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17 UNITED STATES BANKRUPTCY COURT
18 FOR THE DISTRICT OF OREGON

19 In re:
20 Society of Jesus, Oregon Province, an Oregon
21 domestic nonprofit religious corporation,
22 Debtor

Case No.: 09-30938-elp11

Chapter 11

**REPLY OF OFFICIAL COMMITTEE
OF UNSECURED CREDITORS TO
OBJECTION OF BELLARMINO
PREPARATORY SCHOOL,
GONZAGA PREPARATORY
SCHOOL, JESUIT HIGH SCHOOL
AND SEATTLE PREPARATORY
SCHOOL TO CONFIRMATION OF
SECOND MODIFIED JOINT
CHAPTER 11 PLAN OF
REORGANIZATION**

23 The Official Committee of Unsecured Creditors of the Society of Jesus, Oregon Province
24 (the "Committee") hereby replies to the "Objection of Bellarmine Preparatory School, Gonzaga
25 Preparatory School, Jesuit High School and Seattle Preparatory School to Confirmation of Second
26 Modified Joint Chapter 11 Plan of Reorganization" (the "Objection"). The Objection, the sole
27 objection to confirmation of a consensual plan benefitting over 530 survivors of childhood abuse,
28 should be overruled and the Plan should be confirmed as amended. The Objection should be

1 overruled: (a) because Jesuit High Schools have no standing to raise issues that pertain to assets of a
2 trust established solely for the benefit of abuse survivors and (b) the Court approved the disclosure
3 statement on notice to Jesuit High Schools without objection as to the adequacy of disclosure
4 regarding the claims to be transferred to the Trust, (c) the Debtor has the right to transfer its state law
5 rights to the Trust through the Plan and (d) the plan amendment releasing Seattle University meets
6 the standards for a settlement under Bankruptcy Code § 1123(b).

7 In essence, the Objection is nothing more than a plea that if Seattle University gets a release
8 then Jesuits High Schools should get a release too. The resolution of issues with Seattle University
9 was based on an assessment of the risks and benefits associated with an assignment of Third Party
10 Derivative Claims against Seattle University to the Trust. The risks and benefits associated with an
11 assignment of the Third Party Derivative Claims against Jesuit High Schools do not warrant the
12 same decision. Reading between the lines of the Objection, Jesuits High Schools really want two
13 things: (a) a deadline for asserting the Third Party Derivative Claims and (b) certainty as to the
14 jurisdiction where the Third Party Derivative Claims would be brought (Objection, p.4, line 14).
15 The Committee is willing to provide certainty as to a deadline for asserting the Third Party
16 Derivative Claims: it would agree to a deadline of nine (9) months from the Effective Date of the
17 Plan. The second issue, i.e. the venue for the litigation, is more problematic, given the constitutional
18 issues raised by the recent Supreme Court case Marshall v. Marshall, 547 U.S. 293 (2011). While
19 the Committee sees the benefits of consolidating the Third Party Derivative Claims against Jesuit
20 High Schools in one forum, it cannot risk the viability of those claims by agreeing to a venue that
21 may not have constitutional jurisdiction.

22 Jesuit High Schools do not have standing to raise issues pertaining to the Trust, including the
23 transfer of claims against Jesuit High Schools and a release of claims against Seattle University.
24 Jesuit High Schools (only two of the four may have contingent creditor status) did not reject the Plan
25 and have not objected to their treatment as Class 7 general unsecured creditors. The Plan provides
26 for a fixed sum of money (\$500,000) payable to general unsecured creditors. The retention of
27 claims against Seattle University does not have one iota of impact on Jesuit High Schools' recovery
28 on the contingent claims under Class 7. Additionally, they are not beneficiaries of the Trust so the

1 release of claims against Seattle University does not have one iota of impact on Jesuit High Schools
2 recovery on the contingent claims. Jesuit High Schools really are asking the Court, as potential
3 defendants in the Third Party Derivative Claims, to pre-judge the claims and protect them from
4 litigation. Jesuit High Schools elected not to become a Participating Party. Now, they are asking the
5 Court to give them a free pass. Ultimately, the Trustee under the Trust will make the decision as to
6 the cost-benefit of pursuing the litigation as Paragraph 6.1.7 of the Trust gives the Trustee the sole
7 discretion to initiate litigation in any forum.

8 Jesuit High Schools complain that the Plan allows for the assignment of litigation that
9 could/should have been brought earlier in the case, was not adequately described in the Disclosure
10 Statement and could have a ruinous impact on them. First and foremost, the Jesuit High Schools did
11 not object to the Disclosure Statement. Seattle University objected on the grounds now being
12 asserted and Jesuit High Schools did not join that objection (Docket No. 1173). The Court approved
13 the Disclosure Statement without modifying provisions regarding the description of the Third Party
14 Derivative Claims. Jesuit High Schools did not object to the description of the claims when they had
15 the chance to do so. Now, it is too late. Second, they try to pigeon-hole the Third Party Derivative
16 Claims as sec. 541-type litigation and then seem to argue that the claims would be untimely if
17 brought after the Effective Date. The claims that are being assigned are not dependent on the
18 existence of a bankruptcy case and are not related to any specific Bankruptcy Code provision, much
19 less Section 541. If there are issues relating to the timeliness of the claims, the Jesuit High schools
20 can present those arguments to the Trustee in their case for his exercising his discretion NOT to sue
21 or to a court of constitutional jurisdiction; this Court should not prejudge the matter. Finally, the
22 Jesuit High Schools plead that assignments of Third Party Derivative Claims could be ruinous
23 because it would not be subject to insurance. Of course, Jesuit High Schools undertook that risk by
24 not pursuing Participating Party status. See In re Pen Holdings, Inc., 316 B.R. 4985 (Bankr. M.D.
25 Tenn. 2004) (Section 1123 (b)(3) is not designed to protect defendants. It argues, on the other hand,
26 that a plaintiff with a direct abuse claim against one of them might have an insurable claim. Putting
27 aside that Jesuit High Schools cannot speak for their carriers as to coverage issues, they are mixing
28 apples and oranges. If Jesuit High Schools are the alter ego of the Debtor, that property benefits all

1 of the survivors because the Debtor’s property was subject to creditor claims. To the extent that
2 Jesuit High Schools are separate from the Debtor and liable for certain abuse, then only the
3 survivors of that abuse can recover from their assets and their insurance program.

4 Jesuit High Schools, in an attempt to get a “me too” release, attack the settlement with Seattle
5 University contending that the settlement should have been brought under Bankruptcy Rule 9019.
6 The Jesuit High Schools do not cite any authority that the settlement cannot be effectuated under
7 Bankruptcy Code § 1123(b)(3)(A). Notably, no class voted to reject the Plan, including the class
8 covering the contingent claims of two of the Jesuit High Schools. If the settlement were to be
9 evaluated under Bankruptcy Rule 9019, it would meet the requisite standards of A & C Properties,
10 784 F.2d 1377 (9th Cir. 1986)((a) The probability of success in the litigation; (b) the difficulties, if
11 any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and
12 the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the
13 creditors and a proper deference to their reasonable views in the premises).

14 The compromise of Seattle University involved a consideration of its potential objections to
15 the Plan and the strength of the Third Party Derivative Claims. The Committee, earlier in the case,
16 obtained discovery from Seattle University regarding its relationship with the Debtor and used that
17 discovery to evaluate the settlement. That discovery addressed the issues of corporate governance
18 and the degree of financial and operational separateness between the Debtor and Seattle University.
19 The Committee also considered Seattle University’s objection to the Disclosure Statement and
20 statements of counsel regarding Seattle University’s posture on Plan objections. Based on the all of
21 the foregoing and after consultation with the State Court Counsel, all of whom represent one or more
22 committee members, the settlement with Seattle University was endorsed for the following reasons:

23 (a) Probability of success in the litigation: The litigation against Seattle University faced
24 serious obstacles. The relationship between Seattle University and the Debtor has evolved over time
25 and, over time, the University has become more independent of the Debtor both financially,
26 academically and operationally. The Committee considered the risks associated with the fact that
27 the relationship has become more distant over time and whether the litigation could be based on a
28 relationship as it existed decades ago or as it exists today.

1 (b) Risks of Collection: Successful alter ego litigation against Seattle University did not
2 have a collection risk.

3 (c) Complexity of the litigation: When the Committee sought discovery of Seattle
4 University through a Rule 2004 examination, Seattle University demonstrated that any resulting
5 litigation would be hotly contested. The Committee believes that the Court recognized the nature of
6 such litigation when it ruled on the objections to the Rule 2004 examination request and reduced the
7 scope of the Committee's document production request. Seattle University is a complex institution
8 and litigation regarding its governance and structure would have been extremely complex from legal
9 and factual perspectives. The litigation would have taken years, including likely appeals, and the
10 delay and costs of such litigation would have been factored in to the recovery for needy survivors.

11 (d) Paramount interests of creditors: The interests of creditors and deference to their
12 views dictates the approval of the settlement. The Committee counsel consulted with State Court
13 Counsel, who collectively represent at least five hundred of the survivors with filed claims. The
14 State Court Counsel overwhelmingly endorsed the Seattle University settlement.

15 For all of the foregoing reasons, the Court should overrule the Objection and confirm the
16 Plan.

17 Dated: July 5, 2011

PACHULSKI STANG ZIEHL & JONES LLP

18
19 By /s/ James I Stang
James I. Stang (CA Bar No. 94435)
20 Pamela E. Singer (CA Bar No. 224758)
21 Attorneys for Official Committee of
22 Unsecured Creditors
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1 **CERTIFICATE OF SERVICE**

2 I, Diane H. Hinojosa, declare as follows:

3 I am employed in the County of Los Angeles, State of California. I am over the age of
4 eighteen years and am not a party to this action. My business address is 10100 Santa Monica
5 Boulevard, Suite 1100, Los Angeles, California.

6 I certify that on July 5, 2011, I served, **via email**, a full and correct copy of the foregoing
7 **REPLY OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO OBJECTION**
8 **OF BELLARMINE PREPARATORY SCHOOL, GONZAGA PREPARATORY SCHOOL,**
9 **JESUIT HIGH SCHOOL AND SEATTLE PREPARATORY SCHOOL TO**
10 **CONFIRMATION OF SECOND MODIFIED JOINT CHAPTER 11 PLAN OF**
11 **REORGANIZATION** on the parties of record, as follows:

12 John D. Albert – jalbert@albertandtweet.com

13 Ford Elsaesser – ford@ejame.com and cindy@ejame.com

14 I also certify that on July 5, 2011, I caused to be served the above-described document by
15 means of electronic transmission of the Notice of Electronic Filing through the Court's transmission
16 facilities, for parties and/or counsel who are registered ECF Users.

17 I swear under penalty of perjury that the foregoing is true and correct to the best of my
18 knowledge, information, and belief.

19 Executed on July 5, 2011, at Los Angeles, California.

20
21
22 /s/ Diane H. Hinojosa
DIANE H. HINOJOSA