

# Compliance Today – September 2022

## Board oversight not exempted for religious organizations

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By Gabriel Imperato

On May 24, 2022, New York Attorney General Letitia James sued the Roman Catholic Diocese of Albany, New York; its leadership; and others in the New York State Supreme Court of Schenectady County. The suit alleges that the defendants breached their fiduciary and legal duties to more than 1,100 former employees of St. Clare’s Hospital by intentionally removing the St. Clare’s Retirement Income Plan from the protections available under federal law and failing to fund, insure, and administer the pension plan.<sup>[1]</sup>

### The parties

Attorney General Letitia James assumed office on January 1, 2019.<sup>[2]</sup> She was elected public advocate of New York City in 2013 and was re-elected in 2017 before assuming her current role. She began her career as a public defender at the Legal Aid Society before serving as head of the Brooklyn Regional Office of the New York State Attorney General’s Office, and later as representative for the 35<sup>th</sup> Council District in Brooklyn in the New York City Council.<sup>[3]</sup>

The diocese was established in 1941 by Special Act 283 of the New York Legislature.<sup>[4]</sup> From 1977 until 2014, the diocese exercised control over St. Clare’s Corporation through Bishop Emeritus Howard Hubbard.<sup>[5]</sup> From 2014 to the present, control has been exercised through current Bishop Edward Scharfenberger. Joseph Pofit has served as a board member and officer of the corporation since 2008, working under both bishops throughout their tenures.<sup>[6]</sup> The Very Reverend David R. LeFort is the trustee of the Diocesan Investment and Loan Trust Fund and has acted as the purported legal representative for Bishop Scharfenberger.<sup>[7]</sup> All of these individuals, along with the diocese and St. Clare’s Corporation, are named as co-defendants in the lawsuit.<sup>[8]</sup>

### History of the pension plan

In 1948, the diocese cofounded St. Clare’s Hospital of Schenectady, New York, a not-for-profit corporation known since 2009 as St. Clare’s Corporation, to oversee hospital operations.<sup>[9]</sup> In 1959, the corporation established a pension plan to provide benefits to retired hospital employees and their beneficiaries.<sup>[10]</sup> In 1991, the corporation, at the diocese’s direction, applied to the Internal Revenue Service (IRS) for an exemption from Employee Retirement Income Security Act (ERISA) regulations, or “church plan” status.<sup>[11]</sup> The exemption was granted in 1992, removing the pension plan from federal requirements, including mandatory annual contributions, insurance coverage, reporting, and the federal prohibition on reductions in benefits for vested employees. However, the church plan is still subject to state laws.<sup>[12]</sup>

Between 1999 and 2006, Bishop Hubbard failed to make the proper contributions to fund the pension plan, causing the fully funded plan to become underfunded by \$43 million. In 2005, the corporate board, led by Bishop Hubbard, “froze” the plan, preventing vested employees from accruing benefits based on service after that date. The board took similar actions in 2006 and 2007, further reducing pension benefits and eligibility for vested employees by increasing the age at which benefits could be realized and eliminating early retirement options.

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These changes were illegal under New York’s labor and insurance laws, and also violated the defendants’ duty of obedience.<sup>[13]</sup>

From 2005 to 2008, the corporation represented to the pensioners that the elimination of further accruals and reduction in vested benefits would ensure the plan’s solvency. Despite the plan being deeply insolvent, Pofit testified under oath that the plan was too “rich” in the benefits it provided for pensioners. In 2007, Bishop Hubbard rejected the board’s requests to combine the pension plan with other diocesan pension plans available to lay employees.<sup>[14]</sup> Also in 2007, the corporation, at Bishop Hubbard and the board’s direction, requested funding from the state of New York for the pension plan to remedy the deficit they caused by repeatedly failing to make proper contributions and insure plan assets.<sup>[15]</sup>

In 2008, the state of New York provided the corporation with a grant of \$28.5 million in Medicaid funds, which the corporation represented would be sufficient to fully fund the pension plan.<sup>[16]</sup> In 2008, the hospital closed, but the corporation continued to exist with the primary purpose of managing the pension plan.<sup>[17]</sup> Bishop Hubbard disbanded the board of directors, usurping their authority, making himself the corporation’s sole director, and appointing Pofit to wind up the hospital’s affairs.<sup>[18]</sup> In just over a year, the plan lost millions of dollars due to poor monitoring and administration.<sup>[19]</sup>

Though Bishop Hubbard reconstituted the corporation’s board of directors in 2009, which created the St. Clare’s Retirement Income Plan Trust in 2011, the defendants failed to appoint a single person with pension experience or expertise. The trust’s board of trustees, consisting of every sitting corporate board member sans Bishop Hubbard, held no meetings and conducted no business from its formation until sometime in 2017.<sup>[20]</sup>

From 2001 to 2017, defendants often failed to make the annual contributions necessary to maintain the plan’s financial condition, in whole or in substantial part. Even so, St. Clare’s Corporation reported the full contribution amount on IRS Form 990, rendering the filings inaccurate and misleading.<sup>[21]</sup> When Bishop Scharfenberger took over in 2014, he followed Bishop Hubbard’s lead in neglecting the pension plan, refusing to combine the plan with other plans or provide the plan with financial assistance.<sup>[22]</sup> In 2017, the corporation board unanimously voted to rejoin ERISA and purchase Pension Benefit Guaranty Corporation coverage for the pension plan. However, Bishop Scharfenberger directed the board to reverse its prior vote, which it did.<sup>[23]</sup>

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