

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

In re:
ARCHDIOCESE OF MILWAUKEE,

Debtor.

Case No. 11-20059-svk

Chapter 11

Hon. Susan V. Kelley

DEBTOR'S OBJECTION TO MOTION OF OFFICIAL COMMITTEE
OF UNSECURED CREDITORS AND JEFFREY ANDERSON & ASSOCIATES
FOR AN ORDER PURSUANT TO FEDERAL RULE OF BANKRUPTCY
PROCEDURE 2004 DIRECTING THE ORAL EXAMINATION OF BISHOP
SKLBA, ARCHBISHOP WEAKLAND, AND DANIEL BUDZYNSKI
AND FOR PRODUCTION OF DOCUMENTS

Archdiocese of Milwaukee, debtor and debtor in possession (the "Debtor" or "Archdiocese"), hereby submits this objection to the motion of the official committee of unsecured creditors (the "Committee") and Jeffrey Anderson & Associates ("Anderson," and collectively with the Committee, the "Movants") for an order pursuant to Federal Rule of Bankruptcy Procedure 2004 directing the oral examination (the "Examinations") of Bishop Sklba, Archbishop Weakland, and Daniel Budzynski (collectively, the "Requested Examinees") and for the production of documents [Docket No. 340] (the "Rule 2004 Motion"). In support of this objection, the Debtor states as follows:

Daryl L. Diesing
Bruce G. Arnold
Frank H. LoCoco
Michael E. Gosman
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Background and Summary of Relief Requested in the Rule 2004 Motion

1. On May 20, 2011, the Committee filed a motion for relief from stay (the "Deposition Motion") to allow "parties in interest"¹ to take depositions in the state court cases pending against the Debtor as of January 4, 2011 (the "Petition Date"), of the Requested Examinees and other witnesses seventy (70) years or older.

2. The Debtor objected to the Deposition Motion because, among other reasons, the Committee was an improper party to bring the Deposition Motion and there was no cause for the relief sought therein (the "Objection to the Deposition Motion").

3. On July 20, 2011, the Court issued an Order denying the Deposition Motion (the "Order Denying the Deposition Motion") [Docket No. 339].

4. On July 14, 2011, the Court entered an Order approving February 1, 2012, as the Abuse Survivor Bar Date (the "Abuse Survivor Bar Date") and approving the Abuse Survivor Proof of Claim Form (the "Bar Date Order") [Docket No. 331].

5. The Abuse Survivor Bar Date is less than six (6) full months away. Until the Abuse Survivor Bar Date has passed, the Debtor will not know the scope of Abuse Survivor Claims against it, nor will it know the identities of many of the Abuse Survivors who have not yet come forward but may wish to be represented at any examinations of the Requested Examinees (the "Unknown Abuse Survivors").

6. The Committee, comprised exclusively of Mr. Anderson's Abuse Survivor clients, nonetheless committed to giving Mr. Anderson the opportunity to take depositions that could help him (i) maximize the recovery of his seventeen (17) clients with cases pending against the Debtor as of the Petition Date (the "State Court Cases"), (ii) attract new Abuse

¹ The Committee clarified in its reply to the Debtor's objection to the Deposition Motion (the "Committee Reply") that although the Deposition Motion was filed exclusively by the Committee, the Committee was "not proposing that it participate in the depositions" and was instead seeking relief from the automatic stay for Anderson so that he could take depositions. (Committee Reply ¶ 24.)

Survivor clients, and (iii) backdoor the claims adjudication process, joined with Anderson in refashioning its Deposition Motion as a Rule 2004 Motion.²

Debtor's Basis for this Objection

7. This Rule 2004 Motion amounts to an attempt by the Movants to continue with discovery in the State Court Cases that are stayed, notwithstanding this Court's Order Denying the Deposition Motion or the fact that the proposed Examinations truly are not focused on the Debtor's financial affairs, the proper focus of Rule 2004 examinations.

8. The Rule 2004 Motion states that the requested examinations and document production (the "Document Production") should be permitted because (i) "the Examinations are critical for the preservation of evidence," (ii) the testimony of the Requested Examinees "will be important to the resolution of this bankruptcy case," and (iii) the "Examinations may well provide an opportunity to learn the identities of sexual abuse survivors." (Rule 2004 Mot. ¶¶ 2, 3, 4.)

9. The Rule 2004 Motion should be denied because (i) there is little risk of loss of evidence prior to the Abuse Survivor Bar Date, which is less than six (6) months from now, (ii) the testimony of the Requested Examinees will not advance this Chapter 11 case at this time, and (iii) it is exceedingly unlikely that the Examinations will result in disclosure of Unknown Abuse Survivors.

I. The Rule 2004 Motion Is Unnecessary to Preserve Testimony

10. The Movants give as their primary reason for filing the Rule 2004 Motion the "preservation of evidence relating to sexual abuse in the Archdiocese of Milwaukee" and claim

² The Debtor incorporates herein the arguments from its Objection to the Deposition Motion regarding the impropriety of the Committee devoting its energy to relief that is harmful to a significant portion of the unsecured creditor class, and the Debtor may object to the fees of Committee counsel related to the Deposition Relief Motion and the Rule 2004 Motion for that reason.

that they have specific concern for the loss of the testimony of the Requested Examinees because they are more than seventy-five (75) years old. (Rule 2004 Mot. ¶ 2.)

11. The Movants provide no authority for their position that it is proper to immediately take the Examinations to preserve evidence based exclusively on the age of an examinee.

12. Pursuant to the Order Denying the Deposition Motion, the Debtor already has an affirmative obligation to “inform the Committee should it learn that the testimony of any individual whose name appears in Section A of the Deposition Motion [which includes the Requested Examinees] or is identified to the Debtor by the Committee as a potential deponent may be imminently lost due to death or mental or physical impairment and/or health or disability.” (Order Den. the Dep. Mot. ¶ 3.) The Rule 2004 Motion is completely unnecessary in light of the court’s direction that the Debtor must communicate with Bishop Sklba and Archbishop Weakland on a monthly basis, confirming with them that they have had no adverse health events, and immediately report to the Movants and the Court should the Debtor learn that the testimony of either may be imminently lost.³

13. The only reason provided by Movants in the Rule 2004 Motion for why a delay of less than a half-year in the taking of examinations of the Requested Examinees would result in evidence being lost is that of the nineteen (19) individuals listed on the Debtor’s website as deceased perpetrators of abuse, “11 of them died before the age of 75.” (Rule 2004 Mot. ¶ 23.)

This argument is horribly flawed for the following reasons:

- A. Bishop Sklba and Archbishop Weakland are not accused of being perpetrators of abuse and therefore any statistics regarding the life expectancy of perpetrators of abuse are irrelevant to them;
- B. the Requested Examinees are all over the age of seventy-five (75) and the statistic cited by the Committee says nothing about the life expectancy of

³ The Debtor is not in contact with Daniel Budzynski who is a laicized priest. However, the Debtor will inform the Movants and the Court if it becomes aware that Mr. Budzynski has suffered an adverse health event.

individuals that are over the age of seventy-five (75); and

- C. even if the Movants' statistic could otherwise appropriately be applied to the Requested Examinees, the nineteen (19) person sample size clearly makes it statistically insignificant.

14. In the Debtor's Objection to the Deposition Motion, the Debtor referenced a mortality table, a common tool used by juries in Wisconsin to help determine life expectancy, which shows that an eighty-four (84) year old man such as Archbishop Weakland, the oldest of the Requested Examinees, has a life expectancy of six (6) years. (Debtor's Objection to the Dep. Mot. ¶ 17.) A seventy-five (75) year old man like Bishop Sklba has a life expectancy of over ten (10) years. The Committee objected to the use of a mortality table (Committee Reply ¶ 27), even though it is clear that courts may take judicial notice of such tables,⁴ apparently opposed to any statistically significant data being introduced into evidence regarding life expectancy.

15. Given that the Debtor has affirmatively undertaken notifying the Movants and the Court if it learns a Requested Examinee's testimony may be imminently lost due to death or mental or physical impairment and/or health or disability, and that the Committee has provided no credible evidence that the Requested Examinees' testimony will likely be lost if the Examinations do not occur at this time, there is simply no reason for the Court to approve the Examinations.

16. To the extent the Court finds it advantageous to prospectively put in place a framework whereby the Examinations can occur if there ever becomes a risk of imminent loss of testimony due to the health of a Requested Examinee, the Debtor believes the order allowing for depositions in the bankruptcy case of the Catholic Diocese of Wilmington, Inc., attached hereto

⁴ See *Donlea v. Carpenter*, 124 N.W.2d 305, 312 (Wis. 1963) (finding "no reason why a court should not take judicial notice of figures based on expectancies computed on the basis of current statistics and published by responsible government agencies and include such expectancies in [jury] instructions...")

as Exhibit A, could prove a helpful model for how testimony can be protected without unduly burdening a debtor.⁵

II. The Taking of Examinations at This Time Will Hinder, Not Advance, This Chapter 11 Case

17. The Movants' claim the Examinations should occur by September 16, 2011, because they will help "the Debtor, the Committee, or other parties in interest, to determine whether claims should be objected to and the value of claims." (Rule 2004 Mot. ¶ 3.)

18. This approach is completely backwards. There is a reason Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") 3007 and 9014 allow for the depositions of witnesses after, not before, there is an objection to a claim; it is to prevent unnecessary or overbroad discovery that is wasteful of a debtor's resources.

19. The Movants fail to acknowledge that until the Abuse Survivor Bar Date passes, no one, not the Debtor, the Movants, nor other parties in interest, know what the proper scope of the Examinations should be or even if the Examinations will ever be necessary. The number of valid Abuse Survivor claims is completely unknown at this time because only two (2) Abuse Survivors have filed proofs of claim that may comply with the Bar Date Order.

20. Instead of helping resolve this chapter 11 case as the Committee suggests, the premature taking of the Examinations will instead have one or more of the following consequences:

- A. the Examinations will be overly broad and therefore wasteful of the Debtor's limited resources;
- B. the Movants will realize after the Abuse Survivor Bar Date passes and Abuse Survivor proofs of claim are reviewed that they have additional questions for the Requested Examinees and will move the Court to allow further examinations;
- C. Abuse Survivors who have not appeared in this chapter 11 case prior to

⁵ Although the enclosed order does not include any obligation on the debtor in that case to keep the parties informed regarding the health status of witnesses, the Archdiocese has and will undertake this obligation.

the Examinations will argue that they, too, have the right to examine the Requested Examinees, giving rise to the serial examination of the Requested Examinees, a further drain on the Debtor's estate; or

- D. if the approach suggested by Attorney Elliott in his amended joinder to the Committee's Deposition Motion (the "Elliot Joinder") [Docket No. 274] is adopted, the Requested Examinees will only be examined once for this chapter 11 case, potentially prejudicing Abuse Survivors who have not yet appeared in this case. (*See Elliot Joinder* at page 3.)

21. Furthermore, the Rule 2004 Motion completely ignores the potential impact of dispositive motions on the necessity for discovery. The Wisconsin Supreme Court has repeatedly rejected clergy abuse claims which are time-barred,⁶ and to conduct meaningless discovery with respect to claims which are time-barred or otherwise unenforceable against the estate would be a horrible waste of the Archdiocese's limited resources. When the determination of an issue (such as the Debtor's statute of limitations defense here) may obviate the need for discovery it is within the court's discretion to stay discovery until the dispositive issue has been decided.⁷ 8A Charles Alan Wright et al., *Federal Practice and Procedure* § 2040 (3d ed. 2010) (the court has discretion to stay discovery pending the outcome of a dispositive issue); *Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 804 (Fed. Cir. 1999) ("When a particular issue may be dispositive, the court may stay discovery concerning other issues until the critical issue is resolved."); *Chavous v. D.C. Fin. Responsibility & Mgmt. Assistance Auth.*, 201 F.R.D. 1, 2 (D.D.C. 2001).

22. Rule 2004 provides that this Court "may" order the examination of any entity. However, an examination should not be permitted where, as here, the burden on the Debtor and

⁶ John Doe 1 v. Archdiocese of Milwaukee, 2007 WI 95, 734 N.W.2d 827; BBB Doe v. Archdiocese of Milwaukee, 565 N.W.2d 94 (Wis. 1997); Pritzlaff v. Archdiocese of Milwaukee, 533 N.W.2d 780 (Wis. 1995)

⁷ This concept is sometimes referred to as the "principle of judicial parsimony." *Sinclair Refining Co. v. Jenkins Petroleum Process Co.*, 289 U.S. 689, 694 (1933); *See also* 8A Charles Alan Wright et al., *Federal Practice and Procedure* § 2040 (3d ed. 2010) ("the principle of judicial parsimony") holds that "when one issue may be determinative of a case, the court has discretion to stay discovery on other issues until the critical issue has been decided."

other creditors in permitting the Examinations to move forward far outweighs any benefits to the moving parties.

23. The premature Examinations requested by the Movants will not advance this chapter 11 case. Instead, they will result in needless expense for the Debtor and potentially result in serial depositions of the Requested Examinees.

III. The Examinations Will Not Help Determine Abuse Survivor Identities

24. The Movants' most specious argument is that the Examinations must occur immediately so that the identities of Unknown Abuse Survivors can become known prior to the Abuse Survivor Bar Date. (Rule 2004 Mot. ¶ 4.)

25. After often difficult and extremely time-consuming negotiations, the Debtor and the Committee agreed to the form of the Bar Date Order, which was entered on July 14, 2011. The Bar Date Order requires the Debtor to undertake an extensive review procedure to identify Abuse Survivors and provide any known Abuse Survivors with notice by mail of the Abuse Survivor Bar Date. For Unknown Abuse Survivors, the Bar Date Order requires a broad publicity campaign that includes advertisements in national, regional, and local publications, and outreach to parishes, schools, law enforcement agencies, and counselors, among others. If the Movants did not believe the Bar Date Order complied with due process, the time to voice those concerns was at the June 22, 2011, bar date hearing or by filing an appeal of the Bar Date Order. A Bankruptcy Rule 2004 exam is simply not the proper vehicle for an assault on the Bar Date Order.

26. Furthermore, although the Debtor is confident that neither Bishop Sklba nor Archbishop Weakland are aware of any Abuse Survivors not known to the Debtor, to placate the Movants, the Debtor specifically will interview both men and ask whether they know the names of any Abuse Survivors not already identified.

27. The Debtor is not in contact with Daniel Budzynski, but the Debtor has identified him as someone against whom there are substantiated claims of Abuse, so it would be quite shocking if Mr. Budzynski risked criminal prosecution by volunteering the identities of any Unknown Abuse Survivors against whom he perpetrated his alleged crimes. It is quite likely he will simply assert his 5th Amendment privilege against self-incrimination.

IV. The Proposed Rule 2004 Motion Has Other Flaws

28. While it is true that the scope of Rule 2004 examinations is generally broad, it is equally true that “Rule 2004 examinations may not be used to annoy, embarrass or oppress the party being examined.” *In re Coffee Cupboard, Inc.*, 128 B.R. 509, 514 (Bankr. E.D.N.Y. 1991) (citing *In re Drexel Burnham Lambert Group*, 123 B.R. 702, 712 (Bankr. S.D.N.Y. 1991)); *See In re Mittco, Inc.*, 44 B.R. 35, 36 (Bankr. E.D.Wis. 1984) (noting that Rule 2004 exams “cannot be used for purposes of abuse or harassment” or “stray into matters which are not relevant to the basic inquiry.”)

29. As made evident by the motion and brief in support of a protective order filed on behalf of Bishop Sklba in case number 2007-CV-10888, which are attached hereto as Exhibit B, Mr. Anderson widely publicized transcripts and videos of Archbishop Weakland’s 2008 deposition in violation of an agreement with opposing counsel and applicable Wisconsin Rules of Professional Conduct.

30. Given the procedural infirmity of the Rule 2004 Motion and the absence of any legal grounds to conduct claim discovery at this time, it is fair to ask whether the real purpose of the Rule 2004 Motion is not to preserve evidence, but rather to embarrass the Debtor. It is telling that the Movants, while claiming that it is critical to preserve evidence, do not request an examination of any Abuse Survivors, many of whom may actually be in poor health.

31. If after the statute of limitations and other outcome determinative issues are resolved it is necessary to conduct discovery in connection with a contested matter relating to the validity of a claim, the Court can fashion a Scheduling Order that not only addresses the need to protect Abuse Survivor confidentiality, but also protects the rights of any individuals that are deposed or examined against the type of conduct described in the paragraph twenty-nine (29) above.

32. In addition to the arguments raised above, the Debtor has specific concerns regarding the Examinations of each Requested Examinee.

33. As admitted by the Movants (Rule 2004 Mot. ¶ 33), Archbishop Weakland was deposed in the State Court Cases in June of 2008. The Movants neglect to mention that the Deposition was taken by Mr. Anderson and lasted for twelve (12) hours, well beyond the seven (7) hour limit established in Rule 30 of the Federal Rules of Civil Procedure.

34. Furthermore, contrary to the Movants' intimation (Rule 2004 Mot. ¶ 34), at that very deposition Mr. Anderson questioned Archbishop Weakland regarding claims against Lawrence Murphy.

35. Tellingly, the Movants' Rule 2004 Motion does not provide specific questions they have of Archbishop Weakland that would advance this bankruptcy case because their questions were answered during Archbishop Weakland's twelve (12) hour deposition.

36. The proposed examination of Bishop Sklba is equally troubling.

37. The Movants' assertion that "[a]s of the Petition Date, the deposition of Bishop Richard Sklba was set for January 6, 2011, but was stayed by the commencement of this case" (Rule 2004 Mot. ¶ 29), is patently false. Attached hereto as Exhibit C is a letter dated December 22, 2010, from Mr. Anderson to counsel for Bishop Sklba which makes plain that a hearing on Bishop Sklba's motion for a protective order was scheduled for February 23, 2011,

and only after such hearing would it be determined when or if the deposition of Bishop Sklba would occur.

38. As with Archbishop Weakland, the Movants provide no reasonable explanation for what information Bishop Sklba might possess that will advance this bankruptcy proceeding.

39. As more fully explained in paragraph twenty-seven (27) above, the Movants' claim that Mr. Budzynski will disclose the names of Unknown Abuse Victims if they can take his immediate examination is frivolous.

40. Finally, the Movants provide no indication of why, if immediate preservation of evidence is critical, that they do not request an examination of any Abuse Survivors, many of whom may actually be in poor health. This is as clear an indication as any that the Rule 2004 Motion is not truly about preservation of evidence.

V. **The Document Requests are Unnecessary at This Time**

41. The Movants refer to their requested Document Production as "limited," but calling it thus does not make it so. The "limited" Document Production requested by the Committee is in fact so broad that it would be impossible for the Debtor to comply by the Movant's proposed deadline of August 24, 2011. Additionally, compliance would require the Debtor to knowingly violate HIPAA confidentiality requirements. This is especially concerning given that the Movants provide no valid rationale for the requested Document Production.

42. There is no risk of the loss of any documents responsive to the Document Request because the Debtor has a litigation hold in place.

43. Pursuant to the Bar Date Order, the Debtor has already agreed to undertake and is undertaking a burdensome file review to uncover the names of any Unknown Abuse Survivors that it has in its records. Therefore, the requested Document Production will be of no use in uncovering additional Unknown Abuse Survivors.

44. The requested Document Production would simply reduce the assets of the Debtor's chapter 11 estate without any countervailing benefit. While a more limited Document Production may eventually prove helpful in claims adjudication with respect to any claim that is not otherwise time-barred, it is premature to consider such relief prior to the Court's consideration of the Debtor's dispositive motions.

Conclusion

The Examinations and Document Request moved for by the Committee and Mr. Anderson are unnecessary to preserve testimony, would hinder the progress of this chapter 11 case, and would not help uncover Unknown Abuse Survivors. The relief sought by the Movants in the Rule 2004 Motion should be denied.

Dated this 5th day of August, 2011.

ARCHDIOCESE OF MILWAUKEE
Debtor and Debtor-in-Possession
by its counsel,
Whyte Hirschboeck Dudek S.C.

By: /s/ Michael E. Gosman

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EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)
) Chapter 11
)
THE CATHOLIC DIOCESE OF)
WILMINGTON, INC.,) Case No. 09-13560 (CSS)
)
)
Debtor.) Ref. Docket No. 27

ORDER MODIFYING THE AUTOMATIC STAY TO PERMIT
THE TAKING OF DE BENE ESSE DEPOSITIONS
SUBJECT TO DEBTOR'S OPPORTUNITY TO OBJECT

Upon consideration of the motion (the "Motion")¹ of the Unofficial Committee of Abuse Survivors ("Unofficial Committee"), pursuant to Section 362 of Title 11 of the United States Code (the "Bankruptcy Code"), Rules 4001(a) and 9014 of the Federal Rules of Bankruptcy Procedure, and Rule 4001-1 of the Local Rules of Bankruptcy Procedure, for the entry of an order (this "Order") modifying the automatic stay to permit the taking of *de bene esse* depositions; the Response of the above-captioned debtor and debtor-in-possession (the "Debtor") thereto; the arguments presented by the Unofficial Committee and the Debtor at the Court's November 2, 2009 hearing; notice of the Motion having been adequate and appropriate under the circumstances; and after due deliberation and sufficient cause appearing therefore:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is granted as set forth herein.
2. A party (the "Requesting Party") who wishes to take the *de bene esse* deposition of a witness in the underlying State Court Litigation whose testimony would otherwise

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

imminently be lost due to death or mental or physical impairment shall provide the Debtor with the following:

- a) A written notice of the intent to take the deposition ("Written Notice");
- b) A written statement of the basis for requesting the deposition ("Statement of Basis"); and
- c) Documents in support of the party's Statement of Basis for requesting the deposition ("Supporting Documents"). The Supporting Documents must evidence the need for the deposition to be taken in order to immediately preserve the witness' testimony.

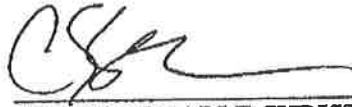
3. The Debtor will respond, in writing, to the Requesting Party no more than 5 business days after receipt of the Supporting Documents. If the Debtor does not respond to the Requesting Party within 5 business days of the receipt of the Supporting Documents, the deposition will go forward as noticed.

4. If the Debtor responds in accordance with the terms prescribed in Paragraph 3 above, but the Requesting Party and the Debtor cannot reach agreement as to whether the requested deposition will go forward, or there is a dispute between the parties as to any other issue with respect to the requested deposition, the parties will contact the Court to seek resolution of the disputed issue(s).

5. Nothing in this Order shall impair the rights of any witness under the applicable law to oppose the taking of his or her deposition, either in this Court, or any other Court where the witness' rights may be implicated.

6. The Court retains jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

Dated: Wilmington, Delaware
January 26 2010



THE HONORABLE CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

JANE DOE 2 and JANE DOE 3,

Plaintiffs,

v.

ARCHDIOCESE OF MILWAUKEE,

Case No. 2007-CV-10888

Defendant,

and

COMMERCIAL UNION INSURANCE COMPANY n/k/a
ONEBEACON INSURANCE COMPANY,

Intervening Defendant,

and

DIOCESE OF SIOUX FALLS,

Defendant.

MOTION FOR PROTECTIVE ORDER

PLEASE TAKE NOTICE that on December 23, 2010, at 10:30 a.m., or as soon thereafter as counsel may be heard, BISHOP RICHARD J. SKLBA, by his attorneys, Crivello Carlson, S.C., will move the Court, the Hon. Thomas R. Cooper presiding, in his courtroom at the Milwaukee County Courthouse, for a protective order pursuant to Wis. Stat. Secs. 804.01(3), 808.08(2)(a)3 and Wis. Stat. Sec. 804.02(2), as follows:

1. Prohibiting the deposition of Bishop Sklba noticed by the Plaintiffs, until after all pending appeals are concluded and on-going mediation is completed, and further requiring that Bishop Sklba be deposed only once for all pending cases;

2. If the deposition goes forward at this time, limiting the scope of the discovery deposition to testimony pertaining to only the above captioned cases;
3. Requiring the deposition transcript and exhibits to Bishop Sklba's deposition, whenever it is taken, to be sealed from the public and the press and to be opened only by order of this court;
4. Requiring that the transcript and exhibits of Bishop Sklba's deposition be used only to the extent reasonably necessary for purpose of the above-captioned lawsuit and prohibiting their use for any other purpose whatsoever, including an order directed to Plaintiff's attorneys:
 - a. from putting any part of the deposition on the Anderson Advocates website
 - b. giving the deposition to any third party, including SNAP and Bishopaccountability.org or similar groups
5. Prohibiting the Plaintiffs and their attorneys from disseminating any and all portions of Bishop Sklba's deposition transcript and exhibits, at any time during and after termination of this lawsuit, and from conveying any information regarding their recollections of Bishop Sklba's deposition testimony and exhibits, whether orally, electronically, in writing, by photocopying, scanning or other reproduction, or by any other means, to any person, entity, institution, the internet, world-wide web or media outlet, other than by paper photocopy, bates stamped, to Plaintiff's lay and expert witnesses whose names and addresses have been disclosed to all parties under a scheduling order entered by the Court in this case. Further:
 - a. Such named lay and expert witnesses be prohibited from disclosing any and all portions of Bishop Sklba's deposition transcript and exhibits, at any time during and after termination of this lawsuit, orally, electronically, in writing, or by any other means, to any person, entity, institution, internet, world-wide web or media outlet;
 - b. Such named lay and expert witnesses be further prohibited from conveying any information regarding their recollection of Bishop Sklba's testimony, the contents of Bishop Sklba's deposition transcript and exhibits, at any time during and after termination of this lawsuit, orally, electronically, in writing, or by any other means, to any person, entity, institution, internet, world-wide web or media outlet;

- c. Such named lay and expert witnesses be further prohibited at any time during and after termination of this lawsuit, from photocopying, scanning or reproducing by any means any and all portions of Bishop Sklba's deposition transcript and exhibits.

d.

The grounds for this motion are as follows:

1. The Plaintiffs have noticed the deposition of Bishop Sklba in the above captioned matter. (Affidavit of Patrick W. Brennan, **Exhibit A**) The deposition will involve the testimony of the retired Bishop regarding fraud claims alleged in this complaint, and must be limited to only that evidence relevant under *Doe I v. Archdiocese of Milwaukee*, 303 Wis. 2d 34, 734 N.W. 2d 827, 2007 WI 95 (2007).

2. A party may not notice any deposition in a case in which an appeal has been taken, without first filing with the circuit court and serving on the parties and deponent a motion for leave to take the deposition for the reason of perpetuation of testimony by deposition, pursuant to the express provisions of Wis. Stat. Sec. 804.02(2); Plaintiffs have failed to file any such motion for leave to depose Bishop Sklba. (Brennan Aff.)

3. There is no reason to perpetuate the testimony of Bishop Sklba while this case is on appeal. Bishop Sklba has always been present in the Milwaukee area. He just turned 75 and is in good health. (Brennan Aff., **Exhibit B**) Also, Bishop Sklba continues to serve as Vicar General and Auxiliary Bishop for the Archdiocese of Milwaukee. (Brennan Aff., **Exhibits B, C**)

4. Plaintiffs' attorneys have previously publicized other Bishop depositions, contrary to prior agreement of counsel.

5. Wis. Stat. Sec. 808.08(2)(a)3 permits the circuit court to "make any order appropriate to preserve the existing state of affairs."

6. Wis. Stat. § 804.01(3) permits the circuit court to issue a protective order to prevent undue expense and oppression to the deponent.

7. Undue expense would result from the unnecessary deposition of Bishop Sklba given the limited scope of the issues currently before the court, the appeal, and the on-going mediation. A deposition of Bishop Sklba would not produce any information that would be available to or relevant for the appeals, as the briefs have been filed.

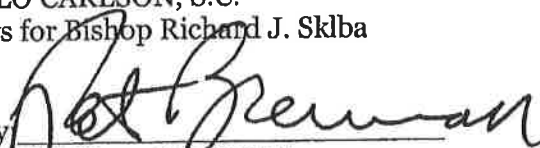
8. Good cause exists under Wis. Stat. Sec. 804.01(3) to enter the protective order due to “potential harm to . . . privacy or reputational interests of . . . nonlitigants.” *Mitsubishi Heavy Industries America, Inc. v. Circuit Court of Milwaukee County*, 233 Wis. 2d 1, 11-12, 605 N.W.2d 868 (2000) (concurring opinion.)

9. A protective order sealing the deposition transcript until further order of the court, preventing public dissemination at all times, in addition to the pre-filing protections recognized by the Wisconsin Supreme Court in *Mitsubishi* is needed, and is proper to prevent oppression, undue expense and prejudice to the Bishop in this case under Wis. Stat. Sec. 804.01(3).

Further grounds for this motion are set forth in the accompanying brief and affidavit of Patrick W. Brennan.

Dated this 23 day of November, 2010.

CRIVELLO CARLSON, S.C.
Attorneys for Bishop Richard J. Skiba

By 
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PROOF OF SERVICE

The undersigned certifies that the foregoing documents was served upon all counsel of record in the above matter by depositing a copy thereof in the U.S. Mail with postage prepaid on



11-23-10

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

JANE DOE 2 and JANE DOE 3,

Plaintiffs,

v.

ARCHDIOCESE OF MILWAUKEE,

Case No. 2007-CV-10888

Defendant,

and

COMMERCIAL UNION INSURANCE COMPANY n/k/a
ONEBEACON INSURANCE COMPANY,

Intervening Defendant,

and

DIOCESE OF SIOUX FALLS,

Defendant.

**BISHOP RICHARD J. SKLBA'S BRIEF IN SUPPORT OF MOTION FOR
PROTECTIVE ORDER**

INTRODUCTION

Bishop Richard J. Sklba has legitimate, protectable, personal interests in not having his deposition taken while appeals and mediation are pending. A protective order that his deposition not be had at this time is necessary to prevent oppression, undue burden, expense and prejudice to the Bishop. His deposition should not go forward while appeals of other Archdiocese of Milwaukee cases are pending, and until such time as he can be deposed ***once and for all, in each filed*** case. Wisconsin Statutes preclude depositions while appeals are pending, and an order permitting

depositions of witnesses who are 75 years of age or older has only been entered in Case No. 07-CV-10888.

If Bishop Sklba's deposition is permitted at this time, the Court should further order that his deposition transcript, exhibits and video be sealed, and that the scope of the deposition be limited. Such an order is necessary because Bishop Sklba has recently retired and should not be put to the undue personal burden, expense and prejudice of multiple deposition appearances.

Personal prejudice and reputational harm to Bishop Sklba may result from public dissemination of deposition transcript, exhibits and video. By its very nature the cross examination in a deposition is a one-sided process that does not permit a full airing of the evidence that ultimately will be revealed at trial. Plaintiffs' counsel has already publicly posted Archbishop Rembert Weakland's deposition transcript and exhibits on their law firm's website, as well as posting the deposition video on YouTube.

In doing so, Plaintiffs have demonstrated an unwillingness to adhere to express, written agreements between counsel that the Archbishop's testimony would be kept by counsel and not be made publicly available unless and until it is used in the litigation, thus demonstrating deceit and dishonesty contrary to the requirements of *Wisconsin Rules of Professional Conduct*, S.C.R. 20:8:4(c). Further, Plaintiffs' actions in publicly posting the Archbishop's testimony and video may constitute an extrajudicial statement, publicly disseminated, which will have a substantial likelihood of materially prejudicing an adjudicative proceeding in this matter, contrary to *Wisconsin Rules of Professional Conduct*, SCR 20:3.6(a), (c). Their actions further demonstrate their inability to follow Wisconsin law which requires that deposition transcripts are to be kept private and not

disseminated publically because they are the private property of litigants prior to the time they are filed with the court and become public record.

If Bishop Sklba's deposition is taken, he should not be exposed to unnecessary publicity, personal reputational harm and prejudice by slanted pre and post-trial public dissemination of the deposition transcript, exhibits and video. Good cause exists under applicable statutes and Wisconsin authority for a protective order that the deposition transcript, exhibits and video be sealed, and dissemination prohibited as requested; good cause is found in the right to privacy of confidential employment records, reputational harm due to seriousness of the fraud claims alleged in the complaint, and prejudice to the Bishop, as shown below. The scope of discovery should be limited to inquiries concerning this case and the individuals subject to the allegations.

FACTS

This matter was commenced on 9/10/07 and was appealed on 11/24/09. Plaintiffs have made no prior request for Bishop Sklba's deposition, (Affidavit of Patrick W. Brennan) but now seek to depose Bishop Sklba in cases which have no trial court activity (or record), are currently pending in the court of appeals, and which are also subject to on-going mediation. (Brennan Aff., **Exhibit A**) Plaintiffs have not filed or served the prospective deponent with any motion for leave to take his deposition. (Brennan Aff.).

The Court has ordered that the Plaintiffs may conduct depositions in the above captioned case only for deponents who have reached the age of 75. This deposition will involve the testimony of Bishop Sklba regarding allegations of sexual assault and fraud which remain unproven in either criminal or civil court. (Brennan Aff.)

Archbishop Rembert Weakland was deposed on June 5, 2008 in the above captioned cases by Plaintiffs. Following the deposition, on November 19, 2008, Plaintiff's counsel Jeff Anderson & Associates, PA, (Anderson) posted Archbishop Weakland's deposition transcript and exhibits on their law firm's website, (Brennan Aff. **Exhibit D**) with a direct link from Plaintiff's counsel's website to "BishopAccountability.org" for a "Searchable and Enhanced Archbishop Weakland Deposition." (Brennan Aff. **Exhibits D, F**) The video of Archbishop Weakland's deposition was also posted by Plaintiffs' law firm on YouTube, by "andersonadvocates" on November 20, 2008. (Brennan Aff., **Exhibit E**)

This was done by plaintiffs' attorneys in direct contravention of an agreement confirmed in writing between counsel, that Archbishop Weakland's deposition testimony would be kept confidential until it is used in the litigation, as shown in Attorney Thomas Schriener's letter dated April 24, 2008 to Plaintiff's Attorney Michael Finnegan:

" . . .this is to confirm that my client, the Most Rev. Rembert G. Weakland, the retired Archbishop of Milwaukee, will make himself available for deposition on Thursday, June 5, 2008, ***We have agreed that all copies of the transcript of the deposition and of any other form of recording of the testimony will be kept by counsel and will not be made publicly available*** unless and until it is used in the litigation."

(Brennan Aff., **Exhibit G**) (Emphasis added.)

An organization called "BishopAccountability.org" asserts that it copied the transcript and exhibits of Archbishop Weakland's deposition from Anderson's website and posted them on the internet, along with links to excerpts to the video deposition of Archbishop Weakland, which it asserts it obtained from "excerpts of the deposition . . . posted on YouTube by Jeff Anderson & Associates". (Brennan Aff. **Exhibit F**)

Bishop Sklba has been present in the Milwaukee area for almost 50 years. (Brennan Aff., **Exhibit B**) He just turned 75 and is in good health. (Brennan Aff., **Exhibit B**) He continues to serve as a retired bishop throughout the end of 2010, and after that he will continue to assist the Archdiocese in 2011 by providing weekend help in parishes and presiding at confirmations. (Brennan Aff., **Exhibit B**) Also, Bishop Sklba continues to serve as Vicar General and Auxiliary Bishop for the Archdiocese of Milwaukee. (Brennan Aff., **Exhibit C**)

ARGUMENT

I. Wis. Stat. Sec. 804.02(2) Prohibits Depositions During Appeal.

No motion has been brought under Wis. Stat. § 804.02(2) as required, and there is no need at this time for the Court to order perpetuation of the Bishop Sklba's testimony "*to avoid a failure or delay of justice*". The Court should find that Bishop Sklba's deposition is not necessary under the November 23, 2009 order, and should exercise its discretion to decline to make any further order for the deposition even if the proper motion were made.

The procedure set forth in the statute is mandatory, as indicated by the words "shall" with regard to the required showing to be made by the party requesting leave. Wis. Stat. Sec. 804.02(2)(b). See, *Messner v. WHEDA*, 204 Wis.2d 492, 501, 555 N.W.2d 156 (Ct. App. 1996), citing *WHEDA v. Bay Shore Apartments*, 200 Wis.2d 129, 141, 546 N.W.2d 480, 485 (Ct. App. 1996) ("[t]he word "shall" is presumed mandatory when it appears in a statute.")

Upon receiving a proper motion the court "may" order that the requested deposition be taken if it finds that "perpetuation of the testimony is proper to avoid a failure or delay of justice." Wis. Stat. Sec. 804.02(2)(c). Wisconsin courts construe the

word "may" in a statute as allowing for the exercise of discretion. *Linda v. Collis*, 2006 WI App 105, 294 Wis.2d 637, 671, 718 N.W.2d 205, citing *Rotfeld v. DNR*, 147 Wis.2d 720, 726, 434 N.W.2d 617 (Ct. App. 1988). A circuit court's **discretionary determination** will be affirmed if the court makes a rational, reasoned decision and applies the correct legal standard to the facts of record. *Id.*, citing *Sellers v. Sellers*, 201 Wis.2d 578, 585, 549 N.W.2d 481 (Ct. App. 1996).

Plaintiff has neither filed the required motion nor made the required mandatory showing under Wis. Stat. Sec. 804.02(2) that the deposition is **proper to avoid a failure or delay of justice** with respect to Bishop Sklba personally. A deposition of Bishop Sklba would not produce any information that would be available to or relevant for the appeals, as the briefs have been filed.

II. A Protective Order Prohibiting Depositions During Appeal Should Be Granted.

Wis. Stat. Sec. 808.08(2)(a)3 permits the circuit court to "make any order appropriate to preserve the existing state of affairs" while a case is pending on appeal. Accordingly, the Archdiocese's requested protective order should be granted at this time, pursuant to Wis. Stat. § 804.01(3)(a)1 that the deposition of Bishop Sklba "**not be had,**" as a matter of law.

A trial court has the authority under Wis. Stat. § 804.01(3) to issue a protective order. Wis. Stat. Sec. 804.01(3) Protective orders, provides in pertinent part:

(a) Upon motion by a party or **by the person from whom discovery is sought**, and for good cause shown, the court may make any order which justice requires **to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including but not limited to** one or more of the following:

1. **That the discovery not be had;**

2. ***That the discovery may be had only on specified terms and conditions***, including a designation of the time or place;

...
4. ***That certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;***

5. ***That discovery be conducted with no one present except persons designated by the court;***

6. ***t a deposition after being sealed be opened only by order of the court***

...
Wis. Stat. § 804.01(3) (Emphasis added.)

“... a trial court may increase its supervision of the discovery process to ensure that sensitive or confidential information is protected through the creation of an appropriately tailored protective order.”

Sands v. Whitnall Sch. Dist., 2008 WI 89, 312 Wis.2d 1, 44, 728 N.W.2d 15, 754 N.W.2d 439. (Emphasis added.)

Circuit courts have broad discretion in determining whether to limit discovery through a protective order. *Paige K.B. v. Steven G.B.*, 226 Wis. 2d 210, 594 N.W.2d 370 (1999) citing *State v. Beloit Concrete Stone Co.*, 103 Wis.2d 506, 511, 309 N.W.2d 28 (Ct.App. 1981). A circuit court properly exercises its discretion if it examines the relevant facts, applies the proper standard of law and, using a rational process, reaches a conclusion that a reasonable judge could reach. See *Beloit Concrete*, 103 Wis.2d at 511. (citing *McCleary v. State*, 49 Wis.2d 263, 277, 182 N.W.2d 512 (1971)). See also *Loy v. Bunderson*, 107 Wis.2d 400, 414-15, 320 N.W.2d 175 (1982).

A. A Protective Order Is Necessary to Prevent Undue Burden and Expense to Bishop Sklba From Repetitive Depositions.

It is an unnecessary waste of time and expense to force Bishop Sklba to give a deposition at this point, given the limited scope of the issue to be resolved in this case.

Bishop Sklba is willing to give his deposition at a later date, should this case even go forward after a ruling by the Court of Appeals and the conclusion of mediation.

In *State v. Beloit Concrete Stone Co.*, 103 Wis.2d 506, 511, 309 N.W.2d 28 (Ct.App. 1981), the court concluded that a highly placed state official who sought a protective order should not be compelled to testify at a deposition in his official capacity unless a clear showing was made that the deposition is necessary to prevent prejudice or injustice. *Beloit Concrete*, 103 Wis.2d at 512-13. The same reasoning holds true in this matter.

B. A Protective Order Is Necessary to Prevent Oppression and Prejudice to Bishop Sklba.

Should the Court permit his deposition now or in the future, Bishop Sklba requests that the Court order the protections sought in this Motion in order to prevent oppression, prejudice and reputational harm to him personally. There is a sound basis for the rules on how depositions are to be used. These do not include sensational publication via website or selective revelations or distorted images to media outlets.

1. Scope of Discovery Should Be Limited to This Case.

Should the Court order that his deposition go forward at this time, the court should limit the scope of the discovery pursuant to Wis. Stat. Sec. 804.01(3)(a)4, that only testimony pertaining to this case be given. No other court has issued an order similar to the one of November 23, 2009, and other cases may not even go forward after the conclusion of the appeal or upon successful completion of mediation.

2. Deposition Videos and Transcripts Should Be Sealed and Not Be Publicly Disseminated Pre or Post-Trial.

Plaintiffs have already deposed Archbishop Rembert Weakland in this case. Anderson posted Rembert Weakland's June 5, 2008 deposition and exhibits in the

above captioned case on their law firm's website, with a direct link from Plaintiff's counsel's website to "BishopAccountability.org" for a "Searchable and Enhanced Archbishop Weakland Deposition." (Brennan Aff. **Exhibits D, F**) Further, the video of Archbishop Weakland's deposition was posted by "andersonadvocates" on YouTube according to that website. (Brennan Aff., **Exhibit E**) Without a protective order, Plaintiffs will likely publicly post Bishop Sklba's deposition as well.

This was done in contravention of the express agreement between counsel shown in Attorney Thomas Schriener's letter dated April 24, 2008 to Plaintiff's Attorney Michael Finnegan, that the deposition transcript and recording of the testimony would be kept by counsel and not be made publicly available unless and until it is used in the litigation. (Brennan Aff., **Exhibit G**)

The actions of Plaintiffs' counsel constitute deceit and dishonesty contrary to the requirements of *Wisconsin Rules of Professional Conduct*, S.C.R. 20:8:4(c). Further, Plaintiffs' actions in publicly posting the Archbishop's testimony and video may constitute an extrajudicial statement, publicly disseminated, could have a substantial likelihood of materially prejudicing an adjudicative proceeding in this matter, contrary to *Wisconsin Rules of Professional Conduct*, SCR 20:3.6(a), (c). Example of statements which a lawyer **may** make under SCR 20:3.6(c)(2) include information which is in the "public record"; deposition transcripts, exhibits and videos are not in the "public record" prior to the time they are filed with the court, according to Wisconsin authority governing pre-trial discovery, as shown below.

The Wisconsin Supreme Court has unequivocally held that deposition transcripts which "... remain in the possession of the parties and have not yet been filed or used in court remain the **private, personal property of the litigants to which neither**

the media nor the public have a common law right to access. *Mitsubishi Heavy Industries America, Inc. v. Circuit Court of Milwaukee County*, 233 Wis. 2d 1, 11-12, 605 N.W.2d 868 (2000) (Emphasis added.) Further, “unfiled, pretrial discovery materials generated in a civil action between private parties ***are not public records***, and . . . ***neither the public*** nor . . . [the media] has ***either a common law or First Amendment right of access to such materials.***” *Mitsubishi*, 233 Wis. 2d at 19-20. (Emphasis added.)

In *Mitsubishi*, a case in which counsel had followed Wisconsin law and properly kept discovery depositions from the public prior to trial, the circuit court entered an order permitting the Milwaukee Journal Sentinel to intervene and directing parties in possession of any deposition transcripts, videotapes or related exhibits to provide copies of them to the newspaper upon request. *Mitsubishi*, 233 Wis. 2d at 4, 5. A defendant filed a petition for a supervisory writ challenging the circuit court’s order, which the Court of Appeals denied. The same defendant then petitioned the Wisconsin Supreme Court for review and also for a supervisory writ; the Supreme Court granted the writ, holding that the circuit court ***erred*** in permitting the newspaper to intervene and have access to unfiled, pretrial discovery materials the parties and their attorneys had in their possession. *Id.* ***The Supreme Court held that the deposition transcripts, videos and related exhibits were not to be provided to the new media or made public prior to trial see ¶s 18 and 19.***

Mitsubishi, 233 Wis. 2d at 11-15, fn5. The Wisconsin Supreme Court reiterated:

We ****878** hold that unfiled, pretrial discovery materials generated in a civil action between ***20** private parties are not public records and that neither the public nor MJS has either a common law or First Amendment right of access to such materials.^{FN6}

Mitsubishi, 233 Wis. 2d at 19-20.

This broad prohibition applies to *all* discovery materials including videotapes of depositions. There is no need for a “document-by-document” determination of the need for a protective order. *Mitsubishi*, 233 Wis. 2d at fn 5; *Id.*, at 19, citing *Gannett Co. v. DePasquale*, 443 U.S.368, 396, 99 S.Ct. 2898, 61 L.Ed.2d 608 (1979).

Here, without an appropriately tailored protective order, the Court will lack control over information disseminated to the public. The transcripts should be sealed and stay that way until trial. Public dissemination of testimony and exhibits (some of which may ultimately be ruled inadmissible at trial) before trial could prejudice the Bishop and harm his reputation when his words are taken out of context and manipulated.

3. Sensitive and Confidential Material Requires a Protective Order.

The prohibitions of the protective order should apply even after discovery depositions are filed with the court because the deposition of Bishop Sklba may likely include testimony and documentation about the personnel and employment records of Archdiocese employees, which by nature are sensitive and confidential. Employment records are not available to the general public and may not be obtained without a signed, notarized authorization of the employee. See, *Wisconsin Newspress v. Sheboygan Falls Sch. Dist.*, 199 Wis.2d 768, 787, 546 N.W.2d 143 (1996) (expectation of privacy regarding employment records)

III. Good Cause Exists For Protective Order.

“Good cause shown” under Wis. Stat. Sec. 804.01(3), includes “potential harm to . . . *privacy or reputational interests of parties or nonlitigants* and the possible

prejudice to the parties' fair trial rights." *Mitsubishi*, 233 Wis. 2d at 22. (concurring opinion.) (Emphasis added.)

Wis. Stat. § 804.01(3) provides in part:
the scope of discoverable information is broad, including material that cannot be introduced into evidence at trial; and pretrial discovery is designed for the party receiving it, not for strangers to the case.

Mitsubishi, 233 Wis. 2d at 22. (concurring opinion.) (Emphasis added.)

Deposition testimony will, in the normal course of litigation, be subject to motions in limine so that ***the Court will ultimately decide and control*** what information will, and will not, be put before the jury in a public courtroom, for reasons including relevance and prejudice to the deponent. *Mitsubishi*, 233 Wis. 2d at 22. (concurring opinion.)

In Wisconsin, personal credibility of a sexual assault victim is a central issue in litigation involving sexual assaults, and the Plaintiffs' allegations have put their credibility at issue.¹ The fraud claims alleged are serious public accusations of improper conduct which could be prejudicial and damaging to the reputations of innocent nonlitigant witnesses such as Bishop Sklba. His name has already been published in the Milwaukee Journal Sentinel without benefit of the ruling of the circuit court as to the relevance and admissibility of that evidence at trial.

"In order for our adversary system to effectively ensure the ability of litigants to uncover the truth, and to seek and be accorded justice, it is our responsibility to render decisions that do no harm to the fundamental and important right of litigants to access

¹ See, *State v. Lelinski*, 2009 WI App 110, 320 Wis.2d 704, 771 N.W.2d 928 ("Lelinski's trial counsel made direct attacks on Amanda's credibility, questioning her about inconsistencies in her story and about statements she made to neighbors, which suggested that she was lying about the sexual assault to make money in a civil lawsuit against Lelinski. The impeachment and attack on her credibility was strong."); *State v. Austin*, 2009 WI App 141, 478, 774 N.W.2d 478 ("Inconsistencies and contradictions in the statements of witnesses do not render the testimony inherently or patently incredible, but simply create a question of credibility for the trier of fact to resolve.").

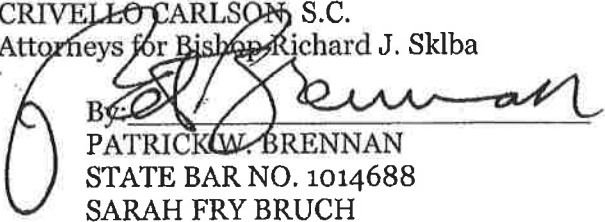
our courts." *Sands v. Whitnall Sch. Dist.*, 312 Wis.2d at 15, 16. A protective order sealing the transcript and preventing public dissemination at all times, in addition to the pre-filing protections noted by the Wisconsin Supreme Court in *Mitsubishi*, is needed here, and is proper to prevent oppression, undue burden and expense, and prejudice to Bishop Sklba under Wis. Stat. Sec. 804.01(3).

CONCLUSION

For all of the reasons stated above, the Archdiocese respectfully requests that the Court grant its motion for a protective order.

Dated this 23 day of November, 2010.

CRIVELLO CARLSON S.C.
Attorneys for Bishop Richard J. Sklba

By: 
PATRICK W. BRENNAN
STATE BAR NO. 1014688
SARAH FRY BRUCH
STATE BAR NO. 1012770

Post Office Address:
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Milwaukee, WI 53203
414-271-7722

PROOF OF SERVICE

The undersigned certifies that the foregoing documents was served upon all counsel of record in the above matter by depositing a copy thereof in the U.S. Mail with postage prepaid on

Ma h u
11-23-10

3. This deposition will involve the testimony of Bishop Sklba regarding allegations of fraud which remain unproven in either criminal or civil court.
4. Bishop Sklba has always been present in the Milwaukee area. He just turned 75 and is in good health. **(Exhibit B)**
5. He continues to serve as a retired bishop throughout the end of 2010, and after that he will assist the Archdiocese in 2011 by providing weekend help in parishes and presiding at confirmations. **(Exhibit B)**
6. Also, Bishop Sklba continues to serve as Vicar General and Auxiliary Bishop for the Archdiocese of Milwaukee. **(Exhibits B, C)**
7. Archbishop Rembert Weakland was deposed on June 5, 2008 in the above captioned case by Plaintiffs, and Plaintiff's counsel Jeff Anderson & Associates posted the deposition transcript and exhibits on his law firm's website at: <http://andersonadvocates.com/News/Page/64.aspx>, and <http://andersonadvocates.com/News/Page/65.aspx>. **(Exhibit D)** These links provide a direct link from Plaintiff's counsel's website to "BishopAccountability.org" for a "Searchable and Enhanced Archbishop Weakland Deposition." **(Exhibit F)**
8. The video of Archbishop Weakland's deposition was posted "by andersonadvocates" on YouTube according to that website, at: <http://www.youtube.com/watch?v=6H67pJo6CYY>; and at http://www.youtube.com/watch?v=--pDVloiNec&feature=mfu_in_order&list=UL; and also at http://www.youtube.com/watch?v=d5VCQGDOIcM&feature=mfu_in_order&list=UL. **(Exhibit E)**

8. "BishopAccountability.org" asserts that it copied the transcript and exhibits of Archbishop Weakland's deposition in the above captioned case from Plaintiff's counsel Jeff Anderson & Associates, PA website and posted them on the internet at:
http://www.bishop-accountability.org/depo/2008_06_05_Weakland_Rembert/, along with links to excerpts to the video deposition of Archbishop Weakland, which it asserts it obtained from "excerpts of the deposition . . . posted on YouTube by Jeff Anderson & Associates." (**Exhibit F**)
9. The letter of the Archdiocese of Milwaukee's attorney Thomas L. Shriner, Jr., dated April 24, 2008 to Plaintiff's Attorney Michael Finnegan, attached as **Exhibit G**, shows the express agreement between counsel that all copies of the transcript of the deposition and of any other form of recording of the testimony will be kept by counsel and will not be made publicly available unless and until it is used in the litigation.
10. No case listed in the caption of the Plaintiff's Amended Notice of Deposition for Bishop Sklba is currently being litigated in the circuit court.
11. Mediation is ongoing in the cases on appeal.
12. Plaintiffs have not filed any motion for leave to take Bishop Sklba's deposition, pursuant to CCAP.

Dated this 23 day of November, 2010.

Patrick W. Brennan
PATRICK W. BRENNAN

Subscribed and sworn to before me
on this 23 day of November, 2010.

Mu ku
Notary Public, State of Wisconsin
My Commission Expires: 5-25-14
Post Office Address:
710 N. Plankinton Avenue
Milwaukee, WI 53203
414-271-7722



PROOF OF SERVICE

The undersigned certifies that the foregoing documents was served upon all counsel of record in the above matter by depositing a copy thereof in the U.S. Mail with postage prepaid on

Mu ku
11-23-10

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ATTORNEYS FOR PLAINTIFFS

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

AFFIDAVIT OF SERVICE

Therese A. Gahler, being first duly sworn, deposes and says that on October 22, 2010 she served the attached document(s):

Notice of Taking Videotape Deposition of Bishop Richard Skiba

upon the following attorneys by placing a true and correct copy thereof in an envelope addressed as follows:

Donald L. Heaney
Kenneth Axe
Lathrop & Clark
740 Regent Street, Suite 400
Madison, WI 53715-2650

John Rothstein
David P. Muth
Quarles & Brady
411 East Wisconsin Avenue, Suite 2040
Milwaukee, WI 53202-4497

Mark S. Nelson
Nelson, Connell, Conrad, Tallmadge & Slein
P.O. Box 1109
Waukesha, WI 53187-1109

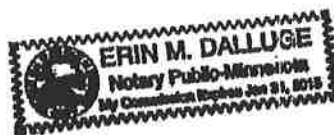
Franklyn Becker
1439 Dayton Street, #215
Mayville, WI 53050

(which is the last known address of said attorneys) and depositing the same, with postage prepaid, by U.S. Mail at St. Paul, Minnesota.

Therese A. Gahler

Subscribed and sworn to before me
this 22nd day of October, 2010.

Erin M. Dalluge
Notary Public



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Bishop Sklba

The Most Reverend Richard J. Sklba
Vicar General/Auxiliary Bishop of Milwaukee

Bishop Richard J. Sklba was born in Racine, Wisconsin, on September 11, 1935, and was baptized at Holy Trinity Parish on September 30, 1935, the feast of Saint Jerome who is the patron saint of Scripture students.



After attending a public elementary school on the outskirts of the city of his birth, he spent two years at Saint Catherine's High School, Racine, before transferring to Saint Francis Minor Seminary, Milwaukee, to finish high school and begin college studies.

From 1954 to 1960, he studied at the Gregorian University, Rome, completing an undergraduate degree in philosophy and a graduate degree in theology. He was ordained to the priesthood in Rome for the Archdiocese of Milwaukee in 1959. He was assigned to Saint Mary's Parish, Elm Grove, in 1960 and served the parish as an assistant pastor for two years.

In 1962, he returned to Rome for three more years of study. While there, he attended the Pontifical Biblical Institute, Rome, and completed the equivalent of an advanced master's degree in sacred Scripture. He completed the equivalent of a doctoral degree in biblical studies at the Pontifical University of St. Thomas of Aquinas (Angelicum), Rome. He was privileged enough to be present in Saint Peter's Basilica, Rome, for the opening session of the Second Vatican Council on October 11, 1962.

After returning to the United States, he spent the next 11 years teaching Scripture at Saint Francis de Sales Seminary, Milwaukee, and served at Saint Veronica's Parish, Milwaukee on weekends. In 1978, he was appointed rector of the seminary by Archbishop Cousins.

When ordained as an auxiliary bishop for the Archdiocese of Milwaukee by Archbishop Waskind on December 19, 1979, Bishop Sklba became one of America's youngest bishops.

For the past 30 years, Bishop Sklba has served on various committees of the U.S. Conference of Catholic Bishops including Priestly Life and Ministry, Doctrine, Liturgy, Permanent Diaconate, as well as Marriage and Family. He was appointed to several task forces including the Teaching Function of the Diocesan Bishop and the sub-committee for Inclusive Language. He chaired the sub-committee on the Review of Scripture Translations from 1991 to 2001.

Bishop Sklba served as chair of the USCCB's Committee for Ecumenical and Interreligious Affairs from 2005-2006. In that capacity, he had the privilege of introducing the nation's religious leaders from several traditions including Jewish, Islamic, Buddhist, Hindu and Jain to Pope Benedict XVI during the Holy Father's historic pastoral visit to the United States in April of 2008.

He has been a member of the Catholic Biblical Association of America since 1968 and served as its president in 1982. Over the years, he also participated in several archaeological expeditions to sites in Israel.

Active in the church's ecumenical and interreligious relationships on a national and local level, Bishop Sklba has co-chaired the national Lutheran/Catholic Dialogue since 1998. In February of 2009, Bishop Sklba was invited to attend the ninth General Assembly of the World Council of Churches in Porto Alegre, Brazil, as a member of the official Vatican delegation headed by Cardinal Walter Kasper. He has been an invited ecumenical guest at many national meetings of the country's mainline Protestant Churches. He has also participated in countless meetings and projects with Jewish scholars of the country in an effort to promote interreligious understanding and cooperation.

His many professional memberships include the Catholic Theological Society of America and the Society for Biblical Literature. Bishop Sklba has also published articles, books, papers and occasional book reviews. In 1988, he was awarded the Catholic Theological Society of America's John Courtney Murray Award for achievement in Theology.

Bishop Sklba was elected archdiocesan administrator by the College of Consultors in May of 2002, and served in that capacity until the Most Reverend Timothy Dolan was installed as Archbishop of Milwaukee on August 20, 2002. Bishop Sklba continued to serve as the Archdiocese of Milwaukee as an auxiliary bishop and general vicar under Archbishops Dolan and Lisecki. He also taught Scripture at Sacred Heart School of Theology, Hales Corners.

Archbishop Lisecki

Bishop Sklba
Resources
Former Archbishops

Former Auxiliary Bishops

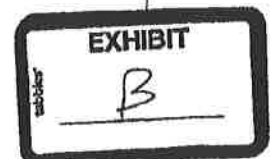
Audio Homilies

Installation

Most Reverend Richard J. Sklba
Vicar General/Auxiliary Bishop of Milwaukee
bishopsklba@archmil.org

Sharon Krueger
Secretary to the Auxiliary Bishop
414-769-3452
kruegers@archmil.org

Mailing address:
3501 S Lake Dr.
P. O. Box 070912
Milwaukee, WI 53207-0912



from 2006 through 2009.

On September 11, 2010, the occasion of his 75th birthday, Bishop Skiba, as required by canon law, submitted his resignation. On October 18, 2010, the Feast of St. Luke the Evangelist, Pope Benedict XVI accepted Bishop Skiba's resignation.

Bishop Skiba will continue to serve the archdiocese as a "retired" bishop through the end of 2010. After that, he will continue to assist the archdiocese by providing weekend help in parishes and presiding at confirmations in 2011.

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The Archdiocese of Milwaukee

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Contact Information

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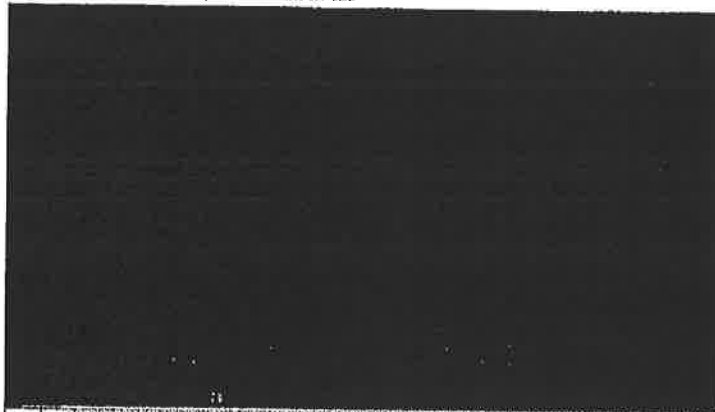
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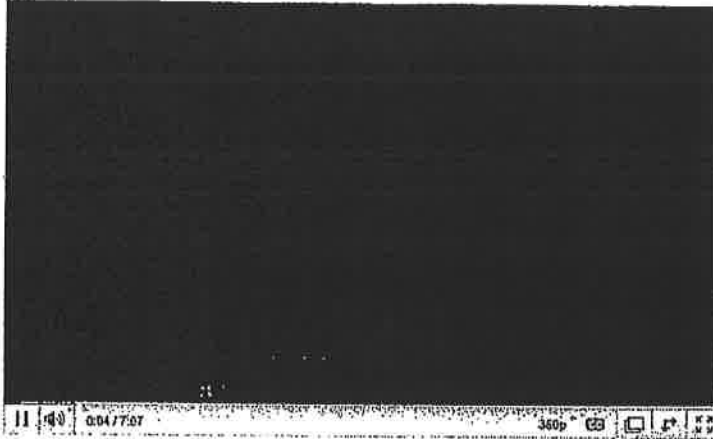
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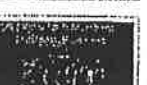
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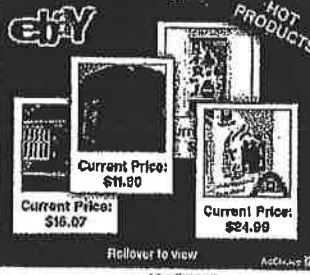
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DEPOSITION OF ARCHBISHOP EMERITUS REMBERT G. WEAKLAND, O.S.B.

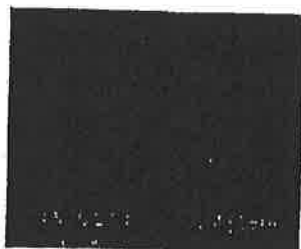
This deposition was taken on June 5-6, 2008. It offers insights into the management of abuse cases by Archbishop William E. Cousins (1958-1977) and Archbishop Rembert G. Weakland (1977-2002). Weakland discusses in detail the cases of convicted abuser Rev. Siegfried Widera (who continued to molest boys in California after Weakland excommunicated him there) and admitted abuser Rev. Franklyn Becker (who molested boys in the Milwaukee parishes and hospitals where Weakland assigned him).

The deposition also examines the Marcoux revelations, which caused the Vatican to accept Weakland's resignation. Weakland talks at length about his attitudes, policies, and programs during 25 years as archbishop, and provides brief assessments of a dozen other abuse cases.

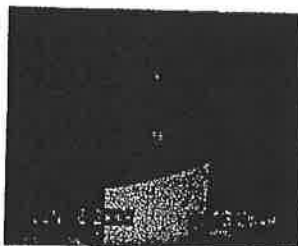
This webpage offers a convenient version of the deposition, designed so that readers can read it easily, do searches, and view exhibits while they read. Below on this page we offer our own table of contents, the list of document exhibits with links to the exhibits added, and the full text of the deposition with added photos and links to all the exhibits. These enhancements are clearly distinguished from the text of the deposition, which was created from the version posted on the website of Jeff Anderson & Associates. You may search the full text of the deposition on this page by using the search function in your browser (in Internet Explorer, type control-F, type the word you wish to search, and click enter).

We occasionally provide links to materials referenced in the text, and we offer additional information on several issues, carefully marking these additions with square brackets. For an alternative history of much that is discussed here by Archbishop Weakland, see Peter Isely and Jim Smith, The Sexual Abuse of Children in the Archdiocese of Milwaukee, February 10, 2004.

Excerpts of the deposition have been posted on YouTube by Jeff Anderson & Associates. Click the images below to view the videos. If you wish to follow along as you watch the videos, we have created a transcript of the video excerpts.



Video excerpts from pages 1 to 199 of the Weakland deposition.



Video excerpts from pages 199 to 312 of the Weakland deposition.

See also PDFs of the original deposition (pp. 1-77, 78-157, 158-237, and 238-321) and of the 43 exhibits (Nos. 101-132, 300, 301-313, 315-410, 412, 412-A, 413-1005).

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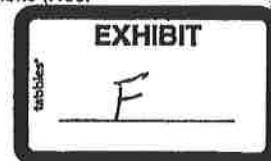


Exhibit F, Archbishop Weakland's Deposition Transcript,
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December 22, 2010

SENT VIA EMAIL & U.S. MAIL

Patrick W. Brennan
Crivello Carlson
710 North Plankinton Avenue, Suite 500
Milwaukee, WI 53203

Re: Motion for Protective Order and Bishop Sklba Deposition

Dear Mr. Brennan:

This will confirm that we have rescheduled the hearing on the Motion for Protective Order to February 23, 2011 at 2:00 p.m. before Judge Cooper.

Since there are so many attorneys involved in scheduling Bishop Sklba's deposition, I would appreciate it if all counsel could provide available dates after February 23 so that we can get the deposition on our calendars.

Very truly yours,

Jeffrey R. Anderson
jeff@andersonadvocates.com

JRA:tg

cc: Donald L. Heaney/Kenneth Axe
John Rothstein/David Muth
Mark Nelson
Paul Scoptur