

# The Court & The Diocese

## In All Fairness

BY RICHARD L. STEVENSON

Much has been written about the issues surrounding the filing of Chapter 11 bankruptcy by the Roman Catholic Diocese of San Diego ("Diocese"). Deeply ingrained in the reaction by many members of the community is the deep-seated outrage over the sexual abuse of children at the hands of parish priests and the perception that "the Church" ignored the problem and protected the violators. However, not much has been written about in the mainstream press from the perspective of the Diocese. Though many interesting, bankruptcy-specific issues are involved when a nonprofit religious institution such as the Diocese files for Chapter 11 protection, such as what property the Diocese owns, those topics are beyond the scope of this article. The author hopes to give the reader a better sense of perspective in thinking about why the Diocese would decide to proceed as it has.


The lawsuits filed against the Diocese primarily allege that the Diocese was negligent in hiring/training/supervising the offending priests. By filing for the reorganization under Chapter 11 of the U.S. Bankruptcy Code, the Diocese sought to avail itself of an effi-

cient system in which to not only treat all the victims/claimants fairly and equitably but also to preserve its financial ability to carry out its mission of supporting the 99 parish communities, 16 missions, 45 elementary schools, five high schools, two universities, 276 priests, 122 deacons, 296 religious sisters and 20 religious brothers depending on it.

Fairness to the victims/claimants is achieved by filing for Chapter 11 in a couple of ways. First, each claimant will attain compensation much more quickly and efficiently via the Chapter 11 process. These 143 individuals have filed claims in more than 120 different cases spread across different counties. With a single forum in which to mediate or estimate the value of their claims, the claimants will be spared waiting for years as their respective cases make their way through the state court system. In addition, there is a real risk that, if the cases were

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After four years of failed settlement talks, the Roman Catholic Diocese of San Diego reached a \$198.125 million settlement with 144 sexual abuse victims on September 7, 2007. The Diocese had filed for bankruptcy on February 27, right before trial was to begin on the molestation charges. Although a settlement has been reached, there is still debate as to the appropriateness of the bankruptcy filing that resulted in the staying of the trial.

## Shielding the Truth

BY IRWIN ZALKIN

**O**n Tuesday, February 27, 2007, after weeks of negotiations with Superior Court Judge Anthony Mohr in Los Angeles and on the eve of the first of four jury trials to commence in San Diego by victims of childhood sexual abuse against Bishop Robert Brom, the Roman Catholic bishop of San Diego, Bishop Brom filed a petition for Chapter 11 bankruptcy. As a result, the pending jury trials were automatically stayed as were all other state court proceedings involving the debtor, the Roman Catholic bishop of San Diego, a corporation sole.

The public relations mantra of the Roman Catholic bishop of San Diego (hereinafter the "Debtor") has been that the case was filed in order to "fairly, justly, and equitably compensate victims of sexual abuse by clergy and others associated with RCBSD without compromising RCBSD's stewardship and its mission" (disclosure statement dated March 27, 2007).

How has the Chapter 11 affected victims? In the view of the victims, the Chapter 11 proceeding was filed first and foremost to

keep an institutional secret, preserved by every bishop, including Robert Brom, since the Diocese was founded in 1936. This bankruptcy was filed in large measure to prevent the public airing of the salacious and provocative facts that would reveal the truth of the insidious sexual abuse of children over the past 50 years.

While Bishop Brom purports to have filed the bankruptcy in order to deal fairly with all victims, the list of abuse of the bankruptcy process—and ultimately of the sex abuse creditors—is well defined by Judge Louise De Carl Adler in her order to show cause why the case should not be dismissed, filed August 10, 2007, following the filing of a detailed 175-page report by the court-appointed independent expert R. Todd Nielson, CPA.

The Nielson Report, in addition to previous findings by Judge Adler, reveals that Bishop Brom and his legal representatives have deliberately understated the debtor's assets in sworn financial schedules. The bishop has made material misrepresentations as to the ownership of cash assets to

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addressed in state court, then the first few successful claimants could eat up the Diocese's available assets. For example, in May 2007, a jury in New York awarded \$5.9 million to a single victim in a case against the Diocese of Rockville Center; another victim in that case was awarded \$5.5 million. If that amount were the benchmark here, the \$95 million the Diocese has offered to compensate the claimants would be exhausted before the 18th case were concluded, perhaps even sooner if one considers the legal fees and costs, which also must be paid from the Diocese's available assets, that would accumulate if these cases proceeded in state court.

There should also be a concern for fairness to the Diocese. The 143 claims of abuse filed against the Diocese were for behavior going

back, in at least one case, to the 1930s. The bulk of the allegations relate to conduct from the 1970s and earlier. The Diocese has identified allegations against approximately 38 individual priests as credible. Of those 38 priests, approximately 20 are known to be deceased.

Recognizing the severe emotional harm suffered by victims of childhood sexual abuse and that it often takes time for victims to report the

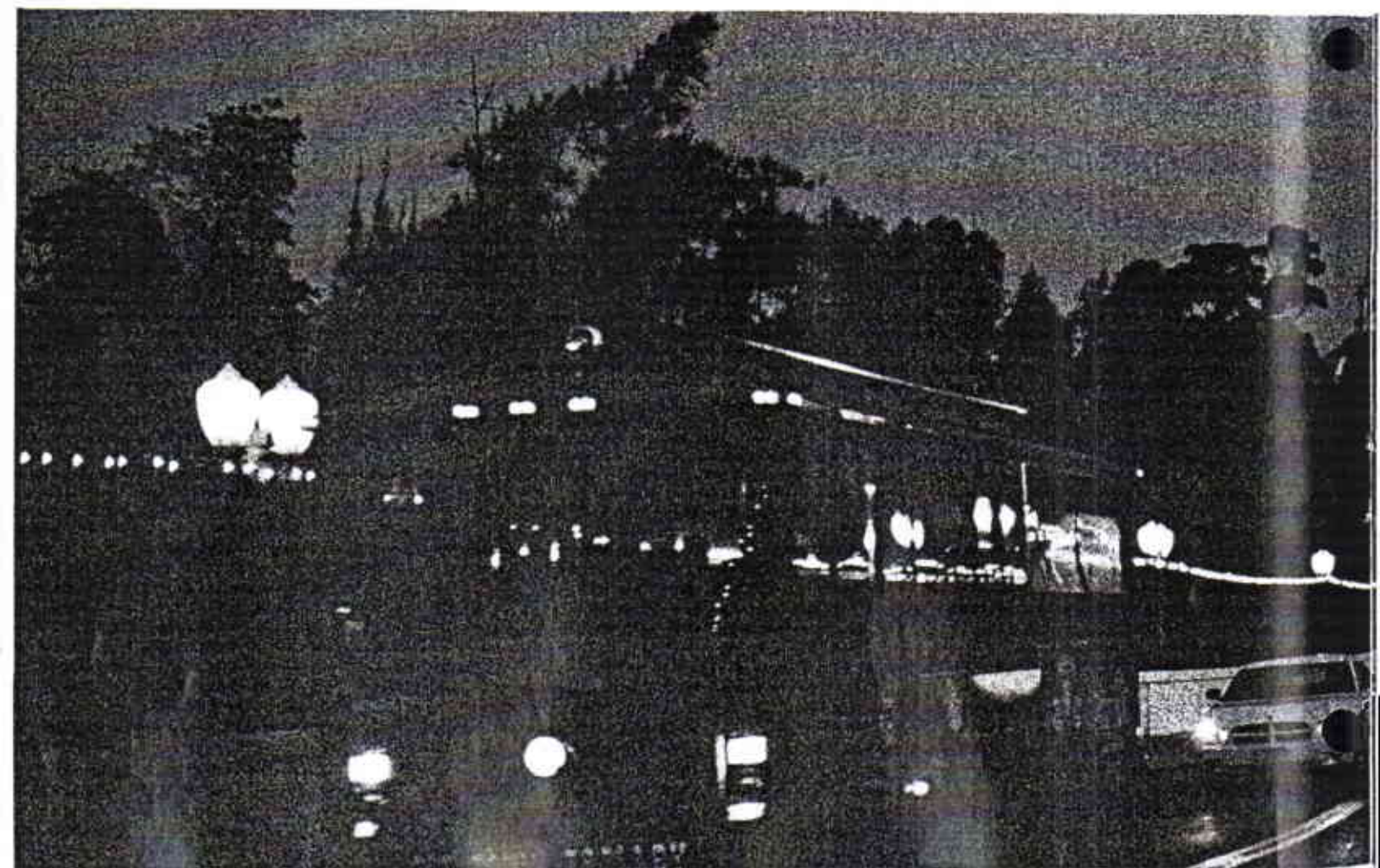
In filing for Chapter 11 bankruptcy, the Diocese chose a course of action that enabled it to be fair not only to the various claimants injured so long ago but also to today's nearly 1 million Catholics in San Diego and Imperial counties.

abuse, there still exists a fundamental unfairness in allowing many of these cases to proceed to trial. Aside from the obvious issues related to the damage the passage of time does to memories, availability of records, and so on, there is nobody other than the alleged victim to say

what happened in many cases against the Diocese. Moreover, there is the risk of juries applying today's standards of care to judge Diocese administrators for conduct that occurred several decades ago. Our understanding of the treatment and proper handling of sex offenders is vastly different in 2007 than it was in the 1930, '40s, '50s or even '70s.

Nobody denies that sexual abuse by priests is intolerable. Our system of law is premised on wrongdoers financially compensating those who have been wronged. Our system is also built on concepts of fairness. In filing for Chapter 11 bankruptcy, the Diocese chose a course of action that enabled it to be fair not only to the various claimants injured so long ago but also to today's nearly 1 million Catholics in San Diego and Imperial counties. ↵

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either banks and state government or the bankruptcy court.

Dilution of assets has been the game plan for dealing with creditors. In its filing of the first set of schedules required to be signed under oath by the Debtor in the Chapter 11 proceedings, the Debtor omitted any reference to its ownership of a subsidiary corporation or the two major properties it deeded to that corporation. After creditors brought this omission to the Debtor's attention, it acknowledged its "oversight" and amended the schedules to include information regarding Catholic Secondary Education Diocese of San Diego Inc., which it refers to as a "third party."

Before the filing of the Chapter 11, and as recently as June 7, 2006, Bishop Brom acknowledged and thanked Sam Skaggs of the ALSAM Foundation for its generous gift

of \$50 million to be used for the construction of the new Mater Dei Catholic High School in south San Diego (June 7, 2006, letter from Bishop Brom to L.S. Skaggs). Although this was a restricted gift, it had a "mandatory forgiveness" provision, meaning that as long as it was used for the purpose intended it would be forgiven in four or possibly five years. However, before the filing of

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the Chapter 11 case, this gift was converted into a secured loan. The security offered by the Debtor was not only the Mater Dei High School site but also the Marion High School site (the high school being replaced by Mater Dei) in Imperial Beach.

By the date of the filing of the Chapter 11 case, the Debtor had drawn down \$35 million of the \$50 million gift/loan. In the statement of financial affairs ("SOFA") filed by this Debtor as part of the Chapter 11 case, it reflects this gift as a liability of \$70 million. It created a \$70 million liability by showing that the \$35 million was secured by two properties and simply doubled the "liability."

Contrary to Bishop Brom's public relations reference to the plan as a "settlement," it is not. It requires victims to give up the right to jury trials, while preserving to the debtor the right to raise statute of limitations and all other defenses.

In short, the RCBSD bankruptcy is nothing more or less than a strategy to continue to hide the truth and devalue the claims of rape and molestation victims. ♫

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