

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

In re:)	Case No. 11-20059-SVK
)	
ARCHDIOCESE OF MILWAUKEE,)	Chapter 11
)	
Debtor.)	Hon. Susan V. Kelley
)	

**THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS' REPLY TO DEBTOR'S
OBJECTION TO MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS FOR LIMITED RELIEF FROM THE AUTOMATIC STAY TO PERMIT
TAKING OF CERTAIN DEPOSITIONS**

The Official Committee of Unsecured Creditors (the "Committee") in the above-captioned case hereby replies (the "Reply") to the *Debtor's Objection to Motion of Official Committee of Unsecured Creditors for Limited Relief from the Automatic Stay to Permit Taking of Certain Depositions* (the "Opposition"). In support of this Reply, the Committee respectfully states as follows:

REPLY

1. By the *Motion of Official Committee of Unsecured Creditors for Limited Relief from the Automatic Stay to Permit Taking of Certain Depositions* (the "Motion"),¹ the Committee is seeking relief from the automatic stay to allow the plaintiffs in the State Court Cases, the Debtor, and other parties in interest (i) pursuant to the orders and procedures already in place in the State Court Cases, to conduct depositions of witnesses who are 75 years old or

¹ Unless otherwise defined herein, capitalized terms have the meanings ascribed to them in the Motion.

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older or are dying and (ii) to move the applicable Courts in which the State Court Cases are pending to modify the State Court Stay to allow the depositions of witnesses who are 70 years old or older or are dying.

2. The Debtor's Opposition to this Motion can be reduced to three points:
 - There is no procedure to preserve testimony that applies to each of the State Court Cases and the Committee's request to lift the stay to allow such depositions is otherwise unprecedented;
 - The Committee lacks authority to bring this Motion and is inappropriately acting on behalf of plaintiff survivors at the expense of other unsecured creditors; and
 - The Committee has not met its burden of establishing "cause" to lift the automatic stay.

3. The facts and the law contradict each of these points.

4. The Committee wishes to make one thing absolutely clear: This Court should not be involved in any State Court Case discovery disputes if it grants the Motion. Any motions for protective order or motion to compel should be within the sole province of the State Courts.

The Debtor Incorrectly Asserts That There Is No Procedure in Place to Conduct Post-Appeal Preservation-of-Testimony Depositions of Elderly or Dying Witnesses

5. The Debtor claims that the parties did not take depositions to preserve testimony in each State Court Case. The Debtor adds that before such depositions could occur the plaintiffs would have to file a motion with the State Court and that insurance counsel would likely oppose this motion. Therefore, even if the Court lifted the automatic stay, these depositions would not likely go forward. In having made these statements, the Debtor asserts that the Committee has engaged in a "troubling pattern" of misleading this Court.

6. The Debtor's statements at a hearing in one of the State Court Cases and the parties' past practice directly refute these arguments. They show that (1) the parties agreed

to consolidate the State Court Cases for purposes of the insurance coverage appeal, (2) the Debtor agreed that post-appeal depositions of witnesses who were 75 years or older or who were ill could go forward in each State Court Case, (3) the insurers did not object to this procedure and (4) the Court allowed depositions to proceed after the insurance coverage issue was appealed.

7. Specifically, in the case of *Jane Doe 2 and Jane Doe 3 v. Archdiocese of Milwaukee*, the Debtor's counsel and plaintiffs' counsel discussed with the State Court the procedure for taking depositions going forward. The discussion occurred in the presence of insurer's counsel.

8. First, Debtor's counsel told the Court, "we've already taken an appeal from Judge DiMotto's decision on [the] insurance question." Transcript of hearing before the Honorable Thomas R. Cooper, dated October 27, 2009 ("Cooper Hearing Transcript") at 11:2-4, attached hereto as **Exhibit A**. Debtor's counsel added that the Debtor was stipulating to the ruling of no insurance coverage in all of the State Court Cases for purposes of the appeal. *Id.* at 11:7-13, **Exh. A**.

9. Plaintiffs' counsel then told the Court that an issue had arisen with respect to whether or not the State Court Stay applied to all discovery or whether or not depositions could be taken to preserve testimony. Debtor's counsel responded:

And here's just what I'll offer. Again, Judge DiMotto had the first of these cases She allowed the stay to be entered but that any witness over 80 could be deposed without any further leave, and if there was any witnesses who plaintiffs identified had a medical problem, they could take them too.

Id. at 13:10-16, **Exh. A**. Debtor's counsel added that this procedure was "okay with us." *Id.* at 13:23, **Exh. A**. Plaintiffs' counsel asked to lower the deposition age cut-off to 70 years old. Debtor's counsel replied, "I'd ask for 75, your Honor. . . . And if there's anybody who has a medical problem, that's okay." *Id.* at 14:6-10, **Exh. A**. The Court then lowered the cut-off age

from 80 years old to 75 years old. *Id.* at 14:11, **Exh. A**. Insurance counsel, who was present in the courtroom, did not object.

10. After this hearing, the plaintiffs conducted seven depositions of witnesses aged 75 years or older in each of the State Court Cases – without any objection from insurance counsel or Debtor’s counsel. *See* excerpts of depositions transcripts, attached hereto as **Exhibit B** (showing depositions of witnesses aged 75 years or older; showing the caption that lists each of the State Court Cases; and showing that the depositions occurred after October 2009, when the parties discussed the depositions with Judge Cooper and Judge Cooper agreed that the depositions could go forward after the appeal was filed). Clearly, Judge Cooper allowed the depositions to go forward after the insurance coverage appeal was taken, a written motion now would be superfluous and the depositions apply to each State Court Case. Accordingly, contrary to the Debtor’s assertion, there is a procedure in place in the State Court Cases for preserving testimony.²

11. The Committee understands that this Court will manage this case as it sees fit and that the decisions of other bankruptcy courts are not precedential. In the Motion, the Committee did point out that relief from the stay was granted in the bankruptcy case of the Catholic Diocese of Wilmington, Inc. (“CDOW”) to allow plaintiffs to conduct depositions to preserve testimony. The Committee cited to the CDOW proceeding to inform the Court that the relief sought was not, as the Debtor alleges, “without precedent.”

12. Further, the issue before this Court on the Motion is substantially similar, if not identical, to the issue before the Court in CDOW: Should the automatic stay be modified to allow plaintiffs and other interested parties to preserve testimony that is essential to their

² Furthermore, the statutes cited by the Debtor, W.S.A. §§ 808.075 and 804.02, do not show that the trial courts are divested of jurisdiction after an appeal. They provide that the Court can allow depositions to go forward after an appeal, as Judge Cooper allowed. Therefore, the motion for protective order referred to in the Opposition will likely be denied by the State Court. Further, in that motion for protective order, Bishop Sklba sought to effect an end run around the parties’ agreement by claiming, *inter alia*, that the plaintiffs need permission to conduct the deposition. Of course this permission has already been obtained. Finally, the motion was continued only because of a scheduling conflict for the plaintiffs’ counsel.

claims, particularly where the State Court has already agreed that such testimony should be preserved?

13. In the bankruptcy case of CDOW, the State Court had stayed litigation of liability issues pending a mediation, but allowed discovery to go forward to preserve testimony. Similarly, in this case, the State Court stayed litigation of liability issues pending resolution of insurance coverage issues, but allowed discovery to go forward to preserve testimony. In CDOW, the Court agreed that this relief should be granted. If this Court concludes that the law and facts of this case warrant relief from stay, the Motion should be granted.

The Committee Has the Authority to Bring this Motion and Is Not Otherwise Acting Inappropriately on Behalf of One Set of Creditors

14. Section 1109 gives a creditors' committee the right to "raise," "appear," and "be heard" on "any issue in a case." 11 U.S.C. § 1109. In addition, section 1103(c) defines the actions in which a creditors' committee may engage during the course of a bankruptcy case:

A committee appointed under section 1102 of this title may-

- (1) consult with the trustee or debtor in possession concerning the administration of the case;
- (2) investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of a plan;
- (3) participate in the formulation of a plan, advise those represented by such committee of such committee's determinations as to any plan formulated, and collect and file with the court acceptances or rejections of a plan;
- (4) request the appointment of a trustee or examiner under section 1104 of this title; and
- (5) perform such other services as are in the interest of those represented.

11 U.S.C. § 1103(c).

15. The case law confirms the breadth of the power that these two statutory provisions provide to a committee. For example, in *Prince v. Zazove*, 959 F.2d 1395, 1399 (7th Cir. 1992), the Seventh Circuit described a committee's statutory authority as so broad that "failure to be concerned about assets that might be included in the debtor estate could well reflect a failure to meet these statutory demands." See also *Unsecured Creditors Comm. v. Marepron Fin. Corp. (In re Bumper Sales, Inc.)*, 907 F.2d 1430, 1433 (4th Cir. 1990) ("Section 1109(b) is to be construed broadly . . . ; Committee has standing to object to creditor's motion to condition use of cash collateral) (quotations and citations omitted); *Official Comm. of Unsecured Creditors of Cybergenics Corp. ex rel. Cybergenics Corp. v. Chinery*, 330 F.3d 548, 563 (3d Cir. 2003.) ("Section 1109(b) . . . evinces Congress' intent for creditors' committees to play a vibrant and central role in Chapter 11 adversarial proceedings."); *Southern Pacific Transp. Co. v. Voluntary Purchasing Group, Inc.*, 227 B.R. 788, 792 (E.D. Tex. 1998) ("The plain language of [§1109(b)] gives the Committee an expansive right of participation. . . . Federal courts and leading commentators have taken the position that § 1109(b) is to be interpreted broadly in favor of giving parties in interest an opportunity to appear and be heard in proceedings affecting their interests."; Committee had right to participate as appellee in appeal of plan confirmation) (citations omitted); *In re Penn-Dixie Indus., Inc.*, 9 B.R. 941, 944 (Bankr. S.D.N.Y. 1981) ("Committees' powers under Section 1103(c) constitute a wide and important array of authority and responsibility in a Chapter 11 case.") (quotations and citations omitted); *Pan Am Corp. v. Delta Air Lines, Inc.*, 175 B.R. 438, 514 (S.D.N.Y. 1994) ("The function of an official creditors committee is to . . . ensure that the unsecured creditors' views are heard and their interests promoted and protected."); *In re Daig*, 17 B.R. 41, 43 (Bankr. D. Minn. 1981) ("The committee as the sum of its members is . . . a partisan . . .").

16. Moreover, committees have authority to do an array of activities that are not expressly listed in Section 1103. See e.g., *Official Unsecured Creditors' Committee v. Stern (In re SPM Mfg. Corp.)*, 984 F.2d 1305, 1315 (1st Cir. 1993) (creditors' committee had authority, per section 1103(c)(5), to enter contract with secured creditor concerning further distribution of

proceeds paid by estate to secured creditor); *Creditors' Committee v. Parks Jagers Aerospace Co.* (*In re Parks Jagers Aerospace Co.*), 129 B.R. 265, 267 (M.D. Fla. 1991) (creditors' committee had standing to act after confirmation of a chapter 11 plan but before its consummation when the debtor failed to make requirement plan payments to general unsecured creditors); *In re Myers*, 168 B.R. 856, 862 (Bankr. D. Md. 1994) (creditors' committee had standing to request “an extension of time for filing of complaints to determine nondischargeability” given that creditors had not received notice of the deadline).

17. The breadth of this power contradicts the Debtor’s argument that committees are constrained to perform only those acts that directly and immediately benefit every creditor. If that proposition were true, then committees would be unable to object to individual claims or types of claims brought by select creditors. However, “it is hornbook law that a creditors' committee and individual unsecured creditors may object to the claims of other general unsecured creditors” *Matter of Levy*, 54 B.R. 805, 808 (Bankr. S.D.N.Y. 1985)

18. The Debtor cites *Levy* for the proposition that the Motion is inappropriate because only a specific set of creditors, plaintiffs, will conduct the depositions that are at issue in the Motion. However *Levy* establishes that a Committee does not have to do only those acts that directly benefit all the creditors. In *Levy*, the Committee objected to the claim of an individual creditor. The creditor responded that this action constituted a conflict of interest because the Committee represented all the creditors’ interests, and, therefore, represented his interest. The Court held that the Committee did not represent individual creditors but creditors as a whole. Given that the disallowance of an invalid claim would benefit creditors as a whole, the objection was a proper exercise of the Committee’s power.

19. Similarly, here, the depositions will benefit creditors as whole. Preserving testimony will enable all parties to assess the value of the survivors’ claims, which in turn will aid in the formulation and consummation of a plan. It will also facilitate claims resolution. Therefore, the Committee is acting within its authority when it moves for relief from stay so that

all parties can continue preserving testimony pursuant to the procedures already in place in the State Court Cases.

The Debtor Cannot Meet Its Burden of Showing That No Cause Exists to Modify the Stay

20. Section 362(g) states that the party requesting relief has the burden of proof on the issue of the debtors' equity in property and "the party opposing such relief has the burden of proof on all other issues." 11 U.S.C. § 362(g)(2).

21. The Debtor's cases "to the contrary" merely stand for the unremarkable proposition that, even where the other side bears the burden of proof, a motion must first present a *prima facie* entitlement to relief. Thus, as set forth in the *Stranahan* case cited by the Debtor, a party will not be put to the task of establishing no cause for relief from stay, unless the motion shows "some facts" to support cause in the first instance. *In re Stranahan Gear Co., Inc.*, 67 B.R. 834, 837 (Bankr. E.D. Pa. 1986). Clearly, the Motion presents "some facts" that establish cause. First, relief will not "greatly prejudice" the Debtor. In the State Court Cases, it agreed to depositions of witnesses who were 75 years old or ill. The Motion simply asks to continue that agreement. Second, the risk of harm to all parties, including plaintiffs, "considerably outweighs" the risk of harm to the Debtor. The parties in the Chapter 11 case are facing the loss of testimony and therefore are facing the risk of not being able to evaluate the claims. These claims, moreover, are the driving force behind this bankruptcy case and the facts surrounding the claims should be given every chance to be discovered and preserved. In contrast, Debtor is facing attorney fees that, as set forth below, are not as great as estimated by the Debtor. On balance, the scale tips heavily in favor of granting the Motion. Finally, the claims are far from "frivolous." Based on the foregoing facts, the Debtor – not the Committee—will bear the burden to prove that no cause exists to lift the stay.

22. The Debtor's Opposition does not meet its burden of establishing that no cause exists to lift the stay.

23. The Debtor asserts that it might agree to the plaintiffs' claims and that therefore the depositions are potentially unnecessary. If the Debtor truly intended to agree to these claims, it would allow the plaintiffs full access to witnesses without incurring significant expense to "defend" the depositions and without opposing this Motion. This "possible agreement" falls far short of solving the problem presented by the Motion. Further, if the Debtor did agree to allowance of the abuse claims, it should do so promptly to address the mortality and competency issues raised by the mere passage of time. Notably, the Debtor's suggestion does not state whether it has addressed this possible agreement with its insurers who have a right to control the defense of covered claims. Additionally other parties in interest who have a right to object to claims, could only be bound if the agreement were the subject of an order allowing the claims. Finally, until the bar date passes, the "possible agreement" does not address claims beyond those currently known to it.

24. The Debtor also turns 180 degrees and argues that it will vigorously defend the depositions at a cost of up to \$35,000 per deposition. The Debtor does not address whether its insurers would pay the costs of defending the depositions. Further, this estimate is inflated if the Debtor assumes that Committee counsel would participate in the depositions. The Committee is not proposing that it participate in the depositions. In addition, as set forth above and in the Motion, incurring legal fees does not constitute "great prejudice," which is the relevant factor under *Fernstrom Storage* test. Finally, the expense of defending depositions is considerably outweighed by the harm to the parties if the testimony is lost forever.

25. The Debtor also argues that the depositions are not necessary because a claims master might be appointed and the claims master will allocate a pool of assets toward the claims. The Debtor is getting way ahead of the real status of this case, as the Debtor and the Committee have not had a single substantive discussion regarding a plan of reorganization. Even if a valuation protocol is used to distribute a pool of assets, the negotiation or litigation that would precede the creation of that pool necessitates a process that gives the parties as complete a set of information as possible. Neither the Debtor, other parties seeking a release under a plan

nor the related insurers will pay towards the reasonable value of the abuse claims if the facts supporting those claims cannot be established. For example, in the Chapter 11 case of the Society of Jesus, Oregon Province, Safeco (the primary carrier) insisted on taking numerous depositions as a condition precedent to further mediation of its coverage exposure. On the other hand, the plaintiffs' expectations may be impacted by the results of discovery. The depositions will preserve information that is necessary to creating a realistic scenario for a negotiated reorganization plan.

26. The Debtor asserts that it needs to gauge its response to claims and depositions based on all the claims in their entirety. It suggests that under certain unspecified scenarios it would spend less time and expense on depositions than on others and that these unspecified scenarios should be allowed to play themselves out before the Debtor has to incur the expense of depositions. However, the Debtor is well aware of the claims against it after having engaged in years of litigation and mediation with respect to these sex abuse claims. If the Debtor were as in the dark as it suggests with respect to the "number and type of claims against it," it would not likely have commenced this case. Besides, this risk is considerably outweighed by the risk to the parties of losing testimony that is necessary to the review of the claims.

27. The Debtor suggests that the risk of losing testimony is not great because, as set forth above, the pedophiles and their aiders and abettors whom the plaintiffs wish to depose, will likely live long lives, well into their late eighties. The Debtor did not raise this argument in the State Court Cases and instead agreed to a cut off age of 75 years old. The Debtor should be judicially estopped from now arguing that this age cut-off is too young. *See In the Matter of Thomas v. Cassidy*, 892 F.2d 637 (7th Cir. 1990) ("Where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not hereafter, simply because his interests have changed, assume a contrary position.") (citations and quotations omitted). Besides, the standard in the State Court Cases is not simply an age cut off,

but an age cut off or a medical condition.³ In addition, the Debtors' mortality tables appended to the Opposition are hearsay and, therefore, inadmissible. The Debtor also makes no effort to tailor any information regarding mortality to the witnesses at issue. The information provided is therefore irrelevant. Accordingly, the Debtors' evidence of mortality should be excluded.

28. Finally, the Debtor suggests a series of procedures to ostensibly reduce costs and avoid duplicate depositions. For example, the Debtor proposes that all interested parties receive notice of a particular deposition, apparently so that numerous individuals can attend various depositions. The Motion, however, simply asks to continue the procedure that was in place in the State Court Cases so that testimony will not be lost. If the Debtor wishes to change the procedure that is in place in the State Court Cases, it can attempt to change those procedures by motion before the State Court. There is no need to involve this Court in those issues.

[This Reply continues on the next page.]

³ The Debtor also claims that the Committee has only asked for relief from the stay to depose witnesses who are 70 years or older and that the Committee should have asked for permission to also depose witnesses who are dying. The Debtor misstates the Motion. The Committee is respectfully asking for relief from the stay to depose witnesses who are 75 years or older, or who are dying, consistent with the procedure in place in the State Court Cases. At the Cooper Hearing, moreover, Debtor's counsel stated that the Debtor "was okay" with deposing witnesses who were 75 years or old or who had "a medical problem." Regardless of any subtle distinction between "dying" and having "a medical problem," the Committee respectfully requests that the Court lift the stay to allow the parties to follow the specific procedure that is in place in the State Court Cases.

CONCLUSION

WHEREFORE, the Committee respectfully requests that the Court enter an Order granting the Motion in its entirety and granting such other and further relief as may be just and proper.

Dated: July 7, 2011

PACHULSKI STANG ZIEHL & JONES LLP

By /s/

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Creditors

STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY
BRANCH 28

JANE DOE 2 and JANE DOE 3,

Plaintiffs,

-vs-

Case No. 07-CV-10888

ARCHDIOCESE OF MILWAUKEE,

and

DIOCESE OF SIOUX FALLS,

Defendants.

MOTION HEARING

October 27, 2009

Before THOMAS R. COOPER,
Circuit Judge, Br. 28

APPEARANCES:

JEFF ANDERSON & ASSOCIATES, P.A., by MICHAEL G. FINNEGAN, ESQ., 366 Jackson Street, Suite 100, St. Paul, Minnesota, 55101, appeared on behalf of the Plaintiffs.

PAUL J. SCOPTUR, ESQ., 2600 North Mayfair Road, Suite 1030, Milwaukee, Wisconsin, 53226, appeared on behalf of the Plaintiffs.

QUARLES & BRADY, LLP, by JOHN ROTHSTEIN, ESQ., and DAVID P. MUTH, ESQ., 411 East Wisconsin Avenue, Milwaukee, Wisconsin, 53202, appeared on behalf of the Defendant, Archdiocese of Milwaukee.

LATHROP & CLARK, LLP, by KENNETH B. AXE, ESQ., and DONALD L. HEANEY, ESQ., 740 Regent Street, Suite 400, Madison, Wisconsin, 53701, appeared on behalf of the Defendant, Diocese of Sioux Falls.

NELSON, CONNELL, CONRAD, TALMADGE, S.C. by MARK S. NELSON, ESQ., N14 W23755 Stone Ridge Drive, Suite 150, Waukesha, Wisconsin, 53187, appeared on behalf of the Defendant, Commercial Union Insurance Company.

Marsha E. Steadman, Court Reporter

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TRANSCRIPT OF PROCEEDINGS

THE CLERK: Calling Case 07-CV-10888, Jane Doe
2, et al, versus Archdiocese of Milwaukee, et al.

Appearances, please.

MR. FINNEGAN: For the plaintiff, Mike Finnegan.

MR. SCOPTUR: Paul Scoptur, as well, your Honor.

MR. ROTHSTEIN: On behalf of the Archdiocese,
your Honor, it's John Rothstein and --

MR. MUTH: David Muth.

MR. AXE: Diocese of Sioux Falls appears by
Lathrop & Clark by Kenneth Axe and Donald Heaney, your
Honor.

MR. NELSON: Mark Nelson for Commercial Union,
now known as OneBeacon.

THE COURT: All right, motion for
reconsideration. I've read it. Briefly.

MR. AXE: Your Honor, thank you for listening to
our motion today. I understand that according to
plaintiffs you shouldn't even reconsider an earlier
decision, but I think we're here trying to reach the
right decision and to do justice, and to that extent
we've filed a motion for reconsideration in part based
upon new law which did not exist at that time. That's
the Coulee case from the Wisconsin Supreme Court.

The issues on reconsideration really are two.

1 First is whether the cause of action for intentional
2 misrepresentation or fraud based on the active placement
3 of the priest and retention of that priest rather than
4 defrocking him or laicizing him is barred by the first
5 amendment to the United States Constitution and by
6 Article 1 Section 18 of the Wisconsin Constitution, which
7 the Wisconsin Supreme Court has said in Cooley goes
8 beyond the protections of the First Amendment, is even
9 stronger with respect to free exercise of religion.

10 The second issue is whether the cause of action
11 for intentional misrepresentation or fraud based on the
12 failure to disclose to these plaintiffs, who, as the
13 Court noted at the last oral argument, were not known to
14 the defendants, is similarly barred by the constitution.

15 THE COURT: Did you only use with all due
16 respect once or twice when you reargued that in your
17 brief? Was it only once?

18 MR. AXE: At least once.

19 THE COURT: Yes. Okay, but go ahead.

20 MR. AXE: Just to show you that I was paying
21 attention. So. And also because there was no duty to
22 disclose to these plaintiffs the legal duty which was
23 established by the plaintiffs and by any precedent.

24 With respect to the first issue, intentional
25 misrepresentation by action, that requires a

1 consideration of the action and what that would represent
2 to these plaintiffs.

3 In other words, since there's no statement -- no
4 affirmative statement, one has to look at the action and
5 decide what representation if any was made, whether it's
6 true or false.

7 THE COURT: Now you're rearguing the case.
8 We're dealing with the motion for reconsideration. I'm
9 not going to sit here and let you reargue and say Judge,
10 you were wrong the last time and I'm giving you a chance
11 to change your mind. I made that decision based upon a
12 lot of consideration, and I'm not going to change it.
13 Let the Court of Appeals and the Supreme Court tell me if
14 I'm wrong. So don't reargue the case. It's a motion for
15 reconsideration. Is there sufficient grounds, new
16 evidence to grant that, 'cuz I'm not going to reconsider
17 what I decided.

18 What part of no don't you understand?

19 MR. AXE: Okay, your Honor. Then I would at
20 least for the record indicate --

21 THE COURT: Okay.

22 MR. AXE: -- without going through the --

23 THE COURT: Make your record, that's fine.

24 MR. AXE: -- entire argument.

25 THE COURT: But I don't want you to go on and

1 on, 'cuz I'm telling you I've read it; I know where I'm
2 coming from.

3 MR. AXE: Your Honor, in Cooley the court said
4 that the question of what makes one competent to serve as
5 a religious leader is not subject to examination by a
6 court at all.

7 THE COURT: They tip-toed around administerial
8 function of a teacher and all that stuff, but Cooley
9 deals with actions within the church community. This
10 involves a lawsuit involving the church community and a
11 person outside that community, and I'm not so sure Cooley
12 is applicable, with all due respect.

13 It's -- it's a whole different thing. And
14 that's where I'm coming from. I want you -- you know, at
15 least discuss that. That's the clear -- that's a clear
16 distinction that I see.

17 MR. AXE: Okay. Your Honor, at the oral
18 argument, and I don't think this was in the brief, when
19 Mr. Anderson was making his argument he stated, and I
20 quote, "Them placing him in parish with full knowledge
21 of, or in hospital with knowledge of his unfitness and
22 concealing that is an act. It is a misrepresentation of
23 his fitness."

24 The fitness he's talking about, obviously, is to
25 serve as a priest in that position. That would require

1 the Court, whether it's a jury or your Honor, to look at
2 his competence and his fitness to serve in that position,
3 and whether the religion, the entity was correct in
4 placing him in that position and not taking other
5 measures or placing him somewhere else.

6 That is exactly what Cooley says this court
7 cannot do, whether it's a religious school teacher in a
8 religious school, or even more strongly where you don't
9 have to look at whether it's a spiritual leader, a
10 priest.

11 THE COURT: Is the fitness that he speaks to the
12 fitness to be a priest, therefore Cooley would have an
13 application, or is it a fitness to be around children,
14 which has nothing to do with whether he's a priest or
15 not.

16 He can be a priest somewhere safe where he
17 doesn't have access to children. That's a distinction.

18 You're right that Cooley applies if they're
19 saying he should have been defrocked. I don't think
20 they're saying that. I think they're saying he should --
21 he should not have unsupervised contact with children as
22 a priest. And that's a different thing than Cooley.

23 MR. AXE: But, your Honor, even if the issue is
24 where he should be placed, or what limitations and
25 controls are placed on him, or what kind of treatment he

1 should get, or whether there should be religious rites
2 such as just the power of prayer or penance, or reporting
3 to his bishop; any of those things, those are religious
4 considerations, and the decision in Cooley says that the
5 state simply has no authority to control or interfere
6 with the selection of spiritual leaders. It talks about
7 controlling and interfering, and that's no different than
8 the selection, the training, the retention, the
9 supervision which in the other cases of Pritzlaff and in
10 Clauder the Court said the Court has no right to go there
11 under the constitution. There it was negligence, but the
12 reasoning is the same that you have to decide what makes
13 one competent to serve as a priest and where that priest
14 should be assigned.

15 In the Clauder case there was an argument that,
16 well, he's a priest but he's in a hospital, so he's doing
17 some kind of secular counseling. And the Supreme Court
18 said no, we're convinced that that's part of his
19 religious mission. He's not some secular counselor who's
20 being hired by the hospital to work. This is part of the
21 religious practice.

22 The same is true here. Whether there are
23 children there or not. One can argue about the wisdom,
24 about whether that was a good decision, whether the
25 religion should or should not, which really goes to

1 negligence, not a representation, but when you start that
2 argument you're getting into the religious sphere, and
3 that is not what this Court is permitted to do under
4 Cooley and those cases.

5 THE COURT: I'm looking forward to seeing what
6 kind of tap dance the Supreme Court is going to do with
7 this because they've been doing a couple of those.

8 Listening to your argument I'm no longer is this
9 frivolous, is this just another -- no, that's a valid
10 issue. So, Mr. Malone, with all due respect --

11 MR. AXE: Mr. Axe, your Honor.

12 THE COURT: All right. Excuse me. That now
13 it's, you know, there's a valid concern, but I just --
14 Well, let's let the plaintiff at least say something
15 before I make an argument.

16 MR. FINNEGAN: Your Honor, the issues -- I won't
17 discuss the broad issues that that were raised in the
18 reconsideration, but the issues that were discussed this
19 morning, the claims that we're making are whether or not
20 Mac Arthur was fit to work with children. Doesn't matter
21 whether he's a priest. They can hire as many child
22 watches as they want. The problem is once they start
23 putting them out there --

24 THE COURT: All right. Thank you very much.

25 There's no new evidence. I don't think Cooley

1 rises to the level of new evidence because it's clearly
2 distinguishable. The Cooley case deals with rules within
3 the order and those kinds of things, where this case
4 involves duty, intentional acts relating to the order
5 versus an outside, unrelated person. I see that as
6 clearly distinguishable.

7 I don't think -- I don't think the Supreme Court
8 intended to create the broad interpretation that the
9 defense is making here, or wants me to make, and it is
10 not new evidence. It's clearly distinguishable, and I'm
11 denying the motion for reconsideration.

12 We've made a record. Let the Appellate Court
13 see if I'm right or wrong. I suspect I'll be -- I'm
14 hoping for 50/50, but we'll see. You know. Then, quite
15 frankly, and the Appellate Court, and these are difficult
16 issues, but it's different where the trial court has to
17 deal with the issues, and this is not speaking to you,
18 this is speaking to them, that trial court issues are
19 very different than appellate issues. And,
20 unfortunately, what's been decided on these Archdiocese
21 cases has created more questions than answers.

22 I want to get this case to trial if it happens.
23 There's huge issues on the plaintiffs. If there's no
24 intentional acts here, it's huge because the statute of
25 limitations comes into application. They have to answer

1 that question. Is this an action in negligence, is this
2 an action intentional tort? And if it's an intentional
3 tort, if it's a conspiracy, which I believe goes to
4 intent, then there's the question the Archdiocese whether
5 there's insurance coverage and all those things.

6 What I need to try this case from the appellate
7 courts is to resolve the issues between actions and
8 negligence, and actions based upon intentional acts. And
9 when that is answered then we can move this forward and
10 do our discovery and do the things and get ready for
11 trial. But I'm asking them as a trial court to tell us
12 how you want us to proceed so that we can put an end to
13 this open sore that has been developing within the faith
14 community, the Roman Catholic Roman faith community,
15 which I am not a part of, and we need to move forward and
16 put an end to all this stuff. Get an answer one way or
17 the other.

18 With that, there's an issue of discovery.
19 Somebody wanted discovery to continue?

20 MR. ROTHSTEIN: I think there's -- First there's
21 an issue -- there's a motion here today, your Honor, on
22 insurance coverage. That's why Mr. Nelson is here. I
23 represent the Archdiocese. As you know, there's a series
24 of these cases in front of the courts here in Milwaukee
25 County. Judge Jean DiMotto and Judge White have already

1 ruled on that insurance question. It's the same
2 insurance question. And we've already taken an appeal
3 from Judge DiMotto's decision on that insurance question
4 because, as you know, insurances --

5 THE COURT: Can my case be resolved under that
6 rubric?

7 MR. ROTHSTEIN: Yeah. What we intend to do is
8 that we've reached a stipulation with Mr. Nelson so that
9 all the cases -- they all have the same insurance
10 question. We're going to stipulate to the same ruling.
11 We're preserving our rights as the Archdiocese, but
12 there's no need to reargue this 14 times. We have one
13 appeal. We're going to ask --

14 THE COURT: Especially in view of the new rate
15 of \$60 an hour.

16 MR. ROTHSTEIN: Yes, indeed. Maybe I need the
17 14 cases then.

18 In any event, your Honor, so today we have a
19 stipulation that we've already submitted to the Court. I
20 think in this action, this is the Jane Doe 2 and 3
21 action, you've already admitted one deacon into the case
22 as an intervention.

23 Mark has brought a summary judgment motion.
24 It's the same one. We've briefed it. It's already been
25 decided against us, we know that, so we stipulated that

1 the same ruling negative to the Archdiocese may be
2 entered here.

3 THE COURT: For the purposes of appeal
4 preserving all other rights?

5 MR. ROTHSTEIN: Yes, that's exactly right. And
6 so you have this new case, the Neels' case. It's the
7 same issue. And so Mr. Nelson again has stipulated with
8 us he will intervene, his motion to have insurance
9 coverage decided in his favor is granted, and we are
10 going to appeal that too.

11 THE COURT: Fair statement, counsel?

12 MR. NELSON: That's correct, your Honor, and I
13 believe the stipulations have already been submitted to
14 the Court for it's review and consideration.

15 THE COURT: All right. Now, gentlemen, my term
16 is up in 2012. I'm going to try to get this tried.

17 MR. ROTHSTEIN: So on those insurance, so we can
18 get that done, if maybe afterwards we can assist the
19 clerk and maybe get those orders out so we can get those
20 signed.

21 THE COURT: Yeah.

22 MR. ROTHSTEIN: Get that part done because we're
23 already in the process. The Judge DiMotto, who had the
24 first decision, that was appealed first. We're waiting
25 for the record and then the briefing's going to start.

1 THE COURT: All right. Does the plaintiff have
2 any dogs in this fight?

3 MR. FINNEGAN: Not in the insurance fight, your
4 Honor. The only issue that we had with the insurance
5 company is whether or not there's a stay on all
6 discovery. And our main issue there is the -- is being
7 preserved some of the testimony of older witnesses.

8 THE COURT: All right. Anybody want to argue on
9 that? I have some thoughts based upon that too.

10 MR. ROTHSTEIN: And here's just what I'll offer.
11 Again, Judge DiMotto had the first of these cases and we
12 have addressed this question in the past. She allowed
13 the stay to be entered but that any witness over 80 could
14 be deposed without any further leave, and if there were
15 any witnesses who plaintiffs identified had a medical
16 problem, they could take them too.

17 THE COURT: Does this sound like a framework you
18 could live with?

19 MR. ROTHSTEIN: That's what we did in DiMotto's
20 court. Here it is.

21 MR. FINNEGAN: That is what happened in her
22 court.

23 MR. ROTHSTEIN: So it's okay with us.

24 MR. FINNEGAN: The question, or the only comment
25 we had with that was the 80-year-old cut-off was in our

1 mind a little high as far as --

2 THE COURT: All right, 79 point -- 79 years 10
3 months.

4 MR. SCOPTUR: How about 70?

5 MR. FINNEGAN: We'd ask for 70.

6 MR. ROTHSTEIN: I'd ask for 75, your Honor. In
7 the sense that at the Archdiocese priests can't retire
8 until they're 75. Once they're retired, if they need to
9 take them, that's fine. And if there's anybody who has a
10 medical problem, that's okay.

11 THE COURT: 75 sounds good. You guys ever buy a
12 used car? One's at 80, one's at 70?

13 MR. FINNEGAN: The only other issue that we have
14 on the Neels' case, which we didn't have on the DiMotto
15 case, your Honor, is we don't have the documents on the
16 perp in that case on Hanser, and so there's probably
17 people in there that we don't know about that are
18 witnesses, and that's our concern is that we don't know
19 those people. So taking their depositions that's -- you
20 know, we're at a loss on that. That's --

21 THE COURT: It doesn't make sense to me to
22 continue discovery because we don't know what direction
23 this case is going to take. And, quite frankly, I don't
24 -- I mean, this happens, what, 30 years ago, 40 years
25 ago? Is that what we're talking about?

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MR. ROTHSTEIN: Yes, your Honor.

THE COURT: All right. So the built-in difficulty you mention is -- part of the cause is your client. I mean, not that -- I'm not doing this in accusatory fashion. That's just the way it is. So I'm not going to have any discovery other than the mentioned. We'll get this squared away, then move forward. So there's a stay of discovery also.

Anything else?

MR. ROTHSTEIN: No, your Honor.

THE COURT: All right. Let me know when you come in next time so I can have the staff people come in and take out the chairs.

(Proceedings concluded)

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STATE OF WISCONSIN)
MILWAUKEE COUNTY) SS:

I, MARSHA E. STEADMAN, Official Reporter of Circuit Court, Milwaukee County, Wisconsin, hereby certify that the foregoing is a true and accurate transcript of my stenograph notes taken in the forgoing proceedings.

Marsha E. Steadman
Registered Professional Reporter
10-29-01

Exhibit B

IN THE CIRCUIT COURT OF MILWAUKEE COUNTY
STATE OF WISCONSIN

PETER NEELS and DAVID NEELS,
Plaintiffs,

-vs-

Case No. 09-CV-13945

ARCHDIOCESE OF MILWAUKEE,
Defendant.

JOHN DOE 13,
Plaintiff,

-vs-

Case No. 09-CV-15678

ARCHDIOCESE OF MILWAUKEE,
Defendant.

JOHN DOE 1, JOHN DOE 2, JOHN DOE
3, and CHARLES LINNEMAN,

Plaintiffs,

-vs-

Case No. 05-CV-1351

ARCHDIOCESE OF MILWAUKEE, et al.

Defendants.

JANE DOE 1,

Plaintiff,

COPY

-vs-

Case No. 07-CV-008390

ARCHDIOCESE OF MILWAUKEE and
DIOCESE OF SIOUX FALLS,
Defendants.

EXAMINATION OF DAVID J. HANSER, 4-23-10

David J. Hanser - 4/23/2010
Peter Neels, et al. vs. Archdiocese of Milwaukee, et al.

Page 2

1 -----
JANE DOE 2 and JANE DOE 3,

2
3 Plaintiffs,

4 -vs- Case No. 07-CV-10888

5 ARCHDIOCESE OF MILWAUKEE and
6 DIOCESE OF SIOUX FALLS,
7 Defendants.

8 -----
9 JAMES ESSENBERG,

10 Plaintiff,

11 -vs- Case No. 08-CV-9050

12 ARCHDIOCESE OF MILWAUKEE,
13 Defendant.

14 -----
15 DONALD MARSHALL,

16 Plaintiff,

17 -vs- Case No. 08-CV-10160

18 ARCHDIOCESE OF MILWAUKEE,
19 Defendant.

20 -----
21 JOHN DOE 6,

22 Plaintiff,

23 -vs- Case No. 09-CV-008128

24 ARCHDIOCESE OF MILWAUKEE,
25 Defendant.

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David J. Hanser - 4/23/2010
Peter Neels, et al. vs. Archdiocese of Milwaukee, et al.

Page 3

1 -----
2 DEAN WEISSMULLER,
3 Plaintiff,
4 -vs- Case No. 09-CV-12849
5 ARCHDIOCESE OF MILWAUKEE,
6 Defendant.

7 -----
8 JOHN DOE 14,
9 Plaintiff,
10 -vs- Case No. 09-CV-16186
11 ARCHDIOCESE OF MILWAUKEE,
12 Defendant.

13 -----
14 DONALD BUTCHER,
15 Plaintiff,
16 -vs- Case No. 09-CV-17444
17 ARCHDIOCESE OF MILWAUKEE,
18 Defendant.

19 -----
20 GERALD KOBBS,
21 Plaintiff,
22 -vs- Case No. 09-CV-007598
23 SISTERS OF MERCY OF THE
24 AMERICAS, REGIONAL COMMUNITY OF
25 CHICAGO, THE ARCHDIOCESE OF
MILWAUKEE, and ABC INSURANCE,
Defendants.

23 -----
24 Video Conference Examination of DAVID J. HANSER,
25 taken at the instance of the Plaintiffs, under and

Depo International, Inc.
(763) 591-0535 or (800) 591-9722 admin@depointernational.com

David J. Hanser - 4/23/2010
Peter Neels, et al. vs. Archdiocese of Milwaukee, et al.

Page 4

1 pursuant to Section 804.05 of the Wisconsin Statutes,
2 before KATHLEEN E. CARTER, a Certified Realtime
3 Reporter, Registered Merit Reporter and Notary Public in
4 and for the State of Wisconsin, at Quarles & Brady, 411
5 East Wisconsin Avenue, Milwaukee, Wisconsin, on Friday,
6 April 23, 2010, commencing at 10:06 a.m. and concluding
7 at 10:42 a.m.

8 A P P E A R A N C E S

9 JEFF ANDERSON & ASSOCIATES, P.A., by
MR. MICHAEL FINNEGAN,
10 366 Jackson Street, Suite 100,
St. Paul, Minnesota 55101,
11 appeared by videoconference on behalf of the Plaintiffs.
12 QUARLES & BRADY, by
MR. DAVID P. MUTH,
13 411 East Wisconsin Avenue,
Milwaukee, Wisconsin 53202,
14 appeared on behalf of Defendant Archdiocese of
Milwaukee.

15 LATHROP & CLARK, LLP, by
16 MR. KENNETH B. AXE,
740 Regent Street, Suite 400,
17 Madison, Wisconsin 53715-2650,
appeared telephonically on behalf of Defendant
18 Archdiocese of Sioux Falls.
19 SCHIRO & ZARZYNSKI, by
MR. JOHN S. SCHIRO,
20 735 West Wisconsin Avenue, Twelfth Floor,
Milwaukee, Wisconsin 53203-1918,
21 appeared on behalf of the Deponent.

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I N D E X

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No. 2 - Color Copy Of A Photograph Of Peter Neels...	22

Disposition Of Original Exhibit/s:
Attached To Original Transcript

Father Dennis C. Klemme - 4/16/2010
John Doe 1, et al. vs. Archdiocese of Milwaukee, et al.

Page 1

IN THE CIRCUIT COURT OF MILWAUKEE COUNTY
STATE OF WISCONSIN

JOHN DOE 1, JOHN DOE 2, JOHN DOE
3 and CHARLES LINNEMAN,
Plaintiffs,

-vs-

Case No. 05-CV-1351

ARCHDIOCESE OF MILWAUKEE, et al.,
Defendants.

JANE DOE 1,
Plaintiff,

-vs-

Case No. 07-CV-008390

ARCHDIOCESE OF MILWAUKEE and
DIOCESE OF SIOUX FALLS,

Defendants.

JANE DOE 2 and JANE DOE 3,

Plaintiffs,

-vs-

Case No. 07-CV-10888

ARCHDIOCESE OF MILWAUKEE and
DIOCESE OF SIOUX FALLS,
Defendants.

JAMES ESSENBERG,
Plaintiff,

-vs-

Case No. 08-CV-9050

ARCHDIOCESE OF MILWAUKEE,
Defendant.

EXAMINATION OF FATHER DENNIS C. KLEMME, 4-16-10

Depo International, Inc.
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Father Dennis C. Klemme - 4/16/2010
John Doe 1, et al. vs. Archdiocese of Milwaukee, et al.

1 DONALD MARSHALL,
 2 Plaintiff,
 3 vs. Case No 09-CV-10160
 4 ARCHDIOCESE OF MILWAUKEE,
 5 Defendant
 6 JOHN DOE 6,
 7 Plaintiff,
 8 vs. Case No 09-CV-408138
 9 ARCHDIOCESE OF MILWAUKEE,
 10 Defendant
 11 DEAN WEISSMULLER,
 12 Plaintiff,
 13 vs. Case No 09-CV-13849
 14 ARCHDIOCESE OF MILWAUKEE
 15 Defendant
 16 PETER NEELS,
 17 Plaintiff,
 18 vs. Case No 09-CV-13945
 19 ARCHDIOCESE OF MILWAUKEE
 20 Defendant

1 Video Conference Examination of
 2 FATHER DENNIS C. KLEMME, taken at the instance of the
 3 Plaintiffs, under and pursuant to Section 804.05 of the
 4 Wisconsin Statutes, before JANE M. JONES, a Certified
 5 Realtime Reporter, Registered Merit Reporter and Notary
 6 Public in and for the State of Wisconsin, at Quarles &
 7 Brady, LLP, 411 East Wisconsin Avenue, Milwaukee,
 8 Wisconsin, on April 16, 2010, commencing at 10:00 a.m.
 9 and concluding at 1:22 p.m.

A P P E A R A N C E S

10
 11
 12
 13 JEFF ANDERSON & ASSOCIATES, P.A., by
 14 MR. MICHAEL FINNEGAN,
 15 366 Jackson Street, Suite 100,
 16 St. Paul, Minnesota 55101,
 17 appeared by videoconference on behalf of the Plaintiffs.
 18
 19
 20
 21 QUARLES & BRADY, LLP, by
 22 MR. DAVID P. MUTH,
 23 411 East Wisconsin Avenue,
 24 Milwaukee, Wisconsin 53202,
 25 appeared on behalf of Defendant Archdiocese of
 Milwaukee.
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1 JOHN DOE 13
 2 Plaintiff,
 3 vs. Case No 09 CV-15678
 4 ARCHDIOCESE OF MILWAUKEE
 5 Defendant
 6 JOHN DOE 14,
 7 Plaintiff,
 8 vs. Case No 09 CV-16186
 9 ARCHDIOCESE OF MILWAUKEE,
 10 Defendant
 11 DONALD BUTCHER,
 12 Plaintiff,
 13 vs. Case No 09-CV-17444
 14 ARCHDIOCESE OF MILWAUKEE,
 15 Defendant
 16 GERALD KOBS,
 17 Plaintiff,
 18 vs. Case No 09 CV-18759
 19 SISTERS OF MERCY OF THE AMERICAS,
 20 REGIONAL COMMUNITY OF CHICAGO,
 21 THE ARCHDIOCESE OF MILWAUKEE and
 22 ABC INSURANCE,
 23 Defendants

* * *

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* * *

Disposition Of Original Exhibits

Plaintiff's Exhibit A (Black Binder) To Be Returned For A Period Of Time At The Office Of Brown & Jones Reporting, Inc. And Later To Be Returned To Quarles & Brady.

* * *

2 (Pages 2 to 5)

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Father Dennis C. Klemme - 4/16/2010
John Doe 1, et al. vs. Archdiocese of Milwaukee, et al.

Page 6	Page 8
1 TRANSCRIPT OF PROCEEDINGS	1 of these questions, you'll know where I'm going
2 FATHER DENNIS C. KLEMME, called as a	2 with the question, but if you can, just wait until
3 witness herein, having been first duly sworn on	3 I'm all the way done with the question and give
4 oath, was examined and testified as follows:	4 your answer, and I'll try to do the same with you.
5 EXAMINATION	5 Does that make sense?
6 BY MR. FINNEGAN:	6 A Yes, yes.
7 Q Hi Father Klemme, my name is Mike Finnegan. The	7 Q And the same thing on that. If I notice that we're
8 first question is, can you hear me all right?	8 talking over each other, I may ask you that or just
9 A Yes, I can. Thank you, Michael.	9 tell you, can we just wait until I'm done with the
10 Q If at any point, Father, you can't hear me or you	10 question, again, not meant to badger you at all,
11 don't understand the question, just ask me, and	11 just to make sure the court reporter can get it
12 I'll rephrase it or I'll speak louder if you can't	12 down.
13 hear me.	13 A Okay.
14 A I appreciate that. Can you hear me?	14 Q I'll ask you just -- so I'm going to go back to
15 Q I can hear you.	15 some of your background after I ask about these
16 A Okay.	16 other two just for Ken's benefit, but the first one
17 Q Yes, I can.	17 is, during your time as a priest in the Archdiocese
18 A Thank you.	18 of Milwaukee, did you have any contact with or any
19 Q I'm going to go over a couple of ground rules here	19 knowledge about Father Bruce MacArthur?
20 at the beginning, and then we have, process wise,	20 A I know that he existed as a priest working in the
21 we have Ken Axe on the phone, and he is involved in	21 Archdiocese because he's a Salvatorian, so I did
22 just a couple of the cases, with just a couple of	22 not know him well. It was just because he was
23 the priests, actually, one of the priests and a nun	23 working as a Salvatorian in the Archdiocese of
24 that is involved, so what I'm going to do for Ken's	24 Milwaukee.
25 benefit is just ask you about those two first,	25 MR. MUTH: Mike, can I jump in there real
Page 7	Page 9
1 which you may not know, and then if you don't know	1 quick for clarification?
2 anything about those, Ken can get off the phone and	2 MR. FINNEGAN: Yeah, go ahead.
3 have a better use of his time.	3 MR. MUTH: I believe there may be some
4 A Okay, thank you.	4 confusion between two different MacArthurs, one
5 Q You're welcome. The first thing that you	5 being a Salvatorian priest and one being from Sioux
6 understand is that you're under oath today, and	6 Falls. I throw that out there for clarification
7 this can be used in a court of law. One of the	7 sake.
8 things that we do all the time in normal	8 BY MR. FINNEGAN:
9 conversation, we'll nod our heads, we'll go like	9 Q I was just going to follow up with you. The Bruce
10 this.	10 MacArthur that we're talking about, just to give
11 A Okay.	11 you a general time frame, Father Klemme, he was a
12 Q And it's real hard for the court reporter to get	12 priest at the Diocese of Sioux Falls.
13 that down, so if you do nod your head or do	13 A No. I don't --
14 something that is nonverbal, I'll ask. I'll say,	14 MR. MUTH: Wait until he finishes.
15 "Father Klemme, was that a yes or was that a no,"	15 BY MR. FINNEGAN:
16 and I'm not meaning to badger you at all. Just so	16 Q No problem. I'm just going to give you a little
17 that the court reporter can get it down.	17 background. That might refresh your memory and let
18 A All right.	18 you know whether you know the Bruce MacArthur that
19 Q Does that make sense?	19 we're talking about. He was a priest of the
20 A So far.	20 Diocese of Sioux Falls and came to Milwaukee in
21 Q The other thing that we do all the time in normal	21 approximately '64-'65 and was there for about five
22 conversation that makes it very hard for the court	22 years, until about 1970, and then went back to the
23 reporter to take a transcription of it is we talk	23 Diocese of Sioux Falls, so the Bruce MacArthur that
24 over each other a lot of times, and we don't let	24 I want to know if you know is that Bruce MacArthur
25 each other finish in normal conversation. In some	25 from the Diocese of Sioux Falls?

3 (Pages 6 to 9)

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Father Paul Esser - 3/1/2010
John Doe 1, et al. vs. Archdiocese of Milwaukee, et al.

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IN THE CIRCUIT COURT OF MILWAUKEE COUNTY
STATE OF WISCONSIN

JOHN DOE 1, JOHN DOE 2, JOHN DOE
3 and CHARLES LINNEMAN,

Plaintiffs,

CONFIDENTIAL

VOLUME II

-vs-

Case No. 05-CV-1351

ARCHDIOCESE OF MILWAUKEE, et al.,
Defendants.

JANE DOE 1,

Plaintiff,

-vs-

Case No. 07-CV-008390

ARCHDIOCESE OF MILWAUKEE and
DIOCESE OF SIOUX FALLS,

Defendants.

JANE DOE 2 and JANE DOE 3,

Plaintiffs,

-vs-

Case No. 07-CV-10888

ARCHDIOCESE OF MILWAUKEE and
DIOCESE OF SIOUX FALLS,
Defendants.

JAMES ESSENBERG,

Plaintiff,

-vs-

Case No. 08-CV-9050

ARCHDIOCESE OF MILWAUKEE,
Defendant.

EXAMINATION OF FATHER PAUL ESSER, 3-1-10

Depo International, Inc.
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Father Paul Esser - 3/1/2010
John Doc 1, et al. vs. Archdiocese of Milwaukee, et al.

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<p>1 DONALD MARSHALL,</p> <p>2 Plaintiff,</p> <p>3 -vs- Case No. 08-CV-10160</p> <p>4 ARCHDIOCESE OF MILWAUKEE,</p> <p>5 Defendant,</p> <p>6 JOHN DOE 6,</p> <p>7 Plaintiff,</p> <p>8 -vs- Case No. 09-CV-005128</p> <p>9 ARCHDIOCESE OF MILWAUKEE,</p> <p>10 Defendant,</p> <p>11 DEAN WEISSMULLER,</p> <p>12 Plaintiff,</p> <p>13 -vs- Case No. 09-CV-12849</p> <p>14 ARCHDIOCESE OF MILWAUKEE,</p> <p>15 Defendant,</p> <p>16 PETER NEELS,</p> <p>17 Plaintiff,</p> <p>18 -vs- Case No. 09-CV-13945</p> <p>19 ARCHDIOCESE OF MILWAUKEE,</p> <p>20 Defendant,</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 Continuation of Video Conference Examination of</p> <p>2 FATHER PAUL ESSER, taken at the instance of the</p> <p>3 Plaintiffs, under and pursuant to Section 804.05 of the</p> <p>4 Wisconsin Statutes, before JANE M. JONES, a Certified</p> <p>5 Realtime Reporter, Registered Merit Reporter and Notary</p> <p>6 Public in and for the State of Wisconsin, at Quarles &</p> <p>7 Brady, LLP, 411 East Wisconsin Avenue, Milwaukee,</p> <p>8 Wisconsin, on March 1, 2010, commencing at 10:03 a.m.</p> <p>9 and concluding at 12:59 p.m.</p> <p>10</p> <p>11 APPEARANCES</p> <p>12</p> <p>13 JEFF ANDERSON & ASSOCIATES, P.A., by</p> <p>14 MR. MICHAEL FINNEGAN,</p> <p>15 366 Jackson Street, Suite 100,</p> <p>16 St. Paul, Minnesota 55101,</p> <p>17 appeared by videoconference on behalf of the Plaintiffs.</p> <p>18</p> <p>19 QUARLES & BRADY, LLP, by</p> <p>20 MR. JOHN ROTHSTEIN,</p> <p>21 411 East Wisconsin Avenue,</p> <p>22 Milwaukee, Wisconsin 53202,</p> <p>23 appeared on behalf of Defendant Archdiocese of</p> <p>24 Milwaukee.</p> <p>25</p> <p>26 LATHROP & CLARK, LLP, by</p> <p>27 MR. KENNETH B. AXE,</p> <p>28 740 Regent Street, Suite 400,</p> <p>29 Madison, Wisconsin 53715-2650,</p> <p>30 appeared telephonically on behalf of Defendant</p> <p>31 Archdiocese of Sioux Falls.</p> <p>32</p> <p>33</p> <p>34</p> <p>35</p>
Page 108	Page 110
<p>1 JOHN DOE 13,</p> <p>2 Plaintiff,</p> <p>3 -vs- Case No. 09-CV-15678</p> <p>4 ARCHDIOCESE OF MILWAUKEE,</p> <p>5 Defendant,</p> <p>6 JOHN DOE 14,</p> <p>7 Plaintiff,</p> <p>8 -vs- Case No. 09-CV-16186</p> <p>9 ARCHDIOCESE OF MILWAUKEE,</p> <p>10 Defendant,</p> <p>11 DONALD BUTCHER,</p> <p>12 Plaintiff,</p> <p>13 -vs- Case No. 09-CV-17444</p> <p>14 ARCHDIOCESE OF MILWAUKEE,</p> <p>15 Defendant,</p> <p>16 GERALD ROBS,</p> <p>17 Plaintiff,</p> <p>18 -vs- Case No. 09-CV-007598</p> <p>19 SISTERS OF MERCY OF THE AMERICAS,</p> <p>20 REGIONAL COMMUNITY OF CHICAGO,</p> <p>21 THE ARCHDIOCESE OF MILWAUKEE and</p> <p>22 ABC INSURANCE,</p> <p>23 Defendants,</p> <p>24</p> <p>25</p>	<p>1 * * * * *</p> <p>2 INDEX</p> <p>3</p> <p>4 Examination: Page</p> <p>5 By Mr. Finnegan..... 111</p> <p>6 By Mr. Rothstein..... 201</p> <p>7</p> <p>8 Exhibits Referred To: Page</p> <p>9 No. 108 - 133</p> <p>10 No. 110 - 133</p> <p>11 No. 111 - 134</p> <p>12 No. 300 - 142</p> <p>13 No. 301 - 136</p> <p>14 No. 302A - 137</p> <p>15 No. 410 - 172</p> <p>16 No. 511 - 158</p> <p>17 No. 512 - 160</p> <p>18 No. 565 - 166</p> <p>19 No. 576 - 161</p> <p>20</p> <p>21 Request: Page</p> <p>22 Mr. Finnegan - Housekeepers' Names..... 196</p> <p>23</p> <p>24</p> <p>25</p>

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Father Paul Esser - 3/1/2010
John Doe 1, et al. vs. Archdiocese of Milwaukee, et al.

Page 111	Page 113
1 TRANSCRIPT OF PROCEEDINGS	1 MR. AXE: Then I'm off. Nice meeting you
2 FATHER PAUL ESSER, called as a witness	2 telephonically, Father.
3 herein, having been first duly sworn on oath, was	3 THE WITNESS: Take care.
4 examined and testified as follows:	4 MR. ROTHSTEIN: Good-bye.
5 EXAMINATION	5 BY MR. FINNEGAN:
6 BY MR. FINNEGAN:	6 Q Thank you for that, Father Esser. It was a little
7 Q Hi Father Esser. My name is Mike Finnegan, and we	7 out of order, but we wanted to take care of Ken so
8 had conducted part of a deposition of yours back in	8 he didn't have to be on for the whole thing.
9 July. Can you hear me all right through the	9 A I understand.
10 videoconference?	10 Q Just so that you know, Father Esser, and John, so
11 A You're better, now. You were a little low before.	11 you know who else is in the room with me, Melissa
12 I can hear you fine.	12 Troy (phonetic), who is a law student here in the
13 Q Perfect. Perfect. I'm going to ask you about	13 Twin Cities, who I mentor, she's also in the room,
14 different topics than I did last time. Ken Axe,	14 and coming in and out occasionally is McKinley
15 who is on the phone, only has one of the cases, so	15 Willett (phonetic), who works in our office, who is
16 I'm just going to go right to that part of the case	16 the technical guy. He may come in, in case
17 first.	17 anything goes wrong with the technical stuff
18 Do you remember the instructions that we	18 because I don't know anything about that, all
19 went over last time about answering truthfully and	19 right?
20 all that? Do you understand those same	20 A All right, sure, fine.
21 instructions apply here?	21 Q Tell me if you can, Father Esser, who is the --
22 A I do, yes.	22 within the Archdiocese, who has the power or the
23 Q Father Esser, could you state your full name and	23 responsibility to transfer a priest from one
24 spell your last name for the record, please?	24 location to another?
25 A Certainly. Paul Matthew Esser, E-S-S-E-R.	25 A The Archbishop.
Page 112	Page 114
1 Q And you were ordained in 1957?	1 Q And who has the power within the Archdiocese to
2 A Correct.	2 suspend a priest?
3 Q I'd like to focus your attention, just for this	3 A The Archbishop.
4 first little part, on one of the cases we have	4 Q And who has the power within the Archdiocese to
5 involving a religious nun by the name of Sister	5 restrict a priest's ministry?
6 Norma Giannini. She was a principal at one of the	6 A The Archbishop.
7 high schools, one of the schools, St. Patrick's in	7 Q And ultimately, the decision about where a priest
8 the Archdiocese of Milwaukee back in the 1960s. Do	8 works within the Archdiocese, that decision is
9 you have any recollection of Sister Norma Giannini,	9 ultimately made by the Archbishop, correct?
10 at all?	10 A Correct.
11 A No.	11 Q And what about the health insurance and retirement,
12 Q And I assume from that answer, have you ever met	12 Father Esser? How are those handled within the
13 Sister Norma Giannini?	13 Archdiocese? Is that something that the
14 A Not to my knowledge, no.	14 Archdiocese controls, or how does that -- tell me a
15 Q And you don't remember ever hearing anything of a	15 little bit about that, how that works?
16 negative nature about Sister Norma Giannini?	16 MR. ROTHSTEIN: Pardon me. Counsel, now,
17 A I do not.	17 you're asking about priests, now, of the
18 MR. FINNEGAN: All right. Thank you.	18 Archdiocese?
19 Ken, I don't have anything else on Sister Norma.	19 MR. FINNEGAN: Priests, correct, John.
20 MR. AXE: Okay, and I think you told me	20 Thank you for that.
21 before that there were questions on the last go	21 MR. ROTHSTEIN: Okay, go ahead.
22 around on MacCarther, and you're not going into	22 THE WITNESS: There are policies which
23 that at this time?	23 cover all of that. We have a priest pension fund,
24 MR. FINNEGAN: Exactly. I'm not going	24 we have a healthcare board that looks into that and
25 into MacCarther, at all.	25 tries to find, you know, a good healthcare person

3 (Pages 111 to 114)

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Father Donald F. Zerkel - 4/27/2010
John Doe 1, et al. vs. Archdiocese of Milwaukee, et al.

Page 1

IN THE CIRCUIT COURT OF MILWAUKEE COUNTY
STATE OF WISCONSIN

JOHN DOE 1, JOHN DOE 2, JOHN DOE
3, and CHARLES LINNEMAN,

Plaintiffs,

-vs-

Case No. 05-CV-1351

ARCHDIOCESE OF MILWAUKEE, et al.

Defendants.

JANE DOE 1,

Plaintiff,

COPY

-vs-

Case No. 07-CV-008390

ARCHDIOCESE OF MILWAUKEE and
DIOCESE OF SIOUX FALLS,
Defendants.

JANE DOE 2 and JANE DOE 3,
Plaintiffs,

-vs-

Case No. 07-CV-10888

ARCHDIOCESE OF MILWAUKEE and
DIOCESE OF SIOUX FALLS,

Defendants.

JAMES ESSENBERG,

Plaintiff,

-vs-

Case No. 08-CV-9050

ARCHDIOCESE OF MILWAUKEE,

Defendant.

EXAMINATION OF FATHER DONALD F. ZERKEL, 4-27-10, VOL. 1

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Father Donald F. Zerkel - 4/27/2010
John Doe 1, et al. vs. Archdiocese of Milwaukee, et al.

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DONALD MARSHALL,

Plaintiff,

-vs-

Case No. 08-CV-10160

ARCHDIOCESE OF MILWAUKEE,

Defendant.

JOHN DOE 6,

Plaintiff,

-vs-

Case No. 09-CV-008128

ARCHDIOCESE OF MILWAUKEE,

Defendant.

DEAN WEISSMULLER,

Plaintiff,

-vs-

Case No. 09-CV-12849

ARCHDIOCESE OF MILWAUKEE,

Defendant.

PETER NEELS and DAVID NEELS,

Plaintiffs,

-vs-

Case No. 09-CV-13945

ARCHDIOCESE OF MILWAUKEE,

Defendant.

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Father Donald F. Zerkel - 4/27/2010
John Doe 1, et al. vs. Archdiocese of Milwaukee, et al.

Page 3

1 -----
2 JOHN DOE 13,
3 Plaintiff,
4 -vs- Case No. 09-CV-15678
5 ARCHDIOCESE OF MILWAUKEE,
6 Defendant.
7 -----
8 JOHN DOE 14,
9 Plaintiff,
10 -vs- Case No. 09-CV-16186
11 ARCHDIOCESE OF MILWAUKEE,
12 Defendant.
13 -----
14 DONALD BUTCHER,
15 Plaintiff,
16 -vs- Case No. 09-CV-17444
17 ARCHDIOCESE OF MILWAUKEE,
18 Defendant.
19 -----
20 GERALD KOBS,
21 Plaintiff,
22 -vs- Case No. 09-CV-007598
23 SISTERS OF MERCY OF THE
24 AMERICAS, REGIONAL COMMUNITY OF
25 CHICAGO, THE ARCHDIOCESE OF
MILWAUKEE, and ABC INSURANCE,
Defendants.

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Father Donald F. Zerkel - 4/27/2010
John Doe 1, et al. vs. Archdiocese of Milwaukee, et al.

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DEAN WEISSMULLER,

Plaintiff,

-vs-

Case No. 09-CV-12849

ARCHDIOCESE OF MILWAUKEE,

Defendant.

Video Conference Examination of FATHER DONALD F. ZERKEL, taken at the instance of the Plaintiffs, under and pursuant to Section 804.05 of the Wisconsin Statutes, before KATHLEEN E. CARTER, a Certified Realtime Reporter, Registered Merit Reporter and Notary Public in and for the State of Wisconsin, at Quarles & Brady, 411 East Wisconsin Avenue, Milwaukee, Wisconsin, on Tuesday, April 27, 2010, commencing at 1:04 p.m. and concluding at 5:02 p.m.

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Father Donald F. Zerkel - 4/27/2010
John Doe 1, et al. vs. Archdiocese of Milwaukee, et al.

1 A P P E A R A N C E S
2 JEFF ANDERSON & ASSOCIATES, P.A., by
3 MR. MICHAEL FINNEGAN,
4 366 Jackson Street, Suite 100,
5 St. Paul, Minnesota 55101,
6 appeared via video conference on behalf of the
7 Plaintiffs.

8 QUARLES & BRADY, by
9 MR. DAVID P. MUTH,
10 411 East Wisconsin Avenue,
11 Milwaukee, Wisconsin 53202,
12 appeared on behalf of Defendant Archdiocese of
13 Milwaukee.

14 LATHROP & CLARK, LLP, by
15 MR. KENNETH B. AXE,
16 740 Regent Street, Suite 400,
17 Madison, Wisconsin 53715-2650,
18 appeared telephonically on behalf of Defendant
19 Archdiocese of Sioux Falls.

20 * * * * *

21 I N D E X

22 Examination:	Page
23 By Mr. Finnegan.....	6
24 Exhibit Identified:	Page
25 No. A - Drawing Of Priest Living Quarters At St. John's.....	26
26 No. B - Sheet Of Paper With Person's Name Corresponding To John Doe 1-2-3, John Doe 1-2-4 And John Doe 1-2-5.....	66
27 No. 510- 1972 Letter From Archbishop Cousins.....	86
28 No. 511- (Not Identified).....	86
29 No. 515- Letter Dated April 10, 1975.....	87
30 No. 521B-Document Re 1976 Lawsuit Against St. John's.....	91
31 No. 576 -(Not Identified).....	93
32 Disposition Of Original Exhibit/s:	
33 Ex. A - Attached To Original Transcript	
34 Ex. B - Retained By Mr. Muth	
35 (All other referenced exhibits are contained in the premarked exhibit book.)	

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1 TRANSCRIPT OF PROCEEDINGS

2 FATHER DONALD F. ZERKEL, called as a
3 witness herein, having been first duly sworn on
4 oath, was examined and testified as follows: .

5 EXAMINATION

6 BY MR. FINNEGAN:

7 Q Father Zerkel, can you state your full name and
8 spell your last name for the record, please.

9 A Donald Francis Zerkel, Z-E-R-K-E-L.

10 Q What's your date of birth, Father Zerkel?

11 A 6-27-31.

12 Q Would you tell me what your present residence is,
13 where you are living right now?

14 A My home is in Lakewood, Wisconsin. The address is
15 W15519 McKinley Lane, Athelstane,
16 A-T-H-E-L-S-T-A-N-E, Wisconsin, 54104.

17 In the personnel book I have another
18 address. It's P.O. Box 74, Newburg, N-E-W-B-U-R-G,
19 Wisconsin.

20 Q Thank you, Father Zerkel. First, have you ever had
21 a deposition -- have you given a deposition before?

22 A Not about our matter today, no, but I have been
23 deposed on an automobile accident.

24 Q Let me -- You may remember some of the ground
25 rules, but I'll tell you a couple of them again.

Father Paul Lippert - 5/10/2010
John Doe 1, et al. vs. Archdiocese of Milwaukee, et al.

Page 2		Page 4
1	-----	1
2	Donald Marshall,	2
3	Plaintiff(s),	3
4	vs. Case No.: 08-CV-10160	4
5	Archdiocese of Milwaukee,	5
6	Defendant(s),	6
7	-----	7
8	John Doe 6,	8
9	Plaintiff(s),	9
10	vs. Case No.: 09-CV-008128	10
11	Archdiocese of Milwaukee,	11
12	Defendant(s),	12
13	-----	13
14	Dean Weissmuller,	14
15	Plaintiff(s),	15
16	vs. Case No.: 09-CV-12849	16
17	Archdiocese of Milwaukee,	17
18	Defendant(s),	18
19	-----	19
20	Peter Neels and David Neels,	20
21	Plaintiff(s),	21
22	vs. Case No.: 09-CV-13945	22
23	Archdiocese of Milwaukee,	23
24	Defendant(s),	24
25	-----	25

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1	John Doe 13,	1
2	Plaintiff(s),	2
3	vs. Case No.: 09-CV-15678	3
4	Archdiocese of Milwaukee,	4
5	Defendant(s),	5
6	-----	6
7	John Doe 14,	7
8	Plaintiff(s),	8
9	vs. Case No.: 09-CV-16186	9
10	Archdiocese of Milwaukee,	10
11	Defendant(s),	11
12	-----	12
13	Donald Butcher,	13
14	Plaintiff(s),	14
15	vs. Case No.: 09-CV-17444	15
16	Archdiocese of Milwaukee,	16
17	Defendant(s),	17
18	-----	18
19	Gerald Kobs,	19
20	Plaintiff(s),	20
21	vs. Case No.: 09-CV-007598	21
22	Sisters of Mercy of the Americas,	22
23	Regional Community of Chicago,	23
24	The Archdiocese of Milwaukee	24
25	and ABC Insurance,	25
	Defendant(s),	

TELEPHONIC DEPOSITION
The following is the telephonic deposition
of FATHER PAUL LIPPERT, taken by and before GAYLE
MAY-BARKER, a Registered Professional Reporter
and Notary Public Pursuant to Notice of Taking
Deposition at the offices of JEFF ANDERSON &
ASSOCIATES, Suite 100, 366 Jackson Street, St.
Paul, Minnesota, on Monday, May 10, 2010,
commencing at 9:30 AM.

EXAMINATION OF FATHER PAUL LIPPERT
A P P E A R A N C E S:
On Behalf of the Plaintiff:
Michael Finnegan, Esquire
JEFF ANDERSON & ASSOCIATES
Suite 100
366 Jackson Street
St. Paul, Minnesota 55101
PHONE: 651-227-9990
On Behalf of the Defendant via Telephone:
David Muth, Esquire
QUARLES & BRADY
411 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-4497
PHONE: 414-277-5000
Ken Ahe, Esquire
Nelson, Connell, Conrad, Tallmadge
& Slein
N14W23755 Stone Ridge Drive
Suite 150
Waukesha, Wisconsin 53187-1109
PHONE: 262-347-0303

2 (Pages 2 to 5)

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Father Paul Lippert - 5/10/2010
John Doe 1, et al. vs. Archdiocese of Milwaukee, et al.

Page 6		Page 8	
1	EXAMINATION OF FATHER PAUL LIPPERT	1	EXAMINATION OF FATHER PAUL LIPPERT
2	INDEX	2	Ken Axe is on the phone; and he represents two of
3	EXAMINATION BY: PAGE	3	the defendants in two of the cases that we have
4	Mr. Finnegan 4	4	in Milwaukee. And so what I'm going to do is
5	EXHIBITS	5	tell you a couple of ground rules, and then I'm
6		6	going to skip right to a couple of questions for
7	(Previously marked and attached.)	7	the alleged perpetrators in his cases. So it's
8		8	going to seem a little bit out of order, but it's
9		9	just so that if you don't know anything about his
10		10	cases, that he'll be able to get off the phone.
11		11	A. Finc.
12		12	Q. Father Lippert, just so you
13		13	remember from before, what we're doing here isn't
14		14	a marathon. If you need to take a break at any
15		15	point, you just let me know; and I will -- as
16		16	long as there's not a question pending, we can
17		17	take a break whenever you need and take as many
18		18	as often. Does that make sense?
19		19	A. Yes, it does.
20		20	Q. If there's something that you can't
21		21	hear, if you can't hear me or one of my questions
22		22	doesn't make sense, you can't understand it, just
23		23	let me know that and I'll do my best to rephrase
24		24	it. All right?
25		25	A. Okay.
Page 7		Page 9	
1	EXAMINATION OF FATHER PAUL LIPPERT	1	EXAMINATION OF FATHER PAUL LIPPERT
2	PROCEEDINGS	2	Q. The other thing that can be
3	Whereupon, the telephonic deposition of	3	difficult, especially over the phone here for the
4	FATHER PAUL LIPPERT was commenced at 9:30 AM as	4	court reporter, is a lot of times when we're
5	follows:	5	talking we'll make sounds like uh-huh, huh-uh,
6		6	stuff like that. If you do that, which is
7	FATHER PAUL LIPPERT,	7	perfectly fine in normal conversation, for
8	not being in my presence, after having	8	purposes of this I'll ask was that a yes, was
9	been duly sworn, testified as follows:	9	that a no, Father Lippert. And the only reason
10	***	10	I'm doing that is so that the court reporter can
11	EXAMINATION	11	get that down. That's not meant to badger you at
12	BY MR. FINNEGAN:	12	all. It's just so she can get it down. Does
13	Q. Father Lippert, this is Mike	13	that make sense?
14	Finnegan, and I've taken your deposition one time	14	A. Yes, it does.
15	before. And I think you may remember a couple of	15	Q. The other one that we do in normal
16	ground rules, but I'll go over a couple in the	16	conversation that is very, very tough for the
17	front and also tell you a little bit about the	17	court reporter is we talk over each other in
18	procedure that we're going to use this morning.	18	normal conversation a lot. And what I'd ask you
19	First, I'll just put on the record	19	to do for this process is just wait until I'm
20	all parties have stipulated that this court	20	done with the question and then you give your
21	reporter can be here in my office and Dave Muth	21	answer. And I'll try and do the same thing for
22	is with the witness and that we proceed that way.	22	you so that I'll wait until you give your answer
23	MR. MUTH: That's correct.	23	and you are done with your answer until I ask
24	MR. FINNEGAN: The second thing	24	another question. Does that make sense?
25	that I want to let you know, Father Lippert, is	25	A. It does.

3 (Pages 6 to 9)

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1 STATE OF WISCONSIN CIRCUIT COURT
 2 COUNTY OF MILWAUKEE CIVIL DIVISION
 3
 4 John Doe 1, John Doe 2,
 5 John Doe 3, and Charles Linneman,
 6 Plaintiffs,
 7 vs File No 05-CV-1351
 8 Archdiocese of Milwaukee, et al
 9 Defendants
 10
 11 Jane Doe 1,
 12 Plaintiff
 13 vs File No 07-CV-000390
 14 Archdiocese of Milwaukee and
 15 Diocese of Sioux Falls,
 16 Defendants
 17
 18 Jane Doe 2 and Jane Doe 3,
 19 Plaintiffs,
 20 vs File No 07-CV-10880
 21 Archdiocese of Milwaukee and
 22 Diocese of Sioux Falls,
 23 Defendants
 24 DEPOSITION OF FATHER ROBERT MUELLER
 25 APRIL 26 2010

1 ----- 3
 2 Peter Neels and David Neels,,
 3 Plaintiffs,
 4 vs Case No 09-CV-13945
 5 Archdiocese of Milwaukee,
 6 Defendant
 7
 8
 9 John Doe 13,
 10 Plaintiff,
 11 vs Case No 09-CV-15678
 12 Archdiocese of Milwaukee,
 13 Defendant
 14
 15 John Doe 14,
 16 Plaintiff,
 17 vs Case No 09-CV-16186
 18 Archdiocese of Milwaukee,
 19 Defendant
 20
 21 Donald Butcher,
 22 Plaintiff,
 23 vs Case No 09-CV-17444
 24 Archdiocese of Milwaukee,
 25 Defendant

1 ----- 2
 2 James Esenberg,
 3 Plaintiff,
 4 vs Case No 08-CV-9050
 5 Archdiocese of Milwaukee,
 6 Defendant
 7
 8 Donald Marshall,
 9 Plaintiff,
 10 vs Case No 08-CV-10160
 11 Archdiocese of Milwaukee,
 12 Defendant
 13
 14 John Doe 6,
 15 Plaintiff,
 16 vs Case No 09-CV-008128
 17 Archdiocese of Milwaukee,
 18 Defendant
 19
 20 Dean Weissmuller,
 21 Plaintiff,
 22 vs Case No 09-CV-12049
 23 Archdiocese of Milwaukee,
 24 Defendant
 25

1 ----- 4
 2 Gerald Kobs,
 3 Plaintiff,
 4 vs Case No 09-CV-007598
 5 Sisters of Mercy of the Americas,
 6 Regional Community of Chicago,
 7 The Archdiocese of Milwaukee, and
 8 ABC Insurance,
 9 Defendants
 10
 11 The Deposition of FATHER
 12 ROBERT MUELLER (via telephone), taken
 13 pursuant to Notice of Taking Deposition,
 14 taken before Patricia A Hulse, a Notary
 15 Public in and for the County of Dakota, State
 16 of Minnesota, taken on April 26, 2010, at 366
 17 Jackson Street, St Paul, Minnesota,
 18 commencing at approximately 10 00 a m
 19
 20 AFFILIATED COURT REPORTERS
 21 2935 Old Highway 8
 22 St Paul, Minnesota 55113
 23 (612) 338-4348
 24
 25

6

1 APPEARANCES

2

3 ON BEHALF OF THE PLAINTIFFS

4 MICHAEL G FINNEGAN
 5 Jeff Anderson & Associates, P A
 6 366 Jackson Street
 7 Suite 100
 8 St Paul, Minnesota 55101

9 ON BEHALF OF THE DEFENDANT
 10 ARCHDIOCESE OF MILWAUKEE

11 DAVID P MUTH (Via Telephone)
 12 Quarles & Brady
 13 411 East Wisconsin Avenue
 14 Suite 2040
 15 Milwaukee, Wisconsin 53202-4497

16 ON BEHALF OF THE DEFENDANT
 17 COMMERCIAL UNION INSURANCE COMPANY

18 MARK NELSON (Via Telephone)
 19 Nelson Connell Conrad
 20 Tallmadge & Stein
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23 ON BEHALF OF THE DEFENDANT
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DEPOSITION OF FATHER ROBERT MUELLER

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1 P R O C E E D I N G S

2 (Witness sworn)

3 FATHER ROBERT MUELLER

4 called as a witness, being first duly sworn,

5 was examined and testified as follows

6 * * *

7 EXAMINATION

8 * * *

9 BY MR FINNEGAN

10 Q Just for the record this is Mike Finnegan,

11 and the procedure that we agreed upon so that

12 we could take Father Mueller's deposition

13 today was for the court reporter to be here

14 with me in St Paul and for Dave Muth to be

15 with the witness at his residence and then

16 Ken Axe and Mark Nelson are on the phone

17 And the agreement going into this was, if

18 there were no objections to having the court

19 reporter here with me and handling it over

20 the phone like this

21 MR MUTH That's correct This is

22 Dave Muth

23 BY MR FINNEGAN

24 Q Father Mueller, again, this is Mike Finnegan

25 I'll tell you just a couple of ground rules

7

1 here upfront

2 And with the phone, one of the

3 number one things, if you don't hear me at

4 all or you can't make out what I'm saying,

5 just let me know and I'll rephrase it for

6 you

7 Similarly, if there's a question

8 that you do not understand, just let me know

9 and I'll do my best to rephrase that for you

10 Does that make sense, Father Mueller?

11 A Yes

12 MR MUTH Mike?

13 MR FINNEGAN Yes

14 MR MUTH This is Dave Muth It's

15 pronounced Father Mueller

16 BY MR FINNEGAN

17 Q I'm sorry, Father Mueller

18 Could you, Father Mueller, for the

19 record state your full name and spell your

20 last name, please?

21 A Robert F Mueller, M-U-E-L-L-E-R

22 Q A couple of the other ground rules,

23 Father Mueller, if you need to take a break

24 at any point just let me know and we can take

25 a break any time The only thing that I'd

8

1 ask is if I just asked a question, that you

2 answer that question and then we'll take a

3 break

4 So no matter what it is, if you

5 need one in 15 minutes, 20 minutes, whatever

6 it is we can take a minute any time

7 The other ground rule that could

8 come into play here is a lot of times when

9 we're talking in conversation we'll use

10 sounds like uh-huh, uh-uh, stuff like that

11 And if you do do that,

12 Father Mueller, I'll just ask you, was that a

13 yes, was that a no And the reason I'm doing

14 that is so that the court reporter can get

15 all the answers down

16 And so it's not meant to harass

17 you, badger you at all, so just be aware that

18 it happens And we do it in normal

19 conversation, but in this process we just

20 need to have an audible answer Does that

21 make sense?

22 A Yes

23 Q And then you do understand, Father Mueller,

24 that you're under oath today?

25 A Yes She says yes, yes, I guess

