

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN

In re:

ARCHDIOCESE OF MILWAUKEE,

Case No. 11-20059-svk

Chapter 11

Debtor.

Hon. Susan V. Kelley

DESCRIPTION OF DEBTOR AND PRE-FILING HISTORY  
AFFIDAVIT OF JOHN J. MAREK

STATE OF WISCONSIN )  
 ) ss.  
COUNTY OF MILWAUKEE )

John J. Marek, being duly sworn, deposes and states:

1. I am the Treasurer and Chief Financial Officer of the Archdiocese of Milwaukee, (the “Archdiocese” or “Debtor”), the debtor and debtor-in-possession in the above-captioned Chapter 11 case (“Chapter 11 Case”). As the Treasurer and Chief Financial Officer, I am generally familiar with the Archdiocese’s day-to-day operations, business affairs and books and records.

2. On the date hereof (the “Petition Date”), the Archdiocese, a Wisconsin civil corporation, filed its voluntary petition for relief under Title 11 of the United States Bankruptcy Code (the “Bankruptcy Code”).

3. Pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code, the Debtor continues to operate its business and manage its properties as a debtor in possession.

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4. All facts set forth in this Affidavit (the "Affidavit") are based on my personal knowledge, upon information supplied to me by others associated with the Archdiocese, upon my review of relevant documents or upon my opinion based on my experience and knowledge of the Debtor's operations, financial condition and present financial outlook. If I were called upon to testify, I could and would testify competently to the facts set forth herein. I am authorized to submit this Affidavit.

### **Description of the Archdiocese**

7. The Diocese of Milwaukee was established on November 28, 1843, and was elevated to an Archdiocese<sup>1</sup> on February 12, 1875, by Pope Pius IX. A "diocese" is a portion of the Catholic Christian faithful entrusted to a bishop for him to shepherd with the cooperation of the presbyterate (the body of priests). A diocesan bishop has the responsibility to assist all the Christian faithful in a specific geographical region with their spiritual needs.

8. The region served by the Archdiocese consists of 4,758 square miles in southeast Wisconsin which includes the following counties: Dodge, Fond du Lac, Kenosha, Milwaukee, Ozaukee, Racine, Sheboygan, Walworth, Washington and Waukesha (the "Region").

9. There are 657,519 registered Catholics in the Region.

10. The primary role of the Archdiocese is to provide resources, spiritual leadership, direction, support, planning, programming, leadership development and other services to individuals of the Roman Catholic faith, parish corporations, and schools in the Region. In its own words, the mission of the Archdiocese is:

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<sup>1</sup> An archdiocese is a diocese that is important due to its size or historical significance, and is governed by an archbishop.

- to serve Catholic parishes, schools, and institutions so that they may effectively carry out their mission;
- to serve the people of God in southeastern Wisconsin; and
- to serve the broader community

11. While the theological organization of a diocese is governed by canon law, the business and financial affairs of the Roman Catholic Church (the “Church”) vary across the world because they are governed by a combination of local civil law and canon law. Within the United States, the civil organization of dioceses varies from state to state.

12. The Archdiocese provides certain ecclesiastical services and pastoral care to the two hundred and ten (210) parish corporations (the “Parish Corporations”), one hundred and fourteen (114) Catholic elementary and middle schools, thirteen (13) Catholic high schools (collectively with the Catholic elementary, middle, and high schools, the “Schools”), and various other Catholic-based social and community service organizations that operate in the Region. The Archdiocese also serves as a resource, from time to time, for the five (5) Catholic colleges and universities, and nine (9) Catholic hospitals located in the Region.

13. The Archdiocese has approximately one hundred twenty (120) salaried employees and fifty-seven (57) hourly employees. There are also approximately six (6) counselors paid on a commission basis.

14. As a religious organization, the Archdiocese has no significant, ongoing for-profit business activities or business income. Its annual operating budget is approximately \$24 million.

15. Payroll, facilities and education account for over half of the budget. The Archdiocese provides millions of dollars of assistance to needy charities and organizations located within the Region.

16. Revenue for the Archdiocese principally comes from a variety of sources, including donations, parish assessments, some fee-based services, the annual Catholic Stewardship Appeal,

cemetery revenues and grants from charitable funds and other charities, portions of which are also subject to donor restrictions.

### **Legal Structure of the Archdiocese and Parishes**

17. Since 1903 the Archdiocese of Milwaukee has been and continues to be a Wisconsin civil corporation.

18. The Archdiocese operates pursuant to Chapter 181 of Wisconsin Statutes, with the Archbishop of Milwaukee acting as its sole Corporate Member. Many corporate decisions are also subject to canon law which requires the Archbishop to consult with a Finance Council comprised of lay and clergy as well as a College of Consultors consisting of clergy members.

19. The Parish Corporations located within the Archdiocese are separate civil corporations. Other than a few Parish Corporations which are wholly-owned by religious orders, the Parish Corporations are all organized and operate pursuant to Wis. Stat. § 187.19. In Wisconsin, parish corporations have been separately incorporated since 1883 (Wis. Stat. § 187.19 is based on Chapter '37 of the Laws of Wisconsin (1883), and many of the Parish Corporations came into existence in 1883, with the majority incorporated prior to 1930). In accordance with the Wisconsin Statutes, each Parish Corporation has a designated Board of Trustees as prescribed by statute. Parish corporations own their own property, finance their own activities, manage their own assets and are responsible for their own corporate activities.

20. The Archdiocese's Chapter 11 Case differs significantly from the diocesan bankruptcy cases in Spokane, Washington, Tucson, Arizona, Portland, Oregon, San Diego, California, and Fairbanks, Alaska (the "Corporation Sole Bankruptcies"). In each of those cases, the parishes existed civilly as unincorporated associations as parts of the diocese's civil corporation. This single corporation, i.e. "corporation sole", held title to all parish property.

Because title to the parish property was held by the corporate sole, a central issue in those cases was whether property of the parishes was included within the diocese's bankruptcy estate.

21. In contrast to the Corporation Sole Bankruptcies, the Archdiocese does not hold title to any of the property of the Parish Corporations.

22. The Parish Corporations have not sought bankruptcy relief and are not debtors in the above-captioned proceeding.

### **The Clergy Sex Abuse Crisis and Archdiocese's Response**

23. A tragedy that runs contrary to every teaching and tradition of the Church<sup>2</sup> has unfolded in the Church as a whole and in the Archdiocese in particular: a small number of clergy and others took advantage of their positions of trust and respect in the community to sexually abuse children (the "Abuse").

24. The Church as a whole and the Archdiocese in particular are committed to providing for all victims/survivors of Abuse, known and yet to be known, in a fair, just and equitable manner with the available resources of the Archdiocese.

25. The Archdiocese addressed the victims of Abuse in a substantially different way than other dioceses. Acknowledging the issue of clergy sexual abuse of minors in the Archdiocese of Milwaukee in the late 1980s, the Archdiocese developed a process for receiving and responding to reports of Abuse by clergy and assigned a senior staff member to direct this process.

26. Consequently, in 1989 the Archdiocese established Project Benjamin, an initiative that brought together victims' advocates, healthcare professionals, judicial and law enforcement

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<sup>2</sup> References to the term "Church" refer to the universal church of Roman Catholic belief, seated in the Vatican and currently headed by Pope Benedict XVI.

representatives and clinical social workers and therapists to assist in the Archdiocese's response to Abuse victims.

27. In the spring of 2002, the U.S. Bishops adopted the *Charter for the Protection of Children and Young People* (the "Charter"), which adopted a "one strike" policy with regard to clergy serving in any active, public ministry, and also included:

- permanent removal from active ministry of any priest or deacon with a substantiated allegation of sexual abuse of a minor;
- requirement of criminal background checks for adults, including clergy, who work with children and youth;
- implementation of educational programs for the prevention of child sexual abuse for both adults and children;
- provision of behavioral guidelines/Ethical standards for ministry;
- establishment of outreach for victims/survivors; and
- creation of review boards to make recommendations to the diocesan bishop about substantiation of accusations against clergy and to oversee policy implementation.

28. Not only has the Archdiocese continuously satisfied the Charter, but it has taken many additional steps, not required by the Charter, to protect children from abuse and to provide healing for those who have been harmed. These additional measures include:

- hiring a full time victim assistance coordinator to implement the archdiocesan response to sexual abuse through the Sexual Abuse Prevention and Response Services office;
- hiring a full time safe environment coordinator to oversee implementation of all requirements to promote the safety of children and youth;
- providing counseling referrals, spiritual direction, therapy support and other services to assist people who have been abused or affected by abuse. In fiscal year 2009-2010, \$882,129 was spent on settlements and therapy for the victims of clergy sexual abuse;
- making Archbishop ListECKI, Bishop Sklba, and, previously, Bishop Callahan and Archbishop Dolan, available to meet with individuals who have suffered or been affected by sexual abuse by clergy;
- requiring Safe Environment education for all priests, deacons, staff and volunteers in all parishes and schools;
- providing age-appropriate education for school and religious education children to equip them with the skills to help them protect themselves from abuse;
- requiring all Church personnel to sign The Code of Ethical Standards for Church Leaders;

- implementing a Community Advisory Board to review and improve the response of the Archdiocese to those who have experienced or been affected by sexual abuse by Church personnel;
- conducting healing services, Masses and other forms of reconciliation events for victim/survivors in the Archdiocese; and
- requiring intensive background screening as well as psychological testing for those wishing to enter the seminary.

29. Moreover, in the early 1990s, retired Milwaukee County Circuit Court Judge Leander Foley led a review of all known priest-offender files to determine if any cases fell within the criminal statute of limitations and should be referred to the appropriate authority or, if a criminal referral was not possible because of the expiration of the statute of limitations, to ensure that appropriate action was taken to avoid risk of further offenses.

30. In 2002, this process was repeated when civil authorities reviewed the Archdiocese's files to verify that there were no prosecutable criminal cases falling within the criminal statute of limitations.

31. In 2004, then Archbishop Timothy M. Dolan directed a complete, external, forensic review of every diocesan priest's file to make sure that no allegations of clergy sexual abuse of a minor went undiscovered or unreported.

32. Since the advent of the Charter, when a claim of Abuse is substantiated, the priest or deacon responsible for the Abuse is permanently removed from active ministry. Further, even before the Charter was implemented, but at all times thereafter, when claims of Abuse are reported, the Archdiocese works to settle claims in a holistic way, by providing pastoral care, therapy and counseling, as well as financial resolution for victims/survivors of Abuse.

33. The Archdiocese, recognizing the need for a process outside the archdiocesan structure to address claims of Abuse of minors by diocesan clergy, introduced an independent, voluntary mediation system in January 2004. The system was created in collaboration with Eva M. Soeka, Director of Marquette University's Center for Dispute Resolution. Moreover,

regardless of whether the mediation system is accessed for a case involving a clergy member who is still alive, the appropriate county's district attorney is contacted with information about the report.

34. The Archdiocese also became one of the first dioceses in the country to provide a public listing of all diocesan priests restricted from ministry in accordance with the Charter. On July 9, 2004, the Archdiocese publicly provided the names of all such priests, and continues to do so on the Archdiocese's website.<sup>3</sup>

### **Events leading to Commencement of the Chapter 11 Case**

35. The Archdiocese has struggled for several years to remain financially viable while funding compensation for Abuse victims and continued victim litigation. The litigation has been necessary due to disagreement over the level of compensation that can or should be paid to Abuse victims in the face of competing needs for a very limited amount of available money. Throughout recent years, the Archdiocese has continued, as a priority, to pay for therapy, counseling, and other healing efforts for Abuse victims. It also made significant settlement payments to Abuse victims.

36. In August 2006, in Los Angeles, California, the Archdiocese was involved in court-ordered mediation stemming from Abuse claims against two priests who formerly served in the Archdiocese, resulting in a settlement of over \$16.65 million, of which the Archdiocese paid \$8.25 million, with the remainder paid by insurers.

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<sup>3</sup> The public listing states: "In line with the assurances given in the Charter for the Protection of Children and Young People, these are the names of the diocesan priests of the Archdiocese of Milwaukee who have been (or would be if they were still alive) restricted from all priestly ministries, may not celebrate the sacraments publicly, or present themselves as priests in any way. In addition, in accordance with the canonical norms that have been established, the allegations against any living priest are sent to the Congregation for the Doctrine of Faith in Rome."



37. During the fiscal year from July 1, 2009, to June 30, 2010, the net financial impact<sup>4</sup> of sexual abuse cases involving a diocesan clergy member and a minor was \$1,430,757, after reimbursement from insurance for mediation agreements and attorney fees.

38. As of June 30, 2010, the cumulative financial impact to the Archdiocese has been at least \$29,564,678 for abuse of minors by a diocesan priest or deacon.

39. To fund these costs (and other outreach to victims/survivors going back to the 1980s), the Archdiocese sold property, used interest and investment income, liquidated savings and investments, and reduced its operating costs through staff and service reductions. It also obtained a loan guaranteed by the landlord of its main offices (the Cousins Center) to meet the financial requirements of the California settlement agreement. The current balance on the loan is approximately \$4,650,000.

40. The Archdiocese is currently a defendant in twelve (12) lawsuits brought by a total of seventeen (17) claimants (the "State Court Litigation"), alleging they were victims of Abuse. The Archdiocese also received a demand from the plaintiffs' attorneys in the State Court Litigation on behalf of seven (7) additional individuals (collectively, the "Claimants").

41. Late last year, the Archdiocese contacted the Claimants' attorneys and proposed a mediation to attempt to reach resolution on the current pending lawsuits. A mediation session involving the Claimants' attorneys, an attorney for some of the Archdiocese's insurers, and the Archdiocese, including Archbishop Jerome E. ListECKi, took place on October 18, 2010 and

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<sup>4</sup> Net financial impact only measures the net amount of payments for settlements, medication, therapy for victims, legal fees and compliance audits (net of insurance reimbursements); actual financial impact is likely to be larger due to reduced donations and other fees and expenses that result from the Archdiocese's efforts to address the impact of the Abuse (e.g. interest payments on debt incurred for settlements, employee time, etc.)

November 11, 2010, with retired Cook County, Ill. Judge Stuart Nudelman serving as mediator. The mediation was not successful.

42. Subsequent negotiations and offers of settlement reached an impasse in December 2010.

43. The litigation involving Abuse victims has substantially depleted the Archdiocese's assets. Moreover, the litigation adversely impacts the Archdiocese's fundraising efforts, to the point that the Archdiocese can no longer both lead the faithful and fulfill its commitment to the Abuse Victims.

44. Finally, because the Wisconsin Court of Appeals recently ruled that the Archdiocese does not have insurance coverage for the claims asserted in the State Court Litigation, the projected costs of defending these cases, even if successful, will deplete the resources of the Archdiocese to a degree that the Archdiocese will not be able to pay other creditors and fund compensation and assistance to victims that are not plaintiffs or who bring their claims to the Archdiocese in the future.

#### **Purpose and Goals of the Chapter 11 Filing**

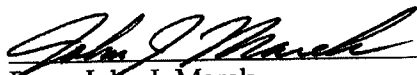
45. The Archdiocese filed its chapter 11 filing for the following reasons:
- To provide compensation for the unresolved claims of victims/survivors of Abuse including those Abuse victims/survivors who have not yet come forward.
  - To continue its outreach and support to victims/survivors of Abuse as an ongoing ministry of the Church;
  - To carry on the essential ministries and services of the Archdiocese so it can continue to meet the needs of the Parish Corporations, parishioners, and other who rely on the Church for spiritual, pastoral, and human assistance, thereby allowing the Archdiocese to move forward on stable financial ground to continue its ministry and mission in service to the people of Southeastern Wisconsin.
  - To fairly allocate the Archdiocese's remaining income and assets among the legitimate competing interests for such property, recognizing that it is not possible to pay all alleged claims and interests in full.

46. The Archdiocese has implemented effective measures designed to safeguard young people, and it has worked with civil authorities to review clergy files to allow any criminal proceedings to move forward and bring justice to clergy accused of these crimes. With its limited resources, the Archdiocese has done the best it can to compensate victims/survivors of Abuse who have come forward.


47. Given the experience of the other dioceses around the country, the Archdiocese believes that there may be additional Abuse victims who have not yet brought Abuse claims against the Archdiocese.

48. In light of the Diocese's limited financial resources, failure to file this chapter 11 proceeding would have resulted in some Abuse victims who have not yet brought claims against the Archdiocese failing to receive any compensation or assistance from the Archdiocese or any other known source.

49. Failure to file this chapter 11 proceeding also would likely have resulted in a cessation of the Archdiocese's ministry, education, and charitable outreach, upon which so many people rely.

  
By: John J. Marek  
Title: Treasurer and Chief Financial Officer

SUBSCRIBED and SWORN to before me this  
4<sup>th</sup> day of January, 2011.

  
Notary Public

My Commission Expires: 9/21/14

