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10

11 UNITED STATES BANKRUPTCY COURT
12 EASTERN DISTRICT OF WASHINGTON
13

14 In Re:)

15 THE CATHOLIC BISHOP OF)
16 SPOKANE a/k/a THE CATHOLIC)
17 DIOCESE OF SPOKANE, a)
18 Washington corporation sole,)
19 Debtor.)

) Case No. 04-08822-PCW-11

) Adv. Proc. No. 05-80038

) **AFFIDAVIT OF**
) **NICHOLAS P. CAFARDI**

20 COMMITTEE OF TORT)
21 LITIGANTS,)

22 Plaintiff,)

23 vs.)

24 THE CATHOLIC BISHOP OF)
25 SPOKANE, et. al.,)

26 Defendants.)
27)

1 STATE OF PENNSYLVANIA)
2) ss.
3 County of Allegheny)

4 NICHOLAS P. CAFARDI, being first duly sworn on oath, deposes and
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6 says:

7 1. I am over the age of eighteen (18) and competent to testify and
8
9 have personal knowledge to all facts set forth herein.

10 **BACKGROUND**

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12 2. I am Dean and Professor of Law at Duquesne University Law
13 School in Pittsburgh, PA. My curriculum vitae is attached to this affidavit as
14 Exhibit "A."
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16 3. My education is: Bachelor in Philosophy, 1970, Gregorian
17 University, Rome, Italy; Masters in Philosophy, 1972, Duquesne University,
18 Pittsburgh, PA; Juris Doctor, *cum laude*, 1975, University of Pittsburgh
19 School of Law; *Juris Canonici Licentiatus* (License in Canon Law) *summa*
20 *cum laude*, 1987, University of St. Thomas Aquinas, Rome, Italy. I am
21 currently a candidate for a Doctor of Canon Law at St. Thomas.
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25 4. My professional employment has been: 1975-1977, Legal
26 Counsel to the Diocese of Pittsburgh; 1977- 1981, Assistant Dean and
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1 Assistant Research Professor, University of Pittsburgh School of Law; 1981-
2 1988, Legal Counsel to the Diocese of Pittsburgh; 1988-1993 General Counsel
3 and Vice-President for Legal Services, Duquesne University; 1993-Present,
4 Dean and Professor of Law, Duquesne University School of Law.
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7 5. As a canon lawyer, I have represented individuals and religious
8 institutes before diocesan tribunals and the tribunals of the Holy See in Rome.
9 As a canon lawyer, I have advised dioceses and religious orders on the proper
10 civil law structures for their ministry in conformity with the canon law.
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13 **CANON LAW OF THE ROMAN CATHOLIC CHURCH**
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15 6. The canon law of the Catholic Church is the oldest, continually
16 functioning legal system in the world. It dates back to collections of church
17 law and discipline that were assembled in the first and second centuries of the
18 common era. In the late middle ages and Renaissance period, it began to be
19 collected and summarized in a more orderly fashion. A collection including
20 Gratian's Decree, 1140, the Decretals of Gregory IX, 1234, the *Liber Sextus* of
21 Boniface VIII, 1298, the *Liber Septimus* of Clement V/John XXII, 1317, the
22 Extravagantes of John XXII and the *Extravagantes Communes*, 1500, was
23 given official status by Gregory XIII in 1580, as the *Corpus Iuris Canonici*-the
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1 Body or Collection of Canon Law. The *Corpus Iuris Canonici*, together with
2 the decrees of the Council of Trent (1545-1563), were the canon law of the
3 Catholic Church until 1917, when the *Codex Iuris Canonici* was promulgated
4 by Benedict XV. This Code of Canon Law replaced all previous legislation.
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6 In 1983, a revision of the Code of Canon Law, incorporating the theology of
7 the Second Vatican Council, was promulgated by John Paul II.
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10 7. The Canon Law of the Roman Catholic Church is both a
11 theological and a juridical discipline. It finds its fundamental rules in the
12 experience of a society based on faith and having as its primary purpose the
13 proclamation of the Gospels and the saving of souls.
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16 8. In the Christian community, an over-all obligation of theological
17 origin exists prior to any law. It is the bond that binds the faithful to God and
18 to each other. Canon law gives directions in detail as to how to fulfill this
19 principal obligation in daily life. Canon law, in its essence, depends on a pre-
20 existing theological reality.
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23 9. It is therefore impossible to read the juridic language of the Code
24 of Canon Law without an awareness of the theological reality on which the
25 law is based.
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1 10. The 1983 Code of Canon Law is the universal law for the entire
2 western or Latin Church, and is currently in force in the United States of
3 America. References to the Code of Canon Law in this Affidavit are to the
4 current 1983 Code of Canon Law ("CIC"). The applicable canons of the 1983
5 Code of Canon Law are attached to this Affidavit as Exhibit "B."
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9 11. In the Apostolic Constitution on the Roman Curia, *Pastor Bonus*,
10 issued at the Vatican on June 28, 1988, Pope John Paul II set forth the
11 competencies of the various Roman dicasteries (departments) of the Roman
12 Curia, the agencies which assist the Holy Father in his governance of the
13 Universal Church. Articles 154-158 address the function and competencies of
14 the dicastery known as the Pontifical Council for the Interpretation of
15 Legislative Texts.
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19 12. In *Pastor Bonus*, Article 154 - The function of the Pontifical
20 Council for the Interpretation of Legislative Texts "consists mainly in
21 interpreting the laws of the Church." In Article 155 - With regard to the
22 universal laws of the Church, the Council is competent to publish authentic
23 interpretations confirmed by pontifical authority, after consulting the
24 dicasteries concerned in questions of major importance. In Article 156 - This
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1 Council is at the service of the other Roman dicasteries to assist them to
2 ensure that general executory decrees and instructions which they are going to
3 publish are in conformity with the prescriptions of the law currently in force
4 and that they are drawn up in correct juridical form. Article 157 – Moreover,
5 the general decrees of the various national conferences of bishops are to be
6 submitted to this Council by the dicastery which is competent to grant them
7 the *recognitio* (approval), in order that they may be examined from a juridical
8 perspective. In Article 158 – At the request of those interested, the Council
9 determines whether particular laws and general decrees issued by legislators
10 below the level of the Holy See are in agreement with the universal laws of the
11 Church.
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18 13. These articles from *Pastor Bonus* are attached as Exhibit "C."
19 Pursuant to these Articles, the Pontifical Council for the Interpretation of
20 Legislative Texts is the official body designated to provide definitive
21 interpretations of the Canon Law in the Roman Catholic Church. Contrary
22 interpretations of the Canon Law are to be resolved by the Pontifical Council
23 for the Interpretation of Legislative Texts.
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DOCUMENTS REVIEWED

14. I have reviewed the following documents:

- a) Committee of Tort Litigant's Memorandum of Points and Authorities in Support of Motion for Partial Summary Judgment in In re: The Catholic Bishop of Spokane a/k/a The Catholic Diocese of Spokane, Debtor Case No.: 04-08822-PCW11, Chapter 11, Adv. Case No. 05-80038
- b) Affidavit of James I. Stang, Esq. In Support of Committee of Tort Litigant's Motion for Partial Summary Judgment in In re: The Catholic Bishop of Spokane a/k/a The Catholic Diocese of Spokane, Debtor Case No.: 04-08822-PCW11, Chapter 11, Adv. Case No. 05-80038
- c) Committee of Tort Litigants' Separate Statement of Undisputed Material Facts in Support of Motion for Partial Summary Judgment in In re: The Catholic Bishop of Spokane a/k/a The Catholic Diocese of Spokane, Debtor Case No.: 04-08822-PCW11, Chapter 11, Adv. Case No. 05-80038

- 1 d) Committee of Tort Litigants' Motion for Partial Summary
2 Judgment in In re: The Catholic Bishop of Spokane a/k/a
3 The Catholic Diocese of Spokane, Debtor Case No.: 04-
4 08822-PCW11, Chapter 11, Adv. Case No. 05-80038
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7 e) Complaint for Declaratory Relief and Substantive
8 Consolidation in In re: The Catholic Bishop of Spokane
9 a/k/a The Catholic Diocese of Spokane, Debtor Case No.:
10 04-08822-PCW11, Chapter 11, Adv. Case No. 05-80038
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13 f) Motion for Summary Judgment filed by Plaintiff Michael
14 Shea in In re: The Catholic Bishop of Spokane a/k/a The
15 Catholic Diocese of Spokane, Debtor Case No.: 04-08822-
16 PCW11, Chapter 11, Adv. Case No. 05-80038
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19 g) Memorandum in Support of Motion For Summary
20 Judgment filed by Plaintiff Michael Shea in In re: The
21 Catholic Bishop of Spokane a/k/a The Catholic Diocese of
22 Spokane, Debtor Case No.: 04-08822-PCW11, Chapter 11,
23 Adv. Case No. 05-80038
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1 15. Because those allegations regarding matters of Catholic Church
2 doctrine, polity, and governance in the five documents described above are
3 identical or almost identical to each other, I will refer jointly to Tort Litigants'
4 and Plaintiffs' pleadings in the paragraphs that follow.
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7 **TORT LITIGANT'S AND PLAINTIFFS' ERRORS**
8 **REGARDING THE DOCTRINE, POLITY, AND GOVERNANCE**
9 **OF CATHOLIC INSTITUTIONS AND REGARDING THE**
10 **EFFECT OF THE CORPORATION SOLE ON PARISH AUTONOMY**
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12 16. Tort Litigants and Plaintiffs in their pleadings claim that, because
13 legal title to parish entities is in the Roman Catholic Bishop of Spokane, a
14 corporation sole, the diocese is the owner of all parish property. Such a
15 conclusion would create an ecclesiastical system which is out of conformity
16 with the Code of Canon Law and which, as a result, does not exist. Were a
17 civil court to attempt to impose a polity upon a Roman Catholic diocese as
18 required by Tort Claimants' allegations, the result would be a complete
19 distortion of the Roman Catholic Church's doctrine, polity, and governance.
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25 17. Under the Code of Canon Law, a parish is a separate legal entity
26 from the diocese. It is, under Canon Law, its own public juridic person. CIC,
27 canon 515, §3.
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1 18. In the Code of Canon law, a public juridic person is an aggregate
2 of persons or an aggregate of things, constituted by operation of law or by an
3 act of competent ecclesiastical authority as its own legal person, existing
4 independently of other persons, endowed with its own rights and duties, and
5 owning its own property, apart from the property of other juridic persons. CIC,
6 canons 113-116.
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10 19. Parish property is, almost entirely, the result of the offerings of
11 the faithful to the parish for the use of the parish. Under the Code of Canon
12 Law, gifts made for a particular purpose must be used only for that purpose.
13 CIC, canon 1267, §3.
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16 20. Under the Code of Canon Law, property given to the pastor of a
17 parish is presumed to be property given to the parish itself. CIC, canon 1267,
18 §1.
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21 21. Under the Code of Canon Law, the pastor of a parish, and not the
22 diocesan bishop, is the administrator of all parish property. CIC, canon 532.
23 The diocesan bishop is neither the owner nor the administrator of parish
24 property.
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1 22. Under the Code of Canon Law, the Catholic Church has an innate
2 right to acquire, retain, administer and alienate temporal goods in pursuit of its
3 proper ends, *independently of civil power*. CIC, canon 1254, §1
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6 23. Under the Code of Canon Law, all juridic persons are capable of
7 acquiring, retaining, administering and alienating property. CIC, canon 1255
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9 24. Under the Code of Canon Law, the property of a parish is not the
10 property of the diocese nor of the diocesan bishop. CIC, canon 1256.
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12 25. Under the Code of Canon Law, all property which belongs to a
13 public juridic person, such as a parish, is ecclesiastical property, subject to the
14 Canon Law. CIC, canon 1257, §1
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17 26. In 2004, the Pontifical Council for the Interpretation of
18 Legislative Texts issued an opinion on whether, in the case of a parish
19 bankruptcy, the assets of the diocese could be used to pay parish creditors.
20 The interpretation of the Council, which is authoritative, was that the
21 ownership of church property is always in individual public juridic persons,
22 and not in some confused mingling of them. The Council further stated that to
23 make the goods of one public juridic person available for the debts of another
24 public juridic person would contradict the basic separateness and legal
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1 autonomy of juridic persons, one from another. Acta Consilii I, Nota, No. 3,
2 Communicationes I (2004) 24, at 25. This opinion and a certified English
3 translation is attached as Exhibit "D."
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6 27. A proper and correct interpretation of this ruling would apply
7 equally to making the assets of a parish available to the creditors of a diocese.
8 As the Pontifical Council for the Interpretation of Legislative Texts has stated,
9 making the goods of one public juridic person (e.g. the parish) available for
10 the debts of another (e.g. the diocese) is a violation of Canon Law because it
11 destroys the legal autonomy of these public juridic persons, one from another.
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15 28. The Corporation Sole law of the State of Washington specifically
16 states that a bishop "may, in conformity with the constitution, canons, rules,
17 regulations or discipline of such church or denomination, become a
18 corporation sole...." RCW 24.12.010
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22 29. When the Roman Catholic Bishop of Spokane became a
23 corporation sole, he did so in conformity with the canons of the Roman
24 Catholic Church, as specified in the statute, and as further delineated in the
25 Articles of Incorporation at Article VI. The Articles of Incorporation are
26 attached as Exhibit "E."
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1 30. The corporation sole is the incorporation of an office, with
2 corporate privileges granted to the individual holding the office. In
3 establishing a corporation sole, the Roman Catholic Bishop of Spokane was
4 not merely separating his personal from his private interests, as the Tort
5 Litigants and Plaintiffs allege (Committee Memo of P & S's Re Motion for
6 Summary Judgment, Page 10, Line 12); rather he was incorporating the office
7 of diocesan bishop so that it could function as a corporation in the manner
8 permitted by civil law and in conformity with the Canon Law.
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13 31. Under the Corporation Sole law of the State of Washington, a
14 corporation sole may "deal in real and personal property in the same manner
15 as a natural person may." RCW 24.12.020 One of the rights of natural persons
16 with regard to real and personal property is the right to hold property in trust.
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20 32. The Articles of Incorporation of the Spokane corporation sole
21 state that the corporation sole is being formed for the purpose of "holding
22 property in trust." Article III. Thus, the corporate articles are public notice
23 that the corporation sole will be holding legal title to property, the beneficial
24 ownership of which resides in other legal entities.
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1 36. When the bishop as corporation sole signs leases or licenses in
2 regard to parish property, he does so as trustee and not as outright owner. In
3 situations where the lease or license may not go into detail as to the nature of
4 the corporation sole's authority to sign on behalf of a parish, the fact of the
5 corporation sole's trusteeship is demonstrated by the fact that the lease or
6 license proceeds are transmitted without exception to the parish. Such income
7 cannot be kept by the bishop or the diocese because the Code of Canon Law is
8 very clear that such income inures to the benefit of the public juridic person of
9 the parish which is the true owner of parish property, with the right to receive
10 all income from it. CIC, canon 1284, § 2, 4^o.

16 37. It is incorrect to say that the corporation sole was "designed as a
17 legal entity to give the presiding Bishop absolute and complete control over
18 the property of the diocese." Memorandum in Support of Motion For
19 Summary Judgment filed by Plaintiff Michael Shea, p. 14. The corporation
20 sole only places bare legal title to certain real estate in the office of the bishop,
21 not in the bishop himself, the exercise of which office is bound by the Canon
22 Law of the Roman Catholic Church, which law does not give the office of
23 bishop absolute and complete control over parish assets.

1 38. It is incorrect to say that the bishop has “unbridled authority to
2 dispose of this [parish] property which the Diocese owns.” Memorandum in
3 Support of Motion For Summary Judgment filed by Plaintiff Michael Shea , p.
4 23. First of all, neither the bishop nor the diocese is the owner of parish
5 property under the Canon Law. The public juridic person that is the parish
6 owns all parish property. CIC, canon 1256. The bishop can only dispose of
7 parish property with the consent of the pastor of the parish, who is the
8 canonical administrator of the parish. CIC, Canon 532. In situations where the
9 value of parish property being disposed of is above a minimal amount, the
10 consent of the diocesan finance council and the diocesan college of consultors
11 is required. CIC, canon 1291, §1 In situations where the value of parish
12 property being disposed of is beyond \$5,000,000, the additional permission of
13 the Apostolic See is necessary. CIC, canon 1291, §2

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21 39. It is incorrect to say that parishes “are merely unincorporated
22 divisions of the corporation sole.” Memorandum in Support of Motion For
23 Summary Judgment filed by Plaintiff Michael Shea, p. 28. Parishes are stable
24 communities of Christ’s faithful established within a diocese. CIC, canon 515,
25 §1. They are not “divisions” of the diocese or of the corporation sole in any
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1 sense. Their relationship to the corporation sole is that the corporation sole
2 holds certain assets that are, under the Canon Law, the property of individual
3 parishes, and that are, civilly, restricted assets of the corporation sole held for
4 the sole use and benefit of those stable communities of the faithful that are the
5 individual parishes.
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9 40. In the theological context of the Code of Canon Law, a parish is a
10 community of the faithful by means of which the faith is passed on, works of
11 charity are performed, the young are educated and the Gospel is preached. It
12 is, pre-eminently, the means of assuring that the faithful, through the
13 sacraments, and especially through the Eucharist, are spiritually nourished and
14 saved. Parishes are not "operating divisions" of a diocese whose assets can be
15 seized by the diocesan bishop when he has diocesan debts to pay. They are
16 stable communities of the faithful, with a stable pastor, which constitute the
17 most immediate means for individual Catholics to work out their salvation.
18 Among those means are the parish assets, the parish property, both real and
19 personal, that make liturgy and sacraments possible and works of charity
20 sustainable, assets that primarily have their origins in the contributions that the
21 parishioners made to the parish for this purpose, to aid in their salvation. The
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1 idea that a bishop, or someone standing in his place, would harm a parish to
2 pay diocesan debts is abhorrent to the Canon Law. It would violate the
3 highest principle of the Canon Law, which is that every law exists for the
4 salvation of souls. CIC, canon 1752
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7 41. When the bishop exercises his legislative authority in his diocese,
8 as when he makes rules for parishes to follow in their financial affairs, he can
9 only do so in accordance with and in agreement with the universal law of the
10 Church, the Canon Law. CIC, canon 391 §1. No individual bishop is able to
11 alter the universal law of the Church. CIC, canon 12, § 1.
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15 42. Thus in the Diocesan Policy Manual, which is a form of
16 legislation for the Diocese of Spokane, the Introduction clearly states "In the
17 application of universal law to the particular church [the diocese], decrees or
18 instructions contrary to laws lack all force. CIC, canons 33 §1, 34 §2." The
19 autonomy rights that a parish has are given to it by universal law. Therefore,
20 nothing in that diocesan manual can be interpreted to destroy the separate
21 existence and autonomy of the public juridic personality of the parishes from
22 each other and from the diocese.
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1 43. Under the Code of Canon Law, the property of a parish cannot be
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3 used for the debts of any other public juridic person, including the debts of the
4 diocese. To do so would destroy the juridical autonomy of the individual
5 public juridic persons of the parish as separate from the diocese. Only
6 diocesan assets are available for diocesan creditors.
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9 44. The bishop's right to legislate for the diocese and the parishes
10 within the diocese does not and cannot destroy the legal autonomy of the
11 parishes in Canon Law. Any such legislation by a diocesan bishop that
12 attempted to destroy the legal autonomy of individual parishes would be
13 contrary to the universal law of the Church and would be void.
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17 45. A diocesan bishop is subject to the Code of Canon Law in the
18 same way that every baptized Catholic is subject. Should a diocesan bishop
19 violate the canons, he is subject to penalties for those violations, including the
20 penalty of loss of ecclesiastical office.
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23 46. The fact that a parish is under a diocesan bishop's legislative
24 power does not destroy a parish's independence or submit the parish to the
25 bishop's control in such a way that the legal independence of a parish is
26 destroyed. It would be a complete mischaracterization of a bishop's
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1 jurisdictional authority over parishes to say that it simply makes the parishes
2 the alter ego of the bishop. Such a conclusion would create an ecclesiastical
3 system which is out of conformity with the Code of Canon Law and which, as
4 a result, does not exist. Were a civil court to attempt to impose a polity upon a
5 Roman Catholic diocese as required by Tort Claimants' and Plaintiffs'
6 allegations, the result would be a complete distortion of the Roman Catholic
7 Church doctrine, polity, and governance.
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12 47. It is my canonical opinion that should the Tort Litigants' and
13 Plaintiffs' assertions as to the lack of distinction between diocesan and parish
14 property be accepted by the court, the ecclesial polity and governance of the
15 Catholic Church as it applies to dioceses and parishes would be violated. The
16 one size fits all organization described by the Tort Litigants in their respective
17 pleadings is simply not the Catholic Church as it is or as it is required to be by
18 its own Code of Canon Law.
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23 48. I have reviewed the Affidavit of the Most Reverend William S.
24 Skylstad, Bishop of Spokane, and I concur in his representations as to the
25 Canon Law of the Roman Catholic Church and the relationship of the diocesan
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1 bishop and the diocese to the parishes within the diocese, the formation and
2 functioning of parishes, and the rights of parishes and their pastors.
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4 49. The statements contained here are true and correct. I have made
5 these statements upon my personal knowledge.
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9 Nicholas P. Cafardi
10 NICHOLAS P. CAFARDI, J.D., J.C.L.

11 SIGNED AND SWORN to before me this 27 day of May, 2005, by
12 NICHOLAS P. CAFARDI.

13
14 Marie M. Zagrocki
15 Print Name: MARIE M. ZAGROCKI
16 NOTARY PUBLIC in and for the State
17 of Pennsylvania, residing at Pittsburgh,
18 Allegheny County.
19 My Commission Expires: April 19, 2007.

20 I:\Spodocs\33029\00036\plead\00323214.DOC

Notarial Seal
Marie M. Zagrocki, Notary Public
City Of Pittsburgh, Allegheny County
My Commission Expires Apr. 19, 2007
Member, Pennsylvania Association Of Notaries