

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
	)	
CATHOLIC DIOCESE OF WILMINGTON, INC., a Delaware Corporation, <sup>1</sup>	)	Case No. 09-13560 (CSS)
	)	
Debtor.	)	Ref. Docket No. 534
	)	
	)	

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**DEBTOR’S OBJECTION TO THE EMERGENCY MOTION OF THE  
OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO HOLD  
CATHOLIC DIOCESE OF WILMINGTON, INC. AND OTHER  
PARTIES IN CIVIL CONTEMPT FOR VIOLATION OF  
THE AUTOMATIC STAY AND MEDIATION ORDER AND  
REQUEST FOR EXPEDITED CONSIDERATION THEREON**

Catholic Diocese of Wilmington, Inc., a Delaware corporation, the debtor and debtor in possession in the above captioned case (the “Debtor”), hereby objects (the “Objection”) to the motion [D.I. 534] (the “Contempt Motion”) of the Official Committee of Unsecured Creditors (the “Committee”) to hold the Debtor, the Most Reverend W. Francis Malooly, D.D. (the “Bishop”), Young Conaway Stargatt & Taylor, LLP (“YCST”), and certain YCST attorneys in civil contempt for alleged violation of the automatic stay and this Court’s *Second Amended Order Assigning Matter to Mediators* [D.I. 514] (the “Mediation Order”). In support of this Objection, the Debtor respectfully represents as follows:

**PRELIMINARY STATEMENT**

1. The Contempt Motion is completely meritless. The Committee, relying on a tortured, out-of-context quotation from one Third Circuit case, tries to argue that the filing of the Amicus Curiae Motion violated the automatic stay, and boldly announces that it is “black

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<sup>1</sup> The last four digits of the Debtor’s federal tax identification number are 5439. The Debtor’s mailing address is 1925 Delaware Avenue, P.O. Box 2030, Wilmington, Delaware 19899-2030.

letter law”. Not only does the Committee misread the case upon which it relies, but it also fails to bring to the Court’s attention subsequent controlling authority that undermines its entire argument about the automatic stay’s applicability. Furthermore, the Committee’s argument that the Amicus Curiae Motion violated the Mediation Order is based upon an untenable reading of the Mediation Order, and a disregard for the Third Circuit’s principles used in guiding a contempt inquiry. Perhaps most telling of Committee counsel’s true view of the merits of the Contempt Motion is that it is not signed by an attorney admitted to practice in Delaware as required by the Local Bankruptcy Rules, nor even an attorney who has been admitted *pro hac vice* in this Court. Given the complete lack of merit in the Committee’s legal arguments, the only conclusion that can be drawn is that the Contempt Motion was brought to harass and intimidate the Debtor on the eve of the Court-ordered mediation. As such, the Contempt Motion was brought for unreasonable and vexatious purposes and the Committee’s counsel should be held liable for all costs, expenses and attorney’s fees incurred in responding to the motion pursuant to 28 U.S.C. § 1927.

### **ADDITIONAL FACTUAL BACKGROUND**

2. On June 4, 2010, two days after the Amicus Curiae Motion<sup>2</sup> was filed, the Neuberger Firm issued a press release, a copy of which is attached hereto as Exhibit A, which stated that this Court, by virtue of paragraph 9 of the Mediation Order, had “**directed** that the 8 DeLuca survivor cases can be immediately scheduled for trial” (emphasis added) against the non-debtor parish defendants, and suggested this meant that “the only way these parishes can avoid a jury trial is to honestly participate in the current bankruptcy court mediation process by contributing their own parish assets to the mediation money fund which will be distributed to

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<sup>2</sup> Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Contempt Motion.

survivors.” The Neuberger Firm is counsel to Mr. Sheehan, as well as to three of the seven members of the Committee and the Ad Hoc Committee of Abuse Survivors in this case. While the press release ostensibly concerned two additional sexual abuse cases that had been filed against non-debtor parishes (with corresponding proofs of claim filed in the Debtor’s bankruptcy case), the Debtor believes the statements regarding parishes’ contribution of their assets to the mediation was intended as a direct threat to the parish participants in the mediation process in this case.

3. On June 17, 2010, the Debtor filed a motion in the Delaware Supreme Court, a copy of which is attached hereto as Exhibit B, requesting deferral of consideration of the Amicus Curiae Motion for a period of time to permit the Contempt Motion to be addressed by this Court, or by the parties in the mediation process.

## **OBJECTION**

### **I. The Amicus Curiae Motion Did Not Violate the Automatic Stay**

4. Section 362(a)(1) of the Bankruptcy Code, upon which the Committee exclusively relies, stays “the commencement or continuation . . . of a judicial . . . action or proceeding *against the debtor* that was or could have been commenced” prepetition. 11 U.S.C. § 362(a)(1) (emphasis added). The Contempt Motion is less than clear regarding what constitutes the “action against the debtor” the commencement or continuation of which supposedly violates the automatic stay. It would appear there are but five possibilities, namely: (i) Mr. Sheehan’s civil action in the Delaware Superior Court (the “Superior Court Action”), (ii) Mr. Sheehan’s appeal to the Delaware Supreme Court (the “Appeal”), (iii) the cross-appeal of the Oblates of St. Francis de Sales (the “Oblates”) to the Delaware Supreme Court (the “Cross-Appeal”), (iv) the Amicus Curiae Motion itself, or (v) all cases currently pending against

the Debtor in any court which were brought pursuant to the Child Victim’s Act (collectively, the “CVA Cases”). The Debtor will address each of these in turn, and will establish that none can serve as the predicate for attachment of the automatic stay to the Amicus Curiae Motion.

5. Because there is no statutory predicate for application of the automatic stay as a threshold matter, the remaining, rather unremarkable points the Committee makes about the stay—i.e., that it exists, that it applies equally to debtors and creditors, that it is not waivable by the debtor, that acts taken in violation of it are void *ab initio*, and that violations are remediable by civil contempt—are simply irrelevant.

**A. The Amicus Curiae Motion is Not a Continuation of the Superior Court Action Against the Debtor**

6. The Superior Court Action was certainly “against the Debtor” and was brought prepetition, but the Debtor’s involvement in the case ended when the Debtor settled with Mr. Sheehan. As is underscored by the Debtor’s status as *amicus curiae*, the Debtor is *not* a party to the Appeal or Cross-Appeal. Accordingly, it is difficult to imagine how the Amicus Curiae Motion could be considered a “continuation” of the Superior Court Action “against the Debtor” so as to fall within section 362(a)(1) of the Bankruptcy Code.

7. To overcome this language barrier, the Committee relies upon the following quote from *Association of St. Croix Condominium Owners v. St. Croix Hotel Corp.*, 682 F.2d 446, 449 (3d Cir. 1982): “In our view, section 362[(a)(1)] should be read to stay all appeals in proceedings that were originally brought against the debtor, regardless of whether the debtor is the appellant or appellee.” *Id.* at 449. The Committee appears to argue that, because the Superior Court Action was “originally brought against the Debtor,” and because the Appeal and Cross-Appeal were taken from the Superior Court Action, the Debtor’s participation in the appellate proceedings is stayed under § 362 as interpreted by *St. Croix*. (See Contempt Mot.

¶ 30.) This argument is untenable under even a superficial reading of *St. Croix*, which dealt with appellate proceedings to which the Debtor was *a party* as appellant and cross-appellee, and not with proceedings in which the debtor was a non-party *amicus curiae*.

8. *St. Croix* concerned an appeal by a chapter 11 hotel debtor-lessee (the “Hotel”) and a cross-appeal by a non-debtor lessor (the “Association”) arising from an eviction action commenced by the non-debtor prepetition in the Territorial Court of the Virgin Islands. The Territorial Court entered an order evicting the Hotel, awarding money damages and attorneys’ fees to the Association on its breach of lease claims, and awarding money damages to the Hotel on its counterclaims. The Hotel appealed to the District Court of the Virgin Islands, which vacated the order of eviction and remanded to the Territorial Court for further proceedings. From the District Court’s order, the Hotel and the Association appealed and cross-appealed to the Third Circuit, the Hotel seeking to overturn the award of money damages and attorneys’ fees and the Association seeking to regain possession of the leasehold premises. After the appeals were fully briefed, the Third Circuit, noting that the Hotel had commenced chapter 11 proceedings at some point during the appeals process, ordered the parties to submit additional briefing as to whether the automatic stay in the Hotel’s bankruptcy case had any effect on the appeal.

9. The *St. Croix* court began its analysis by noting that § 362(a)(1) only stays proceedings “against the debtor” and “*does not address* actions brought by the debtor which would inure to the benefit of the bankruptcy estate.” 682 F.2d at 448 (emphasis added).<sup>3</sup> The

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<sup>3</sup> *Accord ACandS, Inc. v. Travelers Cas. & Sur. Co.*, 435 F.3d 252, 259 (3d Cir. 2006) (“[T]he stay of actions and proceedings provided for by § 362(a)(1) applies only to actions brought *against* the debtor—‘the statute does not address actions brought by the debtor which would inure to the benefit of the bankruptcy estate.’” (emphasis in original) (quoting *St. Croix*, 682 F.2d at 448)); *Maritime Electric Co. v. United Jersey Bank*, 959 F.2d 1194, 1204 (3d Cir. 1991) (“Although the scope of the automatic stay is broad, the clear language of section 362(a) indicates that it stays only proceedings *against* a ‘debtor’ -- the term used by the statute itself. ‘The statute does not address

court noted further that § 362(a)(1) “does not indicate whether a stay becomes operative when the trial phase of a proceeding against a debtor has already concluded prior to the filing of a bankruptcy, and *the debtor or his adversary* takes an appeal.” *Id.* at 448-49 (emphasis added). On this specific point, the court observed that the applicability of the stay to an appeal by a debtor or its adversary might arguably depend on whether the appeal was “by” the debtor or “against” the debtor. *Id.* at 549. The court went on to reject a rule of law based upon a “by”-or-“against” dichotomy, reasoning as follows:

Its inadequacy is demonstrated by this case, in which both the debtor Hotel and the Association appealed from the district court judgment. Although the Hotel, in its appeal, ostensibly seeks to preserve assets for the bankruptcy estate by forestalling its eviction and the payment of a money judgment and attorneys’ fees, the Association, in its cross-appeal, seeks to regain possession and thus in effect to divest the estate of those assets. The potential disruption of the administration of the bankruptcy estate that would be caused *by the Association’s success in its cross-appeal* is precisely the result section 362 was designed to prevent.

*Id.* (emphasis added).<sup>4</sup>

10. The *St. Croix* court considered briefly the possibility of staying the Association’s appeal while permitting the Hotel’s appeal, but rejected this approach as “unwise,” presumably out of concern for fairness to the Association if it were required to defend itself against the Hotel’s appeal while being barred from pursuing its own remedies on appeal. *Id.* and

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actions brought by the debtor which would inure to the benefit of the bankruptcy estate.” (emphasis in original) (quoting *St. Croix*, 682 F.2d at 448)).

<sup>4</sup> As the emphasized language makes clear, the Third Circuit was concerned about the effect of *the non-debtor Association’s appeal* on the administration of the Hotel’s bankruptcy estate. In paragraph 35 of the Contempt Motion, the Committee casually omits this language so as to suggest *the debtor Hotel’s* appeal was the problem: “As in *St. Croix*, ‘the potential disruption of the administration of the bankruptcy estate’ *caused by the Contempt Parties* [i.e., the Debtor] is ‘precisely the result section 362 was designed to prevent.’” (Contempt Mot. ¶ 35 (emphasis added).) The “result” implicating the stay in *St. Croix*, of course, was the possibility that the Hotel would be divested of its leasehold, and the Association would assume a preferred position among creditors, having obtained valuable property from the Hotel’s bankruptcy estate. The Amicus Curiae Motion does not raise similar concerns, because however the Amicus Curiae Motion is decided, no creditor can obtain any direct relief against the Debtor to the detriment of other creditors.

n.2.<sup>5</sup> *Against this backdrop*, the court made its ruling, quoted below in its entirety, which included the language relied upon by the Committee in the Contempt Motion (in italics):

*In our view, section 362 should be read to stay all appeals in proceedings that were originally brought against the debtor*, regardless of whether the debtor is the appellant or appellee. Thus, whether a case is subject to the automatic stay must be determined at its inception. That determination should not change depending on the particular stage of the litigation at which the filing of the petition in bankruptcy occurs.

Under this test, the instant appeals, since they arise out of an eviction proceeding brought against the debtor Hotel, are subject to the automatic stay imposed by section 362.

*St. Croix*, 682 F.2d at 449 (emphasis added). Although a literal reading of the italicized language, out of context, might suggest that the stay applies to any appeal from any action in which the debtor had at one point been a party, the literal reading is untenable given the context of the ruling, which was necessarily confined to appeals to which the debtor was party *either* as appellant *or* as appellee. In other words, where the debtor is either appellant or appellee from an action that was originally brought “against the debtor,” then whether the appeal is considered an action “by” or an action “against” the debtor is immaterial, because the appeal itself is a “continuation” of the original action “against the debtor” for purposes of § 362(a)(1). *St. Croix* simply does not speak to an appeal from an action following termination of the debtor’s involvement therein, in which appeal the debtor participates only as a non-party *amicus curiae*.

11. Even if *St. Croix* could be read for the proposition for which it is cited by the Committee, it could not fairly be considered “black letter law” (*see* Contempt Mot. ¶ 5), nor

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<sup>5</sup> The court observed that the fairness concern would arise even in cases where the non-debtor did not cross appeal:

If the appeal is permitted because it is “by” the debtor, and the debtor prevails on the appeal, we question the effect of such an interpretation if the creditor decides to bring the case to a higher court. Is this second level of appeal then stayed because the appeal is now one “against” the debtor? The unfairness of such an approach is obvious.

*St. Croix*, 682 F.2d at 449 n.2 (emphasis added).

indeed “legal authority in the controlling jurisdiction known to [Messrs. Flynn and Gamgort] to be *directly adverse* to the position of the [Debtor]” in the Amicus Curiae Motion so as to mandate disclosure to the Delaware Supreme Court under Rule 3.3(a)(2) of the Delaware Lawyers’ Rules of Professional Conduct<sup>6</sup> (*see* Contempt Mot. ¶¶ 5, 22 & 51).

12. Perhaps more importantly (and not without irony), the Committee’s literal and out-of-context reading of *St. Croix* to apply § 362(a)(1) to *any* appeal from *any* action that had at one point been “against” the debtor is foreclosed by subsequent, controlling authority in *Maritime Electric Co. v. United Jersey Bank*, 959 F.2d 1194 (3d Cir. 1991), which clarified *St. Croix*’s statement about actions “originally brought against a debtor” as follows:

All proceedings in a single case are not lumped together for purposes of automatic stay analysis. Even if the first claim filed in a case was originally brought against the debtor, section 362 does not necessarily stay all other claims in the case. Within a single case, some actions may be stayed, others not. *Multiple claim and multiple party litigation must be disaggregated so that particular claims, counterclaims, crossclaims and third-party claims are treated independently when determining which of their respective proceedings are subject to the bankruptcy stay.*

Thus, within one case, actions against a debtor will be suspended even though closely related claims asserted by the debtor may continue. Judicial proceedings resting on counterclaims and third-party claims asserted by a defendant-debtor are not stayed, while same-case proceedings arising out [*sic*] claims asserted by the plaintiff are stayed.

*Id.* at 1204-05 (emphasis added).

13. When one “disaggregates” the multi-party Superior Court Action as required by *Maritime*, it is clear that the Appeal and the Cross-Appeal are not continuations of an

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<sup>6</sup> The Debtor notes also that the Delaware Supreme Court has concurrent jurisdiction to determine whether the automatic stay applies to the Amicus Curiae Motion, *In re Baldwin-United Corp. Litigation*, 765 F.2d 343, 347 (2d Cir. 1985) (“The court in which the litigation claimed to be stayed is pending has jurisdiction to determine . . . whether the proceeding pending before it is subject to the automatic stay.”), and the only “controlling” authority vis-à-vis the Delaware Supreme Court on questions of federal law is the United States Supreme Court, *see Rohr Aircraft Corp. v. County of San Diego*, 51 Cal. 2d 759, 764-765 (Cal. 1959) (finding California state courts not bound by decisions of lower federal courts on questions of federal law), *rev’d on other grounds*, 362 U.S. 628 (1960).

action “originally brought against the debtor,” but rather are continuations of the action originally brought against the Oblates. Again, this is underscored by the Debtor’s position as a non-party *amicus curiae* to the Appeal and the Cross-Appeal. Accordingly, the Committee’s assertion that the Amicus Curiae Motion “blatantly violates” § 362(a)(1) based solely on its tortured reading of *St. Croix*, with no mention of the *Maritime* disaggregation requirement, is entirely without merit.

**B. The Amicus Curiae Motion Did Not Otherwise Trigger § 362(a)(1)**

14. As discussed above, to implicate § 362(a)(1), the Amicus Curiae Motion must constitute an action, or the continuation of an action, “against the Debtor.” Because the Amicus Curiae Motion is not “against the Debtor,” it can only implicate § 362(a)(1) if it constitutes the “continuation” of some other action against the Debtor. For the reasons set forth above, the Amicus Curiae Motion cannot be considered a continuation of the Superior Court Action. While the Amicus Curiae Motion could perhaps be considered a continuation of the Appeal or the Cross-Appeal, neither of those actions is “against the Debtor” so as to implicate § 362(a)(1). This leaves only the CVA Cases themselves as the “action” the continuation of which implicates § 362(a)(1), which the Committee vaguely suggests but nowhere asserts in the Contempt Motion.

15. While the CVA Cases are certainly actions “against the Debtor,” it is not at all clear how the Amicus Curiae Motion constitutes a “continuation” of the CVA Cases for purposes of § 362(a)(1). The only relief the Debtor will be afforded if the Amicus Curiae Motion is granted is that the Delaware Supreme Court will consider the Debtor’s *amicus* brief in connection with the Cross-Appeal from the Superior Court Action. No relief will be granted to the Debtor in any of the CVA Cases. The Committee cites no legal authority for the proposition that the potential effect of an eventual ruling from Delaware Supreme Court’s decision on the

constitutionality of the CVA after reading the Debtor's *amicus* brief could somehow transform the Amicus Curiae Motion into a "continuation" of the CVA Cases for purposes of § 362(a)(1). This is simply too attenuated to be borne by the straight-forward language of the statute.

16. Additionally, were the Court to interpret any action having an "effect" on the CVA Cases as violative of the automatic stay, then the rule would have to extend to actions taken *by any party* that might "affect" the CVA Cases. *See* 11 U.S.C. § 362(a) (automatic stay is "applicable to all entities"). This would necessarily include, *e.g.*, the efforts to schedule immediate trials in cases involving the non-debtor parishes, all of whom have indemnification claims against the Debtor, the filing of new cases, on behalf of individuals who have filed Tort Claims in the diocesan bankruptcy, and the issuance of press releases by the Neuberger Firm for the purpose of exerting influence over the mediation process. While the Debtor believes such actions may well pose a threat to the mediation process, and thereby disrupt the orderly administration of the Debtor's estate, the Debtor could not possibly, in good faith, hale the Neuberger Firm into this Court and seek contempt sanctions for violation of § 362(a)(1) on such a gauzy legal theory.

## **II. The Amicus Curiae Motion Did Not Violate the Mediation Order**

17. The Contempt Motion correctly states that, to support a finding of civil contempt, the order which is said to have been violated must be specific and definite. (Contempt Mot. ¶ 44 (citing *In re Rubin*, 378 F.2d 104, 108 (3d Cir. 1967); *Clean Harbors, Inc. v. Arkema, Inc. (In re Safety-Kleen)*, 331 B.R. 605, 608 (Bankr. D. Del. 2005).) However, the Contempt Motion casually omits the following additional, material principles that guide the contempt inquiry, which were elucidated by the *Safety-Kleen* court (on the same page cited by the Committee, in fact) and are rooted in controlling Third Circuit precedent:

“[A] person will not be held in contempt of an order unless the order has given him fair warning that his acts were forbidden.” *United States v. Christie Indus., Inc.*, 465 F.2d 1002, 1006 (3d Cir. 1972). Further, the long-standing rule in contempt cases is that ambiguities or omissions in an order will favor the party charged with contempt.” *Ford v. Kammerer*, 450 F.2d 279, 280 (3d Cir. 1971). In sum, the [party seeking to impose sanctions for contempt] must prove by clear and convincing evidence that the [alleged contemnor] violated an unambiguous order and that *no other reasonable interpretation of such order existed*. See *Harris v. City of Philadelphia*, 47 F.3d 1342, 1350 (3d Cir. 1995) (summarizing the applicable standard for contempt).

*Safety-Kleen*, 331 B.R. at 608 (emphasis added).

18. The Committee relies upon the following decretal provision in the Mediation Order (the “General Stay Provision”) as the “specific,” “definite,” and “unambiguous” directive of this Court that admits of “no other reasonable interpretation” but that the act of filing the Amicus Curiae Motion was “forbidden”:

The bankruptcy case is generally stayed until further order of the Court. No relief will be granted by the Court in connection with any further applications or motions filed with the Court absent a showing of irreparable harm, provided, however, that the Court will consider granting relief on routine matters and/or on a consensual basis.

(Mediation Order ¶ 10.)

19. The Debtor does not understand this General Stay Provision to intend or accomplish anything other than what it states, namely: to stay *the bankruptcy case* such that *this Court* will grant no relief *in the bankruptcy case* except in limited circumstances. The Amicus Curiae Motion was not filed in this bankruptcy case, it does not seek any relief from this Court, and it requires no action by this Court. As such, the Debtor believes the General Stay Provision unambiguously *does not* forbid the filing of the Amicus Curiae Motion, and cannot reasonably be interpreted otherwise.

20. Additionally, the Debtor does not understand the General Stay Provision to “forbid” the filing of pleadings that seek relief from this Court. The reference to “any further

applications or motions filed with the court” appears to contemplate that pleadings may be filed, with the caveat that no action will be taken by this Court with respect to those pleadings unless (i) necessary to prevent immediate and irreparable harm, (ii) the pleading concerns a routine matter, or (iii) the relief requested is consensual. The Debtor does not understand this to require parties to seek leave from the Court prior to filing pleadings—it merely puts the onus on the parties to establish one of the bases for the Court to take action with respect to such pleading, or else they will have to wait until the stay of the case is lifted to obtain the relief requested. Thus, assuming *arguendo* that the filing of the Amicus Curiae Motion is akin to the filing of an omnibus claim objection to all CVA-based proofs of claim, based on the constitutional infirmity of the CVA (*see* Contempt Mot. ¶ 20), such a pleading would not be *barred* by the General Stay Provision. This Court merely would not act upon it absent a showing of immediate and irreparable harm. Whether such immediate and irreparable harm exists with respect to the Amicus Curiae Motion, however, is immaterial, because the Delaware Supreme Court is the only court with jurisdiction to act or not act upon the Amicus Curiae Motion.

21. The Debtor’s interpretation of the General Stay Provision is bolstered by comparison to the automatic stay provisions of the Bankruptcy Code, which enumerate specific actions that are stayed. *See generally* 11 U.S.C. § 362(a). Had the Court intended the “general stay” of “the bankruptcy case” in the General Stay Provision to apply to specific acts, particularly an act so bankruptcy-remote as the filing of an Amicus Curiae Motion in the Delaware Supreme Court, presumably the Court would have used more targeted language akin to that employed by Congress in § 362(a).

22. Perhaps more importantly, the Debtor’s interpretation of the General Stay Provision is bolstered by other provisions in the Mediation Order. In particular, paragraph 7 of

the Mediation Order provides, in pertinent part, that all parties in interest and their respective counsel “are ordered to comply with all directions issued by the mediators” at peril of “the imposition of appropriate sanctions.” (Mediation Ord. ¶ 7.) Paragraph 4 of the Mediation Order sets forth certain conditions under which the Debtors “shall pay the invoice[s]” of Judge Rutter, and orders that any disputes “shall be submitted to the Court for resolution.” (*Id.* ¶ 4.) Paragraph 11 of the Mediation Order provides, in pertinent part, that “no further discovery shall proceed in connection with this bankruptcy case” except as authorized by the mediators or otherwise agreed by the relevant parties. (*Id.* ¶ 11.) Each of these provisions contains a specific decree as to what the Court intends to happen or not to happen, embodied in the mandate that parties “are ordered to” or “shall” do something or refrain from doing something. Such mandatory language is conspicuously lacking in the General Stay Provision, the operative language of which is that “the bankruptcy case is generally stayed.” Had the Court intended the General Stay Provision to prohibit or enjoin certain actions, presumably the Court would have used specific language of mandate.

23. The Contempt Motion appears to acknowledge the weakness of its reliance on the General Stay Provision, standing alone, and attempts to bolster it by citing to other *non-decretal* paragraphs of the Mediation Order to suggest that the filing of the Amicus Curiae Motion violated the spirit of the Mediation Order. Specifically, the Contempt Motion references Judge Gross’s recommendation that “[i]ssues involving the constituencies be held in abeyance pending the mediation,” lest the “‘competitiveness’ of litigation and any rulings . . . harden the parties’ positions” in the mediation. (*See* Contempt Mot. ¶ 9 (quoting Mediation Ord. at 2 (quoting May 13, 2010, letter from Judge Gross [D.I. 477]).)

24. The Committee accuses the Debtor, by virtue of the Amicus Curiae Motion, of being involved in the “competitiveness of litigation” of which Judge Gross expressed concern, and posits that the Delaware Supreme Court’s consideration of the Debtor’s *amicus* brief will “harden” the Debtor’s position regarding the constitutionality of the CVA and threaten the chances of a successful mediation. The Debtor disagrees. There is nothing “competitive” about the Amicus Curiae Motion—it is a simple statement designed to alert the Delaware Supreme Court to the position of a non-party having a significant interest in the outcome of the Cross-Appeal, which alerts the Court to broader policy considerations not presented by the parties to the Cross-Appeal, but that might inform the Court’s decision as to the constitutionality of the CVA.<sup>7</sup> The Debtor’s position on the CVA has been no secret, given the Debtor’s opposition to passage of the CVA and the case-dispositive motions filed by the Debtor in many of the CVA Cases highlighting the constitutional infirmities of the CVA. As a non-party *amicus* the Debtor will not be entitled to be heard at oral argument in support of its brief. Thus, any “competitiveness” of the Cross-Appeal will be between the parties thereto.

25. Whether or not the Delaware Supreme Court considers the Debtor’s *amicus* brief, there will be a decision reached at some point on the Cross-Appeal. Were that decision reached during the mediation, it would obviously impact the negotiating leverage of the parties thereto. But this impact would have occurred whether or not the Debtor filed the Amicus Curiae Motion. Accordingly, the Debtor does not believe the Amicus Curiae Motion can be fairly categorized among the three specific “issues” about which Judge Gross expressed concern about “competitiveness of litigation,” namely: (i) the trial concerning the Pooled Investment Account (which this Court permitted to go forward), (ii) the motion to disband the Lay

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<sup>7</sup> The Debtor notes that the Neuberger Firm, counsel to the Ad Hoc Committee of Abuse Survivors, will be actively seeking a ruling from the Delaware Supreme Court that the CVA is constitutional.

Employees' Committee and related pleadings, and (iii) any further extension of the stay of CVA Cases against non-debtor parishes (the Debtor's rights with respect to which, incidentally, are preserved by paragraph 9 of the Mediation Order<sup>8</sup>). Accordingly, even assuming *arguendo* that a violation of the "spirit" of an order as recorded in its non-decretal paragraphs could provide a basis for civil contempt, which it cannot, the Debtor's filing of the Amicus Curiae Motion did not violate the spirit of the Mediation Order or Judge Gross's recommendations with respect to the stay of "issues" involving the mediation parties:

26. For the reasons set forth above, neither the General Stay Provision nor the Mediation Order as a whole prohibited the filing of the Amicus Curiae Motion. And at a minimum, to the extent the Mediation Order was intended to prohibit the filing of the Amicus Curiae Motion, the language of the order, interpreted in the Debtor's favor, do not provide the Debtor with "fair warning" of the scope of prohibited action so as to support a finding of civil contempt. Accordingly, the Committee's request for sanctions should be denied.

### **III. The Contempt Motion Was Not Signed and Filed by a Delaware Lawyer as Required by Del. Bankr. L.R. 9010-1(c)**

27. Local Rule 9010-1(c), which governs association with Delaware counsel, provides in pertinent part that "Delaware counsel shall be the registered users of CM/ECF and shall be required to file all papers." Del. Bankr. L.R. 9010-1(c). The Contempt Motion was electronically signed and filed by a California lawyer who, so far as the Debtor is aware, is not licensed to practice in the United States District Court for the District of Delaware and has not been admitted *pro hac vice* to practice before this Court.

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<sup>8</sup> For this reason, among others, the press release issued by the Neuberger Firm was misleading when it suggested that, in paragraph 9 of the Mediation Order, this Court had "directed" the scheduling of trials against the non-debtor parishes and that the "only" way parishes would avoid trial is by contributing their assets to the mediation process. As the Debtor's right to seek a further stay of those trials was expressly preserved, there are obviously no guarantees the trials will occur as and when scheduled by the Delaware Superior Court, much less any directive from this Court that such trials should proceed.

28. The requirement of association with Delaware counsel is deeply rooted in Delaware state practice, which charges Delaware counsel with the responsibility of educating their out-of-state colleagues about the high standards of professionalism expected of lawyers practicing in the Delaware courts, *see Principles of Professionalism for Delaware Lawyers* ¶ C (“Before moving the admission of a lawyer from another jurisdiction, a Delaware lawyer . . . should furnish the candidate for admission with a copy of these Principles.”), and sharing fully in the conduct of the litigation to ensure these standards are met, *see Del. Lawyers’ Rules of Professional Conduct* 5.5(c)(1) (requiring “active participation” of Delaware counsel who associates with out-of-state counsel).

29. As Vice Chancellor Laster stated in a recent letter opinion distinguishing between “local counsel” (a role the Court of Chancery does not recognize) and “Delaware counsel,”

A Delaware lawyer always appears as an officer of the Court and is responsible for the positions taken, the presentation of the case, and the conduct of the litigation.

If a Delaware lawyer signs a pleading, submits a brief, or signs a discovery request or response, it is the Delaware lawyer that takes the positions set forth therein. This is true regardless of who prepared the initial draft or how the underlying work was allocated.

When a particularly questionable argument was made in the briefing, [the Court] ha[s] not hesitated to ask the **Delaware** lawyer at the hearing how the argument possibly could be advanced, regardless of whether forwarding counsel was designated to make the argument. . . . It is the Delaware lawyer’s responsibility to ensure that the arguments being made are appropriate. A Delaware lawyer cannot abdicate his or her obligations or cede them to forwarding counsel.

*State Line Ventures, LLC v. RBS Citizens, N.A.*, C.A. No. 4705-VCL, 2009 Del. Ch. LEXIS 233,

\*2-3 (Del. Ch. Dec. 2, 2009) (emphasis in original).

30. The Debtor respectfully submits that, before it, the Bishop, and YCST are forced to defend themselves against the grave charges leveled against them in the Contempt Motion—including, among others, that YCST has violated the Delaware Lawyers’ Rules of Professional Conduct—it is appropriate that the Contempt Motion should first be vetted and vouched for by a Delaware lawyer representing the Committee as being appropriate for filing and prosecution in this forum. Failing that, the Debtor submits that the Contempt Motion should be disregarded by this Court as procedurally and substantively deficient under Local Rule 9010-1(c).

### **RESERVATION OF RIGHTS**

31. The Debtor reserves the right to supplement this Objection and assert any additional rights and defenses with respect to the Contempt Motion to which the Debtor may be entitled at law or in equity, including, but not limited to that an injunction against the Amicus Curiae Motion would constitute an impermissible intrusion upon the Debtor’s First Amendment right to petition the Delaware government for a redress of grievances wrought by the passage of the CVA.<sup>9</sup>

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<sup>9</sup> See U.S. Const. Amend. I (“Congress shall make no law . . . abridging the right of the people . . . to petition the Government for a redress of grievances.”); *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 510-11 (1972) (California Motor Transport, 404 U.S. at 510-511 (finding it would be destructive of the right of petition to apply federal law so as to bar groups from “us[ing] the channels and procedures of state . . . courts to advocate their causes and points of view respecting resolution of their business and economic interests”).

WHEREFORE, the Debtor respectfully requests that the Court deny the Contempt Motion, award the Debtor costs, expenses and attorneys' fees in connection with the Contempt Motion and this Objection pursuant to 28 U.S.C. § 1927,<sup>10</sup> and grant the Debtor such other and further relief as is just and proper.

Dated: Wilmington, Delaware  
June 18, 2010

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Counsel to the Debtor and Debtor in Possession

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<sup>10</sup> The statute provides, in pertinent part, that "[a]ny attorney . . . who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the costs, expenses and attorneys' fees reasonably incurred because of such conduct." 28 U.S.C. § 1927.

**Exhibit A**

**June 4, 2010, Press Release by the Neuberger Firm**

# THE NEUBERGER FIRM

ATTORNEYS AND COUNSELLORS AT LAW

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THOMAS S. NEUBERGER, ESQUIRE  
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June 4, 2010

**FOR IMMEDIATE RELEASE**

## **DIOCESE PARISH ONLY COURT CASES RESTART, AND TWO NEW ONES ARE FILED**

**Wilmington, DE:** On June 1, 2010 the U.S. Bankruptcy Court issued a Second Amended Order Assigning Matter to Mediators in the Diocese of Wilmington Bankruptcy which allows the restart of the DeLuca 8 trials on or after October 1, 2010. These 8 jury trials were scheduled to start seriatim on October 19, 2009 before President Judge James Vaughn of the Superior Court in Dover, but were caught up and stayed in the October 18<sup>th</sup> bankruptcy filing by Bishop Malooly. Now, despite the current mediation process in the Diocese bankruptcy, the Court in amended item 9 of its Order has directed that the 8 DeLuca survivor cases can be immediately scheduled for trial against St. Elizabeth's, St. John's and St. Matthews parishes on behalf of survivors John Vai, Michael Schulte, and six other anonymous survivors, and that those jury trials can begin "no sooner than October 1, 2010."

"This is a happy day for all those survivors of predator Diocese priests who also have sued 28 of the 57 Diocese parishes. After a year delay by Malooly, now they will have their day in court beginning with John Vai and all 8 victims of priest DeLuca," said their attorney Thomas S. Neuberger. "Now the only way these parishes can avoid a jury trial is to honestly participate in the current bankruptcy court mediation process by contributing their own parish assets to the mediation money fund which will be distributed to survivors," he added.

Today, two new cases also were filed in Superior Court against several parishes, including St. Paul's here in Wilmington, St. Mary Refuge of Sinners in Cambridge, Maryland and Immaculate Conception in Elkton, Maryland. John Goe #2 alleges from the ages of 7 to 17, from 1970 to 1979, he frequently was sexually abused by Diocese priest Walter D. Power in Sussex County and in Maryland. This is the third victim of Power who has sued a parish which did not protect children.

Like other pedophile priests who were Power's contemporaries in the Diocese, Power was assigned to the Delaware and Maryland Boy Scouts. And similarly, like other known pedophile priests in the Diocese, Power spent much of his time as a priest hidden out in rural Maryland parishes including those in Salisbury, Cambridge, Maryland, Chestertown, Pocomoke City and Elkton. Power was publicly identified as a known child abuser by then Bishop Saltarelli on November 16, 2006. Mr. Goe alleges that Power was a serial abuser who preyed upon numerous young boys while stationed at Delaware and Maryland parishes. He was finally removed from active ministry in 1983, but was allowed to retire as a priest in good standing. Power died in 1998.

John Toe #3 alleges in the 1960's he frequently was sexually abused by Diocese priest John O'Brien, as a young child. He is the second survivor of O'Brien to sue a parish because of his actions. O'Brien is deceased and was not on the public list released by former Bishop Saltarelli.

These two parish lawsuits do not arise under the Delaware Child Victim's Act of 2007 and its two year look back window, which closed on July 10, 2009. Instead, these survivors experienced traumatic amnesia and only recently recovered their memories of the unspeakable sexual abuse they experienced as young as 5 or 7 years old, when their minds as a protective mechanism blocked their memories of the severe sexual trauma they endured.

"Again, these parishes will have to contribute their own assets to satisfy these financial claims against them since their parent Diocese is now in bankruptcy," added co-counsel Thomas Crumplar.

#30#

**Exhibit B**

**Debtor's Motion to the Delaware Supreme Court  
To Defer Ruling on the Amicus Curiae Motion**

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES E. SHEEHAN,

Plaintiff-Below,  
Appellant/Cross-Appellee,

No. 730, 2009

- v -

OBLATES OF ST. FRANCIS de SALES; OBLATES OF  
ST. FRANCIS de SALES, INCORPORATED, a  
Delaware corporation; SALESIANUM SCHOOL,  
INC., a Delaware corporation,

APPEAL FROM THE  
SUPERIOR COURT IN AND  
FOR NEW CASTLE COUNTY

C.A. No. 07C-11-234  
(CLS)

Defendants-Below,  
Appellees/Cross-Appellants.

MOTION OF CATHOLIC DIOCESE OF WILMINGTON, INC. TO DEFER CONSIDERATION  
OF MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF (D.I. 27)

The Catholic Diocese of Wilmington, Inc. ("CDOW") respectfully moves this Court for an order deferring for thirty (30) days the consideration of the Motion for Leave to File Brief of the Amicus Curiae the Catholic Diocese of Wilmington, Inc. in Support of Defendants-Below Appellees/Cross-Appellants (D.I. 27, hereinafter "Motion for Leave") filed on June 2, 2010. In support of this Motion to Defer, CDOW states as follows:

1. CDOW, along with all named parties to the above-captioned matter, are participating in a mediation ordered by the United States Bankruptcy Court for the District of Delaware. Meetings of the mediation parties will commence during the weekend of June 25, 2010, reconvene the following weekend, and may continue later into July if necessary. In order to afford the parties to the mediation the opportunity to concentrate on the tasks necessary to prepare for successful mediation sessions, the Bankruptcy Court has entered a stay

of the diocesan bankruptcy proceedings, and has extended, until July 31, 2010, an interim stay of all proceedings in all cases pending before the Delaware Superior Court involving CDOW and its parishes.

2. While CDOW has settled with Appellant/Cross-Appellee Sheehan and therefore is no longer a party in the above-captioned action (hence, the filing of a motion for leave to file as *amicus curiae*), it is CDOW's understanding that the instant matter will become one of the matters to be mediated between Appellant/Cross-Appellee and Appellees/Cross-Appellants.

3. It is the sincere hope of CDOW that all matters now pending against CDOW, the parishes and affiliated corporations of the Diocese of Wilmington, and the various religious orders and schools, be resolved in the mediation. To this end, CDOW respectfully requests that this Court defer consideration of its Motion for Leave until the completion of the mediation process. While it is unknown at this time when the mediation will conclude, in order that Appellant/Cross-Appellee be afforded the opportunity to include arguments in its final brief (now due on August 2, 2010)<sup>1</sup> in opposition to CDOW's *amicus* brief (should the Court eventually grant leave to file), CDOW respectfully requests that the Court defer consideration of its Motion for Leave for thirty (30) days, until July 19, 2010, or such other time as the Court deems appropriate.

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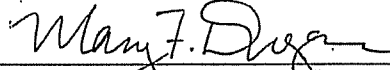
<sup>1</sup> Today the Court granted Appellant/Cross-Appellee's Motion Under Rule 15(b) to extend the time for service and filing of Appellant/Cross-Appellee's Reply Brief in order that the parties may concentrate on the mediation. (D.I. 45, 36)

4. Counsel for CDOW is filing this Motion to Defer at the request of the mediator, and understands that the mediator has raised the matters set forth herein with counsel for Appellant/Cross-Appellee; however, at the time of the filing of this Motion to Defer, counsel for CDOW does not know the position of counsel for Appellant/Cross-Appellee as to the proposed deferral.

WHEREFORE, for the foregoing reasons, the Catholic Diocese of Wilmington, Inc. respectfully requests that this Court defer consideration of its Motion for Leave to File *Amicus Curiae* Brief (D.I. 27) until July 19, 2010, or until such other time as the Court deems appropriate.

Dated: June 17, 2010

YOUNG CONAWAY STARGATT  
& TAYLOR, LLP



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Anthony G. Flynn (#74)

Mary F. Dugan (#4704)

William E. Gamgort (#5011)

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