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St. Andrew's Nativity School

UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re:)
) Case No. 09-30938-elp11
SOCIETY OF JESUS, OREGON)
PROVINCE, an Oregon domestic)
nonprofit religious corporation,)
)
Debtor.)
_____)

**OBJECTION OF BELLARMINE PREPARATORY SCHOOL,
GONZAGA PREPARATORY SCHOOL, JESUIT HIGH SCHOOL AND SEATTLE
PREPARATORY SCHOOL TO CONFIRMATION OF SECOND MODIFIED JOINT
CHAPTER 11 PLAN OF REORGANIZATION**

- 1 COMES NOW BELLARMINE PREPARATORY SCHOOL (Tacoma, Washington);
- 2 (hereinafter "Bellarmine Prep."), GONZAGA PREPARATORY SCHOOL (Spokane,

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1 Washington) (hereinafter “Gonzaga Prep.”); JESUIT HIGH SCHOOL (Portland, Oregon)
2 (hereinafter “Jesuit High”); and SEATTLE PREPARATORY SCHOOL (Seattle, Washington)
3 (hereinafter “Seattle Prep.”) (hereinafter all four schools collectively referred to as “Jesuit High
4 Schools”) and object to confirmation of the proposed Second Modified Joint Plan of
5 Reorganization (Dated June 30, 2011) (Doc. 1244-1), insofar as the Plan proposes to assign and
6 transfer claims against the Jesuit High Schools, the Plan does not comply with 11 U.S.C. §
7 1129(a)(1)(2)(3) and (16), and the settlement with Seattle University does not comply with
8 Bankruptcy Rule 9019.

9 Two Jesuit High Schools are defendants in adversary cases brought by the Committee,
10 asserting claims under Chapter 5 of the Bankruptcy Code, and those specific schools, depending
11 on the outcome of said cases, may have claims under Class 7 of the proposed Plan, as 502(h)
12 claims.

13 With regard to the timeliness of this objection, the Jesuit High Schools were prepared to
14 file the original draft of this objection timely; that is, before 4 p.m. PDT, on June 30, 2011. The
15 Jesuit High Schools were advised of the terms of the Seattle University settlement, and requested
16 and obtained the consent of Debtor’s counsel and the consent of Committee’s counsel to a one-
17 day extension to file an objection to confirmation. The Jesuit High Schools believe that the
18 Seattle University settlement, which is the primary substantive area of change, directly affects
19 the Jesuit High Schools, and raises additional substantive grounds for objection to confirmation
20 insofar as the provisions involving the Jesuit High Schools are concerned.

21 The objection of the Jesuit High Schools relates in particular to the following provisions
22 of the Plan: Section 1.145, at page 25 (definition of “Third Party Derivate Claims”); Section 6.1,

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1 at page 53 (“Establishment of Trust”), and in particular Section 6.7(e), as well as the “Society of
2 Jesus, Oregon Province Trust Agreement for Qualified Settlement Fund” paragraphs 2.1.7 and
3 2.1.8 (Doc. 1244-2, Exhibit 1.147, page 2) that would become effective should the Plan become
4 effective. In particular, the Jesuit High Schools assert that as to this particular proposed
5 “transfer” or assignment, confirmation of the Plan would not comply with §§ (1), (2), (3), and
6 (16) of § (a) of 11 U.S.C. § 1129. In addition, while the Jesuit High Schools support the relief
7 granted to Seattle University under the Second Modified Joint Plan of Reorganization, as
8 modified on June 30, 2011, the Jesuit High Schools believe that the terms of the releases and
9 related provisions require a Bankruptcy Rule 9019 settlement process, with notice and hearing.

10 In the Disclosure Statement Regarding First Joint Plan of Reorganization (Doc. 1187-1),
11 there is discussion concerning the “claims” being transferred, described as follows, beginning on
12 page 22, at line 23 of said Disclosure Statement:

13 *“The Debtor and the apostolates each assert that they are separate civil entities and their*
14 *assets are not part of the Bankruptcy Estate. That dispute has not been settled through the Plan,*
15 *and nothing in the Plan will serve to release the following Persons or Entities from liability for*
16 *any of the Claims: (i) a Person or Persons having personally committed an act or acts of Abuse*
17 *resulting in a Claim against the Debtor or a Participating Party, (ii) the Society of Jesus; (iii)*
18 *the Father General of the Society of Jesus and his predecessors, (iv) the Society of Jesus General*
19 *Curia; (v) a successor or predecessor of the Debtor to the extent of such successor’s or*
20 *predecessor’s independent liability for an act or acts of Abuse; (vi) Gonzaga University; (vii)*
21 *Seattle University; and (viii) the Jesuit High Schools.*

22
23 *“The Committee contends that the Debtor has Third Party Derivative claims against,*
24 *inter alia: (i) the Society of Jesus; (ii) the Father General of the Society of Jesus and his*
25 *predecessors, (iii) the Society of Jesus General Curia; (iv) Gonzaga University; (v) Seattle*
26 *University, and/or (vi) the Jesuit High Schools. Under the Plan, Third Party Derivate Claims*
27 *means Claims against any Person or Entity for disregard of the corporate form, piercing the*
28 *corporate veil, or alter ego, that would subject such Person or Entity to liability for Abuse*
29 *Claims against the Debtor. Under the Plan, these claims are assigned to the Trust. The Trustee*
30 *will determine whether the Trust should prosecute such claims, the Trustee will do so based on*
31 *the exercise of his business judgment that such litigation would benefit the Trust.”*

32

1 The Disclosure Statement, therefore, leaves open the possibility that claims might be
2 made post-Effective Date, where there no longer exists an estate; claims that assets and property
3 of the Jesuit High Schools could be determined to be property of the (no longer existing)
4 bankruptcy estate.

5 The Plan is significantly more vague, and makes reference only to “Third Party
6 Derivative Claims,” defined as “*means Claims against any Person or Entity for disregard of the*
7 *corporate form, piercing the corporate veil, or alter ego, that would subject such Person or*
8 *Entity to liability for Abuse Claims against the Debtor.*”

9 Other than the above-referenced descriptive paragraph in the Disclosure Statement,
10 nowhere in the Disclosure Statement or Plan are these purported claims against the Jesuit High
11 Schools defined with any particularity as to whether they exist under Bankruptcy Law, or under
12 the laws of the states of Oregon or Washington; there is no indication as to what value is being
13 placed, if any, on such claims, or what consideration is being made or credited for the value of
14 such claims; in what jurisdiction such claims would be brought; and when such claims would be
15 brought.

16 All of the Jesuit High Schools carry policies of insurance that are effective in the event an
17 Abuse Claimant in this case were to bring a case against any of said high schools, to the extent
18 such claim is allowed by state law. Such claims by individual claimants against the Jesuit High
19 Schools could have been brought prior to this pending bankruptcy proceeding, or at any time
20 subsequent, and in all such cases, the Jesuit High Schools have insurance coverage to provide for
21 defense and payment of such claims.

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1 The language in the Plan appears to be deliberately vague, but could have this result: the
2 Trustee of the Trust having received such assignment, could then bring a claim asserting liability
3 for abuse claims based upon state law theories of alter ego, corporate form, or “piercing the
4 corporate veil.” Such claims could subject the Jesuit High Schools to ruinous litigation for
5 which no insurance coverage exists, contrasted with the fact that there would be insurance
6 coverage for claims brought by individual abuse claimants who have a colorable claim.

7 Confirmation of the Plan in its current state would give the Trust and the Trustee standing
8 to assert legal positions, which if they had any merit, could have and should have been brought
9 forth during the bankruptcy proceeding. For example, the concept that any of the Jesuit High
10 Schools (or Universities) could be considered “property of the estate” under § 541 would at least
11 be subject to litigation before this Court as to whether under § 541, or under the provisions of
12 § 544, as a property interest of the Jesuit High Schools, in fact, belong to the Debtor-in-
13 Possession or such asset could be recovered under Chapter 5.

14 The Chapter 5 claims have all been brought, in the normal context of seeking monies that
15 were paid by the Debtor to two of the Jesuit High Schools, and those cases will proceed in the
16 normal course. Similar claims, of course, were brought and litigated before this Court and other
17 courts in a series of Diocese cases to make the ultimate determination as to whether, for example,
18 parishes or endowments were or were not property of the Bankruptcy Estate.

19 The proposed Plan creates a well-funded Trust to investigate and perhaps pursue claims
20 that no one has identified with any degree of certainty whatsoever. Unlike the proposed sales of
21 real property assets, directly controlled by the Debtor or its affiliates, where the value is
22 reasonably known or estimated, or the extensively-detailed sale and buy-back of insurance

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1 policies and negotiations of releases and exculpations, where again, dollar amounts and
2 exposures are dealt with precisely, this “asset” of the Estate being transferred was never
3 scheduled, and was never the subject of any contested matters, even on a preliminary basis, in
4 the case.

5 In addition, even though the determination of § 541 property is within the sole
6 jurisdiction of this Court, the Trustee may apparently pursue each individual school for such
7 claims, should the Trustee elect to do so, in other jurisdictions.

8 Finally, the Second Modified Joint Plan of Reorganization removes Seattle University
9 from the “target list” on which the Jesuit High Schools and Gonzaga University still remain.
10 Further, § 11.10 “Release of Claims Against Seattle University,” provides a broad release of
11 Seattle University, with no explanation why one of the six educational institutions is receiving
12 such release.

13 Therefore, the Jesuit High Schools object to confirmation on the following grounds:

14 1. The Plan does not meet the requirements of 11 U.S.C. § 1129(a)(1) and (2), in
15 that it is obvious that the claims being transferred are, at a minimum, claims that property or
16 assets of the Jesuit High Schools are § 541 property, and the determination of such property is
17 within the exclusive jurisdiction of this Court, and becomes “moot” when there is no longer an
18 estate.

19 2. As to the transfer of claims to the Trust as proposed in the Plan, the Plan does not
20 meet the good faith requirement under § 1129(a)(3) because (a) such claims, if they exist should
21 be valued and at least identified as disputed § 541 property; (b) the nebulous and uncertain
22 description of the claims, which theoretically or arguably could subject the Jesuit High Schools

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1 to a theory that they are jointly and severely liable for abuse claims; and (c) the lack of any
2 information as to the legal basis for such claims, or why such claims confer any benefit to the
3 Estate or to the creditors of the Estate.

4 3. Under 11 U.S.C. § 1129(a)(16), the provisions of the Plan involving the transfer
5 of claims against the Jesuit High Schools do not comply with the requirement that all transfers of
6 property under the Plan by the Debtor be in accordance with the applicable provisions of non-
7 bankruptcy law because since there is no meaningful description of the basis of such claims, it is
8 impossible to determine whether the transfer of such claims would violate the non-bankruptcy
9 law that is applicable to the transfers of property by a non-moneyed corporation, particularly if it
10 is asserted that the assets of entities, such as the Jesuit High Schools, are or were property of the
11 Estate to begin with.

12 4. The relief granted to Seattle University in the Second Modified Joint Plan of
13 Reorganization, which the Jesuit High Schools believes in all likelihood is appropriate, is
14 nonetheless clearly the result of a settlement between the proponents of the Plan and Seattle
15 University. Such a settlement, the Jesuit High Schools argue, must be reviewed and approved in
16 the context of Bankruptcy Rule 9019 before it could have binding effect as a provision of the
17 Plan.

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1 WHEREFORE, the Jesuit High Schools request that their objection to the confirmation of
2 the Plan, insofar as the Plan seeks to transfer or otherwise deal with claims against the Jesuit
3 High Schools, be sustained.

Respectfully submitted this 1st day of July, 2011.

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