

The Honorable Patricia Williams
Chapter 11

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WASHINGTON AT SPOKANE

In re:

THE CATHOLIC BISHOP OF
SPOKANE, a/k/a The Catholic Diocese of
Spokane,

Debtor.

Case No. 04-08822

**PLAN TRUSTEE’S MOTION FOR
ORDER TO SHOW CAUSE FOR
HOLDING DEBTOR AND ITS
COUNSEL IN CONTEMPT OF
COURT PURSUANT TO 11 U.S.C.A. §
105(a) AND 28 U.S.C.A. § 1651**

COMES NOW the Plan Trustee, and respectfully moves the Court for issuance of an Order to Show Cause, directing the Diocese and its attorneys, Gregory Arpin and Paine Hamblen, to appear and show cause why they should not be held in contempt of the Court’s Orders on Confirmation of the Plan, Regarding Payment of Future Claims, and Denying Stay of Proceedings Pending Appeal. The order of contempt is sought by the Plan Trustee pursuant to 11 U.S.C.A. § 105(a) and 28 U.S.C.A. § 1651. This motion is based upon the legal authority set forth herein, the record to date, and upon the contemporaneously filed Declaration of Plan Trustee Gloria Z. Nagler.

I. Facts Relevant to Diocese Motion

1 The Reorganized Debtor, the Diocese of Spokane (“Diocese”) brought motions
2 on October 21 and 22, 2009 to “enforce the Plan” and to seal the record related to the
3 motion. These motions sought to obtain the Bankruptcy Court’s intervention in the
4 TCR’s and Plan Trustee’s administration of the Plan Trust. Specifically, the motions
5 sought to have this court direct the TCR to reject certain future tort claims filed by
6 individuals against the Diocese for payment out of the Plan Trust. The basis for the
7 Diocese’s request for court intervention was an allegation that the TCR, when
8 considering future tort claims, incorrectly applied the law to the facts presented by the
9 future tort claimants in all but one of the future tort claims filed. The Diocese sought
10 to have the court direct the TCR to reject certain future tort claims, based upon the
11 Diocese’s assertions of the law applicable to such future tort claims.
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16 The Diocese also sought to enjoin the Plan Trustee from making payment of
17 funds from the Plan Trust to those future tort claimants that the Diocese believes,
18 under its application of the facts asserted by the Diocese and its interpretation of
19 applicable law, do not qualify for payment from the Plan Trust. The Diocese’s
20 motions were rejected by this court.
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23 The Diocese then sought a stay from this court, pending appeal of the case, to
24 prevent the distribution of funds from the Plan Trust while the Diocese pursued an
25 appeal of the court’s decision. The motion for the stay was denied, and the Plan
26 Trustee was directed by the court to commence payment of the future tort claims
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1 allowed by the TCR.

2 On January 13, 2010, Greg Arpin, counsel for the Diocese, sent an e-mail to the
3 Plan Trustee and counsel for the Chapter 11 Plan's notice parties, in which Arpin, on
4 behalf of Diocese, threatened to sue the Plan Trustee personally if the Diocese's
5 position was ultimately sustained on appeal, but after funds were released from the
6 Plan Trust. The Diocese confirmed its decision not to further seek a review of the
7 denial of the Diocese's motion for stay of the Bankruptcy Court order directing the
8 Plan Trustee to make the pending distribution. Arpin's letter concludes: "[I]f it [the
9 Diocese] ultimately prevails on its appeal that the TCR determinations can and should
10 be reviewed for ultra vires acts and abuse of discretion, the Diocese reserves all rights
11 to look to the Trustee to reimburse the FC Fund for money paid out on claims that do
12 not qualify under the Plan as Future Claims." *See* Decl. of Gloria Nagler, Exhibit A.
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18 To the extent that the letter was intended to dissuade the Plan Trustee from
19 carrying out her duties pursuant to the terms of the Chapter 11 Plan, the Diocese and
20 its legal counsel have willfully disregarded the Court's refusal to stay distribution
21 from the Plan Trustee, and the direction given by the court to distribute the funds for
22 payment of future tort claims allowed by the TCR. There is no other interpretation of
23 Arpin's e-mail than a direct threat made by the Diocese, Arpin and his law firm that
24 they will engage the Plan Trustee in litigation, seeking a personal judgment against
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1 her, if the Plan Trustee obeys this court's order and makes payment as directed by the
2 court.

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4 The communication from the Diocese and Arpin is made for the improper
5 purpose of deterring the Plan Trustee from complying with a Court Order to disburse
6 funds to allowed claimants, and seeks to interfere with and prevent her performance
7 of her duties under the Plan Trust, the Plan, the Washington State Bar Rules of
8 Professional Conduct and federal law. Arpin seeks to use the threat of expensive
9 litigation seeking personal liability of the Plan Trustee – a threat that cannot be made
10 in good faith under any rational application of law or facts to these circumstances –
11 to accomplish that which he could not accomplish on the merits. When this court
12 denied the Diocese's motion seeking a stay pending appeal, the sole legal and ethical
13 course of action available to the Diocese and Arpin was to seek further review of this
14 court's order, not to threaten liability of the Plan Trustee for doing her job.
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II. Argument

A. Legal Standard

Bankruptcy Courts have the inherent power to impose sanctions on parties and counsel who willfully abuse the judicial process, a power which is also embodied in statute. Bankr.Code, 11 U.S.C.A. § 105(a); 28 U.S.C.A. § 1651; BR 9020. Code § 105 authorizes bankruptcy courts to take any action to enforce or implement court orders or rules or to prevent an abuse of process through contempt proceedings. *In re Lapin*, 226 B.R. 637, (9th Cir. BAP 1998). The bankruptcy contempt statute authorizes courts to issue any order, process or judgment necessary or appropriate to carry out provisions of the Bankruptcy Code to impose sanctions to enforce and implement its own orders or rules, or to prevent abusive litigation tactics, so as to achieve orderly and expeditious disposition of cases before it. 11 U.S.C.A. § 105(a); *In re Icenhower*, 406 B.R. 42 (Bankr. S.D. Cal. 2009). In exercising its inherent sanctions authority, a court must make an explicit finding of bad faith or other willful misconduct tantamount to bad faith. *Id.* Conduct which delays or disrupts litigation or hampers enforcement of court order demonstrates “bad faith.” *Id.*

Contempt of court generally is the disregard of judicial authority. A person disregards judicial authority when he fails to take “all the reasonable steps within [his] power to insure compliance with the [court's] order.” *Sekaquaptewa v. MacDonald*, 544 F.2d 396, 406 (9th Cir.1976), *cert. denied*, 430 U.S. 931, 97 S.Ct. 1550, 51

1 L.Ed.2d 774 (1977). Parties do not have a direct right of action against another party
2 for contempt of court; contempt powers are granted to the specific court that issued
3 the specific order. *In re Moi*, 381 B.R. 770 (Bankr. S.D. Cal. 2008). Here, the
4 Diocese and Arpin have disregarded the court's authority by resorting to the coercive
5 communication to achieve a *de facto* stay of the court's order. Compliance with the
6 court's order requires that the Diocese, in the manner set forth in the court rules, seek
7 a review and reversal of the court's order.
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10 **B. The Diocese and its Counsel Attempted Circumvention of a Court Order By**
11 **Coercing an Officer of the Court to Disobey the Court's Order, Justifying**
12 **Issuance of an Order of Contempt**

13 Mr. Arpin's communication to the Plan Trustee is very clear in its coercive and
14 unlawful intent. The text of the e-mail provides no other interpretation other than
15 Arpin's attempt to coerce the Plan Trustee to disobey this court's order and delay
16 payments ordered by the court. Such action is unlawful because its intent is to
17 circumvent the court's denial of the motion for stay pending appeal, and obtain a stay
18 despite the court's clear direction to refuse delay of payment by the Plan Trustee. The
19 threat of personal liability through future litigation initiated by the Diocese and Arpin,
20 considering that the Plan Trustee is an officer of this court bound to comply with its
21 orders, is much like threatening a judge with a lawsuit for exercising its authority to
22 make rulings in contested matters.
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1 The Diocese's threat of seeking personal liability for the Trustee for carrying
2 out the order of the court, and making payment of future claims approved by the TCR,
3 is a breach of the Diocese's own duties under the Plan it proposed and approved.
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5 When performance of a confirmed Plan is breached and undermined by its proponent,
6 as it has been here, the section of the Bankruptcy Code authorizing the court to issue
7 any order necessary or appropriate to carry out the provisions of Title 11 permits the
8 court to take any action or make any determination necessary to enforce the
9 confirmation order and set the case on the right course. 11 U.S.C.A. § 105. *In re*
10 *Payne*, 387 B.R. 614 (Bankr. D. Kan. 2008).
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13 Counsel for the Diocese violated Washington Rules of Professional Conduct
14 8.4. RPC 8.4 states that "It is professional misconduct for a lawyer to...engage in
15 conduct that is prejudicial to the administration of justice...commit any act which
16 reflects disregard for the rule of law..." Arpin's letter seeks to compel the Plan
17 Trustee, through coercion and threats of litigation, to violate RPC 8.4(j) by having the
18 Plan Trustee – to avoid the threat of litigation for which the Trustee will likely have
19 to use her personal assets to pay for defense – "willfully disobey or violate a court
20 order directing him to do or cease doing an act which he or she ought in good faith to
21 do or forbear."
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25 The Washington State Supreme Court found that conduct prejudicial to the
26 administration of justice, in violation of RPC 8.4, is "... conduct of an attorney in his
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1 official or advocate role, or which might physically interfere with enforcing the law.”
2 *In Re Kuvara*, 149 Wn.2d 237, 255, 66 P.3d 1057 (2003). *Kuvara* hindered the
3 clearing of his clients’ title to property by inaction, and that conduct was deemed a
4 violation of RPC 8.4. Here, Arpin has threatened legal action against the Plan Trustee
5 in an attempt to hinder delivery of payments to the future tort claimants, directly
6 contrary to the court’s order. This court may use the violation of RPC 8.4 as a basis
7 for finding contempt.
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10 **C. The Law of Supersedeas Precludes Any Good Faith Claim By the Diocese**
11 **Against the Plan Trustee**

12 When the court enters an order, and the order is appealed without a stay of the
13 order’s effect or the posting of a supersedeas bond, the parties to the case and third-
14 parties whose conduct is impacted by the court’s initial order are entitled to rely upon
15 the validity of the order until an appellate court reverses the order. See *In the Matter*
16 *of Combined Metals Reduction Company*, 557 F.2d 179, 188-89 (9th Cir., 1977) (citing
17 *In Re Abingdon Realty Corp.*, 530 F.2d 588, 589 (4th Cir. 1976).
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20 The case of *Spahi v. Hughes-Northwest, Inc.*, 107 Wn. App. 763, 27 P.2d 1233
21 (2001) helps illustrate how the communication from the Diocese and Arpin seeks to
22 accomplish the intimidation of the Trustee, without any good-faith legal basis for the
23 communication. In *Spahi v. Hughes-Northwest*, the United States was successful in
24 obtaining an order of the trial court for the sale of real property by the United States
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1 Marshall after summary judgment was entered by the District Court in favor of the
2 United States. The landowner appealed the summary judgment order, but did not
3 supersede the order. While the appeal was pending, the United States Marshall, acting
4 on the direction of the District Court's order granting the United States summary
5 judgment, conducted a public auction of the landowner's property – carrying out the
6 court's order since no supersedeas bond or order had been obtained to prevent
7 enforcement of the District Court's order.
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10 On appeal, the landowner prevailed, and obtained a reversal of the District
11 Court order directing the United States Marshall to conduct the auction sale of the
12 property. After success on the merits, the landowner sought to regain title to his land,
13 sold to a third party at the Marshall's sale, by filing a state court action against the
14 third-party purchaser from the United States Marshall at the auction sale. The court
15 found that the landowner's remedy was limited to seeking the value of the property
16 sold from the United States, and that no action lies against the third-party purchaser
17 of the property because failure to supersede the Marshall's sale. The court noted that
18 the judgment of the United States, entered by the District Court, was "presumed valid,
19 and unless the judgment is superseded, a judgment creditor has specific authority to
20 execute on that judgment." *Spahi v. Hughes-Northwest*, 107 Wn. App. at 769.
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25 The most a judgment debtor retains, when failing to supersede a judgment
26 entered against the judgment debtor in favor of the judgment creditor, is the right to
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1 seek return of the value of property seized in payment of the debt from the judgment
2 creditor. Here, the Diocese retains a right to seek return of funds distributed to a
3 future tort claimant if the Diocese is successful on appeal, but has no claims against
4 anyone else participating in the judgment collection process, because the participants
5 are carrying out the authority granted them in a judgment presumed to be valid. The
6 presumption of validity empowering the Plan Trustee to act now will not be changed
7 in the future by a reversal of the court's order; the Plan Trustee is entitled to rely upon
8 the presumption now, and is protected from eventual reversal of the order by the
9 Diocese's own failure to obtain a supersedeas order.

13 The *Spahi* case offers a clear, direct parallel to the facts of this case. Instead of
14 the United States Marshall being directed to sell the real property as it did in *Spahi*,
15 the Plan Trustee has been directed to distribute funds based upon a lawful court order
16 to the judgment creditors, the future tort claimants. The Diocese, unsuccessful in its
17 attempt to supersede the award of compensation to the tort claimants, seeks to hold
18 the Plan Trustee liable for following the court's order to distribute funds from the Plan
19 Trust. It is as if the judgment debtor in *Spahi* claimed a right to sue the United States
20 Marshall for selling the property while the appeal is pending, and sought damages
21 from the Marshall having conducted the auction sale. There is no question that the
22 United States Marshall in *Spahi* acted properly to sell the property, despite the
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1 pendency of the appeal, following a presumptively valid order of the District Court.
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4 Likewise, there is no good faith argument based upon law or fact that the Plan
5 Trustee, by following this court's presumptively valid order, could ever be liable to
6 the Diocese for completing the court-ordered distributions during the pendency of the
7 appeal, because a court order is "presumed valid, and unless the judgment is
8 superseded, a judgment creditor has specific authority to execute on that judgment."
9 The Diocese will never have any claim to make against the Plan Trustee after success
10 on appeal because the law of supersedeas prevents such a claim against an officer of
11 the court carrying out a court order later reversed on appeal.
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16 **D. The Diocese and Its Counsel Should be Joint and Severally Liable for
17 Sanctions, Including all Fees and Costs Associated with this Motion**

18 Sanctions will lie for a willful abuse of the judicial process. *In re Scientex*
19 *Corp.*, 46 B.R. 41 (Bankr. C.D. Cal. 1984). Any attorney or other person admitted to
20 conduct cases in any court of the United States or any Territory thereof who so
21 multiplies the proceedings in any case unreasonably and vexatiously may be required
22 by the court to pay personally the excess costs, expenses, and attorneys' fees
23 reasonably incurred because of such conduct. 28 U.S.C. § 1927.
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1 What the Diocese and Arpin could not achieve on the merits, they seek to
2 achieve through coercion. The Plan Trustee has no professional insurance to cover
3 her performance of her office, just like each judicial employee who serves this court.
4 The Plan Trust was designed to indemnify and hold the Trustee harmless from any
5 claims, but the Diocese has already represented to this court that such indemnity will
6 be meaningless before long, because the Diocese expects the future tort claims fund,
7 the source of the indemnification, to be exhausted in short order. The Diocese's
8 strategy here is clear; force the Plan Trustee to violate the court order in fear of future
9 litigation by the Diocese, or force her to resign. Either result will create a delay in
10 distribution from the future tort claims fund for the Diocese, a delay it could not
11 achieve on the merits when it brought its motion for the stay.
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16 **III. Conclusion**

17 The Plan Trustee respectfully moves the Court for entry of an Order, finding
18 the Diocese and its legal counsel to be in contempt of the Court's orders, and for
19 sanctions against the Diocese, the law firm of Paine Hamblen, and attorney Greg
20 Arpin individually and his marital community in the sum of not less than \$10,000, to
21 be paid to the Plan Trust, and should further order payment by the same persons of all
22 costs and attorney's fees associated with the presentation of this motion.
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1 DATED this 21st day of January, 2010.

2 DAVID S. KERRUISH, P.S.

3 By 

4 David S. Kerruish, WSBA #11090
5 Attorney for Plan Trustee

6 **NAGLER & ASSOCIATES**

7 /s/Gloria Z. Nagler

8 GLORIA Z. NAGLER, WSBA # 13176
9 Plan Trustee

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The Honorable Patricia Williams
Chapter 11

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WASHINGTON AT SPOKANE

In re:

THE CATHOLIC BISHOP OF
SPOKANE, a/k/a The Catholic Diocese of
Spokane,

Debtor.

Case No. 04-08822

**DECLARATION OF GLORIA Z.
NAGLER IN SUPPORT OF PLAN
TRUSTEE’S MOTION FOR AN
ORDER HOLDING DEBTOR AND
ITS COUNSEL IN CONTEMPT OF
COURT**

I hereby certify under penalty of perjury under the laws of the State of Washington that the following is true and correct:

1. My name is Gloria Z. Nagler. I am the Plan Trustee appointed by the Court to administer the Plan Trust, created by the approved Plan of Reorganization in this case. I have personal knowledge of the facts contained in this declaration, and I am competent to testify to these facts.

2. The Reorganized Debtor, the Diocese of Spokane (“Diocese”) brought motions on October 21 and 22, 2009 to “enforce the Plan” and to seal the record related to the motion. These motions sought to obtain the Bankruptcy Court’s intervention in the TCR’s and Plan Trustee’s administration of the Plan Trust.

1 Specifically, the motions sought to have this court direct the TCR to reject certain
2 future tort claims filed by individuals against the Diocese for payment out of the Plan
3 Trust.
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5 3. The basis for the Diocese's request for court intervention was an
6 allegation that the TCR, when considering future tort claims, incorrectly applied the
7 law to the facts presented by the future tort claimants in all but one of the future tort
8 claims filed. The Diocese sought to have the court direct the TCR to reject certain
9 future tort claims, based upon the Diocese's assertions of the law applicable to such
10 future tort claims.
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13 4. The Diocese also sought to enjoin the Plan Trustee from making payment
14 of funds from the Plan Trust to those future tort claimants that the Diocese believes,
15 under its application of the facts asserted by the Diocese and its interpretation of
16 applicable law, do not qualify for payment from the Plan Trust. The Diocese's
17 motions were rejected by this court.
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20 5. The Diocese then sought a stay from this court, pending appeal of the
21 case, to prevent the distribution of funds from the Plan Trust while the Diocese
22 pursued an appeal of the court's decision. The motion for the stay was denied, and the
23 Plan Trustee was directed by the court to commence payment of the future tort claims
24 allowed by the TCR.
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1 6. On January 13, 2010, Greg Arpin, counsel for the Diocese, sent an e-mail
2 to me and to counsel for the Chapter 11 Plan’s notice parties, in which Arpin, on
3 behalf of Diocese, threatened to sue the me personally if the Diocese’s position was
4 ultimately sustained on appeal, but after funds were released from the Plan Trust. A
5 copy of the email transmission is attached as Exhibit A. In the email, the Diocese
6 confirmed its decision not to further seek a review of the denial of the Diocese’s
7 motion for stay of the Bankruptcy Court order directing me to make the pending
8 distribution. Arpin’s letter concludes: “[I]f it [the Diocese] ultimately prevails on its
9 appeal that the TCR determinations can and should be reviewed for ultra vires acts
10 and abuse of discretion, the Diocese reserves all rights to look to the Trustee to
11 reimburse the FC Fund for money paid out on claims that do not qualify under the
12 Plan as Future Claims.”

13 7. There is no other interpretation of Arpin’s e-mail than a direct threat
14 made by the Diocese, Arpin and his law firm that they will engage in litigation, and
15 seek a personal judgment against me, if I obey this court’s order and make payment
16 as directed by the court. Since the Future Tort Claims Fund is the sole source of funds
17 from which I am indemnified, and the Diocese has already alleged that the fund will
18 become inadequate to pay anticipated claims, the Diocese and Arpin have threatened
19 me with the prospect of being forced to use my personal funds to defend such a claim.
20 My malpractice insurance does not appear to provide coverage for my work as the
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1 Plan Trustee, and there is no insurance provided by the Plan Trust on which I can rely
2 for costs of defense. At the time of the entry of the Order Confirming Plan, the
3 Diocese demanded and obtained an *ultra vires* exclusion to the exculpation clause
4 which was applicable to all the attorneys and officers of the estate. The claim of *ultra*
5 *vires* action, though erroneous, is the core of the Diocese appeal. Thus, the threat is
6 more egregious because the same party orchestrated this significant change to the
7 exculpation clause. See, Order Confirming Debtor's Second Amended Plan, p. 9.

10 8. Given the timing and the denial of the Diocese's motion for a stay
11 pending appeal, the communication from the Diocese and Arpin is made for the
12 improper purpose of deterring me from complying with a Court Order to disburse
13 funds to allowed future tort claimants, and seeks to interfere with and prevent me from
14 performance of my duties under the Plan Trust and the Plan. Arpin seeks to use the
15 threat of expensive litigation seeking my personal liability – a threat that cannot be
16 made in good faith under any rational application of law or facts to these
17 circumstances – to accomplish that which he could not accomplish on the merits.
18 When this court denied the Diocese's motion seeking a stay pending appeal, the sole
19 legal and ethical course of action available to the Diocese and Arpin was to seek
20 further review of this court's order, not to threaten liability of the Plan Trustee for
21 doing my job.

26 9. Faced with the choice of (a) complying with the court's order, and
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1 becoming subject to the Diocese's and Arpin's promise of a lawsuit against me
2 personally for recoupment of over \$300,000 in funds paid out to future claimants if
3 the Diocese wins its appeal for which I will likely have to pay out of my personal
4 funds the cost of defense) and (b) resignation from the post of Plan Trustee before
5 making any more payments to future tort claimants, to avoid the financial exposure
6 to the uncertain expense posed by the Diocese's and Arpin's threats. If I did elect to
7 resign, given the circumstances, it is hard to imagine any other qualified professional
8 taking the role of Plan Trustee, given the Diocese's threat. The Diocese will have
9 achieved its stay of all future tort claimant payments pending the appeal by preventing
10 anyone from carrying out the role of Plan Trustee, as that role is described in the Plan
11 Trust and the Plan. It is my belief that the requested order of contempt, and a demand
12 for the Diocese to purge its contempt by agreeing to the entry of my proposed order,
13 is appropriate to carry out the purpose and terms of the Plan Trust, and is consistent
14 with the legal and ethical duties of attorneys appearing in this court.
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20 DATE: January 21, 2010
21 PLACE: Seattle, Washington

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23 /s/Gloria Z. Nagler
24 GLORIA Z. NAGLER, WSBA # 13176

The Honorable Patricia Williams
Chapter 11

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WASHINGTON AT SPOKANE

In re:

THE CATHOLIC BISHOP OF
SPOKANE, a/k/a The Catholic Diocese of
Spokane,

Debtor.

Case No. 04-08822

**ORDER HOLDING DEBTOR AND
ITS COUNSEL IN CONTEMPT OF
COURT PURSUANT TO 11 U.S.C.A. §
105(a) AND 28 U.S.C.A. § 1651**

This matter having come before the Court on the Motion of the Plan Trustee for this Court's issuance of an Order Holding the Diocese in Contempt of the Court's Orders on Confirmation of the Plan, Regarding Payment of Future Claims, and Denying Stay of Proceedings Pending Appeal; the court having considered the motion, the Declaration of Gloria Z. Nagler in Support of the Motion, the Response of the Diocese and its counsel, and _____; it is hereby

ORDERED as follows:

1. The Diocese of Spokane and its counsel, Gregory Arpin and the law firm of Paine Hamblen, are in contempt of the Court's Orders on Confirmation of the Plan,

1 Regarding Payment of Future Claims, and Denying Stay of Proceedings Pending
2 Appeal. Such contempt may be purged by these parties in the manner described in
3 this order. The court makes the following findings of fact in support of the
4 determination of contempt:
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7 a. The Reorganized Debtor, the Diocese of Spokane (“Diocese”) brought
8 motions on October 21 and 22, 2009 to “enforce the Plan” and to seal the record
9 related to the motion. These motions sought to obtain the Bankruptcy Court’s
10 intervention in the TCR’s and Plan Trustee’s administration of the Plan Trust.
11 Specifically, the motions sought to have this court direct the TCR to reject certain
12 future tort claims filed by individuals against the Diocese for payment out of the Plan
13 Trust. The basis for the Diocese’s request for court intervention was an allegation that
14 the TCR, when considering future tort claims, incorrectly applied the law to the facts
15 presented by the future tort claimants in all but one of the future tort claims filed. The
16 Diocese sought to have the court direct the TCR to reject certain future tort claims,
17 based upon the Diocese’s assertions of the law applicable to such future tort claims.
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22 b. The Diocese also sought to enjoin the Plan Trustee from making payment
23 of funds from the Plan Trust to those future tort claimants that the Diocese believes,
24 under its application of the facts asserted by the Diocese and its interpretation of
25 applicable law, do not qualify for payment from the Plan Trust. The Diocese’s
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1 motions were rejected by this court.

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3 c. The Diocese then sought a stay from this court, pending appeal of the
4 case, to prevent the distribution of funds from the Plan Trust while the Diocese
5 pursued an appeal of the court's decision. The motion for the stay was denied, and the
6 Plan Trustee was directed by the court to commence payment of the future tort claims
7 allowed by the TCR.
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10 d. On January 13, 2010, Greg Arpin, counsel for the Diocese, sent an e-mail
11 to the Plan Trustee and counsel for the Chapter 11 Plan's notice parties, in which
12 Arpin, on behalf of Diocese, threatened to sue the Plan Trustee personally if the
13 Diocese's position was ultimately sustained on appeal, but after funds were released
14 from the Plan Trust.
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17 e. To the extent that the letter was intended to dissuade the Plan Trustee
18 from carrying out her duties pursuant to the terms of the Chapter 11 Plan, the Diocese
19 and its legal counsel have willfully disregarded the Court's refusal to stay distribution
20 from the Plan Trustee, and the direction given by the court to distribute the funds for
21 payment of future tort claims allowed by the TCR. There is no other interpretation of
22 Arpin's e-mail than a direct threat made by the Diocese, Arpin and his law firm that
23 they will engage the Plan Trustee in litigation, seeking a personal judgment against
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1 her, if the Plan Trustee obeys this court's order and makes payment as directed by the
2 court.

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4 f. The communication from the Diocese and Arpin was made for the
5 improper purpose of deterring the Plan Trustee from complying with a Court Order
6 to disburse funds to allowed claimants, and seeks to interfere with and prevent her
7 performance of her duties under the Plan Trust, the Plan, the Washington State Bar
8 Rules of Professional Conduct and federal law.
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11 g. The threat of litigation seeking personal liability of the Plan Trustee is
12 a threat that cannot be made in good faith under any rational application of law or
13 facts to these circumstances, and was made to accomplish that which the Diocese and
14 Arpin could not accomplish on the merits when the matters was presented to this
15 court. When this court denied the Diocese's motion seeking a stay pending appeal,
16 the sole legal and ethical course of action available to the Diocese and Arpin was to
17 seek further review of this court's order, not to threaten liability of the Plan Trustee
18 for doing her job.
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22 2. Sanctions are hereby ordered jointly and severally against the Diocese,
23 the law firm of Paine Hamblen, and attorney Greg Arpin individually and his marital
24 community in the sum of \$ _____, to be paid to the Plan Trust. The Diocese,
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1 the law firm of Paine Hamblen, and attorney Greg Arpin should further all costs and
2 attorney's fees associated with the filing and presentation of this motion incurred by
3 the Plan Trustee, in an amount to be determined by the court on application by the
4 Plan Trustee, without oral argument.
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7 3. To purge their contempt of the court order, the Diocese, the law firm of
8 Paine Hamblen, and attorney Greg Arpin shall execute a stipulation and file it with
9 this court, that (a) the Plan Trustee, in the absence of an order of a court of competent
10 jurisdiction staying enforcement of this court's current order on appeal by the
11 Diocese, may pay such claims as ordered by the court; (b) that payment of such claims
12 by the Plan Trustee shall not be the subject of any action by the Diocese or its agents
13 brought against the Plan Trustee seeking repayment of any sum by the Plan Trustee
14 distributed during the pendency of the appeal, if the Diocese obtains a reversal of this
15 court's order; and (c) the Diocese, the law firm of Paine Hamblen, and attorney Greg
16 Arpin acknowledge that the Plan Trustee and TCR are entitled to immunity from any
17 claims arising from the performance of their duties undertaken to carry out the Plan
18 and Plan Trust, and shall not be sued by the Diocese or its agents, absent the Plan
19 Trustee's or TCR's disobedience with an order of this court.
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1 If there is disagreement on the proper form of the stipulation needed to purge
2 this order of contempt, this court will determine the language adequate to accomplish
3 the task.
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5 Presented By:

6
7 DAVID S. KERRUISH, P.S.

8 By

9 David S. Kerruish, WSBA #11090

10 Attorney for Plan Trustee
11

12
13 **NAGLER & ASSOCIATES**

14
15 /s/Gloria Z. Nagler

16 GLORIA Z. NAGLER

17 WSBA # 13176

18 Plan Trustee
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