

April 6, 2007 - Diocese transferred funds to parishes, records show

Actions preceded bankruptcy filing

By Jeff McDonald, UNION-TRIBUNE (CA) STAFF WRITER

In the months leading up to its historic bankruptcy filing in late February, the Roman Catholic Diocese of San Diego moved at least \$1.5 million from its own accounts to various schools and parishes, according to bankruptcy court records.

Listed as gifts, the transactions state the diocese has no relationship with the school or parish that collected the money – a declaration that seeks to remove the assets from those being considered by the federal bankruptcy judge.

The cash transfers were noted in a voluminous record filed March 29 by diocese attorneys. Lawyers representing alleged victims of sexual abuse by Catholic priests uncovered the transactions over the past several days.

“Almost daily I have been discovering what appear to be wrongful transfers of assets,” said attorney Andrea Leavitt, who represents several of about 150 plaintiffs suing the Catholic diocese.

No one from the diocese would discuss the cash transfers yesterday. Diocese lawyers Susan Boswell and Micheal Webb did not return telephone calls seeking comment about the transactions.

Attorneys seeking millions of dollars in damages have so far identified up to 12 transactions dating back to June in which the diocese steered at least \$1.5 million to Catholic schools and parishes in the region.

The plaintiffs' attorneys said the transfers indicate that church officials were trying to reduce the diocese assets at the same time lawyers were negotiating settlements with their clients.

“It's extremely disturbing to see that in the weeks leading up to the bankruptcy filing, they were gifting property away,” Leavitt said.

Attorney Irwin Zalkin, who represents approximately 30 plaintiffs suing the diocese, said he was bothered by the timing of the gifts reported last week.

“If the evidence is they were transferring assets knowing that they were going to be filing bankruptcy, I think that would be a breach of their fiduciary responsibility to their creditors,” he said.

Lawyers representing the diocese and the plaintiffs had been litigating the clergy-abuse claims for years until Feb. 27, when Bishop Robert Brom opted to seek bankruptcy protection.

The Chapter 11 reorganization filing effectively stalled the first trial, which had been scheduled to begin the following day, and three others also scheduled this spring.

The Roman Catholic Diocese of San Diego became the fifth such diocese in the country to declare bankruptcy under the weight of so many clergy-abuse lawsuits.

In bankruptcy cases, debtors often seek to reduce their assets as much as possible to minimize the amount of money eventually paid to creditors, experts say.

Almost as soon as Brom opted for bankruptcy protection, lawyers for the plaintiffs began questioning the \$156 million in assets listed by the diocese in its initial court filings.

That amount does not include hundreds of millions of dollars worth of other real estate holdings that plaintiffs' lawyers argue should be included in the diocese assets. The diocese says those properties are held in trust for parishes.

UCLA law professor Lynn LoPucki, who specializes in bankruptcy cases and has followed the filings by Roman Catholic churches nationwide, said the transactions by the San Diego diocese raise serious questions.

It is illegal for institutions or individuals to give away assets at a time they are contemplating bankruptcy, LoPucki said. If creditors convince a judge that gifts are made to avoid paying debts, the awards can be ordered returned, he said.

“Those are classic fraudulent transfers,” he said. “You give away property at a time you're insolvent . . . They can be taken back.”

LoPucki said that in other cases, lawyers representing other dioceses have argued they were simply holding those assets in trust for the particular schools and churches that received the gifts.

“It's like your mom and dad are keeping your money for you,” he said. “They put it in their own bank account and give it to you when you want it back.”

UC Hastings law professor Frederick Lambert said the gifts are likely to be examined closely by the bankruptcy judge because the diocese received nothing in return.

“The question is whether they fall under some exemption,” he said.

Any hearing on this issue is likely to take several months to get before the U.S. Bankruptcy Court.

A so-called avoidance-demand letter must first be sent to the debtor before any motions to reverse the gifts can be filed. Although such a letter was sent to diocese attorneys this week, the motion is likely to take several weeks to draft and a hearing could take six or eight weeks beyond that.

In bankruptcy papers filed last week, the diocese outlined a plan to set up a \$95 million fund to settle the 150 or so cases.

But lawyers representing the alleged victims are seeking closer to double that amount, based on settlements paid to clergy-abuse victims in other parts of the country.