled investment fund?

14 A. It is a fund of Saint Mark's in the pooled investment
15 account.

16 Q. Now, this appears to be a request to allow the school to
17 draw from that fund to support this field development project,
18 is that correct?

19 A. Yes.

20 Q. And, again, why is there a request of the diocese to allow
21 them to proceed with that withdrawal?

22 A. It's a rule of the diocese in keeping with what's provided
23 for in Canon law admonishing the bishop to have proper
24 oversight of the use and expenditure of temporal affairs. And
25 our rule is any capital project over 25,000 dollars will

1 require the review and permission of the bishop.

2 Q. And would it matter how that capital project was funded;
3 whether through a savings account that Saint Mark's had, a CD
4 or monies in the pooled investment account?

5 A. It would not make any difference.

6 Q. Thank you.

7 MS. WALSH: Your Honor, at this time we'd like to move
8 into evidence the admission of document -- Exhibit Number 391.

9 MR. BROWN: No objection, Your Honor.

10 THE COURT: It's admitted without objection.

11 (Memorandum from Monsignor Cini to Bishop Michael Santorelli,
12 dated January the 26th, 2006 re Saint Mark's High School
13 Capital Campaign was hereby received in evidence as Debtor's
14 Exhibit 391 for identification, as of this date.)

15 Q. And, Monsignor, the last document on this subject is
16 Exhibit Number 393, if you could turn to that tab, please?

17 A. Thank you.

18 Q. And could you please identify this document for the
19 record?

20 A. It's a memorandum from me to Allan Daul, who at the time
21 was executive director for Catholic Charities, dated January
22 13, 1998, and the subject matter is Children's Home.

23 Q. Monsignor, I don't think we've heard about Children's Home
24 before, could you just explain what that is?

25 A. Children's Home was an orphanage established I think in

1 the late 1800s. And in 1994, I believe it was, the trustees of
2 Children's Home approached Catholic Charities and asked it to
3 take over the ownership and the operation of Children's Home.

4 Q. And if you'll look to the bottom of this memorandum the
5 second to last paragraph, could you read that sentence, please?

6 A. Second to last paragraph?

7 Q. Yes, Monsignor?

8 A. We have authorized the payment of the Collins' bill for
9 your telephones at 22,720 dollars from the reserves.

10 Q. Now, what are the reserves?

11 A. The reserves of Children's Home.

12 Q. And would those monies be in their pooled investment
13 account, or no?

14 A. I believe they would have been, yes.

15 Q. And, again, why is it that you're authorizing them to pay
16 this bill out of those funds?

17 A. Part of the oversight that's required.

18 Q. And if you look to paragraph -- the last -- well, the next
19 paragraph down, starting with the word, although, what is the
20 subject matter of that paragraph?

21 A. The statement here, "although the trustee's have
22 authorized up to 300,000 dollars of invested reserves for the
23 renovation project," that's referring to renovation of the
24 facilities at Children's Home, "before I present this for
25 ratification by the bishop I think we should discuss the scope

1 and the projected costs of the remaining work one more time.
2 We can arrange for a meeting when next we meet in the next
3 couple of days."

4 Q. Was the issue here the withdrawal of funds from the PIA or
5 the spending for this project?

6 A. Approval of the project.

7 Q. Monsignor, switching gears for a moment, did there come a
8 point in time when the debtor considered creating statutory
9 trusts to hold the assets that the parishes, the foundation and
10 the affiliates had in the Mellon pooled investment account?

11 A. Yes.

12 Q. When was that first considered, to your recollection?

13 A. Probably in the late spring in 2007, I think.

14 Q. Why was it considered?

15 A. At the time there were substantial number of abuse suits
16 filed against the diocese. And in the discussions we were
17 looking for additional protection of the assets of affiliate
18 corporations and parishes who had participated -- were
19 participating in the pooled investment fund.

20 Q. And when you say additional protection of the assets, what
21 do you mean by that?

22 A. Counsel had described to us the statutory trust. And our
23 understanding was that it was yet another added protection of
24 the assets held for others.

25 Q. Now, in your view was there any ambiguity at that point in

1 time as to who owned the funds that the nondebtor participating
2 in the pooled investment program had invested in the account?

3 A. There was no ambiguity, no.

4 Q. Was there any concern on the part of the debtor that those
5 funds contributed by the nondebtor pooled investors were not
6 held in trust?

7 A. No, there was no concern.

8 Q. Did you, yourself, ever have any doubts that the funds
9 that were contributed by the nondebtor entities to the pooled
10 investment program were their own funds?

11 A. I never had a doubt of that, no.

12 Q. Who did you believe owned the funds?

13 A. The persons who participated in the fund. The individuals
14 the parishes -- pardon me, the individual organization and
15 parishes.

16 Q. Were these statutory trusts created?

17 A. They were created, yes.

18 Q. And were they ever funded prior to the filing of the
19 bankruptcy proceeding?

20 A. They would not fund it, no.

21 Q. Why not?

22 A. We didn't have time.

23 MS. WALSH: Your Honor, thank you. That's all I have
24 for Monsignor at this time.

25 THE COURT: Okay, thank you. Mr. Jenkins, good

1 morning.

2 MR. JENKINS: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY MR. JENKINS:

5 Q. Monsignor, if we could perhaps turn from the
6 administrative, your job as vicar general, to the job I happen
7 to know you like a lot better; being pastor of St. Ann's. When
8 did you become pastor of St. Ann's?

9 A. June of 2003.

10 Q. Now, where is St. Ann's?

11 A. St. Ann's is located at what is known as the forty acres
12 of Wilmington.

13 Q. It's on Union Street; the church?

14 A. The church fronts on Union Street, yes.

15 Q. Approximately how many families does St. Ann serve?

16 A. On the records we have just under 900 families.

17 Q. And what's your approximate weekly attendance?

18 A. Most of the weeks there are about between 750 and 850
19 people at mass.

20 MR. BROWN: Your Honor, again, I'm just going to
21 object to this line of questioning as being completely
22 irrelevant to the issues in phase one. No more relevant than
23 the intentions in the abuse claims about the lives that were
24 ruined with a tragedy --

25 MR. JENKINS: If I could speak to that, Your Honor. I

1 think Your Honor captured it the other day. What I'm putting
2 this testimony on is to show that only somebody smoking crack
3 cocaine would have put money into something that they didn't
4 think they owned. Given the responsibilities that, for
5 example, a pastor, and then we have the other witnesses. It
6 goes precisely to an issue we don't think should be open. In
7 fact, we think the evidence is overwhelming, but we hear from
8 the other side, in fact, that the evidence shows it was an
9 attempt to become creditors.

10 We want to put this evidence on because we think it
11 shows precisely to the contrary.

12 THE COURT: Mr. Brown.

13 MR. BROWN: Your Honor, this does not go to the
14 intention between the diocese and the individual pooled
15 investor. It goes to what the individual pooled investor may
16 have been, you know, contemplating in its own mind, but it has
17 nothing to do with the conversations, or the agreement or the
18 expressions of intent between the pooled investor and the
19 diocese. This is just simply to get a picture of the wonderful
20 works of these pooled entities in contrast to the competing
21 equities of the abuse claims.

22 MR. JENKINS: And, Your Honor, I think that's just
23 not correct. The statement on we are told by our friends that
24 we have a burden of showing by clear and convincing evidence
25 that there was intent to create a trust and that this would be

1 our property. We're showing, both the state of mind by our --
2 the pooled investment participants, what their money is being
3 used for and why they would have, of course, insists that they
4 be the owners of it. And we think it goes to creating that --
5 what we're told is the clear and convincing evidence.

6 Now, if counsel will stipulate that, in fact, it was
7 our intent within the organizations to do that, to create a
8 trust and that the only issue he has is whether that was
9 effectuated, that would be different. But that is not what is
10 argued in their briefs, that is not what is argued in their
11 complaint. And we believe we should be allowed to put on this
12 evidence.

13 THE COURT: All right, I'm going to allow the
14 evidence. I think evidence of the intent of a contractual
15 party may be relevant to whether there's a meetings of minds of
16 the two parties to that contract. So I will overrule the
17 objection, allow the testimony.

18 And, Mr. Jenkins, I'd ask you to keep the language a
19 little less colorful. The reference I'm referring to is
20 someone on crack cocaine. Let's keep it a little more
21 professional level.

22 MR. JENKINS: Yes, Your Honor.

23 BY MR. JENKINS:

24 Q. Monsignor Cini, what services are provided by the parish?

25 A. The services you would find in any typical Catholic

1 parish. We celebrate the Eucharist with the congregation
2 daily, and especially weekly. Provide religious instruction,
3 both for children as well as adults. We have a school of 270
4 children, most of whom come from parents who belong to the
5 parish. We provide outreach services to those that are ill,
6 shut in and also the poor, especially through our St. Vincent's
7 de Paul Society. Those are a number of the typical things we
8 provide.

9 Q. And what grades are taught at the school?

10 A. Pre-K through eight.

11 Q. Okay. And how does St. Ann's fund these services?

12 A. We rely on the contributions of the members of the parish,
13 primarily. For the school we rely primarily on tuition paid by
14 the parents. However there's always a significant amount of
15 money, perhaps 150,000 to 200,000 dollars a year that is taken
16 from the parish to support it. And also income from the
17 reserves that the parish has.

18 Q. What's the current tuition at St. Ann's?

19 A. 4,900 dollars per child, a little bit of a break if you
20 have multiple children.

21 Q. Now, as pastor of St. Ann's are you responsible for the
22 financial workings of the parish?

23 A. I am, yes.

24 Q. And do you have any assistance with that?

25 A. Well, I'm required to have a finance council as advisors.

1 And we have staff; I have a business manager and also a
2 bookkeeper.

3 Q. And what is the parish finance council?

4 A. It's a group of persons knowledgeable in finance, I
5 believe the guidelines also suggest that someone acquainted
6 with civil law should be a member of the council, who advise
7 the parish on all matters of finance.

8 Q. And what types of professionals do you currently have on
9 the parish financial council?

10 A. We have bankers, investment bankers, CPAs, attorneys,
11 stockbrokers.

12 Q. How often does the Parish Finance Council meet?

13 A. At St. Ann's we meet at least eight times a year, usually
14 between the months of September through June.

15 Q. And does your Parish Finance Council assist you in
16 developing an investment policy and plan for funds in excess of
17 St. Ann's daily operating needs?

18 A. It does, yes.

19 Q. And you earlier testified that St. Ann's elected to invest
20 in the pooled investment account?

21 A. I did, yes.

22 Q. And I believe you testified that -- well, let me ask
23 again. When did St. Ann's begin investing in the pooled
24 investment account?

25 A. Probably April of 2004. 2004, definitely. I think it was

1 April or May.

2 Q. How did that decision come about?

3 A. The parish had some endowment funds, as well as a tuition
4 assistant fund, managed by another group. The finance council
5 in reviewing the performance of that group determined that it
6 was unsatisfactory. So we began to look for other options for
7 investment. I presented to them the Diocesan Pooled Investment
8 Program. Provided them with information about it. There was
9 discussion about that program and alternatives. And ultimately
10 the finance council recommended that we go with the pooled
11 investment program.

12 MR. JENKINS: Your Honor, at this time we also have a
13 small book of exhibits for Monsignor Cini. Can I ask my
14 colleague, Ms. Platia, to distribute that around?

15 THE COURT: Yes, please.

16 MR. JENKINS: Thank you, Your Honor.

17 (Pause)

18 THE COURT: Thank you.

19 Q. Now, do you have that book in front of you, Monsignor
20 Cini?

21 A. I do, thank you.

22 Q. Can you turn to Exhibit 327?

23 A. I have it.

24 Q. What is Exhibit 327?

25 A. Minutes of the St. Ann's Parish Finance Council meeting of

1 February 16, 2004.

2 Q. Is it the regular practice of the parish finance council
3 to keep minutes of its meetings?

4 A. Yes, it is.

5 Q. Are the meetings typically prepared at around -- or around
6 the time of the meeting?

7 A. I'm sorry, I didn't hear the full question.

8 Q. Sorry. Are the minutes typically prepared at or around
9 the time of the meeting?

10 A. Usually right after, yes. During and after.

11 Q. Were you present at the February 16, 2004 meeting?

12 A. I was, yes.

13 Q. And could you tell us what occurred at that meeting?

14 A. In addition to talking about regular business, such as
15 income and expenses, the expenses of the school, tuition, et
16 cetera, we also spoke about the invested reserves of the
17 parish.

18 Q. And what was the nature of that conversation?

19 A. It discussed the current investment performance and also
20 how the investments were deployed, annexed. Also some
21 questions came up about the parish in -- pardon me, the pooled
22 investment program.

23 Q. And are those questions listed at the middle of the first
24 page of Exhibit 3, page 27?

25 A. They are listed, yes.

1 Q. Okay. Now, was the Parish Finance Council concerned about
2 making its own choices regarding asset mix in the pooled
3 investment account?

4 A. That was one of the concerns, yes.

5 Q. And were they also concerned about the autonomy of St.
6 Ann's and receiving monthly accounting reports?

7 A. They were, yes.

8 Q. Okay. Now, could you turn to Exhibit 328? Let me
9 first --

10 MR. JENKINS: Your Honor, if I may introduce Exhibit
11 327 into evidence.

12 MR. BROWN: No objection.

13 THE COURT: It's admitted without objection.

14 (Minutes of the St. Ann's Parish Finance Council meeting of
15 February 16, 2004 was hereby received in evidence as Nondebtor
16 Defendant's Exhibit 327 for identification, as of this date.)

17 MR. JENKINS: Thank you, Your Honor.

18 Q. If we could turn to 328, Monsignor?

19 A. Thank you.

20 Q. What is Exhibit 328?

21 A. Minutes of the St. Ann's Finance Council meeting March 15,
22 2004.

23 Q. Were you present at this meeting?

24 A. I was.

25 Q. And what occurred at this meeting?

1 A. Final determination of moving the funds from the group
2 that was investing for the parish to the diocese pooled
3 investment program.

4 Q. And was there also a decision on what asset mix should be
5 put in?

6 A. Yes.

7 Q. Okay. And was there also a decision to have a trust
8 agreement drawn up in connection with the investment?

9 A. Yes.

10 Q. And if you could look to the second bullet point at the
11 middle of the page, where it says motion to have trust
12 instrument drawn by Alan Stone.

13 A. Yes.

14 Q. Do you recall was Mr. Stone involved in drafting a trust
15 instrument?

16 A. He was.

17 Q. Why did the finance council want a trust instrument?

18 A. The members wanted a document between the diocese and the
19 parish stating that they had entrusted the funds to them for
20 investing purposes.

21 Q. Okay.

22 MR. JENKINS: And, Your Honor, I'd like to move to
23 introduce Exhibit 328 into evidence.

24 THE COURT: Any objection?

25 MR. BROWN: No, Your Honor.

1 THE COURT: It's admitted without objection.
2 (Minutes of the St. Ann's Finance Council meeting March 15,
3 2004 was hereby received in evidence as Nondebtor Defendant's
4 Exhibit 328 for identification, as of this date.)

5 MR. JENKINS: Thank you, Your Honor.

6 Q. If we could turn to Exhibit 409.

7 A. Yes, sir.

8 Q. Is this a copy of the trust agreement that was drawn up?

9 A. It is.

10 Q. And if you could turn to the last page?

11 A. Yes, sir.

12 Q. Who signed this on behalf of St. Ann's church?

13 A. I did.

14 Q. And who signed this on behalf of the Catholic Diocese of
15 Wilmington?

16 A. Joseph Corsini.

17 Q. Okay.

18 MR. JENKINS: And, Your Honor, if we could -- I'd like
19 to move to introduce Exhibit 409.

20 THE COURT: Any objection?

21 MR. BROWN: No objection, Your Honor.

22 THE COURT: It's admitted without objection.

23 (Copy of the trust agreement was hereby received in evidence as
24 Nondebtor Defendant's Exhibit 409 for identification, as of
25 this date.)

1 Q. Okay, let's go back to 328 a moment.

2 A. Yes, sir.

3 Q. Now, did the St. Ann's parish get monthly reports as
4 opposed to just quarterly reports? If you remember.

5 A. Yes.

6 Q. And do you recall why you got monthly reports, rather than
7 quarterly reports?

8 A. It's part of the normal procedure of the Finance Council
9 at St. Ann's to review all the finances of the parish,
10 including the investments.

11 Q. Okay. Was that important to the parish finance council?

12 A. Yes.

13 Q. And if we could turn to Exhibit 154. What is Exhibit 154?

14 A. It discusses parish investment strategy. The parish being
15 St. Ann's parish.

16 Q. And who drafted Exhibit 154?

17 A. I did.

18 Q. And why did you prepare this?

19 A. That's prepared in 2005 and it was a summarization -- a
20 written summarization of our investment strategy for new
21 members to the finance council.

22 Q. Is it an accurate summary of the decision-making process
23 that was involved in determining whether to invest in the
24 pooled investment account?

25 A. It is.

1 MR. JENKINS: Your Honor, I move the admission of
2 Exhibit 154.

3 THE COURT: Any objection? Mr. Brown, any objection?

4 MR. BROWN: No, Your Honor.

5 THE COURT: It's admitted without objection.

6 (Parish investment strategy was hereby received in evidence as
7 Nondebtor Defendant's Exhibit 154 for identification, as of
8 this date.)

9 MR. JENKINS: Thank you, Your Honor.

10 Q. Now, let's turn to Exhibit 333. You mentioned that prior
11 to investing in the pooled investment account some St. Ann's
12 reserves were previously invested with another account manager,
13 was that Cypress Capital Management?

14 A. Yes, sir.

15 Q. And was that -- the money in Cypress Capital Management
16 transferred to the pooled investment account?

17 A. It was, yes.

18 Q. How was the money transferred to the pooled investment
19 account?

20 A. It was wired.

21 Q. And so Cypress wired it to Mellon Bank?

22 A. Yes.

23 Q. Okay. And Mellon Bank's the custodian of the pooled
24 investment account

25 A. It is, yes.

1 Q. And what is Exhibit -- I'm sorry, 333?

2 A. It's a memorandum to me from Cypress Capital Management
3 that discusses the final distribution of the monies they had
4 held for the parish for investment purposes.

5 Q. Uh-huh. And it indicates on these two pages that there
6 was a wire transfer to Mellon Bank?

7 A. Yes.

8 MR. JENKINS: Your Honor, I would move the admission
9 of Exhibit 333.

10 THE COURT: Any objection?

11 MR. BROWN: No, Your Honor.

12 THE COURT: It's admitted without objection.

13 (Memorandum to me from Cypress Capital Management was hereby
14 received in evidence as Nondebtor Defendant's Exhibit 333 for
15 identification, as of this date.)

16 Q. Now, if we could turn to Exhibit 331, Monsignor?

17 A. Yes.

18 Q. What is Exhibit 331?

19 A. It's a summary -- it's a document which summarizes a
20 donation of the Brooks family to St. Ann's parish for the St.
21 Ann's tuition assistance program.

22 Q. Okay. Was this money -- this donation put into the pooled
23 investment account?

24 A. It was, yes.

25 Q. Was the Brooks family the only family that contributed

1 money to St. Ann's pooled investment funds?

2 A. No.

3 MR. JENKINS: Your Honor, I move the admission of
4 Exhibit 331.

5 THE COURT: Any objection?

6 MR. BROWN: No, Your Honor.

7 THE COURT: It's admitted without objection.

8 (Document which summarizes a donation of the Brooks family to
9 St. Ann's was hereby received in evidence as Nondebtor
10 Defendant's Exhibit 331 for identification, as of this date.)

11 Q. Monsignor Cini, if we could turn to Exhibit 342.

12 A. Yes.

13 Q. What is Exhibit 342?

14 A. Minutes of the St. Ann's Parish Finance Council meeting on
15 April 24, 2006.

16 Q. Okay. And were you present at this meeting?

17 A. I was, yes.

18 Q. Do you see down under investments, the middle of the page,
19 the second bullet point? It says "discuss moving the cash
20 management account to higher earning institution, i.e. ING
21 Direct."

22 A. Yes, I see it.

23 Q. Do you recall that conversation?

24 A. I do.

25 Q. What was the nature of that conversation?

1 A. We had some funds in cash management in the pooled
2 investment program with the diocese. Some members of the
3 council thought that we could get a higher rate of return if we
4 invested them in ING.

5 Q. Could the debtor have prevented you from cashing out --
6 you being St. Ann's, from cashing out your cash management
7 account and moving those funds to ING Direct?

8 A. No, it could not.

9 Q. Why not?

10 A. The funds belonged to St. Ann's.

11 MR. JENKINS: Your Honor, I move the admission of
12 Exhibit 342.

13 THE COURT: Any objection?

14 MR. BROWN: No, Your Honor.

15 THE COURT: It's admitted without objection.

16 (Minutes of the St. Ann's Finance Council meeting April 24,
17 2006 was hereby received in evidence as Nondebtor Defendant's
18 Exhibit 342 for identification, as of this date.)

19 MR. JENKINS: Thank you, Your Honor.

20 Q. If we can move to 348, Monsignor?

21 A. Yes.

22 Q. What is Exhibit 348?

23 A. Minutes of the St. Ann's Finance Council meeting February
24 26, 2007.

25 Q. And were you present for this meeting?

1 A. I was.

2 Q. At the bottom of the page it says financial reports, do
3 you see that?

4 A. I do.

5 Q. Do you see the second bullet point, it says "the
6 investment account will be reallocated to raise cash for the
7 day-to-day expenses of the parish, 400,000. These funds will
8 be invested in a cash management account with a five-plus
9 percent interest. The funds will be drawn from the Kalmar fund
10 with the remaining coming from the Iridian and Friess funds,"
11 do you see that?

12 A. I do.

13 Q. Could you explain what occurred there?

14 A. Yes. Some members of the finance council were a little
15 concerned about the volatility of the market. So in the course
16 of our discussions we decided to withdraw sufficient monies
17 from the investments. Here it was identified as 400,000
18 dollars. Monies that we would need, that we projected we would
19 need for at least two years to underwrite the budget at Saint
20 Mark's -- pardon me, at St. Ann's. So that the rest of the
21 fund could be left to the market without any withdrawals.

22 Q. And was this taking money out of the pooled investment
23 account?

24 A. It was.

25 Q. Okay.

1 MR. JENKINS: Your Honor, I'd move the admission of
2 Exhibit 348.

3 THE COURT: Any objection?

4 MR. BROWN: No, Your Honor.

5 THE COURT: It's admitted without objection.

6 (Minutes of the St. Ann's Finance Council meeting February 26,
7 2007 was hereby received in evidence as Nondebtor Defendant's
8 Exhibit 348 for identification, as of this date.)

9 MR. JENKINS: Thank you, Your Honor.

10 Q. Let's turn to 349, Monsignor.

11 A. Yes.

12 Q. What is Exhibit 349?

13 A. A memorandum to David Fullerton, diocesan finance staff
14 person who manages the pooled investment fund for the diocese,
15 from me, regarding St. Ann's investments. And specifically our
16 request to withdraw 400,000 dollars from the account.

17 Q. And was the money withdrawn from the account?

18 A. It was. And the memo specifies which investment managers
19 we should withdraw the 400,000 dollars.

20 MR. JENKINS: I move the admission of Exhibit 349,
21 Your Honor.

22 MR. BROWN: No objection, Your Honor.

23 THE COURT: It's admitted without objection.

24 (Memorandum to David Fullerton, diocesan finance staff person
25 was hereby received in evidence as Nondebtor Defendant's

1 Exhibit 349 for identification, as of this date.)

2 MR. JENKINS: Thank you, Your Honor.

3 Q. Now, has St. Ann's ever pledged its funds held in the
4 pooled investment account as collateral?

5 A. Yes.

6 Q. And how did that come about?

7 A. The parish took out a loan from Allied Irish Bank, I want
8 to say sometime in the late '90s. And they -- the assets of
9 the parish at the time were given as part of the collateral,
10 yes.

11 Q. And then when you moved your assets into the pooled
12 investment account did your pooled investment account become
13 collateral for Allied Irish Bank?

14 A. Yes, it did.

15 Q. Why was St. Ann's able to do that?

16 THE COURT: Do what?

17 MR. JENKINS: Let me rephrase that.

18 Q. Did you pledge -- did St. Ann's pledge those funds as its
19 property?

20 A. We did, yes. St. Ann's did.

21 Q. And are those funds reported on St. Ann's financial
22 statements as its property?

23 A. Yes, they are.

24 Q. And subsequently, did you pay off the loan from Allied
25 Irish Bank?

1 A. Yes, we did.

2 Q. Okay. Can you turn to Exhibit 377?

3 A. Yes.

4 Q. What is this document, Monsignor?

5 A. This is a fund statement for the quarter ending 12/31/09
6 from the Catholic Diocese of Wilmington to St. Ann's reporting
7 on the status of St. Ann's growth fund.

8 Q. And the second page, what does that indicate? What's
9 that?

10 A. It is also a fund statement for the quarter ending
11 12/31/2009 from the Diocese of Wilmington to St. Ann's
12 discussing the -- or providing the report on the St. Ann's
13 tuition aid fund.

14 Q. And are these the two funds St. Ann's has in the subfunds
15 that St. Ann's has in the pooled investment account?

16 A. Yes.

17 MR. JENKINS: Now, let me, Your Honor, with the
18 Court's permission move Exhibit 377 into evidence?

19 THE COURT: Any objection?

20 MR. BROWN: No, Your Honor,

21 THE COURT: It's admitted without objection.

22 (Fund statement for the quarter ending 12/31/09 from the
23 Catholic Diocese of Wilmington to St. Ann's was hereby received
24 in evidence as Nondebtor Defendant's Exhibit 377 for
25 identification, as of this date.)

1 Q. Now, let's go to Exhibit 370, Monsignor, the last one in
2 the booklet?

3 A. Yes.

4 Q. What is Exhibit 370?

5 A. It's a report on the activity of the investment St. Ann's
6 has with the parish investment account for both its grown fund
7 and the tuition fund. And it reports the activity for month-
8 by-month.

9 Q. And is this the monthly statement that you earlier talked
10 about?

11 A. Yes, it is.

12 Q. So St. Ann's gets something like this every month?

13 A. Almost every month, yes.

14 Q. Okay. And this goes to the finance committee of St.
15 Ann's?

16 A. It's part of the reports that they review when they meet,
17 yes.

18 Q. Okay.

19 MR. JENKINS: Your Honor, I'd like to introduce
20 Exhibit 370.

21 THE COURT: Any objection?

22 MR. BROWN: No, Your Honor.

23 THE COURT: It's admitted without objection.

24 (Report on the activity of investments St. Ann's has with the
25 parish investment was hereby received in evidence as Nondebtor

1 Defendant's Exhibit 370 for identification, as of this date.)

2 Q. Do you have an understanding, Monsignor, of who owns the
3 assets held in the St. Ann's subaccounts of the pooled
4 investment account?

5 A. I do. They're owned by St. Ann's parish.

6 Q. And earlier in response to Ms. Walsh you testified about
7 your understanding about the ownership of pooled investment
8 accounts and where you got that understanding. Do you have any
9 further understanding as the pastor of St. Ann's or as
10 basically your earlier testimony, about where you got your
11 understanding about who owned funds? Does that carryover to
12 St. Ann's?

13 A. I would say so, yes.

14 Q. Has CDOW Inc. ever used the funds in St. Ann's pooled
15 investment account?

16 A. It has not.

17 Q. Now, what would happen to St. Ann's if somehow the funds
18 in the pooled investment account were taken away from it?

19 A. We'd have difficulty meeting our budget. As I indicated
20 earlier practice has been to withdraw the earnings from the
21 growth fund to support operations, particularly the operations
22 of the school. It enables us to keep the tuition at a level
23 where most parents can afford to send their children to St.
24 Ann's.

25 Q. Monsignor, has anybody ever told you that, in fact, you

1 were just -- St. Ann's was just lending money to the debtor?

2 A. No.

3 Q. If you had been told that this was not St. Ann's money,
4 but, in fact, a loan being made to the debtor, would you have
5 made that loan?

6 A. We would not have done that, no.

7 MR. JENKINS: Thank you, Your Honor. I have no
8 further questions.

9 THE COURT: All right, thank you. Let's take a, say,
10 five to ten-minute recess before cross-examination.

11 (Recess from 10:42 a.m. until 10:56 a.m.)

12 THE CLERK: All rise.

13 THE COURT: Please be seated. Mr. Brown.

14 MR. BROWN: Good afternoon, Your Honor. Ken Brown,
15 Pachulski Stang for the creditors' committee.

16 Good afternoon, or good morning, Monsignor.

17 THE WITNESS: Good morning.

18 CROSS-EXAMINATION

19 BY MR. BROWN:

20 Q. Monsignor Cini, how many sex abuse claims have been filed
21 against the diocese?

22 A. I believe it's 130-some, 131.

23 Q. And how many priests affiliated with the diocese have been
24 named in those lawsuits?

25 A. Probably about eighteen.

1 Q. And how many of the diocese priests were identified by
2 Bishop Santorelli as admitted or credibly accused of sexual
3 abuse?

4 A. I believe it is the same number.

5 Q. Do you have an understanding of the tragedy that the sex
6 abuse claims have been in the victim's lives?

7 MS. WALSH: Your Honor?

8 THE COURT: Ms. Walsh.

9 MS. WALSH: Objection. I fail to see the relevance of
10 this. We've given Mr. -- a little bit of slack here in letting
11 him ask these questions, but I think we're going a little far
12 afield now.

13 THE COURT: Mr. Brown.

14 MR. BROWN: Your Honor, I think this testimony is on
15 the same kind of claim as -- or is equivalent to the testimony
16 that Mr. Cini has given on behalf of St. Ann's, with respect to
17 what it does, what its school does and what you're going to
18 hear from the other nondebtor pooled investors and affiliates
19 in terms of their good works and what kind of situation they
20 would be facing if there were determination that either the
21 funds in the PIA were not held in trust or even if they were
22 held in trust that they could not be sufficiently traced from
23 the operating account.

24 You've allowed all that evidence to come in, and I
25 think it's only appropriate that there at least be some

1 evidence in this record with respect to the impact on the abuse
2 claimants, who this money would be available to if it's not --
3 if this was part of a pool, it was available to, both the
4 pooled investors as well as the abuse victims, as opposed to
5 being completely unavailable to the abuse victims.

6 THE COURT: Ms. Walsh.

7 MS. WALSH: Your Honor, the tragedy of the sexual
8 abuse is not disputed in this case. What is disputed by Mr.
9 Brown is the intent of the parties, which is why that evidence
10 was allowed.

11 MR. BROWN: Nor is it disputed in this case, Your
12 Honor, that the -- St. Ann's parish and that the affiliated
13 entities and other parishes do good works, and educate
14 children, and provide charitable assistance. That is not
15 disputed either. But that evidence was allowed. And it's in
16 the record -- it's going to be in the record.

17 THE COURT: Let me just say, and I understand both
18 parties' points. Frankly, I don't view the questions before me
19 to be equitable at least in any -- I don't view the deciding
20 factor at this point in this case to be the balance of equities
21 or what would be the equitable result. Indeed, it's not, at
22 least at the current situation, my intent to base whatever
23 ruling I have on those factors.

24 Mr. Jenkins made, I believe, a credible argument that
25 the reasons and purposes of the money that St. Ann's parish has

1 put in the pooled investment accounts serve certain purposes
2 for whatever that's worth. I think his argument would be it
3 goes to the care or level of care of the custodian of that
4 money at St. Ann's parish, and thus, perhaps it's intent to be
5 particularly prudent with its investments. I don't see how
6 evidence relating to the devastating impact that sexual abuse
7 has or may have had on the plaintiffs in this matter is
8 extreme. I think we've had evidence to that effect. And I
9 believe Monsignor Cini has made statements previously under
10 oath to at least some of that, to a certain extent.

11 I will allow some brief overview for purposes of
12 completing the record in the event you want to argue at a later
13 date that the equity should be involved. But let's keep it to
14 really sort of an overview global series of questions.

15 MR. BROWN: Your Honor I won't spend more than another
16 minute on this.

17 THE COURT: Very good. I think the pending question
18 was do you have an understanding of the --

19 BY MR. BROWN:

20 Q. Do you have an understanding of the degree of the tragedy
21 inflicted upon the victims' lives by the sexual abuse?

22 A. To the extent that I can understand and have an
23 appreciation of it, yes. I'm not a victim, it didn't happen to
24 me. But I have listened to several dozen victims, as well as
25 reading reports about the devastating effect that it has, so I

1 have an appreciation I believe.

2 MR. BROWN: Your Honor, at this point I would move on.
3 I would just move into evidence, or request the Court take
4 judicial notice of three proofs of claim that are listed in the
5 exhibit binders as 498, 499 and 505.

6 THE COURT: Any objection?

7 MS. WALSH: Yes, Your Honor. We would renew the
8 objection we stated at the pretrial conference to the
9 admissibility of that evidence. It's hearsay, it is also
10 irrelevant in our view.

11 MR. BROWN: Your Honor, we dealt with the relevance
12 issue. And I think that you know what my arguments are there.
13 As to being hearsay, we're not offering it for the truth, we're
14 offering it -- they're allegations under penalty of perjury,
15 they are proofs of claim that attached the lawsuits and the
16 allegations of a lawsuit. We're offering them for
17 the -- to establish that the allegations have been made and
18 that those claims exist, not for the truth of the allegations
19 therein. It will be proved later.

20 MR. JENKINS: Your Honor, for the pooled investment
21 participants we believe these are clearly hearsay. There's no
22 nexus to this case. But we will stipulate that sex abuse like
23 this can have life altering effects that you never recover from
24 that is truly horrific. Anything like that Mr. Brown wants us
25 to say, yes. We also believe that some of the claimants out

1 there, indeed maybe all, we don't know, suffer such sex abuse.
2 But what he's putting in here are proofs of claim with
3 complaints attached and those are hearsay documents and there's
4 no nexus to this case.

5 THE COURT: Good whisper to Mr. Jenkins.

6 UNIDENTIFIED SPEAKER: Thank you.

7 MR. JENKINS: Your Honor, none of the abuse -- the
8 abuse didn't go, also here, the abuse wasn't committed by
9 pooled investment participants, so that's another part of the
10 nexus.

11 But the important thing is it doesn't -- it doesn't
12 concern this case, and it's hearsay, it's classic hearsay.

13 THE COURT: Mr. Brown.

14 MR. BROWN: Your Honor, it's not hearsay. We're
15 obviously not putting them in to establish the truth, we're
16 putting them in the record to establish that these are credible
17 allegations. They are exemplary of credible allegations that
18 have been made by the 140 victims.

19 THE COURT: Well, by using the adjective credible
20 you're inserting them for the truth.

21 MR. BROWN: Okay, well --

22 THE COURT: I don't think they're relevant.

23 MR. BROWN: Pardon me?

24 THE COURT: I do not believe they're relevant, so I'm
25 going to sustain the objection.

1 (Pause)

2 BY MR. BROWN:

3 Q. Monsignor Cini, you testified in your direct examination
4 that the diocese began to consider forming statutory trusts for
5 parishes -- began to consider forming statutory trusts in about
6 2007?

7 A. Yes, sir.

8 Q. And, in fact, statutory trusts were created for the
9 affiliated entities of the debtor and for the parishes, were
10 they not?

11 A. They were.

12 Q. And those statutory trusts were actually created on
13 October 15, 2009, weren't they?

14 A. I believe that is the date, yes.

15 Q. If I represented to you that that's what the allegation is
16 in the debtor's motion with regard to this -- that initiated
17 this adversary proceeding, would that help?

18 A. Yes, sir, thank you.

19 Q. And that was just three days prior to the bankruptcy,
20 wasn't it?

21 A. Yes, sir.

22 Q. Now, statutory trusts were formed as a way to protect the
23 assets in the pooled investment account from the claims of the
24 abuse victims, weren't they?

25 A. Yes.

1 Q. Whose idea was it to create them?

2 A. We asked for a review of the statutory trust from legal
3 counsel. Pardon me, the "we" being the Finance Council of the
4 Diocese of Wilmington.

5 Q. Now, you said that you had no concern that the funds held
6 in the pooled investment account were at risk to the claims of
7 the abuse victims, didn't you?

8 A. Did I testify --

9 Q. I think you testified that you had no concerns that the
10 funds weren't held in trust?

11 A. That is correct.

12 Q. Okay. So why create the statutory trust?

13 A. It was an instrument that provided -- at least my
14 understanding, additional protection for funds that we held in
15 trust.

16 Q. And your advisors told you that you needed to create the
17 statutory trusts?

18 A. They advised us to pursue it, yes.

19 Q. And you followed that advice?

20 A. Yes, sir.

21 Q. And why did they tell you to create the statutory trusts?

22 MS. WALSH: Your Honor, I would object to that
23 question on the grounds of attorney-client privilege.

24 MR. BROWN: Your Honor, I think they've raised this
25 issue. They've raised the issue of the statutory trust being

1 created on direct.

2 MS. WALSH: I don't believe that opened the door to
3 the disclosure of attorney-client information. I simply asked
4 Monsignor what his understanding and what the diocese or the
5 debtor's intent was in creating the trust.

6 THE COURT: Well, but if his understanding is based
7 upon conversations with counsel isn't Mr. Brown entitled to
8 test the foundation of that understanding?

9 MS. WALSH: I think Mr. Brown would first need to
10 establish that the answer Monsignor gave was based upon
11 communications he had with counsel.

12 THE COURT: Well, I believe he just testified that
13 he -- his advisors recommended it and they pursued it based on
14 that recommendation. I don't know who advisors are, maybe we
15 can be more specific.

16 MR. BROWN: I can ask the question, Your Honor.

17 THE COURT: Okay.

18 BY MR. BROWN:

19 Q. Did the advisors that advised you concerning the creation
20 of the statutory trust include your lawyers, or the diocese
21 lawyers?

22 A. Your Honor, I believe the first time we discussed it was
23 in finance council, and then the attorneys were invited to
24 address us on the issue, on the question of statutory trusts.

25 Q. Did your lawyers provide advice to you concerning the

1 reasons to create a statutory trust?

2 A. I believe they did, yes.

3 THE COURT: All right. I'm going to think about this
4 for a little while. So we're going to defer ruling. And if I
5 sustain the objection we're done, and if I overrule it we'll
6 have to revisit it.

7 MR. BROWN: Thank you, Your Honor.

8 MS. WALSH: Thank you, Your Honor.

9 (Pause)

10 Q. Did you have an understanding that holding -- did you have
11 an understanding -- you understood that if you created
12 statutory trusts and moved the affiliate assets in the PIA and
13 the parish assets in the PIA into the statutory trust that that
14 would provide additional protection against the claims of the
15 abuse victims?

16 A. That was my understanding.

17 Q. And you got that understanding from lawyers?

18 A. Yes.

19 Q. Now, the diocese made some last ditch efforts, didn't it,
20 just before the bankruptcy to get those assets in the pooled
21 investment account transferred to the statutory trust, didn't
22 it?

23 A. I believe there were discussions about transferring.

24 Q. Just in the weeks -- in the week and days before the
25 bankruptcy, correct?

1 A. I believe there was discussion, yes.

2 Q. And those discussions took place between the debtor's
3 lawyers at Young Conaway and the representations at Mellon
4 Bank, correct

5 A. I believe so, that's my belief.

6 Q. And ultimately Mellon Bank indicated that it couldn't get
7 the assets transferred into the statutory trust in the time
8 permitted before the bankruptcy filed, isn't that correct?

9 A. That's my understanding, yes.

10 Q. But it wasn't for the lack of trying, was it?

11 A. We tried.

12 Q. Monsignor, do you still have the binder that you were
13 given for your direct examination up there?

14 A. I do, sir.

15 Q. Okay. So I'm going to refer to Exhibit 381, which has
16 been admitted to evidence already in that binder.

17 THE COURT: Which binder is it; the debtor binder or
18 the St. Ann's binder?

19 MR. BROWN: The debtor binder. It is the first-day
20 affidavit of Monsignor Cini.

21 THE COURT: Thank you.

22 THE WITNESS: Thank you.

23 Q. So, Monsignor Cini, you have the affidavit in front of
24 you?

25 A. I do, sir.

1 Q. And if you'd turn to the last page of the affidavit, page
2 46.

3 THE COURT: Page?

4 MR. BROWN: Page 46 of the affidavit.

5 THE COURT: Thank you.

6 MR. BROWN: Last page. It's the last page before the
7 exhibits.

8 THE COURT: Okay.

9 Q. Is that your signature?

10 A. Yes, sir, it is my signature.

11 Q. And you signed this declaration under penalty of perjury?

12 A. I did, sir.

13 Q. Did you -- at the time you signed this declaration did you
14 believe the contents of it were true?

15 A. Yes, I did.

16 Q. And do you understand what the contents of it were when
17 you signed it?

18 A. For the most part, yes.

19 Q. What do you mean for the most part, that leaves some room
20 for equivocation? What -- were there parts of it you didn't
21 understand when you signed it?

22 A. At the time I signed it I thought I understood everything
23 in it, yes.

24 Q. Okay. So if you turn to page 20 of the declaration, which
25 is where paragraph 49 starts.

1 A. Yes, sir.

2 Q. Paragraph 49 appears to be part of your description of the
3 pooled investment program, if you flip the page to page 19,
4 it's under the heading pooled investment program?

5 A. Yes.

6 Q. Correct?

7 A. Yes, sir.

8 Q. I believe you testified in your direct examination that
9 that second sentence, "pooled investment funds are sent to CDOW
10 which holds them in its general operating account pending
11 transfer to the pooled investment account," testified that
12 that's an incorrect representation, right?

13 A. I did, sir, yes.

14 Q. And, in fact, you now understand that money goes into the
15 operating account and there isn't a corresponding transfer into
16 the pooled investment account, right?

17 A. Yes, sir.

18 Q. The second sentence, "generally at the conclusion of each
19 month CDOW determines how much cash it needs to operate the
20 following month." And then "rather than CDOW transferring all
21 the pooled investment funds in its operating account to the
22 pooled investment account and thereafter immediately
23 withdrawing funds or liquidating investments from its
24 subaccounts to fund operations, CDOW and the custodian
25 reconciled the pooled investment funds transferred to CDOW

1 against the funds needed by CDOW for its operations." Can you
2 tell me what you meant by that?

3 A. I believe it relates to the need for cash.

4 Q. What was the basis for that statement? How did you come
5 by that information?

6 A. I relied on the finance office to supply the information.

7 Q. Did they lawyers give you this information?

8 A. And the lawyers, yes.

9 Q. Did the lawyers write that entire declaration?

10 A. They did.

11 Q. Do you know where they got the information from?

12 A. Exactly where --

13 Q. Well, did they get the information from you?

14 A. From the Department of Finance.

15 Q. Okay. So they didn't interview you in connection with
16 this declaration?

17 A. Not with regard to this, no.

18 Q. When you say with regard to this -- with regard to the
19 entire declaration or within regard to paragraph 49?

20 A. Paragraph 49.

21 Q. Okay. So is it accurate that you didn't read and
22 understand paragraph 49 before you signed it?

23 A. I think I understood it was there.

24 Q. Did you understand the contents?

25 A. I believe so.

1 Q. There's a sentence beginning "thereafter CDOW transfers
2 funds to or from the operating account and uses the funds
3 remaining in that account to fund operations." Again, did that
4 information -- that information came from your lawyers?

5 A. The declaration was drawn up by attorneys, yes.

6 Q. So that sentence -- the information in that -- that
7 statement came from your lawyers?

8 A. Yes.

9 Q. Okay. If you turn to page -- the next page, 21.
10 Paragraph 51, the second sentence. Could you just read that
11 for me, I don't think I need to read it in the record, but just
12 read that for me, the second sentence beginning CDOW benefits?

13 A. Sir, do you wish me to read it out loud?

14 Q. No.

15 A. Oh, okay. Thank you.

16 Q. I just want you to read it and understand.

17 A. Thank you.

18 (Pause)

19 Q. Sir, you stated "that the pooled investment account
20 preserves the dioceses liquidity and access to operating cash
21 by virtue of CDOW's ability to constructively withdraw cash
22 from its subaccounts within the pooled investment account,
23 using the monthly deposits from the pooled investors and
24 offsetting book entries." Can you explain to us what you meant
25 by that? In particular, what you meant by constructively

1 withdraw?

2 A. No, sir, I can't.

3 Q. So you didn't -- you don't -- at the time -- at the time
4 you signed this you didn't understand what paragraph -- what
5 paragraph 51 meant, did you?

6 A. I indicated early on in the declaration that I relied on a
7 variety of sources for information in -- and that I testified
8 that I believed what they wrote, the information they supplied
9 was true.

10 Q. But you didn't have personal understanding of it yourself,
11 did you?

12 A. Don't have what you would call everyday working knowledge
13 of the operations of our finance office, is of the accounting.

14 Q. Do you have any understanding whether that second sentence
15 in paragraph 51 is true?

16 A. I don't.

17 Q. Accurate? You do not?

18 A. correct, sir.

19 (Pause)

20 Q. Monsignor, are you an officer of any of the debtor's
21 affiliated entities?

22 A. I am, yes, sir.

23 Q. And can you tell me what role you have as an officer in
24 the affiliated entities, and which ones?

25 A. I believe I'm treasurer of several of them, or a member.

1 Q. Do you mean secretary or --

2 A. Pardon me, sir, you said affiliates?

3 Q. I'm talking -- yeah. For example, Catholic Cemeteries,
4 DOW Schools, Catholic Charities?

5 A. Catholic Charities I believe I'm a member. Diocese of
6 Wilmington Schools I believe I'm the vice-president. You
7 mentioned an other, sir?

8 Q. Cemeteries?

9 A. I'm a member.

10 Q. Are you secretary of any -- of the debtor's affiliated
11 entities?

12 A. I don't believe I'm a secretary, no.

13 Q. And bishop is the president of Foundation, correct?

14 A. Of the Foundation, sir?

15 Q. Yes.

16 A. He is, yes.

17 Q. You testified earlier that Foundation wasn't an affiliate
18 of the debtor?

19 A. It is not.

20 Q. That the bishop is the president, correct?

21 A. That is correct.

22 Q. And there are other overlapping roles that individuals
23 that are officers or -- of the diocese has on -- with respect
24 to Foundation, aren't there?

25 MS. WALSH: Just for clarification, officers of the

1 diocese, are you referring to the debtor?

2 MR. BROWN: I'm referring to the diocese.

3 Q. I mean, you're secretary of the diocese, correct?

4 MS. WALSH: No, the debtor --

5 A. I'm not secretary of the diocese, no, I'm vicar general.

6 Q. Okay. You're vicar general of the diocese. You also have
7 a role in foundation, correct?

8 A. I'm a member.

9 Q. Okay. Mr. Corsini, he is secretary of the diocese,
10 correct?

11 A. He's chief finance officer for the diocese.

12 Q. He is chief finance officer for the diocese. He's also an
13 executive director of Foundation, correct?

14 A. He is.

15 Q. Okay. And the bishop is the president of, both the
16 diocese and the Foundation, correct?

17 A. Bishop is the pastoral leader of the diocese, and
18 president of the Foundation. He's not president of the
19 diocese.

20 Q. Bishop isn't president of the diocese?

21 A. Not of the ecclesial -- and as understanding diocese to
22 mean that sir, I'm sorry to --

23 Q. What about -- is the bishop the president of CDOW Inc.?

24 A. He is.

25 Q. Okay. So when you said the Foundation wasn't an affiliate

1 you were speaking just in terms of it not being part of the
2 ecclesiastical structure of the diocese, correct?

3 A. It is not part of the ecclesiastical structure of the
4 diocese.

5 Q. Do you know who owns legal title to all of the assets in
6 the pooled investment account? Well, let me state it another
7 way. The debtor, CDOW Inc., has legal title to all the assets
8 in the pooled investment account, doesn't it?

9 A. Legal title, I believe we have -- my understanding is the
10 assets belong to the participants in the pooled investment
11 fund.

12 Q. Are you familiar with the custody agreement with Mellon
13 Bank?

14 A. With Mellon I have seen it, yes.

15 Q. Do you have an understanding that that custody agreement
16 is with the Diocese Inc. only?

17 A. I believe so, yes.

18 Q. And you have an understanding that only the Diocese Inc.
19 and representatives affiliated with the Diocese Inc. have the
20 ability to withdraw funds from the pooled investment account?

21 A. I don't have that understanding of the -- how it operates,
22 no, I don't.

23 Q. When you said that the pooled investors, such as St.
24 Ann's, own the assets in the pooled investment account, do you
25 have any basis to -- what you -- strike that. Are you a

1 lawyer?

2 A. I am not.

3 Q. Do you have any legal training?

4 A. No, I do not, sir.

5 Q. What was the basis for you concluding that St. Ann's, for
6 example, owns the assets in the pooled investment account?

7 A. Well, I was the pastor of the parish when it was
8 transferred, and they were the assets and are the assets of St.
9 Ann's.

10 Q. Your belief that they're the assets. Are you aware of any
11 legal documents that establish that?

12 A. The financial statements of the diocese clearly -- pardon
13 me -- of the parish clearly state that.

14 Q. Anything else?

15 A. Well, yes. I believe that we will find the files of St.
16 Ann's, some documentation about people who left money to the
17 parish, and clearly is left to the Parish of St. Ann's.

18 Q. But you understand that the pooled investment account only
19 is held at Mellon Bank in the name of the debtor, CDOW Inc.,
20 don't you?

21 A. I believe I've heard -- have come to that conclusion.

22 Q. Now, moving on to the second part of your testimony with
23 respect to your role as pastor of St. Ann's parish. There's a
24 trust agreement between St. Ann's and the diocese with respect
25 to the assets in the pooled investment account, isn't there?

1 A. There is.

2 Q. And you were asked about that on your direct examination,
3 correct?

4 A. Yes, sir.

5 Q. And that trust agreement exists because the parish thought
6 it was necessary to have a written trust agreement with the
7 diocese in connection with putting its funds in the pooled
8 investment account, right?

9 A. The members of the finance council for the parish,
10 specifically an attorney, suggested that we should have this
11 document.

12 Q. Do you know why?

13 A. Good business practice.

14 Q. To confirm the trust relationship existed, right?

15 A. Yes, sir.

16 Q. You understood, when you put the money in the pooled
17 investment account, on behalf of St. Ann's, that you were going
18 to get -- you could ask for that money back when you wanted it?

19 A. Absolutely, sir.

20 Q. And that the diocese would pay it back to you, correct?

21 A. Correct.

22 Q. And that you would get any gains or losses attributed to
23 that, correct?

24 A. Yes, sir.

25 Q. And do you have -- is there any basis you had to

1 understand that you were entitled to anything more than that,
2 other than just when you wanted the money back, it was going to
3 be paid back to you by the diocese?

4 A. My understanding was that all the assets, and as you just
5 stated, any gains as a result of the investment with the
6 program, would be returned to St. Ann's at the parish's
7 request.

8 Q. Okay.

9 MR. BROWN: Your Honor, do you -- would you like to
10 continue to defer the ruling on the objections till a later
11 time, or do we want to deal with it before my examination
12 closes?

13 THE COURT: Well, I'm going to take a recess to think
14 about it.

15 MR. BROWN: Okay.

16 THE COURT: So if this is a good time to do that, I'm
17 happy to do that.

18 MR. BROWN: But for that, I've covered what I'm going
19 to cover.

20 THE COURT: All right. We'll take a short recess
21 then. I'll let you know when I'm ready.

22 (Recess from 11:30 a.m. until 11:48 a.m.)

23 THE CLERK: All rise.

24 THE COURT: Please be seated. I'm going to sustain
25 the objection in connection with attorney-client privilege.

1 And let me explain.

2 The issue becomes whether the client has in some way
3 put forward its reliance on the privilege -- privileged
4 communications in support of its averments or position. Now,
5 the way this arises is that we have the PIA in place, and it
6 remains in place to this day. Mr. Brown has identified the
7 fact that there was an attempt, on the eve of bankruptcy, to
8 form an express statutory trust that did not occur. And I
9 believe the testimony by Monsignor Cini --

10 MR. BROWN: It did occur. The trust was --

11 THE COURT: I'm sorry. The creation occurred, but the
12 funding did not. And I believe the testimony of Monsignor Cini
13 was that there was not time to do that.

14 Now, Mr. Brown wants to draw, I believe, an
15 implication or an -- an implication from that action that it is
16 indicative, I believe, of the debtor's belief and/or the
17 reality that the resulting trust was, in fact, not created.
18 The debtor doesn't really respond as to the implication,
19 perhaps, but simply says, I believe, that it was done -- excuse
20 me, that the facts are what they are. And Monsignor Cini says
21 that his understanding of the purpose of the express trust was
22 to protect the assets from the abuse of plaintiffs, as
23 creditors.

24 What we would get into, if we opened the door, if I
25 found that the door had been opened in connection with the

1 privilege, would, I believe, ultimately be, there was probably
2 advice as to why you should or shouldn't do this. And as a
3 substantial part of that advice, there probably would have been
4 a discussion as to the risk -- the litigation risk, if you
5 will, in connection with whether the PIA would be found in its
6 entirety to be property of the estate, as a result of the
7 resulting trust not existing.

8 MR. BROWN: Or the tracing.

9 THE COURT: Or the tracing issue. So -- but the
10 problem there becomes, once I open that door, we have a
11 slippery slope. Was the advice: well, yes, we discussed the
12 fact that there was litigation risk? All right. Was there
13 more detail? Yes. And what we really get into is where on the
14 scale of zero to a hundred on litigation risk were we, and did
15 Young Conaway say man, we're dead in the water; or was it more,
16 no, we feel we have a very strong case, but belts and
17 suspenders we should do this; or was it somewhere in between?

18 That's highly sensitive, clearly advisory legal
19 advice -- that's clearly legal advice for the purpose of
20 helping the diocese to decide how to proceed. And I don't
21 believe that the door has been opened on that.

22 In addition, I think we would have a relevance issue
23 as to the fact that the -- when do you judge the intent of the
24 creation of the resulting trust. And I'll hear argument on
25 that, I suppose. My feeling would probably -- well, my initial

1 thought on it would be when it's created, when the money is
2 actually put into the PIA, you run into an issue over the fact
3 that there are approximately forty entities, all in all?

4 MR. BROWN: Thirty-one entities. And then multiple
5 times that they all put --

6 THE COURT: Yes, there are thirty-one entities and
7 there are multiple deposits. And there are 170-something
8 subfunds. But that doesn't -- I don't think we're -- I wonder
9 about the relevance of a sort of after-the-fact discussion on
10 the eve of a bankruptcy on how to protect assets as being
11 relevant to that. So given the substantial doubt I have as to
12 relevance of what that advice was and the very -- the
13 potentially prejudicial to the debtor effect of allowing that
14 information to be explored, and the fact that I don't believe
15 that the debtors put it at issue, I'm going to sustain the
16 objection.

17 Any further questions?

18 MR. BROWN: No, sir, Your Honor.

19 THE COURT: Okay. Redirect.

20 MS. WALSH: Your Honor, we have no redirect of
21 Monsignor Cini.

22 THE COURT: Mr. Jenkins?

23 MR. JENKINS: We have no redirect, Your Honor.

24 THE COURT: All right. Thank you, Monsignor. You may
25 step down.

1 THE WITNESS: Thank you, Your Honor.

2 THE COURT: Mr. Dorsey?

3 MR. DORSEY: Your Honor, at this point the debtors
4 have no further witnesses. We do have -- we have admitted some
5 of the documents. There's a lot of documents in the binders
6 that have not yet been admitted into evidence. Some of them
7 will probably come in through the nondebtor defendants. But
8 the debtor would like to reserve until the completion of the
9 presentation of the evidence by the nondebtor defendants, to
10 then move into evidence any additional documents that they
11 think are necessary. And we can certainly work with Mr. Brown
12 to see if we can do those on a consensual basis.

13 THE COURT: Very good. Any objection?

14 MR. BROWN: No, Your Honor.

15 THE COURT: All right. Very good. That turns us to
16 Mr. Trainer's clients. And how would you propose to proceed?

17 MR. TRAINER: Your Honor, we are ready to call
18 witnesses, at Your Honor's pleasure. Given the time, I didn't
19 know if you thought it would be most efficient to move forward
20 now or wait till after lunch.

21 THE COURT: Let's -- if it's okay with the parties,
22 let's move forward -- let's push forward to about one o'clock,
23 and then we'll break there. I think --

24 MR. TRAINER: Very well, Your Honor.

25 THE COURT: -- and we'll obviously break, if at all

1 possible, at a break between witnesses. But we'll have to see
2 how it goes.

3 MR. TRAINER: Very well, Your Honor. The nondebtor
4 defendants then call Mark Christian.

5 (Witness is sworn)

6 THE CLERK: Please state and spell your name for the
7 record.

8 THE WITNESS: Mark Christian, C-H-R-I-S-T-I-A-N.

9 THE CLERK: Thank you. You may be seated.

10 DIRECT EXAMINATION

11 BY MR. TRAINER:

12 Q. Good morning, Mr. Christian. Where are you employed, Mr.
13 Christian?

14 A. I'm employed by Catholic Cemeteries Inc.

15 Q. And could you describe for us exactly what is Catholic
16 Cemeteries?

17 A. Catholic Cemeteries Inc. was founded in I believe 1881, as
18 the Cathedral Cemetery Company, and subsequently became
19 Catholic Cemeteries Inc. in 1955. Its objective is to
20 manage -- it owns, manages, operates, develops regional
21 cemeteries throughout the diocese.

22 Q. And can you name the cemeteries that it operates for the
23 diocese?

24 A. It operates three regional cemeteries: Cathedral Cemetery
25 on Lancaster Avenue in Wilmington; All Saints Cemetery on

1 Kirkwood Highway, midway between Wilmington and Newark; and our
2 latest cemetery, Gate of Heaven Cemetery, which is on Route 26
3 in Dagsboro, Delaware.

4 Q. What is your title with Catholic Cemeteries?

5 A. I'm currently the executive director and also the
6 corporation secretary.

7 Q. Now, does Catholic Cemeteries have a board of trustees?

8 A. Yes, it does.

9 Q. And do you serve on that?

10 A. Yes, I serve as the secretary.

11 Q. Okay. Now, how long have you held these positions?

12 A. Both since 1996 -- February of 1996.

13 Q. Let's focus on the board of trustees. What are the
14 general responsibilities of the board of trustees?

15 A. The board of trustees oversees the activities of the
16 corporation on an annual basis. Mainly they review the
17 financial position of the corporation, review requests from our
18 advisory board for development or change in our programs.

19 Q. Okay. Do they have any say on transfers of real property?

20 A. They have the sole say on the transfers of real property.

21 Q. How about major capital improvements?

22 A. They have the sole say on major capital improvements.

23 Q. Now, you mentioned, I believe, that you were secretary of
24 the board of trustees. In that position, what are your
25 responsibilities?

1 A. My responsibilities are basically to record the minutes of
2 the meeting. And I'm also a voting member of the corporation.

3 Q. Do you attend all meetings?

4 A. Yes.

5 Q. Now, as executive director, what are your
6 responsibilities?

7 A. Oversee the day-to-day operation of the three diocesan
8 cemeteries.

9 Q. Are you responsible for financial operations?

10 A. Yes.

11 Q. Now, as far as those operations, how does Catholic
12 Cemeteries fund those?

13 A. The funding of our operation comes primarily from the sale
14 of graves and crypts, also our services related to those sales,
15 as well as the sale of memorials and burial vaults. We also
16 rely on a monthly disbursement from our endowed-care fund,
17 which helps to cover the shortfall in our operating revenue on
18 a monthly basis.

19 Q. Now, can you explain to the Court what Cemeteries does
20 with the funds it receives through the sales of graves, and
21 crypts, and memorials?

22 A. Since 1955, there has been an established practice that a
23 set percentage of each purchase price from each grave, crypt,
24 niche, or a memorial foundation sold, is invested into what we
25 call the endowed-care fund.

1 Q. And you mentioned a set percentage. What currently is
2 that set percentage?

3 A. It is now fifteen percent.

4 Q. Now, can you explain to the Court why Cemeteries sets
5 aside that amount of money?

6 A. It's mandated by state law.

7 Q. And can you expand on that?

8 A. Any cemetery that sells lots, crypts, graves, niches, must
9 reserve a minimum of ten percent of the purchase price for the
10 future care and maintenance of the cemetery.

11 Q. And when you say "reserve", what do you mean by that?

12 A. It's put into a fund where the principal is never touched.

13 Q. Now, does Cemeteries participate in the pooled investment
14 account?

15 A. Yes.

16 Q. And do you know, since when?

17 A. 1986.

18 Q. Okay.

19 MR. TRAINER: Your Honor, I have a witness binder for
20 Mr. Christian, if I may pass those out?

21 THE COURT: Yes. Thank you.

22 MR. TRAINER: Your Honor, if I may approach and give
23 the witness some room here?

24 THE COURT: Yes, please. Thank you.

25 Just wherever. Okay. Let the record reflect I waved

1 vaguely.

2 MR. TRAINER: And I understood, somehow, Your Honor.

3 Q. If you -- Mr. Christian, you could look at the binder
4 you've just been handed by Ms. Platia and turn to the first
5 tab, which should be labeled 294.

6 A. Yeah, I found it.

7 Q. And can you tell us what Exhibit 294 is?

8 A. It is the minutes of the annual meeting of the corporate
9 board of directors of Catholic Cemeteries Inc., for February
10 18th of 1986.

11 Q. Okay. And does the cemetery board conduct meetings
12 regularly?

13 A. The corporate board meets at least annually.

14 Q. Okay. Is it the regular practice of the board to keep
15 minutes of the meetings?

16 A. Yes.

17 MS. BROWN: Objection, Your Honor. Lack of personal
18 knowledge. The witness has testified that he began working at
19 Cemeteries in 1996. And this document is dated ten years
20 prior.

21 THE WITNESS: May I clarify?

22 THE COURT: Wait a minute. Lay some foundation.

23 MR. TRAINER: Well, Your Honor, he has testified that
24 he attends all the meetings, and he's secretary of the meeting,
25 and has been since 1986. And that I want to lay the foundation

1 that they keep regular minutes, they're recorded soon after.
2 So I was in the middle of that when Ms. Brown objected.

3 THE COURT: 1996, you joined?

4 THE WITNESS: I've been an employee of Catholic
5 Cemeteries since 1977. So I'm familiar with --

6 THE COURT: All right. You may proceed.

7 MR. TRAINER: Okay, Your Honor. Thank you.

8 Q. Is it the regular practice of the Cemeteries' board to
9 keep minutes of the meetings?

10 A. Yes.

11 Q. And are the minutes prepared at or around the time the
12 meetings take place?

13 A. Very near the time the meetings take place. Shortly
14 thereafter.

15 Q. Okay. Now, at this meeting in particular, can you look
16 towards the bottom of the first page. You'll see it states:
17 "Resolved, that this board orders and approves the transfer of
18 the management of the endowed-care fund account to the Diocese
19 of Wilmington management accounts; the transfer to be in the
20 approximate amount of 3,172,178 dollars." Do you see that?

21 A. Yes.

22 Q. Now, does this resolution made at the February 18, 1986
23 meeting reflect your understanding of the history of the
24 Cemeteries' investment in the pooled investment account?

25 A. Yes, it does.

1 Q. Now, if you look further down, it says -- still on the
2 first page, at the very bottom: "Monsignor Rebman explained to
3 the board that the transfer of the funds as heretofore
4 approved, will result in more efficient utilization of the
5 corporate investments, but, he noted, there will continue to be
6 certain funds remaining in the accounts of the corporation."

7 Do you see that?

8 A. Yes.

9 Q. Now, does Monsignor Rebman's recognition that the transfer
10 of funds to the pooled investment account will result in a more
11 efficient utilization of Cemeteries' investment, does that
12 comport with the current board's view of the pooled investment
13 account?

14 A. Yes, it most certainly does.

15 Q. Now, can you expand on the current board's view of the
16 more efficient utilization that Monsignor Rebman apparently
17 expressed?

18 A. More efficient utilization comes from the fact that we
19 have a greater return on the investment than we could have ever
20 managed on our own, so I do believe. There's economies of
21 scale. Also there is availability of a more diverse and
22 experienced set of management advisors and investors that we,
23 as an individual corporation, would not have access to.

24 MR. TRAINER: Your Honor, I'd like to move Exhibit 294
25 into evidence.

1 THE COURT: Any objection?

2 MS. BROWN: No objection.

3 THE COURT: Submitted without objection.

4 (Minutes of the annual meeting of the corporate board of
5 directors of Catholic Cemeteries Inc. for February 18th of 1986
6 was hereby received in evidence as Defendant's Exhibit 294, as
7 of this date.)

8 Q. Now, let's discuss the Cemeteries' investments in the
9 pooled investment account. How many subaccounts does Catholic
10 Cemeteries have in the pooled investment account?

11 A. We have a total of ten. There are two that are directly
12 owned by the Cemetery Corporation. Eight others are owned by
13 individual mausoleum owners. The cemetery does have a trust
14 agreement with each owner. The purpose of these funds is
15 solely for specific expenses related to the maintenance of what
16 we call private mausoleums.

17 Q. Now, are the private mausoleums and the subfunds
18 associated with them, are they on a family-by-family basis?

19 A. Yes, they are.

20 Q. And are the accounts in those subfunds only used for the
21 care of those family mausoleums?

22 A. Yes.

23 Q. In addition to the mausoleum trust subaccounts that we
24 just spoke about, you mentioned two other subaccounts that
25 Cemeteries has in the pooled investment account. Can you

1 describe those, please?

2 A. The first is what we call, as I had mentioned before, the
3 endowed-care account. And that is strictly funded by the
4 proceeds from the sale of the items that I mentioned
5 previously. The second fund we have is called an operating
6 reserve account.

7 Q. And what is that used for?

8 A. That's used for development of inventory, purchase of
9 equipment and sort of miscellaneous expenses that might be
10 beyond our current budget.

11 Q. And I think, Mr. Christian, we discussed how the endowed-
12 care subaccount was funded. But can you explain, to the extent
13 it isn't obvious from its name, the purposes of the funds in
14 the endowed-care subfund?

15 A. The endowed-care subfund is solely used for the
16 maintenance of our cemeteries.

17 Q. Can you turn to Exhibit 312 in your binder, please? And
18 I'd ask you if you've seen that before?

19 A. Yes.

20 Q. Can you tell us what it is? It's a letter dated December
21 11, 1998 to Mr. Joseph Corsini, the chief financial officer of
22 the diocese.

23 Q. If you'd turn to the second page, I'll ask you if that's
24 your signature?

25 A. Yes.

1 Q. Why did you write this letter?

2 A. The auditors had recommended that we enhance our cash
3 management procedures. We had several certificates of deposit
4 that we were managing on our own, and it was felt that in order
5 to gain a greater return, that we would turn the money over to
6 the pooled investment account, to be invested a little better
7 than we could do on our own.

8 Q. Now, I turn your attention to the second paragraph on the
9 first page of Exhibit 312. You write to Mr. Corsini, "Our
10 mutual ongoing concern regarding the overall low rate of return
11 on certificates of deposit, and your projection that these
12 funds could achieve a ten percent annual rate of return with
13 minimal risk and required degree of liquidity, has led to
14 management's decision to turn these reserve funds over to the
15 diocese." I believe that comports with what you just
16 testified.

17 Then you say, "These funds would be tracked separately
18 from the Cemeteries' diocesan managed endowed-care portfolio."
19 What did you mean by that?

20 A. That was the funds in the pooled investment account.

21 Q. And so was this to create an additional subaccount?

22 A. Yes.

23 Q. Okay. Prior to this letter of December 1998, and putting
24 aside any mausoleum subaccounts, did Cemeteries just have the
25 endowed-care subaccount?

1 A. Yes.

2 Q. Okay. If you could turn to the fourth and fifth pages of
3 document -- Exhibit number 312, specifically NDP2184, can you
4 tell us what that is?

5 A. It's a cashier's check made payable to Catholic Cemeteries
6 Inc. for \$110,391.56. I believe it was the proceeds from a
7 matured certificate of deposit that was held with the bank.

8 Q. Okay. And if you could turn to the following page,
9 NDP2185 and tell us what that is?

10 A. That's a copy of the check that was sent to the diocese
11 for that same amount, to establish the operating reserve
12 account.

13 Q. Okay. And is this what was forwarded to the diocese in
14 connection with the letter that makes up the first two pages of
15 Exhibit 312?

16 A. Yes.

17 Q. Now, when a deposit is made by Catholic Cemeteries into
18 the subaccounts at the pooled investment account, do you make
19 those deposits?

20 A. No, I do not.

21 Q. Who does?

22 A. The finance coordinator for Cemeteries, Rita --

23 Q. And who is --

24 A. -- Rita Crozier

25 Q. -- I'm sorry, Rita Crozier?

1 A. Rita Crozier, yes.

2 Q. Okay. And when she does that, does she copy you on any
3 communication to the diocese?

4 A. Yes.

5 Q. And we just saw a check from Catholic Cemeteries being
6 written to the Diocese of Wilmington. Is that the way it is
7 usually done?

8 A. Yes.

9 MR. TRAINER: Your Honor, I'd like to move Exhibit 312
10 into evidence.

11 THE COURT: Any objection?

12 MS. BROWN: No, Your Honor.

13 THE COURT: It's admitted without objection.

14 (12/11/98 letter from Mr. Christian to Mr. Corsini was hereby
15 received in evidence as Defendant's Exhibit 312, as of this
16 date.)

17 MR. TRAINER: Thank you, Your Honor.

18 Q. Now, if you could turn to Exhibit 341, please, Mr.
19 Christian? You mentioned earlier in your testimony a set
20 amount of sale proceeds being contributed to the endowed-care
21 fund. Do you recall that?

22 A. Yes, I do.

23 Q. Now, every time there is a sale, does Catholic Cemeteries
24 make that deposit into the endowed-care subfund?

25 A. No, it does not.

1 Q. Can you tell us how that operates?

2 A. Each sale -- at the point of each sale, the amount
3 designated for the care fund is segregated from the purchase
4 price. At the end of each month Rita, the finance coordinator,
5 then figures out the total care that is owed from the proceeds
6 of all sales for the prior month. At that point, a check is
7 cut from our operating account and put into what we call the
8 endowed-care savings account, which is a temporary account that
9 we accumulate funds until there's adequate money to transfer to
10 the investment portfolio.

11 Q. Okay. Now, directing your attention to Exhibit 341. I
12 think you mentioned earlier in your testimony that currently
13 the amount of fifteen percent is put aside from sales to the
14 endowed-care fund. And maybe I should ask you first, if you
15 would, to identify Exhibit 341.

16 A. Exhibit 341 is a typical letter that is sent whenever
17 enough funds are accumulated into our savings account to be
18 transferred to the pooled investment account.

19 Q. Okay. To whom is the letter addressed?

20 A. To Mr. Corsini, the --

21 Q. Okay. Executed by whom?

22 A. Rita B. Crozier.

23 Q. Okay. Now, I got a bit ahead of myself. But I mentioned
24 the fifteen percent. And it seems that, if you look in the
25 middle there, it says, "The endowed-care funds for Catholic

1 Cemeteries is mandated by the State of Delaware and are
2 calculated and paid on gross sales as follows: ten percent of
3 gross lot sales; ten percent of gross mausoleum sales; ten
4 percent of foundation sales." Why are you now at fifteen
5 percent, if I understand your testimony?

6 A. It was the decision of the board that in the long-term
7 interest of the stability -- future stability of the
8 cemeteries, that we increase the amount that we contribute to
9 the endowed-care portfolio.

10 Q. Mr. Christian, you referred to this letter as a typical
11 letter. Is this an example of how, on a regular basis,
12 Catholic Cemeteries makes deposits to the endowed-care subfund
13 in the pooled investment account?

14 A. Yes, it is.

15 Q. Now, how do you confirm that the deposit was, in fact,
16 made into the endowed-care subaccount?

17 A. Usually, we get a confirmation via e-mail, as it says on
18 this -- in the notes here, "Confirmed via e-mail to Rita." And
19 then we always track the quarterly statements. And they
20 clearly have always shown any contributions that we've made.

21 MR. TRAINER: Your Honor, I'd like to move Exhibit 341
22 into evidence?

23 THE COURT: Any objection?

24 MS. BROWN: No, Your Honor.

25 THE COURT: Submitted without objection.

1 (Letter sent to Mr. Corsini when enough funds are accumulated
2 by Catholic Cemeteries to deposit in PIA was hereby received in
3 evidence as Defendant's Exhibit 341, as of this date.)

4 MR. TRAINER: Thank you.

5 Q. Mr. Christian, if you could turn to Exhibit 508, please?
6 And if I could ask you to identify that?

7 A. That's the quarterly funds statement that Catholic
8 Cemeteries receives regarding the funds that it has invested in
9 the pooled investment account.

10 Q. And what is the date of that statement?

11 A. This particular statement in front of me says 12/31 of
12 2005.

13 Q. Okay. And do you regularly receive these statements?

14 A. Every quarter.

15 Q. Okay. Now, if you could look halfway down Exhibit 508 and
16 you'll see "Donations: 50,000 dollars"?

17 A. Yes.

18 Q. Do you see that? Now, if you'd turn back to what's been
19 admitted as Exhibit 341, which bears the date of December 23,
20 2005?

21 A. That is correct.

22 Q. Is the 50,000 dollars represented in Exhibit 508 the
23 50,000 dollars we see in Exhibit 341?

24 A. Yes.

25 Q. Now, addressing or directing your attention to Exhibit

1 508. The fund is listed as Catholic Cemeteries Inc., account
2 number F0840. Do you see that?

3 A. Yes.

4 Q. Does Cemeteries receive fund statements for all ten of its
5 subaccounts within the pooled investment account?

6 A. Yes, it does.

7 MR. TRAINER: Your Honor, I'd like to move Exhibit 508
8 into evidence, please.

9 THE COURT: Any objection?

10 MS. BROWN: No, Your Honor.

11 THE COURT: Submitted without objection.

12 (12/31/05 quarterly funds statement of Catholic Cemeteries re
13 funds invested in the pooled investment account was hereby
14 received in evidence as Defendant's Exhibit 508, as of this
15 date.)

16 MR. TRAINER: Thank you.

17 Q. Now, with these other subaccounts, does Cemeteries operate
18 the same way with respect to withdrawals from the pooled
19 investment account?

20 A. A clarification would be, endowed-care, the -- any
21 withdrawal from the endowed-care fund is in our budget. So we
22 set -- we do a budget and we determine what our maintenance
23 needs are. And then we communicate that with the diocese, who
24 then arranges to give us monthly payments from the endowed-care
25 to cover our maintenance costs. That's the first account, the

1 endowed-care account.

2 The operating reserve account, I can ask for money from
3 that at any time.

4 Q. I apologize. I asked the wrong question.

5 A. Okay.

6 Q. I actually meant the word deposit. When you -- and I used
7 withdrawal, I understand that. When Cemeteries deposits money
8 into -- or funds into any one of its various subaccounts, does
9 it follow generally the procedure that we've seen in Document
10 341, for instance?

11 A. Yes.

12 Q. Okay. I apologize. If you could turn to Exhibit 319,
13 please, Mr. Christian? And if you could go to the fourth page
14 of that exhibit? Are you there?

15 A. Yes.

16 Q. Could you identify that for us, please?

17 A. This is a letter that addresses a request to Mr. Corsini
18 to withdraw funds from our pooled investment account.

19 Q. And you executed that?

20 A. Yes.

21 Q. Now, is this typical -- and for the record, this is
22 NDP2163 -- is this typical of how you proceed to make a
23 withdrawal from the pooled investment account?

24 A. Yes, it is.

25 Q. Now, are deposits reflected on the quarterly statements

1 that Cemeteries receives relating to its subaccounts?

2 A. Yes, they are.

3 Q. And if you could turn back to the first page of Exhibit
4 319? And maybe keep your hand in that fourth page there. Are
5 you there?

6 A. Um-hum.

7 Q. Now, if you will look at the first page, is the withdrawal
8 that I believe was described in the fourth page of Exhibit 319
9 in your letter to Mr. Corsini for 107,000 dollars, is that
10 reflected in the statement on the first page of Exhibit 319?

11 A. Yes, it's shown as a decrease in the fund and a
12 distribution to Catholic Cemeteries.

13 Q. Okay. Now, can you describe this first page of Exhibit
14 319? What is the source of this document?

15 A. The source of the document is from the diocesan finance
16 office.

17 Q. Now, do you receive this monthly in connection with the
18 statement relating to your -- the pooled investment account?

19 A. No.

20 Q. Okay. When do you receive these?

21 A. Quarterly.

22 Q. Quarterly. I'm sorry, yes. And is quarterly when you
23 also receive the statements regarding the pooled investment
24 account from Mellon?

25 A. Yes.

1 MR. TRAINER: Your Honor, I'd like to move Exhibit 319
2 into evidence.

3 MS. BROWN: No objection, Your Honor.

4 THE COURT: It's admitted without objection.

5 (Documents re Catholic Cemeteries' withdrawal of funds from PIA
6 was hereby received in evidence as Defendant's Exhibit 319, as
7 of this date.)

8 MR. TRAINER: Thank you.

9 Q. Now, Mr. Christian, to your knowledge, has the diocese --
10 has the debtor, Catholic Diocese of Wilmington Inc., ever
11 withdrawn money from these Cemeteries' subaccounts for its own
12 use?

13 A. No.

14 Q. How do you know?

15 A. It's never been reflected in any statement.

16 Q. Do you review the quarterly statements?

17 A. I most certainly do.

18 Q. Okay. Now, how does Cemeteries determine how to allocate
19 the money it has in the pooled investment accounts among the
20 various investment managers?

21 A. We rely on the expertise of the diocesan finance council
22 to make those decisions. We have general -- they know
23 generally what the fund is intended for, and they've always
24 done a very, very good job at meeting those expectations.

25 Q. Was that a decision that was authorized by the board of

1 trustees of Catholic Cemeteries?

2 A. Yes, that was the decision that was authorized in the 1986
3 resolution that you saw.

4 Q. Is that delegation of authority unconditional?

5 A. No, it is not.

6 Q. Does Cemeteries have the right to determine on its own how
7 its assets in the pooled investment account will be invested?

8 A. Yes, it does.

9 Q. Who perform -- or maybe I should ask you this. Are the
10 accounts and financials of Catholic Cemeteries audited?

11 A. Yes.

12 Q. And who performs that?

13 A. Belfint Lyons & Shuman, currently.

14 Q. Could I ask you to turn to Exhibit 355 in your binder?
15 And can you tell us what that is?

16 A. That's the -- what we call the audit report dated December
17 11th of 2007.

18 Q. Maybe I should ask you, how long has Belfint, Lyons &
19 Shuman audited Catholic Cemeteries?

20 A. For at least the last, I believe, five years.

21 Q. Now, if I could ask you to turn to page NDP01505 in
22 Exhibit 355? Are you there?

23 A. Yes.

24 Q. Now, this page is titled "Statement of financial position,
25 June 30, 2007," correct?

1 A. Yes, it is.

2 Q. And does this statement reflect the pooled investment
3 holdings of Catholic Cemeteries?

4 A. Yes, it does.

5 Q. And can you point us exactly to where that is?

6 A. It's under the assets. The category is "Pooled
7 Investment", and then there are various columns that segregate
8 it out into our operating reserve and our endowed-care invested
9 reserves.

10 Q. And we see here -- I guess these are the mausoleum
11 subaccounts?

12 A. Yes.

13 Q. And are they considered restricted assets?

14 A. Yes, because they're donor-designated funds, so yes, they
15 are.

16 Q. But the pooled investments are listed as assets of
17 Catholic Cemeteries?

18 A. Yes.

19 Q. Now, does Cemeteries rely on the money it holds in the
20 subaccounts for its operations?

21 A. Yes, it does.

22 Q. Okay. And again, which account is that?

23 A. The -- well, there's two. Operating reserves is one, and
24 endowed-care invested reserves is the other account.

25 Q. Now, has it always been the intent of Catholic Cemeteries

1 that the funds held in its subaccounts would be the property of
2 Cemeteries?

3 A. Yes.

4 Q. Were those funds ever intended for use by the debtor?

5 A. No.

6 Q. And did the debtor ever use the funds in Cemeteries
7 subaccounts?

8 A. No.

9 Q. Now, at this time, does Cemeteries have free access to the
10 funds in its subaccounts?

11 A. No, it does not.

12 Q. And why not?

13 A. We have to go through a process whereby we request the
14 funds. It's reviewed, I believe, by the -- a committee and
15 then approved by the Court. That's my understanding.

16 Q. And have -- and during the term of this bankruptcy, have
17 you received permission from the Court to use --

18 A. Yes, and we're grateful for that.

19 Q. Okay.

20 MR. TRAINER: Your Honor, I'd like to move Exhibit 355
21 into evidence.

22 MS. BROWN: No objection.

23 THE COURT: Submitted without objection.

24 (Dec 2007 audit report of Catholic Cemeteries was hereby
25 received in evidence as Defendant's Exhibit 355, as of this

1 date.)

2 MR. TRAINER: Thank you.

3 Q. Mr. Christian, what would happen to Cemeteries if it
4 permanently lost access to its funds in the pooled investment
5 account?

6 A. Unlike other ministries of the diocese, we can't simply
7 walk away from our cemeteries. So regardless of what happens,
8 in some way or form, we will do the best we can to maintain the
9 burial grounds of our faithful departed. Certainly if we lose
10 this money, it'll be a struggle and a very hard struggle. But
11 we will do the best that we can.

12 So I would not say that we would close our doors. We
13 can't do that because of the nature of what we do. But we
14 would have to march forward.

15 Q. What effect would it have on the endowed-care fund?

16 A. We would lose -- if we lost the endowed-care fund, we'd
17 have no money for the maintenance that was promised to our lot
18 owners.

19 Q. And it's your understanding that that promise is the
20 result of a statutory mandate by the State of Delaware?

21 A. Stat -- there is a statute. It's not clear if it applies
22 to not-for-profit, because the law was very ambiguous.

23 Q. Has Catholic Cemeteries always followed the requirements
24 of the law that funds be set aside for endowed care?

25 A. Yes. Since 1955.

1 MR. TRAINER: Thank you, Your Honor. I have no
2 further questions.

3 THE COURT: All right. Anything from the debtor?

4 MS. WALSH: No questions, Your Honor.

5 THE COURT: All right. Cross?

6 MS. BROWN: Good afternoon, Your Honor. Gillian Brown
7 of Pachulski Stang Ziehl & Jones on behalf of plaintiff, the
8 official committee of unsecured creditors.

9 CROSS-EXAMINATION

10 BY MS. BROWN:

11 Q. Good afternoon, Mr. Christian. Just a few questions for
12 you. You started working for Catholic Cemeteries in 1977. Is
13 that right?

14 A. That's correct.

15 Q. And at that time, were you on the board of trustees for
16 Cemeteries?

17 A. No, I was actually working in the field, as they say.

18 Q. So you did not become a member of the board of trustees
19 until 1996. Is that true?

20 A. That is correct.

21 Q. So isn't it also true that at the time the Cemeteries
22 first made a contribution to the pooled investment account, you
23 were not on the board during those discussions.

24 A. No, I was not.

25 Q. Did you or Cemeteries ever present the debtor with a trust

1 agreement for the debtor to execute with relation to the pooled
2 investment account?

3 A. No, we did not, not a formal trust agreement.

4 Q. You mentioned earlier that the monies that the Cemeteries
5 takes in after a sale goes to a segregated account before it
6 gets transferred to the endowed-care fund in the PIA. Is that
7 true?

8 A. Yes.

9 Q. When you say a segregated amount, what do you mean by
10 that?

11 A. We take the ten percent -- currently it's fifteen percent
12 of each sale. We write a check from our operating account and
13 transfer it to a savings account.

14 Q. So it's true to say then, that it was important that the
15 money that was -- the fifteen percent that goes to the endowed-
16 care fund, be preserved. Is that right?

17 A. That is correct.

18 Q. And in fact, it was so important that the Cemeteries
19 actually put it into a separate bank account from its general
20 operating account. Isn't that right?

21 A. That's correct.

22 Q. If I could ask you to turn to the binder that Mr. Trainer
23 was looking at with you earlier, Exhibit 312? And that's the
24 letter, I believe, that you wrote to Mr. Corsini at the
25 diocese, on or about December 11, 1998. Do you see that?

1 A. Yes.

2 Q. And I'm going to refer to the same paragraph that Mr.
3 Trainer was referring to. That's the second paragraph,
4 regarding the low rate of return. Is it true to say that
5 Cemeteries put the -- some of its funds, that is, not the
6 endowed-care funds, into PIA so it could increase its earnings
7 on those monies?

8 A. That's a true statement.

9 Q. Is it also true that there could be some risk in moving
10 those funds from a CD to the PIA?

11 A. Certainly there's risk.

12 Q. Does -- you mentioned earlier, actually, in response to
13 one of my questions that Cemeteries has a savings account. Is
14 that right?

15 A. Yes.

16 Q. When Cemeteries puts money into its savings account, does
17 Cemeteries have the intent that it will be able to withdraw
18 those funds from the savings account?

19 A. No.

20 Q. Why is that?

21 A. We reserve that money as a contribution to the endowment.

22 Q. Let me ask you about any other savings accounts, not for
23 the endowed-care. Does the Cemeteries have any other savings
24 accounts?

25 A. Yes.

1 Q. How many such savings accounts?

2 A. There are -- there's one other.

3 Q. And what's that account?

4 A. That's called operating reserve account.

5 Q. Where's the operating reserve account located?

6 A. Well, the liquid funds are in a savings account, and the
7 balance is in the pooled investment account.

8 Q. And which bank is the non-PIA aspect of those accounts in?

9 A. I believe it's WSFS. I'm not a hundred percent.

10 Q. Okay. With regard to that account that you think might be
11 at WSFS -- is that right?

12 A. Yes.

13 Q. Does Cemeteries consider the money it puts into that bank
14 account its money?

15 A. Certainly.

16 MS. BROWN: Thank you. I have no further questions
17 for this witness.

18 THE COURT: All right. Any redirect?

19 MR. TRAINER: No, Your Honor, not from the nondebtor
20 defendants.

21 THE COURT: All right. You may step down, sir.

22 THE WITNESS: Thank you.

23 THE COURT: Next witness.

24 MR. JENKINS: Your Honor, with the Court's permission,
25 the pooled investment participants call Patrick Donovan of the

1 Catholic Youth Ministry.

2 THE COURT: All right. Mr. Donovan?

3 (Witness is sworn)

4 THE CLERK: Please state and spell your name for the
5 record.

6 THE WITNESS: Patrick Donovan, D-O-N-O-V-A-N.

7 THE CLERK: Be seated.

8 MR. JENKINS: And, Your Honor, I think it probably
9 would make sense, as this time we have a small booklet, with
10 the Court's permission, if we could distribute that around?

11 THE COURT: Yes, please. Thank you.

12 MR. JENKINS: And I'll note for the Court's scheduling
13 purposes, we only have three exhibits in this booklet. I think
14 I'll be able to finish this in probably fifteen minutes or
15 less.

16 THE COURT: Okay. Thank you.

17 DIRECT EXAMINATION

18 BY MR. JENKINS:

19 Q. Mr. Donovan, can you tell us your present employment and
20 position?

21 A. I'm the executive director of Catholic Youth Ministry.

22 Q. What is Catholic Youth Ministry?

23 A. Our primary objective is to serve young people and the
24 adults who answer the call to serve them in the Diocese of
25 Wilmington.

1 Q. And what specifically does Catholic Youth Ministry do?

2 A. Primarily, we have training, workshops, large gathered
3 events that parishes can't do for themselves, diocesan events,
4 participation in national conferences. And we also have the
5 largest athletic league in the State of Delaware.

6 Q. And how many leagues -- how many sports?

7 A. I believe there are about a dozen leagues -- a dozen
8 different sports. One league, different sports, stretched
9 across fall, winter and spring, with about 6,800 athletes,
10 currently.

11 Q. In providing these services, does CYM work with the
12 various parishes that comprise the Diocese of Wilmington?

13 A. We do. We train the coaches, help screen the coaches and
14 manage the leagues for the parishes and schools.

15 Q. Now, could you tell the Court your professional
16 background?

17 A. I have a degree in communications and a masters in
18 theology. I was a junior high teacher and a high school
19 teacher, prior to coming to the Diocese of Wilmington.

20 Q. Okay. What is your title at CYM?

21 A. Executive director.

22 Q. Now, is CYM a doing-business-as title for Catholic Youth
23 Organization, Inc.?

24 A. It is. We were founded in 1932 as Catholic Youth
25 Organization, Inc. In 2000 we made the switch to change our

1 name to Catholic Youth Ministry to put the emphasis, rather
2 than on an organized gathering of young people, ministry to the
3 young people and the adults who serve them.

4 MR. JENKINS: And, Your Honor, I will be using the
5 terms CYM and CYO interchangeably. Technically, it is CYO Inc.
6 as the entity.

7 Q. Are you a member of the board of trustees of CYO Inc.?

8 A. I am.

9 Q. How long have you been executive director of --

10 A. Since July 15, 1999.

11 Q. And what is your general responsibilities as executive
12 director?

13 A. I manage the day-to-day operations of our staff, oversee
14 our services, oversee our financial budgeting, and help to
15 manage programs and services we provide.

16 Q. How does the CYM fund its charitable organizations --
17 excuse me, operations?

18 A. We are funded primarily through fees and associat -- fees
19 from the programs and services that we do. We also receive
20 funding from the Diocese of Wilmington, United Way, and a small
21 bit from the state granted aid.

22 Q. And do you get some from your pooled investment accounts?

23 A. And our pooled investments, we've been using as a
24 budgetary item to help meet the shortfall, in part because
25 can't ever tell how successful our events are going to be. So

1 we've always needed to include a line item drawn from our
2 pooled investments to make up that shortfall.

3 Q. Where did the CYM get the assets held in the pooled
4 investment account?

5 A. I don't know.

6 Q. Okay.

7 A. They predate me. They've been around for decades.

8 Q. Were they invested in the pooled investment account when
9 you arrived at the CYM?

10 A. They were, yes.

11 Q. Since you've been at the CYM, has it made any deposits
12 into its pooled investment accounts?

13 A. No, we have not.

14 Q. So money has only come out?

15 A. Correct.

16 Q. Could you turn in the booklet that you were given, to
17 Exhibit 378?

18 A. Yes.

19 Q. Do you see that? And could you tell us what Exhibit 378
20 is?

21 A. Our 2010 annual budget.

22 Q. Okay. Did you prepare this budget?

23 A. I did.

24 Q. Now, does the CYM typically incorporate draws from its
25 reserves held in the pooled investment account in the --

1 A. We do.

2 Q. -- okay. You have to let me finish, because we have this
3 recording and it's later going to be transcribed. It's hard
4 for the -- for people to do that. So let me finish the
5 question and then you can answer.

6 Is a draw from the subaccounts reflected in the 2010
7 budget?

8 A. It is.

9 Q. Okay. And how much is budgeted from the pooled investment
10 accounts?

11 A. For fiscal year 2010, 17,500.

12 Q. Okay. And can you point where that is on this exhibit?

13 A. In account 306350, about seven or eight lines down.

14 MR. JENKINS: I don't know if Your Honor --

15 THE COURT: I got it.

16 Q. How did you arrive at that figure, 17,500?

17 A. After we finished -- in the process of our budgeting, we
18 determined that we would be about that much short based on the
19 current estimates for athletic competitions, registrations, and
20 participation in our annual events.

21 Q. Okay. How much did the CYM budget from the invested
22 reserves in 2009?

23 A. 25,000.

24 Q. And have you budgeted for fiscal year 2011 yet?

25 A. We have.

1 Q. And how much have you budgeted for that year?

2 A. I believe it's 20,000 dollars.

3 Q. Now, do you believe you will need that money next year?

4 A. I do.

5 Q. Who performs the audits of the CYM's financial statements?

6 A. Belfint, Lyons & Shuman.

7 Q. Before I get there, let me remember --

8 MR. JENKINS: With the Court's permission, I'd like to
9 move the entry of Exhibit 378 into evidence.

10 THE COURT: Any objection?

11 MS. BROWN: No.

12 THE COURT: It's admitted without objection.

13 (CYM 2010 annual budget was hereby received in evidence as
14 Defendant's Exhibit 378, as of this date.)

15 MR. JENKINS: Thank you, Your Honor.

16 Q. How long has Belfint, Lyons & Shuman been your auditors?

17 A. I believe at least three years.

18 Q. Okay. Could you turn to Exhibit 367 and tell us what that
19 is?

20 A. This is our annual audit for year ending June 30, 2009.

21 Q. Now, if you could look at page -- it's a Bates number,
22 that's the number in the bottom right corner -- NPD01235. What
23 is represented on this page?

24 A. Our statement of financial position.

25 Q. And does it list the assets and liabilities of CYM?

1 A. It does.

2 Q. And does it list the pooled investments as an asset?

3 A. It does.

4 Q. And what is the amount of the asset listed for June 30,
5 2009, for the pooled investments?

6 A. 183,122 dollars.

7 Q. Do you know whether the 183,122 represented the total
8 assets held in the CYM's subaccounts on June 30, 2009?

9 MS. BROWN: Your Honor, I'm going to object to this
10 line of questioning as not being relevant. The witness has
11 testified that he was not at CYM at the time that it started
12 putting money into the PIA. It hasn't put any money into the
13 PIA since he's been at CYM. And therefore all the testimony
14 regarding what they're going to do with the money doesn't have
15 any bearing on what CYM's intent was when it entered into the
16 PIA.

17 MR. JENKINS: Actually, Your Honor, what I was just
18 asking here was is this his understanding of the amount of
19 money they had in the pooled investments accounts of the
20 estate. I think it's a yes or no. And I'm not sure the
21 objection goes to that at all.

22 THE COURT: All right. You're just trying to
23 establish what the balance is?

24 MR. JENKINS: I'm just trying to establish that this
25 document is correct, and then I'm going to ask to put it in

1 evidence, Your Honor.

2 THE COURT: I'll allow it for those purposes.

3 BY MR. JENKINS:

4 Q. As far as you know, is that number correct?

5 A. Yes.

6 Q. And did you have two subaccounts in the pooled investment
7 account?

8 A. Yeah.

9 MR. JENKINS: Your Honor, I would like to move the
10 admission of Exhibit 367 into evidence.

11 THE COURT: Any objection?

12 MS. BROWN: No, objection, Your Honor.

13 THE COURT: It's admitted without objection.

14 (CYM annual audit for year ending June 30, 2009 was hereby
15 received in evidence as Defendant's Exhibit 367, as of this
16 date.)

17 Q. Could you turn to the last of our exhibits, Exhibit 360?
18 What is Exhibit 360?

19 A. The funds statement for quarter ending 12/31/2008.

20 Q. And I think, as you go back, you'll find that there are
21 earlier dates as well?

22 A. Right.

23 Q. Are these your two different subaccounts CYO not
24 designated account and a --

25 A. Right.

1 Q. -- CYO designated?

2 A. Correct, yes.

3 Q. Do you receive these statements every quarter?

4 A. Yes, sir.

5 Q. Do you personally review these statements?

6 A. I do.

7 Q. Why does CYO receive these statements?

8 A. Because as executive director, it's my job to review the
9 statements for the money that we have on deposit with the
10 pooled investments.

11 Q. Do you have an understanding of who owns the assets held
12 in these subaccounts?

13 A. Yes.

14 Q. Who do you believe owns those assets?

15 A. Catholic Youth Organization, Inc.

16 Q. Has anyone ever told you otherwise?

17 A. No.

18 Q. Where did you get that understanding?

19 A. From my conversations when I first started, with officials
20 in the Catholic Diocese of Wilmington.

21 Q. Has CDOW Inc. -- during your tenure at CYM, has CDOW Inc.,
22 the debtor here, ever used the funds in the CYO subaccounts?

23 A. No.

24 Q. And what would happen to CYM/CYO if somehow the funds in
25 the pooled investment accounts were no longer available to it?

1 MS. BROWN: Objection, Your Honor. Relevance?

2 THE COURT: Overruled.

3 Q. You may answer.

4 A. Because they're part of our line item budget, we would
5 have to increase funds raised, either through increased
6 revenue, with programming and staff, increased fees, or we'd
7 have to reduce staff.

8 Q. Thank you, Mr. Donovan.

9 MR. JENKINS: Your Honor, I have no further questions.

10 THE COURT: All right. Thank you. Ms. Walsh?

11 MR. JENKINS: Oh, excuse me. I'm told that, Your
12 Honor, I forgot to move the last exhibit. I would, with the
13 Court's permission, move Exhibit 360 into evidence.

14 THE COURT: Any objection? It's admitted --

15 MS. BROWN: No, Your Honor.

16 THE COURT: -- without objection.

17 (CYM quarterly funds statements was hereby received in evidence
18 as Defendant's Exhibit 360, as of this date.)

19 MR. JENKINS: Okay. And I apologize, Your Honor.

20 THE COURT: It's all right. Ms. Walsh?

21 MS. WALSH: The debtor has not questions, Your Honor.

22 THE COURT: All right. Thank you. Cross?

23 CROSS-EXAMINATION

24 BY MS. BROWN:

25 Q. Good afternoon, Mr. Donovan. Just a few questions for

1 you. Were you present in any capacity at CYM when it started
2 putting its funds into the PIA?

3 A. No.

4 Q. Did you ever present the diocese with a copy of a trust
5 agreement relating to the funds in the PIA?

6 A. No.

7 Q. Does CYM currently have a savings account separate from
8 anything in the PIA?

9 A. No.

10 MS. BROWN: Thank you. That's all I have, Your Honor.

11 THE COURT: Thank you. Redirect?

12 MR. JENKINS: No, Your Honor.

13 THE COURT: You may step down.

14 Let's recess for lunch until 2 p.m.

15 (Recess from 12:48 p.m. until 2:09 p.m.)

16 THE CLERK: All rise.

17 THE COURT: Please be seated. Good afternoon.

18 IN UNISON: Good afternoon, Your Honor.

19 THE COURT: Next witness.

20 MS. PLATIA: May it please the Court. Good afternoon,
21 Your Honor. Toni-Ann Platia from Ashby & Geddes for the
22 nondebtor defendants. Our next witness will be Monsignor
23 Charles L. Brown.

24 THE COURT: All right.

25 (Witness is sworn)

1 THE CLERK: Please state and spell your name for the
2 record.

3 THE WITNESS: Charles, C-H-A-R-L-E-S, L. Brown,
4 B-R-O-W-N.

5 THE CLERK: Thank you.

6 DIRECT EXAMINATION

7 BY MS. PLATIA:

8 Q. Good afternoon, Monsignor.

9 A. Good afternoon.

10 Q. Can you please describe your services to the Diocese of
11 Wilmington?

12 A. I entered the seminary in 1959 and went to school at St.
13 Mary's College in Kentucky and Catholic University Washington
14 for the eight years. And then I was assigned -- ordained on
15 May 20, 1967 and was assigned to St. Matthews as an associate
16 in Woodcrest for four years, Immaculate Heart of Mary in
17 Liftwood for five years, and Holy Rosary in Claymont for five
18 years. And then in 1981 I was appointed pastor of St. Johns in
19 Milford; in 1986, St. Frances de Dales in Salisbury; 1998, at
20 St. Elizabeth Ann Seton in Bear, Delaware; and then in 2005, at
21 St. John the Beloved, where I am now.

22 Q. Thank you. And in February of this year, were you
23 recognized with a special honor?

24 A. Yes. His Holiness appointed me as a chaplain to His
25 Holiness, and that ceremony was just held last Sunday.

1 Q. Congratulations. Let's focus on St. John the Beloved.
2 Can you tell me the services that are provided by the parish?

3 A. We obviously do the religious services. We have a school
4 with almost 600 children in it, K to 8. We have religious
5 education program, CCD, with around 400 children in it. Youth
6 ministry program, with about 90 to 100 high school kids. We
7 have a large -- a very large athletic program. We have a
8 social ministry program called Parish Outreach. We have over
9 400 people that are on our list that come for food or clothing
10 during a month or a month and a half. And we support the St.
11 Vincent de Paul Society which helps people with their rent
12 or -- not so much food, but rent and electric bills and those
13 type of things. So it's a -- we try to cover everything.

14 Q. And you mentioned that St. John's operates a school.

15 A. Yes.

16 Q. What's the name of that school?

17 A. St. John the Beloved School -- Catholic School.

18 Q. And how many grades does it teach?

19 A. K to 8.

20 Q. And between the religious services and the social
21 services, how are those services funded?

22 A. The majority through the offertory collection that's taken
23 up on masses on Sunday; tuition for the school and tuition also
24 for the religious education programs. The athletic programs
25 were free to the parents, because of people volunteering to

1 work our carnival, which begins next week, Sunday -- or Monday,
2 rather. And but last year we had the rain day for three day so
3 they started charging for that. And the invest -- you know, we
4 draw down sometimes on the investments that we have -- not the
5 invest -- the savings that we have.

6 Q. As pastor of St. John the Beloved, are you responsible for
7 its finances?

8 A. Yes, yes.

9 Q. Do you have assistance from anyone else?

10 A. We have a business manager who does the day-to-day
11 operations and the parish finance council.

12 Q. Okay. And just so we're clear, because we had heard
13 testimony before about the diocesan finance council, is that
14 something different than the parish finance council?

15 A. Yeah, totally different. They have -- the diocesan
16 finance council works and advises the bishop, and the parish
17 finance council advises the pastors. They're not the same at
18 all.

19 Q. The St. John the Beloved parish finance council, what
20 types of professionals serve on your council?

21 A. We have three CPAs, a retired banker, a woman in real
22 estate and an investment counselor.

23 Q. Do you hold meetings?

24 A. Yes. We're supposed to do them every month. But we
25 usually take Christmas and the two months in the summer off, so

1 we meet about nine times a year.

2 Q. And how would you describe your relationship with the
3 parish finance council?

4 A. Very good. They're very supportive, very knowledgeable,
5 and help both the business manager and myself in doing what
6 we're called to do and maintain the financial integrity and
7 stability of our parish.

8 Q. Are you president of the finance council?

9 A. Yes.

10 Q. Can you give the Court some ideas of the responsibilities
11 of your parish finance council?

12 A. They are responsible for the -- overseeing the creation of
13 the budget and approve the final budget that we -- or at least
14 recommend to me the final budget that the parish operates on.
15 They approve and -- the final report, the annual report. They
16 publish the report for the parish. They oversee the collection
17 of the monies and the dist -- and the banking of the monies,
18 the process for that. They also oversee the bookkeeping and
19 make sure that everything -- all the funds that are spent go
20 through our parish books. And they also advise on the
21 investments that we place or the money that is in reserve.

22 Q. Okay. So your surplus investments, they advise you on?

23 A. Yes, they do.

24 Q. And that last responsibility, how does the parish finance
25 council meet that responsibility?

1 A. Well, they set up -- they determine where the money will
2 be going, what's the best way to invest the money to get the
3 most return. And since I've been there, they've changed some
4 of the places where we placed our money. Most of the time it
5 was in CDs. We have a checking account, savings account, CD.
6 We have Morgan Stanley investment. And we have invest --
7 investments, which I think is a money market type of fund. And
8 then the balance is the pooled investment account.

9 Q. So St. John the Beloved invests in the pooled investment
10 account?

11 A. Yes, we did.

12 Q. Can you give us an idea of how you interpret the pooled
13 investment account? How would you describe that account?

14 A. It's a fund that the diocese provides or manages that --
15 that parishes or any entity within the diocese can place its
16 money to be managed and receive a return, which tends to be
17 larger than you can get on any other situation.

18 Q. And do the parish and other participants that invest in
19 the account have their own subaccounts?

20 A. Oh, yes. We have our accounts for -- we actually have two
21 separate accounts: one for the parish and one for the
22 development fund for the school, which is our endowment fund
23 for the school.

24 Q. And does the diocese charge for its services?

25 A. No.

1 Q. When did St. John the Beloved begin investing in the
2 pooled investment account?

3 A. I think it was in 2007, we began.

4 Q. You mentioned that St. Johns has two subaccounts. Can you
5 describe -- I think you also mentioned that one is for the
6 parish, one is for the school?

7 A. Yes, correct.

8 Q. Can you describe those in a little more detail?

9 A. We had raised money through diocesan-sponsored Bring a
10 Division to Life campaign, which was for -- I wasn't there with
11 the parish when they raised the money. I've spent a lot of it
12 on various improvements in the buildings of the parish. But we
13 had some left over and I wanted to put that in reserves in case
14 there was an emergency or a problem that would arise that we
15 didn't know -- you know, that we didn't prepare for. And so we
16 put 200,000 dollars in an account for the parish.

17 And the school development fund, we put 100,000 dollars in
18 of the school development fund, which was money raised by the
19 parents in a phone-a-thon and fundraisers to create an
20 endowment fund.

21 Q. And how did the parish reach that decision to invest in
22 the pooled investment account?

23 A. Well, I was the one that brought it up to the finance
24 council. I had been on the board for the Catholic Diocese
25 Foundation, and at the time was knowledgeable about how the

1 pooled investment account worked, and asked whether parishes
2 could invest in it, because they certainly were making a very
3 good return on the money, and was told yes, that we could, and
4 set up our own accounts.

5 And so when I went to St. John's, I mentioned it to the
6 finance council that we could do better than what we were doing
7 on some of the fund. And I asked Mr. Corsini to send the --
8 sort of a packet that explained the investments, the
9 counselors, or the investment companies that we used, the
10 return and that type of thing. And they accepted my
11 recommendation -- it was the other way around, this time -- and
12 decided to invest some of our money with those accounts.

13 MS. PLATIA: Your Honor, we have witness binders for
14 this witness. May we approach?

15 THE COURT: Yes. Thank you.

16 THE WITNESS: Thank you.

17 Q. Monsignor, can you turn to Exhibit 288, please?

18 A. I have it.

19 Q. Okay. And you just spoke a moment ago about materials
20 that were provided by Mr. Corsini. Are these the materials?

21 A. Yes, they are.

22 Q. What types of information does Exhibit 288 contain?

23 A. They speak about investment considerations when you're
24 making the decision; parish accounting manual requirements.
25 They talk about the diocesan investment program, the

1 performance summary in 2006, historical investment manager
2 returns, the investment projections, and the manager profiles.

3 Q. If you could turn to the third page of these materials?

4 It's marked as NDP00954.

5 A. Yes.

6 Q. And if I could focus your attention, under the first --
7 under "Oversight", the first bullet point?

8 A. Right. "The parish finance council."

9 Q. Yes. Thank you. What sort of oversight does your parish
10 finance council have over the pooled investment account?

11 A. They receive the quarterly reports and basically analyze
12 them and just watch what they're doing with our money.

13 Unfortunately it's going down rather than up because of the
14 finances of the country.

15 Q. And do they have -- do they advise you on whether to make
16 deposits or withdrawals from the account?

17 A. They haven't. But, I mean, they can. They could either
18 way. We've left it in. Because we've lost money, we want to
19 at least get it to where it was.

20 Q. At the time that the parish finance council made the
21 decision to invest in the pooled investment account, did anyone
22 at the diocese or otherwise indicate that St. John the Beloved
23 was required to participate?

24 A. No, no, no.

25 Q. And as president of the finance council and pastor of the

1 parish, did you believe that St. John's was required to
2 participate?

3 A. No, it was not.

4 Q. What was your understanding?

5 A. That it was a -- it was a fund that was available to
6 parishes to voluntarily participate in if they so chose, under
7 the -- you know, with the direction of the finance council or
8 at least the approval of the finance council of the parish.
9 But it was totally free on the parish's part.

10 Q. And when you say the finance council, you mean the parish
11 finance council?

12 A. Parish finance council.

13 Q. Okay. Do you know whether all the parishes in the Diocese
14 of Wilmington participate in the account?

15 A. To my knowledge they don't -- the majority don't.

16 Q. And why not, if you know?

17 A. Most of the parishes don't have a lot of excess funds to
18 be able to contribute or to put in there for investments.

19 Q. What do you think --

20 A. That's my opinion.

21 Q. -- thank you. What do you think some of the advantages
22 are to participating in the pooled investment account?

23 A. The biggest thing is, is you don't have to have a whole
24 lot of money to put in to get a very large return. Because
25 it's pooled, they're able to have very topnotch investment

1 counselors and companies put the money to work for the whole
2 group, and in participating in that, we got the return on that
3 that was much larger than we would have gotten otherwise. So
4 you have very, very knowledgeable investment counselors and
5 companies that do that, and that the oversight from the diocese
6 and the finance council was acceptable to our parish finance
7 council.

8 Q. Okay. Let's go back to 2007 for a moment. You mentioned
9 earlier that the parish invested 200,000 in the parish account?

10 A. Right.

11 Q. If you could turn to Exhibit 347, please?

12 A. I have it.

13 MS. PLATIA: Your Honor, I apologize. We'd like to
14 move Exhibit 288 into evidence, please.

15 MS. BROWN: No objection, Your Honor.

16 THE COURT: It's admitted without objection.

17 (Information packet re PIA provided by Mr. Corsini to St. John
18 the Beloved finance council was hereby received in evidence as
19 Defendant's Exhibit 288, as of this date.)

20 MS. PLATIA: Thank you.

21 Q. Okay. Back to Exhibit 347. Can you tell us what that is?

22 A. It's a check written out to the Diocese of Wilmington from
23 St. John the Beloved Church, signed by myself, for investment
24 into the diocese and development fund.

25 Q. And why did you remit this check to the Diocese of

1 Wilmington?

2 A. That was the vehicle by which we got the money from our
3 banking account into the investment -- into the pooled
4 investment account.

5 Q. And if you could turn to the next page of the exhibit?

6 A. This is the statement from February 1st, '07 through
7 February 28th, '07.

8 Q. And in looking at this statement, can you tell us how much
9 money does it say that the church withdrew from its account in
10 February 2007?

11 A. I don't see anything on this one.

12 Q. If you --

13 A. Flip the page?

14 Q. -- yes, I'm sorry.

15 A. I'm sorry. Okay. Two pages. Withdrawal of 200,000
16 dollars.

17 Q. And what was that for?

18 A. That was the money that we put into the -- the diocesan
19 pooled investment account.

20 Q. And you mentioned earlier that in 2007 you also invested
21 100,000 into the St. John the Beloved school's subaccount?

22 A. Right.

23 Q. If we could turn to Exhibit 346?

24 MS. PLATIA: Before we do that, if I may move Exhibit
25 347 into evidence, please?

1 MS. BROWN: No objection, Your Honor.

2 THE COURT: It's admitted without objection.

3 (Documents re St. John the Beloved parish deposit to Diocese of
4 Wilmington PIA were hereby received in evidence as Defendant's
5 Exhibit 347, as of this date.)

6 MS. PLATIA: Thank you.

7 Q. Can you tell us Exhibit 346, please?

8 A. It's a check from our development fund checking account to
9 the Diocese of Wilmington for 100,000 dollars, also signed by
10 me, check 700.

11 Q. And why did you remit this check to the Diocese of
12 Wilmington?

13 A. For the same reason, to have -- for them to transfer it
14 into the pooled investment account.

15 Q. Okay. For the school's subaccount?

16 A. For the school's subaccount, yes.

17 Q. And if you could turn to the next page of this exhibit.

18 A. I have it.

19 Q. And what is this?

20 A. This is the monthly report from the checking account
21 giving the activity for that month from January 27, 2007 to
22 February 23, 2007.

23 Q. And if we look towards the bottom of the page under the
24 heading "Checks" --

25 A. Checks. There's one for -- check number 700 indicates

1 that 100,000 dollars was transferred on February the 12th.

2 Q. And what was that for?

3 A. That was for the school development fund subaccount in the
4 diocesan pooled account.

5 Q. Thank you.

6 MS. PLATIA: At this time, I'd like to move for the
7 admission of Exhibit 346 into evidence.

8 THE COURT: Any objection?

9 MR. BROWN: We are a little confused --

10 MS. BROWN: No, Your Honor.

11 MR. BROWN: -- in our binder.

12 MS. BROWN: We just lost --

13 THE COURT: I'm sorry?

14 MS. BROWN: No objection, Your Honor.

15 THE COURT: Okay. 346 -- is that what we were on?

16 MS. PLATIA: Yes.

17 THE COURT: It's admitted without objection.

18 (Documents re St. John the Beloved parish deposit to Diocese of
19 Wilmington PIA were hereby received in evidence as Defendant's
20 Exhibit 346, as of this date.)

21 MS. PLATIA: Thank you.

22 Q. Monsignor, can you turn to Exhibit 352?

23 A. I have it.

24 Q. What is Exhibit 352?

25 A. This is a copy of our parish financial report -- annual

1 report for the fiscal year ending 2007.

2 Q. Okay. You mentioned earlier that the parish finance
3 council generally reviews this report?

4 A. Yes, they do.

5 Q. Did you review this report?

6 A. Yes, I did. I signed it.

7 Q. Thank you. If you could turn to the third page of the
8 financial report, it's marked as NDP00978?

9 A. Okay. I have it.

10 Q. What is represented on this page?

11 A. This is the balance sheet from June 2007.

12 Q. And are the parish's and the school's pooled investments
13 identified on the balance sheet?

14 A. Yes, they are.

15 Q. How is --

16 A. We have number 1166 says "Diocese investment church." And
17 it shows 206,963.24, and 1168 account number "Diocese
18 investment the school development fund" is 103,482 dollars.

19 Q. And how are they identified on the balance sheets?

20 A. They are assets -- current assets, assets of the parish.

21 Q. Thank you. In 2008 -- this was fiscal year 2007 --

22 A. Correct.

23 Q. -- in 2008 were the school and the parish's pooled
24 investments identified on the balance sheet as assets?

25 A. Yes, they were.

1 Q. And how about in 2009?

2 A. The same.

3 MS. PLATIA: At this time I'd like to move for the
4 admission of Exhibit 352 into evidence.

5 MS. BROWN: Your Honor, may I just have a second to
6 look through the remainder of the exhibit?

7 THE COURT: Yes.

8 (Pause)

9 MS. BROWN: No objection, Your Honor.

10 THE COURT: Admitted without objection.

11 (St. John the Beloved parish financial report for 2007 was
12 hereby received in evidence as Defendant's Exhibit 352, as of
13 this date.)

14 Q. Monsignor, can you turn to Exhibit 361 in your binder?

15 A. Um-hum. I have it.

16 Q. Okay. And what is Exhibit 361?

17 A. This is the fund statement for the quarter ending December
18 31, 2009, from the diocese pooled investment account. It's St.
19 John the Beloved Parish's results or fund -- the parish fund.

20 Q. Does this exhibit also include statements from other
21 quarters as well?

22 A. No --

23 Q. Maybe if you can turn the page please?

24 A. Oh, yes. I'm sorry, yes. From the quarter ending
25 September and the quarter ending June. So it goes -- every

1 quarter we receive a report on our investment.

2 Q. Thank you. And as of December 2009, how much money was in
3 the parish's account?

4 A. Unfortunately only \$187,553.10 on our \$200,000 investment.

5 Q. And you mentioned that the parish receives these statement
6 every quarter?

7 A. Quarter, right -- correct.

8 Q. Does the school's subaccount also receive these statements
9 every quarter?

10 A. Yes, they do.

11 Q. If you --

12 MS. PLATIA: May I move for the admission of Exhibit
13 361 into evidence?

14 MS. BROWN: No objection, Your Honor.

15 THE COURT: It's admitted without objection.

16 (St. John the Beloved quarterly reports re PIA fund was hereby
17 received in evidence as Defendant's Exhibit 361, as of this
18 date.)

19 Q. If we could also turn to Exhibit 362?

20 A. I have it.

21 Q. Are these the quarterly statements for the school's
22 subaccount that you mentioned?

23 A. Yes, they are. The SDF stands for school development
24 fund.

25 Q. How much money was in the school account as of December

1 31, 2009?

2 A. \$93,776.52.

3 Q. Why does St. John the Beloved receive these statements?

4 A. Because it's our money that they're reporting on. It's
5 the parish's money, it's the school's money that they're
6 reporting on back to us on their investment activity.

7 Q. Thank you. And has it always been the intent of St. John
8 the Beloved that these funds held in the pooled investment
9 account would be its property?

10 A. Certainly.

11 Q. Did the diocese ever use these funds?

12 A. Not to my knowledge, no.

13 Q. Were they ever intended to be used by the diocese?

14 A. No.

15 Q. Sorry, the debtor?

16 A. No.

17 Q. Okay.

18 A. Either one.

19 Q. If St. John the Beloved wanted to withdraw money from this
20 account, could the diocese or the debtor restrict?

21 A. No.

22 Q. Why not?

23 A. The agreement was, it's our money and that any time that
24 we wanted it back we could just let them know -- let Mr.
25 Corsini know -- and they would write us a check and we would

1 receive our money.

2 MS. PLATIA: May I move for the admission of Exhibit
3 362 into evidence?

4 MS. BROWN: No objection, Your Honor.

5 THE COURT: It's admitted without objection.

6 (St. John the Beloved school development fund quarterly reports
7 re PIA was hereby received in evidence as Defendant's Exhibit
8 362, as of this date.)

9 Q. At this time, I'm just going to switch gears on you a
10 little bit.

11 A. Okay.

12 Q. And earlier in your testimony you mentioned that prior to
13 your time at St. John the Beloved, you were a pastor at St.
14 Francis de Sales. Is that right?

15 A. Correct. From 1986 to 1998; twelve years.

16 Q. Do you know whether St. Francis de Sales invests in the
17 pooled investment account?

18 A. They were when I was there. I put money into the account.

19 Q. So the first time St. Francis de Sales decided to invest
20 in the pooled investment account was --

21 A. Was when I was there. I think it was towards the end of
22 my term there, about 1997 or so.

23 Q. And how did they come to -- how did St. Francis de Sales
24 come to invest in the pooled investment account?

25 A. Again, because I was on the Catholic Diocese Foundation

1 board at the time, was when I found out that, you know, that we
2 could participate in it. We did have some money in our
3 endowment fund for the school and for the parish that I wanted
4 to help -- wanted to grow. And I brought it up to the parish
5 finance council and asked Mr. Corsini to come down to talk to
6 them about it, because this was something that was new to me
7 and also would be new to them also. And Mr. Corsini did come
8 down.

9 Q. Okay. Thank you. If we could turn to Exhibit 144,
10 please?

11 A. I have it.

12 Q. What is Exhibit 144?

13 A. It's the minutes of a meeting in September, I believe,
14 1997, of the finance council.

15 Q. Does this -- does the finance council meet regularly?

16 A. They also meet about nine times a year. They were meeting
17 nine times a year when I was there.

18 Q. Is it the regular practice of the finance council to keep
19 minutes of its meetings?

20 A. Yes, it is.

21 Q. And are these minutes prepared around the time that the
22 meeting would take place?

23 A. Just afterwards, yes.

24 Q. Do you recall being present at this particular meeting?

25 A. I was.

1 Q. Do you know what occurred at this meeting?

2 A. Mr. Corsini came down to make the presentation. He
3 brought the same documents that we had -- that he sent to St.
4 John the Beloved. And he also spoke about the opportunities
5 for the investment, the different investment counselors and the
6 fact that you could make your own decisions about how you
7 wanted to invest the money. So that's reflected in here.

8 Q. Do you recall whether Mr. Corsini distributed any material
9 to the --

10 A. He did, the same type of materials that he distributed to
11 St. John's in the earlier exhibit.

12 Q. And at this meeting, did the parish finance council
13 approve the investment into the pooled investment account?

14 A. Yes. They also decided how they wanted to do the equity
15 and make the mix and the split, which is more than we did in
16 St. John the Beloved.

17 Q. And is that decision on the allocation of their
18 investments reflected in these minutes?

19 A. It is.

20 Q. And do you know whether St. Francis de Sales set up
21 subaccounts similar to St. John's?

22 A. They did. There was two separate accounts: one for the
23 school development -- school endowment; and the other one was
24 for the parish itself -- parish money itself.

25 Q. Is that reflected in these minutes?

1 A. Yes, it is. It mentions that they -- 75,000 dollars was
2 for the endowment fund and 50,000 dollars for the parish.

3 Q. And at the meeting, was there also a discussion regarding
4 the availability of your funds for purposes of withdrawal?

5 A. Yes. The -- it says that money would be available when
6 needed at the rate of -- at the time of the withdrawal. So you
7 could take it out, basically, any time you wanted.

8 Q. And at this meeting, was there also a discussion regarding
9 separate accounting?

10 A. Yes. That it is possible, and that's what they did. They
11 have the two different funds.

12 MS. PLATIA: At this time, I'd like to move into
13 evidence Exhibit 144.

14 MS. BROWN: No objection.

15 THE COURT: It's admitted without objection.

16 (Minutes of St. Francis de Sales finance council meeting 9/1997
17 was hereby received in evidence as Defendant's Exhibit 144, as
18 of this date.)

19 Q. Monsignor, if you could turn to Exhibit 306, please?

20 A. I have it.

21 Q. And what is Exhibit 306?

22 A. It's the minutes for the devel -- St. Francis de Sales
23 development committee on October 8, 1997.

24 Q. Were you present at this meeting?

25 A. I was.

1 Q. I'd like to focus your attention towards the bottom of the
2 first page.

3 A. Um-hum.

4 Q. There was some discussion regarding the community fund.
5 Do you see that?

6 A. Yes.

7 Q. At this meeting, was there a discussion regarding the
8 transfer of funds?

9 A. Yes. We had initially put money in the Eastern Shore -- I
10 forget the name -- it's a community development fund, because
11 we were in Salisbury and we wanted to support the communi --

12 THE COURT: Hit the button --

13 THE WITNESS: Oh, I'm sorry. I --

14 THE COURT: There you go.

15 THE WITNESS: -- thank you.

16 THE COURT: You're welcome.

17 A. -- we also wanted to support the community. But when we
18 found out about the availability of the diocesan pooled
19 investment account, and the fact that it was making a larger
20 return, that's when the finance council decided to transfer the
21 funds from one -- most of the funds from the community
22 foundation into the diocesan investment account.

23 Q. And you mentioned that was because they were earning a
24 higher return?

25 A. The diocesan was a higher return on the investment.

1 Q. Did anyone at this meeting express concern regarding who
2 would have access to these funds once they were transferred?

3 A. Yes. One of the members, Betsy Hughes, was concerned
4 about -- with the revisions, whether we would actually have
5 access to that money. And I made it clear that, you know, as
6 pastor -- and I have the authority to withdraw and to see how
7 the -- where the money was spent. With the development
8 committee, we made it very clear that it was just for the
9 school, unless the school ceased to exist, but that the
10 development committee would have the responsibility for
11 determining where the money went. So she was concerned whether
12 that still held. And it did -- it does.

13 Q. And you told her that at the meeting?

14 A. Definitely.

15 Q. What exactly do the minutes state as to what you told her?

16 A. "Father Brown said that the pastor had ultimate authority
17 over how the money was spent."

18 Q. Thank you. And if the pastor had ultimate authority over
19 those funds, could the debtor have restricted its use in any
20 way?

21 A. No.

22 Q. Could it have used those funds for its own purposes?

23 A. No.

24 MS. PLATIA: At this time, I'd like to move for the
25 admission of Exhibit 306 into evidence.

1 THE COURT: Any objection?

2 MS. BROWN: No objection, Your Honor.

3 THE COURT: It's admitted without objection.

4 (Minutes of St. Francis de Sales development committee 10/1997
5 was hereby received in evidence as Defendant's Exhibit 306, as
6 of this date.)

7 MS. PLATIA: At this time, I have no further
8 questions.

9 THE COURT: All right. Thank you.
10 Debtor?

11 MS. WALSH: No questions of this witness, Your Honor.

12 THE COURT: All right. Cross?

13 CROSS-EXAMINATION

14 BY MS. BROWN:

15 Q. Good afternoon, Monsignor.

16 A. Hi.

17 Q. I'm going to talk first about St. John the Beloved, and
18 then we'll talk second --

19 A. Sure.

20 Q. -- about the other parish at which you worked. In 2007,
21 did St. John the Beloved ask the debtor to enter into a trust
22 agreement with regard to the PIA?

23 A. No, we did not.

24 Q. And any time since then has St. John the Beloved asked the
25 debtor to enter into a trust agreement with regard to the PIA?

1 A. No, we did not.

2 Q. Am I correct that when the St. John the Beloved put funds
3 into the PIA, some of those funds were in CDs beforehand?

4 A. I don't rem -- no, I wrote a check -- I don't know exactly
5 where they came from. We had -- we had CDs. We had some
6 pooled -- some money market funds. So I don't know exactly
7 where they were from.

8 Q. Let me turn your attention to the binder that Ms. Platia
9 was working with, with you; the tab marked 346?

10 A. Okay, yes.

11 Q. So it appears that at the time of this check dated
12 February 7, 2007, the St. John the Beloved parish had a
13 checking account at First Union. Is that right?

14 A. Correct.

15 Q. And am I correct to presume that at the time you signed
16 this check that the checking account had sufficient funds to
17 cover the check?

18 A. It did, it did.

19 Q. Did St. John the Beloved believe that the funds that were
20 in the First Union account for which it was writing this check,
21 were funds that belonged to St. John the Beloved?

22 A. Definitely. Specifically to the school development fund.

23 Q. If you would turn the page, there's a bank statement from
24 Wachovia. Do you see that?

25 A. Correct. Yes.

1 Q. And is it correct that at the time that St. John the
2 Beloved had the funds indicated in these -- in the account on
3 this Wachovia statement that St. John the Beloved believed that
4 those funds belonged to St. John the Beloved?

5 A. Definitely. And again, that specific checking account was
6 for the school development fund.

7 Q. The reason -- one of the reasons that the parish St. John
8 the Beloved moved funds into the PIA was in order to get -- to
9 do better, I believe you said. Is that right?

10 A. Correct.

11 Q. And by do better, you meant to get a larger return on the
12 money?

13 A. Larger return on the investment, correct.

14 Q. I'm sorry?

15 A. A larger return on the investment.

16 Q. And in order to get a larger return on investment, that
17 would entail the parish taking some sort of risk. Isn't that
18 right?

19 A. Correct. As obvious from the statements.

20 THE COURT: I'm sorry to say, I've seen worse.

21 THE WITNESS: Sorry about that. PIA does well.

22 Q. Monsignor, may I ask you to turn to tab 288 in the binder
23 that you have in front of you?

24 A. Okay.

25 Q. If I rightly recall, this exhibit at Trial Exhibit 288,

1 contains information that Mr. Corsini provided to St. John the
2 Beloved in or about 2007. Is that right?

3 A. Correct.

4 Q. On the second page of Trial Exhibit 288, the Bates stamp
5 at the bottom right-hand says NDP00953. Do you see that?

6 A. Yes, I do.

7 Q. Where on this page do you see reference to a beneficial
8 ownership?

9 A. What do you mean by that?

10 Q. Do you see a reference to the term beneficial ownership
11 anywhere on this page?

12 A. I'll have to read it.

13 (Pause)

14 A. No, I do not.

15 Q. I'm going to now turn our attention to St. Francis de
16 Sales.

17 A. Um-hum.

18 Q. Would you remind me what years you were pastor at that
19 parish?

20 A. 1986 to 1998.

21 Q. If I may, would you look at tab 144 of the binder in front
22 of you?

23 A. Um-hum.

24 Q. That's Trial Exhibit 144.

25 A. I have it.

1 Q. Who took down these minutes of the finance council at St.
2 Francis de Sales parish?

3 A. From the writing, it looks like it was Mary Beers (ph.),
4 who was our business manager.

5 Q. And did Ms. Beers normally take accurate minutes?

6 A. Yes.

7 Q. Do you see anything in these finance council notes about
8 St. Francis de Sales retaining an ownership interest in monies
9 that it put into the PIA?

10 A. Not in the minutes. But it's assumed because it's the
11 parish money.

12 Q. If I can ask you to turn to tab 306, that's Trial Exhibit
13 306 in the binder?

14 A. I have it.

15 Q. You made reference to money that was in a community fund.
16 What is that community fund, or what was it?

17 A. It still is. It's the -- it's sort of like a pooled
18 investment account, also, for Salisbury -- in the Salisbury
19 area. The individuals or groups, organizations, can put --
20 invest their money in the community development fund. You have
21 your separate account. And they pool the money together, doing
22 the same thing, invest it, and keep track of your own accounts.
23 And every once in a while, somebody, especially the very
24 wealthy will say -- they do a distribution in the -- within the
25 community investment. So it was another way of -- besides the

1 investment money, getting money that was donated to all the --
2 all of the investors.

3 Q. When St. Francis de Sales opted to move some of its money
4 from the community fund --

5 A. Right.

6 Q. -- into the PIA, was that done also to increase the rate
7 of return on that money?

8 A. Yes, yes.

9 Q. And at that time, did St. Francis de Sales understand that
10 it would be incurring some sort of risk in moving the money in
11 order to get a higher rate of return?

12 A. It was the same risk, because they were also investing in
13 the stock market -- the community foundation.

14 Q. At the last page of Trial Exhibit 306 it has a Bates
15 number on the bottom right-hand NDP05601.

16 A. Yes.

17 Q. This is -- I'm going to refer to the same clause that you
18 discussed with Ms. Platia on your direct examination. It's
19 true that you said that the pastor of St. Francis de Sales had
20 ultimate authority over how money was spent in the PIA. Is
21 that right?

22 A. Correct.

23 Q. Were you here earlier in the courtroom when there was
24 testimony from Monsignor Cini regarding the diocese oversight
25 of funds that parishes spent?

1 A. Yes.

2 Q. Do you agree with Mr. Cini's representation that the
3 Diocese of Wilmington actually could determine whether or not
4 the parish can spend certain funds?

5 A. Yes, because of the fact of we have the -- we need
6 permission to spend anything over 25,000 in the parish.

7 MS. BROWN: Thank you. That's all I have, Your Honor.

8 THE COURT: Redirect?

9 MS. PLATIA: Just very briefly.

10 REDIRECT EXAMINATION

11 BY MS. PLATIA:

12 Q. Monsignor, do you need permission to withdraw from the
13 pooled investment account? Do you need permission from the
14 debtor to withdraw from the pooled investment account?

15 A. No.

16 Q. Do you need permission from Monsignor Cini?

17 A. No.

18 Q. Thank you.

19 MS. PLATIA: No more questions, please.

20 THE COURT: Thank you. You may step down, sir.

21 THE WITNESS: Thank you.

22 THE COURT: And the next witness. Mr. Jenkins?

23 MS. PLATIA: Your Honor, at this time we'd like to
24 call Reverend Edward M. Aigner.

25 THE COURT: Of course. Thank you. Sorry. I saw Mr.

1 Jenkins rise.

2 (Witness is sworn)

3 THE CLERK: Please state and spell your name for the
4 record.

5 THE WITNESS: Edward, E-D-W-A-R-D, middle initial M,
6 as in Michael, Aigner, A-I-G-N-E-R, Junior.

7 DIRECT EXAMINATION

8 BY MS. PLATIA:

9 Q. Good afternoon, Father Aigner.

10 A. Hello.

11 Q. Can you describe your service to the Diocese of
12 Wilmington?

13 A. A priest of the Diocese of Wilmington. I serve in
14 parishes currently in St. Francis De Sales in Salisbury,
15 Maryland.

16 Q. And how long have you been at St. Francis De Sales?

17 A. Twelve years.

18 Q. Can you tell me a little bit about the services provided
19 by St. Francis?

20 A. We're a large parish to 2,500 families. We have a school,
21 K-8 grades, a large campus ministry, a large area, two
22 churches, a major medical center, nursing homes, all the full
23 range of parish activities.

24 Q. Thank you. How does St. Francis fund all of these
25 services?

1 A. Mostly through weekly contributions.

2 Q. How about the school?

3 A. The school, families pay tuition and they get a subsidy --
4 an annual subsidy from the parish about close to a quarter of a
5 million a year.

6 Q. As pastor of St. Francis are you responsible for its
7 finances?

8 A. Yes.

9 Q. And do you have assistance from anyone else?

10 A. On staff we have a business manager and, as has been
11 mentioned, we also have finance counsel.

12 Q. We just heard Monsignor Brown testify earlier regarding
13 the responsibilities of the St. John the Beloved Parish Finance
14 Council. You were here for that testimony.

15 A. Yes.

16 Q. Would you agree with his testimony with respect to the
17 role of the St. Francis Parish Finance Council?

18 A. Yes. The role and the makeup and the times of meetings.

19 Q. And would his description of the Parish Finance Council
20 apply equally to the St. Francis Finance Council? Thank you.

21 Are you also president of your Parish Finance Council?

22 A. The answer was yes. I'm sorry I didn't wait till the end
23 of the --

24 Q. Thank you. Are you president of your Parish Finance
25 Council?

1 A. Yes.

2 Q. We also learned from Monsignor Brown that as former pastor
3 of the St. Francis De Sales he participated in the parish's
4 decision to investment in the pooled investment account. Were
5 you here for that?

6 A. Yes.

7 Q. Does Monsignor Brown's testimony regarding the initial
8 setup of the parish and the schools' subaccounts of the pooled
9 investment account reflect your understanding of --

10 A. Yes.

11 Q. -- how these accounts -- okay. Thank you. Could you
12 just give us a little bit more detail about the parish and the
13 school's subaccount of St. Francis De Sales?

14 A. Could you repeat that?

15 Q. I'm just looking for some more detail on each of those
16 accounts.

17 A. Each of those accounts. The pooled account and --

18 Q. Yes, I'm sorry. Monsignor Brown testified that in 1997
19 St. Francis De Sales established a parish account as well as a
20 school account, both of which were held in the pooled
21 investment account.

22 A. Right now we only have the school account there, but there
23 was a time we had two accounts, one for the parish and one for
24 the school.

25 Q. Okay. And at the time when you had the parish account

1 what was that account used for?

2 A. We had to withdraw the money for some needed repairs to
3 fire safety equipment in the school and to put a sprinkler
4 system in.

5 Q. Before you withdrew the money what did you use? Was that
6 just more of a savings account then?

7 A. Yes. That was a savings account --

8 Q. Okay.

9 A. -- for the parish.

10 Q. And you mentioned that subsequent to 1997 the parish
11 eventually withdrew -- was it all of the money from the parish
12 account?

13 A. From the parish account, yes.

14 Q. And you stated that that was a result of some fire safety
15 issues?

16 A. Yes. Some things needed to be done for bringing the
17 school up to code, the sprinkler system.

18 Q. And, so, today the St. Francis De Sales has just one
19 subaccount, and that's for the school?

20 A. Yes.

21 Q. Okay. Thank you. How much money is currently in this
22 school's subaccount in the pooled investment account?

23 A. It's in the neighborhood of 100,000 dollars.

24 Q. And for what purpose do you use this money?

25 A. It's the school endowment fund. We spend a certain

1 percentage of the interest, and it's also there for emergencies
2 and things that need to be done at the school that we don't
3 have the funds for.

4 Q. Would you say this represents most of the school's
5 savings?

6 A. That is the school's savings.

7 Q. You mentioned that St. Francis had liquidated the parish's
8 funds that were held in the pooled investment account. Do you
9 know when that was?

10 A. Maybe five or six years ago. I don't recall exactly.

11 Q. And at that time when you did liquidate the account did
12 you seek the permission of the Diocese, or the debtor, to
13 liquidate that account?

14 A. I think we just asked for it and received it.

15 Q. And when you told the Diocese that you wanted to liquidate
16 the account do you recall whether anyone questioned your
17 decision to do so?

18 A. No.

19 Q. Other than the initial funding of the -- now, I'll focus
20 on the school's subaccount. Other than the initial funding of
21 that account has St. Francis deposited additional money?

22 A. I'm not sure.

23 Q. Okay.

24 MS. PLATIA: Your Honor, I also have witness binders
25 for this witness. May I approach, please?

1 THE COURT: Yes. Thank you.

2 Q. Father, if you could turn to Exhibit 317 in the binder.
3 It's not the first one. The second one, please. And I'll ask
4 you, what procedures does the parish generally follow when
5 making an investment into the pooled investment account?

6 A. Normally we send a check to the Diocese with a letter.

7 Q. A letter. Would the letter be similar to that here in
8 Exhibit 317?

9 A. Yeah, that's a copy of one.

10 Q. And at the bottom of this letter -- what is here at the
11 bottom of this letter?

12 A. It's a check made out to the Diocese. February '01, for
13 investment.

14 Q. And in your letter here at Exhibit 317 what are you
15 telling -- I'm sorry. Who did you send this letter to?

16 A. Our business manager sent it to Mr. Corsini.

17 Q. And what did your business manager tell Mr. Corsini in
18 this letter?

19 A. "Please invest this money according to the investment
20 guidelines that were established when the fund was set up
21 originally."

22 Q. And does Exhibit 317 generally reflect the procedures that
23 you follow in making a deposit into the pooled investment
24 account?

25 A. Yes, that's the procedure.

1 Q. Okay.

2 MS. PLATIA: This time I'd like to move for the
3 admission of Exhibit 317 into evidence.

4 MS. BROWN: No objection, Your Honor.

5 THE COURT: It's admitted without objection.

6 (Check and letter sent to Diocese 2/28/01 were hereby received
7 as NDP's Exhibit 317 for identification, as of this date.)

8 Q. Father, if you could turn to Exhibit 339. What is Exhibit
9 339?

10 A. It's our annual financial report to the Diocese.

11 Q. For what year?

12 A. 2005.

13 Q. Did you review this annual financial report?

14 A. Yes.

15 Q. Is that your signature?

16 A. By pastor, yes.

17 Q. If you could turn to the third page of the financial
18 report. It's marked as NDP-04006.

19 A. Yes.

20 Q. What is represented on this page?

21 A. The assets of the parish at the time.

22 Q. Is the St. Francis De Sales School subaccount identified
23 as an asset on this page? Maybe if I could assist you?

24 A. Yes.

25 Q. If we could turn to Schedule G. I'll give you the page

1 number in a second.

2 A. Okay. It's probably under savings accounts. Well --

3 Q. Actually, if you'll turn to NDP-04024. Are you there?

4 A. 4024, yes.

5 Q. Okay. And at the top of that page, I think it's cut off,
6 but I --

7 A. Yes. There it is.

8 Q. And that would be a Schedule G, right, above Schedule H?

9 A. Yes.

10 Q. Do you see that? And, so, if we can turn back -- sorry.
11 If we could turn back to NDP-4006, what we were just looking
12 at.

13 A. Yes. That would be under G.

14 Q. Okay. Thank you. To your knowledge, has it always been
15 the practice of St. Francis to carry its pooled investments as
16 assets on its financials?

17 A. Yes.

18 MS. PLATIA: This time I'd like to move Exhibit 339
19 into evidence, please.

20 MS. BROWN: Your Honor, may I just have a moment to
21 review the document?

22 THE COURT: Yes.

23 (Pause)

24 MS. BROWN: No objection, Your Honor.

25 THE COURT: It's admitted without objection.

1 (2005 Annual Financial Report to the Diocese of St. Francis De
2 Sales, Salisbury, Maryland was hereby received as NDP's Exhibit
3 339 for identification, as of this date.)

4 MS. PLATIA: All right. Thank you.

5 Q. Father Aigner, if you could turn to Exhibit 376, please.
6 What is this document?

7 A. It's a quarterly report from the pooled investment fund
8 for our parish.

9 Q. What is the date of this report?

10 A. 12/31/2009

11 Q. Does the parish receive these statements every quarter?

12 A. Yes.

13 Q. And before St. Francis liquidated the parish subaccount
14 did it also receive statements for that account?

15 A. I believe so.

16 Q. And why do you believe St. Francis receives these
17 statements?

18 A. To let us know how our investment is doing, because the
19 financial council likes to review that.

20 Q. Has it always been the intent of St. Francis de Sales that
21 the money it holds in the pooled investment account belongs to
22 it?

23 A. Belongs to the parish.

24 Q. Yes.

25 A. Yes.

1 Q. Were those funds ever intended to be used by the Diocese
2 or the debtor?

3 A. Not my understanding.

4 Q. Did the Diocese or the debtor ever use these funds?

5 A. Not to my knowledge.

6 MS. PLATIA: Your Honor, I'd like to move into
7 evidence Exhibit 376, please.

8 MS. BROWN: No objection.

9 THE COURT: It's admitted without objection.
10 (Quarterly report from the pooled investment fund of St.
11 Francis De Sales, Salisbury, Maryland dated 12/31/2009 was
12 hereby received as NDP's Exhibit 376 for identification, as of
13 this date.)

14 MS. PLATIA: Okay. I have no further questions at
15 this time.

16 THE COURT: Thank you. Debtor?

17 MS. WALSH: Yes, Your Honor. Just a clarification.

18 THE COURT: Yes. Please.

19 CROSS-EXAMINATION

20 BY MS. WALSH:

21 Q. Father, good afternoon

22 A. Hello.

23 Q. I just wanted to clarify one of the questions and answers.
24 You were asked whether at the time that St. Francis De Sales
25 liquidated the parish account in the pooled asset program

1 whether anyone from the Diocese questioned that liquidation.
2 And just to clarify for the record, what was your answer to
3 that question?

4 A. I -- I don't recall any question.

5 Q. Okay. Thank you, Father.

6 A. Okay. Thank you.

7 THE COURT: Cross?

8 CROSS-EXAMINATION

9 BY MS. BROWN:

10 Q. Good afternoon, Father.

11 A. Hello.

12 Q. Would you please turn in the binder that you were
13 discussing with Ms. Platia to Trial Exhibit 317? Do you have
14 that in front of you?

15 A. Yes.

16 Q. Trial Exhibit 317 is a letter dated February 28, 2001.
17 Isn't that right?

18 A. Yes.

19 Q. And the sentence that you discussed with Ms. Platia reads
20 "Please invest this money according to the investment
21 guidelines that were established when the fund was set up
22 originally", correct?

23 A. Yes.

24 Q. You began as pastor for St. Francis De Sales twelve years
25 ago. Is that right?

1 A. Yes.

2 Q. And when was the PIA fund originally set up?

3 A. Father Brown set it up when he was pastor a few -- a few
4 years before I arrived, I believe. I don't know the exact date

5 Q. So it's true that you were not a representative of St.
6 Francis De Sales at the time that parish joined the PIA. Is
7 that right?

8 A. No. I mean --

9 Q. Am I correct?

10 A. You are correct.

11 Q. Thank you.

12 A. Yes.

13 Q. At any time since you have been pastor at St. Francis De
14 Sales has the parish asked the debtor to enter into a trust
15 agreement with regard to the PIA?

16 A. What do you mean by a trust agreement?

17 Q. Has anybody at the parish asked the debtor to enter into a
18 written agreement respecting the pooled investment?

19 A. No.

20 Q. I'd like you to turn, if you would, to Trial Exhibit 339,
21 and this, again, is the 2005 Parish Financial Report for St.
22 Francis De Sales. Is that right?

23 A. Yes.

24 Q. And if you'd move three pages in to the page with the
25 label on the bottom reading NDP-04006. Are you with me there?

1 A. Yes.

2 Q. On the list of assets here we talked about -- or you
3 talked on direct about Schedule G, which was the PIA account,
4 correct?

5 A. Yes.

6 Q. And I believe you testified that the money in the PIA
7 account belongs to the parish, correct?

8 A. Yes.

9 Q. Also, I see listed on this page, up six lines, there's an
10 entry for savings accounts. Do you see that?

11 A. Yes.

12 Q. Does this line indicate that the parish had funds in a
13 savings account?

14 A. It seems to indicate that, yes.

15 Q. And is it true that the parish believed that the funds in
16 its savings accounts also belonged to the parish?

17 A. Yes.

18 MS. BROWN: I have no further questions, Your Honor.

19 THE COURT: Okay. Thank you. Redirect?

20 MS. PLATIA: No, Your Honor.

21 THE COURT: Okay. Thank you. You may step down, sir.

22 THE WITNESS: Okay.

23 THE COURT: Next witness.

24 MS. PLATIA: Your Honor, at this time we'd like to
25 call the Very Reverend Daniel Gerres.

1 THE COURT: All right.

2 (Witness duly sworn)

3 THE CLERK: Please state and spell your name for the
4 record.

5 THE WITNESS: Daniel, D-A-N-I-E-L, W., Walter, Gerres,
6 G-E-R-R-E-S.

7 DIRECT EXAMINATION

8 BY MS. PLATIA:

9 Q. Good afternoon, Father Gerres.

10 A. Good afternoon.

11 Q. Can you describe your service to the Diocese of
12 Wilmington?

13 A. I've been a priest forty-four years to the Diocese of
14 Wilmington. Served as pastor. Served twenty-four years in the
15 National Guard. Chaplain of Gander Hill Prison. On Catholic
16 Charities, Cemetery Board. Pastor of St. Thomas.

17 Q. How long have you been pastor of St. Thomas?

18 A. Twelve years.

19 Q. Thank you. Okay. Let's focus on St. Thomas.

20 A. Okay.

21 Q. How many families does St. Thomas serve?

22 A. It's a inner city parish, and it would be more accurate to
23 say units. There are 341 units, because most of them are widow
24 or widowers. Their age, I'd say the average age might be about
25 seventy. That's it.

1 Q. Okay. Where is St. Thomas located?

2 A. 4th and Bancroft Parkway, which is one block down from
3 Union Street if you know where Robino's is. Everybody seems to
4 know that one.

5 Q. You're --

6 A. You could walk the distance.

7 Q. Is that near Little Italy?

8 A. Little Italy, yes.

9 Q. Okay. In addition to the religious services provided by
10 St. Thomas does it also operate a school?

11 A. We do not operate a school.

12 Q. Did you used to operate a school?

13 A. We used to operate a school.

14 Q. What was the name of that school?

15 A. St. Thomas the Apostle School.

16 Q. How long was this school in service?

17 A. School was in service almost since the parish began, which
18 is back in 1904, and it moved to be where -- used to be in
19 1959.

20 Q. Why does this school no longer operate?

21 A. Basically, no students and no money.

22 Q. Can you elaborate a little bit on that?

23 A. The pool of students for a parochial school is just
24 getting smaller and smaller. Within the geographical area of
25 St. Thomas we have seven parishes with seven schools, Catholic

1 schools, and, so, it just wasn't there. And the second thing
2 was tuition. The parents couldn't afford the tuition, because
3 most of the people that send their kids to school were not
4 professional people, but, maybe, like, bricklayers and that
5 level there. So they couldn't afford it, plus there was a lot
6 of maintenance to the school. It was built in 1959. Like, a
7 wall was falling down. Heaters, all those things that go along
8 with old buildings.

9 Q. Did the parish try to support the school?

10 A. The parish tried to support the school, but it really
11 couldn't, because on the -- there were five buildings, and
12 they're all old buildings. So there's the church, the rectory,
13 the old former school, and, then, oh, it's called the Bayard
14 House, which is the old convent which houses fifteen pregnant
15 girls.

16 Q. Was the decision to close the school an easy one?

17 A. Not at all. A lot of emotion involved in it. It has a
18 great tradition. St. Thomas has been a school in the city for,
19 you know, years and years and years. And then parents were
20 very upset because their children had to be displaced.

21 Children were upset. Everybody was upset.

22 Q. Were you --

23 A. That was not an easy decision.

24 Q. Were you upset?

25 A. Yes.

1 Q. When did the school close?

2 A. Two years ago.

3 Q. And after the school closed did you sell the property --

4 A. Yes, we did.

5 Q. -- as a school?

6 A. What did you do with the proceeds from the sale?

7 MS. BROWN: Objection, Your Honor. This line of
8 questioning seems not to be relevant to the issues before the
9 Court regarding the intent of parishes in entering into the
10 PIA.

11 THE COURT: Why are we going down this road?

12 MS. PLATIA: I was actually just about to get to the
13 point, Your Honor. The proceeds from the sale, I believe,
14 Father Gerres will --

15 THE COURT: Oh. Where they went?

16 MS. PLATIA: Yes.

17 THE COURT: Okay. Very good.

18 A. The proceeds went to the PIA.

19 Q. Thank you. How much?

20 A. A million dollars.

21 Q. And who made the decision to invest that million dollars
22 into the pooled investment account?

23 A. I had a meeting with our finance counselor. And, again,
24 you have to understand St. Thomas isn't set up the way the
25 other parishes are. We don't have a lot of professional

1 people, so I would call people together I knew, and we had met
2 with Tom Cini or not -- Mr. Corsini. He made a presentation
3 about the proposal, and everyone agreed that that was the way
4 to go.

5 Q. Okay.

6 MS. PLATIA: Your Honor, we have witness binders for
7 this witness also. May we approach?

8 THE COURT: Yes. Thank you.

9 THE WITNESS: Okay. I got it. Thank you.

10 Q. Father Gerres, if you could turn to Exhibit 139, please.

11 A. 1 -- okay. Yes. I have it.

12 Q. Okay. What is Exhibit 139?

13 A. Oh, it's the minutes of our finance meeting December 15,
14 2008, and perhaps the most important thing in there was the
15 discussion of the school being sold and the need to have some
16 vehicle or some place to put the money.

17 Q. Is it the regular practice of the finance committee to
18 keep minutes of its meetings?

19 A. Yes.

20 Q. Are the minutes prepared around the time that the meeting
21 takes place?

22 A. Yes.

23 Q. If you could take a look at these minutes, and I'd like to
24 focus your attention to the bottom of the page where it says
25 discuss investment strategy.

1 A. Okay.

2 Q. The minutes say, if you could follow along, "Settlement on
3 the school will be held on January 15, 2009, at which time the
4 parish will receive a large sum that needs to be invested". Do
5 you see that?

6 A. Yes.

7 Q. And it goes on to say "The committee needs to look into
8 investment opportunities that will enable us to get a decent
9 return on the funds. We will need to have a vehicle to invest
10 the money as soon as possible." Do you see that?

11 A. Yes.

12 Q. What investment vehicles did the finance committee
13 consider?

14 A. Well, everyone has a friend who's a financial advisor,
15 and, so, everybody, sort of, had different people that they
16 would recommend, and, quite frankly, having been around for a
17 while I just think that's a poor way of going, you know, to
18 favor people like that, you know, so I sort of wanted to keep
19 it mainstream. And I had served on the finance committee for
20 the Diocese for the number of years and also the Catholic
21 Foundation, so I was really aware, well aware, of what a
22 wonderful group of people they had.

23 Q. Okay. If you could take a look back at these minutes,
24 right about where I left off, the minutes go on to say "After
25 some discussion it was decided to invest through the Diocese of

1 Wilmington investment plans but not until we get clarification
2 on whether we have a choice of funds".

3 A. Yes.

4 Q. "Dick Pierce (ph.) will contact Joe Corsini and report
5 back to the committee via e-mail."

6 A. Right.

7 Q. And you mentioned earlier that the committee had met with
8 Joe Corsini.

9 A. That's right.

10 Q. Were you present at the meeting?

11 A. Yes, I was.

12 Q. And what did you learn based on your meeting with Mr.
13 Corsini?

14 A. I really didn't learn a lot, to be honest with you,
15 because I was really very familiar with the whole, you know,
16 what was going to happen and the way the Diocese invested
17 funds. So I didn't learn a lot, but I think everybody on the
18 committee learned an awful lot about it, and I think they were
19 very impressed with the professionalism that was shown.

20 Q. Did they learn about how the pooled investment account was
21 set up and structured?

22 A. Yes.

23 Q. And what types of investments the account invested in?

24 A. Yes.

25 Q. And after that meeting and after the -- at the time the

1 finance committee and you decided to invest in the pooled
2 investment account did you have an understanding as to the
3 nature and the ownership of the funds in that account?

4 A. Absolutely.

5 Q. And what was that?

6 A. That it was the parish's.

7 Q. Did you reflect that understanding in a letter?

8 A. Yes, I did.

9 Q. If you could turn to Exhibit 363, please.

10 MS. PLATIA: And before we do that, if I could move
11 into Evidence Exhibit 139.

12 MS. BROWN: No objection, Your Honor.

13 THE COURT: It's admitted without objection.

14 (Minutes of St. Thomas finance meeting of 12/31/08 were hereby
15 received as NDP's Exhibit 139 for identification, as of this
16 date.)

17 Q. Okay. Exhibit 363. Are you there?

18 A. 363. I'm right there.

19 Q. What is Exhibit 363?

20 A. This is a letter I wrote to Joe Corsini. "Find enclosed a
21 check for a million dollars to be invested in St. Thomas name
22 in the Diocesan account. It is my understanding that if the
23 need arises this is, and always will be, available for parish
24 use. If this is not the case please return it and I will put
25 it under my mattress for safekeeping."

1 Q. Thank you. And in the final words of your letter you say
2 "This money came at a heavy price".

3 A. That's right.

4 Q. What did you mean?

5 A. That selling the school was the most difficult thing I've
6 ever -- I've done in my forty-four years.

7 Q. And if you'll turn to the second page of Exhibit 363.

8 A. Okay.

9 Q. What is reflected on this page?

10 A. That is the check that we sent in to the Diocese. That's
11 my signature. For a million dollars.

12 Q. Was that for investment in the pooled investment account?

13 A. That's right.

14 Q. What's the date on the check?

15 A. March 23, 2009.

16 Q. So for approximately how long has St. Thomas been a
17 participant in the pooled investment account?

18 A. Oh, geez. You're going to make me do the math? March. I
19 guess a year.

20 Q. Okay.

21 A. Okay.

22 MS. PLATIA: If I may move for the admission of
23 Exhibit 363 into the evidence, please.

24 MS. BROWN: No objection.

25 THE COURT: It's admitted without objection.

1 (Letter from Father Gerres to Joe Corsini was hereby received
2 as NDP's Exhibit 363 for identification, as of this date.)

3 Q. Okay. And if we could turn to Exhibit 369, Father.

4 A. Okay.

5 Q. What is Exhibit 369?

6 A. It's the quarterly statement that we got detailing the
7 profit we've made.

8 Q. How often did you receive these statements?

9 A. Since we just got into the fund I think we have three.

10 Q. Are they on a quarterly basis?

11 A. Yes.

12 Q. And for what quarter is this statement?

13 A. This quarter, fourth -- oh, ending September 30, 2009.

14 Q. Are you on the first page?

15 A. Oh, sorry. "Fund statement for the quarter ending
16 12/31/09."

17 Q. And are there other quarterly statements also included in
18 this exhibit?

19 A. Yes. Which is the one I just read for 9/30/2009.

20 Q. Thank you.

21 A. Okay.

22 Q. Does St. Thomas carry the funds it has in the pooled
23 investment account as assets on its financial statements?

24 A. Yes.

25 Q. Has it always been the intent of St. Thomas that these

1 funds held in the pooled investment account would always belong
2 to the parish?

3 A. Absolutely.

4 Q. Were the funds held in St. Thomas's account ever intended
5 for use by the Diocese?

6 A. Not at all.

7 Q. Did the Diocese or -- sorry -- or the debtor ever use
8 these funds?

9 A. Not -- to the best of my knowledge I would have to say no.

10 Q. And if this money was determined to be part of the
11 bankruptcy estate what would happen to St. Thomas?

12 A. Well, quite frankly, we'd close. It's an inner city
13 parish, aged population. It would have an effect, like, for
14 instance, we use the gymnasium that is used by a lot of the
15 parishes that don't have schools and things like that, and the
16 Bayard House, I presume, it would close too, so it would be up
17 for sale.

18 Q. Thank you.

19 MS. PLATIA: If I can move for the admission of
20 Exhibit 369.

21 MS. BROWN: No objection, Your Honor.

22 THE COURT: It's admitted without objection.

23 (Quarterly statements, 3rd and 4th quarter, 2009 were hereby
24 received as NDP's Exhibit 369 for identification, as of this
25 date.)

1 MS. PLATIA: Okay. I have no further questions at
2 this time.

3 THE COURT: Ms. Walsh?

4 MS. WALSH: No questions, Your Honor.

5 THE COURT: Cross?

6 CROSS-EXAMINATION

7 BY MS. BROWN:

8 Q. Good afternoon.

9 A. Good afternoon. How are you?

10 Q. Well, thank you. And you?

11 A. Good.

12 Q. When the parish of St. Thomas the Apostle entered into the
13 pooled investment account did the parish ask the debtor to
14 enter into a trust agreement with regard to the funds that were
15 put in?

16 A. No.

17 Q. I'd like to ask you to turn to the first tab of the folder
18 that Ms. Platia was working on, and that would be Trial Exhibit
19 139.

20 A. Okay.

21 Q. And, again, these are minutes of the finance committee
22 meeting of December 15, 2008. Is that correct?

23 A. That's right.

24 Q. And in your experience these minutes were done accurately.
25 Is that right?

1 A. Yes.

2 Q. And they were also thorough. Is that true?

3 A. Yes.

4 Q. Do you see the use of the term ownership anyplace in these
5 board minutes, or, rather, committee minutes?

6 A. Do you want me to read through it?

7 Q. If you would.

8 A. Okay, fine.

9 (Pause)

10 A. I do not see anything that mentions ownership.

11 Q. I'd like to turn the page, or to the next trial exhibit,
12 which is 363.

13 A. Okay.

14 Q. And that is your letter to Mr. Corsini at the debtor. Is
15 that right?

16 A. Right.

17 Q. You referenced that it was your understanding that the
18 million dollars to be invested in St. Thomas's name is, and
19 always will be, available for parish use, correct?

20 A. Right.

21 Q. Did the monies that St. Thomas the Apostle invested in the
22 PIA go to anything other than a money market account?

23 A. No. This went to the Diocese. Okay. And then we have
24 money that was put in a money market account to pay bills.

25 Q. I understand. Thank you for clarifying that, actually.

1 My question was not very good.

2 A. Okay.

3 Q. What did the parish invest in within the PIA? Did the
4 parish designate any investments?

5 A. No.

6 Q. To your understanding, it's possible, though, that the
7 million dollars that the parish sought to be invested in the
8 PIA could lose value. Isn't that right?

9 A. Oh, yes.

10 Q. And, if I may, have you turn the page. This, again, is
11 Trial Exhibit 363, but at the bottom of the page it reads NDP-
12 03760. Is that right?

13 THE COURT: Where are you?

14 MS. BROWN: This is the copy of the check. It's part
15 of Trial Exhibit 363. It's the second page.

16 THE WITNESS: Okay.

17 THE COURT: Okay. Thank you.

18 THE WITNESS: Got it.

19 Q. Do you have that in front of you, Father?

20 A. Yes. This is it.

21 Q. So this is a check that you signed. Is that right?

22 A. That's right.

23 Q. And you dated the check April 23, 2009, correct?

24 A. That's right.

25 Q. This was a million dollars drawn on the parish's account

1 at Wilmington Trust, correct?

2 A. That's right.

3 Q. And I'm going to assume that on the date that you signed
4 this check there was a million dollars in that account to cover
5 the check?

6 A. That's right.

7 Q. At the time that you wrote this check was it your
8 understanding that the parish owned the one million dollars
9 that was in its Wilmington Trust checking account?

10 A. Absolutely.

11 MS. BROWN: Thank you, Your Honor. No further
12 questions.

13 THE COURT: Do you have redirect?

14 MS. PLATIA: Yes, Your Honor, very briefly.

15 REDIRECT EXAMINATION

16 BY MS. PLATIA:

17 Q. Father Gerres, Ms. Brown asked you a few questions about a
18 trust agreement, and her questions previously with the other
19 defendants were questions that related to a written trust
20 agreement. She asked you whether you had ever asked the
21 Diocese to enter into a trust agreement. Do you ever ask the
22 Diocese to enter into a written trust agreement?

23 A. No.

24 Q. Okay. Thank you.

25 THE COURT: All right. You may step down.

1 THE WITNESS: Okay. Next witness.

2 MR. TRAINER: Thank you, Your Honor. The non-debtor
3 defendants call Cathy Weaver to the stand.

4 THE COURT: Okay. Ms. Weaver

5 (Witness is sworn)

6 THE CLERK: Please state and spell your name for the
7 record.

8 THE WITNESS: Catherine Weaver, C-A-T-H-E-R-I-N-E,
9 Weaver, W-E-A-V-E-R.

10 THE CLERK: Thank you.

11 DIRECT EXAMINATION

12 BY MR. TRAINER:

13 Q. Good afternoon, Ms. Weaver.

14 A. Good afternoon.

15 Q. Can you tell us about what your current position is,
16 exactly what you do?

17 A. Sure. I currently serve as Superintendent of Schools with
18 the Catholic Diocese of Wilmington. In that position I have
19 the opportunity and the blessing to work with all of the
20 Catholic schools serving the Diocese of Wilmington.

21 Q. Okay.

22 THE COURT: I'm sorry, Ms. Weaver. I apologize.
23 Would you move that microphone just --

24 THE WITNESS: Yes.

25 THE COURT: You're fine, but --

1 THE WITNESS: Thank you.

2 THE COURT: There you go. Thank you.

3 Q. Can you give us an idea of your professional background?

4 A. Yes. My background is one of -- I have a bachelor's
5 degree from Lafayette College in Easton, Pennsylvania, a
6 master's degree from Loyola University in New Orleans. I'm
7 currently completing my doctoral dissertation in education at
8 Newman University and will be completed this year. I also hold
9 a principal's certificate from the American Montessori Society
10 and an academic counseling certificate from the University of
11 North Carolina.

12 Q. Can you give us an idea of your employment background?

13 A. Sure. Prior to serving in the position of superintendent
14 with the Catholic Schools here in Wilmington I spent four years
15 as assistant superintendent in the office here. Prior to that
16 I was a Catholic school principal for four years, and then I
17 spent thirteen years as assistant principal in a local
18 Montessori school.

19 Q. Which Montessori school was that?

20 A. Wilmington Montessori School.

21 Q. And at which school were you a principal?

22 A. Immaculate Heart of Mary School.

23 Q. At any time did you serve on the board of Saint Mark's
24 High School?

25 A. I did, yes. In addition to the work that I do

1 professionally, prior to my assignment as a superintendent and
2 working in the Catholic Schools' office I served as a volunteer
3 at Saint Mark's High School. I also, in volunteer capacity,
4 serve as a teacher of religion.

5 Q. Did you serve on the board of Saint Mark's?

6 A. I did.

7 Q. And from when to when did you serve?

8 A. From 1992 to 1998, I believe, and the last year, in 1998,
9 I served as chairperson of Saint Mark's board.

10 Q. Now, can you tell us what, exactly, Diocese of Wilmington
11 Schools, Inc. is --

12 A. Sure.

13 Q. -- and what it does.

14 A. The Diocese of Wilmington Schools, Incorporated is a
15 nonprofit organization which seeks to serve the mission of
16 Catholic educational ministry here in Wilmington, and so that
17 organization works specifically with our Diocesan schools.
18 There are four of those. They are Christ the Teacher, Most
19 Blessed Sacrament, Saint Mark's High school and St. Thomas More
20 Preparatory School.

21 Q. Now those are the Diocesan schools. What relationship, if
22 any, does Diocese of Wilmington Schools have with private
23 Catholic schools in the Diocese?

24 A. In the Diocese there are a number of different kinds of
25 schools. We have private Catholic schools. We have Diocesan

1 schools, and we also have parish schools. So the Diocese of
2 Wilmington Schools work specifically with the four schools that
3 I mentioned. In addition to that, through the auspices of
4 Superintendent, we have a relationship, I have a relationship
5 with the private Catholic schools and also with the parish
6 Catholic schools. That relationship is a little bit different,
7 depending upon the type of school.

8 Q. Okay. Would it be correct, though, to say that the
9 schools of which the Diocese of Wilmington Schools has direct
10 oversight is just the Diocesan schools?

11 A. Direct oversight for those Diocesan schools, yes, through
12 the Diocese of Wilmington Schools, Incorporated. The Catholic
13 Schools' office has an additional supervisory relationship with
14 the private and the parish Catholic schools.

15 Q. Now, maybe if you could explain to the Court what the
16 purpose of Diocese of Wilmington Schools, Inc. is, so if you
17 have this formal oversight over the Diocesan schools in
18 relationship with both the parish and the private schools, what
19 does Diocese of Wilmington Schools bring to the table?

20 A. I think the Diocese of Wilmington Schools, Incorporated
21 provides an opportunity for us to work with, in a direct way,
22 those schools that serve a larger population than, say, a
23 parish school might or a private school. So, in general, these
24 schools are working with populations of students that might
25 come from a variety of different geographic areas.

1 Q. Okay. But do you unify or systematize anything among
2 those schools?

3 A. Yes. I'm sorry. I do understand your question, I think,
4 a little better now. There is a supervisory relationship and a
5 common practice among all of the schools in terms of some
6 things like setting a common salary scale, working with a
7 common curriculum, the common teaching of religion, so all of
8 those things are consistent across the schools.

9 Q. Okay. Are the Diocesan schools to which you referred
10 separately incorporated?

11 A. No, they are not. They are - operate, really, as
12 independent segments of Diocese of Wilmington Schools,
13 Incorporated.

14 Q. And can you tell us a little bit, briefly, about these
15 Diocesan schools by name, if you would?

16 A. Sure. Christ the Teacher is a school, a Catholic
17 elementary school located in Glasgow, Delaware. It was
18 established in 2002. It's one of our newest Catholic schools.
19 It serves a population of pre-K through eighth grade students.
20 It recently was nominated for the blue ribbon, National Blue
21 Ribbon School of Excellence, and serves students coming from
22 four parishes in the Dioceses, St. Margaret's, St. Joseph's,
23 St. Elizabeth Ann Seton and Holy Family.

24 Most Blessed Sacrament Catholic School, located in
25 Ocean Pines, Maryland, is our newest Catholic school,

1 established in 2003. It currently serves a population of pre-
2 kindergarten through eighth grade. Approximately 240 students.
3 Accredited by Middle States Association of Colleges and
4 Schools, and interesting in that there are eight parishes that
5 are served by that school and that it also serves students both
6 from Delaware and Maryland in the beach area of Sussex County
7 and Worcester, Wicomico Counties in Maryland.

8 Saint Mark's High School was established in 1969. It
9 is the -- a large Diocesan Catholic High School located in Pike
10 Creek Valley here in the Wilmington area, currently serving
11 about 1,350 students, grades 9-12. A wonderful array of
12 Advanced Placement and extracurricular activities there. Also
13 a wonderful program serving students with learning
14 disabilities.

15 Finally, St. Thomas More Preparatory School came to
16 the Diocese in 1997. It had been established initially as a
17 private school, and, then, at one point the group establishing
18 the program had reached out to our bishop to ask if it might be
19 possible for it to become a Diocesan school. So that school
20 serves 227 students currently, grades 9-12, in Magnolia,
21 Delaware. So it's operating in Kent County, here in Delaware.

22 Q. Okay. You mentioned your service as superintendent of
23 Diocesan Schools of Wilmington. Are you also on the board of
24 trustees?

25 A. I am.

1 Q. And what is your position on the board?

2 A. Secretary.

3 Q. And can you explain to us how that board of trustees
4 operates, functions?

5 A. Well, the board meets approximately once a year, unless
6 there are other reasons to meet, but, generally, we meet
7 annually, and we review every year the state of the schools,
8 the four schools that I mentioned that make up Diocese of
9 Wilmington Schools. We look at both the financial and the
10 academic and leadership components of the schools for the past
11 year.

12 Q. What is your position on the board of trustees?

13 A. Secretary.

14 Q. And in that position, as well as superintendent of the
15 Diocesan Schools of Wilmington, do you have a general
16 understanding of the finances of each of the schools?

17 A. Yes, I do.

18 Q. And do certain of the schools participate as investors in
19 the Diocesan pooled investment account?

20 A. Yes. Three of the schools participate.

21 Q. Which three?

22 A. Christ the Teacher, St. Thomas More Preparatory and Saint
23 Mark's High School.

24 Q. You mentioned before Most Blessed Sacrament. That does
25 not participate?

1 A. That's correct.

2 Q. Well, why doesn't it?

3 A. Most Blessed Sacrament, being the newest Catholic school,
4 is still in the process of growing its program and its
5 enrollment, and up until this point it really hasn't had any
6 additional discretionary dollars to invest.

7 Q. So it's just lack of money, then. Now, with Christ the
8 Teacher, St. Thomas More --

9 THE COURT: I'm sorry. Was the answer to that --

10 THE WITNESS: Yes, I'm sorry.

11 Q. With Christ the Teacher, St. Thomas More and Saint Mark's
12 is participation in the pooled investment account by those
13 entities optional?

14 A. Yes, it is optional.

15 Q. Now, do you generally have an understanding of how the
16 pooled investment account is set up?

17 A. Generally.

18 Q. Can you give us that general understanding?

19 A. Well, I think the pooled investment account is a service
20 offered by the Diocese, which is available for anyone of the
21 Diocesan entities to use in order to grow monies that they may
22 have available.

23 Q. Now, to your understanding can a participant such as
24 Christ the Teacher, St. Thomas More or Saint Mark's structures
25 its own portfolio and manage its --

1 A. Yes, they can.

2 Q. -- investment? You have to -- I'm sorry. You have to
3 let me finish.

4 A. I'm sorry.

5 Q. I'm on a roll here. And manage its investments within the
6 pooled investment account?

7 A. Yes.

8 Q. Now, to your understanding, has it always been the intent
9 of St. Thomas More and Christ the Teacher and Saint Mark's that
10 the funds held in the pooled investment account would always be
11 the property of those schools?

12 MS. BROWN: Objection, Your Honor. Lack of
13 foundation. I think there has been any testimony regarding
14 whether the superintendent was involved at the time that each
15 of these schools entered into the PIA.

16 MR. TRAINER: I asked whether it was her
17 understanding, Your Honor.

18 THE COURT: All right. Overruled. Do you remember
19 the question?

20 Q. Would you like --

21 A. Would you restate that for me, please?

22 Q. Sure. To your understanding, has it always been the
23 intent of St. Thomas More and Christ the Teacher and Saint
24 Mark's that the funds held in the pooled investment account
25 would always be the property of those schools?

1 A. Yes.

2 Q. Now, to your understanding, where they ever intended for
3 use by the debtor or the Diocese?

4 A. No.

5 Q. Again, in your position as superintendent and secretary at
6 the board of trustees, are you aware of an instance in which
7 the Diocese has ever used the funds in those schools' accounts?

8 A. I am not aware of any such event.

9 Q. Now, to your understanding in your position as
10 superintendent, what would happen if the schools lost access,
11 and by the schools I mean St. Thomas More, Christ the Teacher
12 and Saint Mark's, lost access to the monies that they have in
13 the pooled investment account?

14 A. I think it would be significant for the schools that
15 currently have money invested. I think there would be
16 significant impact. I think that those monies are used for
17 things such as growing new programs, like the one at Saint
18 Mark's relating to serving students with learning disabilities.
19 The money is also used for important capital replacements. If
20 there's an emergency situation where there might be a failure
21 of a system that money would be very important.

22 In addition to that, a number of the dollars that are used
23 through the PIA are tied to scholarship monies, tuition
24 assistance to needy families and needy students attending the
25 schools, and without access to that money the ability of the

1 funds to provide that kind of scholarship assistance to
2 students coming from some of the neediest areas, even here in
3 the city, would be greatly diminished.

4 MR. TRAINER: Thank you. That's all I have, Your
5 Honor.

6 THE COURT: Okay. Ms. Walsh? Any question?

7 MS. WALSH: No, thank you, Your Honor.

8 THE COURT: All right. Cross?

9 CROSS-EXAMINATION

10 BY MS. BROWN:

11 Q. Good afternoon, Ms. Weaver

12 A. Good afternoon.

13 Q. When did Christ the Teacher School first deposit funds
14 into the pooled investment account?

15 A. I don't have that information in front of me, but -- do I
16 can't answer that question at this point.

17 Q. Were you superintendent at that time?

18 A. I was in the Catholic School's office at that time, at
19 the time that Christ the Teacher began. I may have been
20 assistant superintendent at the time that such an investment
21 would have been made.

22 Q. Were you involved on behalf of Christ the Teacher in its
23 communications with the debtor regarding investment into the
24 PIA?

25 A. Schools are free to make those decisions on their own. I

1 would have an awareness of those investments through my service
2 on the board of directors with the individual schools.

3 Q. I appreciate that, but the question just asked for a yes
4 or no answer.

5 A. Could you restate it again, please?

6 Q. Sure. Were you involved in any of the communications
7 between Christ the Teacher and the debtor with regard to Christ
8 the Teacher's investment in the PIA?

9 A. Not specifically.

10 Q. So you were not privy to any communications between Christ
11 the Teacher School and the debtor with regard to how the money
12 was supposed to be handled, were you? Again, the question asks
13 for a yes or no answer.

14 A. Would you restate it, please?

15 Q. Sure. Sure. You were not privy to any communications
16 between Christ the Teacher and the debtor with regard to how
17 the PIA funds were going to be handled, were you?

18 A. I was aware.

19 Q. But you weren't privy to any communications, were you?

20 A. What do you mean by privy?

21 Q. You did not participate in any of those communications.

22 A. Direct communications --

23 Q. Correct.

24 A. -- between the debtor? Not directly.

25 Q. With regard to St. Thomas More Prep, do you know when that

1 school began contributing funds into the PIA?

2 A. I have that information available, but not -- not here in
3 front of me today.

4 Q. Were you superintendent of DOW at the time St. Thomas
5 More Prep entered into the PIA?

6 A. I don't believe that I was.

7 Q. Were you involved in any communications between St.
8 Thomas More Prep and the debtor with regard to investments in
9 the PIA?

10 Q. In what capacity were you involved in those
11 communications?

12 A. Both as superintendent and in the role of board person --
13 representative on the board.

14 Q. At the time that you were in those capacities that you
15 just recited did anybody on behalf of St. Thomas More Prep
16 School request that the debtor enter into a trust agreement
17 with the school respecting the pooled investment funds?

18 A. To the best of my knowledge, no.

19 Q. Let's talk about Saint Mark's High School, lastly. Do you
20 know when Saint Mark's began investing in the PIA?

21 A. I'm aware that Saint Mark's was investing through my board
22 service a number of years ago. Also aware through my role as a
23 member of the board there and superintendent.

24 Q. So you were a member of the board of Saint Mark's from
25 1992 to 1998, correct?

1 A. Yes.

2 Q. And during that period of time --

3 THE COURT: You cut her off.

4 THE WITNESS: Yes.

5 THE COURT: The answer was yes. Go ahead.

6 Q. During the period 1992 to 1998 you served on the board of
7 Saint Mark's High School, correct?

8 A. Yes.

9 Q. So is it true that during that period of time is when
10 Saint Mark's High School began contributing into the PIA?

11 A. I believe that there were opportunities at that point,
12 yes.

13 Q. When you say you believe there were opportunities, does
14 that mean that Saint Mark's actually did give money to the
15 Diocese in expectation that it would be invested in the PIA?

16 A. Yes.

17 Q. At the time Saint Mark's High School began its involvement
18 with the pooled investment account did Saint Mark's ask the
19 debtor to enter into a trust agreement with regard to those
20 monies in the PIA?

21 A. I'm unaware that there was such a request made.

22 Q. In your capacity as superintendent of the Diocese of
23 Wilmington Schools, Inc. are you aware whether or not Christ
24 the Teacher has its own bank account?

25 A. They do.

1 Q. And St. Thomas More Prep as well?

2 A. Um-hum.

3 Q. And Saint Mark's High School as well.

4 THE COURT: I'm sorry.

5 THE WITNESS: Yes.

6 THE COURT: Um-hum is not going to --

7 THE WITNESS: I'm sorry.

8 THE COURT: -- is not going to do it.

9 THE WITNESS: I'm sorry. Yes to all.

10 Q. Do you, as superintendent of the Diocese of Wilmington
11 Schools, Inc., have to approve of withdrawals or deposits into
12 that --

13 A. No.

14 Q. -- into that accounts?

15 THE COURT: The answer is no?

16 THE WITNESS: No.

17 MS. BROWN: Thank you. I have no further questions
18 for this witness.

19 THE COURT: All right. Redirect?

20 REDIRECT EXAMINATION

21 BY MR. TRAINER:

22 Q. Ms. Weaver, just to clear up a couple of things that I'm
23 sure were unintentional misspeaks on Ms. Brown's parts. Just
24 be clear. You are not superintendent of the Diocese, are you?

25 A. No. I'm -- well, I'm superintendent of schools.

1 Q. But, okay, let's be clear. Superintendent of Catholic
2 Schools of Wilmington?

3 A. Superintendent of Schools for the Catholic Diocese of
4 Wilmington.

5 Q. Okay. But you are not Superintendent of the Diocese, are
6 you?

7 A. No.

8 Q. No. The other thing is in questioning Monsignor Brown and
9 Father Aigner Ms. Brown asked about written trust agreements,
10 and, then, in questioning Father Gerres and you I think she
11 unintentionally just dropped to trust agreements. So when she
12 was asking you about trust agreements did you understand her to
13 be asking about written trust agreements?

14 A. Yes.

15 MR. TRAINER: That's all I have, Your Honor. Thank
16 you.

17 THE COURT: Thank you. You may step down, ma'am.

18 THE WITNESS: Thank you.

19 THE COURT: Let's take a short recess, please.

20 (Recess from 3:47 p.m. until 4:04 p.m.)

21 THE COURT: Mr. Jenkins?

22 MR. JENKINS: Thank you, Your Honor. Your Honor, the
23 non-debtor defendants call Richelle Vible of Catholic
24 Charities.

25 THE COURT: Please take the stand, ma'am.

1 (Witness is sworn)

2 THE CLERK: Please state and spell your name for the
3 record.

4 THE WITNESS: Richelle, R-I-C-H-E-L-L-E, Vible,
5 V-I-B-L-E.

6 THE CLERK: Thank you.

7 MR. JENKINS: Your Honor, with the Court's permission
8 at this time I would ask my colleague, Ms. Platia, to hand up
9 to the Court and pass out a booklet we have for Ms. Vible.

10 THE COURT: Yes.

11 MR. JENKINS: And, in addition, Your Honor, we have in
12 that booklet photocopies of two Catholic Charities pamphlets.
13 Ms. Vible is going to be looking at the actual pamphlet,
14 because it's a little easier on the eye than the photocopy we
15 have. I've provided some to my friends Mr. Brown and Ms.
16 Brown. I didn't know if the Court had a preference on --

17 THE COURT: Yes. I'd be happy to have the real
18 brochure. Thank you.

19 DIRECT EXAMINATION

20 BY MR. JENKINS:

21 Q. Now, Ms. Vible, could you tell the Court what your present
22 employment and position are?

23 A. I am executive director of Catholic Charities, Inc.

24 Q. And could you briefly tell us your professional
25 background?

1 A. Prior to coming to Catholic Charities I spent most of my
2 career in banking, mostly recently as Delaware president for
3 Citizens Bank.

4 Q. And do you have an MBA from Wharton?

5 A. Yes, I have an MBA from Wharton. My undergrad is with
6 Catholic University of America. I also have executive
7 leadership education with Harvard Business School.

8 Q. And how long have you been with Catholic Charities?

9 A. A little over two years.

10 Q. And did you do anything with the Diocese or its affiliates
11 or other entities before then? Were you on any boards?

12 A. Before I came to Catholic Charities, immediately prior to
13 that I served on the board of the Catholic Diocese Foundation.
14 I had also served on a committee for the Diocesan School Board.

15 Q. Now, could you tell us briefly what Catholic Charities is?

16 A. Catholic Charities is a social services agency. We do
17 direct service to folks in need throughout the state of
18 Delaware and in the nine counties of the Eastern Shore of
19 Maryland.

20 Q. Now, could you turn to Exhibit 379?

21 MR. JENKINS: And for the Court's purpose that's the
22 directory of services, Your Honor, the brochure. And could you
23 tell us what this directory of services is?

24 A. Well, the directory of services is really an informational
25 brochure that we provide to clients or folks who might refer

1 clients in need to Catholic Charities so they have an easy way
2 of determining the services that we provide and where we
3 provide all of them.

4 Q. And could you briefly go through and tell us the services
5 that Catholic Charities provides, using this as your guideline?
6 Just be brief on each.

7 A. Okay. Substance abuse counseling is, in fact, substance
8 abuse treatment, outpatient treatment that is provided. We are
9 fully licensed to provide substance abuse counseling in the
10 State of Delaware.

11 Adoption services. Catholic Charities is fully
12 licensed to provide adoption services in all three counties in
13 Delaware as well as in Maryland. Bayard House is our
14 residential maternity home for pregnant teens and young woman
15 and their babies. It is the only licensed facility for
16 pregnant teens in the State of Delaware.

17 Q. And that's what Father Gerres was talking about before?

18 A. Yes. Bayard House rents the old convent space from the
19 St. Thomas parish. Casa San Francisco is a homeless shelter in
20 Milton, Sussex County, Delaware, where we provide, obviously,
21 shelter services, but we also provide food distribution
22 services to about 600 families throughout Sussex County. There
23 are a couple of other support type services that are provided
24 to the community at Casa.

25 CADC training. Catholic Charities is certified as an

1 educator for mental health professionals who seek to receive
2 the education needed to become licensed in substance abuse
3 counseling, and, so, we provide classes. The child and adult
4 care food program is -- it is a subsidy for nutritional meals
5 that are -- is provided. Catholic Charities ministers to it.
6 The subsidy is provided to in-home daycare. It is similar to
7 a -- the food program in schools, except it's for daycares.

8 Counseling is pretty much what it says it is.
9 Catholic Charities provides mental health services in all of
10 our -- all three counties in Delaware as well as on the Eastern
11 Shore of Maryland. We are fully licensed and certified. We
12 have psychiatrists on staff, licensed social workers on staff.
13 We also accept and our certified by a number of insurances.
14 Medicaid, Medicare, Blue Cross Blue Shield, Aetna, et cetera.

15 The community based intensive outpatient program, or
16 IOP, as we call it, is a very intense counseling program for
17 children which hopes to keep those children out of residential
18 psychiatric treatment.

19 Crisis alleviation is the provision of financial
20 assistance to folks who are very needy in the form of rent
21 assistance, mortgage assistance, food, utilities, that sort of
22 thing.

23 The Delaware Energy Assistance Program is a sister
24 program with our crisis alleviation program where Catholic
25 Charities administers LIHEAP, federal LIHEAP funding, which is

1 the low-income heating and energy assistance program to
2 Delaware families. We assisted this past winter, from
3 September through March, close to 20,000 families and
4 distributed about 10 million dollars for folks in need.

5 The domestic violence intervention/anger management,
6 these are classes where perpetrators are required to attend to,
7 hopefully, help them get through their anger management
8 problems. We work with the courts and with the parole office
9 to make sure that the folks who are required to attend, in
10 fact, do so.

11 Family life bureau, basically, provides education to
12 couples who are getting ready to be married, Pre-Cana classes.
13 There are also some services to married couples and folks who
14 have lost a spouse later in life.

15 Our HIV services program, Catholic Charities partners
16 with the Delaware HIV Consortium and we provide all of the
17 emergency financial assistance through, or on behalf of, the
18 HIV Consortium to folks in -- throughout the State of Delaware.
19 We also provide some ancillary HIV services, including support
20 for transportation, eyeglasses, and some other types of things.

21 Immigration and refugee services. We have folks who
22 will assist immigrants or refugees who are looking to either
23 settle in this area, who are looking to become citizens, or,
24 perhaps, are looking to relocate family members from another
25 country into this area. We, as a matter of fact, are assisting

1 an Iraqi artist who will be exhibiting across the street at
2 1919 Market Street tomorrow. So we're very excited about that.

3 Q. That's actually the Pachulski Stang building, right?

4 A. Well, come down at 4:30 and see the art of Thamer. So
5 he's -- he's very good. It's a really interesting situation.
6 He's a Sunni Muslim and his wife is a Shiite, and it was -- he
7 was -- he has refugee status. His life was threatened in Iraq.
8 So we, here in Delaware, are very happy to have been able to
9 help him and his young family.

10 Our parish social ministry program basically works
11 with each of the parishes to help them start social justice
12 programs within their own parishes, potentially participate in
13 social justice right here in their own neighborhood.

14 Our pregnancy counseling is a free, twenty-four hour
15 service that's available to any person who is affected by a
16 crisis pregnancy.

17 And, then, we also have Seton Center. Seton Center is
18 a community center that's based in Princess Anne, Maryland.
19 Somerset County is outside of Baltimore City, the poorest
20 county in Maryland, and we serve a primarily Hispanic community
21 at Seton Center where they provide food pantry, emergency
22 financial assistance, thrift services. Some of our staff there
23 are nurses. They provide some sort of medical support as well.

24 And Seton Villa is a residential program for
25 preadolescent children ages 6-12. These children are -- they,

1 basically, have finished their residential psychiatric
2 treatment. They're severely emotionally disturbed, and are not
3 capable of living in a family environment, so they live at
4 Seton Villa until they are able to move to a family.

5 In a nutshell, that's what we do.

6 Q. Thank you.

7 MR. JENKINS: Your Honor, I move the admission of
8 Exhibit 379. I guess the photocopied version, since that's
9 what we have in the binders.

10 THE COURT: Any objection?

11 MR. BROWN: Your Honor, for the record, we had
12 objected to this in the pretrial. We'll put the relevance
13 objection on the record and note, also, that Catholic Charities
14 is not a defendant, so I think the relevance objection is even
15 more pronounced.

16 MR. JENKINS: And that's correct. They are not a
17 defendant. Other entities they have, and I was going to turn
18 to that, Your Honor, but, perhaps, the Court would like to hear
19 about that first.

20 THE COURT: Well, it's all right. I overrule the
21 objection, and I'll admit 379.

22 MR. JENKINS: Okay.

23 (Catholic Charities Directory of Services was hereby received
24 as NDP's Exhibit 379 for identification, as of this date.)

25 Q. Now, as Mr. Brown pointed out, Catholic Charities is not

1 named as a defendant. I think it's because our friends, at
2 doing what we asked them to, didn't name Catholic Charities,
3 and we appreciate that. Is Catholic Charities affiliated with
4 three other entities, Seton Villa, Siena Hall and Children's
5 Home?

6 A. Seton Villa, Siena Hall and Children's Home are each
7 separate corporations. Those corporations, via their bylaws
8 and their boards of trustees, place responsibility on Catholic
9 Charities to operate those corporations.

10 Q. Now, are you a member of the board of trustees of Catholic
11 Charities?

12 A. Yes, I am.

13 Q. Are you a member of the board of trustees of each of those
14 other entities?

15 A. Yes, I am.

16 Q. And have each of those other entities been named as
17 defendants here?

18 A. Are they? Is that what you're asking me?

19 Q. Yes. I'm sorry, it is.

20 A. Yes. I understand. Seton Villa, Siena Hall and
21 Children's Home are defendants, yes.

22 Q. And, now, I think you told us that Catholic Charities
23 manages each of those entities?

24 A. The way the governance works is the boards of trustees of
25 each of those entities place responsibility to operate those

1 entities onto Catholic Charities, the staff and the board of
2 directors of Catholic Charities, to handle its day-to-day
3 operations.

4 Q. And does a majority of the money in the pooled investment
5 account for the Catholic Charities entities actually belong to
6 those three entities?

7 A. Each of the three entities has their own account, as does
8 Catholic Charities, and the monies that are in the pooled
9 investment account for each of the three entities are -- the
10 money is stipulated for use in the care of children. The
11 income from those funds are used to fund the daily operating
12 budget of Catholic Charities' programs which do care for
13 children.

14 Q. So that would be some of the programs that you went
15 through before --

16 A. Yes.

17 Q. -- in the directory of services.

18 A. Yes.

19 Q. Thank you. Now, in your role as executive director of
20 Catholic Charities do you oversee the management of the group
21 homes?

22 A. Yes, I do.

23 Q. Now, if we could turn to Exhibit 380, but we'll use the
24 brochure, again, if you have it. That's the 2009 Annual Report
25 to the Community. At least I think this is the right thing.

1 And this brochure, 2009 Annual Report to the Community, was
2 this prepared under your supervision?

3 A. Yes.

4 Q. And does this indicate a source of funds and expenses for
5 a summary -- source of funds and expenses for Catholic
6 Charities and the other entities on page, I guess, 3?

7 A. Yes. This is our actual operating results for fiscal year
8 2009.

9 Q. And on that do you have a mention of funding from pooled
10 investment accounts?

11 A. If you look under source of funds you can see we have a
12 number of different sources of funds. The bottom one, called
13 reserves, where it says 720,596 dollars, those are the interest
14 or the income from reserves that we use to fund the operation
15 of our programs every year.

16 Q. That's from the pooled investment accounts?

17 A. Yes.

18 Q. How do you determine how much you take from the pooled
19 investment accounts every year?

20 A. Our practice is to look at the balance of the pooled
21 investment funds on December 31st of the prior year, and budget
22 to take five percent of that balance, divide it by twelve, and
23 take it on a monthly basis to fund our operations. We also
24 take some additional funds, in the neighborhood of a half a
25 percent up to two percent, depending on the year, for capital

1 improvements to our properties.

2 Q. What would happen to Catholic Charities if it didn't have
3 access to the pooled investment funds?

4 A. If Catholic Charities didn't have access to the pooled
5 investment funds we would have to close some of our programs.

6 Q. Now, do the various entities, old investors within the
7 Catholic Charities umbrella, do they decide how to allocate the
8 money into the various subaccounts in the pooled investment
9 account, or does somebody else do that?

10 A. The -- I'm not sure I understand your question. The
11 subaccounts that are in the pooled investment account are set
12 up either for a specific entity or a specific purpose that was
13 directed by the original donor.

14 Q. And I apologize. My question wasn't a good one. In
15 deciding what investments, or in those various funds, who does
16 that?

17 A. Oh, we --

18 Q. Who makes the investments?

19 A. Oh, you mean which stocks to buy or bonds and that sort of
20 thing?

21 Q. Or which of the investors in the pooled investment -- the
22 investment managers?

23 A. We rely on the Diocesan Finance Office to oversee the
24 investment management decisions for the pooled investment
25 account. We don't make separate investments decisions for our

1 pieces of the investment. Just like a mutual fund, if you
2 invest in the mutual fund you have a piece of the same
3 investments that the manager had selected.

4 Q. And is that the Finance Council of the Diocese that
5 determines

6 A. Well, I -- it -- I'm not an expert on the workings of the
7 Finance Council, but my understanding is that the Finance
8 Council may provide some advice. The finance office works with
9 a professional manager at BNY Mellon, and, I think, together
10 they figure that out.

11 Q. Now, who performs the audits of the financial statements
12 of the various entities?

13 A. Belfint, Lyons & Shuman.

14 Q. Are those the financial statements of -- I keep wanting to
15 say Seton Hall, but, of course, it's Seton Villa, and Siena
16 Hall and Children's Home. Are they consolidated with Catholic
17 Charities?

18 A. Catholic Charities, Inc. financial statements, they're
19 listed as consolidated financial statements and they include
20 the information from Seton Hall. Now I'm doing it.

21 Q. I shouldn't have said it, Your Honor.

22 UNIDENTIFIED SPEAKER: I've done it all.

23 UNIDENTIFIED SPEAKER: We've been doing it the whole
24 time.

25 A. Siena Hall --

1 Q. Right.

2 Q. -- Seton Villa and Children's Home and Catholic
3 Charities.

4 Q. Okay.

5 MR. JENKINS: And, Your Honor, I'd like to move into
6 evidence Exhibit 380. That's the 2009 annual report to the
7 community.

8 MS. BROWN: No objection, Your Honor.

9 THE COURT: It's admitted without objection.
10 (Catholic Charities 2009 Annual Report to the Community was
11 hereby received as NDP's Exhibit 380 for identification, as of
12 this date.)

13 MR. JENKINS: Thank you, Your Honor.

14 THE COURT: I have a question on that, though, if we
15 could just backtrack a sec. On page 3 the source of funds,
16 reserves, that's the PIA?

17 THE WITNESS: That's the income from it.

18 THE COURT: That's what I was going to ask.

19 THE WITNESS: That's not the total.

20 THE COURT: That's not the balance?

21 THE WITNESS: No.

22 THE COURT: Okay.

23 THE WITNESS: No, this is just an income, and, well,
24 an expense, income and expense statement. For a balance sheet
25 you'd want to look at our financial statement.

1 Q. Which is?

2 THE WITNESS: Our audit.

3 THE COURT: Which we're going to get.

4 MR. JENKINS: Which is the next exhibit, 356.

5 THE COURT: I understand. I just wanted to be clear.

6 So the 720,000 were withdraws from the PIA, either income or, I
7 guess, principal if you had to go deeper.

8 THE WITNESS: Yeah, because you -- you budget it at
9 five percent a year, and if you make more than five percent
10 then you didn't take all your income, but if you make less than
11 five percent you take a little bit of your principal. But it's
12 a pretty typical way of handling an endowment or reserve fund
13 for a not-for-profit.

14 THE COURT: Okay. Thank you.

15 Q. Now, let's take a look at Exhibit 357, and that would be
16 in the booklet, the black booklet there. Do you see that?

17 A. Yes.

18 Q. What is 357?

19 A. This is a copy of our audit for the fiscal year ended June
20 30, 2008.

21 Q. Could you turn to page 3?

22 A. Now, that's a balance sheet.

23 Q. That's a balance sheet. And are the pooled investments
24 listed there?

25 A. Yes.

1 Q. And what's the amount for pooled investments for 2008?

2 A. As of June the 30, 2008 17,459,434 dollars.

3 MR. JENKINS: And I'm not sure, Your Honor, why we
4 have 2008. I think it's a bit less now, because of intervening
5 events.

6 Q. Are Seton Villa, Siena Hall and Children's Home's assets,
7 pooled investment assets, included in these amounts?

8 A. Yes. It's -- as it says at the top, Catholic Charities,
9 Inc. and related entities, and that is comprised of those
10 three, Catholic Charities plus the three others.

11 Q. Okay. Now --

12 A. If you want to look at them split up it's in the back.

13 Q. Why don't you take us to that page?

14 A. Page 21 is the -- I think it's 21. Oh, no.

15 THE COURT: Get it. 20 is --

16 THE WITNESS: 21 is 2007. On page 20 is the 2008
17 that, the balance sheet that splits it up between Children's
18 Home, Seton Villa and Siena Hall.

19 A. And it looks like Catholic Charities isn't there, but you
20 can figure it out if you can do the math.

21 MR. JENKINS: Now, Your Honor, I'd like to move the
22 introduction of Exhibit 357 into evidence.

23 MS. BROWN: No objection, Your Honor.

24 THE COURT: 357 is admitted without objection.

25 (Catholic Charities audit for the fiscal year ending June 30,

1 2008 was hereby received as NDP's Exhibit 357 for
2 identification, as of this date.)

3 Q. Let's turn to Exhibit 375. What is Exhibit 375?

4 A. This is a copy of a quarterly statement for the -- it
5 looks like I have four statements here. One for the Seton
6 Villa fund, one for Seton Villa Whiteside fund (ph.), Siena
7 Hall fund and Children's Home, Inc. fund.

8 Q. Could you tell us what Seton Villa Whiteside fund is?

9 A. This was a fund that was set up by a specific donor
10 specifically for the education of children who have lost one or
11 more parents.

12 Q. Now, do you receive these statements every quarter?

13 A. Yes.

14 Q. Why do you receive these statements?

15 A. They show us the income that we've received on our
16 investments. They've also shown us how much we pay in fees.
17 They show us what the impact of our regularly budgeted
18 withdrawals have been, et cetera.

19 Q. Do you have an understanding of who owned the funds held
20 by Seton Villa, Siena Hall?

21 A. Seton Villa. I'm sorry.

22 Q. Seton Villa. Yes. Siena Hall and Children's Home.

23 A. Each of the corporations owns their own funds.

24 Q. Do you have any doubt about that?

25 A. No, I don't.

1 Q. Where did you get that understanding?

2 A. Before I came to work for Catholic Charities I made sure
3 that I understood who owned what. To me, it's very important,
4 as a nonprofit manager, to make sure that your organization has
5 financial viability. In looking at the reserves on our balance
6 sheet I was able to get myself comfortable with the fact that
7 Catholic Charities has financial stability and could, in fact,
8 operate for many years to come. As a matter of fact, this year
9 we are celebrating our 180th anniversary.

10 Q. You're 180?

11 A. Catholic Charities actually predates the founding of
12 Diocese of Wilmington.

13 Q. And what were you told about the ownership of these funds?

14 A. I was shown the audit, and they are owned by the entities
15 under which they are named.

16 Q. And what told you this?

17 A. Definitely Monsignor Cini told me. I'm sure Joe Corsini
18 told me. I, also, I'm a banker, and I take the word of
19 auditors as well.

20 Q. Okay. And, now, you've been here for a while and you've
21 heard Ms. Brown ask other witnesses about whether they were
22 there when the money went into the account. Were you at
23 Catholic Charities when the money funded these various --

24 A. No. My understanding of the movement of Catholic
25 Charities and related monies into the pooled investment

1 accounts is that it occurred sometimes in the 1970s. I've seen
2 some files on that matter, but, obviously, I wasn't here.

3 Q. But you have been here for two years, right?

4 A. Yes.

5 Q. If somebody had told you Richelle, you know, the way it is
6 you don't own this money. This money is actually owned by the
7 debtor, or CDOW, Inc., and you're just a creditor. Would you
8 have taken action?

9 A. I'm not sure who would of been able to tell me that that I
10 would have taken as credible, given the fact that I had asked
11 those questions before I came to work for Catholic Charities.

12 Q. And suppose had said to you well, it might be that the
13 debtor owns these. What would you have done?

14 A. I would try and get it back, because I'm responsible for
15 Catholic Charities and the money belongs to Catholic Charities.

16 Q. Now, can the funds held by Seton Villa, Siena Hall and
17 Children's Home be spent on anything you want?

18 A. No. those funds are specifically for the care of children,
19 and according to the bylaws of each of those corporations they
20 are entrusted to Catholic Charities to operate --

21 Q. But you just --

22 A. -- those corporations.

23 Q. I'm sorry.

24 A. That's all right.

25 Q. Could you just give that money to the debtor?

1 A. No.

2 Q. Does Catholic Charities receive money through the Annual
3 Catholic Appeal?

4 A. Yes. The Annual Catholic Appeal provides contributions to
5 Catholic Charities on an annual basis, approximately a million
6 dollars a year these days.

7 Q. At the time of giving are parishioners told that Catholic
8 Charities will be one of the recipients of money from the
9 appeal?

10 A. Yes, as far as I know.

11 Q. And is Catholic Charities a substantial recipient of
12 money?

13 A. I think a million dollars is pretty substantial, so, yes.

14 Q. At this time does Catholic Charities and the three other
15 entities have free access to the funds held in their
16 subaccounts?

17 A. Actually, at this moment in time I'm extremely frustrated
18 because our budgeted monthly withdrawals have not -- we have
19 not been able to access them, I guess because of all of these
20 bankruptcy proceedings, and it is -- it's making it very
21 difficult on my cash flow.

22 Q. So it's creating a problem for Catholic Charities and the
23 other entities?

24 A. Yes. Cash flow problem.

25 Q. What would happen to Catholic Charities and the three

1 other entities if somehow the funds and their pooled investment
2 account were deemed to no longer belong to them?

3 A. Well, if the funds would no -- would no longer belong to
4 Catholic Charities and the other entities then we would,
5 obviously, no longer be able to receive income from those
6 funds. There are several programs operated by Catholic
7 Charities that rely very heavily on that income for their
8 funding, and we would very likely need to close those programs.

9 MR. JENKINS: Your Honor, I have no further questions.
10 Oh, I am told I better move Exhibit 375 into evidence, with the
11 Court's permission.

12 MS. BROWN: No objection.

13 THE COURT: It's admitted without objection.

14 (Quarterly Statements were hereby received as NDP's Exhibit 375
15 for identification, as of this date.)

16 MS. WALSH: No questions, Your Honor.

17 THE COURT: Oh, thank you. Sorry. Cross?

18 CROSS-EXAMINATION

19 BY MS. BROWN:

20 Q. Good afternoon, Ms. Vible.

21 A. Good afternoon.

22 Q. Did I understand correctly that Seton Villa, Siena Hall
23 and Children's Home entered into the PIA in the 1970s?

24 A. Children's Home was not associated with the Diocese in the
25 1970s, but Catholic Charities, Siena Hall and Seton Villa, to

1 the best of my knowledge, placed their existing reserve funds
2 into the pooled investment fund in the 1970s.

3 Q. Were you on the board of trustees of Seton Villa in the
4 1970s?

5 A. No, ma'am.

6 Q. Were you on the board of trustees of Siena Hall in the
7 1970s?

8 A. No, ma'am.

9 Q. So would it be correct to say that you were not personally
10 involved in the communications between Seton Villa and the
11 debtor at the time Seton Hall put its funds into the PIA?

12 A. I was not involved personally. I have only seen some of
13 the correspondence from that time.

14 Q. And is it also similarly true, then, that you were not
15 personally involved in any communications between Siena Hall
16 and the debtor at the time Siena Hall put its funds into the
17 PIA?

18 A. Not in the 1970s.

19 Q. And, then, with regard to Children's Home, do you know
20 when they funds from Children's Home were --

21 A. I don't know off the top of my head. I'm sorry.

22 THE COURT: I'm sorry, ma'am. Please let her finish
23 her question.

24 THE WITNESS: Sorry.

25 Q. Are you currently on the board of trustees of Children's

1 Home?

2 A. Yes, ma'am.

3 Q. Did Children's Home get involved with the PIA at the time
4 you were on that board?

5 A. I have been on the board of Children's Home for the last
6 two plus years, since I've been executive director, and the
7 funds had already been invested with the pooled investment
8 account.

9 Q. With regard to Catholic Foundation, are you currently on
10 the board of trustees of Foundation?

11 A. No.

12 Q. When were you on that board?

13 A. I was on the board of the Catholic Diocese Foundation
14 through, I guess, February of 2008, and I withdrew from the
15 board when I became executive director of Catholic Charities.

16 Q. At the time you were on the board of trustees of Catholic
17 Foundation, is that the period of time when Foundation became
18 involved with the pooled investment account?

19 A. The funds were already invested in the pooled investment
20 account when I served my tenure on the Diocese Foundation
21 board.

22 Q. I believe your testimony was that you have an
23 understanding regarding the ownership of funds in the PIA by
24 Seton Villa, Siena Hall and Children's Home, based on
25 representations of various people. Is it correct that you

1 based it, in part, on representations from Monsignor Cini?

2 A. I guess you could say it would be based, in part, on that.
3 I rely very heavily, given my background, on audits, financial
4 statements, and that sort of thing. So it would not be solely
5 based on a verbal representation from any person.

6 Q. Certainly. And I want to go through each of the things
7 that -- each of the people or things that you rely upon to form
8 your understanding --

9 A. Is that --

10 Q. -- regarding the ownership of funds. So one of those
11 things is representations from Monsignor Cini, correct?

12 A. Absolutely.

13 Q. And, also, you relied on representations from Mr. Corsini
14 regarding the ownership of the funds, correct?

15 A. Of course.

16 Q. And, then, you also based your understanding on the
17 ownership of funds in the PIA based on your own analysis of
18 financial documents. Is that correct?

19 A. That would be an additional source, yes.

20 Q. Did I miss anything that informs your understanding of the
21 ownership of the funds in the PIA?

22 A. Catholic Charities, like many other not-for-profit
23 organizations, has a fiduciary responsibility to spend the
24 money that it receives from donors and from other supporters.
25 Catholic Charities has, for many years, been not just audited

1 by financial auditors but is independently accredited and is
2 independently licensed through the State of Delaware and the
3 State of Maryland to conduct its work. In all of those
4 instances Catholic Charities has always been deemed to have
5 performed its fiduciary responsibility appropriately. If
6 Catholic Charities were to give up funds that were entrusted to
7 it for a purpose which was not intended by the original donor
8 we would no longer be performing our fiduciary responsibility.
9 I rely very heavily on the longtime reputation of Catholic
10 Charities as well as our accreditation and licensing bodies.

11 MS. BROWN: Your Honor, I seek to strike that response
12 as nonresponsive.

13 THE COURT: Your Honor, I think Ms. Brown asked an
14 open-ended question, did you rely on anything else, and Ms.
15 Vible testified that she did rely on the practice and pattern
16 of history. I think it was quite responsive. She may not like
17 the answer, but it was responsive.

18 MS. BROWN: Your Honor, the question was did I miss
19 anything. Was there anything else, other than representations
20 by Monsignor Cini, by Mr. Corsini and based on audits. And the
21 response that I received was the trust that the witness has in
22 accreditations and licenses.

23 THE COURT: Yes, overruled.

24 Q. So, other than the things that you've just, you've
25 testified about here today, is there anything else upon which

1 you base your understanding about the ownership of funds in the
2 PIA?

3 A. Based on the correspondence that I saw when the funds were
4 invested in the pooled investment accounts, the staff and the
5 board of Catholic Charities at that time was adamant that the
6 monies continued to belong to Catholic Charities and were
7 entrusted to the Diocese for safekeeping and for management to
8 assist Catholic Charities in getting a higher return on its
9 investment.

10 MS. BROWN: Objection. Hearsay.

11 THE COURT: You can't ask the question --

12 MS. BROWN: Well --

13 THE COURT: -- that calls for hearsay and then object
14 to the answer. Overruled.

15 MS. BROWN: No, I didn't ask for the substance. I
16 asked just for what she relied on.

17 THE COURT: Oh.

18 THE WITNESS: I relied on --

19 THE COURT: Overruled.

20 THE WITNESS: -- what I said I relied on.

21 THE COURT: I know. Overruled.

22 Q. Have you seen -- about the letters that you were just
23 describing? Did you see any opinion letters from lawyers
24 regarding the ownership of funds?

25 A. Not to the best of my recollection.

1 Q. Are you aware that Seton Villa, Siena Hall and Children's
2 Home have each filed proofs of claim in this bankruptcy case?

3 A. Filed a what?

4 Q. Proofs of claim.

5 A. I'm not sure I understand the question.

6 Q. That's fine.

7 MS. BROWN: No further questions.

8 A. If that -- if you're talking -- if a proof of claim is the
9 paperwork that needed to be filed by April 15th I am aware of
10 that, because I signed those.

11 MS. BROWN: No further questions, Your Honor.

12 THE COURT: Okay. Let me ask a couple of questions,
13 and if it raises issue that either side wants to follow up on
14 that's fine. There were some questions about what would
15 happen, what the effect would be on Catholic Charities and its
16 work in the event that the money in the PIA was deemed not to
17 be property of those entities. Is it your understanding if the
18 Court were to rule that there was no trust in place here that
19 Catholic Charities, Siena, et cetera, would receive nothing of
20 that money?

21 THE WITNESS: Are you asking me if I understand --

22 THE COURT: What's your understanding? It is your
23 understanding that the money would just be poof, gone, and you
24 would have no recourse, or that there would be some other way
25 that at least some of the money could be returned?

1 THE WITNESS: Well, if the money was poof, gone, I
2 would try and find some other recourse.

3 THE COURT: Well --

4 THE WITNESS: I'm not -- I'm not good at -- I'm not a
5 lawyer.

6 THE COURT: Good for you.

7 THE WITNESS: So --

8 THE COURT: We have more than enough. Here's --

9 THE WITNESS: But --

10 THE COURT: You said that you would have to -- what
11 I'm trying to really get at is what underlines your comment
12 that you would have to cut back services.

13 THE WITNESS: Each of the programs that I, kind of,
14 went through has various sources of funding. They're not all
15 the same. The Delaware Energy Assistance Program, for example,
16 is fully funded by federal dollars that come to Catholic
17 Charities through the State of Delaware via a contract. If,
18 you know, any of this pooled investment money went away,
19 obviously, we would still be able to operate that program.

20 Other programs have other sources of income. Our
21 counseling program, for example, brings in fees from Blue Cross
22 Blue Shield, from Medicaid, et cetera, for services rendered.
23 There are a couple of programs, namely adoption and Bayard
24 House, others less so, but the adoption program relies --
25 phew -- well over sixty percent on the income from the pooled

1 investment funds. Our largest expense in the adoption program
2 is, obviously, the employees, and, you know, our employees need
3 to be paid every, you know, other week like everybody else, but
4 if we no longer had access to the adoption or to the pooled
5 investment income we couldn't afford to run the adoption
6 program.

7 THE COURT: Well, you say, and just to understand,
8 that there are different sources of funds for the different
9 services. Do the funds in and the funds out for those
10 different services run through separate accounts or is it more
11 of a budgeting issue?

12 THE WITNESS: It's a budgeting. It's a budgeting
13 issue. But, again, and I talked a little bit about fiduciary
14 responsibility. When we receive a -- for example, we receive
15 United Way donations, and United Way says I want you, Catholic
16 Charities, to spend this much on your counseling program. I
17 want you to spend this much on your homeless shelter. And I
18 want you to spend this much on your crisis alleviation program.
19 We absolutely do, and that's part of our budgeting process and
20 that's part of our fiduciary responsibility. But United Way
21 doesn't fund adoption. And I can't take dollars away from the
22 United Way to fund adoption because that's just not something
23 that they do.

24 THE COURT: No, but, I mean, professionally you
25 understand money is fungible. I mean, a dollar is a dollar.

1 THE WITNESS: Money is fungible, and a dollar is a
2 dollar, but we do have our fiduciary responsibility to spend
3 the dollars that were given to us in the way the donor
4 intended. And, in fact, our government contractors, even
5 United Way, they all come in and check.

6 THE COURT: Right.

7 THE WITNESS: They all come in and look and make sure
8 that we spent their money on what they asked us to spend it on.
9 And, I guess, when you say their money, it's if they gave us a
10 dollar they want to see that we spent a dollar, not fifty
11 cents.

12 THE COURT: Right. On a specific budget item --

13 THE WITNESS: Yes.

14 THE COURT: -- that they funded. Okay. So your
15 concern, for example, with adoption, would be that there would
16 be a sixty percent shortfall on the budget --

17 THE WITNESS: Yes.

18 THE COURT: -- because there would be zero money
19 available from the pooled investment account.

20 THE WITNESS: Absolutely. We would have, you know,
21 we'd have a similarly large, maybe about forty percent, hole in
22 our funding for Bayard House. We'd have to close it.

23 THE COURT: Okay. Now, if I were to tell you that
24 that's not what would happen, that what would happen is that
25 you would then have -- all this money would be part of the

1 debtors' pie, and that you would have a slice of that pie and
2 that other people would have a slice of that pie, such as the
3 abuse claimants. And, as a result, your piece might not be
4 fifteen million, but it might be ten million. Clearly there's
5 less income. But that might be a different understanding than
6 your understanding that that money would just be gone.

7 THE WITNESS: I would have a really hard time going
8 back to my donors, and yes, some of this money is from donors
9 who were here long before I was. But some of the money,
10 hundreds of thousands of dollars of that money that's in the
11 pooled investment funds, was brought in during my tenure by
12 specific donors who made donations for a specific purpose. And
13 I'm thinking, for example, right now, of two large foundation
14 grants that were made to Catholic Charities for the purpose of
15 rebuilding our Casa San Francisco homeless shelter. How do I
16 go back to -- I don't even want to say it -- a very well-known
17 local foundation and say because, you know, somebody else did
18 something Catholic Charities lost half of your money. How can
19 I do that, go back to the donors and say that? That's where I
20 would have a real problem.

21 THE COURT: Say blame that guy on the bench with
22 the black dress. All right. I understand.

23 THE WITNESS: Okay.

24 THE COURT: Any other questions.

25 MR. JENKINS: I have no questions, Your Honor.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MS. WALSH: No, Your Honor.

THE COURT: All right. Thank you. You may step down.

THE WITNESS: Thank you.

THE COURT: We'll end for the day. All right?

MR. TRAINER: Very well, Your Honor. What time would
Your Honor like to start tomorrow?

THE COURT: Again, let's meet in the conference room
at 9:15 and we'll start court at 9:30. If there's nothing
anybody wants to discuss at 9:15 you can just let my staff
know in the morning and we don't have to go through the
process. All right?

UNIDENTIFIED SPEAKER: Thank you, Your Honor.

THE COURT: Adjourned. Recessed until tomorrow.

(Proceedings concluded at 4:49 p.m.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

T E S T I M O N Y

WITNESS	EXAMINATION BY	PAGE
Monsignor Cini	Ms. Walsh	7
Monsignor Cini	Mr. Jenkins	39
Monsignor Cini	Mr. Brown	60
Mark Christian	Mr. Trainer	86
Mark Christian	Ms. Brown	109
Patrick Donovan	Mr. Jenkins	113
Patrick Donovan	Ms. Brown	122
Monsignor Brown	Ms. Platia	124, 153
Monsignor Brown	Ms. Brown	147
Father Aigner	Ms. Platia	154
Father Aigner	Ms. Walsh	163
Father Aigner	Ms. Brown	164
Father Gerres	Ms. Platia	181, 167
Father Gerres	Ms. Brown	178

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

(continued)

T E S T I M O N Y

WITNESS	EXAMINATION BY	PAGE
Catherine Weaver	Mr. Trainer	182, 196
Catherine Weaver	Ms. Brown	196
Richelle Vible	Mr. Jenkins	198
Richelle Vible	Ms. Brown	217

E X H I B I T S

DEBTOR	DESCRIPTION	EVID
381, 128, 74, 63		25
391	Memo from Monsignor Cini Bishop Santorelli dated January the 26th, 2006 re Saint Mark's High School	35
NONDEBTOR DEFENDANT	DESCRIPTION	EVID
327	Minutes of the St. Ann's Parish Finance Council meeting of February 16, 2004	46

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

(continued)

E X H I B I T S

NONDEBTOR DEFENDANT	DESCRIPTION	EVID
328	Minutes of the St. Ann's Finance Council meeting March 15, 2004	48
409	Copy of the trust agreement	48
154	Parish investment strategy	50
333	Memorandum to me from Cypress Capital Management	51
331	Document which summarizes a donation of the Brooks family to St. Ann's	51
342	Minutes of the St. Ann's Finance Council meeting April 24, 2006	53

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

(continued)

E X H I B I T S

NONDEBTOR DEFENDANT	DESCRIPTION	EVID
348	Minutes of the St. Ann's Finance Council meeting February 26, 2007	55
349	Memorandum to David Fullerton	56
377	Fund statement for the quarter ending 12/31/09 from the Catholic Diocese of Wilmington to St. Ann's	57
370	Report on the activity of investments St. Ann's	59
DEFENDANT	DESCRIPTION	EVID
294	Minutes of the annual meeting of the corporate board of directors of Catholic Cemeteries Inc., for February 18th of 1986	93

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

(continued)

E X H I B I T S

DEFENDANT	DESCRIPTION	EVID
312	12/11/98 letter from Mr. Christian to Mr. Corsini	97
341	Letter sent to Mr. Corsini when enough funds are accumulated by Catholic Cemeteries to deposit in PIA	100
508	12/31/05 quarterly funds statement of Catholic Cemeteries re funds invested in the pooled investment account	101
319	Documents re Catholic Cemeteries' withdrawal of funds from PIA	104
355	Dec 2007 audit report of Catholic Cemeteries	107
378	CYM 2010 annual budget	118

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

(continued)

E X H I B I T S

DEFENDANT	DESCRIPTION	EVID
367	CYM annual audit for year ending June 30, 2009	120
360	CYM quarterly funds statements	122
288	Information packet re PIA provided by Mr. Corsini to St. John the Beloved finance council	133
347	Documents re St. John the Beloved parish deposit to Diocese of Wilmington PIA	135
346	Documents re St. John the Beloved parish deposit to Diocese of Wilmington PIA	136
352	St. John the Beloved parish financial report for 2007	138

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

(continued)

E X H I B I T S

DEFENDANT	DESCRIPTION	EVID
361	St. John the Beloved quarterly reports re PIA fund	139
362	St. John the Beloved school development fund quarterly reports re PIA	141
144	Minutes of St. Francis de Sales finance council meeting 9/1997	144
306	Minutes of St. Francis de Sales development committee 10/1997	147
NDP	DESCRIPTION	EVID
317	Check and letter sent to Diocese 2/28/01	160

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

NDP
339

376

63

139

176

369

I N D E X
(continued)

E X H I B I T S

DESCRIPTION	EVID
2005 Annual Financial Report to the Diocese of St. Francis De Sales, Salisbury, Maryland	162
Quarterly report from the pooled investment fund of St. Francis De Sales, Salisbury, Maryland dated 12/31/2009	
Minutes of St. Thomas finance meeting of 12/31/08	174
Letter from Father Gerres to Joe Corsini	
Quarterly statements, 3rd and 4th quarter, 2009	177

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

(continued)

E X H I B I T S

NDP	DESCRIPTION	EVID
379	Catholic Charities Directory of Services	204
380	Catholic Charities 2009 Annual Report to the Community	210
357	Catholic Charities audit for the fiscal year ending June 30, 2008	213
375	Quarterly statements	217

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T I O N

I, Esther Accardi, certify that the foregoing transcript is a true and accurate record of the proceedings.

ESTHER ACCARDI (CET**D-485)
AAERT Certified Electronic Transcriber

Veritext
200 Old Country Road
Suite 580
Mineola, New York 11501

Date: June 7, 2010

**UNITED STATES BANKRUPTCY COURT
District of Delaware**

In Re:

Catholic Diocese of Wilmington, Inc.
1925 Delaware Avenue
P.O. Box 2030
Wilmington, DE 19899
EIN: 51-0095439
Roman Catholic Diocese of Wilmington

Chapter: 11

Case No.: 09-13560-CSS

***NOTICE OF FILING OF TRANSCRIPT AND OF DEADLINES RELATED TO RESTRICTION AND
REDACTION***

A transcript of the proceeding held on 6/3/10 was filed on 6/7/10 . The following deadlines apply:

The parties have 7 days to file with the court a *Notice of Intent to Request Redaction* of this transcript. The deadline for filing a *request for redaction* is 6/28/10 .

If a request for redaction is filed, the redacted transcript is due 7/8/10 .

If no such notice is filed, the transcript may be made available for remote electronic access upon expiration of the restriction period, which is 9/7/10 unless extended by court order.

To review the transcript for redaction purposes, you may purchase a copy from the transcriber (see docket for Transcriber's information) or you may view the document at the clerk's office public terminal.



Clerk of Court

Date: 6/7/10

(ntc)

Notice Recipients

District/Off: 0311-1
Case: 09-13560-CSS

User: Leslie
Form ID: ntcBK

Date Created: 6/7/2010
Total: 8

Recipients of Notice of Electronic Filing:

ust	United States Trustee	USTPREGION03.WL.ECF@USDOJ.GOV
aty	John Louis Decker	j.decker@smmj.com
aty	Michael S. Neiburg	bankfilings@ycst.com

TOTAL: 3

Recipients submitted to the BNC (Bankruptcy Noticing Center):

db	Catholic Diocese of Wilmington, Inc.	1925 Delaware Avenue	P.O. Box 2030	Wilmington, DE 19899
aty	James L. Patton	Young, Conaway, Stargatt & Taylor	The Brandywine Bldg.	1000 West Street, 17th Floor PO Box 391 Wilmington, DE 19899-0391
aty	Maris J. Finnegan	Young Conaway Stargatt & Taylor, LLP	The Brandywine Bldg.	1000 N. West Street, 17th Fl. Wilmington, DE 19801
aty	Patrick A. Jackson	Young Conaway Stargatt & Taylor, LLP	The Brandywine Bldg	17th Fl, 1000 West St Wilmington, DE 19801
aty	Robert S. Brady	Young, Conaway, Stargatt & Taylor	The Brandywine Bldg.	1000 West Street, 17th Floor PO Box 391 Wilmington, DE 19899-0391

TOTAL: 5