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ENTERED <u>8/29/07</u> FILED <div style="border: 1px solid black; padding: 5px; text-align: center;">           AUG 24 2007         </div> CLERK, U.S. BANKRUPTCY COURT SOUTHERN DISTRICT OF CALIFORNIA BY <u>[Signature]</u> DEPUTY
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# FOR PUBLICATION

## UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF CALIFORNIA

In re  
 THE ROMAN CATHOLIC  
 BISHOP OF SAN DIEGO, a  
 California corporation sole,  
  
 Debtor.

Case No. 07-00939-A11

### MEMORANDUM DECISION

#### I. INTRODUCTION

The issue before this Court is whether to remand 42 of the approximately 127 removed child sexual abuse adversary proceedings to the state court pursuant to 28 U.S.C. § 1452(b). The Roman Catholic Bishop of San Diego ("RCBSD" or "Debtor") removed all of the sexual abuse actions pending against it from the state court to the bankruptcy court after it filed its chapter 11 bankruptcy petition.<sup>1</sup>

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<sup>1</sup> The Debtor removed 127 of the actions to this Court pursuant to 28 U.S.C. § 1452(a). The sexual abuse case known as *Melodie H.* was previously removed to the United States District Court for the Southern District of California based upon diversity jurisdiction.

1 The Court established an omnibus procedure for addressing motions to  
2 remand. Hearings on motions for remand were scheduled only for those  
3 actions against the Debtor that were ready for trial at the time of bankruptcy,  
4 or had been released prepetition by the state court coordination judge for all  
5 purposes, including trial.<sup>2</sup> The OCC, at the Court's request, has taken the  
6 lead in coordinating the presentation of the plaintiffs' evidence and filed an  
7 omnibus memorandum of points and authorities in support of the motions in  
8 the main bankruptcy case.<sup>3</sup> The Debtor and others who are aligned with the  
9 Debtor have filed an omnibus opposition and/or joined in the Debtor's  
10 omnibus opposition to the motions. For the reasons more fully set forth  
11 below, the Court grants the motions.

## 12 II.

### 13 **FACTUAL BACKGROUND**

14 The Debtor filed its chapter 11 bankruptcy petition on February 27,  
15 2007. The filing was on the eve of trial of several of the approximately 127  
16 child sexual abuse actions pending against it. Specifically, trial in the *Rister*  
17 case was set to commence on February 28, 2007, and trial in the *Mary Ann*  
18 *M.* case was set to follow immediately thereafter. Trial in the *Michael S.* case  
19 was set for April 3, 2007, and trial in the *John Roe* case was set for June 1,  
20 2007.

21 The Debtor explained that it filed chapter 11 to stay prosecution of the  
22 actions so that it could "fairly, justly and equitably compensate" the victims  
23 and bring healing to those affected by the past acts of sexual abuse by clergy  
24 or others associated with RCBSD "without compromising RCBSD's  
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26 <sup>2</sup> The major parties in interest, including the Debtor, counsel for the various plaintiffs and  
27 the Official Committee of Creditors ("OCC") jointly identified the motions that would be heard.

28 <sup>3</sup> Notices of the motions to remand were filed in the adversary proceedings, along with the  
plaintiffs' supporting declarations.

1 stewardship and its mission and ministry to the Catholic faith community of  
2 parishes, parishioners, religious workers, volunteers and students in the  
3 Diocese.”<sup>4</sup> On March 28, 2007, the Debtor filed a disclosure statement and  
4 plan of reorganization which pays the victims from a \$95 million fund.<sup>5</sup> There  
5 is no hearing scheduled on the disclosure statement or plan. The claims bar  
6 date is February 27, 2008.<sup>6</sup>

7 The evidence in support of the 42 motions demonstrates: These  
8 actions are part of statewide coordinated proceedings established to handle  
9 the more than 1,000 sexual abuse lawsuits pending against the Debtor and  
10 other Roman Catholic Dioceses within the State of California. The Debtor  
11 petitioned for inclusion in the coordinated proceedings in May 2003.

12 Three coordinated proceedings were established (known as Clergy I,  
13 Clergy II and Clergy III). The actions against the Debtor were part of Clergy  
14 II. The purpose of the coordinated proceedings is to facilitate the efficient  
15 and fair handling and resolution of the sexual abuse cases. There is a single  
16 Coordination Judge<sup>7</sup> for the Clergy I and Clergy II cases who has presided  
17 over all pre-trial matters for these cases. The Coordination Judge has issued  
18 a uniform case management order to govern the proceedings, and has ruled  
19 on all pre-trial motions. Division 8 of the California Second District Court of  
20 Appeals is designated to hear all appeals in all Clergy cases.<sup>8</sup>

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22 <sup>4</sup> See First Day Motion No. 1 filed February 28, 2007, docket entry (“d.e.”) 9 at page 4.  
23 Hereinafter, all docket entries refer to the main bankruptcy case unless otherwise specified.

24 <sup>5</sup> See d.e. 150.

25 <sup>6</sup> See d.e. 1061.

26 <sup>7</sup> Hon. Haley J. Fromholz, Judge, Superior Court, Los Angeles County.

27 <sup>8</sup> There have been many pending and concluded appeals related to the Clergy cases. See  
28 Declaration of Irwin M. Zalkin (“Zalkin Declaration”) filed July 12, 2007, d.e. 747 at ¶¶ 21.a.-m.  
(listing the appeals and their subject matter). The Debtor filed evidence objections to the Zalkin

1 The Coordination Judge ordered the actions stayed while the parties  
2 engaged in mediation. The stay lasted approximately three years. After the  
3 parties failed to reach a settlement, the Coordination Judge released a  
4 number of the cases from the stay for limited litigation purposes. Thereafter,  
5 extensive litigation ensued in the released cases, as outlined in the Zalkin  
6 Declaration.<sup>9</sup>

7 Ultimately, the Coordination Judge fully released a number of San  
8 Diego-based cases for trial. After consultation with the plaintiffs and the  
9 Debtor, five of the Clergy II cases were selected to serve as “test cases” to  
10 proceed to trial in the hope they would spur settlements in the remaining  
11 cases. Within these test cases, there have been three motions for summary  
12 judgment/adjudication (one granted), dozens of discovery motions, the  
13 imposition of discovery sanctions and scores of depositions.<sup>10</sup> As the test  
14 cases approached trial, the Coordination Judge released additional cases for  
15 trial, including every case of sexual abuse alleged against Fr. Edward  
16 Anthony Rodrique and Fr. Franz Robier.<sup>11</sup>

17 In addition to the Zalkin Declaration, the moving plaintiffs have filed form  
18 declarations in support of their motions to remand setting forth pertinent  
19 information concerning the status of their individual cases.<sup>12</sup> According to the  
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21 Declaration. Except for striking non-material inflammatory language, the evidence objections were  
22 overruled.

23 <sup>9</sup> *Id.* at ¶¶ 9-10.

24 <sup>10</sup> *Id.* at ¶ 11.

25 <sup>11</sup> *Id.* at 12.

26 <sup>12</sup> Exhibit 4 to OCC’s Evidence Summary, d.e. 798, summarizes the responses for the  
27 plaintiffs in these 42 actions. There is a minor discrepancy in the number of actions set for hearing.  
28 The moving papers and Summary of Evidence indicate there are 41 actions with 58 plaintiffs;  
whereas the Reply correctly indicates there are 42 actions. The Court does not know which  
action/plaintiff(s) have been omitted from Ex. 4, but it is non-material to the ruling on these motions.

1 plaintiffs' responses, all of the 42 actions have been released from the state  
2 court stay. Over half of the 58 plaintiffs in these 42 actions have indicated that  
3 discovery is complete or close to complete.<sup>13</sup>

4 The Debtor's evidence in opposition to the motions consists of four  
5 declarations.<sup>14</sup> These declarations state, *inter alia*, that only *five* of the 127  
6 Clergy II actions have any significant discovery taken; that the pre-trial  
7 proceedings are not as extensive as Mr. Zalkin represents; that if all 127  
8 cases are remanded, it would take two and one half to three years for  
9 discovery to be completed and each of these cases tried; that remanding all  
10 127 of the cases would create a tremendous burden on the state court  
11 system; that it would be inefficient and impractical to remand some of the  
12 actions while others remained in the federal system for estimation because  
13 it would create dual litigation; and that there is no basis for plaintiffs to believe  
14 there would be group trials in the state court.<sup>15</sup>

15 The Debtor indicates that if the parties remain unable to reach a  
16 settlement, the district court must estimate the claims pursuant to 11 U.S.C.  
17 § 502(c).<sup>16</sup> It asserts the only efficient way to resolve the value of the 127  
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19 <sup>13</sup> *Id.*

20 <sup>14</sup> The Declaration of J.E. Holmes III ("Holmes Declaration"); the Declaration of Maria C.  
21 Roberts ("Roberts Declaration"); the Declaration of Susan L. Oliver ("Oliver Declaration"); the  
22 Declaration of Dave Carothers ("Carothers Declaration"); and the Declaration of Karen F. Landers  
23 ("Landers Declaration"). *See* d.e. 888. Additionally, the Diocese of San Bernadino filed the  
24 Declaration of Wilfrid C. Lemann in support of its omnibus opposition to the motions, d.e. 886.

25 <sup>15</sup> *See* Carothers Declaration. Except for the Roberts Declaration, all of the declarations are  
26 substantially the same. Additionally, the Roberts Declaration attacks the credibility of Mr. Zalkin.  
27 The Declarations filed in support of the Omnibus Reply amply responded to Ms. Roberts'  
28 accusations.

<sup>16</sup> The Debtor's proposed motion to estimate contingent and unliquidated personal injury  
claims is attached as an exhibit to its motion to withdraw reference of the adversary proceedings, d.e.  
790. The district court heard this motion to withdraw reference on August 17, 2007. By order  
entered August 20, 2007, it denied the motion and ordered that the Debtor *shall not file* the motion

1 Clergy II cases is to estimate the value of these claims for distribution. The  
2 district court would have to try these cases by jury trial only “as a last resort.”

3 Finally, although the information in the declarations is sparse, the  
4 Debtor also contends that its federal constitutional defenses are unsettled  
5 and complex; whereas the state law claims are “straightforward.”<sup>17</sup> It argues  
6 that remand is not appropriate where (as purportedly here) the litigation  
7 involves serious constitutional concerns.<sup>18</sup>

8 **III.**  
9 **ANALYSIS**

10 As a preliminary matter, the Court wishes to dispose of arguments  
11 which cloud the correct remand analysis. Both the moving parties and the  
12 Debtor have argued in favor of, and against, applying the abstention doctrines  
13 in 28 U.S.C. §§ 1334(c)(1) and (c)(2) to send these actions back to the state  
14 court.

15 The Debtor argues that 28 U.S.C. § 157(b)(4) directs that personal  
16 injury and wrongful death claims shall not be subject to the mandatory  
17 abstention provisions of 28 U.S.C. § 1334(c)(2). Further, it argues the  
18 prohibition against mandatory abstention in 28 U.S.C. § 157(b)(4) means a  
19 court can exercise *discretionary* abstention pursuant to 28 U.S.C.  
20 § 1334(c)(1) only in “exceptional circumstances.”<sup>19</sup>

21 \_\_\_\_\_  
22 to estimate until after November 26, 2007, at which time the court will review the progress of the  
23 bankruptcy case and consider whether, based upon the events that have taken place, withdrawal of  
24 the reference and estimation of the claims might then be appropriate. *See* Order Denying Debtor’s  
25 Motion to Withdraw Reference at page 8, U.S.D.C. Case No. 07cv1355-IEG(RBB). Indeed, the  
26 motion to estimate is premature since the claims bar date has not yet passed. A court cannot feasibly  
27 estimate claims until the bar date has passed and the universe of claims is known.

28 <sup>17</sup> Debtor’s Omnibus Opposition at pages 16-17, d.e. 888.

<sup>18</sup> *Id.* at 16-17 and 21.

<sup>19</sup> *Id.* at 7.

1           The Court agrees it cannot send these actions back to the state court  
2 based upon abstention. In addition to the express mandate against mandatory  
3 abstention in 28 U.S.C. § 157(b)(4), on two occasions the Ninth Circuit has  
4 held the abstention doctrine is inapplicable if there is no parallel proceeding  
5 in the state court. *In re Lazar*, 237 F.3d 967, 981-82 (9<sup>th</sup> Cir. 2001); *Security*  
6 *Farms v. International Brotherhood of Teamsters*, 124 F.3d 999, 1009-1010  
7 (9<sup>th</sup> Cir. 1997). The Debtor's removal of these actions from the state court  
8 means there is no longer a parallel state court proceeding. Accordingly, as  
9 a matter of law, abstention is inapplicable.

10           A bankruptcy court's power to remand is provided in 28 U.S.C.  
11 § 1452(b). This section provides that a court to which an action is removed  
12 may remand the action on "any equitable ground." The "any equitable  
13 ground" standard is an unusually broad grant of authority; it subsumes and  
14 reaches beyond all of the reasons for remand under the nonbankruptcy  
15 removal statutes. *In re McCarthy*, 230 B.R. 414, 417 (9<sup>th</sup> Cir. BAP 1999).

16           Notwithstanding, the Debtor asserts a court can remand only in  
17 "exceptional circumstances."<sup>20</sup> The Debtor's argument is flawed because it  
18 relies upon cases that applied 28 U.S.C. § 157(b)(4) and 28 U.S.C.  
19 §§ 1334(c)(1) and (c)(2) to support this conclusion. See e.g. *Beck v. Victor*  
20 *Equipment Co., Inc.*, 277 B.R. 179, 180-181 (Bankr. S.D.N.Y. 2002); *Matter*  
21 *of Chicago, Milwaukie, St. Paul & Pacific R. Co.*, 6 F.3d 1184, 1189 (7<sup>th</sup> Cir.  
22 1993); *In re Pan American Corp.*, 950 F.2d 839, 845 (2<sup>nd</sup> Cir. 1991). All cases  
23 cited by the Debtor involved abstention, and not a motion to remand a  
24 removed case pursuant to 28 U.S.C. § 1452(b).<sup>21</sup> This Court has already

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26           <sup>20</sup> *Id.* at 11-12.

27           <sup>21</sup> *Beck* is the only case that purports to involve a motion to remand. However, a review of  
28 the case reflects the plaintiff actually moved for *abstention* "pursuant to 28 U.S.C. § 1334(c)." *Beck*,  
277 B.R. at 180. The entire analysis focuses on § 157(b)(4) and §§ 1334(c)(1) and (c)(2). Relying

1 indicated 28 U.S.C. § 157(b)(4), and 28 U.S.C. §§ 1334(c)(1) and (c)(2) are  
2 inapplicable to the remand issue.

3 The Court rejects the Debtor's "exceptional circumstances" argument.  
4 The Court is persuaded its discretion is much broader than the Debtor urges.  
5 See *McCarthy*, 230 B.R. at 417-18 (indicating a bankruptcy court's exercise  
6 of discretion to remand need only be supported by "any plausible basis" to be  
7 affirmed on appeal). Further, even if the broad grant of discretion were  
8 fettered by "exceptional circumstances," clearly this tsunami of child sexual  
9 abuse cases against Roman Catholic clergy would qualify as "exceptional."

10 The "any equitable ground" standard is not statutorily defined.  
11 Accordingly, case law has imported the "factors" governing discretionary  
12 abstention to assist with the remand decision. See *In re Enron Corp.*, 296  
13 B.R. 505, 508-9 (C.D. Cal. 2003)(importing the discretionary abstention  
14 factors into the remand analysis and affirming the bankruptcy court's remand  
15 to state court of two of the over 100 securities actions filed nationwide instead  
16 of transferring venue to the New York bankruptcy court). The imported factors  
17 are:

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19 (1) the effect or lack thereof on the efficient administration of the  
20 estate if the Court recommends [remand or] abstention; (2) extent  
21 to which state law issues predominate over bankruptcy issues; (3)  
22 difficult or unsettled nature of applicable law; (4) presence of  
23 related proceeding commenced in state court or other  
24 nonbankruptcy proceeding; (5) jurisdictional basis, if any, other  
25 than § 1334; (6) degree of relatedness or remoteness of  
26 proceeding to main bankruptcy case; (7) the substance rather  
27 than the form of an asserted core proceeding; (8) the feasibility of  
28 severing state law claims from core bankruptcy matters to allow  
judgments to be entered in state court with enforcement left to the  
bankruptcy court; (9) the burden on the bankruptcy court's docket;

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26 upon § 157(b)(4), the court indicated that "discretionary remand" should rarely be invoked.  
27 However, it is obvious the court was referring to abstention, as it cited to "abstention under 28  
28 U.S.C. § 1334(c)(1)" in discussing this point. *Id.* at 181. The court provided no further analysis of  
its reason for denying the request for discretionary abstention. *Beck* is not persuasive authority  
because it nowhere addresses remand under the liberal standard in 28 U.S.C. § 1452(b).

1 (10) the likelihood that the commencement of the proceeding in  
2 bankruptcy court involves forum shopping by one of the parties;  
3 (11) the existence of a right to a jury trial; (12) the presence in the  
4 proceeding of nondebtor parties; (13) comity; and (14) the  
5 possibility of prejudice to other parties in the action.

6 *Enron*, 296 B.R. at 508, n. 2; see also *In re Tucson Estates, Inc.*, 912 F.2d  
7 1162, 1167 (9<sup>th</sup> Cir. 1990)(citing to a Texas bankruptcy case which articulates  
8 a similar list). While these factors assist a court's remand decision, they do  
9 not control it. The standard remains "any equitable ground."

10 Using the above-listed factors as a guide, the Court finds remand of the  
11 42 actions is appropriate. First, the Court finds that resolution of the sexual  
12 abuse lawsuits is central to the administration of the Debtor's bankruptcy  
13 case. The lawsuits are the reason the Debtor filed this case. However, the  
14 Court is persuaded that, absent a settlement of the claims, prompt resolution  
15 of these claims through the bankruptcy process is unlikely.

16 The Debtor's proposed motion to estimate asks the district court to  
17 estimate the victim's claims at zero dollars.<sup>22</sup> Its plan of reorganization offers  
18 a more generous \$95 million fund to pay these claims, but this proposal would  
19 pay plaintiffs an amount far below the historical statewide average. The  
20 plaintiffs have made it clear that both proposals are unacceptable.

21 Moreover, the claims estimation process has not commenced. The  
22 claims bar date will not pass until February 27, 2008, at which time the  
23 universe of claims will be known. This is the earliest a district court could  
24 feasibly begin to estimate the claims. The Debtor's motion to estimate does  
25 not articulate how estimation will be expeditiously accomplished except to  
26 indicate there will be no jury trials. Claims estimation for distribution purposes  
27 in bankruptcy cases is not well developed through case law. It is likely there  
28 will be significant disputes concerning how it should be accomplished. The

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<sup>22</sup> See Debtor's proposed Motion to Estimate at page 2.

1 possibility of further appeals is also high since the Debtor's desired process  
2 will deprive plaintiffs of their Seventh Amendment right to a jury trial.

3 Further, the Debtor has not moved forward on its plan of reorganization.  
4 Although it represented in oral argument that it will file an amended plan in  
5 mid-October 2007, the Debtor has not stated how it will be amended. Unless  
6 the proposed payment amount is substantially increased, the Court foresees  
7 a lengthy confirmation process.

8 Additionally, the Court finds that state law issues predominate even  
9 though the Debtor has raised federal constitutional law defenses which it  
10 characterizes as unsettled and complex. The history of the litigation in the  
11 Clergy cases establishes the federal constitutional defenses are neither  
12 unsettled nor complex. They have been extensively litigated in the state  
13 courts and by the district court (in *Melanie H.*), and rejected by every court  
14 that has considered them.<sup>23</sup> In contrast, the state law statute of limitations  
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18 <sup>23</sup> The district court recently affirmed these federal constitutional law defenses are neither  
19 unsettled nor complex, stating in its Order Denying Debtor's Motion to Withdraw Reference that:

20 [T]he Court does not believe resolution of the Debtor's constitutional  
21 challenges will require "more than the mere application of well-  
22 settled or 'hornbook' non-bankruptcy law." [Citation omitted] Both  
23 the state courts and Judge Hayes in the *Melanie H.* case have rejected  
24 the Debtor's facial constitutional challenges to SB1779 under the due  
25 process, ex post facto, and bill of attainder clauses of the U.S.  
26 Constitution. Although the Debtor would like to reopen the litigation  
27 of the constitutionality of SB1779, the remaining constitutional issue  
28 to be litigated in these adversary actions is whether the statute, as  
applied, violates the due process clause. The contours of the right to  
due process are well-established in this area, and the Court does not  
believe resolution of the "as applied" constitutional challenge will  
require "material consideration" or "significant interpretation" of the  
United States Constitution.

Order at 3-4.

1 defense remains unsettled and complex.<sup>24</sup>

2 The Court finds there is no basis for federal jurisdiction other than 28  
3 U.S.C. § 1334. Although the actions are related to the bankruptcy in the  
4 sense of fixing liability amounts against the Debtor; they are not related in  
5 any way that bears upon the Debtor's day-to-day operation of its religious,  
6 educational and charitable missions.

7 Further, the Court finds these actions involve solely non-core state law  
8 claims. It is feasible to remand these 42 actions for liquidation in the state  
9 court, but to reserve the bankruptcy issues of claim treatment to the  
10 bankruptcy court. The Debtor incorrectly assumes the claims *must be*  
11 liquidated through estimation in the federal system.<sup>25</sup> See *In re Dow Corning,*  
12 *Corp.*, 211 B.R. 545, 562-566 and 599-603 (Bankr. E.D. Mich. 1997)(denying  
13 cross-motions to estimate mass personal injury tort claims in lieu of  
14 liquidation through actual trials).

15 Moreover, the Court rejects the Debtor's argument of state court  
16 inefficiency. These actions were part of statewide coordinated proceedings.  
17 One panel of appellate judges still hears appeals from all of the Clergy cases.  
18 Judge Fromholz remains the Coordination Judge for the Clergy II cases. The  
19 Court concludes that the past and future rulings in state court for these 42  
20 cases, and the history of the rulings in prior Clergy cases together with the  
21 continuity of procedural rules, makes prosecution of the 42 actions in the state  
22 court more efficient and uniform than in the district court. The fact that  
23 settlement discussions are still being conducted by Judge Papas and that  
24 *Melanie H.* is pending in the district court does not make the federal court a

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27 <sup>24</sup> See Declarations filed in Support of Omnibus Reply, d.e. 977-979; see also Debtor's  
Supplemental Request for Judicial Notice filed August 22, 2007, d.e. 1071.

28 <sup>25</sup> The Debtor made this argument at the hearing.

1 more efficient forum.

2 Further, although there is conflicting evidence as to how much discovery  
3 remains, the Court is persuaded that much of the discovery will duplicate prior  
4 discovery because most of these 42 actions involve serial perpetrators such  
5 that discovery and trial preparation in the later cases will be streamlined.<sup>26</sup>

6 The Court finds the Debtor has overstated burden that remand will have  
7 on the state court system. The state court was already handling all of the  
8 actions and had already absorbed the workload. Further, the Court is only  
9 remanding 42 of the 127 actions at this time. Based upon the history of the  
10 Clergy cases statewide, the Court believes that trying (or the possibility of  
11 trying) the first five actions may spur settlements or at the very least, assist  
12 in placing a value on the remaining cases not remanded. Judge Papas has  
13 indicated his willingness, even after remand, to remain involved in the  
14 settlement effort. As such, the Court is not persuaded the burden on the state  
15 court will be excessive.

16 In contrast, the pre-trial management of the actions would be a burden  
17 on either the bankruptcy court or the district court. In the event of trials, it  
18 would be enormously burdensome for the district court to try all 127 of the  
19 cases. The Debtor appears to propose that a single district court judge would  
20 try all 127 cases.

21 It is likely that the Debtor is forum shopping. The Debtor's plan of  
22 reorganization proposes to pay each plaintiff an amount far below the  
23 statewide settlement average. It appears the Debtor is hoping for a far better  
24 result in the federal forum than the Dioceses have thus far historically  
25 achieved in the state court forum.

26 The Court finds the subject matter of the pending actions (protection of

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28 <sup>26</sup> See Evidence Summary at Ex. 4 (only five plaintiffs responded that their action was *not*  
against a serial perpetrator).

1 children from sexual predators) is a matter of compelling state interest. The  
2 presence of federal constitutional defenses already unsuccessfully litigated  
3 does not cause the federal government to have an equally compelling  
4 interest. As such, comity strongly favors the state court forum over the  
5 federal court.

6 Finally, the plaintiffs have requested jury trials. The Court finds that loss  
7 of the Seventh Amendment right to a jury trial will cause severe prejudice to  
8 the plaintiffs, especially since these cases are intensely fact driven.<sup>27</sup>

9 The Court concludes the equities overwhelmingly favor remand of the  
10 42 actions to the state court for liquidation through trial (or settlement) rather  
11 than claims estimation, or liquidation through trial in the federal court. These  
12 cases are remanded for all purposes, including determination of punitive  
13 damages if appropriate.

14 The Debtor has cited *In re Roman Catholic Archbishop of Portland in*  
15 *Oregon*, 338 B.R. 414, 418-19 (Bankr. D. Or. 2006), to argue that this Court  
16 must retain the actions that request punitive damages. In *Roman Catholic*  
17 *Archbishop of Portland*, the bankruptcy court retained the actions that  
18 requested punitive damages because it reasoned the determination of  
19 punitive damages implicates fundamental property of the estate issues which  
20 must be decided by the bankruptcy court. *Id.* at 418.

21 The Court disagrees with *Roman Catholic Archbishop of Portland* on  
22 this point. The Court is not persuaded the fact that a state court jury, as part  
23 of its determination in awarding punitive damages, may have to pass upon  
24 issues of the Debtor's "net worth" requires retention of the actions by the  
25 bankruptcy court. Punitive damages is a state law issue and any court that  
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27 <sup>27</sup> Arguably, it would also prejudice the Debtor. Its federal constitutional defense of due  
28 process, as applied, is case-by-case fact driven. See Carothers Declaration at ¶ 20 (“[e]ach one is  
unique as to ... whether or not RCBSD had or should have had notice of the alleged abuse.”)

1 decides this issue would have to apply state law. The judge in *Roman*  
2 *Catholic Archbishop of Portland* recognized the jury's punitive damages  
3 determination would *not* be *res judicata* on the bankruptcy court's  
4 determination of what constitutes property of the debtor's estate. *Id.* at 419,  
5 n.5. Likewise, this Court will be making its own determination of what  
6 constitutes property of the Debtor's bankruptcy estate.

7 **IV.**

8 **CONCLUSION**

9 28 U.S.C. § 1452(b) vests the Court with broad authority to remand a  
10 removed action on "any equitable ground." Because this standard is not  
11 defined by statute, case law has imported the equitable "factors" for  
12 discretionary abstention to assist the equitable remand analysis. This  
13 Memorandum Decision explains why these factors overwhelmingly support  
14 remand back to the coordinated state court proceedings. Accordingly, the  
15 Court exercises its discretion to grant the motions to remand.

16 This Memorandum Decision is in lieu of Findings of Fact and  
17 Conclusions of Law. The Court will be entering its own remand orders  
18 concurrently herewith.

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21  
22 Dated: 24 Aug 07



LOUISE DE CARL ADLER, Judge