

Published on *National Catholic Reporter* (<https://www.ncronline.org>)

October 11, 2012 at 10:00am

Washington diocese sues former lawyers for malpractice

by Tom Gallagher

NCR Today

In July, I wrote a story about the important role mediation can play in resolving priest sexual abuse claims, evidenced by the work done by Bishop Blase Cupich immediately after he arrived in the Spokane, Wash.. diocese. Although the diocese entered bankruptcy in 2004 and paid almost \$50 million in settlements, the outcome of the bankruptcy was that no provision was made for the resolution of future priest sexual abuse claims.

The opening paragraph of my story captured the big picture:

The Spokane, Wash., diocese recently announced that a new settlement had been reached with respect to current, pending claims of sexual abuse. The settlement culminates almost a decade of complex litigation and a 2004 bankruptcy filing that cost the diocese \$48 million.

The failure to resolve the matter of future litigation claims during the 2004 bankruptcy created real foreclosure peril for the diocese and all of its parishes and schools. Moreover, the law firm that represented the diocese in the bankruptcy case, Paine Hamblen Coffin Brooke and Miller of Spokane, also represented Bishop William Skylstad in as an individual, not as the bishop. First-year law students will tell you that you cannot represent two parties at the same time without creating a material conflict of interest, since one party's interests might not match up to the other party's interests. (Obviously, class-action lawsuits are different.)

According to *The Spokesman-Review* today:

A malpractice lawsuit filed this week by the diocese seeks more than \$12 million from the venerable Spokane law firm Paine Hamblen Coffin Brooke and Miller.

The claim is the latest bombshell in a bankruptcy that staggered along from December 2004 until May. The diocese settled with 180 people who claimed they were sexually abused by priests and other Catholic clergy.

The diocese, now under the leadership of Bishop Blase Cupich, says in court documents that bankruptcy lawyers Shaun Cross and Greg Arpin failed to explore other means of ending the abuse scandal.

Cupich also blames the lawyers for writing a bankruptcy plan that failed to assess and adequately fund the risk of new claims, which nearly forced the foreclosure of churches.

The lawsuit also accuses the attorneys of a conflict of interest, in shielding former Bishop William Skylstad from testifying in the first civil trial alleging sex abuse by filing for bankruptcy on the eve of that suit. The accusation echoes concerns voiced during the bankruptcy by some lawyers and wealthy Catholics who opposed that strategy. At one point, several prominent Catholics urged Skylstad to resign.

The lawsuit stunned Paine Hamblen.

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"We believe we worked very hard and very diligently for them and did extraordinary work," Jane Brown, managing partner of the firm, said Tuesday. "We stand by our work."

Cross, who has since left Paine Hamblen, did not return messages seeking comment. Brown spoke on behalf of Arpin.

Paine Hamblen ? one of Spokane's oldest law firms, with 50 attorneys and a storied, 119-year history ? defended the legal advice it provided the diocese in the years leading up to bankruptcy.

"We kind of feel like the new bishop is not fully informed and doesn't really understand under what circumstances any judgment calls were made," Brown said. "They were facing hundreds of millions of dollars in claims that dwarfed the church's financial resources, and the diocese and parishes have been able to continue."

Since the filing of the lawsuit this week, Cupich has been advised by his legal counsel not to participate in any media interviews.

A letter from Cupich to be distributed to parishes this weekend is posted on the diocesan website and offers context and an explanation for filing the malpractice lawsuit.

Cupich states early on that the issues raised in the malpractice lawsuit came to him from during the time he was negotiating a settlement on the unfunded future claims issue. His attempts to resolve the issues in confidential mediation failed when the law firm refused to settle the claims. Cupich also points out that his fiduciary responsibility to the people of the diocese required him to file the malpractice lawsuit.

Here are the salient paragraphs of the letter:

First, many of our concerns expressed in our filing with the court came to my attention during the

recent 18 month mediation period, which ended in successfully resolving the pending future claims against the diocese and the related threats of foreclosure facing a significant number of our parishes and schools.

Second, when these concerns were brought to my attention, I took my time and consulted with experts locally and nationally to determine the most prudent course of action.

Third, I also reviewed these concerns and the advice I received from these experts with leaders in our diocese, both lay men and women and clergy. My preference has always been to resolve these issues quietly and through mediation, so as to avoid further unnecessary publicity for the Church. Yet, when faced with the rejection of our offer to enter into mediation to resolve these serious issues, I could not ignore an important and compelling point impressed upon me by my advisors, namely that I have a fiduciary responsibility to you, the people of the diocese, for the sacrifices and support you have been called on to make over these past few years.

You have extended to me your trust and support since my arrival and especially as I dealt with the future claim and foreclosure issues and I do not take either lightly. I now ask your patience once again, and that you join me in the hope that these concerns can be resolved through mediation and negotiation, a process that has served us so well in this last year and a half.

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