

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

**In re:** :  
 :  
**CATHOLIC DIOCESE OF WILMINGTON,** : **Chapter 11**  
**INC., a Delaware corporation,** :  
 : **Case No. 09-13560 (CSS)**  
**Debtor.** :  
 : **Ref. D.I. 546, 554**

**Objection Deadline: TBD**  
**Hearing Date: TBD**

**JAMES E. SHEEHAN’S REPLY TO THE OBJECTION OF THE DEBTOR TO THE  
EMERGENCY MOTION OF JAMES E. SHEEHAN TO HOLD THE CATHOLIC  
DIOCESE OF WILMINGTON, INC., BISHOP W. FRANCIS MALOOLY, YOUNG  
CONAWAY STARGATT & TAYLOR, LLP, ANTHONY FLYNN, ESQUIRE AND  
WILLIAM E. GAMGORT, ESQUIRE IN CONTEMPT FOR VIOLATION OF THE  
COURT’S NOVEMBER 12, 2009 ORDER (D.I. 105) AND REQUEST FOR EXPEDITED  
CONSIDERATION THEREON**

James E. Sheehan (“Sheehan”) hereby replies to the objection (“Opposition”) of the Debtor,<sup>1</sup> filed on June 23, 2010 (D.I. 554) to the *Emergency Motion of James E. Sheehan to Hold the Catholic Diocese of Wilmington, Inc., Bishop W. Francis Malooly, Young Conaway Stargatt & Talor, LLP, Anthony Flynn, Esquire and William E. Gamgort, Esquire in Contempt for Violation of the Court’s November 12, 2009 Order (D.I. 105) and Request for Expedited Consideration Thereon* (“Motion for Contempt” or “Motion”), filed on June 21, 2010 (D.I. 546). Unless otherwise defined herein, capitalized terms have the meanings ascribed to them in the Motion for Contempt.

**UPDATED FACTS**

As this Court is already aware, on June 24, 2010, the Delaware Supreme Court denied the

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<sup>1</sup> While not clear, it appears the Debtor filed the Opposition on behalf of each party whom Sheehan seeks to hold in contempt for violation of this Court’s Settlement Order.

Diocese's amicus motion. (Ex. 1). Therefore, expedited consideration is no longer necessary. Nor is it necessary to order the Diocese to withdraw its motion. Nevertheless, Sheehan respectfully submits that all additional relief specified in his original motion is necessary and appropriate. (D.I. 546 at 8-9). This matter also is not moot because Sheehan seeks civil compensatory attorneys' fees for vindicating his rights and punitive criminal sanctions to vindicate the authority of the Court and for violation of federal criminal law.

### ARGUMENT

#### **I CONTEMNORS HAVE VIOLATED THIS COURT'S NOVEMBER 12, 2009 SETTLEMENT ORDER AND SHOULD BE HELD IN CONTEMPT.**

**A. Sheehan's Earlier Arguments.** Rather than repeat them at length here, Sheehan adopts the legal argument contained within his original motion.

**B. Contemnors Are Bound by the Court's Settlement Order.** Contemnors' arguments appear to boil down to a claim that the Diocese is not bound by this Court's Settlement Order and is instead only bound by the Settlement Agreement.<sup>2</sup> First, as explained in the Motion, the Settlement Order was drafted by the Diocese's own attorneys, submitted by Motion to the Court for approval and, after due consideration, approved, signed and entered by the Court. Its plain terms demonstrate that it is binding and that the Court "approved" the provision at issue. (Tab A to the Motion at ¶ 8). Accordingly, it is clear this is a valid and binding Court Order despite Contemnors' unhappiness with being bound by it.

Second, as noted in Sheehan's original Motion at page 4, the Diocese never signed the Settlement Agreement. No where in its objection does the Diocese contest this simple fact.

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<sup>2</sup> (See D.I. 556 at 7 - characterizing the Diocese's argument as "the Settlement Order is not binding and did not really 'approve' anything, even though it says 'approved.'").

Accordingly, the unexecuted Settlement Agreement binds neither Sheehan nor the Diocese and Contemnors' reliance upon its provisions is improper.<sup>3</sup> As a result, only this Court's Settlement Order properly binds the parties and, as explained in Sheehan's motion, by again raising "claims" of "any and every kind, nature and character whatsoever" which the Diocese had earlier raised pre-settlement in the Sheehan case, Contemnors knowingly violated this Court's Settlement Order.

**C. The Diocese Contracted Away Its Constitutional Claims.** Continuing, if the Diocese feels unfairly deprived of its opportunity to argue the constitutionality of the CVA to the Delaware Supreme Court, then it should not have placed the provision waiving its ability to do so in the proposed Settlement Order which the Diocese itself drafted. It should not have contracted away its right to raise such a challenge when it settled with Sheehan last November. For the same reason, the Diocese's reliance upon the petition clause is equally without merit. See, e.g. Pee Dee Health Care, P.A. v. Sanford, 509 F.3d 204, 213 (4th Cir. 2007) ("Where a party knowingly and willingly enters into an agreement that waives a constitutional right, the agreement is enforceable so long as it does not undermine the public's interest in protecting the right").

**D. The Court Should Deny Contemnors' Request for Fees.** The Court should deny Contemnors' misplaced request for fees. The Diocese drafted a proposed Settlement Order for the Court containing various provisions, including one by which it released all "claims" of "any and every kind, nature and character whatsoever" which the Diocese had earlier raised pre-settlement in the Sheehan case. The Diocese submitted this proposed Settlement Order to the

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<sup>3</sup> Of course, the Settlement Agreement itself specifically states that it is subject to this Bankruptcy Court's orders, such as the Settlement Order. (Tab C to Motion at 4).

Court for approval. The Court signed the Settlement Order, giving it legal effect. The Diocese subsequently violated the plain terms of that Settlement Order by filing its motion with the Delaware Supreme Court in which it raised claims it had previously raised and released. It cannot now claim ambiguity in an Order carefully drafted by its own attorneys. The plain terms of the Settlement Order have been violated and Sheehan's motion and the specific relief sought is entirely proper.<sup>4</sup>

### CONCLUSION

Sheehan seeks oral argument on his motion but, due to the pending mediation, it need not be until October, 2010. As set forth in greater detail in Sheehan's Motion, the Court should hold Contemnors in contempt and grant the civil and criminal relief requested therein, with the exception of the order to withdraw the Delaware Supreme Court Motion which has been decided, and coercive daily fines and coercive incarceration which are no longer effective.

Respectfully Submitted,

**THE NEUBERGER FIRM, P.A.**

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Dated: June 30, 2010

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<sup>4</sup> Similarly, as explained above, the Diocese also cannot hide behind the unexecuted Settlement Agreement which, despite the passage of more than six months, the Diocese still refuses to sign.

# **Exhibit 1**



Denied

EFiled: Jun 24 2010 8:35AM EDT  
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Case Number 730,2009

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES E. SHEEHAN,

Plaintiff-Below,  
Appellant/Cross-Appellees,

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.

ORDER

The Court, having considered the motion of the Catholic  
Diocese of Wilmington, Inc. ("CDOW") for leave to file a brief as  
*Amicus Curiae*,

IT IS, this \_\_\_\_\_ day of \_\_\_\_\_ 2010, ORDERED that  
the motion is granted; and it is

IT IS FURTHER ORDERED that CDOW's brief as *Amicus Curiae* In  
Support of Defendants-Below Appellees/Cross-Appellants shall be  
filed.

\_\_\_\_\_  
J.