

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION**

**GEORGE DALE, Commissioner of Insurance** )  
**for the State of Mississippi, in his official** )  
**capacity as Receiver of FRANKLIN** )  
**PROTECTIVE LIFE INSURANCE COMPANY,** )  
*et al.,* )

**Plaintiffs,** )

**v.** )

**EMILIO COLAGIOVANNI; EDWARD DAVID** )  
**COLLINS; THOMAS CORBALLY;** )  
**ENDURANCE INVESTMENTS LTD.; THE** )  
**HOLY SEE a/k/a VATICAN CITY STATE;** )  
**MONITOR ECCLESIASTICUS FOUNDATION,** )  
**CALDWELL & CALDWELL, JAMES** )  
**CALDWELL, JR., JAMES CALDWELL III;** )  
**and MONEX DEPOSIT COMPANY,** )

**Defendants.** )

**No. 3:01-cv-00663-WHB-LRA**

**PLAINTIFFS' REPLY IN SUPPORT OF OBJECTIONS  
TO MAGISTRATE JUDGE'S AUGUST 30, 2007 ORDER**

**I. PROCEDURAL ISSUES.**

The Holy See's Response ("Response" or "HS Br.") fails to articulate any "undue delay" or prejudice, which are the *sine qua non* of a proper opposition to a motion to amend. To compensate for its weakness on the merits, the Holy See emphasizes several "rules" it incorrectly contends govern this Court's consideration of the Receivers' Objections to the Magistrate Judge's August 30, 2007 Order ("Objections" or "Obj.").

**A. The Court Need Not Apply a Deferential Standard of Review With Respect to Many of the Issues Presented.**

For all the reasons set forth in their Objections, the Receivers easily meet the Rule 72(a) "clearly erroneous or contrary to law" standard with respect to the Magistrate Judge's August 30, 2007 Order. Nothing in the Holy See's Response changes this. But the Holy See's Response does raise questions as to how Rule 72(a) should be applied in this case. The Magistrate Judge's order was premised largely upon a *sua sponte* finding that the May 22 Order was a Rule 16(b) scheduling order from which the Receivers needed relief to amend, and the resulting conclusion that the "good cause" standard applies. In its Response, the Holy See emphasizes arguments for the application of Rule 16(b) it did not make below, and on which the Magistrate Judge did not rely. In particular, the Holy See cites the November 19, 2002 Case Management Order ("CMO"), and contends it provides a deadline for the Receivers' motion to amend. HS Br. 9-11. That argument does not require this Court to address "any portion of the magistrate judge's order," Fed. R. Civ. Pro. 72(a), and is therefore subject to a *de novo* standard. *See e.g. McCormick v. City of Lawrence*, No. 02-2135-JWL, 2005 U.S. Dist. LEXIS 37396, \*14 (D. Kan. July 8, 2005) ("[i]n so holding, the court is not finding that the magistrate judge's decision on this matter was clearly erroneous or contrary to law because plaintiff's newly presented arguments were not presented to the magistrate judge in the first instance").

Similarly, any analysis of the merits of the Receivers' motion to amend under Rule 15(a) should be reviewed *de novo*, because the Magistrate Judge applied Rule 16(b) and not Rule 15(a). In addition, to the extent the Holy See's Response is based on the interpretation of the word "opposition" in the parties' agreement embodied in the May 22 Order (HS Br. 11-12), that interpretation is a pure issue of law subject to *de novo* review. *Barrow v. Greenville Indep. School Dist.*, 202 F.R.D. 480, 482 (N.D. Tex. 2001) (portions of magistrate judge's order constituting legal conclusions are "freely reviewable" under *de novo* standard); *Theriot v. United States*, 245 F. 3d 388, 394 (5th Cir. 1998) ("[c]ontract interpretation is a question of law, subject to *de novo* review").

Under any standard – *de novo* or clearly erroneous – the Receivers should prevail. But given the merits in favor of amendment here, it is not surprising the Holy See tries to impose a "clearly erroneous" standard on every argument it makes for affirmance – stretching the standard far beyond the parameters of Rule 72(a).

**B. Because the Magistrate Judge Raised Rule 16(b) *Sua Sponte*, the Receivers Are Entitled to Include New Evidence and Arguments to Address That Issue.**

Indicative of both parties' view of the outdated CMO as clearly moot, neither party mentioned Rule 16(b) or argued application of the rule's "good cause" standard in their briefs to the Magistrate Judge. Nevertheless, the Magistrate Judge ruled *sua sponte* that Rule 16(b) applied and analyzed the Receivers' motion under a "good cause" standard. Because the Holy See never raised these issues below, the Objections represented the first opportunity for the Receivers to respond to them. In order to establish why that standard does not apply or, alternatively, how the Receivers' motion to amend meets that standard, the Receivers necessarily offered new evidence and arguments.

None of the cases the Holy See cites for the proposition that “the language of Rule 72” does not permit the Receivers to introduce new evidence involved circumstances such as those here, where the Magistrate Judge’s core conclusions were reached *sua sponte*. See HS Br. 4-5. In such an instance, a party objecting to a magistrate judge’s decision may introduce evidence necessary to respond to the *sua sponte* issue. See *In re HECI Expl. Co.*, 862 F.2d 513, 518 n. 7 (5th Cir. 1988). The Receivers cited *HECI* in their Objections, but the Holy See failed to address it. See also *McCormick*, 2005 U.S. Dist. LEXIS 37396, \*10-11 (where magistrate judge decided issue not raised by the parties, objector was permitted to introduce evidence on the issue).

**C. The Receivers’ Submissions in Support of Their Motion to Amend Were Entirely Proper.**

Prominent in the Holy See’s Response is the spurious charge that the Receivers were not forthcoming with the Magistrate Judge concerning the scope of their proposed amendment and the source of the facts on which the amendment is based. Thus, the Holy See argues that the Receivers’ amendment motion was properly denied because the Receivers did not highlight amendments concerning the “autonomous” status of MEF and the beneficiary of \$5 million under Frankel’s scheme. HS Br. 13-17. In fact, these changes fall within the general description of the amendments the Receivers identified in their motion and, in any event, are secondary issues at best.<sup>1</sup> The first sentence of the Receivers’ “Summary of Proposed Amendment”

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<sup>1</sup> The Holy See calls the deletion of MEF as being “autonomous” a “critical issue.” HS Br. 14. The issue is a red herring and far from critical. Whether MEF was “autonomous” matters little to the Receivers’ claims, as is best summarized in their brief to the Fifth Circuit, which the Holy See itself cites and attaches on this point. See Exhibit A to HS Br., pp. 54-55, (*e.g.*, MEF could be a “fake entity” and it wouldn’t matter to Receivers’ claims). The Holy See also falsely states the Receivers “switched” the beneficiary of Frankel’s promised \$5 million from MEF to the Holy See. HS Br. 16. While the Receivers did originally plead that the plan would result in MEF getting the \$5 million, Docket 89, ¶ 54, that complaint, fairly read as a

submitted to the Magistrate Judge stated that the proposed amendment, which was tendered in full, “significantly amends the Receivers’ factual allegations regarding the *Holy See, MEF and Colagiovanni*.” Docket 238, p. 5 (emphasis added). The Re/Colagiovanni meeting is then highlighted as the most important aspect of the amendment. *Id.* p. 11. This was neither improper nor misleading.<sup>2</sup>

The Holy See also argues the Receivers are at fault for failing to submit the depositions (totaling 2,875 pages) to the Magistrate Judge, and the Receivers should have cited a deposition passage to support each individual change to the complaint. *See* HS Br. 12-13. Such a standard would be unworkable in a complex case such as this. The Magistrate Judge did not accept any of these arguments, and this Court should similarly reject them.<sup>3</sup>

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whole, alleges that the Holy See would benefit as well. For example, it was understood that Frankel’s plan would allow “the *Vatican* [to] keep the \$5 million to do with as it saw fit.” *Id.* ¶ 48 (emphasis added); *see also id.* ¶ 53.

<sup>2</sup> The Holy See continues to unfairly criticize the Receivers for not providing the Magistrate Judge or this Court with a “redlined” comparison of the 4th and 5th amended complaints. However, in addition to the substantive factual amendments directed at the Holy See at issue here, the proposed amendment deletes the RICO allegations against the Holy See (which this Court dismissed and the Receivers did not appeal), and all allegations against former defendants Collins, Corbally and Endurance. As a result of these changes to the complaint, and the operational idiosyncracies of the redline software, the redline “comparison” does not provide an accurate or helpful portrayal of the substantive amendments, a situation the Receivers communicated to the Holy See. This is amply demonstrated by the Holy See’s redlined comparison of the PDF versions of the two complaints, which it submitted to the Magistrate Judge. Docket 245-2 (Exhibit J). Nevertheless, if the Court feels a redlined comparison of the WordPerfect files of the two complaints would be helpful, the Receivers will supply one.

<sup>3</sup> There was no need, then or now, to burden the Court with the lengthy deposition transcripts for the purpose of tying each proposed amended allegation to a particular line of testimony. The Receivers elected to submit the entirety of Colagiovanni’s deposition with their Objections for two reasons: to support their assertion that the deposition lasted nine days and there were no time or subject constraints on the Holy See’s ability to question Colagiovanni; and to rebut the Holy See’s contention that Colagiovanni’s alleged unavailability prejudices it because there is more it would have asked at the deposition. In its Response, the Holy See does

Much of the Holy See's Response is devoted to a parsing of the allegations in the Receiver's proposed amendment, through which the Holy See makes two arguments: (1) the record does not support the new factual allegations (*e.g.* HS Br. 15, 17, 19 n. 19, 20); and (2) all of the evidence underlying the amendments was not "newly acquired" or based exclusively on the Colagiovanni, Bolan and Cacciavillan depositions. HS Br. 12-17.

The first of these arguments provides no basis for denying the Receivers' motion to amend. The Receivers' amendments are fully supported by the record, but even if the Holy See can point to other record evidence to raise fact issues, at most, those are issues a factfinder must resolve. As to the second argument, as clearly demonstrated by the briefing before the Magistrate Judge and in this Court, the most significant amendment relates to the Re/Colagiovanni meeting that occurred early in the chain of events. Docket 238, Ex. A, ¶¶ 48-49. Importantly, this is not a "complete overhaul" of the Receivers' actual authority theory, as the Holy See claims. HS Br. 18. In fact, this meeting was pleaded on information and belief in the original complaint against the Holy See, *see* Docket 89, ¶ 56, and was addressed at Colagiovanni's interview. *See* HS Br. 19. But during the Receivers' direct examination of Colagiovanni at his deposition the subject was developed in far more detail, with fully 77 pages of testimony devoted to it, thus leading to the proposed amendment.<sup>4</sup> *See* Colagiovanni Dep. Vol. II pp. 266-343.

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not identify any additional questions it would have asked had the Receivers amended earlier. *See* HS Br. 28-31.

<sup>4</sup> On the issue of whether the Holy See was among those who would benefit from Frankel's promise of \$5 million, the Holy See cites only Colagiovanni's deposition (and takes it out of context) and then contends the amended allegations about the Holy See benefitting do not come from the depositions. The proposed amendment's new allegations about this issue, however, *see* Docket 238, Ex. A, ¶¶ 39, 7, 50-52, 76, are taken largely from Bolan's testimony. *See, e.g.*, Bolan Dep. pp. 32, 40-41, 125, 157, 271 (Exhibit 1 hereto) (variously describing beneficiaries as the Vatican, MEF and the Catholic Church). Further, while the Holy See is correct that Colagiovanni testified MEF is "autonomous," he also gave contradictory testimony,

Even to the extent the Holy See can trace some elements of the factual picture in the proposed amendments to the Colagiovanni interview, the Holy See for all practical purposes admits the picture was not sufficiently complete at that time to provide a basis for amending the complaint. *See* HS Br. 31 (upon its review of the interview transcript “the Holy See could not have fairly anticipated the Plaintiffs’ actual authority theory”). Regardless of when the Receivers may have first had some evidence of each individual element of this highly complex fact scenario, those elements and the broader picture of Colagiovanni’s authority were not fully developed until the depositions.

Finally, the Holy See contends that the Receivers should not be “surprised” that a fact-pleading standard applies here, citing an FSIA case, *Arriba Ltd. v. Petroleos Mexicanos*, 962 F.2d 528 (5th Cir. 1992), and Federal Rule of Civil Procedure 9(b). HS Br. 34.<sup>5</sup> The Receivers never contended they were “surprised” by this, arguing only that, given the Holy See’s position that a fact-pleading standard applies, the Receivers should be permitted to make a first substantive amendment and plead their best factual case. *See* Obj. 25-26. The Holy See simply proves the point by once again urging that a fact-pleading standard applies.

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included in the proposed amendment, *id.*, ¶ 11, that: (1) MEF was established under Canon law, Colagiovanni Dep. Vol. I p. 117; (2) Colagiovanni’s appointment as President of MEF had to be approved by the Holy See’s Secretary of State, *id.* p. 124, Vol. II, p. 282; and (3) the *Monitor Ecclesiasticus* is published with the explicit approval of the Holy See, as evidenced by Papal decree. *Id.* Vol. I. pp. 133-34. At most, these are issues for the factfinder.

<sup>5</sup> The application of a fact-pleading standard is not as clear as the Holy See suggests. *Arriba* requires the pleading of specific facts only to invoke an exception to foreign sovereign immunity. 962 F.2d at 537 n. 17. Here, the Fifth Circuit has already held the Receivers’ complaint pleads “commercial activity” under the FSIA. *Dale v. Colagiovanni*, 443 F.3d 425, 429 (5th Cir. 2006). The text of Rule 9(b) says nothing about agency allegations, and does not apply to them unless, unlike here, “the plaintiff relies on the same circumstances to establish both the alleged fraud and the agency relationship. . . .” *BP Chemicals Ltd. v. Jiangsu Sopo Corp. (Group), Ltd.*, 285 F.3d 677, 687 (8th Cir. 2002).

## II. THE HOLY SEE'S ARGUMENTS FOR APPLYING THE "GOOD CAUSE" STANDARD OF RULE 16(b) FAIL.

Despite having never considered the CMO worthy of mention to the Magistrate Judge, the Holy See now makes it the centerpiece of its argument that the Magistrate Judge properly applied Rule 16(b).<sup>6</sup> That the CMO became superseded by events shortly after it was entered cannot be seriously disputed. The Holy See concedes that later orders related to the scheduling of dismissal motions "*a fortiori* modified some of the CMO deadlines" (even though those deadlines have nothing to do with dismissal motions). HS Br.10 n. 5. The Holy See identifies discovery and trial deadlines as being "*a fortiori*" modified, but fails to explain why the amendment deadline would not be similarly affected.

As for the Holy See's "plain language" argument concerning the CMO, the inclusion of specific provisions in the CMO carving out the Holy See from discovery resulted from the Holy See's objection to the entry of *any* case management order in the absence of a discovery stay. *See* Docket 52. The CMO's discovery-related carve-outs simply make explicit the relief that the Holy See sought. The examples the Holy See cites to support its argument that "the Holy See has repeatedly stated that the CMO's provisions apply to it" relate only to the specific discovery carve-outs, not to the amendment, trial, or other deadlines in the CMO. HS Br. 10 n. 6.

The Holy See's sparse treatment of the May 22 Order is similarly unconvincing. The Holy See reads the word "opposition" to require "the round of briefing set forth in Local Rule 7.2," HS Br. 12, but that misses the point. The Receivers sought relief from that "round of briefing" when they moved for an extension of time. What the Holy See never addresses is the

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<sup>6</sup> As noted above, any arguments about the CMO are subject to a *de novo* standard.

Receivers' argument that by seeking such relief, they did all that was required under the Order. Because the May 22 Order itself contains no amendment deadline – even the Holy See must concede it is silent on the subject of amendments – the standard applicable to the Receivers' motion to amend is separate from and unrelated to the May 22 Order. The Holy See never engages with this argument. *See Datastrip Int'l Ltd. v. Intacta Techs., Inc.*, 253 F. Supp. 2d 1308, 1317 (N.D. Ga. 2003) (“[b]ecause the Scheduling Order does not contain limitations for amending pleadings, the Rule 16 good cause requirement is not applicable”).<sup>7</sup>

The Holy See argues that “opposition” precludes the right to amend, but cites no statute, Federal Rule of Civil Procedure, or Local Rule to support its position. As the Receivers pointed out, none exists. Instead, the Holy See cites inapposite cases having nothing to do with the term “opposition.” Those cases denied motions to amend filed after dismissal or summary judgment motions were fully briefed (and in some cases argued) – not amendment motions filed as initial responses to such motions. *See HS Br. 27, citing e.g., Lockman Found. v. Evang. Alliance Miss.*, 930 F.2d 764, 771-72 (9th Cir. 1991) (motion to amend filed after motion to dismiss fully briefed and court had ruled orally); *Hindo v. Univ. of Health Sci.*, 65 F. 3d 608, 615 (7th Cir. 1995) (motion to amend filed after motion to dismiss fully briefed and “district court was considering” dismissal motion); *PI, Inc. v. Quality Prod., Inc.*, 907 F. Supp. 752, 764-65 (S.D.N.Y. 1995) (“After the parties fully briefed these [dismissal] motions, and after the court heard oral

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<sup>7</sup> The Holy See cites *Phillips v. Greben*, No. 04-950 (GEB), 2006 U.S. Dist. LEXIS 78419 (D.N.J. Oct. 27, 2006), to assert the May 22 Order did not need to state an amendment deadline for Rule 16(b) to apply. HS Br. 11. *Phillips*, however, relied on facts not present here, as the motion to amend was filed after the close of discovery and the court concluded that “although no set date to amend the pleadings was provided in the scheduling orders . . . it was certainly clear that any possibility to amend the pleadings would expire when discovery closed.” *Id.* at \*16.

argument, the plaintiff moved again to amend its complaint for the second time, apparently anticipating an adverse result after oral argument”); *Keady v. Nike, Inc.*, 116 F. Supp. 2d 428, 439-40 (S.D.N.Y. 2000) (motion to amend filed “[s]ubsequent to full briefing of defendants’ motion to dismiss”; motion denied as futile); *Leviton Mfg. Co., Inc. v. Nicor, Inc.*, No. Civ. 04-0424 GB/LFG, 2007 U.S. Dist. LEXIS 35225, \*4-6 (D. N.M. Apr. 20, 2007) (supplemental expert declaration filed five months after summary judgment briefing completed).<sup>8</sup>

The Holy See argues that the May 22 Order’s reservation of the right to take discovery implies the absence of a reservation of the right to amend.<sup>9</sup> HS Br. 12, n. 9. In addition to being faulty on its own terms, the Holy See’s argument ignores the fact that the May 22 Order, in part, resolved the Receivers’ motion to take substantial discovery from the Holy See. *See* Docket 221. Although the Receivers ultimately agreed not to further pursue that specific request, they needed to ensure the May 22 Order would be without prejudice to any separate discovery rights they might have in response to the Holy See’s New Motion. By contrast, the topic of amendment had nothing to do with the Receivers’ discovery motion, so there was no need to eliminate any possible confusion with respect to that issue in the May 22 Order.

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<sup>8</sup> The other cases cited in the Holy See’s lengthy string-cite, HS Br. 27-28, turned on factors other than the status of pending motions. *See Wimm v. Jack Eckerd Corp.*, 3 F.3d 137, 140 (5th Cir. 1993) (plaintiff knew of facts long before filing initial complaint and offered no explanation for its failure to plead them initially); *Costello v. Univ. of N.C. at Greensboro*, 394 F. Supp. 2d 752, 756 (M.D.N.C. 2005) (motion to amend denied “because it is futile”); *Turkenitz v. Metromotion, Inc.*, No. 97 Civ. 2513, 1997 U.S. Dist. LEXIS 19762, \*1 (S.D.N.Y. Dec. 12, 1997) (motion to amend filed on “eve of trial”).

<sup>9</sup> The “right to amend” the Receivers referred to in the Objections obviously was to the Receivers’ rights generally under Rule 15, not, as the Holy See argues, to the automatic right to make a first amendment before a defendant has answered. *See* HS Br. 7.

### III. THE RECEIVERS DID NOT UNDULY DELAY IN MOVING TO AMEND.

The Holy See misstates the parties' burdens on the issue of delay. As the Receivers explained in their initial brief, it is well-settled that merely pointing to the passage of time is not enough. "It is only undue delay that forecloses amendment." *Dussouy v. Gulf Coast Inv. Corp.*, 660 F.2d 594, 598 (5th Cir. 1981). "Delay that is neither intended to harass nor causes any ascertainable prejudice is not a permissible reason, in and of itself to disallow an amendment." *Sec. Ins. Co. of Hartford v. Kevin Tucker & Assocs.*, 64 F.3d 1001, 1009 (6th Cir. 1995). "The mere passage of time between an original filing and an attempted amendment is not a sufficient reason for denial of the motion." *Spartan Grain & Mill Co. v. Ayers*, 517 F. 2d 214, 220 (5th Cir. 1975). In this case, the Holy See has yet to identify any cognizable prejudice from the passage of time.

As a result, the Holy See is mistaken when it asserts the Receivers "bear the burden of showing that delay was due to oversight, inadvertence or excusable neglect." HS Br. 7 (*quoting Parish v. Frazier*, 195 F. 3d 761, 763 (5th Cir. 1995), *also citing Little v. Liquid Air Corp.*, 952 F. 2d 841, 846 (5th Cir. 1992)). As the Fifth Circuit made clear in *Little*, only "if the delay in filing a motion for leave to amend is particularly egregious, [does] the burden shift[] to the moving party to demonstrate that the delay was 'due to oversight, inadvertence, or excusable neglect.'" 952 F.2d at 846. Here, given the procedural history of this case, and the fact that discovery has barely commenced, it was not "egregious" that the Receivers moved to amend when they did.<sup>10</sup>

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<sup>10</sup> The cases the Holy See cites where the burden shifted to the movant are easily distinguishable. *See e.g. Little*, 952 F. 2d at 846 (motion for leave to amend filed after close of discovery); *United States v. Midwest Suspension & Brake*, 49 F. 3d 1197, 1202 (6th Cir. 1995)

The Holy See does not dispute that this case is still in the pleading stage, that most discovery against the Holy See has not yet occurred, that this is the first substantive amendment sought against the Holy See, or that virtually all of the five years this case has been pending was spent briefing the Holy See's motions and litigating an interlocutory appeal. Thus, while the Holy See repeatedly refers to the Receivers' motion to amend as seeking to file a "fifth amendment" and that the claims against the Holy See were filed five years ago, those numbers must be viewed in the proper context of this case.

The Holy See contends the Receivers should have moved to amend based on the Colagiovanni interview. HS Br. 20-23. This argument rests on the premise that the interview gave the Receivers "knowledge of the purported Re/Colagiovanni meeting in September 2002." HS Br. 20-21. But the Holy See defeats its own argument later in its brief, when it asserts that the transcript of the Colagiovanni interview did not give the Holy See sufficient basis "to fairly anticipate[] Plaintiffs' actual authority theory." HS Br. 31. If the Holy See does not believe the Colagiovanni interview transcript was sufficient to put it on notice that the Re/Colagiovanni meeting could form the basis of an actual authority theory, how can it argue that the Receivers had to amend to allege such a theory based on that interview? Arguing both sides of this issue – in the span of 10 pages in the same brief – is a new level of disingenuousness.

The Holy See's desperation to try to establish "undue" delay is best portrayed by its ludicrous suggestion that the Receivers should have sought to amend in the Fifth Circuit. HS Br.

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(motion to amend filed 18 months after discovery closed and one month before trial, and amendment would require "new and expensive round of discovery"); *Deasy v. Hill*, 833 F. 2d 38, 41 (4th Cir. 1987) (motion to amend filed "just before trial").

21, n. 21. The Holy See contends the Receivers should have sought to amend under 28 U.S.C. § 1653, which permits “[d]efective allegations of jurisdiction [to] be amended, upon terms, in the trial or appellate courts.” The Receivers had prevailed on the Holy See’s motion in this Court, thus establishing the requisite jurisdiction. Given that posture, it would have been senseless for them to seek to amend in the appeals court based on a statute concerning “defective allegations of jurisdiction.” Moreover, the Holy See’s citation of that statute as a basis for denying the Receivers’ motion to amend contradicts the very purpose of the statute, which is to “broadly” permit amendment “to avoid dismissal on technical grounds.” *Miller v. Davis*, 507 F. 2d 308, 311 (6th Cir. 1974); *accord Toms v. Country Quality Meats, Inc.*, 610 F.2d 313, 316 (5th Cir. 1980) (28 U.S.C. § 1653 must be “construed liberally” to “permit an action to be brought if it is at all possible to show that jurisdiction exists”).

The Holy See contends that the Receivers should have moved to amend immediately following the Fifth Circuit’s remand order, but provides no reason why the timing of the Receivers’ motion constitutes “*undue* delay.” *Dussuoy*, 660 F.2d at 598 (emphasis added). The Holy See contends the Receivers “knew exactly what *legal issues* would be raised” in their impending motion to dismiss, HS Br. 24, but the Holy See’s motion was based upon *factual* assertions as to which substantial contrary evidence exists in the record. The Receivers sought to amend after the Holy See based its motion on the factual predicate that the Re/Colagiovanni meeting – the subject of more than 77 pages of deposition testimony – never happened. Even if, as the Holy See contends, it made that argument in its initial motion prior to the Colagiovanni

deposition, HS Br. p. 24, n 27, the Receivers had no reason to anticipate the Holy See would make it again after the deposition.<sup>11</sup>

The Holy See presumes it is “undue” delay to wait until after a motion to dismiss is filed before moving to amend. HS Br. 27. None of the Holy See’s cases say so. As noted above, most deal with motions to amend filed after dismissal or summary judgment motions were fully briefed. Others denied amendment motions on grounds inapplicable here. *See supra* at pp. 8-9 and n. 8 (discussing cases).

Finally, while the Holy See contends the Receivers waited more than seven months after the case was remanded before filing their amendment motion, a significant portion of that time elapsed because of two extensions the Holy See requested. The Receivers would certainly not have agreed to those extensions had they known the Holy See would then argue they resulted in undue delay.

Stripped to its core, the Holy See’s argument seeks to impose a requirement on parties to amend their pleadings each time they learn of new facts, no matter the procedural posture or circumstances of a case, or risk having their amendments denied based on a calculation of the time elapsed between the learning of the facts and the filing of the motion. None of the Holy See’s authorities supports such a rule, which would subject the courts to serial amendment motions as new facts inevitably emerge in discovery.

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<sup>11</sup> Contrary to the Holy See’s assertion, the statement in the Curley Declaration that the Receivers did not consider amendment until after they received the Holy See’s motion is not offered as an “explanation for delay,” but merely as a counter to the Holy See’s baseless assertion before the Magistrate Judge (not repeated before this Court), that the Receivers purposely delayed in moving to amend as a bad faith litigation tactic. *See* Docket 245, p. 21.

**IV. THE HOLY SEE WILL SUFFER NO PREJUDICE.**

Finally, even if there were a delay, the Holy See does not explain how it was prejudiced, either before the remand in April 2006 or after. The Receivers do not dispute that Colagiovanni was an important witness, but everyone knew at the time of his deposition that it was likely going to be the only time he would appear. The Holy See was on notice of the Re/Colagiovanni meeting both by the original complaint and the Colagiovanni interview. Docket 89, ¶ 56; *see* Docket 245, p. 22 (Holy See received interview transcript in late 2003, well in advance of the deposition). The Holy See does not dispute that it was given a full and fair opportunity to depose Colagiovanni on any issue it wanted, and that no time or scope limitations were placed on it. The Holy See has never identified, either to the Magistrate Judge or this Court, what it would have asked differently at the Colagiovanni deposition had the Receivers amended earlier. Further, the Holy See does not even address the Receivers' point that Colagiovanni was already "unavailable" by the time of the Fifth Circuit remand, such that the Receivers' request to amend in November 2006 could not have prejudiced the Holy See as respects Colagiovanni's availability. *See* Obj. 28.

Finally, while the Holy See suggests it may have to file a new motion to dismiss if the Receivers are allowed to amend, that should require little more than deleting or editing some arguments in its supporting brief. In any event, as the Receivers stated in their Objections, the fact that the Holy See might have to file another brief does not establish prejudice. Obj. 28-29.

**CONCLUSION**

The Holy See insults the Court and the Receivers by stating that the issue of subject matter jurisdiction “is not a game.” HS Br. 34, n. 34. It has not been treated as such, and the Holy See must recognize that neither was it a game when the Holy See authorized the use of its name and prestige in connection with the fraudulent activities of Martin Frankel.

The request to amend was entirely appropriate, timely and non-prejudicial. The Receivers respectfully suggest the Magistrate Judge clearly erred and entered findings contrary to law in denying the motion, and respectfully request that this Court reverse the Magistrate Judge’s Order of August 30, 2007, and grant the Receivers leave to file their Fifth Amended Complaint.

Respectfully submitted,

**GEORGE DALE**, Commissioner of Insurance for the State of Mississippi, in his official capacity as Receiver of **FRANKLIN PROTECTIVE LIFE INSURANCE COMPANY**

**GEORGE DALE**, Commissioner of Insurance for the State of Mississippi, in his official capacity as Receiver of **FAMILY GUARANTY LIFE INSURANCE COMPANY**

**GEORGE DALE**, Commissioner of Insurance for the State of Mississippi, in his official capacity as Receiver of **FIRST NATIONAL LIFE INSURANCE COMPANY OF AMERICA**

By s/Janet G. Arnold  
Charles G. Copeland (MBN 6516)  
Janet G. Arnold (MBN 1626)  
Robert C. Richardson (MBN 5330)  
COPELAND, COOK, TAYLOR & BUSH, P.A.  
200 Concourse, Suite 200  
1062 Highland Colony Parkway, P.O. Box 6020  
Ridgeland, Mississippi 39158  
(601) 856-7200

Alan F. Curley (PHV 42664)  
Cynthia H. Hyndman (PHV 42665)  
Robert S. Michaels (PHV 42971)  
ROBINSON CURLEY & CLAYTON, P.C.  
300 South Wacker Drive, Suite 1700  
Chicago, Illinois 60606  
(312) 663-3100

**LESLIE A. NEWMAN**, Commissioner of Commerce and Insurance for the State of Tennessee, in her official capacity as Receiver of **FRANKLIN AMERICAN LIFE INSURANCE COMPANY**

By s/Andrew B. Campbell by JGA

William W. Gibson (TN BAR #9049)  
J. Graham Matherne (TN BAR #11295)  
Andrew B. Campbell (TN BAR #14258)  
WYATT, TARRANT & COMBS  
2525 West End Avenue, Suite 1500  
Nashville, Tennessee 37203  
(615) 244-0020

Thomas C. Gerity (MBN 4799)  
WYATT, TARRANT & COMBS, LLP  
4450 Old Canton Road, Suite 210  
Jackson, Mississippi 39211  
(601) 987-5303

**DOUGLAS M. OMMEN**, Director of the Department of Insurance for the State of Missouri, in his official capacity as Receiver of **INTERNATIONAL FINANCIAL SERVICES LIFE INSURANCE COMPANY**

By s/Janet G. Arnold

Charles G. Copeland (MBN 6516)  
Janet G. Arnold (MBN 1626)  
Robert C. Richardson (MBN 5330)  
COPELAND, COOK, TAYLOR & BUSH, P.A.  
200 Concourse, Suite 200  
1062 Highland Colony Parkway, P.O. Box 6020  
Ridgeland, Mississippi 39158  
(601) 856-7200

Douglas J. Schmidt (MO Bar #34266)  
Patrick A. McInerney (MO Bar #37638)  
BLACKWELL SANDERS PEPER MARTIN, LLP  
4801 Main Street, Suite 1000  
Kansas City, Missouri 64112  
(816) 983-8000

**KIM HOLLAND**, Insurance Commissioner for the State  
of Oklahoma, in her official capacity as Receiver of  
**FARMERS AND RANCHERS LIFE INSURANCE  
COMPANY, IN LIQUIDATION**

By s/Janet G. Arnold  
Charles G. Copeland (MBN 6516)  
Janet G. Arnold (MBN 1626)  
Robert C. Richardson (MBN 5330)  
COPELAND, COOK, TAYLOR & BUSH, P.A.  
200 Concourse, Suite 200  
1062 Highland Colony Parkway, P.O. Box 6020  
Ridgeland, Mississippi 39158  
(601) 856-7200

Susan Loving (OK Bar #160)  
LESTER, LOVING & DAVIES, P.C.  
1701 South Kelly  
Edmond, Oklahoma 73013  
(405) 844-9900

**JULIE BENAFIELD BOWMAN**, Insurance  
Commissioner for the State of Arkansas, in her official  
capacity as Receiver of **OLD SOUTHWEST LIFE  
INSURANCE COMPANY**

By s/Janet G. Arnold  
Charles G. Copeland (MBN 6516)  
Janet G. Arnold (MBN 1626)  
Robert C. Richardson (MBN 5330)  
COPELAND, COOK, TAYLOR & BUSH, P.A.  
200 Concourse, Suite 200  
1062 Highland Colony Parkway, P.O. Box 6020  
Ridgeland, Mississippi 39158  
(601) 856-7200

Steve A. Uhrynowycz (AR Bar #82162)  
Liquidation Division  
1023 West Capitol Avenue, Suite 2  
Little Rock, Arkansas 72201  
(501) 371-2776

**CERTIFICATE OF SERVICE**

I, Janet G. Arnold, do hereby certify that I have this date electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

Hon. Linda R. Anderson  
United States Magistrate Judge  
245 E. Capitol Street, Suite 520  
Jackson, MS 39201

W. Thomas McCraney, III, Esq.  
McCraney & Montagnet, PLLC  
5760 I-55 N., Suite 300  
Jackson, MS 39211  
*Counsel for the Vatican*

Frank W. Trapp, Esq.  
Phelps Dunbar  
Post Office Box 23066  
200 South Lamar Street, Suite 500  
Jackson, Mississippi 39225-3066  
*Counsel for the Caldwell Defendants*

Charles R. Wilbanks, Jr., Esq.  
Wells Moore Simmons & Hubbard  
P.O. Box 1970  
Jackson, MS 39215-1970

Thomas A. Pistone, Esq.  
Pistone & Wolder, LLP  
2020 Main Street, Suite 900  
Irvine, CA 92614-8203  
*Counsel for Monex*

Jeffrey S. Lena, Esq.  
Law Offices of Jeffrey S. Lena  
1152 Keith Avenue  
Berkeley, CA 94708  
*Counsel for the Vatican*

This 18<sup>th</sup> day of January, 2008.

s/Janet G. Arnold  
Janet G. Arnold (MBN 1626)

# **EXHIBIT 1**

1  
2 IN THE UNITED STATES DISTRICT COURT  
3 FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
4 JACKSON DIVISION

5 -----x  
6 GEORGE DALE, Commissioner of  
7 Insurance for the State of  
8 Mississippi, in his official  
9 capacity as Receiver of FRANKLIN  
10 PROTECTIVE LIFE INSURANCE  
11 COMPANY;

12  
13 GEORGE DALE, Commissioner of  
14 Insurance for the State of  
15 Mississippi, in his official  
16 capacity as Receiver of FAMILY  
17 GUARANTY LIFE INSURANCE  
18 COMPANY;

19  
20 GEORGE DALE, Commissioner of  
21 Insurance for the State of  
22 Mississippi, in his official  
23 capacity as Receiver of FIRST  
24 NATIONAL LIFE INSURANCE COMPANY  
25 OF AMERICA;

26  
27 PAULA A. FLOWERS, Commissioner of  
28 Commerce and Insurance for the  
29 State of Tennessee, in her official  
30 capacity as Receiver of FRANKLIN  
31 AMERICAN LIFE INSURANCE COMPANY;

32  
33 SCOTT B. LAKIN, Director of the  
34 Department of Insurance for the  
35 State of Missouri, in his official  
36 capacity as Receiver of INTERNATIONAL  
37 FINANCIAL SERVICES LIFE INSURANCE  
38 COMPANY;

39  
40 CARROLL FISHER, Insurance Commissioner  
41 for the State of Oklahoma, in his  
42 official capacity as Receiver of  
43 FARMERS AND RANCHERS LIFE INSURANCE  
44 COMPANY; and  
45

Page 2

1  
2 MIKE PICKENS, Insurance Commissioner  
for the State of Arkansas, in his  
3 official capacity as Receiver  
of OLD SOUTHWEST LIFE INSURANCE  
4 COMPANY,  
5 Plaintiffs,  
6 v. No. 3:01 CV 663BN  
7 EMILIO COLAGIOVANNI; EDWARD  
DAVID COLLINS; THOMAS CORBALLY;  
8 ENDURANCE INVESTMENTS LTD.;  
THE HOLY SEE a/k/a VATICAN  
9 CITY STATE; MONITOR  
ECCLESIASTICUS FOUNDATION;  
10 CALDWELL & CALDWELL;  
JAMES CALDWELL, JR.;  
11 JAMES CALDWELL III; and  
MONEX DEPOSIT COMPANY,  
12  
13 Defendants.  
-----x  
14  
15 THOMAS A. BOLAN  
16 New York, New York  
17 Monday, July 19, 2004  
18  
19  
20  
21  
22  
23 Reported by: Steven Neil Cohen, RPR  
24 Job No. 161647  
25

Page 4

1  
2 APPEARANCES  
3 ROBINSON CURLEY & CLAYTON, P.C.  
4 300 South Wacker Drive  
5 Suite 1700  
6 Chicago, Illinois 60606  
7 Attorneys for Plaintiff  
8 BY: ALAN F. CURLEY, ESQ.  
9 ELIZABETH HUBERTZ, ESQ.  
10  
11 MAURICE N. NESSEN, ESQ.  
12  
13 c/o Thomas Bolan  
14  
15 521 Fifth Avenue  
16  
17 New York, New York 10175  
18  
19 Attorneys for Thomas A. Bolan  
20  
21 JEFFREY S. LENA, ESQ.  
22 1152 Keith Avenue  
23 Berkeley, California 94708  
24 Attorney for Defendant The Holy  
25 See  
BYRON H. DONE, ESQ.  
85 Bradley Avenue  
Walnut Creek, California 94596  
Attorney for Defendant The Holy  
See

Page 3

1  
2 July 19, 2004  
3 9:35 a.m.  
4  
5 Videotaped Deposition of THOMAS  
6 A. BOLAN, taken by Plaintiffs, pursuant to  
7 subpoena at the offices of Esquire  
8 Deposition Services, 216 East 45th Street,  
9 New York, New York, before Steven Neil  
10 Cohen, a Registered Professional Reporter  
11 and Notary Public of the State of New York.  
12  
13  
14  
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17  
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20  
21  
22  
23  
24  
25

Page 5

1  
2 SWANSON AND McNAMARA  
3 300 Montgomery Street  
4 Suite 1100  
5 San Francisco, California 94104  
6 Attorneys for Defendant The Holy  
7 See  
8 BY: MARY McNAMARA, ESQ.  
9  
10 ALEXIS HALLER, ESQ.  
11  
12 THE QUISENBERRY LAW FIRM, P.C.  
13 2049 Century Park East  
14 Suite 2200  
15 Los Angeles, California 90067  
16 Attorney for Defendant Edward  
17 David Collins  
18  
19 BY: JOHN N. QUISENBERRY, ESQ.  
20  
21 ALSO PRESENT: Monsignor Peter Wells  
22 Victoria Davies  
23 Victor Disla, Videographer  
24  
25

Page 30

1 Bolan  
 2 had made reference to the complaint that  
 3 you were working on earlier in the year.  
 4 Was that the Sukarno matter that  
 5 you mentioned a while ago?  
 6 A. Yes.  
 7 Q. You need to really wait until I  
 8 finish the entire question. It will be a  
 9 much clearer record. Thank you.  
 10 A. I will try.  
 11 Q. You mentioned that Mr. Corbally  
 12 told you Akin, Gump was David Rosse'  
 13 lawyer.  
 14 Did he say anything else about  
 15 Akin, Gump or Ambassador Strauss other than  
 16 identifying them as counsel?  
 17 A. That they were Mr. Rosse'  
 18 attorneys.  
 19 Q. Did he mention anything else?  
 20 MS. McNAMARA: Objection.  
 21 THE WITNESS: He told me that  
 22 Kate Tatum, a senior partner there --  
 23 whether he told me at that time, I just  
 24 am not positive. I think he did but I  
 25 wouldn't be sure.

Page 31

1 Bolan  
 2 BY MR. CURLEY:  
 3 Q. Did he talk about insurance  
 4 companies at all?  
 5 A. No.  
 6 Q. Did he talk about trying to  
 7 acquire insurance companies at all?  
 8 A. Not at that meeting, no.  
 9 Q. You mentioned that at some point  
 10 after this meeting with Mr. Corbally you  
 11 called Father Jacobs. How long after the  
 12 meeting?  
 13 A. Immediately afterward; the same  
 14 day or very quickly after that.  
 15 Q. Where was Father Jacobs when you  
 16 called him?  
 17 A. I don't recall where he was. I  
 18 don't recall. He was either in New York or  
 19 Rome. I am not sure.  
 20 Q. Did you have contact information  
 21 for Father Jacobs in both cities?  
 22 A. I had contact for his New York  
 23 number. I called that number and it had a  
 24 forwarding number, I think, in Rome. I  
 25 think that is where I got him, in Rome.

Page 32

1 Bdan  
 2 Q. At the time of this telephone  
 3 call was there anybody else on the line  
 4 besides you and Father Jacobs?  
 5 A. No.  
 6 Q. Can you tell me what you recall  
 7 about that conversation?  
 8 A. Well, I had left out, I think,  
 9 that Mr. Corbally had said that -- I think  
 10 he mentioned the amount of money, some -- I  
 11 am not that positive on that meeting  
 12 whether he did, but I told Father Jacobs  
 13 that Mr. Corbally had told me that he knew  
 14 this man who was -- although he was a  
 15 Jewish atheist, had great admiration for  
 16 the Catholic church and wanted to donate  
 17 huge sums of money to the Catholic church  
 18 to help the poor and the homeless and he  
 19 wanted to work with -- through the Vatican  
 20 and perhaps establish a foundation in the  
 21 Vatican and Father Jacobs said he knew of  
 22 people that could help on this in the  
 23 Vatican and he named Monsignor Emilio  
 24 Colagiovanni, and I gave him Mr. Corbally's  
 25 telephone number and I said -- he said he

Page 33

1 Bolan  
 2 would get in touch with Monsignor  
 3 Colagiovanni or somebody else if  
 4 Colagiovanni was not available to  
 5 participate.  
 6 Q. Did he describe Monsignor  
 7 Colagiovanni's position within the church  
 8 or the Vatican?  
 9 A. He said he was high up in the  
 10 Vatican.  
 11 Q. No other description other than  
 12 that?  
 13 A. Not that I recall at this time,  
 14 at this meeting, at this discussion.  
 15 Q. What happened next after you  
 16 spoke with Father Jacobs?  
 17 A. Well, Father Jacobs and Corbally  
 18 spoke on the telephone. I spoke on the  
 19 telephone with Father Jacobs and he told me  
 20 that Monsignor Colagiovanni was interested  
 21 and that he had spoken with Monsignor  
 22 Colagiovanni and that Monsignor  
 23 Colagiovanni was in Cleveland visiting his  
 24 family and some Archbishop there and that  
 25 they would -- he would arrange with

Page 38

1 Bolan  
 2 start off with a \$55 million donation and  
 3 he said that he had been studying for a  
 4 number of months a new plan to make money  
 5 and that was through the acquisition of  
 6 insurance companies.  
 7 He said he could make billions of  
 8 dollars for the Catholic church through  
 9 these investments and insurance companies  
 10 and he said the plan would be to buy  
 11 successful insurance companies, continue  
 12 with the management and that in a matter of  
 13 five to ten years the Catholic church would  
 14 make billions of dollars.  
 15 He said that -- and he showed me  
 16 some charts that he had been studying how  
 17 insurance companies had increased in value.  
 18 I think one of them was Sun Life  
 19 and he felt that this couldn't fail but he  
 20 said he wanted to supervise the acquisition  
 21 of these companies and -- with respect to  
 22 the 50 million, the other 5 million  
 23 would -- he wouldn't -- the foundation and  
 24 the Vatican could utilize whichever way it  
 25 wanted.

Page 39

1 Bolan  
 2 He also stated that his attorneys  
 3 were Akin, Gump and Mr. Strauss and Kate  
 4 Tatum of that firm were working with him  
 5 and that he had very competent attorneys  
 6 and accountants, Ernst & Young, and that he  
 7 would like to work -- establish this  
 8 foundation in the Vatican.  
 9 Q. Did he talk anything about the  
 10 particular charities that he was interested  
 11 in during this meeting?  
 12 A. At that meeting I am not sure if  
 13 he specified any. He may well have, and he  
 14 certainly emphasized St. Francis a lot at  
 15 that meeting.  
 16 He said he wanted to help the  
 17 poor, the helpless, the ill and that --  
 18 people in trouble and he appeared to be a  
 19 very compassionate man.  
 20 Q. You talked a little bit about the  
 21 amounts of money that he spoke about?  
 22 A. Yes.  
 23 Q. 50 million and 5 million.  
 24 A. Yes.  
 25 Q. Can you tell me specifically what

Page 40

1 Bolan  
 2 he said about the 50 million and the 5  
 3 million?  
 4 A. Well, they would all go to the  
 5 Vatican foundation but he wanted -- with  
 6 respect to -- 55 million would go to the  
 7 Vatican foundation.  
 8 With respect to 50 he wanted to  
 9 be the one who supervised the acquisition  
 10 of these insurance companies.  
 11 Q. With that \$50 million?  
 12 A. Yes. The profits would be the  
 13 Vatican's.  
 14 Q. With respect to the 5 million  
 15 what did he say about that?  
 16 A. The foundation would utilize that  
 17 for other charities and -- in whatever way  
 18 it decided.  
 19 Q. At their discretion?  
 20 A. Yes.  
 21 Q. Did Mr. Rosse talk about  
 22 anonymity at all during this meeting?  
 23 A. Yes. He said that he wanted to  
 24 be anonymous, that he didn't want to get  
 25 credit for this, that he did not want to be

Page 41

1 Bolan  
 2 besieged by other people asking for  
 3 donations.  
 4 He wanted to work with the  
 5 Vatican foundation but he didn't want that  
 6 to be known because of this.  
 7 He later, not at that meeting,  
 8 but he later gave me another reason why he  
 9 wanted to be anonymous.  
 10 Q. What was that reason briefly?  
 11 A. That reason is that he feared for  
 12 his life. When he told me that I had  
 13 already known of his fear for his life and  
 14 I had seen examples of his obsession with  
 15 his physical well being in that respect.  
 16 Q. Why did he fear for his life?  
 17 A. He told me that he had a  
 18 girlfriend who had been married to a man  
 19 with children and that this man had  
 20 molested those children and that Mr. Rosse  
 21 notified the authorities and was -- of this  
 22 fact, and that as a result the husband of  
 23 this woman was indicted on these charges  
 24 and that the man was acquitted and that he  
 25 vowed to kill Rosse for having done this.

Page 122

1 Bolan

2 Q. Is that within the Vatican?

3 A. Yes.

4 Q. Did you have any understanding of

5 the position Monsignor Piovano held?

6 A. He was an assistant Secretary of

7 State.

8 Q. Did he identify himself as such?

9 A. Yes.

10 Q. Were -- was he -- strike that.

11 At that time to your knowledge

12 was there more than one assistant Secretary

13 of State?

14 MS. McNAMARA: Objection,

15 leading.

16 THE WITNESS: I don't know. I

17 don't recall.

18 BY MR. CURLEY:

19 Q. I am trying to find out where he

20 would be in the hierarchy of the Secretary

21 of State, if you know.

22 A. I don't know.

23 Q. You don't know if he was the

24 second to the secretary himself?

25 A. No. I knew who was second but I

Page 123

1 Bolan

2 don't know what his ranking was.

3 Q. You know he was not second?

4 A. He was not second. Number one

5 was Sodano and Cardinal Re was after

6 Cardinal Sodano.

7 Q. Father Farrell, did he have any

8 position within the Vatican that you are

9 aware of?

10 A. No. I had a conversation with

11 Father Farrell before that. I told him

12 that I was very active with his order in

13 the United States and we discussed some of

14 the people I worked with and he was an

15 Irishman, Father Farrell was, and I think

16 he is now a bishop.

17 MS. McNAMARA: I want to move to

18 strike that answer as non-responsive.

19 BY MR. CURLEY:

20 Q. Was that conversation before or

21 after the meeting with Piovano?

22 A. I believe it was before. It

23 could have been after.

24 Q. When you say "before," was it

25 during the introductory phase?

Page 124

1 Bolan

2 A. Yes. I think it was right at the

3 introductory. It may well have been after.

4 I am not positive.

5 Q. Had you met either Piovano or

6 Farrell before this meeting?

7 A. No.

8 Q. Did Father Farrell, was he

9 engaged in the substantive discussion other

10 than as an interpreter?

11 A. No. He was just an interpreter.

12 Q. Can you tell us as best you

13 recall what was discussed -- well, let me

14 ask one more foundation question.

15 Father Jacobs accompanied you to

16 this meeting, correct?

17 A. Yes.

18 Q. Did he -- was he present during

19 the discussion with Piovano?

20 A. Yes.

21 Q. Did he participate in the

22 discussion?

23 A. Yes.

24 Q. Can you tell us as best you

25 recall what was said among the parties to

Page 125

1 Bolan

2 this meeting?

3 A. Yes. I said that -- that I had

4 been in contact with this man in the United

5 States whose name I did not reveal who was,

6 although not a Catholic, in fact, was a --

7 Jewish and an atheist, was a great admirer

8 of the Catholic church, that he had amassed

9 a fortune of billions of dollars and he

10 wanted to help the poor and the needy and

11 that he believed that the Catholic church

12 was the best vehicle for that purpose and

13 that he wanted to effect -- he wanted to

14 establish a foundation in the Vatican to

15 carry out this project, that he would

16 initially give \$55 million, 50 million of

17 which would be used to acquire insurance

18 companies and under the supervision of this

19 donor.

20 The other 5 million would be used

21 by the foundation as it saw fit and that he

22 felt that billions of dollars could be made

23 for the Catholic church through this

24 foundation.

25 Monsignor Piovano said that he

Page 154

1 Bolan

2 A. Hassler Hotel.

3 Q. Who did you meet with in Rome?

4 A. I met with Father Jacobs and with

5 Monsignor Colagiovanni.

6 Q. Where did the meeting take place?

7 A. In the Hassler Hotel.

8 Q. In your room?

9 A. No, downstairs either in the

10 lunchroom or right outside the lunchroom.

11 Q. How long did the meeting last

12 between you and Jacobs and Colagiovanni?

13 A. I would say including lunch,

14 about an hour, between and hour and two

15 hours, possibly longer.

16 Q. Was there anybody else present at

17 the meeting?

18 A. No.

19 Q. Did you do anything else in Rome

20 related to David Rosse during this trip

21 other than this meeting you had with Jacobs

22 and Colagiovanni?

23 A. Well, I had dinner with Father

24 Jacobs that night and that involved

25 discussing David Rosse and this proposal by

Page 155

1 Bblan

2 Monsignor Colagiovanni, I think, at that

3 Sabatini restaurant.

4 Q. So how long was the second

5 trip -- strike that.

6 How long was this trip to Rome

7 that you took?

8 A. Just in Rome, one day, arrive,

9 left on the 6th, meeting on the 7th, left

10 on the 8th, something like that. It was --

11 the 6th, 7th and 8th.

12 Q. Can you tell us what you

13 discussed with Jacobs and Colagiovanni

14 during this meeting?

15 A. Yes.

16 Q. Do you want to take a look at

17 Plaintiff's Exhibit 3? Is that what you

18 were --

19 A. Yes.

20 Q. It is a one-page handwritten

21 document Bates number TB 55.

22 MR. NESSEN: Did you say

23 Plaintiff's Exhibit 2?

24 MR. CURLEY: 3.

25 BY MR. CURLEY:

Page 156

1 Bolan

2 Q. Let's start with the exhibit,

3 Mr. Bolan.

4 There is a signature at the end

5 of the handwriting. It appears to say,

6 Monsignor Emilio Colagiovanni. Do you see

7 that?

8 A. Yes.

9 Q. Did Monsignor Colagiovanni sign

10 this in your presence?

11 A. Yes, he did.

12 MS. McNAMARA: Objection,

13 leading.

14 BY MR. CURLEY:

15 Q. Whose handwriting is the rest of

16 the page?

17 A. That is my printing.

18 Q. Was this prepared at the meeting

19 that you talked about with Jacobs and

20 Colagiovanni?

21 MS. McNAMARA: Objection,

22 leading.

23 THE WITNESS: Yes.

24 BY MR. CURLEY:

25 Q. Can you tell us about the

Page 157

1 Bolan

2 discussion that you had during the meeting?

3 A. Yes. It was basically that

4 Monsignor Colagiovanni said that he had had

5 a discussion with his superiors concerning

6 the question of establishing a foundation

7 in the Vatican and that his superiors in

8 the Vatican had authorized him to be the

9 recipient -- to be the recipient of the \$55

10 million from David Rosse; that his

11 foundation, MEF, be the recipient of that

12 sum, and that the 50 million would be -- be

13 received by Monitor Ecclesiasticus, 55

14 million, and 50 million of it would be

15 transferred to a new foundation which

16 was -- now had the name of St. Francis

17 rather than the longer one, the Pontifical

18 whatever it was, and that Monitor would

19 transfer \$50 million to that foundation and

20 the \$5 million would be kept by Monitor

21 Ecclesiasticus to do as it saw fit.

22 Then we had a discussion as to

23 the mechanics and Monsignor Colagiovanni

24 stated that Father Jacobs would be, who had

25 a position with Monitor Ecclesiasticus,

Page 270

1 Bolan  
 2 time.  
 3 Q. Did Cardinal Cacciavillan speak  
 4 English?  
 5 A. Yes.  
 6 Q. Did you -- it is your belief he  
 7 was a fluent English speaker at the time  
 8 you met with him?  
 9 MS. McNAMARA: Objection,  
 10 leading.  
 11 THE WITNESS: I had no problem  
 12 conversing with him in English.  
 13 BY MR. CURLEY:  
 14 Q. Can you tell us what was said at  
 15 this meeting between you and Cardinal  
 16 Cacciavillan and Monsignor Colagiovanni?  
 17 A. Yes. I told him that the purpose  
 18 of the meeting was -- he had -- he said  
 19 Monsignor Colagiovanni had told him that I  
 20 was there to discuss a letter that had been  
 21 written to the Vatican and the response  
 22 that the Vatican had made and at that point  
 23 I recited it to Cardinal Cacciavillan what  
 24 I considered to be the relationship with  
 25 the St. Francis, the Vatican and Monitor

Page 271

1 Bdan  
 2 Ecclesiasticus, and I told him that this  
 3 individual in the United States, an  
 4 enormously wealthy man, although not a  
 5 Catholic, was Jewish and an atheist, wanted  
 6 to donate money and work with the Vatican  
 7 in helping the poor, the ill, the  
 8 disadvantaged, the downtrodden, and that we  
 9 had -- Monsignor Colagiovanni and I had met  
 10 with him and that an arrangement had been  
 11 worked out whereby this individual would  
 12 contribute \$55 million to the Vatican  
 13 through the Monitor Ecclesiasticus  
 14 Foundation and that the 5 million would be  
 15 used by the Vatican foundation as it saw  
 16 fit, the other 50 million would be invested  
 17 in insurance companies and that Mr. -- this  
 18 individual would have the authority to make  
 19 the investments and that -- I told him that  
 20 I had met with Monsignor Piovano, met with  
 21 Archbishop Salerno, briefly stated that  
 22 although Monsignor Salerno approved of it,  
 23 that I was informed by Monsignor Piovano  
 24 that the Vatican did not want the  
 25 perception of running insurance companies

Page 272

1 Bdan  
 2 and the -- but that subsequently I was  
 3 informed by Monsignor Colagiovanni that his  
 4 superiors in the Vatican had approved of  
 5 having \$55 million going to the Monitor  
 6 Ecclesiasticus Foundation, that 5 million  
 7 would be kept by the Monitor Ecclesiasticus  
 8 Foundation to do what it saw fit as to the  
 9 other 50 million, that would be used to  
 10 acquire insurance companies through  
 11 Mr. Rosse.  
 12 That Mr. Rosse would donate the  
 13 55 million, 5 would be kept by Monitor, the  
 14 other 50 million would be given to a  
 15 foundation, St. Francis Foundation in the  
 16 British Virgin Islands, and that the  
 17 British -- this St. Francis Foundation had  
 18 the same objectives as the Monitor  
 19 Ecclesiasticus, that Father Peter Jacobs an  
 20 official of Monitor Ecclesiasticus would  
 21 have a proxy to represent Monitor  
 22 Ecclesiasticus on St. Francis and that St.  
 23 Francis was -- and that 50 million had been  
 24 transferred to Monitor Ecclesiasticus and,  
 25 in turn, contributed \$50 million to St.

Page 273

1 Bolan  
 2 Francis, that St. Francis was endeavoring  
 3 to acquire insurance companies, that an  
 4 inquiry had been made by one of the  
 5 insurance companies and I had the letter  
 6 that was written by Mr. Sandifur to  
 7 Cardinal Sodano and his answer to it and I  
 8 specified the six questions that had been  
 9 asked and I said that Cardinal Sodano had  
 10 only answered one of them saying that St.  
 11 Francis was not a -- not a Vatican  
 12 foundation and that --  
 13 Q. Can I interrupt you? I am sorry.  
 14 You said Cardinal Sodano and the  
 15 letter he wrote. Did you mean Cardinal Re?  
 16 A. Cardinal Re, yes.  
 17 Q. If I can, let me stop you there  
 18 for a second and have a little follow up  
 19 before we get to that part of it and we can  
 20 come back to that in just a second if that  
 21 is all right.  
 22 I just want to confirm that all  
 23 of the things you just testified about were  
 24 discussed at this meeting with Cardinal  
 25 Cacciavillan?