UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re:	) Bankruptcy Case No.
	) 09-30938-elp11
SOCIETY OF JESUS, OREGON PROVINCE,	)
	) REPORT AND RECOMMENDATION ON
Debtor.	) DEBTOR'S MOTION TO TRANSFER
	) RELATED CASES

This matter came before the court on debtor Society of Jesus, Oregon Province's Motion to Transfer Related Cases. Debtor seeks to transfer to this district nine lawsuits that are currently pending in federal district courts in Washington, Idaho, and Alaska and that involve debtor as a defendant. The tort claimants' committee joins in debtor's motion. Certain co-defendants in those lawsuits have appeared and filed briefs opposing the transfer. The court has held hearings on the motion and reviewed the briefing. Based on the evidence presented and the argument made by counsel, the court makes the following report and recommendation to the district court.

BACKGROUND

Debtor filed a petition under chapter 11 of the Bankruptcy Code in

February 2009. At the time the petition was filed, actions were pending in state courts in which claimants alleged that they were sexually abused by persons employed by or associated with debtor. Most of the actions also included claims against non-debtor defendants for the same sexual abuse, alleging that debtor and the non-debtor defendants jointly employed, controlled, or supervised the alleged abuser.

Pursuant to 28 U.S.C. § 1452(a), debtor removed each of those actions from state court to the federal district court for the district in which the action was pending.[1] Four actions were removed to the District of Alaska, two to the Eastern District of Washington, two to the Western District of Washington, and one to the District of Idaho.[2] The

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[1] Gonzaga University argues that removal was improper because consent of all defendants is required for removal, and it did not consent. Although ordinarily consent of all defendants is required for removal of a civil action under 28 U.S.C. § 1441, see, e.g., Ely Valley Mines, Inc. v. Hartford Acc. and Indem. Co., 644 F.2d 1310, 1314 (9th Cir. 1981), these actions were removed under 28 U.S.C. § 1452(a), which applies specifically to claims or causes of action over which there is bankruptcy jurisdiction. Although the rule is not universally followed, the prevailing rule with regard to removal of actions related to bankruptcy cases is that the consent of all defendants is not required. See, e.g., In re National Century Financial Enterprises, Inc., Investment Litigation, 323 F.Supp.2d 861, 871-73 (S.D. Ohio 2004) (§ 1452(a) allows "[a] party" to remove a claim or causes of action; language differs from § 1441, which allows removal by "the defendant or the defendants").

[2] The cases are:

Alaska: 4:09-CV-00005 RRB
4:09-CV-00007 RRB
4:09-CV-00008 RRB
4:09-CV-00006 RRB
E.D.Wash. CV-08-0295-LRS
CV-09-0062-JLQ

(continued...)

nine actions involve the claims of more than 150 claimants. Relying on 28 U.S.C. § 157(b)(5), debtor now seeks to have all of those actions transferred to the District of Oregon, where its bankruptcy case is pending.

DISCUSSION

The issues raised by debtor's motion implicate bankruptcy jurisdiction and procedures for transferring proceedings that are unique to bankruptcy. Bankruptcy jurisdiction is governed by 28 U.S.C. § 1334. As relevant here, that statute provides that "the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b). Each district may, and the District of Oregon does, refer all bankruptcy cases and proceedings related to the bankruptcy cases to the bankruptcy judges for the district. 28 U.S.C. § 157(a); LR 2100.1. When bankruptcy cases are referred to bankruptcy judges, the bankruptcy judges may "hear and determine" bankruptcy cases, and all core proceedings arising in those cases. 28 U.S.C. § 157(b)(1). Core proceedings include claims determinations, but not liquidation of personal injury tort or wrongful death claims for distribution purposes. 28 U.S.C. § 157(b)(2)(B) and (O). A bankruptcy judge may also hear a non-core proceeding and enter a final order or judgment if the parties consent. Absent consent, the bankruptcy judge makes proposed findings

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[2](...continued)
W.D.Wash. C09-0262-RAJ
C09-0266-JLR
Idaho 3:09-CV-00082-LMB

and conclusions that are submitted to the district court for final order or judgment. However, trial of personal injury tort claims for distribution purposes "shall be" in the district court. 28 U.S.C. § 157(b)(5), (c)(1), (2).

The claims at issue here are personal injury tort claims. Therefore, they are subject to the specific jurisdictional statutes relating to personal injury tort claims.

The statutes provide for removal of claims or causes of action from state court when they are within the bankruptcy jurisdiction of the district court. 28 U.S.C. § 1452(a) provides:

> A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.

After removal, the district court may remand to state court. 28 U.S.C. § 1452(b).

Venue for trial of personal injury tort claims related to a bankruptcy case is governed by 28 U.S.C. § 157(b)(5), which provides:

> The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

This procedure, applicable only to personal injury tort or wrongful death claims, differs from the usual change of venue procedure set out in 28 U.S.C. § 1412, which allows a district court where a case or proceeding is pending to transfer a case or proceeding to another court.

There is no objection to the transfer of any of the proceedings currently pending in the district of Alaska, or in one of the two proceedings pending in the Eastern District of Washington.[3] Seattle University, Gonzaga University, the Diocese of Boise, and the "Remote Provinces"[4] object to the requested transfer of the actions involving them. Each of the objecting parties is a co-defendant with debtor in at least one of the proceedings that debtor seeks to transfer.

1. Which court decides whether to order transfer

Seattle University is a co-defendant in the two cases pending in the Western District of Washington. It argues that this court should defer any decision on the motion to transfer until the court in the Western District of Washington rules on Seattle University's motion for remand, which raises the question of whether there is federal jurisdiction over the claims against Seattle University. The Western District of Washington has now entered orders in both cases deferring ruling on

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[3] Those cases are:
L.A; L.B., et al. v. Society of Jesus, Case No. CV-08-0295-LRS (E.D. Wa.)
John Doe 1 and John Doe 2 v. The Society of Jesus, Case No. 4:09-CV-00005 RRB (D. Alaska)
John Doe 1 through 24 et al. v. The Society of Jesus, Case No. 4:09-CV-00007 RRB (D. Alaska)
James Doe 59 through 71, et al. v. The Society of Jesus, Case No. 4:09-CV-00008 RRB (D. Alaska)
Jane Doe 1 and 2 v. The Society of Jesus, Case No. 4:09-CV-00006 RRB (D. Alaska)

[4] The "Remote Provinces" are nine non-debtor Society of Jesus provinces from across the United States, which are named as defendants in the complaint filed by Doug Seely in Washington. The complaint refers to them generically as "Home Province(s)."

Seattle University's motion to remand pending this court's decision on the motion to transfer. Therefore, deference to the Western District of Washington is unnecessary.[5]

Seattle University also argues, relying on 28 U.S.C. § 1404(a), that the district court where the removed action is currently pending should decide the transfer motion. That statute relates to changes of venue generally. The motion to transfer in this case is based on 28 U.S.C. § 157(b)(5), which is specific to personal injury tort claims in bankruptcy cases. That statute says that the claim "shall be tried in the district court in the district in which the bankruptcy case is pending, or in the district court in which the claim arose, as determined by the district court in which the bankruptcy case is pending." 28 U.S.C. § 157(b)(5) (emphasis added). Because the bankruptcy case is pending in the District of Oregon, the district court for the District of Oregon is the proper court to decide the transfer motion.

Although the district court in this district has referred bankruptcy cases and related proceedings to the bankruptcy judges, see LR 2100.1, § 157(b)(5) says that the transfer determination is to be made by the district court. The local rules in this district provide that the bankruptcy judge shall hear motions for change of venue under 28 U.S.C. § 1412, see LR 2100.6, but do not specifically refer transfer motions involving personal injury tort claims to bankruptcy judges. Therefore, I will make a recommendation to the district court on the motion, leaving

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[5] The district court for the Eastern District of Washington has also deferred ruling on remand pending a decision in this district on the motion to transfer.

the final determination to that court.

2. Transfer of claims against debtor

Section 157(b)(5) provides that personal injury tort claims related to bankruptcy cases shall be tried in either the district in which the claim arose or in the district where the bankruptcy case is pending. No party objects to transfer of any of the claims against debtor to this district, where debtor's bankruptcy case is pending. Nor does any party argue that personal injury tort claims against a debtor in bankruptcy are outside the jurisdiction of this court. The claims are related to the bankruptcy case, as they make up the great bulk of the claims against the bankruptcy estate.

I conclude that the claims against debtor should be transferred to this district, at least for purposes of pre-trial proceedings and while debtor is developing its plan of reorganization, in light of the need for coordination of the liquidation of claims against debtor, of the possibility that claims may need to be estimated before debtor can confirm a plan of reorganization, of the likelihood that a global mediation will be needed to successfully complete this bankruptcy case, and of the need for debtor to preserve assets, which would be defeated by having to engage in pre-trial discovery and motion practice in various other districts. The claims can be more efficiently managed in one place, and that place is this district, where the bankruptcy case is pending. Depending on the course and status of the bankruptcy case, it may be appropriate at a later date to remand the claims to the state courts from which they were removed. But at this time they all need to

be handled in this district.

Therefore, all of the claims against debtor should be transferred to this district.

3. Transfer of claims against non-debtor defendants

The question then becomes what to do with the claims against non-debtor defendants, which are contained in the same complaints as the claims against debtor. The choices are either to sever the claims against non-debtor defendants and allow the district courts where the cases are now pending to decide any further issues, including remand, or to transfer the proceedings in their entirety to this district thus keeping the claims against debtor and non-debtor defendants together.

A. Subject matter jurisdiction

The non-debtor defendants who oppose transfer argue that transfer should be denied and the claims against them remanded to state court because the federal court lacks jurisdiction over these claims. The only possible jurisdictional basis is 28 U.S.C. § 1334(b), which gives the district court jurisdiction over claims "related to" a bankruptcy case. The opposing defendants argue that the non-debtor plaintiffs' claims against them are not related to debtor's bankruptcy case and are therefore outside the jurisdiction of the federal court.

A proceeding is "related to" a case under title 11 and thus is within the jurisdiction of the bankruptcy court if "the outcome of the proceeding could conceivably have any effect on the estate being administered in bankruptcy." In re Fietz, 852 F.2d 455, 457 (9th Cir. 1988) (quoting Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3d Cir. 1984)

(emphasis omitted)).

> [T]he proceeding need not necessarily be against the debtor or against the debtor's property. An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate.

Id. (quoting Pacor, 743 F.2d at 994). Although this grant of jurisdiction is not limitless, it is nonetheless a grant of some breadth. Celotex Corp. v. Edwards, 514 U.S. 300, 308 (1995). In adopting the Pacor definition of "related to" jurisdiction, the Ninth Circuit concluded that such a definition

> best represents Congress's intent to reduce substantially the time-consuming and expensive litigation regarding a bankruptcy court's jurisdiction over a particular proceeding. The Pacor definition promotes another congressionally-endorsed directive: the efficient and expeditious resolution of all matters connected to the bankruptcy estate.

Fietz, 852 F.2d at 457 (citation omitted). The court rejected "any limitation on this definition; to the extent that other circuits may limit jurisdiction where the Pacor decision would not, we stand by Pacor." Id.

There are four proceedings that involve the objecting parties. Because there are some differences between the cases and the state law that applies to those cases, I will discuss them separately.

(i) A.A. et al. v. Society of Jesus and Seattle University, C09-0262-RAJ (W.D. Wa.)

The complaint in this proceeding alleges that the plaintiffs were sexually abused by a priest who was under the joint supervision and

control of both Seattle University and debtor, and that both defendants had the authority to expel the alleged abuser from his position as a priest and a teacher. According to the complaint, individuals who were officials of Seattle University were at the same time officials of debtor. Therefore, the same officials are alleged to have been acting in a dual capacity as agents for both Seattle University and debtor. According to the complaint, debtor and Seattle University both knew of the accused's history as a sexual abuser of children and of his propensity for such abuse yet failed to take action to remove him from his position as priest and teacher, which led to the abuse of plaintiffs. Plaintiffs allege that both defendants were negligent in supervising and retaining the alleged abuser, and that the defendants engaged in a concerted plan to cover up and conceal the sexual abuse.

Plaintiffs originally alleged five causes of action: (1) negligence in hiring, supervising, and retaining the accused, in failing to warn of his abusive behavior, failing to intervene after learning of abuse, and failing to adopt policies and procedures to identify potential and actual sexual offenders and remove them from the priesthood; (2) negligent infliction of emotional distress; (3) violation of Washington's Sexual Exploitation of Children Act; (4) respondeat superior; and (5) fraudulent concealment by engaging in a plan to cover up and conceal sexual abuse of minors by priests.

Before this proceeding was removed to federal court, the state court granted Seattle University partial summary judgment, dismissing the claims for negligent infliction of emotional distress, respondeat

superior, and fraudulent concealment. That left, at the time of removal, the claims for negligence and violation of the Washington statute.

Seattle University argues that this court does not have jurisdiction over the claims against it, because the claims are not "related to" debtor's bankruptcy. It argues that the plaintiffs have not alleged joint and several liability, and there is no possibility under Washington law of contribution or indemnity claims among the defendants. Therefore, it argues, the outcome of the claims against Seattle University could not affect the debtor's bankruptcy estate.

I conclude that the claims are related to debtor's bankruptcy case, regardless of whether there is joint and several liability or the possibility of contribution or indemnity claims against debtor.

First, there is evidence that debtor and Seattle University may share insurance. Debtor provided copies of insurance policies, issued to Seattle University, that include as named insureds "all members of the Jesuit Community of Seattle University." Declaration of Andrew J. Lee in Support of Supplemental Briefing Regarding Debtor's Motion to Transfer, Exh. F. and G. Debtor argues that this policy could provide insurance for it, and if insurance is paid to defend Seattle University or to settle claims against it, less coverage (or none, if all coverage is exhausted) is available to pay the defense of or claims against debtor.

Seattle University argues that the inclusion of members of the Jesuit Community of Seattle University as insureds means that individual members are covered, not that coverage extends to debtor. It says that these policies are similar to corporate director and officer liability

policies, which are not property of the estate, and therefore have no effect on debtor's estate.

It is not clear what the language of the insurance policies means and whether it applies only to the individual community members or to debtor, whose members make up the community. Resolution of that question is a matter for another day. But there is an argument to be made that the insurance could apply to debtor. That creates a conceivable effect on the bankruptcy estate.

Second, the complaint alleges that, in essence, debtor and Seattle University functioned as a single employer of the accused abuser. The same individuals, whose acts are claimed to have been negligent in hiring, retaining, and supervising the accused, were allegedly acting in a dual capacity as officials for both Seattle University and debtor at the same time. The abuse that is alleged to have caused the plaintiffs' harm was that of a single priest, for whom the plaintiffs allege both co-defendants are liable due to their relationship to the actor.

The attempt to establish liability against both defendants will involve the same witnesses and evidence and application of the same law (including statutes of limitations). Because the individuals are alleged to have been acting as agents for both debtor and Seattle University at the same time, any evidence relating to what they knew and what they did about it as agents of Seattle University will necessarily be relevant to and affect the negligence claim against debtor based on those same individuals' knowledge and conduct in their capacity as agents of debtor.

This is a situation where there is more than simply the same

witnesses or the same causes of action.[6] Here, plaintiffs allege that the exact same conduct of the same individuals constituted negligence of both defendants because the individuals were acting in a dual capacity when they acted or failed to act. That is, the same conduct by the same actors is alleged to result in liability of Seattle University and of debtor for the actions of the accused. Unlike in other cases on which Seattle University relies, where there were separate actors allegedly causing a single harm, here there are individuals who were allegedly acting on behalf of two masters at the same time.

Washington is a proportionate liability state, in which the general rule is that two or more defendants who are found liable for a harm pay only their proportionate share of liability, as determined by the trier of fact. See RCW 4.22.070. There are, however, exceptions to that rule. For example, "[a] party shall be responsible for the fault of another person or for payment of the proportionate share of another party where both were acting in concert or when a person was acting as an agent or servant of the party." RCW 4.22.070(1)(a). At this point in the proceeding, I cannot say that this exception could not apply.

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[6] Seattle University argues that this case is like Fietz, in that there was one set of people and one set of facts, and the court concluded that there was no "related to" jurisdiction over the claim. This case is not like Fietz. The court concluded that there was no jurisdiction in Fietz because, by the time the debtor's wife filed her cross-claim against the defendant, the debtor's chapter 13 plan had been confirmed, so the defendant creditor's rights were governed by the confirmed plan and the litigation between the debtor's wife and the defendant could not affect the estate. The lack of jurisdiction was based on the effect of plan confirmation, not on the fact that the claim involved the same parties and the same underlying facts.

Even if the concerted action exception does not apply, and therefore there could be no joint and several liability, the outcome of litigation against Seattle University alone could conceivably have an effect on debtor's estate because of application of collateral estoppel. In Washington, collateral estoppel applies where there are:

> (1) identical issues; (2) a final judgment on the merits; (3) the party against whom the plea is asserted must have been a party to or in privity with a party to the prior adjudication; and (4) application of the doctrine must not work an injustice on the party against whom the doctrine is to be applied.

Southcenter Joint Venture v. Nat'l Democratic Policy Comm., 113 Wn.2d 413, 418 (1989) (quoting Shoemaker v. Bremerton, 109 Wash.2d 504, 507 (1987)).

The parties focus on whether a judgment against Seattle University could have an adverse impact on debtor's estate. However, under Fietz and Pacor, the question is whether the outcome of the litigation could conceivably have any effect on the estate, affecting debtor's rights or liabilities either positively or negatively. If Seattle University were to obtain a defense verdict, it appears that plaintiffs would likely be precluded from relitigating identical facts in their claims against debtor. If the basis for the defense verdict was a factual determination that the statute of limitations had run, or that the alleged abuse had never occurred, for example, debtor would be able to point to the defense verdict in the Seattle University litigation to preclude plaintiffs from relitigating those matters in the claims against debtors. That would have a positive impact on debtor's estate.

This is different from the contribution and indemnity cases in which

the courts have found no jurisdiction. In those cases, the potential liability found to be too remote to support jurisdiction was between the debtor and a third party. Here, it is potential liability of debtor directly to the claimant, which is a claim that could be affected by the outcome of the litigation against Seattle University.[7]

"Related to" jurisdiction is not limitless, but it is broad. It is at least conceivable that the litigation against Seattle University would have an effect on debtor's estate, and that proceedings against Seattle University could affect debtor's liabilities, options, or freedom of action, either positively or negatively, and have an impact on the handling and administration of the bankruptcy estate. I conclude that these claims are within the jurisdiction of the court under 28 U.S.C. § 1334(b).

(ii) J.E. v. Society of Jesus and Seattle University, C09-0266-JLR (W.D. Wa.)

The allegations in the J.E. proceeding are for all relevant purposes identical to those in the A.A. case. Plaintiffs in this action have sued both debtor and Seattle University, just as the plaintiffs did in the A.A. case. The only real difference is that none of the claims in this

[7] Debtor argues that if the claims against debtor and those against Seattle University were severed so that the claims against Seattle University proceeded without debtor, there is the very real possibility that Seattle University would point to debtor's empty chair and argue to the trier of fact that primary responsibility for any harm should rest with debtor, which would not be present to defend itself. It is speculative whether Seattle University would make that argument and what impact that argument would have. Jurisdiction cannot be predicated on such speculation.

case have been dismissed at this point. For the same reasons as I set out above with regard to the A.A. case, I conclude that there is jurisdiction over these claims against Seattle University under 28 U.S.C. § 1334(b).

(iii) Seely v. "John Doe," et al., CV-09-0062-JLQ (E.D. Wa.)

Plaintiff in this case sued debtor, Gonzaga University, and the Remote Provinces alleging that he was abused by a Jesuit priest, whose name is currently unknown, while that priest was working at Gonzaga University as a priest and counselor. The complaint alleges that debtor was conducting business at Gonzaga University and that debtor had "ultimate authority and approval control over Jesuit priests working within the geographic boundaries of the Oregon Province." Complaint at ¶ 1.3. Plaintiff alleges that "defendant" Remote Provinces "was at all times relevant hereto one of ten formal provinces of the Society of Jesus in the United States." Id. at ¶ 1.4. Although the complaint is not entirely clear, I understand plaintiff to allege that the Jesuit priest who is accused of the abuse was under the supervision and control of one of the ten provinces -- either debtor Oregon Province or one of the other Remote Provinces. The complaint alleges that the responsible province and Gonzaga University both had responsibility for the accused priest, although there is no allegation that the two parties acted in concert.

The complaint alleges that the alleged abuser was an employee or agent of the "defendants," which I understand to mean Gonzaga University and one of the Society of Jesus provinces, and that the defendants knew of the risk that the alleged abuser would sexually abuse young boys yet

permitted him to continue in active ministry. The plaintiff alleges that defendants negligently retained and supervised the alleged abuser, and that defendants are vicariously liable for the actions of the alleged abuser because he was acting as an agent for the defendants.

Unlike the complaints against Seattle University, this complaint does not allege that individuals were acting in a dual capacity as officials for debtor and either Gonzaga University or the Remote Provinces. Nor is there any argument that debtor and these co-defendants share insurance. Therefore, the analysis is different for this case than for the A.A. and J.E. cases.

I agree with defendants that Washington law "rejects vicarious liability for intentional or criminal conduct outside the scope of employment." Niece v. Elmview Group Home, 131 Wn.2d 39, 56 (1997). Therefore related to jurisdiction must exist, if at all, based on the other claims against the defendants.

I conclude that the claims against the non-debtor defendants in this case are related to debtor's bankruptcy case. Collateral estoppel could apply to the plaintiff in his claim against debtor, which conceivably could have a positive effect on debtor's estate, if there were a defense verdict based on statute of limitations grounds or on a finding that the alleged abuse never occurred. Further, because only one of the provinces is alleged to be liable, if the fact finder determined that one of the Remote Provinces was responsible, debtor could preclude plaintiff from trying to prove that debtor was responsible for the accused priest's actions. Therefore, the claims against Gonzaga University and the Remote

Provinces are within the jurisdiction of the court under 28 U.S.C. 1334(b).

(iv) Sonneck et al. v. Society of Jesus and Roman Catholic Diocese of Boise, 3:09-CV-00082-LMB (D. Idaho)

The complaint in this case alleges that each of the three plaintiffs was sexually abused by the same priest. Plaintiffs allege that the priest was acting as an agent of and was under the direction and control of both debtor and the Boise Diocese. The complaint alleges that the co-defendants and debtor were in a joint venture. Due to the agency relationship, the plaintiffs allege that debtor and the Boise Diocese are jointly and severally liable for the harm caused by the alleged actions of the accused priest.

Under Idaho law, joint and several liability is limited. In most instances, the trier of fact determines the percentage of negligence or comparative responsibility of each defendant, and judgment is entered against each party for that party's proportionate share of the total damages. Idaho Code § 6-803(3). However, there is joint and several liability where two parties were "acting in concert." Idaho Code § 6-803(5). "Acting in concert" is defined as "pursuing a common plan or design which results in the commission of an intentional or reckless tortious act." Id.

It is not clear whether the Idaho formulation for concerted action might apply under the allegations of this complaint. But the complaint alleges that defendants willfully permitted the plaintiffs to suffer physical pain or mental suffering while in their care and custody and

willfully permitted the plaintiffs to be placed in a situation where their health was endangered. There is at least an argument that those allegations, if proved, could give rise to joint and several liability, thereby conceivably affecting the debtor's estate.

The Boise Diocese argues that it is not seeking indemnification from debtor and has not filed any cross-claims against debtor. However, the possibility of joint and several liability, with the resulting need, if both are found liable, to determine which defendant should pay which portion of the damages, relates directly to this bankruptcy case and to the amount of claims debtor might be required to pay.

Further, collateral estoppel could preclude the plaintiffs from relitigating matters against debtor, if a judgment against them were to be entered against the Diocese, depending on the basis for the judgment. See Maroun v. Wyreless Systems, Inc., 141 Idaho 604, 617 (2005) (setting out elements of collateral estoppel under Idaho law). Therefore, as I explained above with regard to the Washington cases, the claims against debtor in this case could conceivably affect debtor's liability in a positive way. The claims against the Diocese are related to this bankruptcy case and within the jurisdiction of the court under § 1334(b).

B. Transfer

The claims against debtor and the non-debtor defendants in these cases are intertwined. They involve the same plaintiffs and allege the same conduct by the accused priests that caused the harm for which debtor is claimed to be responsible either along with the co-defendants or alternatively to the co-defendants. The accused in each case is alleged

to have been acting as an agent under the supervision and control of debtor or the Remote Provinces and the other co-defendants. Coordination of discovery, pre-trial proceedings, and efficiency of trial weigh in favor of transferring the cases in their entirety to this district.

Severing the claims against debtor from the claims against the non-debtor defendants would result in inefficiency and possible inconsistent results. I recognize that requiring the non-debtor defendants to participate in pre-trial proceedings and possibly trial of these actions in Oregon rather than in their home districts will cause some inconvenience. However, the ability to coordinate the efforts involved in moving the intertwined claims toward resolution, thereby furthering the goal of reorganization of this bankruptcy estate, outweighs the inconvenience to the non-debtor defendants. There may be a time when remand of an entire proceeding is appropriate. That time is not now.

4. Personal jurisdiction

Gonzaga University and the Remote Provinces argue that this court does not have personal jurisdiction over them, based on their lack of connection with debtor's bankruptcy case and because they do not have the requisite minimum contacts with the state of Oregon. Although they made additional jurisdictional arguments to the court in the Eastern District of Washington, the arguments they raise here relate to personal jurisdiction upon transfer to Oregon.

This transfer motion is not the vehicle for obtaining a determination of personal jurisdiction. If these defendants want to argue that they are not properly before the court, they may file their

motions to dismiss. If, however, they challenge jurisdiction on the basis that the transfer of the case to Oregon destroys personal jurisdiction, they will need to cite authority for the proposition that a transfer of a case under 28 U.S.C. § 157(b)(5) can destroy personal jurisdiction that existed before the transfer. I am not aware of any such authority.

5. Request to remand

Some of the non-debtor defendants ask that I remand the claims against them to the state courts from which they came. As I have explained, all of these cases need to stay together in one court during the pre-trial process. I will defer ruling on any request for remand, until such time as debtor's reorganization process has had a reasonable chance to proceed to confirmation or the claims are ready for trial. At that point, the parties can renew their motions to remand, and I will consider whether to recommend that the claims be tried in Oregon or remanded to the state courts from which they were removed.

CONCLUSION

This court has jurisdiction over the claims against the non-debtor defendants. Severance of those claims from the claims against debtor would be inefficient and detrimental to debtor. I recommend that the

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removed proceedings be transferred to the District of Oregon. I defer consideration of the requests for remand.

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ELIZABETH L. PERRIS
Bankruptcy Judge

NOTE: The procedure for filing objections to this Report and Recommendation is found in Fed. R. Bankr. P. 9033.

cc: Thomas V. Dulcich
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