Judge says Wilmington parish money in investment fund part of abuse settlement

WASHINGTON – The Diocese of Wilmington, Del., plans to appeal a federal bankruptcy judge's ruling that the funds deposited by parishes, schools and other Catholic entities into its investment fund are property of the diocese and subject to distribution to victims of clergy sexual abuse.

Judge Christopher Sontchi said in his June 28 decision that the entire $120 million pooled investment account held in the name of the diocese should be considered diocesan assets, even though the diocese said it has only $45 million of its own money in the account.

Others with funds in the pooled investment account include five parishes, four schools, three cemeteries, three present or former group homes for children, the Catholic Youth Organization, and the Catholic Diocese Foundation, incorporated in 1928 to promote "the Catholic religion, Catholic education and Catholic charity within the diocese."

In a statement issued late June 29, the diocese said it "disagrees with this ruling and intends to appeal."

Bishop W. Francis Malooly of Wilmington announced in October 2009 that the diocese had filed for bankruptcy protection. His announcement came a day after settlement negotiations broke down with representatives of eight victims of abuse whose trial was scheduled to begin the next day.

The bishop said at the time that it had become clear from the dollar amounts being discussed in possible early settlements that the diocese "would never get through to 142 claimants in any fair or equitable way." The filing of bankruptcy halted lawsuits against the diocese.

Most of the civil cases filed against the diocese came during a two-year window (July

2007 to July 2009) opened by Delaware's 2007 Child Victims Act, which allowed individuals to file suits previously barred by the statute of limitations.

Sontchi said in his decision that although the assets of each entity were kept in separate subaccounts in the investment fund, lawyers for the "nondebtor defendants" failed to show that the funds had not been commingled with those of the diocese, which the judge called "debtor" in the decision.

"The question at this stage is not whether the defendants can properly identify and trace the trust funds but whether the trust funds have been commingled with the debtor's property," the judge wrote in his 44-page opinion. "The answer is clearly yes – both in the debtor's operating account and the PIA," or pooled investment account.

The diocesan statement said it was "surprising" that Sontchi ruled that the investment fund's accounting records "are insufficient to enable the trust funds of the pooled investors to be traced into and within the pooled investment account," noting that an expert witness for the creditors in the case had "described these accounting records as 'meticulous.' "

The diocese said the parishes and agencies had joined in the pooled investment account "to lower costs and realize better returns," but the funds "remain the funds of those agencies and parishes, and the diocese simply serves as the custodian of the account."

Sontchi acknowledged that the nondebtor defendants "use much of their money in the PIA to fund their extensive and important charitable activities." But he said the "dueling equities in this case … support the court's application of established trust law, which was developed, in part, to balance fairly such competing interests."

Only one parish – St. Ann's in Wilmington – was excluded from the decision because it had a written trust agreement with the diocese. The parish had about $1.6 million in the investment fund as of Dec. 31.

The judge said the nondebtor defendants "still have a claim against the debtor for their lost investment."

“That claim, however, will share pro rata with the other claims against the debtor’s estate,” Sontchi said. “Almost certainly, the claims in this case will not be paid in full. This may seem a harsh result for the nondebtor defendants. But to ignore precedent by ruling in their favor would have a negative impact on the other creditors – the vast bulk of which are involuntary creditors that have asserted tort claims against the debtor related to sexual abuse.”

The diocese said the agencies and parishes participating in the investment fund “will pursue these claims, and in the meantime they will seek court approval to access their funds to enable them to continue to fund their ministries.”

Stephen Neuberger, an attorney representing some of the sex abuse victims, called the pooled investment account “a corporate shell game” that the diocese was using to “hide its assets.”