

Bankruptcy Update 2/22/21

Negotiations continue with the Unsecured Creditors Committee (UCC) and its lawyers.

The negotiations toward a final settlement amount are much more complex than people realize. To outline a bit: the primary contributing entities to the settlement are the Archdiocese (ASF), the religious orders who have claims against some of their members, and the insurance contribution.

The ASF portion includes what is contributed by parishes and associated entities. All entities contributing to the settlement will receive a channeling injunction for protection against future lawsuits for events prior to December 2018; otherwise, those entities may be sued independently of ASF, which would likely be FAR more costly.

So, the (very) general order of events for settling the bankruptcy is:

1. ASF and UCC agree on the ASF/associates contribution. Little else goes forward until this is done.
2. Then ASF and UCC work with the Religious Orders which also have claims against them to determine their contribution.
3. Finally, ASF and UCC negotiate with ASF insurance companies for their contribution.

Unfortunately, should the UCC be unsatisfied with the final overall negotiated amount, then the bankruptcy will likely fail. Should that occur, all above entities may be subject to those much more costly individual civil lawsuits.

ASF began the bankruptcy in December 2018, so the case has gone on for over two years now—much longer than had been estimated. Unfortunately, we're still on step (1) above, though there is hope that we are near agreement on the ASF portion.

Once that ASF portion is agreed upon, we have to begin to raise the money that we don't have readily available—which will be the vast majority. Contrary to common misconception, ASF pockets are not deep. This raising of funds entails selling virtually all Archdiocese-corporation property, as well as the parishes likely having to sell all non-mission-essential properties for their channeling injunction contributions. ASF will also have to seek money from separate but associated entities/corporations such as the Cemetery Corporation, Catholic Foundation, etc., which can themselves receive that very important channeling injunction.

One entity that parishes worry about is the Deposit and Loan (D&L) fund with the Archdiocese, in which the parishes have much of their savings. The D&L is a trust with the parishes as the beneficiaries, and the parish funds there are kept in trust, so they are not (so far) considered part of the ASF corporation. About half of that fund is loaned out at any one time for parish projects such as roof repairs, building renovations, etc., and the majority of funds remaining in the account are "designated", meaning contributed with a specific purpose such as a capital campaign for a new building. Designated contributions are protected by New Mexico law, so we feel that portion is pretty safe. The general/undesignated funds may be used by the parishes for their individual contribution to the channeling injunction. Right now the D&L is considered separate from ASF, but the UCC may challenge that, just as they may challenge that the parishes themselves are separate entities/corporations from ASF.

There is sometimes controversial news articles about why the parishes were incorporated—whether they were done so to "protect" them from lawsuit settlements. But what would have been simply assumed out-of-hand in the past—that parishes are financially independent entities from their parent diocese—has to, in our day, be specified legally. By analogy, one wouldn't expect a son/daughter to be liable for the crimes of his/her parent or sibling, and so why would a parish in Clovis be liable for something the Archdiocese did, or for what a priest in Taos did? In fact, why would the parish be liable for the crimes of its priest, deacon or whatever? It would seem only just that the actual perpetrator pay for his own crimes or misdeeds. But, our legal system has developed in such a way that the entire entity is considered liable, and the entire entity suffers even for the crime of one. How many innocent workers and their families, for instance, are devastated in corporate bankruptcies due to actions of a criminal CEO? Yet...that is our legal system, and we have little recourse. In the ASF case, there are no persons now in ministry who have claims of child abuse against them, and yet many want to hold the whole of the Archdiocese—all 250,000-ish of us—liable for those crimes. Certainly we have much sympathy for victims, but one still wonders about the just-ness of holding the many accountable for the actions of a relative few.

So, in the end, nothing is absolutely safe from being included in settlements, whether it be part of the bankruptcy or in individual lawsuits against parishes or other entities. However, the successful outcome of the bankruptcy is very likely the best (by far) outcome for all parties involved—ASF, parishes, religious orders,

etc., and even the claimants. Why the claimants? Because there is only so many assets to go around—a “melting ice cube”—and if the process digresses to individual lawsuits, not only are hundreds of thousand, if not millions, of dollars going to attorneys, but NO assets are safe from possible liquidation—churches, halls, santuarios, cathedrals, or anything else. And, for the 400 or so claimants, some of the earliest individual lawsuits may get huge amounts, but once the assets are gone, there is very little left for the rest.

Finally, though the whole process is exasperating, there is no “opting out” for any of the entities mentioned; whether in the bankruptcy or in individual lawsuits, each parish and entity will likely have to deal with this. Thus, the success of the bankruptcy is the least painful outcome for everyone.

SPX

Many are rightfully concerned about the fate of St. Pius X High School. Since it is an ASF property, it is unavoidably included in ASF assets, and while WE think it is an essential entity for our mission, neither the UCC nor the bankruptcy court have come to that conclusion; therefore, its value is going to have to be included in the possible assets to be “monetized” for the settlement.

That being said, we are exploring a number of ways to monetize the property so that it may be continued to serve our young students far into the future. This includes selling the adjacent properties, seeking loans from various entities, contributions, etc. Unfortunately, the estimated value of the property used by SPX is around \$10 million, so coming up with that kind of money is difficult, and it's normal for creditors in bankruptcies to demand that any properties be openly marketed in order to determine its true market value. So...even if we raised \$10 million, we still might not be the “highest bidder”, and the bankruptcy court and the UCC have to approve any final sale.

Should the worst occur and SPX has to be sold, we fully intend to seek another location for this very important (WE would say “essential”) part of our mission.

ASF Properties

Many questions what ASF is contributing to the bankruptcy; however, basically every piece of property ASF corporation-proper owns is “on the block”. Already sold is the Archbishop’s house—he now lives in two rooms at an ABQ parish facility. Near sale closing is the old St. Francis school near the cathedral, with some adjacent parking as well. Also for sale is the IHM retreat center in Santa Fe, and we’re showing properties adjacent to SPX—the Madonna Retreat center, Lourdes Hall and St. Clare Hall. A large assortment of small and very isolated properties will likely go up for auction. And, if SPX has to be sold, the chancery itself will very likely have to be included and ASF offices moved elsewhere—likely some leased facility. Basically, that’s all the assets of the ASF—proper corporation.

Conclusion

Hopefully all of the above will help you understand the process a little better, as well as the complexity of the situation. We’ll keep you updated as best—and as legally—as we can. Sadly, much of the negotiation is confidential. For my own part, I wish it were ALL open, because secrecy creates doubts about good faith. In a situation which affects literally hundreds of thousands of persons in our Archdiocese, and will have repercussions far away and long after, openness in these negotiations would open to public scrutiny demands by any party, and likely be welcomed especially by all our people.