

Mar 14 2024

SC Court of Appeals

The State of South Carolina
In The Court of Appeals

Appeal from Dorchester County
Hon. Heath P. Taylor, Circuit Court Judge

Appellate Case 2023-000720

Case Nos. 2006-CP-18-01310
2006-CP-18-01311
2006-CP-18-01636

John Doe #53, John Doe 66, John Doe 66A, John Doe 67,
Jane Doe 1 and Jane Doe 2 and Rachel Roe, individually
and as representatives of a class of people similarly situated,
Plaintiffs,

Of whom class members Julie McDonald and
Richard McDonald are the Appellants,

v.

The Bishop of Charleston a Corporation sole, and the Bishop of
The Diocese of Charleston, in his official capacity, Respondents,

And

David K. Haller, Lawrence E. Richter, Jr., and Richter
& Haller, LLC, Intervenors.

Record on Appeal
Volume Three of Four

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER) 2006-CP-18-1310, 1311, and 1636

JOHN DOE #53, JOHN DOE 66,)
JOHN DOE 66A, JOHN DOE 67,)
JANE DOE 1 AND JANE DOE 2, AND)
RACHEL ROE, INDIVIDUALLY AND AS)
REPRESENTATIVE OF A CLASS OF)
PEOPLE SIMILARLY SITUATED,)

PLAINTIFFS,)

VS.)

TRANSCRIPT OF RECORD

THE DIOCESE OF CHARLESTON, A)
CORPORATION SOLE, AND THE)
BISHOP OF THE DIOCESE OF)
CHARLESTON, IN HIS OFFICIAL)
CAPACITY,)

DEFENDANTS.)

JANUARY 29, 2009
ST. GEORGE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DIANE S. GOODSTEIN, JUDGE

A P P E A R A N C E S:

A. PETER SHAHID, JR., ESQ.
ERIN GROEBER, ESQ.
JAMES G. GEOLY, ESQ.
LAWRENCE E. RICHTER, JR., ESQ.
DAVID HALLER, ESQ.
GREGG MEYERS, ESQ.
DAVID FLOWERS, ESQ.

BONNIE H. KELLY
CIRCUIT COURT REPORTER

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1 THE COURT: Now, we now move on to the *Doe vs. Bishop*
2 *of Charleston and the Diocese*. And we have three motions
3 today: There is a Motion to Recuse; there is a Motion to
4 Enforce Settlement; and then there is a request for an
5 *amicus*.

6 MR. SHAHID: Judge, there's actually one more motion.

7 THE COURT: All right.

8 MR. SHAHID: There was a motion -- with the Motion to
9 Enforce Settlement, Motion to Deposit Funds.

10 THE COURT: Right. I -- I really considered those --
11 one came first and the other one came -- Mr. Shahid, I
12 really considered those to be one and the same.

13 MR. SHAHID: Yes, ma'am.

14 THE COURT: But I do understand that that is a request
15 for relief. I certainly do.

16 Yes, sir, Mr. Meyers?

17 MR. MEYERS: Good morning, Your Honor. There is also
18 a Motion to Dismiss on behalf of my client.

19 THE COURT: That is right. Motion to Dismiss. You
20 are right. Thank you very much.

21 Now, I received an e-mail from Mr. Meyers and we
22 really can ---

23 (Sotto voce discussion between
24 the law clerk and the Court.)

25 THE COURT: I think it was from Mr. Meyers; wasn't it?

1 And Mr. Meyers opined of an order that I think you
2 thought made sense. And there are really two -- two ways
3 to go about this. One, of course, is to just go
4 chronologically, and -- and one is to follow in order of
5 them.

6 And it just seems to me that probably the most
7 appropriate way to probably begin, Mr. Meyers, would be
8 with the Motion to Recuse.

9 And suffice it to say, even prior to yesterday, I'd
10 had an opportunity to review the motions, supporting
11 documentation. And I was fortunate to have yesterday,
12 because we concluded the work that we were doing in Calhoun
13 County. And I was able to devote yesterday to going back
14 over your briefs and your filings in -- in this matter. So
15 with regards to the motions, I have been over the
16 information. It's fairly crisp.

17 MR. MEYERS: If I -- if I could just note, Your Honor,
18 I also, in response to what I got from Mr. Shahid on Monday
19 ---

20 THE COURT: Uh-huh.

21 MR. MEYERS: --- this morning, a few extra documents
22 and another memorandum.

23 THE COURT: I certainly don't have them. So you want
24 to pass those?

25 MR. MEYERS: I'm -- I've got another copy with me.

1 THE COURT: Okay. Good.

2 MR. MEYERS: I'm glad to hand you --

3 THE COURT: All right. I'll take the -- be happy to
4 take the time and review those.

5 (Mr. Meyers hands documents up to the bailiff.)

6 MR. MEYERS: Thanks, Your Honor.

7 (The Court reviews documents.)

8 (Sotto voce discussion between Mr. Meyers
9 and Erin Groeber, Esquire.)

10 (Sotto voce discussion between
11 Mr. Richter and Mr. Haller.)

12 (Sotto voce discussion between
13 Mr. Geoly and Mr. Meyers.)

14 THE COURT: All right. I have reviewed the additional
15 documents and "Reply" is what's on the top sheet filed
16 today by Mr. Meyers. And did you get this to everybody
17 else?

18 MR. MEYERS: Yes.

19 THE COURT: Okay.

20 MR. MEYERS: I note, Your Honor, on mine, the clerk's
21 office in the copy stamp hadn't changed the date. So I
22 don't know what -- they stamped it in two different
23 machines -- the original was stamped in on the first
24 machine, then they gave me this copy? The copy says it was
25 filed yesterday, but it was only filed this morning.

1 THE COURT: I -- I don't know.

2 MR. MEYERS: So, I don't know what they -- I -- I just
3 don't want there to be any confusion about that. I think
4 it's insignificant, but I want to make that clear, since I
5 don't know what the original says, but I know the copy says
6 ---

7 THE COURT: I don't know; I don't know.

8 MR. GEOLY: We received our copies this morning when
9 we arrived at court, Your Honor.

10 THE COURT: Okay. Thank you, Mr. Geoly. Great.
11 Thank you.

12 All right. I think the first motion, I believe, is
13 yours, Mr. Meyers; is it not?

14 MR. MEYERS: Yes, Your Honor. My concern has just
15 been to make sure my clients get a level playing field.
16 And I have always enjoyed being in Your Honor's court, but
17 I -- I'm real -- I'm a little uncertain about my status in
18 Your Honor's court at the moment.

19 I know there was some investigation done on me. I
20 don't know where that stands. I'm not really asking about
21 that. I'm not -- I'm not asking for anything on the record
22 in terms of that, but it's never been clarified for me what
23 that was about.

24 I thought I was pretty clear back in March and in
25 written filings, that all I was doing was providing notice

1 of everyone I knew about. But I wasn't claiming to
2 represent all those people.

3 THE COURT: Sure. Mr. Meyers, I want to call your
4 attention to a telephone conversation that you were on.
5 Mr. Shahid was on it; Mr. Richter was on it; and you were
6 on it. And with the -- at that point in time, just for
7 your information, I had been working with the solicitor's
8 office and working with these lawyers. And there came to
9 be some concern about the John Doe A, John Doe B, John Doe
10 C, etc.

11 And I first remember a reference being made in passing
12 at a hearing. I don't -- I remember you were there,
13 because I remember the interchange between you and -- and -
14 - and Mr. Richter in that interchange. And there was a
15 comment made, as I recall, about your representation of
16 these individuals and they were people denoted by alphabet.

17 And I had alphabets with the plaintiff; I had
18 alphabets that I was dealing with through the Diocese as
19 they went through their archives. And in that telephone
20 conversation, I said, "Mr. Meyers, just give me the
21 information. I will keep it and I will examine the
22 information. Just to be sure you got one client that
23 you're raise in this." Okay?

24 MR. MEYERS: Correct. Yeah. That was the March
25 hearing.

1 THE COURT: Sure.

2 MR. MEYERS: As I recall.

3 THE COURT: And in all candor, your explanations, some
4 of them -- most of them certainly were not the typical
5 representation, where a person retains a lawyer to
6 represent him in an instant case. And in that phone call,
7 I asked you for that -- that basic information; you were
8 kind enough to get it to me; and I issued the order asking
9 for the assistance, to be sure that your representation of
10 those clients was appropriate.

11 I was looking for one and only one, because it was my
12 position that if you had one, you were good to go in terms
13 of making objections. And in fact, I retained that
14 individual.

15 I think you are now aware that there were issues --
16 there were other issues raised by that individual; and I
17 stopped and would not allow any further inquiry, Mr.
18 Meyers, for the simple reason that my inquiry was very
19 limited. It was limited to be sure that there was no
20 question but that you had one; because my position was if
21 you had one and one in the alphabet, you were good to go.

22 And let me reiterate to you so there's no question:
23 Although there were other issues raised, I stopped that
24 inquiry. And the reason why, Mr. Meyers, was my -- my
25 inquiry was very limited. And I wasn't going to let it be

1 extended because of that, because it was very limited.

2 The order that I issued, of course, gave you 10 days,
3 gave everybody 10 days to object. But apparently, this has
4 been a source of great angst for you. That was the
5 beginning and the end of it. Okay?

6 So that's the -- that's it. I don't -- I cannot even
7 imagine how it's been even any more than that, because I
8 was very clear in the telephone conversation that I had
9 with all counsel present. So be that -- now -- now, if
10 you'll proceed. So that that is what that is, and I think
11 you're aware of that, based on other forums.

12 Yes, sir. You may proceed.

13 MR. MEYERS: Well, in terms of the -- the grounds,
14 Your Honor, I tried to set them out in ---

15 THE COURT: Sure.

16 MR. MEYERS: --- pretty good detail in my ---

17 THE COURT: You did.

18 MR. MEYERS: --- written document.

19 THE COURT: And again, I believe that there's another
20 forum that's dealt with -- with those matters.

21 MR. MEYERS: Right. And it's not my intention to
22 belabor those matters, but that has been my concern, that
23 if I had got an adverse ruling, I'd have to be able to
24 justify to my clients that ---

25 THE COURT: Uh-huh.

1 MR. MEYERS: --- indeed we had a level playing field.

2 THE COURT: Sure.

3 MR. MEYERS: And given the course of the way things
4 went, it -- it raised those concerns --

5 THE COURT: Sure.

6 MR. MEYERS: -- in my mind.

7 THE COURT: Sure.

8 MR. MEYERS: And it seemed to me, my clients were not
9 treated in the same way as other people who were in the
10 same situation. So I had those concerns.

11 THE COURT: Sure.

12 MR. MEYERS: I -- I felt obligated to raise them; I
13 have raised them.

14 THE COURT: Very well.

15 MR. MEYERS: I submitted my memorandum and I'll be
16 glad to stand on that.

17 THE COURT: Very well. All right. And I will
18 respectfully deny your Motion to Recuse. And -- and I just
19 put on the record that again, those issues have been dealt
20 with in a different forum, and I am satisfied and hope -- I
21 -- I am satisfied that they have been laid to rest.

22 All right, sir. Now we move on to the jurisdictional
23 issue.

24 MR. MEYERS: Right. My clients, Your Honor, opted out
25 of this case. We had a private settlement agreement. We

1 opted out, our constitutional right to do so. The Diocese
2 has not fulfilled the settlement agreement; they have not
3 paid it.

4 So in an effort to enforce that agreement, I applied
5 general legal principles, as Rule 41.1 says I'm to do. And
6 I filed a breach of contract case in Charleston County.

7 The Diocese, from the beginning, has tried to make me
8 come back here where my clients are opted out, where we
9 have a separate agreement, where if it's part of the class
10 action, I think raises incredible complexities for notice
11 to absent members of the class about different agreements
12 they might have gotten.

13 And I keep trying to make the class action simpler now
14 that I'm out of it, rather than more complicated; and I
15 believe the Diocese is trying to make it more complicated.
16 I think that if the Diocese is correct that my private
17 agreement is part of the class action, a whole series of
18 complications arise from whether absent members of the
19 class were informed about that private agreement. If,
20 however, it's a private agreement, then there's no
21 obligation to inform members of the class about it.

22 So if it's outside the class action, which I believe
23 it is, and using Rule 41.1 -- which is what governs the
24 settlement -- general legal principles apply. It seems to
25 me not only appropriate, but the right thing to do for me

1 to file where the agreement was negotiated, entered,
2 breached, and where the Diocese resides.

3 THE COURT: Mr. Meyers, what about 43(k)?

4 MR. MEYERS: 43(k) says private settlement agreements
5 are governed by Rule 41.1. That's what it says. So when
6 the Diocese brought the agreement here, that makes sense
7 for the Diocese to do, because the Diocese is party to the
8 case, and it wants to note for the Court that my Rule 59
9 objections are resolved and there's not going to be any
10 appeal involving the class; then the agreement says I will
11 opt out. And of course, the Court had already deemed my --
12 11 of my 12 clients to be out of the case in July. But
13 that Rule 59 motion had that order not yet final. So that
14 order is final.

15 Rule 43, though, actually doesn't apply. What it says
16 is if you have a private settlement agreement, that's Rule
17 41.1. And under Rule 41.1, general legal principles apply,
18 unless you're trying to invoke the Court's imprimatur on an
19 issue of secrecy, which we are not trying to do.

20 THE COURT: Yes, sir. I think Rule 43(k) also says
21 that there are ways to present agreements to the Court, to
22 remove them from -- from only being enforceable by virtue
23 of -- of a contract action. And that you can have the
24 Court -- you can place your agreement on the record, and
25 therefore have the ability to have the Court enforce the

1 settlement.

2 And that way -- I mean, typically and normally what
3 happens with Rule 43(k) is -- and it normally happens in a
4 wreck case, in an automobile accident case where
5 litigation's been filed; lawyers are able to settle the
6 case; letters go back and forth; the release arrives; and
7 for whatever reason, the plaintiff does not want to sign
8 the release. Check has arrived.

9 And oft times, lawyers will come back to the Court to
10 enforce the settlement. No question but that they sent the
11 letters; no question but that they had a meeting of the
12 minds. And they're looking for the Court to have the
13 plaintiff sign the release.

14 In that instance, the Court can't do that. The reason
15 the Court can't do that is because it is no more than an
16 agreement; a contract. It wasn't placed on the record
17 before the Court; wasn't published in open court; wasn't a
18 part of a consent order setting forth the terms of the
19 settlement.

20 What makes this one potentially different is because
21 there was a pending Motion to Alter and Amend, and in
22 resolution of -- of the Motion to Alter and Amend, as well
23 as, I gather, any potential concerns that the parties had
24 about appeals, there was an agreement that was entered
25 into; moneys agreed to be paid. And to be sure that the

1 parties -- both sides -- your clients, as -- as well as --
2 as class counsel, as well as the Diocese, opted to publish
3 that to the Court and an order signed.

4 And so far as the Court is concerned, it was -- it was
5 positive because it resolved, by Court order, the Motion to
6 Alter and Amend. And it was important to the Court to have
7 that resolved and resolved in the form of an order.

8 And obviously, the -- those -- your -- your clients
9 would not have done that, walked away from their ability to
10 -- to argue the Motion to Alter and Amend, and if -- if
11 needed, their appellate rights, without the settlement.

12 MR. MEYERS: Correct.

13 THE COURT: So 43(k), tell me why under 43(k) -- and -
14 - and as I also -- let me just say, as I also understand
15 it, as a part of the settlement, your clients were to opt
16 out, and -- and in the documents yesterday, I had not seen
17 -- the -- the documents that had been signed by each of
18 your clients that talk about your opting out. You know,
19 you have -- you're not going to participate in the class
20 settlement; you're going to participate in your settlement,
21 or -- you know, I think somebody had penciled in ---

22 MR. MEYERS: I had.

23 THE COURT: It looked like your handwriting -- you
24 know, about the two options that they had, that this was --
25 this -- this contained their rights as -- as a result.

1 MR. MEYERS: Correct. We would "enforce it outside
2 the class" is the language ---

3 THE COURT: Yeah. Absolutely. So while I certainly
4 understand your argument completely in terms of they --
5 they absolutely are not a part of the class; their rights
6 have not been adjudicated by the class; they opted out of
7 the class. In addition to that, though, your clients and
8 their lawyer was entitled to certain moneys.

9 And so under 43(k), those -- those -- that agreement
10 was reduced to a court order, and of course, the court
11 order incorporates the letter that I think you all -- I
12 think everybody signed.

13 Tell me why -- under 43(k), at least insofar as the
14 parties to the agreement, why then can that agreement not
15 be enforced by the Court?

16 MR. MEYERS: 43(k) ---

17 THE COURT: Uh-huh.

18 MR. MEYERS: --- certainly would entitle the Diocese
19 to enforce my relinquishment of Rule 59, because ---

20 THE COURT: Uh-huh.

21 MR. MEYERS: --- if I tried a notice of appeal after
22 that agreement ---

23 THE COURT: Uh-huh.

24 MR. MEYERS: --- the Court could say, "You can't do
25 that; I've got an agreement right here."

1 In terms of the underlying resolution, though, that's
2 ---

3 THE COURT: Actually, I don't think -- that's an
4 interesting -- now my -- my mind is right back there where
5 you are.

6 Actually, I think they'd have to raise that to the
7 Supreme Court, because I wouldn't have jurisdiction.

8 MR. MEYERS: But -- but that would be the basis of it.
9 The basis would be ---

10 THE COURT: That's right.

11 MR. MEYERS: --- there was ---

12 THE COURT: Right. But it wouldn't be me; it would be
13 the Supreme Court.

14 MR. MEYERS: Right. Because at that point, I at least
15 have the argument that the July 30th order that excludes my
16 clients --

17 THE COURT: Uh-huh.

18 MR. MEYERS: -- is not final. Once I relinquish, that
19 order becomes final.

20 THE COURT: Which order?

21 MR. MEYERS: The July 30th order that excluded my
22 clients from even having standing to raise objection.

23 THE COURT: Okay. That's the order that there was a
24 Motion to Alter and Amend.

25 MR. MEYERS: Right.

1 THE COURT: Okay. I'm with you.

2 MR. MEYERS: Once -- once my Motion to Alter or Amend
3 is resolved, then the -- the only contention I have in the
4 case at that point is I was improperly excluded. I should
5 -- I should have not only standing, I should have at least
6 the ability to state a claim should my clients choose to
7 opt in or be in.

8 And what the Court had done is said not only are my
9 clients -- not only do they lack standing, they can't even
10 make an objection. To make even an objection, they would
11 have had to petition to intervene. And that finding of the
12 Court is the law of this case.

13 THE COURT: Okay.

14 MR. MEYERS: The only way ---

15 THE COURT: Sure.

16 MR. MEYERS: --- for my clients to assert the
17 jurisdiction of this Court, under this Court's order, is
18 for them to petition to intervene and become part of the
19 case.

20 THE COURT: Except for the fact that through your
21 actions as their agent, they submitted themselves to the
22 jurisdiction of the Court under 43(k).

23 MR. MEYERS: To the extent of resolving a Rule 59 ---

24 THE COURT: Right.

25 MR. MEYERS: --- motion, and then the agreement ---

1 THE COURT: Now -- well ---

2 MR. MEYERS: --- which the Court ---

3 THE COURT: --- yeah ---

4 MR. MEYERS: --- also enforces ---

5 THE COURT: --- just the agreement ---

6 MR. MEYERS: --- is they will opt out, and there is
7 constitutional significance to someone opting out. It
8 means we are out. The Diocese wants to bring us back in,
9 saying, "Well, you came into court to opt out; so you must
10 be in."

11 THE COURT: No.

12 MR. MEYERS: It is -- it is -- yes. That is what the
13 Diocese contends.

14 THE COURT: I gotcha.

15 MR. MEYERS: By -- by coming to court ---

16 THE COURT: What they want to do is they just want the
17 benefit of their bargain. They just want to -- as I
18 understand it.

19 Now, let me say this to you. I think that there are
20 other issues and this -- I'm going to give you a simplistic
21 -- as we -- you know, as we have this interchange, because
22 I'm still pondering, where -- where are we? January of
23 '09? And I'm wondering, "How come you don't have your
24 money?" I mean --

25 MR. MEYERS: Well, because the reasons change ---

1 THE COURT: I -- we -- we going to get there. I mean,
2 I think we'll get there, and -- and I would have thought,
3 without question, that -- and -- and now, as of yesterday,
4 and -- and some, I think, perhaps this morning even, I've
5 seen some of the letters -- Meyers on -- doing your Cuba
6 Gooding imitation, "Show me the money."

7 And I think it looks like about May -- the first week
8 in May -- you'd about had it, looks to me like. I mean
9 March, because, I mean, you're saying, "You told me in
10 January, uh-huh, uh-huh." And there would be no question
11 in my mind but that at that point, you could have come back
12 to the Court and done your Cuba Gooding imitation and said,
13 "Show me the money."

14 Because I believe that your clients would have been
15 able to come to this Court, not as members of the class,
16 but to enforce their agreement: "We agreed to opt out; and
17 we agreed that we would forego our Rule 59 motion and any
18 Appellate rights in exchange for our money."

19 And so what you are telling me is that those poor
20 people would not have been allowed to come back to this
21 Court and say, "Where's our money?"

22 MR. MEYERS: We would have had our new Court's order;
23 we would have had to petition to intervene. Had I filed
24 that in March, we'd be hearing that this morning.

25 THE COURT: Oh, no, Mr. Meyers.

1 MR. MEYER: Well, that's the way the -- that's the way
2 the record has been in this case.

3 THE COURT: No.

4 MR. MEYERS: And what I did not want ---

5 THE COURT: Yeah.

6 MR. MEYERS: What became clear to me on March 3rd --
7 when Mr. Shahid wrote me and I received it on March 5th --
8 was that the Diocese had changed its position. It was now
9 articulating a series of new conditions that had to be
10 satisfied. And it was clear to me I wasn't going to get
11 paid anytime soon. Turns out I was right.

12 I made it very clear up through August 15th, I had
13 authority to accept simply the principle amount with no
14 consideration of consequential injury. But what I could
15 not do for my clients was abandon the pretty significant
16 consequential injury that has accrued to them.

17 And I have one third party beneficiary in my agreement
18 with the Diocese who -- who has no ability to participate
19 in this case, none at all. He's excluded by definition.
20 To admit him to this case ---

21 THE COURT: That is "B." That's ---

22 MR. MEYERS: John Doe B.

23 THE COURT: Well, see -- but John Doe B -- see, my --
24 my concern about John Doe B is John Doe B is a stranger to
25 the litigation and ---

1 MR. MEYERS: Yes.

2 THE COURT: --- completely a stranger to the
3 litigation, because I went -- I went back and -- and
4 studied the -- your original objections. And then as you
5 carried that forward, even to the Rule 59 motion, there is
6 no John Doe B.

7 MR. MEYERS: He's not part of it. So he's not ---

8 THE COURT: Has never been part of it.

9 MR. MEYERS: He has no Rule 43 right ---

10 THE COURT: 43(k).

11 MR. MEYERS: --- to assign ---

12 THE COURT: Okay.

13 MR. MEYERS: 43(k). I'm sorry. He has no right at
14 all.

15 (Passing train is heard in the background.)

16 THE COURT: Norfolk/Southern got to do their thing.
17 We got one more. So "Mayberry." Now, go ahead.

18 I agree with you. I agree with you on John Doe B.

19 MR. MEYERS: He can't even petition to intervene in
20 this case. He -- he would have to file a completely new
21 complaint. And there's no jurisdictional connection that
22 he's got, or any of my people have, frankly, with
23 Dorchester County.

24 So it's a strange posture. But Rule 43(k) says,
25 "Private settlement agreements are governed by Rule 41.1."

1 And Rule 41.1 says, "This rule doesn't apply unless you're
2 trying to invoke the Court's imprimatur on secrecy, and
3 what applies instead are general legal principles."

4 So I think, even under the rule, even if this wasn't a
5 class action, but the -- but the ultimate significant
6 overlay is this was a class action and my people, as part
7 of this agreement, not only have been excluded by the
8 Court, but also agreed formally to opt out.

9 Once the formal opt-out happened, if not before -- and
10 I think it was before -- the moment the -- the July 30th
11 order became final as to my people, which was when this
12 agreement was reached, then the only way for us to get in
13 would be to overcome the opt-out. We would have to
14 demonstrate why our opt-out should be somehow modified or
15 conditioned.

16 But once you're out, you're out. And I am just like
17 everybody else on the street, except I have this private
18 agreement with the Diocese, which they, to this day, refuse
19 to honor. So just in terms of the Diocese seeking the
20 equity of the Court, I think they come with very unclean
21 hands.

22 But in terms of opting out, a class action is
23 different than any other kind of case. And it's different
24 in this respect in two different dimensions.

25 THE COURT: Uh-huh.

1 MR. MEYERS: Not only have my people opted out, and so
2 to enforce, we have to find a jurisdictional basis. And
3 under the Court's rule, I have a petition to intervene for
4 11, and the 12th client just has no ability to do anything.

5 But under the -- the flip side is that if my agreement
6 is part of the class action, then absent class members
7 probably have to be told about it. And that no notice was
8 given to absent class members about any of this -- don't
9 have to go through arbitration; you get a set amount;
10 nothing's at risk -- I mean, there are different elements
11 here. And there is no reason to complicate the class
12 action with that.

13 THE COURT: I -- I ---

14 MR. MEYERS: It's the benefit of opting out for my ---

15 THE COURT: You didn't opt out. See, here -- here's -
16 - you -- you keep saying that. The opting out happened two
17 ways.

18 Number one, I think you argued that these folks were
19 going to opt out. But they couldn't have opted out at that
20 point, because the claims process hadn't begun, so they
21 couldn't opt out.

22 MR. MEYERS: Even more fundamentally, the claimants in
23 this case had not specified whether it was an opt-in or an
24 opt-out class. They were silent about that.

25 And my pleading says, "That's not been clarified.

1 Once it's clarified, I reserve the right to make that
2 decision. If I have to make the decision now, I'm opting
3 out."

4 So then the clarification was brought --

5 THE COURT: It very well may be. I think you said ---

6 MR. MEYERS: My clients ---

7 THE COURT: Uh-huh. --- said they intended to opt out,
8 but they had not at that point.

9 But here's the thing: Your clients, your clients
10 opted out in consideration of the settlement which was put
11 on the record, in this case pursuant to, I believe, 43(k).

12 And so your clients couldn't be put in the position of
13 having agreed, because at the point in time when they opt -
14 - opted out, there wasn't even a claims process at that
15 point. It had not been put into effect. So your clients,
16 in consideration of their settlement, part of the
17 consideration was that they would opt out.

18 Now, I just -- you know, I feel like I'm arguing with
19 you to say your clients -- your clients gave up a lot in
20 this settlement. And you're saying that it was of no
21 moment and they aren't entitled to enforce?

22 MR. MEYERS: I'm saying it's of tremendous
23 significance. It's -- the Diocese says that doesn't
24 matter. Just because you opt out -- in fact, when you opt
25 out, you've opted in. When you opt out, you commit

1 yourself to ---

2 THE COURT: No.

3 MR. MEYERS: --- the perpetual jurisdiction of the
4 Dorchester County Court. That's the Diocese's position.

5 THE COURT: No, sir. No, sir. That's not all -- you
6 -- you've got it all as one thing, and it's not one thing.

7 MR. MEYERS: Well, the Diocese's position is that ---

8 THE COURT: Okay.

9 MR. MEYERS: --- we come into court.

10 THE COURT: All right.

11 MR. MEYERS: And if you come into court, even if you
12 come into court to opt out, you're somehow still in. And I
13 think as a matter of class action in Rule 23 that simply --
14 not only does it -- is not consistent with Rule 23 and the
15 due process implications of opting out, I think it also
16 creates incredible complications for the class. And I
17 think that is just not on the radar screen anywhere, and I
18 think it should be.

19 But in any event, my clients -- whether they had a
20 right to come back to this Court and petition to intervene
21 or whatever the mechanism would be ---

22 THE COURT: No.

23 MR. MEYERS: --- or even if you could just walked
24 right in --

25 THE COURT: They didn't have to petition to intervene.

1 Your clients -- I -- I absolutely -- I'm absolutely clear,
2 your clients, to this moment, to this very moment, have
3 every right to come to this Court and to petition to
4 enforce that settlement.

5 MR. MEYERS: Well, I ---

6 THE COURT: And if in fact, the Diocese or anyone has
7 violated the order, to have that party ordered held in
8 contempt ---

9 MR. MEYERS: But ---

10 THE COURT: --- for violating the terms of that order.

11 That settlement is a court order under 43(k). And I -
12 - you know, in my mind, without question, because
13 otherwise, 43(k) means nothing.

14 And -- and the Court was concerned about that
15 settlement. The Court was concerned about that settlement
16 in this regard: I had a pending 59 motion that was pending
17 and a very serious motion; I had individuals who, by
18 agreement, were agreeing for money to opt out and to give
19 up their rights to a class action settlement. You know,
20 just let alone the dollars.

21 This is, you know, this is Dorchester County. This
22 isn't like Charleston County. We don't get those big old
23 dollar amounts like that up here.

24 So you know there was certainly some concern about
25 committing that -- all of those -- all of those terms. It

1 was important, and it certainly was important in terms of
2 the -- of the management of this case.

3 I don't believe that by -- by complying with the terms
4 of the settlement, that your clients -- and what I mean by
5 that, by complying with the terms of the settlement and
6 opting out -- and I've seen those documents. I mean, they
7 signed those documents. So they opted out. That was
8 consideration for their -- for that settlement.

9 MR. MEYERS: Of course.

10 THE COURT: Which at that point is a -- is -- is
11 clearly a court order, and -- and enforceable by the Court.
12 And you know, they had -- they had an open door -- have --
13 had and have an open door to the Court for redress.

14 And I don't think they've -- I -- I mean, what a --
15 what a repugnant place in the law to put your clients. I
16 mean, they -- here they -- here they give up these rights
17 from -- there's a court order and yet they can't come back
18 and avail themselves of that which they have done that has
19 been approved by the Court and reduced to a court order.
20 They cannot avail themselves to that ---

21 MR. MEYERS: Well, my position ---

22 THE COURT: --- to that rapid remedy?

23 MR. MEYERS: --- my position has not been that they
24 might not have had alternative ways to seek enforcement.

25 THE COURT: Sure. Sure. Yeah. Yeah.

1 MR. MEYERS: So but what I would have done is try to
2 comply with the July 30th order and petition to intervene,
3 and I knew I couldn't do that on behalf of my third party
4 beneficiary client. So I took -- I went through the front
5 -- what seemed to me the front door. Straight up.

6 We did all this in Charleston. You reside in
7 Charleston. You have -- I have a private agreement with
8 you, which under Rule 43 is governed by 41, which says it's
9 governed by general legal principles. You breached the
10 contract. I'm going to have consequential damages unless
11 you come through fairly soon, and they continue to breach
12 the contract.

13 So I -- I don't think that there was exclusive
14 jurisdiction by any means. That's certainly not part of
15 the agreement. And I took what I thought was the fastest
16 route; and the Diocese has turned handstands to make sure
17 nobody touches this except Your Honor.

18 THE COURT: Yeah. Well, I -- you know -- and the
19 reason, I gather they -- well, I don't know. I don't know
20 why they did that. And I don't know what's going on in
21 Charleston. You know, and I've seen -- probably in
22 preparation for today's hearing, I've seen some of the
23 pleadings and I've glanced at them.

24 And interestingly enough, interest -- interestingly
25 enough, as I understand the -- the position that you have

1 taken to this point, you for -- for your own tactical
2 reasons, have chosen to treat the agreement not as a court
3 order, but as a contract. And -- and that really -- that
4 lies in Charleston at this point. That -- that isn't here.

5 And I certainly -- I mean, what I have jurisdiction
6 over, obviously -- obviously is the class settlement, the
7 class action, and -- and also the settlement.

8 And jurisdictionally speaking, why do I have
9 jurisdiction over the settlement? Simply because your
10 client submitted to the jurisdiction of this Court for
11 purposes of that settlement under 43(k).

12 MR. MEYERS: Which requires them to opt out.

13 THE COURT: Exactly. Exactly. They're not in the
14 settlement. They are not in this settlement.

15 MR. MEYERS: Correct. They're also not in this case.

16 THE COURT: Yeah. They are.

17 MR. MEYERS: Well, I understand the Court's position
18 and ---

19 THE COURT: They are. That's -- that would -- that's
20 the ruling. They must be. They must be, because --
21 because -- because at the point in time when -- probably at
22 the point in time when the objections were filed and they -
23 - they submitted to the personal jurisdiction of the Court,
24 probably at that point.

25 But that's not the real issue before us. The issue

1 before us has to do with that order that approved the
2 settlement; and unquestionably in my mind, they submitted
3 to the personal jurisdiction of this Court for that
4 settlement.

5 I am not dealing with a breach of contract action. I
6 don't know -- and let me -- let me just expound on that a
7 little bit farther. Because it's your position because of
8 delay on behalf of the Diocese that other things have
9 happened.

10 MR. MEYERS: Correct.

11 THE COURT: Well, you know, Mr. Meyers, you're right.
12 I mean, that -- if those are additional and that's -- that
13 very well may be a whole other situation. And -- but --
14 but the Court's concern here is the class action and that
15 settlement. I mean, that's just part of this -- part of
16 this litigation in my mind.

17 Long story short, I do believe there is jurisdiction
18 and I would deny respectfully your Motion to Dismiss,
19 noting your exception thereto.

20 MR. MEYERS: All right. Well ---

21 THE COURT: Okay.

22 MR. MEYERS: --- I think I've made it very clear that
23 the Diocese continues to refuse to pay. So if -- if indeed
24 that order applies to ---

25 THE COURT: Uh-huh.

1 MR. MEYERS: --- the Diocese ---

2 THE COURT: Sure.

3 MR. MEYERS: --- I would request of the Court to not
4 only compel today the Diocese to pay the money --

5 THE COURT: Yeah.

6 MR. MEYERS: -- which they admit they owe, but to also
7 provide for the interest allowed by law on money that
8 should have been paid, by my calculation, on February 14th,
9 if not sometime fairly soon after.

10 And to compel them to actually do it, because they
11 have refused to do it. And I got one set of reasons in
12 March; I got silence until August. I got a new reason in
13 August: "We can't pay you because we have a Motion for
14 Sanctions against you."

15 And I said, "Keep your motion for sanctions; you will
16 not waiver. Pay the money; keep your motion for
17 sanctions." They still won't do it.

18 So this is the Diocese. They do have to be "dragged,
19 kicking and screaming," as Mr. Richter once said. He's
20 right. And they simply won't do it.

21 And here's how crazy it's got to. On August 5th,
22 before they told me they had filed their motions in July
23 25th in this Court for sanctions to enforce the settlement,
24 I wrote to them not knowing they had filed these motions.
25 And I said, "Look, guys, I've got authority until August

1 15th. Just pay the money. The Charleston case goes away,
2 everything gets resolved." They won't do it.

3 Instead, they're trying to make me accept the money
4 I'm demanding, and they won't pay it. It is "Alice in
5 Wonderland" that I can't get them to honor what you're now
6 concluding is your order.

7 THE COURT: Uh-huh.

8 MR. MEYERS: So your order was not put into effect.
9 So actually, they owe me pre-judgment interest from August
10 31st, the date the Court entered the order. Since the
11 Diocese breached it, I would argue pre-judgment interest
12 should run from there. But it certainly should run from --
13 under the terms of the agreement, when the arbitrations
14 were done. And the Diocese still refuses to pay.

15 So I am --

16 THE COURT: Now, under your argument as you are making
17 it, I'm -- I'm -- you know, I -- the remedies available to
18 the Court, I think, under the circumstances, are varied,
19 but I think it would be post-judgment, not even pre-
20 judgment. It wouldn't be eight and three-quarters or
21 whatever it is as of January, which is much lower, but it
22 would be the higher rate, I think.

23 MR. MEYERS: Well, actually, you're correct, and I
24 appreciate ---

25 THE COURT: Yeah.

1 MR. MEYERS: --- the Court calling my ---

2 THE COURT: I mean, don't you think it would be?

3 MR. MEYERS: --- attention to it.

4 THE COURT: I mean, don't you think it would be?

5 MR. MEYERS: Well, under the Diocese's argument -- I
6 mean, I thought I had to demonstrate that they had a
7 contract that they had breached.

8 Under the Diocese's argument that this is an order of
9 the Court, then they've been under a Court order to pay the
10 money on the terms of the agreement, which they have failed
11 to do. So I think you're right; I think post-judgment
12 interest would apply.

13 Now, they want to sanction me for seeking to make them
14 pay. And I guess I'll have an opportunity to address that,
15 but it seems to me that is exactly my job, try to make them
16 pay. In a class action where you have this strange opt-out
17 situation, it certainly was not bad faith that I pursued
18 them in Charleston under a breach of contract theory.

19 They're arguing I should have done worse to them,
20 bring them in here under the Court's order and get post-
21 judgment interest. So I accept the Diocese's position that
22 they owe me post-judgment interest, or the Court's
23 interpretation, rather.

24 THE COURT: No. I said I -- I'm just -- I think what
25 you're telling me ---

1 MR. MEYERS: --- back to that order.

2 THE COURT: Yeah. I'm not agreeing with you or
3 disagreeing with you at this point, because I haven't heard
4 from them. But I think what you would be asking for would
5 be post-judgment, not pre-judgment. I just -- I just know
6 that.

7 MR. MEYERS: I -- I think you're correct. And I think
8 the Diocese -- under their theory, that's been their
9 obligation, to comply with the Court's order --

10 THE COURT: Uh-huh. Yes.

11 MR. MEYERS: -- which they have not done.

12 THE COURT: See, and that's what they've got. They've
13 got one of those motions, too, to -- to pay the money.

14 MR. MEYERS: -- in which their own filing says they
15 owe.

16 THE COURT: Absolutely. All right. Well, let me tell
17 you what we're going to do. All right. Now, I've dealt
18 with those two motions. I'm going to deal with -- when we
19 return -- the Motion to Enforce Settlement. Right? And
20 then I'll deal with the *amicus* at -- at the conclusion of
21 that.

22 But we're going to take a -- we're going to take a
23 very short break. Please, everybody, help yourself to
24 coffee, if you would like and -- and whatnot.

25 Now, is anybody here on anything other than this --

1 this case, Diocese? Everybody else is --

2 Very well. Thank you all so much. We aren't going to
3 take long. We're going to take maybe 7 to 10 -- maybe 10 -
4 - we'll take a comfort break of 10 minutes. Thank you all.

5 And when we get back, I want to hear from -- from the
6 Diocese and their motion.

7 (Off the record at 11:25 a.m.)

8 (Back on the record at 11:40 a.m.)

9 THE COURT: All right. Now, we are now onto the
10 Diocese motion.

11 MR. SHAHID: Thank you, Judge.

12 THE COURT: Yes.

13 MR. SHAHID: Your Honor, a little history, if -- if I
14 may. Be necessary to put everything in the right
15 perspective ---

16 THE COURT: Sure.

17 MR. SHAHID: --- if I can do this.

18 Back on March of 2007, Mr. Meyers forwarded a letter
19 to me identifying people whom he represented under names of
20 -- the letters John Doe "A" through "O." And that was
21 dated March, 2007 -- March 1, 2007. That is tab 3 of the
22 document we filed with this Court on -- on Monday. On
23 March 9th --

24 THE COURT: Wait a minute, now.

25 MR. SHAHID: Okay.

1 THE COURT: Let me get -- let me get -- all right.

2 Tab -- all right. I'm at tab 3. Okay.

3 MR. SHAHID: All right.

4 THE COURT: All right. Yes.

5 MR. SHAHID: On March 1, 2007, he's identified folks
6 whom he represents to me. And I redacted the -- their true
7 names and just kept it John Doe -- John Doe and Jane Doe
8 identity.

9 THE COURT: Okay.

10 MR. SHAHID: As the Court has already alluded to, we
11 appeared before you on March 9th for that fairness hearing
12 to address the adoption of the September 12th, 2007 class
13 action settlement agreement. And as the Court has -- has
14 mentioned, on that date in time, Mr. Meyers stood up at --
15 at the Court's inquiry, "Do you represent at least one
16 party?" And he said, "I do."

17 Objections were then presented to the Court. And then
18 following -- at the conclusion of the March 9th hearing,
19 things sort of unraveled a little bit, I guess -- for lack
20 of a better way of saying it -- and the solicitor became
21 involved in doing an investigation. And so things were
22 delayed as to the resolution of the approval of the
23 settlement agreement until July 30th, 2007.

24 And as the Court has made reference to, after July
25 30th, 2007, there was a hearing before you in Orangeburg on

1 August 9th, 2007. That hearing addressed motions filed by
2 class counsel and motions filed by defendant. Also filed,
3 but not present at that hearing, was a motion that Mr.
4 Meyers filed -- a Motion to Alter or Amend the July 30,
5 2000 order.

6 So there was a flurry of activity between March 9th
7 and the July 30th order; a flurry of activity from July
8 30th to the hearing in Orangeburg in August; until on
9 August 30th, 2007, a document is signed by Mr. Richter as
10 class counsel, myself as representative of the Diocese, and
11 Mr. Meyers on behalf of the folks that he has identified on
12 the March 1, 2007, with the exception of one individual.
13 That would be John Doe B.

14 Attached, Judge, to the Motion to the -- Enforce the
15 Agreement filed with this Court on July 25th, 2008, the
16 document, which is the settlement agreement of August 30th,
17 2007. If -- if I may just read into the record that
18 agreement. It has been attached to several documents,
19 filed in conjunction with these proceedings, but I think it
20 may be important to read this out loud so that the
21 particulars of this are -- are clear.

22 THE COURT: All right. Now, what tab? What tab?

23 MR. SHAHID: Judge, this is my July 25th filed Motion
24 to Enforce.

25 THE COURT: Okay. Hold on.

1 MR. SHAHID: It is attachment A.

2 (Sotto voce discussion between Mr. Shahid and Ms. Groeber.)

3 MR. SHAHID: And then it's actually -- I believe, tab
4 9 -- there's a big thick document, Judge.

5 THE COURT: Okay. Yes, it is.

6 MR. SHAHID: So reading from tab 9, it is first the
7 order of the Court, which is entered on August 30th, 2007.
8 And then -- which is not included in that tab -- is the --
9 the actual letter. So I'll just go ahead and read the
10 letter to the -- to the Court.

11 THE COURT: Okay.

12 MR. SHAHID: And it -- and it's dated -- on my
13 stationery, it's dated August 30, 2007. And the caption of
14 the letter reads as follows (as read): "Re: John Doe No.
15 53, John Doe No. 66, John Doe 66A, John Doe 67, Jane Doe
16 No. 1, Jane Doe No. 2; and Rachael Roe, individually and as
17 a representative of a class of people similarly situated,
18 versus the Bishop of Charleston, a Corporation Sole; and
19 the Bishop of Charleston -- the Bishop of the Diocese of
20 Charleston, in his official Capacity."

21 There are three case numbers associated with this
22 caption. They are: Case No. 2006-CP-18-1310, 2006-CP-18-
23 1311, and 2006-CP-18-1636; which is the same caption number
24 that this -- that the Court used in -- in issuing this
25 order of July 30, 2007. So it was clear we were dealing

1 with the same order of July 30, 2007, dealing with the same
2 action that class counsel filed with this Court in 2006.

3 And the letter is very simple. It says -- it's
4 addressed to Mr. Richter as class counsel and to Mr. Meyers
5 as the representative of the following individuals.

6 Is the Court still searching for that document? I'm
7 sorry. I have an additional copy, if the Court wants to
8 see my additional copy.

9 THE COURT: I've got it right here.

10 MR. SHAHID: Judge, the letter says as follows (as
11 read): "Dear Larry and Gregg, this is to confirm that the
12 Diocese will offer one million -- 375 million dollars to
13 settle claims of the 11 individuals represented by Gregg
14 Meyers. Those individuals, who have been identified in
15 previous correspondence are" -- that's why I made reference
16 to ---

17 THE COURT: Uh-huh.

18 MR. SHAHID: --- March 1st letter -- "John Doe C, John
19 Doe D, Jane Doe G, John Doe H, Jane Doe I, John Doe J, John
20 Doe K, and the mother of John Doe J, John Doe L, John Doe
21 M, Jane Doe M."

22 So we're clear of who ---

23 THE COURT: Uh-huh.

24 MR. SHAHID: --- who we -- we were addressing; which
25 is also the same people that were -- what were claimed to

1 be from the March 1 letter, and they were part of the folks
2 who filed as objectors and filed the motion to alter or
3 amend on his -- that he filed on their behalf.

4 (As read) "The -- the payments are for personal
5 injuries as defined in the IRS code, and are independent of
6 the claims -- class claims process. These claimants will
7 opt out of the class claims process and will execute
8 releases." Which is important. So their obligation is to
9 not only opt out, but they are to execute releases.

10 (As read) "The claimants retain the right to meet with
11 residing Bishop or the Apostolic Administrator, as they so
12 desire."

13 And at that time, we were given notice ---

14 THE COURT: Uh-huh.

15 MR. SHAHID: -- that Bishop Baker had been reassigned
16 to Birmingham, and so the -- the Apostolic Administrator
17 would be Monsignor Laughlin. So the -- the offer was then
18 to meet if they so desire.

19 (As read) "This offer was made on the condition that
20 all of the objections, including any and all appealed
21 rights to the pending class settlement by any of Mr.
22 Meyers' clients, be withdrawn, and waived with prejudice."

23 So it was clear that Mr. Meyers had to do something,
24 or his clients had to do something, to make sure that any
25 objections to the September 12th, 2007 agreement were --

1 were going to go away, including any right he may have to
2 appeal.

3 He certified in the second letter, second sentence (as
4 read): "Mr. Meyers has certified he is unaware of any
5 other potential or actual objector, and does not represent
6 any other person who has an objection to the January 12,
7 2007 settlement agreement and the July 30, 2007 order. Any
8 other claimant represented by Mr. Meyers and not referenced
9 above will present their claim through the claim -- class
10 claim process."

11 The second contingency is the next paragraph (as
12 read): "This offer is also contingent on the receipt by
13 the Diocese of \$100,000 from Mr. Richter and/or his
14 clients."

15 And the benefit of the bargain comes up next (as
16 read): "All parties and objectors agree to with -- to
17 withdraw all pending motions filed with prejudice,
18 including" -- and these are the things that were -- part of
19 which were addressed at the March hearing in -- in
20 Orangeburg -- "class counsels' motion for sanctions, and
21 will dismiss the rule to show cause; the objector's" -- is
22 Mr. Meyers -- "Motion to Alter or Amend; the defendant's --
23 which is my client's -- Motion to Alter or Amend; Motion to
24 Stay Execution; Motion to Deposit Funds with the Court; and
25 Motion to Dismiss or Vacate the Rule to Show Cause.

1 "This offer, if and when accepted as acknowledged by
2 counsels' signature below, is intended to pave the way for
3 the final approval of the class action settlement, and to
4 eliminate any and all objections or appeals."

5 So inherent in this agreement, and the core
6 disagreement was to -- to resolve any other dangling
7 participles, any other objections, any appeal, anybody who
8 had a complaint about this claims process of the July -- of
9 the January 12, 2007 settlement agreement, your order of
10 July 30, 2007, to go forward. It was the core of the
11 agreement.

12 THE COURT: In other words, it was an agreement
13 affecting the proceedings in an action.

14 MR. SHAHID: It was -- exactly. Because the
15 proceedings were gummed up -- for lack of a better word --
16 by all kind of contingents. Mr. Richter, Mr. Haller were
17 mad at us; we were mad at him. Mr. Meyers had filed his
18 objections to alter or amend. It was -- it was in a state
19 of flux, and I think I'm being kind when I say it was in a
20 state of flux.

21 I think there was a lot of argument going on and a lot
22 of finger-pointing and a lot of other bad stuff going on.
23 So this was to have peace and to allow the claims -- claims
24 process to proceed.

25 The next paragraph and final paragraph is this (as

1 read): "The 1.375 million will be paid from the surplus
2 funds, if any, after, after the claims process had been
3 completed."

4 And the surplus funds -- what we're referring to is
5 that part of the agreement of January 12, 2007 -- was that
6 the Diocese had an obligation to fund \$12,000,000 with Mr.
7 Thomas, the escrow agent.

8 (As read) "In the event there were insufficient or no
9 funds remaining from the 12 million, the Diocese is still
10 obligated to pay the 1.375 million, as stated above."

11 So what's important is we were on the hook for 1.375,
12 hoping to get some money back from the 12 million. If we
13 don't get money back from the 12 million, we're still on
14 the hook.

15 And I need to state this, Judge, and maybe I'll say
16 this 10 times: The Diocese has never stated, has never
17 once -- by innuendo or suggestion -- claimed it does not
18 owe the 1.375 million. We owe the money. There is no
19 dispute about that. And any representation to the -- to
20 the contrary is just not accurate.

21 The final sentence, which I think is very important,
22 very short sentence says (as read): "Payment is expected
23 sometime after January 1, 2008."

24 There was no definite deadline on this payment. It is
25 -- it is to be paid after the claims process has been

1 completed.

2 Now, the September 12th agreement --

3 THE COURT: What year now?

4 MR. SHAHID: I'm sorry. January 12th, which is tab A
5 -- tab 1.

6 THE COURT: Okay.

7 MR. SHAHID: Mr. Geoly was correcting me.

8 On page 14 -- and it actually begins on page 13 --
9 paragraph 6 provides this detail of the payment of -- of
10 claims. And it goes through Mr. Thomas' obligations, how
11 he's going to be compensated, etc., etc.

12 On page 14, paragraph "C" (as read): "After all
13 necessary disbursements, any remaining letters of credit,
14 and/or funds will be returned to the defendant and/or
15 letters of credit will be canceled."

16 So this elaborate -- and it wasn't very elaborate, it
17 was really quite simple -- that the claims process began
18 after July 30th, when all the notices went out -- I'm
19 sorry. After actually August, perhaps. But --

20 THE COURT: Uh-huh.

21 MR. SHAHID: -- claimant forms were sent in,
22 objections that we may have had to some of the claimants
23 were -- were exchanged between class counsel and myself.
24 We met several times to address some of the claims.

25 And in February of 2008, Mr. Infinger began a term

1 addressing the -- the claims -- the claims themselves. And
2 as I recall, on the first day of the term, any remaining
3 objections that we had were held on that particular day.
4 He addressed those objections.

5 Then after that, we were excused, that is, the Diocese
6 was excused; then Mr. Richter and Mr. Haller and any other
7 -- any other lawyer who were independent of Mr. Richter and
8 Mr. Haller, presented their claimants forward. And Mr.
9 Infinger heard those; and he went through the process --
10 the claims process as contemplated and dictated by the
11 January 12, 2007 agreement.

12 A series of letters, which are part of all these
13 times, were exchanged between Mr. Meyers and myself,
14 wanting the money. And I wrote back to him and said, "We
15 will pay you the money, but certain things have to happen.
16 The claims process, as contemplated by the August 30th,
17 2007 order, has got to be completed. And we are obligated
18 to pay you, but we have to get the money back, if any, from
19 the 12 million."

20 We got the money back on April the 15th. Mr. Thomas
21 did an accounting and hand-delivered to me a check for
22 \$1,716,323.90.

23 COURT REPORTER: Ninety cents?

24 MR. SHAHID: Ninety cents.

25 Mr. Richter delivered a check to me in the amount of

1 \$100,000 on April the 28th, 2008.

2 As of this court hearing, I have received zero
3 releases from Mr. Meyers. Not one has been tendered to me.
4 So the releases, as I mentioned on page 1 of the August 30,
5 2007 letter, have not been tendered, have not been
6 delivered to my office. There's no releases.

7 Now, this agreement was reduced to writing. It
8 spelled out terms; it affected a proceeding, because we
9 were in the midst of this controversy. It provided
10 obligations by certain parties: the Diocese, Mr. Richter,
11 Mr. Meyers. It was submitted to the Court for approval,
12 and the Court put a stamp of approval. You signed the
13 order adopting the agreement, filed it, and it was public
14 record.

15 And that order has never been appealed, objected to,
16 or anything. It is the order of this Court, and I stand
17 before the Court asking you to enforce that agreement.

18 Now, clearly, clearly John Doe B is not a participant,
19 is not involved. His name is not mentioned in this
20 agreement. He has got zero standing. So Mr. Meyers'
21 complaint that -- how he would have to come back into court
22 to enforce this agreement would not apply to John Doe B is
23 accurate, because John Doe B was never part of this
24 agreement.

25 And in other correspondence between Mr. Meyers and

1 myself, we said Mr. John Doe B's claim has already been
2 adjudicated. He's already been -- his case has already
3 been settled. He's already gotten money. We're not
4 including him, because he's not part of the August 30th
5 agreement.

6 And whatever private side-deal these folks may have
7 who are named in this letter with John Doe B -- they want
8 to give him part of their money and pro rata it, God bless
9 them. That's -- that's their side-deal.

10 We didn't agree to it. The Diocese had nothing to
11 agree with it. Mr. Richter didn't agree to it. That's not
12 part of this August 30th, 2007 letter. He's outside of the
13 window. He's outside of the picture. He's not included in
14 any way of all this.

15 So the obligations of the Diocese are to fulfill this
16 -- the terms of this agreement. The benefit of the bargain
17 that we received from this was we could move forward with
18 an agreement we had reached with class counsel, and that
19 Mr. Meyers' objections and the clients that he claimed he
20 represented would -- would go away. Their claims that they
21 have with drove -- withdraw all of their objections. It's
22 over.

23 The only thing we have to worry for is let's go
24 through the claims process. If there's not enough money
25 returned back to us to satisfy the 1.37, we have to go to

1 another source and get that money, but we're still
2 obligated to that money.

3 And as the Court has suggested to Mr. Meyers, you
4 ought -- your avenue -- if you thought we had done
5 something wrong; that there was a misinterpretation or we
6 were -- that the Diocese is just dead wrong on what I've
7 stated to the Court, and you think you're entitled to your
8 money sometime prior to the claims process having been
9 completed; if you think that you're entitled to your money
10 on a specific date or a specific time; or something the
11 Diocese has not done, your remedy is to do what the Diocese
12 did on July 25th, that is to file a motion to enforce the
13 agreement. Because if we were in violation of the order,
14 then we are -- we are -- we're to come before you to answer
15 to those violations, if we have done something incorrectly.

16 THE COURT: And let me ask this question: On -- in
17 April, is there a communication from the Diocese to Mr.
18 Meyers that you -- you have the money and you're awaiting
19 the releases?

20 MR. SHAHID: Judge, give me one second.

21 THE COURT: Sure.

22 MR. SHAHID: I think there's a letter April the 4th,
23 and let me just double-check that.

24 THE COURT: Sure. Sure. Take your time.

25 MR. SHAHID: Judge, I think that -- no. I -- and I'll

1 back up and say that on April the 4th, I did send him a
2 letter. And in that letter, I explained to him that we had
3 -- not withholding the money. We understand our
4 obligation, that we owe you the money.

5 And I think it -- for a lack of a better way of saying
6 -- that we were going to -- we are waiting for the claims
7 process to be completed. I did not send him a letter. I
8 don't think I can find -- and I'm pretty sure I didn't send
9 that letter after April the 28th.

10 Because what had happened at that point is that the
11 lawsuit was filed on -- on March the 7th, and then the
12 Diocese filed a motion for change of venue of the
13 Charleston County case to have the -- the venue heard here.
14 And that was heard on June 24th by Judge Few, who, in
15 denying the motion, stayed everything and he gave us an
16 opportunity to file what -- whatever he thought would be
17 appropriate that we needed to file here.

18 And that's why we filed a motion to deposit the money
19 and we filed a motion to enforce this agreement, so that
20 the agreement could be enforced.

21 Plainly, Judge, the problem is this: Mr. Meyers has
22 filed a complaint in the Court of Common Pleas in
23 Charleston County, asking for relief above and beyond the
24 August 30th agreement. He's asked for attorneys' fees,
25 asked for consequential damages, and he's thrown in as a

1 plaintiff John Doe B, who the -- the Diocese has no
2 contractual relationship with, no contractual obligations
3 to, is not part of this August 30th agreement.

4 And so what I'm asking the Court to do is very simple.
5 It's sort of consistent, I think, with what you said in
6 your July 30, 2007 order, "You can't have it both ways."

7 You -- you can't sue us and add a party and add --
8 seek more damages, and then expect us to pay you above and
9 beyond that, when this party, John Doe B, is not in a
10 relationship with the Diocese of any contract.

11 Whatever he's got on a side-deal with these other
12 plaintiffs, these other parties that are mentioned in the
13 August 30th letter, that's between them. And he has no
14 standing, we have no obligation to him. That's just
15 between the two of them.

16 We're ready to deposit the money, Judge, with the
17 Clerk of Court and ask Mr. Meyers' clients to dismiss their
18 July -- I'm sorry -- their March, 2008 complaints against
19 the Diocese for the breach of contract, to issue the
20 releases. And when that's done, the Court can then enter
21 its order, that the money has been deposited with the Clerk
22 -- we'll be asking that we do deposit the 1.375 million to
23 the Court -- then that money can then be released to them
24 once the releases have been signed, and the -- the
25 complaint can be dismissed in Charleston County.

1 But we're asking for -- back on August 30th -- to
2 proceed so that these victims can get their money, and we
3 thought we had it resolved. Then the claims process
4 proceeded with -- pretty much in a very smooth manner. And
5 we're ready -- and I will say it again, the Diocese has
6 never represented or stated that it does not owe this
7 money. It owes the money. But the mechanism to pay that
8 is gummed up because of the lawsuit now filed in -- in
9 Charleston County.

10 THE COURT: Let me ask this question. Again,
11 reflective listening. Because this is -- this is what I'm
12 hearing and -- but this is what I think -- let me just tell
13 you what I think I'm hearing.

14 There was a letter written March the 3rd that
15 reiterates the Diocese's understanding of its obligation to
16 pay the money. And in that letter, it talks about
17 receiving the money back from the Richter firm; the --
18 having the final accounting; the claims process being
19 concluded. And -- and then you -- you say, "I'm ready to -
20 - and we're going to pay the money as soon as these things
21 have occurred." And that's a March the 3rd letter.

22 Now -- and -- and then it says -- is a letter April
23 the 10th from Mr. Meyers, and it says, "Thank you for your
24 self-serving letter of April the 4th," and -- and I don't
25 have an April the 4th letter.

1 And I don't know that it's important, but does the
2 April the 4th letter talk about -- does the -- your April
3 the 4th letter give Mr. Meyers an update of -- of where the
4 claims process might be?

5 What is in that letter? Because it is most
6 unsatisfactory to Mr. Meyers, just reading his -- his
7 letter of April the 10th.

8 MR. SHAHID: Judge, it is -- it is a two-page letter.
9 I'll be glad to turn it up to the Court.

10 THE COURT: Okay. Sure.

11 MR. SHAHID: The Court should really have ---

12 THE COURT: Sure.

13 MR. SHAHID: I can read it, but I thought it would
14 have more effect if you ---

15 THE COURT: Has everybody got this letter? Everybody
16 got the April 10th letter?

17 MR. SHAHID: It's addressed to Mr. Meyers.

18 MR. RICHTER: No, Your Honor. It could be copied.

19 THE COURT: Sure. You want a copy of it? Yeah.
20 We'll get you one.

21 THE BAILIFF: How many copies would you want?

22 COURT REPORTER: I'd like one.

23 THE COURT: Who? Who would like one? Raise your
24 hand. Mr. Meyers. All right. Three.

25 And I'm going to look at that letter. But I gather

1 once the litigation in Charleston got underway, I gather
2 the complexion of the case changed.

3 MR. SHAHID: Yes, ma'am.

4 THE COURT: And -- and at any point in time, Mr.
5 Shahid, either in argument or in any other communication,
6 was -- was Mr. Meyers told, you know, "We're there now. I
7 got the money and we're finished with the claims process."

8 Was -- I mean, because we're -- here we are, of
9 course, in January of '09, and I'm looking for when Mr.
10 Meyers would have learned of the -- of the -- of the --
11 that you were prepared to receive releases, pay money.

12 Because in Mr. Meyers' argument, he says that he wrote
13 a letter in August of '08 that said, "I'm losing my -- my
14 window of opportunity to be able to accept money on behalf
15 of my clients and move forward."

16 And -- and I guess, sort of as a subparagraph to that
17 is: Did you understand in August that he was including
18 John Doe B?

19 MR. SHAHID: No. No, ma'am.

20 THE COURT: Okay.

21 MR. SHAHID: He -- in August -- the August 30th letter
22 did not include John Doe B. It was -- and prior to that
23 letter --

24 MR. RICHTER: Thank you, sir.

25 (The Bailiff hands Mr. Richter a letter.)

1 BAILIFF: You're welcome.

2 MR. SHAHID: -- there was another letter I sent to him
3 that expressly addressed John Doe B, and that letter is
4 part of tab 4. It was a letter dated July 30 -- I'm sorry
5 -- July 23rd, 2007. And if I could answer one of your
6 questions, Judge, that --

7 (To Ms. Groeber) I lost my -- I need that back. I'm
8 sorry.

9 (Sotto voce discussion between
10 Mr. Shahid and Ms. Groeber.)

11 MR. SHAHID: If I may -- okay. In -- in my letter to
12 him -- I don't have a copy of this, Judge -- of April 17th,
13 I -- I state to him that I am dismayed with the contents of
14 his April 12th, 2008 letter. (As read) "Without responding
15 paragraph by paragraph to your letter, I disagree with your
16 factual characterization and legal reasoning. I present to
17 you this opportunity to retract the negative comments and
18 unsupported allegations you have published about me, my
19 client, fellow members of the Bar, and the judiciary.

20 "I want to reemphasize to you as plainly as possible
21 the Diocese of Charleston did not and has not reneged on
22 its obligation pursuant to the August 30th, 2007 agreement
23 and subsequent order.

24 "The Diocese has always represented to you it intended
25 to honor the agreement. Indeed, I hereby restate that

1 until you filed the March 6th, 2008 -- the civil complaint,
2 the Diocese fully intended to perform its obligations,
3 specifically, to pay your clients the aggregate sum of
4 \$1,375,000.

5 "The Diocese has not previously sent you those funds
6 because pursuant to the terms of the agreement, in the
7 letter of August 30th, 2007, the Diocese's obligations to
8 pay those sums had not yet matured.

9 "The Diocese is now unable to pay those funds because
10 your clients filed a civil complaint on the same subject,
11 adding an unmerited party. And your clients are seeking
12 damages beyond one million 375.

13 "It is my sincere hope that you will voluntarily
14 dismiss this lawsuit so that we can engage in a good faith
15 discussion about how and when to finally exchange the three
16 point -- the 1.375 and the releases executed by your
17 clients."

18 So I'm asking him, get rid of -- we can't pay you
19 because you filed a lawsuit. Get rid of the lawsuit.
20 Let's sit down and let's exchange the releases and pay the
21 money.

22 THE COURT: And when is that letter?

23 MR. SHAHID: April 17th. And to this date, I don't
24 have any releases.

25 THE COURT: Now -- and you said -- I don't have a

1 copy?

2 Oh. In other words, you just have one April 7th --
3 you just have one April 17th letter. But I can copy it.

4 MR. SHAHID: Yeah.

5 THE COURT: Oh. Okay. Who would like copies of April
6 17th? All right. Four.

7 (Sotto voce discussion between
8 Mr. Shahid and Ms. Groeber.)

9 MR. SHAHID: And Judge, while we're waiting for that,
10 I think one thing I need to bring to the Court's attention,
11 Mr. Meyers was also making inquiry to Mr. Infinger and to
12 Mr. Haller about "When I'm going to get my money?"

13 So he wrote a letter to Mr. Infinger on February 27th,
14 2008; to Mr. Haller on February 29th, 2008. I can bring
15 those to you as well.

16 He -- I only tell you this because he had the means,
17 the ability to inquire on his own, which in fact he did do
18 as to "What's going on?"

19 So we weren't hiding a ball from him. We weren't
20 withholding anything from him. We were trying to get this
21 thing resolved. And at that point, we were involved in a
22 lawsuit on a breach of contract with this John Doe B fellow
23 as one of the main parties to this whole thing.

24 So I think we've done the right thing to try to get it
25 back here to get them to dismiss the complaint; to get rid

1 of John Doe B so we can pay the money; get the releases
2 from them that they owe us; and we're willing to put the
3 money in -- to the Clerk.

4 THE COURT: Okay.

5 (Bailiff hands out copies of letters.)

6 (Sotto voce discussion between

7 Mr. Richter and Mr. Haller.)

8 (Sotto voce discussion between

9 Mr. Shahid and Mr. Geoly.)

10 THE COURT: I got your position. And so what --
11 here's what you want. You want --

12 MR. SHAHID: The Diocese.

13 THE COURT: --- defendants, defendants. What they are
14 desiring at this point is they would like to pay the 1.375
15 into Court; and have the Court, I gather, order that the
16 releases be forwarded and the exchange be made such that at
17 the time -- so that both sides are protected.

18 At the time that the John Does, beginning with the
19 letter "C" -- not "B," but "C" -- when those releases are
20 obtained and reviewed and approved by the defendants as
21 being whatever -- an appropriate release, then the money
22 would be then released to the -- to the -- to Mr. Meyers to
23 distribute.

24 And I just note from a letter I just -- just this --
25 as we're waiting for the copy, I just read that Mr. Meyers

1 has a comment to you that what they do with the money, how
2 they distribute it is -- is of no moment for you; and you
3 would agree with that as long as you get the releases.

4 MR. SHAHID: Right.

5 THE COURT: Because your position is, I gather, you
6 have a release from "B" already?

7 MR. SHAHID: This -- B --

8 THE COURT: From the past.

9 MR. SHAHID: -- he shouldn't be involved in this,
10 because -- in fact ---

11 THE COURT: I -- I understand, but you have -- in
12 other words, obviously, John Doe B is a stranger to this
13 litigation as well. But I just note that, you know, I was
14 sort of curious about "B." But apparently that's -- that's
15 not for me, that's not for you; that's for Mr. Meyers and
16 his folks.

17 MR. SHAHID: That's right.

18 THE COURT: But -- and you're not looking for anything
19 from -- from John Doe B, either. You're looking for your
20 release from John Doe C, etc., through the alphabet. And
21 normally -- as this transaction normally would occur, the
22 money would be held by Mr. Meyers in his escrow account
23 until the releases were then signed and then forwarded to
24 you and then the money could be disbursed.

25 But what you're asking that the Court do is to deposit

1 the money and not release the money until such time as the
2 releases have been received, and I gather, approved by the
3 -- the defendants.

4 MR. SHAHID: And ---

5 THE COURT: And if a -- then if a hearing would need
6 to be held because there was a dispute about that, so be
7 it.

8 MR. SHAHID: And -- and Judge, one other thing I think
9 needs to happen now, I think they need to make the option
10 of either if they want to pursue the lawsuit in Charleston
11 County, pursue the lawsuit in Charleston County and don't
12 get the money; or dismiss the lawsuit in Charleston County
13 to get the money.

14 Now, I don't understand how -- and that's the essence
15 of my letter to him is: How can we pay you now that you've
16 sued us, have included this actual person in it, and asking
17 for more money on the same letter?

18 So the inquiry is we still have to contend with -- and
19 I -- and I know the Court has said that that complaint is
20 not of the Court's concern -- only to the extent that it's
21 our concern that there is this complaint seeking to enforce
22 an agreement that needs to be enforced here, not there, and
23 we have to now deal with this other party.

24 So by paying the money, we still have to -- we still
25 have to fight a lawsuit which is contemplated that there be

1 no dispute.

2 So the other thing I'm asking the Court, in addition
3 to what you've said, is to give them the option. Either
4 pursue us here to enforce the agreement, and by doing that,
5 dismiss the complaint; or option B, don't pursue the money
6 here and sue us and maybe you get more money and maybe John
7 Doe B gets some more money; and all that other stuff that
8 you're asking for takes place.

9 THE COURT: Two things -- two things, and I'm going to
10 ask you to address the second point.

11 First of all, this is not an agreement. It started
12 out as an agreement; it is a court order. Okay? It's a
13 court order. All right. Now, so that's the first -- let
14 me -- let me reiterate that: This is a court order. It is
15 a court order that affected these proceedings, particularly
16 for Mr. Meyers. It ended their ability to participate. It
17 is a court order. All right.

18 Now, secondly, it is -- it is Mr. Meyers' position, as
19 I understand it, and he'll correct me, I'm sure, if -- if I
20 don't articulate this precisely. But as I understand it,
21 it is his position that by virtue of the actions of the
22 defendants in this case, and the way that they have
23 proceeded in complying or not complying with this court
24 order -- he says "the agreement," but I'll couch it in
25 terms of "this court order" -- that there have been new and

1 different damages, unique, that have arisen as a result of
2 the conduct of the Diocese in -- in resolving this matter,
3 complying with this order. And as a result, there are new
4 and different damages that have arisen; and that those are
5 also contained within the litigation in Charleston, and
6 properly so.

7 Can you address -- now, I know that there -- I know
8 that there -- there are clearly allegations of breach of
9 contract. But as a result of the breach of contract which
10 he alleges, which I would -- I would couch it in terms of
11 violations of the court order -- that as a result of that,
12 there are new and different damages that have arisen as a
13 result of that.

14 And -- and he really -- as I understand his argument,
15 he raises that as an independent and new action of the
16 plaintiffs in the case in Charleston.

17 MR. SHAHID: He has alleged that ---

18 THE COURT: Yes.

19 MR. SHAHID: --- in his complaint.

20 THE COURT: Yes.

21 MR. SHAHID: He's certainly done that in ---

22 THE COURT: Yes.

23 MR. SHAHID: --- in his original complaint and the
24 second amended complaint.

25 THE COURT: Right.

1 MR. SHAHID: Mr. Geoly wanted to say something to me,
2 Judge. If I can possibly ---

3 THE COURT: Sure. Go ahead. Go ahead.

4 (Sotto voce discussion between Mr. Shahid and Mr. Geoly.)

5 MR. SHAHID: Judge, I -- I agree with what you're
6 saying. In his -- in his complaint in Charleston County,
7 he's said, "I have a special person who's been aggrieved,
8 and that special person and other folks have been
9 aggrieved. And they're entitled to more money." That's
10 his -- his complaint.

11 But the essence of the complaint is the August 30,
12 2007 letter agreement as incorporated and made a part of a
13 court order, which I believe 100 percent it is a court
14 order. And certain parties have certain things they are
15 obligated to do under that court order, which we're subject
16 -- and that's why we're here to you.

17 So if there's been -- if we -- if we violated -- the
18 Diocese violated the court order, then the argument would
19 be, I would suspect, then how -- what has the Diocese done
20 to violate the court order, if it has; and are there
21 consequences to violating the court order that include John
22 Doe B and these other claimants?

23 I mean, the same thing -- you're seeking to enforce an
24 order by filing a breach of contract action in Charleston
25 County. That's what he's done. And we're seeking to

1 enforce the order here. And so if there's any -- any
2 collateral damage, I -- for lack of a better way of saying
3 it -- that is before you, to address; because the
4 interpretation of the order is before you.

5 Jim ---

6 MR. GEOLY: Your Honor ---

7 MR. SHAHID: --- can't sit still any longer.

8 MR. GEOLY: I can't. Can I make a distinction, Your
9 Honor?

10 THE COURT: Certainly.

11 MR. GEOLY: Just to -- there's one element here that I
12 think, from the beginning, has added a little bit of
13 confusion and maybe I'm stating the obvious, but ---

14 THE COURT: (To the court reporter) This is Mr. Geoly?
15 Okay.

16 MR. GEOLY: Thank you, Your Honor. There's John Doe
17 B, and then there's the issue of the remaining or the other
18 Gregg Meyers' clients who are suing in Charleston. And
19 when we lump them all together while we're speaking, it can
20 get a little confusing.

21 So I think it's fair to say that at least when we're
22 talking about John Does C through whatever, what Mr. Meyers
23 has really sued about is the alleged violation of your
24 order. And those persons who are subject to that order,
25 our contention has been, belong here in front of you. And

1 if they think that they've been damaged in some way because
2 of the violation of your order, then they should come to
3 you. And whether it's a rule to show cause or some other
4 mechanism, ask you for relief because of all the bad things
5 that have happened to them because we didn't follow your
6 order.

7 And I think all of that would be properly before you,
8 at least jurisdictionally. John Doe C ---

9 THE COURT: And he's done that now.

10 MR. GEOLY: Pardon?

11 THE COURT: He's -- he has done that. He did that
12 orally today.

13 MR. GEOLY: He -- yes. But I didn't hear him giving
14 up his Charleston case either.

15 THE COURT: Uh-uh.

16 MR. GEOLY: So I think ---

17 THE COURT: He hasn't.

18 MR. GEOLY: --- I think he -- he took a very opportune
19 ---

20 THE COURT: Uh-huh.

21 MR. GEOLY: --- position with you when you were
22 exploring options with him.

23 But either way, if he did do that, the parties are in
24 agreement, at least jurisdictionally, that element of the -
25 - that -- that portion of the question is -- is clearly

1 before you. We are talking about your order, and -- and
2 the consequences of following it or not following it.

3 And -- and the substantive dispute, really at the core
4 of all of it, is was the Diocese right or wrong in -- in
5 saying when it believed the money was due? In the
6 beginning, at least that was the beginning of this
7 argument.

8 John Doe B gets more complicated, because he's sort of
9 this derivative claim of a sort. He -- he has some side-
10 agreement with the other claimants. He's making a third-
11 party-beneficiary claim in Charleston. He never was before
12 you; he's not before you; he's not before you now.

13 And I don't think we're saying -- that in adjudicating
14 your order and the consequences of following it or
15 violating it, I don't think we're saying to you that you
16 are adjudicating John Doe B's rights one way or the other.

17 THE COURT: That's right. You are not.

18 MR. GEOLY: We're not asking you to do that. And
19 we're not saying John Doe B's here in front of you, either,
20 in any way. I'm not sure, and we haven't thought through,
21 what happens if you resolve everything that's on the table
22 here and fashion some order that, in essence, enforces this
23 settlement agreement/order, as to the people who are before
24 you. Where does that leave John Doe B and his Charleston
25 lawsuit ---

1 THE COURT: Oh, I'm absolutely certain that you all
2 filed a -- a response that was Accord in Satisfaction,
3 Motion to Dismiss, and etc. I bet -- I bet that you all
4 filed any number of things so that you could in ---

5 MR. GEOLY: We didn't address that.

6 THE COURT: I'm -- I'm going to hear you. And I'm
7 uncomfortable with you being there, because you don't have
8 a table to write on. We got a table right here, Mr.
9 Meyers. How you writing?

10 MR. MEYERS: I'm glad to do it either way. I've got a
11 pad.

12 THE COURT: As long as you're all right; you are
13 welcome to come right here. Okay.

14 MR. GEOLY: And so we just address that separately.

15 THE COURT: He's not -- I'm -- you know, I hate to --
16 if -- if -- if John Doe is -- B is here present, I
17 apologize to you, Mr. John Doe B. But Mr. John Doe B is
18 not part of this litigation.

19 MR. GEOLY: Correct.

20 THE COURT: I'm -- I'm not ---

21 MR. GEOLY: And -- and we're just ---

22 THE COURT: --- you know ---

23 MR. GEOLY: --- being real careful that -- so when
24 we're speaking about ---

25 THE COURT: I'm not concerned about John Doe B, you

1 know. Mr. Meyers has got him and has filed a matter, I
2 gather, on his behalf in Charleston and so be it.

3 MR. GEOLY: It stands ---

4 THE COURT: I mean, he's certainly entitled to that.

5 MR. GEOLY: --- it stands and falls on its own. And
6 whatever implications or consequences of any order this
7 Court enters will speak for themselves. I mean, that ---

8 THE COURT: That's right.

9 MR. GEOLY: --- that order will speak for itself, and
10 whatever legal effect it has will get determined.

11 So if we -- if we can make that distinction, then I
12 think we can speak properly of saying: John Does C through
13 the end are here; they're -- they're --- they're subject to
14 your order; your order incorporates by reference a
15 settlement; the terms of the settlement are at issue.

16 Did we or did we not violate it? And we've obviously
17 contended that we did not violate it. And to this date, we
18 don't have releases, but we want to disgorge the money,
19 because at this point, we give up. We give up trying to
20 arrange an exchange of releases with the other side.

21 It was attempted on more than one occasion. It didn't
22 occur. Don't know why it didn't occur, but it didn't
23 occur. And -- and now here we are. And -- and I think
24 when you resolve that question, you've resolved the matter.

25 THE COURT: Okay.

1 MR. GEOLY: Thank you.

2 THE COURT: Mr. Meyers.

3 MR. MEYERS: Thank you very much, Your Honor. I'm
4 dying to respond.

5 THE COURT: Okay.

6 MR. MEYERS: But if you have a question, I'm glad to
7 hear it.

8 THE COURT: No.

9 MR. MEYERS: Want me up there?

10 THE COURT: Yeah. Absolutely. I'm -- I'm
11 uncomfortable that you don't have a place to put your
12 papers. And they're growing -- they're growing
13 exponentially.

14 MR. RICHTER: We'll share our table, as well, Your
15 Honor.

16 THE COURT: He's fine where he is.

17 MR. MEYERS: You want to ask me, or do you want me to
18 go?

19 THE COURT: Let me see. Wait a minute now. Let me
20 tell you -- let me tell you what is -- I don't see as being
21 an issue, and you don't need to -- you don't need to
22 concern yourself. John Doe B is -- and I gather John Doe B
23 has filed something in Charleston. John Doe B can do
24 whatever he wishes in Charleston. That is not for my
25 consideration.

1 It's clear that John Doe B did not make an appearance
2 here; he's not part of the settlement. John Doe B --
3 assuming -- and -- and I gather John Doe B has filed
4 something in Charleston. John Doe B is entitled to file
5 whatever. You know what I'm saying. That's not for me to
6 -- in my mind, to -- I'm going to leave him completely out
7 of it.

8 MR. MEYERS: I understand.

9 THE COURT: Okay. With regards -- here -- here's what
10 I'm interested in. Let me just sort of ask you to -- this
11 -- this is what I'm interested in. Really -- really two
12 issue, and -- and then maybe other ones, but primarily
13 these two.

14 First of all -- first of all, I see what was going on
15 in terms of the -- in terms of the correspondent --
16 January, March, April. You tell me in August that you
17 communicated, and I might want you to direct me to -- to
18 that letter.

19 MR. MEYERS: It's what I filed today.

20 THE COURT: Okay. Hold on one second. Let -- because
21 I want you -- because I'm afraid I'll get -- I'll ---

22 MR. MEYERS: Sorry.

23 THE COURT: --- forget what I want to say to you.

24 And I'm interested in that. So -- so I'm interested
25 in that.

1 And I'm interested in your communications back that
2 said, "I've got my releases signed; I have them and I'm
3 ready to tender them to you, but I'm not giving them to you
4 until I've got money in hand."

5 I don't think it's reasonable for any lawyer, on
6 behalf of his clients, to any more -- if you've got a
7 release, that you've got them and you have them in hand and
8 you tender them, but you would tender them through you and
9 you would hold them. I think -- and -- and I think you
10 argue -- I just caught a paragraph -- that you said, "Why
11 in the world would I -- why would I give you a release
12 without the money? That would be malpractice."

13 And -- and I tend to think you might be onto something
14 the; because why would a lawyer -- I can understand why a
15 lawyer would get them and have them signed and have them in
16 his or her possession. But I certainly understand why a
17 lawyer would not then transmit, because then you're
18 needlessly creating problems, potentially. And -- and it
19 could happen unintentionally. But it could certainly
20 happen where those would get filed.

21 So -- so I'm -- I guess I'm interested in that, and
22 then -- but -- but I want you to hold for me just at this -
23 - I'm -- I'm really interested in those things first. And
24 you might certainly want to address some other things, but
25 I want you to hold those separate for me. And then we

1 might get into what -- what, if any -- what, if any,
2 damages, because I think we've -- we've talked about that.

3 Well, maybe there's a third area. As I understand --
4 and again, I hadn't read the litigation. But as I
5 understand the position of these plaintiffs, "C" forward;
6 because those are the plaintiffs that I'm interested in --
7 not "B," but "C" -- the ones -- the ones that are involved
8 here -- their allegations of additional damage. Okay?

9 And I guess I would want to hear you -- I guess, on
10 first blush, my -- my -- my initial thought, Mr. Meyers, in
11 all candor, is if these folks suffered as a result of the
12 delay and it's determined that that money should have been
13 paid and that -- and that the Diocese violated the order,
14 what I really want to say is why couldn't they either bring
15 it -- bring it as a part of a Rule to Show Cause, or why
16 couldn't they file it separately in Charleston? I guess
17 that's what comes to mind.

18 So -- and you were going to agree with me, so let's
19 just leave that. In other words, it would be your position
20 that it -- they could either ask for damages as a -- in
21 response to a Rule to Show Cause, or they could sue
22 separately on it in Charleston.

23 MR. MEYERS: Right. That's what I was trying to do.

24 THE COURT: Okay. Now, so --

25 MR. MEYERS: The releases.

1 THE COURT: The releases and notice. I mean, why -- I
2 -- it was pretty clear what happens between January and
3 April.

4 MR. MEYERS: I -- I left Mr. Shahid completely alone
5 until some time in February. I probably touched base with
6 him in January to say, "Where are you on the claims
7 process?" Because what was described when we ---

8 THE COURT: Uh-huh.

9 MR. MEYERS: --- reached the agreement was, "We really
10 would prefer -- we, the Diocese, would really prefer to
11 know whether we were going to have money left over from the
12 class or not. So would you please let us get through the
13 claims process in the sense of the arbitrations?"

14 I said, "Fine."

15 Middle of February, Mr. Shahid's office sent me a
16 letter saying, "Here's the schedule for the arbitrations,"
17 which was to conclude February 13th. So starting February
18 14th, I checked with him. And -- and ---

19 THE COURT: How did it go?

20 MR. MEYERS: --- and listen, I had one guy on the
21 verge of serious problems, which is the reason I had any
22 urgency to my inquiries. But he tells me -- we talked -- I
23 called him once a day.

24 THE COURT: You, Gregg Meyers, called ---

25 MR. MEYERS: Mr. Shahid's office.

1 THE COURT: --- Mr. Shahid's office once a day to say
2 ---

3 MR. MEYERS: And many times, I would be able to talk
4 to him, but -- but on February 21st, he said, "You will be
5 paid February 26th." I passed all that on to my people.

6 And then the next -- and then my phone calls aren't
7 taken, and then -- and they're not returned. And then I
8 get the letter of March 3rd, which says there are these
9 things that have to happen.

10 So I -- now I see there's a change in position. He's
11 arguing preconditions. I wrote him back. I said those
12 were conditional on the offer, not on the performance. Our
13 agreement says it's unrelated to the claims process. But
14 all that's fine.

15 THE COURT: Now, that's ---

16 MR. MEYERS: I find -- I find out ---

17 THE COURT: --- let me -- let me be sure I understand
18 exactly what you're talking about. You're -- that's in a
19 March 3rd letter.

20 MR. MEYERS: That's his March 3rd letter.

21 THE COURT: Okay. Hold on, because I know I got that
22 right here.

23 MR. MEYERS: That's what prompted the lawsuit.

24 THE COURT: Uh-huh. Okay. Hold on.

25 MR. MEYERS: Because what I see the Diocese ---

1 THE COURT: Here it is.

2 MR. MEYERS: --- doing now is saying, "We're changing
3 what we meant by "the claims process" on you. It's not
4 that we need to know the value of what we're going to pay
5 out in the arbitration. We actually have to get the money
6 back. We need a final accounting. We need to get a
7 payment from Mr. Richter. None of which was the conditions
8 as they were described.

9 What they described to us is, "He's agreed to pay the
10 money. That's good enough for us. We just need to know
11 what the awards are going to be to know if we have to get
12 more money or not."

13 THE COURT: All right. Now, hold on, because let me
14 get back to the order, just -- just so I -- I know y'all
15 got this in your -- etched in your minds. But let me get
16 to -- get back to the order real quick. Here it is. Okay.

17 (Sotto voce discussion between
18 Mr. Shahid and Mr. Geoly.)

19 THE COURT: Okay. Now, let me ask you this question.
20 I'm looking back at the letter. Have you -- have you got
21 the letter, too?

22 MR. MEYERS: I do.

23 THE COURT: Okay. And tell me what you anticipated
24 this meant.

25 MR. MEYERS: Once they valued the class claims that

1 were made and understood how much was left over from the 12
2 million, they would be able to initiate the payments to me.

3 THE COURT: Because it -- here's what it says. It
4 says (as read): "The 1.375 million will be paid from the
5 surplus funds, if any, after the claims process has been
6 completed. In the event there are insufficient or no funds
7 remaining from the 12 million pool of funds, the Diocese is
8 still obligated to pay the 1.375 million, as stated above."

9 And I know -- I -- because you -- it says (as read):
10 "Payment is expected sometime after January the 1st, 2008."
11 Well, when any client sees that and -- understandably, they
12 want January 2nd -- has arrived.

13 MR. MEYERS: Well, but I explained to my people that
14 wasn't a firm deadline, and we had to wait for the claim --
15 the arbitrations to be done, and not that I'm -- for them
16 to expect nothing until sometime in February.

17 THE COURT: Okay. And when you say "the arbitrations
18 to be done," that -- that to you is part of the claims
19 process?

20 MR. MEYERS: Right.

21 THE COURT: Okay.

22 MR. MEYERS: The way -- the way this paragraph was
23 explained to me by Mr. Shahid was, "We need to know the
24 value placed on the claims by Mr. Infinger."

25 THE COURT: Uh-huh.

1 MR. MEYERS: "And then we can pay, because" ---

2 THE COURT: Uh-huh.

3 MR. MEYERS: --- "then we will know if we're going to
4 have money left over or not."

5 THE COURT: Uh-huh. Okay. Okay.

6 MR. MEYERS: Now, on March 3rd, he says it doesn't
7 mean that; it means something else.

8 THE COURT: Now, what did you understand that it meant
9 something else? Tell me that. Tell me what -- what you
10 understood on March the 3rd. You said it meant something -
11 --

12 MR. MEYERS: Right.

13 THE COURT: --- else.

14 MR. MEYERS: His letter to me ---

15 THE COURT: Tell me that.

16 MR. MEYERS: --- says ---

17 THE COURT: Uh-huh.

18 MR. MEYERS: --- there are these conditions.

19 THE COURT: Uh-huh.

20 MR. MEYERS: "We have to -- Mr. Infinger and Mr.
21 Thomas have to agree on a final disbursement. The Diocese
22 has to receive a full accounting report." This is his
23 letter of March 3rd.

24 THE COURT: Yeah.

25 MR. MEYERS: "And the Diocese has to have collected

1 the money from Mr. Richter."

2 THE COURT: Okay. Well, now, that's in the letter.

3 MR. MEYERS: Well, the letter says the offer is
4 contingent on him agreeing ---

5 THE COURT: Uh-huh.

6 MR. MEYERS: --- to that.

7 THE COURT: Uh-huh. Uh-huh. Uh-huh.

8 MR. MEYERS: He agreed. So I -- I didn't feel like
9 that was a contingency that was legitimate at all.

10 THE COURT: I understand what you're saying.

11 MR. MEYERS: Nor did I feel like it was legitimate to
12 impose the "we have to get the money back" requirement on
13 me, but --

14 THE COURT: You thought the contingency was satisfied
15 at the time that Mr. Richter signed the letter.

16 MR. MEYERS: As to him, yes.

17 THE COURT: Uh-huh.

18 MR. MEYERS: As to the ---

19 THE COURT: Uh-huh. Uh-huh.

20 MR. MEYERS: --- claimants and the arbitration -- the
21 claims process ---

22 THE COURT: Uh-huh.

23 MR. MEYERS: --- that contingency was satisfied ---

24 THE COURT: Uh-huh.

25 MR. MEYERS: --- when Mr. Infinger hears everybody and

1 makes an award.

2 THE COURT: Right. I'm just talking about the
3 \$100,000. In other words ---

4 MR. MEYERS: Right. That was done ---

5 THE COURT: --- based upon your understanding, you
6 would have thought that after the order was entered that
7 Mr. Shahid, at that point, could have said, "Send me
8 \$100,000; I want to hold it in escrow."

9 MR. MEYERS: Right. But what the letter says ---

10 THE COURT: Uh-huh.

11 MR. MEYERS: --- is "the offer is contingent on that."

12 THE COURT: Uh-huh. I'm with you.

13 MR. MEYERS: And -- and once he agreed to that, they -
14 -- they ---

15 THE COURT: I -- I got it.

16 MR. MEYERS: --- the contingency was on the offer and
17 not on the performance.

18 THE COURT: Uh-huh.

19 MR. MEYERS: So I thought that wasn't even an issue.

20 THE COURT: Uh-huh. Uh-huh.

21 MR. MEYERS: And I thought the Diocese was now trying
22 to erect it as an issue.

23 THE COURT: Uh-huh. I understand.

24 MR. MEYERS: So I felt like the landscape was pretty
25 clear to me. I wasn't going to get a good faith

1 compliance. I had been told I'd be paid February 26th; my
2 phone calls stopped being returned.

3 I was even trying to work around their new
4 interpretation by getting consent of everybody involved in
5 the claims process -- being Mr. Thomas, class counsel -- to
6 say, "Look, the Diocese is telling me now that they have to
7 have all this stuff formally wrapped up. Will you consent
8 to a disbursement to me?" But --

9 THE COURT: And that's the letters that came in March
10 and April.

11 MR. MEYERS: Well, in -- in early March. I was trying
12 ---

13 THE COURT: Yeah. Yeah. Yeah.

14 MR. MEYERS: Then in April, unbeknownst to me, the
15 Diocese gets back -- they get the \$100,000 ---

16 THE COURT: Uh-huh. Yes.

17 MR. MEYERS: --- payment, and they get the money back
18 in the middle of April, on April 15th; which I find out for
19 the first time, October 1, 2008, when Mr. Shahid writes
20 Your Honor and gives an update on what's happening.

21 Now, here's what fascinates me about this. This is
22 two months after I've written him and said, "Let's use
23 Marvin Infinger as an intermediary. I don't trust you at
24 all, so you pay the money to Marvin. And when he tells me
25 he's got the money in his escrow account ---

1 THE COURT: Yes.

2 MR. MEYERS: --- I will give him releases. And when
3 you've gotten the releases, he will give me the money."

4 THE COURT: Where is that letter?

5 MR. MEYERS: What I filed this morning, August 5th,
6 2008.

7 THE COURT: Hold on, because I've got to find that
8 stack. All right. This August the 5th letter.

9 MR. MEYERS: Here.

10 THE COURT: I got it. I got it right here.

11 MR. MEYERS: I've got it right here.

12 THE COURT: No. Gosh, if you give it to me, you won't
13 have one. Hold on. All right. Wait a minute now. Is it
14 the back or the front?

15 MR. MEYERS: It's kind of in the middle.

16 THE COURT: Oh. All right. August the 5th? And you
17 write -- you write it to ---

18 MR. MEYERS: Mr. Geoly.

19 THE COURT: --- Jim Geoly. Okay.

20 MR. MEYERS: With whom I've always gotten along well.

21 THE COURT: Uh-huh. Uh-huh.

22 (The Court reviews the letter.)

23 THE COURT: Got it.

24 MR. MEYERS: Two days later ---

25 THE COURT: Wait a minute. I need a "sticky." I'm

1 sorry. Go ahead. I'm listening to you, I just ---

2 MR. MEYERS: Two days later, the Diocese serves me
3 with the motions they filed July 25th in this court, trying
4 to enforce the settlement.

5 THE COURT: Okay.

6 MR. MEYERS: Here I am, trying to get them to pay the
7 principal amount using Mr. Infinger as an intermediary,
8 which Mr. Infinger had told me he was agreeable to --

9 THE COURT: Uh-huh.

10 MR. MEYERS: -- and they won't do it.

11 Now, the next week, I was in court in Charleston, once
12 again, trying to get them to -- trying to get Judge Houston
13 to order them to do what they had agreed to do. And Mr.
14 Shahid says, "We'd love to comply. We would like to settle
15 the case. We're ready to move forward, but we've got these
16 motions pending in Dorchester County that need to be
17 addressed that simply deal with motions for sanctions."

18 And I say to him, "Keep your motion for sanctions if
19 you want to, but pay my clients their money."

20 THE COURT: And did Mr. Geoly or Mr. Shahid say to you
21 --

22 MR. MEYERS: I got no response to that letter.

23 THE COURT: Okay.

24 MR. MEYERS: Now, Mr. Shahid had written me April 4th,
25 as he's indicated, saying to me, "If you will dismiss your

1 case with prejudice in Charleston, we can talk about
2 resolving everything."

3 That's what his letter says. If I dismiss with
4 prejudice, then he'll talk to me about it.

5 And I wrote him back, saying, "I think you're asking
6 me to commit malpractice. If I dismiss with prejudice, you
7 can successfully defend, saying you don't have to pay me.
8 But, you know, I'll give you releases if you give me a
9 payment through some mechanism."

10 But I don't know until October that the conditions
11 have all been satisfied back in April. He doesn't ever
12 tell me that.

13 Later -- not long ago, he says, "You know, you've
14 never tendered releases." And I'm thinking, my agreement
15 says, "I will give you releases if you pay me."

16 So I wrote him back and I said, "You're right. I
17 haven't offered you releases, because you haven't paid me.
18 You haven't tendered payment. But I'll tell you what --
19 nor have you ever given me releases that you want me to
20 have signed. But I'll tell you what, I'll get releases.

21 And I'm holding in my office releases from every one
22 of my people. Now, I'm not going to give them to Mr.
23 Shahid or anyone else, until I know for sure they have
24 parted ---

25 THE COURT: We ---

1 MR. MEYERS: --- with the money.

2 THE COURT: Yeah. Well, we talked about that. No one
3 would do that. Yeah. No one would do that.

4 MR. MEYERS: And -- and I've been trying for months to
5 resolve simply by getting them to comply with what I
6 thought was the agreement, and what they say is a court
7 order.

8 So I have -- I've been unusually frustrated by the
9 course of these events. And I've never seen anything like
10 it in the 30 years that I have practiced law, and -- and I
11 have not known what to make of it.

12 But if indeed this was a court order, it's certainly
13 not been complied with. If it was a settlement, it's not
14 been complied with. But my people have been willing to
15 perform the entire time.

16 And I've certainly acknowledged they have to exchange
17 releases to get the money, but no releases have been
18 tendered to me. But I now have releases that I've drafted,
19 and -- and I'm ready to perform.

20 I -- I do have three clients who've had consequential
21 injury. Most of them are working; most of them have been
22 able to wait. Have been annoyed to wait, but they've been
23 able to wait. One client spent about four months in prison
24 longer than he had to. He could have qualified for an
25 early-release program, if he'd been able to afford his own

1 apartment. This money would have put him in that posture.

2 THE COURT: Ummm.

3 MR. MEYERS: One client had to borrow money at really
4 punishing interest rates, which damage accrues -- he --
5 he's borrowed it in small increments. I have all the
6 paperwork, and that damage continues to accrue. And we can
7 -- we can still cut it off, if we can get ---

8 THE COURT: Uh-huh. Uh-huh.

9 MR. MEYERS: --- the Diocese to perform.

10 The third client's John Doe B, who is in bankruptcy as
11 a result of ---

12 THE COURT: Uh-huh.

13 MR. MEYERS: --- the Diocese's failure to perform. So
14 -- and I know he's not on the radar screen here at the
15 moment.

16 But those -- and I've written to the Diocese about
17 this. You know, I've given them a thumbnail on what the
18 significance was to their delay. And I've not known how to
19 unlock this, because I feel like they keep saying to me,
20 "You've added this unmerited party." And I keep saying,
21 "He's a third-party beneficiary. He's not part of the
22 agreement.

23 I have not known what to do. I've tried to enlist Mr.
24 Infinger; I've tried to enlist Mr. Geoly. I -- I can't get
25 the Diocese to agree to make payment.

1 THE COURT: Uh-huh. Okay. I got it. I got it. Got
2 it.

3 Mr. Geoly.

4 MR. GEOLY: Your Honor, if I could address at least
5 some of that.

6 THE COURT: Sure. Of course.

7 (To Mr. Meyers) And you can ---

8 MR. GEOLY: The Diocese ---

9 THE COURT: --- you can grab a chair.

10 MR. GEOLY: --- had its own good faith understanding
11 of when this payment was due. The payment was requested,
12 at first, long before it was actually due. Whatever Mr.
13 Meyers thinks he understands about when that due date was,
14 the actual agreement -- the one attached to your court
15 order -- talks about Mr. Richter's contribution that the --
16 this offer is contingent on the receipt by the Diocese of
17 \$100,000, not on Mr. Richter's promise to pay \$100,000.

18 And as the -- as the Court pointed out, the 1.375
19 million will be paid from the surplus fund, if any, after
20 the claims process has been completed. In the event there
21 are no -- there are insufficient or no funds remaining from
22 the 12 million pool of funds, the Diocese is still
23 obligated to pay. Clearly ---

24 THE COURT: (To Mr. Flowers) Yes, sir. Could you take
25 your seat? You -- it's distracting. I'm trying to listen

1 to -- to him. I'll give you -- if you need to consult with
2 him, I'll give him -- y'all time to do that. That's very
3 distracting.

4 (To Mr. Geoly) I'm sorry. Go ahead.

5 MR. GEOLY: Clearly, the written word -- the one
6 signed by Mr. Meyers, the one adopted by the Court as an
7 order -- states that we are talking about the actual
8 receipt by the Diocese of funds before any obligation to
9 make a payment on this settlement would become ripe.
10 That's our interpretation.

11 If we're wrong about that interpretation, at least --
12 and certainly you could understand, I think -- that's it's
13 a good faith interpretation, because it appears to be the
14 plain meaning of the written words. And I don't think
15 we're in the weaker position relying on the written words
16 of Your Honor's order. So that's the state of affairs
17 through at least mid/late April of -- of 2008.

18 Before -- before the claims process was complete,
19 which includes the tendering back to the Diocese of those
20 excess funds, Mr. Meyers filed his Charleston lawsuit,
21 putting into question the very agreement and obligation to
22 pay that was at issue in this order, rather than come to
23 the Court to enforce the order if he thought we were
24 delaying complying with that; and calling into question
25 whether we were or were not protected and released from

1 obligations by the payment of that money.

2 He, in a sense, made it impossible for us to simply
3 give him 1.375 million dollars by filing his lawsuit,
4 because that would not discharge the lawsuit automatically.
5 And yet, from our point of view at the time the lawsuit was
6 filed, these funds were not due yet anyway.

7 We encouraged him to come back to you if he thought he
8 had a problem with the agreement and the order. He pursued
9 his lawsuit.

10 With all of this pending, I certainly did my best to
11 try to find some way to just make it all go away, because
12 that seemed to be the obvious thing to do. We owed 1.375
13 million. Sooner or later, the question of when it was
14 really due was going to be moot, because even from our
15 point of view, it was going to be due. Why can't we just
16 give you the money and everything goes away?

17 That is a conversation I had repeatedly with Mr.
18 Flowers, and I -- and I have a perfectly good working
19 relationship with both of these gentlemen. We have no
20 problems speaking about the issues that are at issue here.
21 And I really think all we were trying to do was set up the
22 kind of exchange that Mr. Meyers described, that he wrote
23 to me about on -- on the occasion he -- he showed you the
24 letter of.

25 Mr. Flowers and I had numerous conversations about

1 that. We contemplated and tried to involve Mr. Infinger in
2 it, for the very reasons that have been discussed, so many
3 times, that I probably can't separate them all in my memory
4 as individual occurrences.

5 But I can tell you this: On one occasion, the idea
6 was the Diocese will tender its money; Mr. Meyers will
7 tender the releases and simultaneously dismiss his
8 Charleston lawsuit, because it will all have been resolved.
9 And no, we wouldn't expect him to dismiss the lawsuit
10 before he knew Mr. Infinger had the money. But once that
11 had occurred, this could all happen in one day. The idea
12 was to have it happen all at the same time.

13 And at the last minute -- maybe it was the day before,
14 maybe it was two days before -- we're informed that well,
15 no, Mr. Meyers doesn't have his releases, because he's had
16 trouble contacting his clients. And they haven't signed
17 them all, or none of them have been signed; or some of them
18 have been signed, but not all of them have been signed.

19 And so this was put off. It couldn't happen. Why
20 can't the Diocese just go forward and trust us? We'll get
21 you the releases. Isn't that enough? We're telling you
22 we're getting them.

23 No, it's not enough. We actually need releases to go
24 with the tender of the money. Why? Because you filed a
25 lawsuit, and we really need to see that this is all

1 resolved at once. These releases are not just releases
2 under Your Honor's order. But as releases, they also
3 provide some protection from this lawsuit that is pending
4 in Charleston, because they are releasing these people's
5 claims against the Diocese. We needed to know that they
6 really existed before the money was tendered. This went
7 around the block quite a few times.

8 Finally, in exasperation, the Diocese said, "You know
9 what? We know we owe this money and we don't want to stand
10 between -- we don't want to be the obstacle to this money
11 being paid. But we're kind of placed in an impossible
12 position, and to this day, we still don't have releases."

13 I understand from Mr. Meyers today that he now has
14 releases. That's wonderful. We -- we can put them all on
15 the table. Our chief financial officer, I believe, is
16 here. In a very short period of time, we can have the
17 check and get this done; because to this day, we know we
18 owe the money.

19 But this is the first day ever Mr. Meyers has said he
20 has signed releases to us. He has letters writing --
21 written that say he will get them. Even the one written to
22 me in August, '08, says he will get them. But he's never
23 tendered any.

24 So the Diocese made a motion to deposit the funds
25 here, and let the Court decide whether he really had

1 releases or not. And in a sense, let the chips on the
2 Charleston case fall. Because we figured if these are
3 valid releases, they'll afford us protection in -- in
4 Charleston as well. And we'll deal with that on our own.
5 That's our burden. We'll have to just go do that. But in
6 July of '08, we -- we gave up and made the motion to
7 deposit the funds here.

8 After the filing of that motion, I get this August
9 letter from Mr. Meyers about he wants to go back and do the
10 same arrangement we were trying to work out with Mr.
11 Infinger earlier. I want to say it was June, but that's
12 from memory.

13 Now that we've already made this motion to deposit the
14 funds in court, he says that he hadn't received the motion
15 at the time he wrote that letter. I have no reason to
16 doubt that. These really may be things that -- that
17 crossed in the mail. That's fine. But that's how we got
18 here.

19 What has not happened here, at any point in time, is
20 any form of calculated delay by the Diocese in paying the
21 money that it has always understood that it owed.

22 What has happened is, at first, the money wasn't due
23 yet. And then, a legal condition was created that made it
24 -- that changed the deal, that made it impossible to just
25 pay the money. Because now, these people who were supposed

1 to be releasing us aren't releasing us. They're not
2 tendering releases, and they're suing us on the very same
3 matter in Charleston. You can't settle a matter and pursue
4 it at the same time. That was the quandary we were put in.

5 This is not an attempt to delay paying the money; this
6 is an attempt to get the benefit of the bargain, which was:
7 It all goes away when we pay the money. Which we're still
8 here trying to do, which is why we filed a motion to
9 enforce the order, which is really all we're asking of you,
10 to -- to make that happen.

11 THE COURT: Okay. Got it.

12 MR. GEOLY: Thank you.

13 THE COURT: Absolutely.

14 MR. MEYERS: Can I say one more thing? I do have
15 releases. Because the Diocese wouldn't send me a release,
16 I wrote it. So I will predict to you, with a high degree
17 of confidence, that the next argument is going to be, "We
18 don't like your release." And I will be unable to get my
19 money.

20 THE COURT: I know there's a release. There's --
21 there is a release that is a part -- it just happens to be
22 contained in the ---

23 MR. MEYERS: --- in the class.

24 THE COURT: --- in the class.

25 MR. MEYERS: Right.

1 THE COURT: But I -- you know --

2 MR. MEYERS: But what I want to say is ---

3 THE COURT: Uh-huh.

4 MR. MEYERS: --- I would certainly recommend to my
5 clients --

6 THE COURT: Okay.

7 MR. MEYERS: -- that since the Diocese unquestionably
8 received on April 28th the last contingency, by their own
9 account -- on April 28th of this year -- last year, they
10 received from Mr. Richter the payment, which was by their
11 own account, in their March letter, the last contingency.
12 They have the money back from the class.

13 THE COURT: Uh-huh. Right.

14 MR. MEYERS: They knew exactly what the disbursements
15 were they had to pay.

16 I would certainly recommend to my clients that
17 everything get resolved as to John Doe C forward, if they
18 will make that payment and the Court awards post-judgment
19 interest from that day. That's 1.375 million, it's about
20 165,000 a year, at 12 percent. I don't know what the right
21 amount would be, but I would certainly make the
22 recommendation.

23 I have to go back to my clients to get complete
24 authority, because my authority expired August 15th, and I
25 -- all I do is annoy them by asking my hypothetical. But

1 if there's money actually tendered or court ordered, and
2 the Diocese actually makes the payment, I would certainly
3 make that recommendation to my people. I suspect they'll
4 follow my recommendation, but I have to go through ---

5 THE COURT: Let me ask you this question, Mr. Meyers:
6 Do you have a copy, either electronically or happen to have
7 one with you today in your file, and -- one of the
8 releases? I'm not talking about a signed one.

9 MR. MEYERS: I have ---

10 THE COURT: Do you have the language?

11 MR. MEYERS: --- in my laptop in the car, which
12 probably has the release --

13 THE COURT: Has got that on it? Here's what I'm going
14 to ask you to do for me, if you don't mind, because it
15 would be helpful. And I certainly wouldn't ask you to --
16 to transfer at this moment a release that has a signature
17 on it. But if you could transfer the language, I would --
18 I would very much like to -- I'd like to proceed as far as
19 we could, just in terms of the -- the enforcement of the
20 settlement.

21 MR. MEYERS: I will say I did not use as the model for
22 the release the one in the class action; I used a release
23 that I've often used. Because -- just because it didn't
24 occur to me to use that one. I did ask the Diocese to give
25 me one so I could look at it --

1 THE COURT: Sure.

2 MR. MEYERS: -- which they wouldn't do.

3 THE COURT: I understand. But I'd like -- in other
4 words, rather than having to reconvene, I'd -- I'd very
5 much like to do that, because you could probably ---

6 MR. MEYERS: I can ---

7 THE COURT: Just as a hint, when we leave here today,
8 1.375 million is going to be moving. Okay? Don't know
9 where it's going to be moving, but it's going to be moving.
10 Okay.

11 MR. MEYERS: Well, it's agreeable to me if it moves to
12 Mr. Infinger's escrow account.

13 THE COURT: I -- I don't know where -- I -- I don't --
14 I'm not sure where I'm going to move it at this moment.
15 But if you could do that, I would very much --

16 MR. MEYERS: I can do that.

17 THE COURT: -- very much like to be able to handle
18 that issue.

19 MR. MEYERS: It would seem worst case, if I could -- I
20 don't know if I can print, but I can certainly e-mail from
21 somewhere in the courthouse to the courthouse, to transfer
22 the text of ---

23 THE COURT: You can -- if you e-mail it -- if you can
24 e-mail it to my law clerk, he can print it. How about
25 that?

1 MR. MEYERS: But I have to get it from my laptop.

2 THE COURT: I know, that's in the car.

3 MR. MEYERS: But I can print it ---

4 THE COURT: I know. Well -- and let me tell you, it's
5 -- let me sort of tell you where we are at this moment.

6 And I -- I'm trying to think. I have a -- folks have got
7 to get lunch, and I have a two o'clock and -- and the
8 gentleman is -- is actually coming from death row at
9 Leiber. So he's -- I -- I like to go ahead and bring those
10 folks in and deal with what I need to deal with, and -- and
11 let them go about their business.

12 So I know I'm going to need to take a break when he
13 gets here. And I'm very mindful that I have the other
14 motion that is pending. So, why don't we do this? Why
15 don't I just shift gears for just a moment and handle the
16 *amicus* motion.

17 Then we'll take a break and you can go get it then.
18 And you can e-mail it and we can get copies. Y'all can
19 take a look. And I know I'm -- I know I'm keeping the
20 plaintiff's counsel here, but it's -- it's fairly
21 remarkable that the -- that, you know, obviously the
22 action, at least at this moment, is between the -- it has
23 to do with the settlement. And y'all -- the \$100,000 is
24 gone.

25 And I know I'm keeping y'all from probably doing

1 things y'all want to be doing. So I'll leave it to you, if
2 you want to remain or not remain.

3 MR. RICHTER: Well, you -- you're kind to consider us
4 in that way, Your Honor. We have not been asked to speak,
5 so we haven't -- haven't spoken. The -- the fight really
6 has been between ---

7 THE COURT: It really has been.

8 MR. RICHTER: I -- I do think that we, perhaps, can be
9 of some assistance to the Court, if you would like -- like
10 for me to do that.

11 THE COURT: Sure. I think -- I think what I -- I'm
12 trying to think. Yeah. And it has -- yes. I -- I'm
13 listening. And then I'll go to the *amicus*.

14 MR. RICHTER: Well, as -- as Your Honor knows -- well
15 ---

16 THE COURT: (To the court reporter) And this -- this
17 is Mr. Richter.

18 MR. RICHTER: --- I -- I believe that no sane or -- or
19 honest person -- sane and honest person could possibly
20 perceive that the matter between the class that Mr. Haller
21 and I represent -- or represented -- and the Diocese was
22 anything other than contentious. At least on -- well, I
23 had -- how contentious? I caused a Rule to Show Cause to
24 be issued by this Court against the Bishop of the Diocese
25 of Charleston. And that resulted -- in part resulted in

1 the hearing in Orangeburg.

2 But some have perceived it that way, so I -- I don't
3 speak on behalf of the Diocese, and I don't speak on behalf
4 of Mr. Meyers' side of this matter.

5 I am a signatory, however, to the very agreement by
6 letter which has formed the actual core of this
7 controversy. And we are significantly involved to the
8 extent that all plaintiffs' counsel contributed a total sum
9 of \$100,000 to get rid of certain counsel and certain
10 issues in the class case.

11 Now, today I hear things that concern me a good bit.
12 We are clearly \$100,000-worth invested in the controversy
13 that has presented itself as being only between these two
14 sides -- Mr. Meyers' side and the Diocese's side -- today.

15 But in looking -- and I just call this to the Court's
16 and everybody's attention, so that it can run through
17 everybody's mind. If it makes any difference, everybody
18 can decide that; if it doesn't make any difference,
19 everybody can decide that.

20 Certainly, the time for making a claim in this class
21 has long ago gone. That process has long ago ended in the
22 case. Now, Mr. Meyers -- or somebody has -- Mr. Meyers has
23 included in his submission today -- I think this is today's
24 submission -- several -- copies of several opt-out forms.

25 But the language on -- this is a court-approved form

1 this Court issued, and all it would say is, "If you want
2 out of this class, you have to execute this form." We had
3 a hearing about that.

4 But apparently, what I heard today was that Mr. Meyers
5 unilaterally caused that form to be ended. So if that opt-
6 out was ineffective, clearly the time for these people to
7 make a claim in the class has long since gone. And if they
8 hadn't opted out properly, I think their claim under this
9 agreement is -- is likewise gone. But that's -- I'm only
10 interested in \$100,000 worth of that argument.

11 Number 2, from what I heard these people say -- and I
12 was there -- in listening to Mr. Meyer's characterization
13 of this matter, it is absolutely clear to me that there was
14 no meeting of the minds amongst the people that entered
15 into this agreement.

16 I say that because there could be no doubt but that it
17 was abundantly clear that the Diocese had to pay Mr.
18 Meyers' clients -- 11 of them, I believe -- from the funds,
19 if there were funds left over after all the distributions
20 to the class. There is absolutely no doubt about that.
21 Those were the terms of the agreement.

22 Clearly, if you look at the dates, nobody asked me to
23 -- to give our \$100,000 contribution to the Diocese so it
24 could make that payment until after that had happened. Mr.
25 Thomas gave his refund check to the Diocese, whatever it

1 was. Somebody then notified me that had happened. We then
2 sent our -- our check. But there is no misunderstanding --
3 was no misunderstanding about that whatsoever.

4 Third, our \$100,000 has been tied up, which we haven't
5 had the interest-use of since April of last -- of last
6 year. And it seems to me that Mr. Meyers filed a suit on
7 March the 6th or 10th of 2007, prior to the time that the
8 Diocese was obligated to make the payment, because the
9 claims period had not wound up. That process had not wound
10 up by that time.

11 The last thing that the Court should know is that Mr.
12 Flowers sat with us and took part in all of these
13 negotiations. There's no doubt about everybody knowing 100
14 percent what happened, happened in Mr. Infinger's office.

15 So to the extent that helps the Court, I offer it. To
16 the extent it doesn't, please disregard it. And thank you
17 for hearing us.

18 THE COURT: Thank you very much. All right.

19 All right. Now, I'm going to shift to our last
20 motion, and that is the petition to appear as an *amicus*
21 *curiae*.

22 And before I do that, Mr. -- Mr. Meyers, I gotta ask
23 you one more question of you. And -- and I know you're
24 going to have to refer to probably some of your paperwork.
25 But on Exhibit -- on today's submittal, on Exhibit 6, and I

1 -- have you got -- you've got it right there.

2 Okay. Exhibit -- look -- look on Exhibit 6 for me.

3 Let's see. Can you tell me which John Doe -- letter-wise -
4 - that person is? Obviously, I don't want to know their
5 identity, just their letter.

6 MR. MEYERS: Which one?

7 THE COURT: The one that's on 6 -- Exhibit 6. Oh,
8 it's Exhibit -- wait a minute. Here we go. Here we go.

9 MR. MEYERS: The -- are you referring to the
10 attachments ---

11 THE COURT: Yeah, exactly.

12 MR. MEYERS: --- that is -- Exhibit 6 in one of my
13 attachments?

14 THE COURT: Exactly.

15 MR. MEYERS: I am pretty sure --

16 THE COURT: Now, just the letter now; just the letter.

17 MR. MEYERS: I have to consult my list to know.

18 THE COURT: I know you do.

19 MR. MEYERS: I have to correlate those.

20 THE COURT: And that's somewhere else.

21 MR. MEYERS: I probably can get that off my laptop.

22 THE COURT: Can I ask you this question? Do you --
23 this is the one of the alphabet from "C" ---

24 MR. MEYERS: Yes.

25 THE COURT: -- forward? Okay. That -- that's

1 probably going to be plenty enough. That's probably going
2 to be plenty enough.

3 MR. MEYERS: I bet I can figure it out, actually, from
4 the affidavit that's attached.

5 THE COURT: Well, I kind of wondered if you did "A, B,
6 C, D." You may have done it that way, you know? So it
7 would be A, B, C, D, E, F, maybe? That might be ---

8 MR. MEYERS: I'm pretty sure it was John Doe D.

9 THE COURT: "D"? Okay.

10 MR. MEYERS: Pretty sure.

11 THE COURT: Great. That works.

12 MR. SHAHID: Judge, I'm sorry? John Doe ---

13 THE COURT: John Doe D.

14 MR. MEYERS: "D" as in "dog."

15 THE COURT: Dog. "D." That's plenty good. That's --
16 but you know that it's one of them. Otherwise, why -- why
17 would you have attached it? Okay. I got it. Okay.
18 Great. That's -- that's plenty of sufficient --

19 All right. Now -- now I'm going to shift to the
20 *amicus*. All right. Mr. Flowers?

21 MR. RICHTER: Judge, let me ask a last question about
22 what you've done thus far before you start into the new
23 matter? I just -- I'm not sure I wrote it down right. Are
24 the releases signed in Mr. Meyers' office now? Is that
25 where -- is that where we are on that issue?

1 THE COURT: He -- here's where, as I understand it.
2 There are releases that have been signed by Mr. Meyers.
3 And what Mr. Meyers did is -- is he -- he used ---

4 MR. RICHTER: By Mr. Meyers. I mean ---

5 THE COURT: Yeah. He used releases that he has that
6 he typically uses in his practice. He has them; they are
7 signed.

8 And of course, he articulated a concern that once the
9 -- you know, that once that counsel for the defendants see
10 the releases, they may or may not be acceptable. And in
11 all candor, he used what is his typical and normal release,
12 rather than what's in the class settlement. And there
13 wasn't any reason, I mean, there wasn't ---

14 MR. RICHTER: Oh, I'm not challenging.

15 THE COURT: --- any agreement to -- you know, to use
16 that one.

17 MR. RICHTER: I -- I just didn't understand whether
18 his clients ---

19 THE COURT: So.

20 MR. RICHTER: --- had signed all of those.

21 THE COURT: Yep. He has them.

22 MR. RICHTER: That's really all I'm asking. Thank
23 you.

24 THE COURT: He does have them. He has them in his
25 office, and he thinks that he has the language on his

1 laptop. And he's going to be kind enough to -- to send
2 that to my law clerk; I'm going to print it; and then I'm
3 going to ask the defendants to look at that language. So,
4 if we can move that process ahead a little bit more, it
5 just gets these folks closer to getting some money. Which
6 is -- I -- I think everybody has an interest in that.

7 Okay. Great.

8 Yes, Mr. Flowers.

9 MR. FLOWERS: Thank you, Your Honor.

10 THE COURT: Uh-huh.

11 MR. FLOWERS: I didn't mean to annoy the Court earlier
12 when I approached.

13 THE COURT: Well, it -- you know, it is because when
14 you ---

15 MR. FLOWERS: I didn't mean to distract you.

16 THE COURT: --- people -- and -- and ---

17 MR. FLOWERS: I apologize to the Court for that.

18 THE COURT: Okay. Yes, sir.

19 MR. FLOWERS: Your Honor, I have filed the petition to
20 appear as *amicus curiae* on behalf of the South Carolina
21 Victims Assistance Network --

22 THE COURT: Uh-huh.

23 MR. FLOWERS: -- which is an organization I've done
24 amicus work for in the past. I've done work for them a
25 number of years now.

1 THE COURT: Yes, sir.

2 MR. FLOWERS: They engaged me to file this petition to
3 bring to the Court's attention, and hopefully shed some
4 light on, the numerous ethical and legal breaches that have
5 occurred in this litigation.

6 I've set them forth in the petition; I won't belabor
7 them. But I will point out to the Court that with the
8 Court's ruling today -- if -- if the Court rules today,
9 that the agreement is part of this litigation, it raises a
10 new issue; and that is whether the class members -- absent
11 class members -- need to be notified about this agreement
12 with Mr. Meyer and my -- Mr. Meyers' and my clients, so
13 that they can come in if there is going to be a final
14 fairness hearing held in this litigation -- which I think
15 there should be -- they should be notified about the terms
16 of that agreement so they could come in and complain or
17 question as to why they didn't get the same agreement; and
18 why their class counsel agreed to pay \$100,000, either out
19 of his own pocket or their pockets; and they've not had an
20 opportunity to be heard on that, as well as a number of
21 other issues they haven't had an opportunity to be heard
22 on.

23 THE COURT: Okay. Now, you -- you just made a
24 comment. You said, "Mr. Meyers' and my clients."

25 MR. FLOWERS: Yes, ma'am.

1 THE COURT: Is -- is that what you said?

2 MR. FLOWERS: Yes, ma'am.

3 THE COURT: Uh-huh. Okay. All right. Now, let's
4 talk about the law a little bit with *amicus*.

5 MR. FLOWERS: And I got -- I got to grab that ---

6 THE COURT: And obviously, all of these issues could
7 have been raised at the time of the objection to the class
8 settlement. They were not raised. And in South Carolina
9 law, we know that we have an appellate rule that addresses
10 *amicus*. And --

11 (Sotto voce discussion between
12 the Court and the law clerk.)

13 THE COURT: -- and it's Rule 213 of the South Carolina
14 Rules of Appellate Procedure. But that's not what you are
15 asking to do, is it?

16 MR. FLOWERS: I'm asking to appear as an *amicus* in the
17 trial court, Your Honor.

18 THE COURT: Uh-huh.

19 MR. FLOWERS: And there is authority for that in a
20 case called "*Cook vs. South Carolina Department of Highways*
21 *and Public Transportation*" ---

22 THE COURT: Yes, sir.

23 MR. FLOWERS: --- a Supreme Court case. The citation
24 is 420 SE 2nd 847. I've got a copy ---

25 THE COURT: I'm very familiar with that case.

1 MR. FLOWERS: And in that case, the Supreme Court said
2 it was within the trial court's discretion to entertain
3 *amicus* petitions.

4 THE COURT: And interestingly enough, the Court talks
5 in that case -- in the *Cook* case -- it refers to the
6 Court's consideration of the *amicus* in that case. And it
7 says two things which I think are interesting.

8 The first thing that it -- that it does not do is it
9 does not refer to the Appellate Rule.

10 The second interesting language is, is it considers it
11 to be -- what the Court says is that it's an evidentiary
12 matter. And whether or not to admit evidence is within the
13 trial court's discretion. It refers to the admission of
14 the *amicus* as an evidentiary admission, which I thought was
15 interesting.

16 And then finally, the Court notes -- the Supreme Court
17 notes in passing that it's apparent that the trial court
18 gave no consideration at all to the *amicus*. And then it
19 basically -- the Court in no way addresses it beyond that.
20 You agree with that?

21 MR. FLOWERS: Yes, ma'am.

22 THE COURT: And that is the only case where *amicus*, at
23 the trial level, is mentioned in the trial court in South
24 Carolina, right?

25 MR. FLOWERS: That's the only one I could find, Your

1 Honor.

2 THE COURT: Well, there is one at the Federal Court
3 level. I'm sure you are familiar with that. Involves the
4 United States government, and the United States said --
5 moved to be able to participate in an *amicus* fashion or to
6 intervene.

7 And the Federal Court in that case -- and I'll get
8 that site for you in just a moment -- opined that because
9 the United States sought by its action to affect the
10 underlying litigation, that it was appropriate that the
11 United States be added as an intervener; and in fact,
12 designated as a party plaintiff.

13 And there's a good discussion in that case about the
14 role that is played by one filing an *amicus*. And -- and I
15 thought that was interesting, too. Because there are
16 certainly some rules relating to *amicus*, and -- and I'm
17 just setting them forward.

18 And this is from a law review article (as read): "The
19 function of an *amicus curiae* is to call the Court's
20 attention to law or fact circumstances. An *amicus curiae*'s
21 principal or usual function is to aid the Court on
22 questions of law. But whatever the matter with reference
23 the *amicus curiae* undertakes to inform the court, he or she
24 should act in good faith, make full disclosure on the
25 point, suppress nothing with intent to deceive the Court.

1 "Traditionally, an *amicus curiae* was a neutral
2 provider of information, although as the law has developed,
3 those with a partisan interest now may participate."

4 Now, it says (as read): "*Amicus curiae* are drawn from
5 the ranks of persons who care about the legal principles
6 that apply in the suit, but who do not have the right to
7 appear in the suit."

8 And they need -- and it goes on to say that (as read):
9 "A private individual seeking to file an *Amicus Appellate*
10 brief does not need to be impartial, but may have an
11 interest."

12 It goes on to say (as read): "An *amicus curiae* has no
13 control over the litigation, and no right to institute any
14 proceedings in it. An *amicus curiae* ordinarily cannot file
15 pleadings or motions in the cause, but is restricted to
16 suggestions relative to matters appearing on the record, or
17 to matters of practice.

18 "An *amicus curiae* is not vested with the management of
19 the case" -- which was important in the Federal case.
20 Can't appeal it. Not bound by the judgment.

21 And then it goes on to say that (as read): "When
22 *amicus* status is granted, the named party should always
23 remain in control with the *amicus* merely responding to the
24 issues presented by the parties. Although an *amicus* may
25 provide supplementary assistance to existing counsel, an

1 *amicus curiae* cannot assume management of the action as
2 counsel, because it cannot be in control of the litigation.

3 "An *amicus* cannot initiate, create, extend, or enlarge
4 issues, including constitutional issues. Courts will not
5 consider issues raised by *amici curiae* that -- which were
6 not raised by the parties. Relief beyond that which is
7 sought by the parties cannot be requested by *amicus curiae*.
8 Instead, an *amicus curiae* must take the case as he or she"
9 -- in your instance, I think you would say "or it" --
10 "finds it, with the issues made by the parties.

11 "Motion practice by -- by *amici curiae* is not
12 permitted."

13 I just note that certainly there is affirmative relief
14 requested in your petition. In other words, I -- I really
15 just note that given the definitions of *amicus curiae* that
16 I have been able to find, they certainly seem quite
17 different from what you propose, Mr. Flowers.

18 MR. FLOWERS: What I propose, or what my client
19 proposes, Your Honor, is at the beginning of the addendum
20 [phonetic] clause to further develop and to point out
21 serious problems with this litigation including: false
22 information given to the Court; misleading the Court; a
23 number of other issues that the parties themselves not only
24 haven't pointed out to the Court, but they actively
25 concealed. And somebody needs to shed some light on it and

1 the parties obviously aren't going to do that.

2 SCVAN is not intending to take over this litigation,
3 to get in control of this litigation. They are merely
4 wishing to shed light on the activities of the parties that
5 are already before this Court. That's the intent of the
6 *amicus* petition.

7 THE COURT: I have read your petition. I have read
8 the case -- the one case under state law that mentions
9 *amicus curiae* at the trial level. I've read the Appellate
10 Court rule, and I have researched both the Federal decision
11 that I mentioned to you, as well as a number of other
12 articles and information.

13 And I must tell you, Mr. Flowers, I do not find that
14 your petition, in any regard, meets what is contemplated by
15 the other -- by the *amicus* matters -- by the *amicus*
16 definition from what I have been able to ascertain.

17 It seems to me that you are attempting, in some form
18 or fashion perhaps to intervene, and you couched it in
19 terms of a petition to appear as an *amicus* rather than a
20 motion to intervene. And our law is clear, at least
21 insofar as the Federal Court decision talks about and
22 discusses that they are very much different, the
23 intervention and the *amicus*.

24 And it seems to me that minimally you are attempting
25 to -- to intervene, although that's not what you have

1 asked. You've asked -- this is couched as a petition to
2 appear as an *amicus*.

3 MR. FLOWERS: Your Honor, so the record's clear, we're
4 not attempting to intervene. We're not attempting to get
5 party status.

6 THE COURT: And you -- and you don't say that. You --
7 I'm just telling you ---

8 MR. FLOWERS: We don't think we have standing ---

9 THE COURT: Uh-huh.

10 MR. FLOWERS: --- to -- to intervene, or to be a party
11 in the class action. What we're asking to do is perform in
12 an advisory role, which an *amicus* does, to the Court about
13 the various matters that are laid out in the petition.

14 THE COURT: Okay. All right. Very well. I'm going
15 to respectfully deny your motion to appear as an *amicus*.
16 Now ---

17 MR. FLOWERS: Can I say one more thing, Your Honor? I
18 understand the Court's ruling.

19 THE COURT: Thank you.

20 MR. FLOWERS: I'm not arguing with the Court. But
21 just so the record's clear, you mentioned that the stuff
22 that's in the petition could have been raised at the
23 fairness hearing. There are matters in the petition that
24 occurred after the fairness hearing ---

25 THE COURT: Okay.

1 MR. FLOWERS: --- so they could not have been raised
2 at ---

3 THE COURT: Okay.

4 MR. FLOWERS: --- the fairness hearing.

5 THE COURT: Very well. All right. Now -- and -- and
6 -- before Mr. Flowers leaves, a couple of things that --
7 that I want to talk about and I feel compelled to put on
8 the record.

9 The first thing is, Mr. Flowers, I have concerns about
10 your petition to appear as an *amicus curiae* when it appears
11 that you represent certain individuals who are parties to
12 the settlement to the -- that we're here about today. And
13 I am concerned about that, and I'm going to put that on the
14 record. I need say no more, but I am expressing to you a
15 concern.

16 MR. FLOWERS: May I respond to it, Your Honor?

17 THE COURT: I'm -- if you wish.

18 MR. FLOWERS: When -- when I was engaged by the South
19 Carolina Victims Assistance Network, I was asked to do a --
20 a specific and discreet thing for them. Whether I was
21 representing other parties or not who were in this
22 settlement is not relevant as long as there's no conflict;
23 and even if there is a conflict, as long as it is disclosed
24 and they give waivers to any potential conflict.

25 Now, I take the position there is no conflict, because

1 the people that Mr. Meyers and I represent in the
2 settlement are not fighting about the class action case any
3 more. They opted out; they are gone. SCVAN wants to bring
4 to the Court's attention all the problems with the
5 settlement.

6 So there is no conflict. And even if there was, it's
7 one that could be waived. And I will represent to the
8 Court as an officer of the Court, I have made full
9 disclosure to everybody involved in this process that I
10 represent as to what the dual role that I might be put in
11 the position of doing. And -- and everyone gave complete
12 waivers as to any problems that anyone may raise at any
13 point in the future about it.

14 THE COURT: I -- I make no findings in that regard,
15 other than to tell you, Mr. Flowers, that it's clear to me
16 that you represent other individuals in the -- in this
17 litigation, and I just simply wanted the record to reflect
18 my concern.

19 Secondly, I'm going to make an e-mail part of the
20 record that I received from you, Mr. Flowers, because I'm
21 very concerned that -- about the content of the e-mail.

22 It is an e-mail, says (as read): "From: David
23 df60@charter.net; Subject: Re: Doe vs. Diocese Case,
24 Potential Hearing Date."

25 And --

1 (Sotto voce conversation between
2 the Court and the law clerk.)

3 THE COURT: I'm going to make that a part of the
4 record. And in it, Mr. Flowers, you make certain
5 allegations regarding the Court's lack of willingness to
6 schedule your -- these matters.

7 And I simply wanted to put on the record that the
8 final motion -- of course, we've had -- I think, we've had
9 one that's been filed very recently. But the bulk of these
10 motions were filed, I think, September 25th and
11 thereabouts.

12 And I had a status conference on October the 2nd, and
13 I wanted to be sure that that was the date, and -- and --
14 and asked for and received today the -- the transcript.

15 And on that occasion, I met with counsel to try to
16 schedule the -- this motion hearing as soon as possible,
17 and gathered everyone rather than trying to do that by e-
18 mail so that we could expedite, I had hoped.

19 On that occasion, because I have my typical duties --
20 which is court -- and I brought my schedule in case anyone
21 wondered what that has been. And -- but I did want the
22 record to reflect that as I attempted to schedule the
23 hearing, I thought I hit most every Friday when -- because
24 I'm in court. And tried to address our next chambers week,
25 which was Thanksgiving week. And then moved into the last

1 two weeks of the year, and was told the following: Mr.
2 Flowers, you could not be available for October the 17th;
3 Mr. Meyers could not be present on October the 24th, or
4 December the 25th through January the 2nd; that Mr. Richter
5 could not be available October the 9th and 10th, or
6 November the 16th through the 21st; and Mr. Shahid was
7 doing the "Gobble-Wobble" race on November the 24th or the
8 25th, which obviously was the week of Thanksgiving, our
9 next chambers week.

10 Between October the 2nd -- which I think comes just
11 days after the last motion, the one filed on September
12 25th. I don't know when I got it; it was filed on the
13 25th. I probably received it some time after that.

14 I then sought and hoped to hear again -- tried to hear
15 the matter during the -- our chambers period at the end of
16 the year. Counsel was not available. I then asked about
17 the first of the year, and was told that you couldn't hear
18 it on January the 8th or February the 2nd and 3rd.

19 And then I was given everyone else's difficulties over
20 the period, to include, I think, one -- a couple of the
21 lawyers just sent me the calendar and said, "You figure out
22 when we're going to be available."

23 And I -- my office spent an awful lot of time trying
24 to get the date. This is the first day since October the
25 2nd that we were all available. And I certainly have made

1 myself available. And needless to say that this matter has
2 been more difficult to get scheduled, quite frankly, than a
3 non-jury capital case that I have tried since October the
4 2nd. So I'm going to make my transcript of the status
5 conference part of the record as well as your e-mail.

6 Also in the e-mail -- the other portion of this e-mail
7 that concerned me was -- I am concerned that some of your
8 statements could be considered to be *ex parte*, an *ex parte*
9 argument in favor of your petition for *amicus*. And as an
10 officer of the Court, disingenuous, because your comment is
11 -- and I would note, I even offered to hear it on the day
12 of October the 2nd, and counsel simply hadn't received it
13 in time and wasn't prepared, which was certainly
14 reasonable.

15 It says (as read): "If the Court should find time in
16 the next two months to hear my petition, which is only
17 opposed by an utterly frivolous argument by the Diocese, I
18 would seek that it not be heard only on January the 8th and
19 February the 2nd and 3rd."

20 That was the comment that I -- I was concerned was
21 argument on the motion itself, which is not correct, as you
22 and I just -- and I interchanged. It's not an utterly
23 frivolous argument. It is not a clear area in South
24 Carolina law in any event, which concerns me that that
25 argument, albeit *ex parte*, could be considered to be

1 disingenuous on your part as an officer of the Court,
2 because it wouldn't be an utterly frivolous argument.

3 MR. FLOWERS: Your Honor, in their ---

4 THE COURT: Let me finish, please.

5 MR. FLOWERS: I'm sorry.

6 THE COURT: And then I'm -- I certainly want you to
7 respond, sir.

8 I put all these matters on the record because --
9 really for two reasons.

10 Number one, I was -- I was -- I try so hard,
11 particularly when I'm the Chief Administrative Judge and
12 have many, many administrative tasks. And I was the Chief
13 Administrative Judge for the 1st Judicial Circuit up to
14 January the 1st; did have pending a capital case, which I
15 did try.

16 Also, unfortunately, I had some other issues that came
17 up that were unanticipated, didn't interfere with this
18 matter at all.

19 But I certainly do try very much to -- to be
20 responsive to counsel, and so when I am accused of the
21 kinds of things that I was accused of in your e-mail, I
22 guess what comes to mind first of all is sadness, I
23 suppose.

24 Secondly, the oath of civility that I -- I presume you
25 took when -- when the Bar was required to take it some

1 years ago. And I -- I want to hear from you, but what I
2 really want to do is just to put you on notice, Mr.
3 Flowers, that your conduct was not appropriate. Okay?

4 MR. FLOWERS: Thank you, Your Honor.

5 THE COURT: Uh-huh.

6 MR. FLOWERS: I -- I will say that I stand by the
7 words. They are truthful statements. The record is clear.
8 What I said in there was that whenever the parties to this
9 action wanted something heard in a hurry, they got heard in
10 a hurry. My petition's been pending since June of last
11 year. It's taken now, I guess, seven months to have it
12 heard.

13 When you did -- you said you attempted to schedule the
14 hearing for these motions towards the end of the year, you
15 attempted to schedule it during the time that you were
16 already advised that Mr. Meyers was not available and would
17 be out of the state.

18 When I say it was utterly frivolous, the Diocese
19 argued in their response to my petition that there was no
20 rule and no statute and no case authority in South Carolina
21 that allows ex -- that allows *amicus curiae* petitions in
22 the trial court. That is a false statement.

23 The *Cook* case is a South Carolina Supreme Court that
24 allows *amicus* petitions in the trial court. And -- and
25 Your Honor has not addressed that with them, that they have

1 said something to the Court that is not true. Now, I will
2 take the Court's admonition, but I stand by the words that
3 are in that e-mail.

4 THE COURT: Thank you for your -- for your
5 acknowledging the admonition, Mr. Flowers. I appreciate
6 that very much.

7 Now, again, I'm going to just attach these as
8 exhibits, the e-mail as well as the transcript. And
9 there's a flurry of -- of e-mails that went back and forth
10 from -- from my law clerk --

11 (To the bailiff) You need to pass that to Bonnie.

12 -- where I at least attempted to get this matter
13 scheduled as quickly as I possibly could. And clearly, Mr.
14 Flowers, I was trying to schedule this matter when I had
15 time at the end of the year, and to -- and to include the
16 first of the year, obviously, the first of January. And no
17 one was able to comply with my request to have this matter
18 heard until today, January the 29th, despite many attempts.

19 You know -- and there is obviously a great difference
20 between trying to schedule a matter between two law firms,
21 obviously, and multiple law firms, as -- as we've had to do
22 here today.

23 All right. Now, we're going to take a break. And if
24 you would be so kind as to do that, we will immediately get
25 it printed. I know y'all got to get some lunch. Don't

1 leave me.

2 And I want y'all to take a look at it. And then what
3 I think I'll do is -- I've got to -- we got to get a little
4 bit of lunch here, and then I -- I've got a -- Mr. Alesky.
5 I've got to -- to deal with him and get right back to you.
6 And I've got the rest of the afternoon earmarked.

7 MR. MEYERS: I have been able to confirm that John Doe
8 D is correct.

9 THE COURT: Wonderful. Thank you so much.

10 MR. FLOWERS: Your Honor, could I ask the Court a
11 question? It doesn't have anything to do with what we were
12 just talking about; it has to do with John Doe B.

13 I think I understand what the Court was talking about
14 earlier when you said John Doe B has nothing to do with
15 this Court, that's Charleston.

16 As we indicated to you at -- at the last -- at the
17 status conference in October ---

18 THE COURT: Mr. Flowers, tell me why you are asking me
19 this question in what capacity.

20 MR. FLOWERS: Because we want to go forward on the
21 case ---

22 THE COURT: Who is "we"?

23 MR. FLOWERS: --- in Charleston.

24 THE COURT: Who is "we"?

25 MR. FLOWERS: We, me and Mr. Meyers, on behalf of John

1 Doe B --

2 THE COURT: Okay. You represent John Doe B in
3 Charleston?

4 MR. FLOWERS: Yes, ma'am.

5 THE COURT: Okay.

6 MR. FLOWERS: Yes, ma'am. A stay has been entered in
7 that case, pending your resolution of the motions before
8 you today.

9 THE COURT: Okay.

10 MR. FLOWERS: But as I understand the -- the colloquy
11 today --

12 THE COURT: Yes.

13 MR. FLOWERS: -- they are taking the position ---

14 THE COURT: Who's "they"?

15 MR. FLOWERS: --- that John Doe B ---

16 THE COURT: You're talking about the Diocese ---

17 MR. FLOWERS: --- the Diocese. I'm sorry.

18 The Diocese agrees that John Doe B is not impacted by
19 this proceeding today, and that the case can go forward
20 with respect to John Doe B. And therefore, what I am
21 asking you, for clarification, is can we go forward with
22 discovery in that case? Do you have any opposition to
23 that?

24 And there's a motion hearing scheduled for next month.
25 They've gotten the motions continued before based on this

1 stay, but if John Doe B is not part of this proceeding,
2 then -- then we would like you to clarify that so that we
3 can go forward with that case in Charleston.

4 THE COURT: How could he ---

5 MR. FLOWERS: That's all ---

6 THE COURT: --- how could John Doe B be a part of this
7 matter?

8 MR. FLOWERS: I'm -- I'm agreeing with that, Your
9 Honor. But they've taken the position that because they
10 filed a motion to enforce a settlement, nothing can happen
11 in Charleston, because they argued that with Judge Few.
12 Judge Few said, "I'm staying it until the motions here are
13 heard."

14 What I -- what I'm trying to get clarification on is
15 regardless of what you do today with John Doe C through the
16 rest, that you are not leaving a stay in place with respect
17 to John Doe B proceeding in Charleston in any way.

18 THE COURT: Let me -- let me -- let me be clear: I am
19 Judge Goodstein; I am not Judge Few. Judge Few issued
20 Judge Few's order. I am not familiar with Judge Few's
21 order. You cannot take anything that I say or do as in any
22 way interpreting Judge Few's order, because I've not seen
23 it; or commenting on Judge Few's order, which I have not
24 seen, I have not reviewed.

25 And I certainly would take no action to affect his

1 order one way -- in any way. You cannot take anything that
2 I say here today as affecting anything to do with Judge
3 Few's order. I hope I am clear.

4 My -- my comment about John Doe B is simply that I
5 have looked at the class settlement; I have looked at the
6 objections; I have looked at my order; I have looked at the
7 letter, which are the subject of these matters. I do not
8 see John Doe B mentioned anywhere, and it has been -- the -
9 the reality in this lawsuit that each letter John Doe or
10 Jane Doe signifies consistently a particular human being.

11 John Doe B -- I don't know John Doe B. John Doe B has
12 not been in this litigation so far as I am aware. I think
13 I looked for confirmation; got that from Mr. Meyers and got
14 that from the Diocese.

15 If you take my words in any way, shape, or form that I
16 am doing anything with regards to Judge Few's order, you do
17 that in error.

18 MR. FLOWERS: And I don't intend to do that, Your
19 Honor, and that's why I was asking the question. Because
20 what we anticipate is the Diocese is going to say next
21 month, "Judge in Charleston, you can't hear this case,
22 because Judge Goodstein has jurisdiction over this case;
23 because Judge Few stayed that case until you can hear these
24 motions."

25 Didn't have anything to do with John Doe B. And all

1 I'm trying to do is head off at the pass their attempt to
2 further delay the case in Charleston with respect to John
3 Doe B. That's all I'm asking. I'm just trying to make
4 sure, on the record ---

5 THE COURT: You cannot do that with me. I am not
6 going to give you an opinion about what happens to the
7 litigation in Charleston. I'm not going to -- I'm -- I --
8 I'm not going to opine. I do not know anything about the
9 litigation in Charleston.

10 All but -- what you all have, for whatever reason, I
11 think, today there's some information. It may be --
12 certainly it's been mentioned that there's litigation in
13 Charleston. I am aware that there's litigation in
14 Charleston, but I have not delved into it. I have not read
15 Judge Few's order.

16 And so I want to be very careful that I just handle
17 this case. I got plenty of cases. I got plenty other
18 parties and plenty other litigation to handle.

19 And I do not want you, Mr. Flowers, going to any judge
20 anywhere and say, "Judge Goodstein said whatever --
21 whatever; and therefore, Judge Goodstein said that the stay
22 in Charleston is no longer in effect." Because I'm not
23 doing that. Okay?

24 MR. FLOWERS: Yes, ma'am.

25 THE COURT: Thank you, Mr. Flowers.

1 MR. GEOLY: Your Honor.

2 THE COURT: I hope that's clear.

3 MR. GEOLY: I hate to prolong; I know we're waiting
4 for a break.

5 THE COURT: Better hold on, Mr. Flowers. Better --
6 whoa. Don't go far.

7 MR. GEOLY: No. But there was a characterization of
8 what the Diocese said. I'm not going to go through this
9 whole thing. I -- I don't think it's appropriate to argue
10 in front of you about what we might or might not argue in
11 some Charleston case that you're not handling.

12 I do want to say that the Diocese made comments to you
13 today that we agree that jurisdictionally John Doe B is not
14 before you, nor are his claims. And that is agreed. I
15 think that's consistent with what you just said. I think
16 that's consistent with what Mr. Flowers just said.

17 But we reserve all of our rights to argue anything we
18 feel we need to argue in front of a Charleston judge in a
19 case that is not before you. And I will leave it at that.

20 THE COURT: Mr. Geoly, I'm -- let me reiterate what I
21 just told Mr. Flowers. Y'all can't take anything I say
22 here today as having any kind of effect on anybody's stay,
23 anybody's order. It is what it -- I'm -- I'm ---

24 MR. GEOLY: Understood.

25 THE COURT: --- I'm right here in Dorchester County.

1 I got this case. I just would like to conclude this case,
2 if that's possible.

3 MR. GEOLY: Understood, Your Honor.

4 THE COURT: And in the appropriate way.

5 MR. GEOLY: And we're certainly not asking you to
6 construe another Judge's order.

7 THE COURT: Thank you. Thank you so much.

8 All right. Y'all go get some lunch, and I -- I hate
9 to do this to you. I know y'all have taken all day, but
10 I'm going to be ready just as soon as I am finished with --
11 - with my two o'clock. My folks got to get something to
12 eat, so it's probably going to be closer to three.

13 MR. RICHTER: We're excused.

14 THE COURT: Oh, absolutely. Absolutely.

15 (Marked as Courts Exhibit 1, e-mail)

16 (Marked Courts Exhibit 2, copy of transcript.)

17 <Off the record at 1:55 p.m.>

18 <Back on the record at 4:57 p.m.>

19 THE COURT: All right. Thank you all so much. You --
20 you all have been at it all day long, and it's now five
21 minutes after five. And -- and y'all have just been
22 valiant, and I'm so appreciative of all the work y'all have
23 done today. And you've helped me so much, and I just want
24 to tell you thanks so much.

25 Mr. Meyers, you started with a document after lunch,

1 and now it's a new document. Tell me the story.

2 MR. MEYERS: It's -- it's just been added to.

3 THE COURT: Great.

4 MR. MEYERS: Not much. What I had was not so terribly
5 objectionable, so we were just able to massage it. We do
6 need the Court to indicate one thing. Because the
7 defendants -- we don't have an agreement on the sum they
8 will pay.

9 THE COURT: Okay.

10 MR. MEYERS: And I went back to the Court's order,
11 which says that there's no more restrictions on any
12 settlement funds that should be paid, that as August 31,
13 2007. I still ---

14 THE COURT: Now, when the -- show me what you're
15 talking about. Let me get it before me, now, because y'all
16 are going to leave me with some homework.

17 MR. MEYERS: The order that the Diocese claims this --
18 my agreement became.

19 THE COURT: Oh, that one. Hold on now. Let me get
20 that one, because I had it all day. Hold on one second.
21 Let me get that. All right. Hold on.

22 (Sotto voce discussion between
23 the Court and the law clerk.)

24 THE COURT: I got the order. No, I don't. No, I
25 don't. I got the order. Okay. Now, go ahead.

1 MR. MEYERS: We -- we have agreed on both the language
2 of a proposed release and on a method of payment.

3 THE COURT: Okay.

4 MR. MEYERS: What we do not have agreement on is an
5 amount to be paid. Now, this order says that (as read):
6 "There is no more restrictions or impediments to the
7 disbursement of any funds."

8 Now, the --

9 THE COURT: And that's in the --

10 MR. MEYERS: This is the order that -- that says my
11 letter of agreement with the Diocese is now an order of
12 this Court. It's the August 31, 2007 order.

13 THE COURT: All right. Now, all right.

14 MR. MEYERS: You -- you incorporated the agreement --

15 THE COURT: Uh-huh. Yes.

16 MR. MEYERS: -- you said it's an order; no more
17 restrictions. So I ---

18 THE COURT: I'm so sorry. I want to look at the exact
19 -- I'm so sorry. Tell me where that language is.

20 MR. MEYERS: It's on -- it's the bottom paragraph on
21 the first page. It's a three-page order.

22 THE COURT: Uh-huh. This is page 1.

23 MR. MEYERS: (As read) "Further, it is ordered" ---

24 THE COURT: There it is. (As read) "Further, it is
25 ordered that as to any" ---

1 MR. MEYERS: --- "any" ---

2 THE COURT: Uh-huh.

3 MR. MEYERS: --- "any restriction or impediments in
4 the disbursement of any such funds heretofore imposed" ---

5 THE COURT: "By this Court" ---

6 MR. MEYERS: --- "by the Court are lifted, removed,
7 and extinguished."

8 All right. Now, so there is -- there is an argument
9 that at that point, I should have been paid. But it seemed
10 to me that even under the Diocese's calculation, they
11 should have paid me once all of their -- as they
12 interpreted the agreement, their pre-conditions were met.
13 That's the April 28th date.

14 Pre-judgment interest that applies to this order is 12
15 -- post-judgment interest that applies to this order is
16 12.25 percent. I looked that up at lunchtime as well. And
17 the calculation from April 28th, we contend should obligate
18 the Diocese to pay an additional \$127,827.91.

19 THE COURT: I'm sorry. Say again. 128 --

20 MR. MEYERS: 127 --

21 THE COURT: Seven.

22 MR. MEYERS: -- 827 --

23 THE COURT: Okay.

24 MR. MEYERS: -- point 91.

25 The per diem amount is \$461.47, using 12.25 percent on

1 the principal amount due. If we ran it from the date of
2 this order, it would be \$239,041.46, but I'm prepared to
3 recommend that my clients get this resolved if they'll pay
4 the interest from at least April 28th.

5 THE COURT: All right. Now, tell me what you all
6 discussed in terms of the -- you said the "mode" of
7 payment, method of payment?

8 MR. MEYERS: Right. A -- a cashier's check will be
9 delivered made out to Gregg Meyers' IOLTA account. It will
10 be delivered to Marvin Infinger. Now, Marvin, of course,
11 doesn't know about this, but he had previously expressed to
12 me willingness to do this.

13 He will hold it until I have provided him with the
14 releases. He will convey the releases to the Diocese. At
15 that point, I will be entitled to the proceeds.

16 THE COURT: Tell me what you mean when you say, "He
17 will hold it."

18 MR. MEYERS: Mr. Infinger will retain the cashier's
19 check.

20 THE COURT: Just the -- I mean, in other words, he
21 will take a check, say, and put it into his safety deposit
22 box.

23 MR. MEYERS: Right. I would prefer that he be
24 authorized to place it into his trust account, and
25 preferably into an interest-bearing trust account.

1 THE COURT: Well, here's -- here's -- let me tell you
2 what concern -- for me. Because -- because I -- I --
3 obviously, I've been thinking about these issues also.

4 Obviously, if someone just maintains possession of a
5 cashier's check is -- as disconcerting as that is, and I --
6 I think that's -- that's very disconcerting.

7 MR. MEYERS: Well, I intend to -- to endorse the check
8 and have Mr. Infinger deposit the check.

9 THE COURT: Well, here's what concerns me with that.
10 In whatever account the moneys might be deposited -- and I
11 agree with you completely it needs to be in an interest-
12 bearing account. But it must be an account that is secured
13 by US Government Treasury, preferably treasury bills,
14 because you -- we cannot just -- I mean, I hate to say
15 that, but I -- the times and -- and let me just say it. In
16 times where the economy was in much, much better shape,
17 even in those times, the moneys -- and there were large
18 sums -- they had to be deposited with the backup of -- of
19 government securities. In other words, I don't think FDIC
20 is going to get it.

21 MR. MEYERS: Uh-huh.

22 THE COURT: See what -- do you see what I'm saying?

23 MR. MEYERS: Yes.

24 THE COURT: It's only \$200,000. So my concern is that
25 -- I think it is prudent to put it in -- in an account --

1 it is prudent to put it in an interest-bearing account.
2 But I think I would be interested in having it in a -- an
3 account that is secured by some sort of treasury
4 collateral, or -- or some sort of collateral.

5 MR. FLOWERS: Your Honor, if I may?

6 THE COURT: Yeah.

7 MR. FLOWERS: If -- if I may.

8 THE COURT: Yeah.

9 MR. FLOWERS: I actually was educated a couple of
10 weeks ago in another matter --

11 THE COURT: Great.

12 MR. FLOWERS: -- about this very issue.

13 THE COURT: Oh, good.

14 MR. FLOWERS: It's my understanding, I think it was a
15 -- a change to the Patriot Act, where the FDIC now insures
16 every amount in an interest-bearing business account.
17 There is no cap anymore on an interest-bearing -- it's a
18 temporary piece of legislation, that I think goes through
19 the end of --

20 THE COURT: End of the year.

21 MR. FLOWERS: -- '09.

22 THE COURT: Yeah. End of '09.

23 MR. FLOWERS: But there is no cap on what the FDIC
24 insures on an interest-bearing business account now.

25 THE COURT: Oh.

1 MR. FLOWERS: It's no longer \$100,000.

2 THE COURT: Well, I knew it was 200,000; it knew it
3 had gone up to 200,000, but I didn't realize it was
4 unlimited.

5 MR. FLOWERS: There is no cap anymore, is my
6 understanding. I can't make that representation that
7 that's actually what the law is, but that's what I was told
8 by my banker.

9 THE COURT: Makes it a lot easier, doesn't it? Boy,
10 that makes it a lot easier.

11 MR. FLOWERS: I have an interest-bearing IOLTA
12 account. I have. And I certainly would be willing for me
13 to hold the funds, knowing that I can't disburse until all
14 the releases are exchanged and Mr. Geoly has told me
15 everything's fine. But I want this money earning interest
16 for however long it takes the mechanics to be done.

17 THE COURT: I -- I'm with you completely.

18 MR. FLOWERS: Okay.

19 THE COURT: Now, let me say this. Let me -- first
20 things first. Now, you all have agreed on the language of
21 a release; is that right?

22 MR. MEYERS: Yes.

23 THE COURT: Could we please make the release the
24 Court's exhibit? And we'll use mine.

25 (To the court reporter) You got it? Thank you.

1 All right. Here it is. Gosh, I hate to take yours
2 and I've got this one. You got it?

3 COURT REPORTER: This will be Court's 3, Your Honor.

4 THE COURT: Court's 3? Great.

5 (Marked Court's Exhibit No. 3, release document.)

6 THE COURT: And everybody agrees -- everyone is happy,
7 copacetic with this full and complete release?

8 You okay with it, Mr. Meyers?

9 MR. MEYERS: We are, Your Honor.

10 THE COURT: Mr. Geoly? Mr. Shahid? Y'all good?

11 MR. GEOLY: Yes, ma'am.

12 THE COURT: Okay. Great. All right. Well, that's
13 done.

14 MR. GEOLY: Your Honor, Mr. Meyers addressed the
15 question of what the amount owed should be. Is now the
16 time to respond to that, or did you have other business you
17 wanted to address first?

18 THE COURT: I'll hear from you briefly.

19 MR. GEOLY: Okay.

20 THE COURT: I mean, I kind of -- you know, I've heard
21 a lot of issues. I sort of have an opinion about that, but
22 go right ahead.

23 MR. GEOLY: Fair enough. The only comment I've got is
24 that to try to -- what it ties back to is when did the
25 Diocese owe the money, and did the Diocese fail to pay the

1 money at some point that it was owed.

2 To try to begin with August, 2007 is a contrivance,
3 because the letter agreement attached to your order is
4 really clear about -- at -- at a minimum, the claims
5 process hadn't been completed before any kind of due date
6 would obtain. So it's kind of a non-serious date to be
7 thinking about.

8 The only real issue is once the last payment from Mr.
9 Richter was received in April, 2008 ---

10 THE COURT: That was the April 28th.

11 MR. GEOLY: Right. Was there some point after that
12 when the Diocese should have turned over this money, but
13 didn't? Or as the Diocese has contended, did the money not
14 become due because it never received releases tendered to
15 it and because of the lawsuit that Mr. Client -- Mr. Meyers
16 clients filed?

17 Whatever you think about those things, the Diocese
18 attempted to cut off any such exposure by making a motion
19 in July, '08, to tender the funds to the Court.

20 So that was the point I wanted to make. Our
21 contention is that we've never been late or overdue, right
22 up to this minute. But whatever one thinks, we certainly
23 made an attempt to tender the funds in July of '08.

24 THE COURT: Thank you. Here's what I want to do. I -
25 - because it is going to take me a little bit of time to

1 craft an order, and I know -- and I want -- you know, I --
2 I want to -- to take a step forward. I think you all have
3 taken a great step forward in getting the language of the
4 release, and I appreciate that very much.

5 Tomorrow, I'm going to ask that -- tomorrow; you all
6 tell me if there's a problem with tomorrow, because
7 Monday's fine, too -- to place the -- the original sum, 12
8 -- help me --

9 MR. SHAHID: One million ---

10 MR. MEYERS: Three seventy-five.

11 THE COURT: -- 135 -- million 375. I want that sum,
12 because I know that sum is -- is -- is -- is appropriate,
13 and maybe more. But I want to give some thought, and I
14 want to look -- I want to look back through these
15 documents. And I really want to -- I want to take a little
16 bit of time to think about it.

17 But I do want that money so that everyone can be
18 assured that it's -- it's poised and ready to be
19 distributed.

20 I know, Mr. Meyers, that you're going to then proceed
21 to -- because it's going to take you some time to -- to
22 have your folks come back in and sign.

23 And in all candor, I say tomorrow or Monday, because I
24 got to make that phone call myself, and just to find --
25 that's fantastic. And then in that event it will be

1 whatever financial institution -- probably whatever -- I
2 would think the larger banks are probably the ones that the
3 -- the Diocese is dealing with, and we'll figure that out.

4 And we may just -- I may get representative plaintiff
5 -- excuse me -- Mr. Meyers -- representative -- you, Mr.
6 Meyers, and somebody -- probably Mr. Shahid or Mr. Geoly --
7 and we'll talk about what bank. But -- and we may do it
8 through the Clerk's office and let the Clerk do it. We'll
9 talk about the mechanics of it.

10 But I do want to be sure that the money is protected,
11 particularly -- and -- and you know, the economy is -- is -
12 - is -- it's not as healthy as it has been, certainly in my
13 lifetime. So I want to be assured that it's protected as
14 much as I can do that. We're going to do that tomorrow or
15 Monday, and that way, that's done.

16 I'm in Common Pleas here next week. And it will be my
17 intention to get my work done over the week -- over the
18 weekend/first of the week; and get you all an order next
19 week, so you'll understand what -- what the final sum will
20 be.

21 And if you get those 11 releases done before I finish
22 my order, please don't -- y'all just get me on a phone
23 call. Because I see no reason why that sum -- even if
24 there's additional to come, I see no reason why that sum
25 ought not be done, ought not be distributed. See what I'm

1 saying?

2 MR. MEYERS: Your Honor, I -- I have people well out
3 of state ---

4 THE COURT: Okay.

5 MR. MEYERS: --- so it does take a few days to turn
6 things around.

7 THE COURT: All right. Okay.

8 MR. MEYERS: But -- but I agree ---

9 THE COURT: I figured it was all at the office.

10 MR. MEYERS: I'll be trying to do it as quickly as I
11 can.

12 THE COURT: Okay.

13 MR. MEYERS: What's important to me on the payment
14 side is that it be done in a way that the Diocese no longer
15 controls the funds.

16 THE COURT: Exactly. Exactly.

17 MR. MEYERS: I find the Court to control it or some
18 neutral ---

19 THE COURT: I know. And I got that. I got that. I
20 got that, Mr. Meyers. And that's the reason I'm saying ---

21 MR. MEYERS: Thank you.

22 THE COURT: --- tomorrow or Monday, that's going to
23 happen. So that you can know that it's -- it's -- it's --
24 the control is under the Court, under the Clerk of Court.
25 Ultimately, under the Court, because even if it's with the

1 Clerk of Court, they're not going to do anything without an
2 order.

3 But -- but you are where you need to be, I think, in
4 terms of your clients feeling like it's in a -- they're
5 different this afternoon, perhaps, than they were yesterday
6 afternoon. So --

7 MR. MEYERS: Right. And I really want to be able to
8 recommend strongly to them that they in fact execute the
9 release. And so it --

10 THE COURT: Absolutely. Absolutely.

11 MR. MEYERS: -- it'll be helpful to know what the
12 order ---

13 THE COURT: I -- I understand. I would urge you to go
14 ahead and do the releases. We can do the first part.

15 MR. MEYERS: I will. I'll hold ---

16 THE COURT: Just in -- I mean, if they get them all
17 back in on Tuesday, my goodness. And it's going to take me
18 until Friday or whatever. I'd just -- I would feel better
19 about that.

20 But anyway, that's -- that'll be the game plan now. I
21 -- what I will do is I'm going to endeavor tomorrow -- I
22 can't do it now because it's 5:20 -- tomorrow morning to --
23 to -- to find that out, and I gather everybody is going to
24 be around their office? Yes, yes, and more yes.

25 MR. SHAHID: I will be in Aiken most of the day

1 tomorrow, Judge.

2 THE COURT: Okay. Okay. All right. Why don't we do
3 this? Let me tell you what I have. I have a -- I have a
4 meeting about a courthouse -- we're sort of at a critical
5 stage with the courthouse -- in the morning. I have a bond
6 hearing at one o'clock, and after that I should be fine.
7 So can we -- can we say at two o'clock tomorrow, can you be
8 near a phone -- cell phone?

9 MR. SHAHID: Tomorrow should be a short day. It's
10 going to be the James Brown estate case.

11 THE COURT: Oh, okay.

12 MR. SHAHID: But it may ---

13 THE COURT: Oh. If you're -- listen, if you're with a
14 judge at two o'clock, they're not going to be interested in
15 me, because they got you.

16 MR. SHAHID: They have me.

17 THE COURT: All right.

18 MR. SHAHID: But Judge, I may be free. I mean, it may
19 -- we start at ten o'clock and we may be done by -- by noon
20 or one. But I don't want to promise you I'm free when I'm
21 not free.

22 THE COURT: Oh, I understand that.

23 MR. SHAHID: I can certainly call into ---

24 THE COURT: That'd be great. And just let somebody in
25 my office know what -- what your status -- and call Mr.

1 Meyers and just let him know what your status is going to
2 be at two. And then y'all just call me.

3 MR. MEYERS: What number should we call, Your Honor?

4 THE COURT: Well, my hearing's at one -- two -- I
5 would call (843)832-0332. And I'll be in the office at two
6 tomorrow for sure.

7 MR. MEYERS: At 2:00 p.m.?

8 THE COURT: Uh-huh. Yeah. For sure. For sure. And
9 then we'll -- and then what I'll do is we'll be doing some
10 -- please, don't -- you know, feel free to please call,
11 yourselves, financial institutions in the morning. Please
12 do. Please. I -- I welcome your help in that regard.
13 Because I -- you know, I would like -- I'd like for this --
14 the money to be protected and go off without a hitch.

15 All right. Thank you all so much. Does that now
16 conclude -- one other thing I wanted to ask. Once -- once
17 this part of it, of course, is -- is completed, then I will
18 be looking from the plaintiff and the defendant for a
19 motion to dismiss. I just share that with you, because I
20 don't know when I'll see you again. Okay?

21 In other words, once -- once we've distributed this
22 money, I would think there would be a final accounting
23 that'll -- a final, final, final accounting that will be
24 filed with the Court. And then an order for -- consent
25 order for dismissal.

1 MR. SHAHID: And you -- you mean either something from
2 class counsel or myself?

3 THE COURT: Both of you, I would think, in a consent
4 order.

5 Great. Thank you all so much.

6 MR. GEOLY: Thank you, Your Honor.

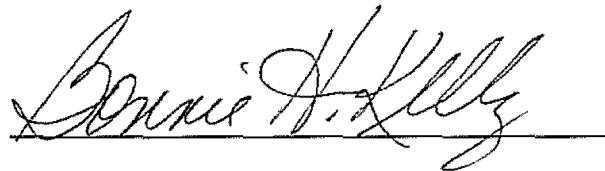
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8 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED BONNIE H. KELLY, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR DORCHESTER COUNTY, SOUTH CAROLINA, ON THE 29TH OF JANUARY, 2009.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

A handwritten signature in cursive script, reading "Bonnie H. Kelly", is written over a horizontal line.

BONNIE H. KELLY

COLUMBIA, SOUTH CAROLINA

MARCH 14TH, 2009

1 STATE OF SOUTH CAROLINA)
2) IN THE COURT OF
3 COUNTY OF CHARLESTON) COMMON PLEAS
4
5 JOHN DOE,) CASE NO. 2006-CP-18-01310
6 Plaintiff,)
7 Vs)
8 BISHOP OF CHARLESTON,) NOVEMBER 23, 2022
9 Defendants) ORANGEBURG, SOUTH CAROLINA

10 HONORABLE HEATH P. TAYLOR, JUDGE

11 A P P E A R A N C E S:

12 BY: DAVID K. HALLER, ESQUIRE

13 Attorney for the Class

14 BY: BENJAMIN C. BRUNER, ESQUIRE

15 CHELSEA J. CLARK, ESQUIRE

16 Attorneys for Richter

17 BY: JOHN E. CUTTINO, ESQUIRE

18 Attorney for Haller

19 BY: GREGG R. MYERS, ESQUIRE

20 Attorney for the McDonald's

21 BY: RICHARD S. DUKES, JR, ESQUIRE

22 Attorney for Dioceses of Charleston

23 BY: ALLEN SIRES, pro se

24 KATHERINE A. SPIRES

25 REGISTERED PROFESSIONAL REPORTER

1 THE COURT: We are here for a status conference in
2 the Doe verses Bishop of Charleston. As you all know, I
3 have been appointed by the Supreme Court to try to put
4 this matter to rest. Let me go I guess first get
5 everybody's name. I know Mr. Cuttino. I know
6 Mr. Bruner. I don't think I've worked with any of you
7 others, so if y'all let me know who's here and who you
8 represent.

9 MR. HALLER: Good morning, Your Honor, I'm David
10 Haller and I apologize for being late.

11 THE COURT: Not a problem.

12 MR. HALLER: I represent the class, the Plaintiff in
13 this action.

14 THE COURT: And, John, who do you represent?

15 MR. CUTTINO: I represent Mr. Haller.

16 THE COURT: Okay. And, Ben, you represent Mr.
17 Richter and the firm?

18 MR. BRUNER: And the former firm of Richter and
19 Haller, yes, Your Honor.

20 THE COURT: Okay. All right. Who we got next?

21 MR. DUKES: I'm Richard Dukes, I represent the
22 Diocese of Charleston.

23 THE COURT: All right. Who we got next?

24 MS. CLARK: I'm Chelsea Clark, Your Honor, I'm
25 cocounsel with Ben representing Mr. Richter and the

1 former law firm.

2 THE COURT: Okay.

3 MR. MYERS: Your Honor, my name is Gregg Myers, I'm
4 representing the McDonald's. Two persons who
5 participated in the class. So it's Julie McDonald and
6 Richard McDonald.

7 THE COURT: All right. Yes, sir?

8 MR. SIRES: Allen Sires, I represent myself and
9 victims of child sexual abuse who will not be here. Or
10 most likely be -- some will be here later if permitted
11 and some will not want to meet with anyone here. But I
12 would be glad to convey their stories and get affidavits
13 from them.

14 THE COURT: Well, we're not here for any -- I don't
15 want to say substantive reason because it's all
16 substantive, but we're not here to get into the merits
17 of anything today. I'm trying to get my head around
18 where we are procedurally and what we need to do moving
19 forward. So we're not here to take any evidence or
20 testimony or anything like that today.

21 MR. SIRES: I've called David Pascoe's office about
22 his investigation and they had no documents at this
23 time.

24 THE COURT: Okay.

25 MR. MYERS: And, Your Honor, if I may? Mr. Sires is

1 a class representative from the class action.

2 THE COURT: Okay.

3 MR. HALLER: I guess technically, Your Honor, that
4 would make him my client.

5 THE COURT: Okay. All right. And I have -- I've
6 looked through everything that everyone has sent me and
7 I appreciate it. But I want to -- you know, I've worked
8 with Mr. Cuttino before, I've worked with Mr. Bruner
9 before, I haven't worked with any of the rest of you,
10 but one thing I want to say from the outset, there seems
11 to be a lot of animosity, acrimony, all that good stuff
12 going on and that ain't me. I don't deal with it. I
13 don't like drama. I'm here to do a legal job and
14 personal grudges, all that good stuff can stay in the
15 hall. You know, we're going to refer to Judge Goodstein
16 as Judge Goodstein not the Shock Four Circuit Court
17 Judge. You know, I don't know what's going on
18 personally amongst everybody, but let's, you know, put
19 all that behind us and act like lawyers and, you know,
20 this isn't personal, everybody's got a job to do. So I
21 want to let you guys know that's how I operate.

22 So with that being said, where are we? Who can -- I
23 mean, I've read the orders as much as I can. You know,
24 this case is so old, a lot of stuff is not online, so my
25 assistant is going to go down and get me a copy of the

1 file next week.

2 MR. DUKES: I can tell you, Judge, there's nothing
3 in it. The paper file is in a box in the clerk's office
4 in Saint George because in 2017 I went and looked for it
5 and there's very little in there.

6 THE COURT: Okay. Do we know where it went?

7 MR. DUKES: No.

8 THE COURT: I mean, I know, Mr. Myers, you've been
9 in this thing from the outset, I mean, do you have a
10 good file? I know, Mr. Haller, you've been here from
11 the outset, I mean, do y'all have -- I'm looking for
12 orders that we can't find, you know, the electronic file
13 references some orders from the Supreme Court. There
14 may or may not have been an order of dismissal from -- I
15 guess, Judge Kinard. Do y'all have a good file because
16 we can't find one.

17 MR. MYERS: I have a pretty comprehensive
18 collection, Your Honor. Although, I was only on the
19 perforated class action at the time, but the work I've
20 done because of other people who've contacted me since
21 then has caused me to assemble a lot of information. I
22 also at one point went through the paper file. I didn't
23 copy everything, but I copied a lot of stuff that I knew
24 I would need down the road. So I may be able to at
25 least provide the Court and copies for the parties a

1 fair amount of stuff. I certainly have every order I
2 ran across. So I may be able to provide the orders as a
3 starting point just orient the Court.

4 THE COURT: Yeah. And that's what I'm trying to do
5 is -- because I want to go ahead and get y'all in as
6 quick as possible. I've got a term -- a general
7 sessions term the week of December 12th in Dorchester
8 and what I'm leaning towards if we can go ahead and
9 resolve whatever motions or anything that's outstanding
10 toward the end of that week like December 16th just go
11 ahead and get things moving.

12 But I want to make sure I have a good procedural
13 understanding of where we are. Because I know, again,
14 there may have been an order issued by Judge Kinard or
15 may not --

16 MR. MYERS: Judge Kinard didn't even enter the
17 picture until 2013, so he certainly didn't issue an
18 order in 2009.

19 THE COURT: Yeah, I know that.

20 MS. CLARK: If I might just for convenience
21 purposes. I think the best public copy of the orders
22 that we -- some of them that we've located is the record
23 on appeal from the consolidated eighth case appeal that
24 was decided last year, that would be on speed track that
25 would have more copies of things than what otherwise

1 would be assembled somewhere publically.

2 MR. BRUNER: And that's what I was going to suggest,
3 Your Honor, that the C Track has numerous copies of the
4 record, I think there are four volumes of more --
5 they're multiple copies because there was some
6 corrections. I have a hyperlink that was in the letter
7 I sent yesterday afternoon that is our copies of those,
8 but the Court can get them directly from the Court of
9 Appeals. Most of the filings should be contained in
10 that record, I believe. But as you mentioned,
11 Mr. Myers, Mr. Haller has been here from the beginning.
12 Our firm has been involved for at least 13 years now, we
13 have a collection too we should be able to get most of
14 it to you.

15 THE COURT: Okay.

16 MR. MYERS: And, Your Honor, if I may. Many of the
17 issues on appeal concern issues that aren't part of
18 this. So in other words, there's -- when Your Honor
19 unfortunately drew the short straw from the Supreme
20 Court concerns just the class and the fact that it was
21 never closed. And the issues that Mr. Sires has raised
22 that my client's raised, we think need to be addressed
23 and at least looked at.

24 But don't concern most of the appellate issues which
25 had to do with out-of-state class members who are saying

1 why was the noticed changed, that, you know, there were
2 issues in those cases that aren't in these cases. But
3 this concerns the conduct of class counsel and the way
4 certain class members got treated and not treated. It's
5 simpler in that regard.

6 THE COURT: Okay. Mr. Haller, you got anything to
7 add?

8 MR. HALLER: No, Your Honor.

9 THE COURT: All right. Well, that's what -- I mean,
10 that's the main thing I need to do is get my -- and I
11 think -- I know there were some of -- obviously, the
12 class order that Judge Goodstein signed, all that stuff
13 is in the materials you all submitted. But like I said,
14 the electronic file references a few orders in there.
15 Judge Dickson I think filed a couple of procedural
16 orders, but there's a few things in there -- so y'all
17 are telling me that Judge Kinard never signed an order?

18 MR. MYERS: No, he didn't, Your Honor. He took ill
19 not long after he got appointed and died in 2015.

20 THE COURT: Because the public index is showing a
21 disposition of dismissed by him.

22 MR. MYERS: Yeah, I've never seen that. Never even
23 ran across --

24 THE COURT: And I know y'all had circulated an order
25 of dismissal to Judge Goodstein, but that must have been

1 about the time she recused herself.

2 MR. HALLER: That's correct, Your Honor.

3 MR. DUKES: And, Judge, this is not in the record,
4 but after a hearing in 2017 in another case, Judge
5 Nicholson told me that he entered an order closing this
6 case. And said, you think that's okay? And I said,
7 well, sure, Judge, I think so. But apparently that
8 never got entered. So I hate to say it, but who knows.

9 THE COURT: Well, I guess that's my job to find out.
10 Okay. What we'll do then is my administrative assistant
11 is going to go down there and see what she can find
12 Monday or Tuesday of next week. And then what I'd like
13 to do is go ahead and schedule whatever outstanding
14 motions. I know some folks have asked me just to issue
15 a Form 4. That would be very easy for me to do, but I
16 think I need to at least let everybody who has filed a
17 motion, make a record and go from there.

18 So what I'm looking at right now is absent there
19 being a week long general sessions trial, I'm going to
20 look to hear everything on December 16th unless anybody
21 has a particular conflict, okay.

22 MR. HALLER: Your Honor, I am -- my daughter has
23 been spending the semester in Purgatory in Florence,
24 Italy, she turns 22 on Saturday and she asked me to come
25 and spend two weeks with her traveling. I'm leaving on

1 the 15th.

2 THE COURT: Okay. You're leaving on the 15th. All
3 right. Then how about we say the afternoon of the 14th,
4 does that give everybody enough time? I know you're
5 traveling --

6 MR. HALLER: I have a mediation on the 14th, if I
7 need to move that I will move that.

8 THE COURT: Well, how about the 12th? How is that
9 with everybody's schedule?

10 Mr. Haller? (Joking)

11 MR. HALLER: I have a hearing. The next three weeks
12 are as busy for me.

13 THE COURT: I understand. I'm just messing with
14 you. I remember what it's like.

15 MR. HALLER: I'm available on the 13th. I have a
16 hearing scheduled in front of Judge Scarborough who's
17 the Master and Equity in Charleston at 2 o'clock. I
18 would expect that would take an hour. So, you know, I
19 mean, if you wanted to do -- ask Judge Scarborough if he
20 would move it back or --

21 THE COURT: Well, I was just trying since I was
22 going to be down there and I know a number of you are
23 from Charleston just for convenience purposes, but I can
24 do it -- I mean, we can wait until after the first of
25 the year. I was just trying to get something going.

1 And I'm going to be in Dorchester a pretty good bit
2 after the first of the year too. I'm not wet into
3 having it that week, I was just trying to get things
4 moving along.

5 MR. HALLER: I appreciate that and I'm sorry that my
6 schedule is what it is.

7 THE COURT: That's all right. Hey, I know what it's
8 like to be busy. That's no problem.

9 MR. HALLER: Whatever you -- if you'd like to do it
10 on the 12th or the 14th, I can move either of those.

11 THE COURT: Pull up my schedule for January.
12 Because I'm going to be -- I mean, I don't think I leave
13 the circuit next six months but twice. So, I mean, I'm
14 around. Why don't we look at -- let's go ahead and
15 schedule it now for January 27th and that should give us
16 time to -- everybody get their heads around it or for me
17 to, you all have your heads around it, for me to get
18 mine around it. And then -- and that will be in
19 Dorchester.

20 MR. HALLER: Thank you, Your Honor. I appreciate
21 your consideration.

22 THE COURT: No problem.

23 MR. HALLER: As to the file, we were sort of
24 brainstorming where it might be. There were parts of
25 under Judge Goodstein's order, there were parts of the

1 file that were required to be under seal including the
2 identity of the individual class members. If I had to
3 guess, that material and everything else got put in some
4 secret hiding chamber in the Dorchester County
5 courthouse. Or when the courthouse moved because this
6 was -- this was the old courthouse days when the
7 courthouse moved something happened to the file then.

8 THE COURT: Well, I think they physically had to go
9 into a vault once this order was issued to go find it.
10 But, again, we just don't know what all is in there.

11 MR. HALLER: Something we can do to help?

12 THE COURT: I mean, if y'all have and I don't want
13 to put everybody to a lot of extra work, but if you have
14 a good file with all the pleadings at least, you know, I
15 don't need all the correspondence obviously and all
16 that, but if somebody has, you know, a comprehensive
17 file of the pleadings and orders and can get that to me,
18 then we can make sure everything matches up with what's
19 in the clerk's file too just so I have a --

20 MR. DUKES: I know that I have -- my predecessors of
21 the Dioceses counsel is a man named Peter Shea and I
22 have Peter's file. Peter is an imminent pack rat, so
23 everything's there, but he's also -- his sense of
24 organization is different than mine, so finding it is --
25 maybe a little more difficult, but I know I've got

1 everything.

2 THE COURT: Okay. And, Mr. Myers, you think you
3 have everything too?

4 MR. MYERS: Well, I have a lot and I'm glad to
5 organize it. I have it all by date and I have it
6 electronically. So I'm glad to circulate what I've got
7 and provide it to the Court and to the parties and, you
8 know, we'll see. I know to go and clean it up and make
9 sure it's clean copies.

10 THE COURT: Okay. That would be good. I mean, what
11 you all have provided so far has been helpful. I feel
12 like I have a pretty good grasp, but I don't want to be
13 missing something. Because, again, the public index
14 shows a number of orders that y'all didn't provide. I
15 mean, I didn't ask you to obviously, but -- that we just
16 can't find. They're not -- this case is of the age that
17 everything was not -- you know, we weren't e-filing
18 then, so, you know, can't get my hands on a lot of it to
19 give me an idea of, you know, where procedurally
20 everything exactly stands.

21 MR. MYERS: If you give me about ten days, Your
22 Honor, I think I can get something circulated.

23 MR. BRUNER: The index should at least show what was
24 filed, Your Honor, and we may be able to amongst
25 ourselves --

1 MR. DUKES: Reconstruct it.

2 MR. BRUNER: Look at the index and say by date,
3 number, however way, at least say this is what we
4 believe was filed at -- in these entries.

5 THE COURT: Yep.

6 MR. BRUNER: Some things like roster notice
7 publications aren't really a separate document, but
8 orders we should be able to birddog those.

9 THE COURT: Okay. There was a remitter order in
10 2011 from the Supreme Court that we couldn't find.
11 That's one that jumped out at me. Now, also there is --
12 Mr. Myers, I have a copy of your motion, but there is
13 another motion that was a motion -- it was filed May 11,
14 2016 post award fairness hearing.

15 MR. MYERS: That's Mr. Sires, Your Honor. That's
16 his motion.

17 THE COURT: Okay. I thought so.

18 MR. SIRES: I'll have to copy it and e-mail it to
19 you.

20 THE COURT: Okay. That would be great. Because it
21 wasn't electronically saved either, so I don't have a
22 copy of it.

23 MS. CLARK: I'm not sure if there's anything missing
24 from Judge Nicholson's time period, but I will mention
25 that he's practicing in the O'Shea Law Firm as a

1 mediator as I understand it. And another lawyer in that
2 firm, Brooklyn O'Shea was his law clerk, I believe, so
3 if there's something that Judge Nicholson would have
4 had, they may know about it.

5 THE COURT: Okay.

6 MR. MYERS: And, Your Honor, he may have -- Judge
7 Nicholson may have asked things to be moved to
8 Charleston at one point. I don't know that, but it's a
9 possibility.

10 THE COURT: Okay. All right. Yeah, I know Brook.
11 We'll reach out then and see if he has anything on it.

12 MR. HALLER: Your Honor, for the motions that you
13 want to hear on the 27th, do you want any additional
14 briefing from the parties, specifically the plaintiffs?

15 THE COURT: Whatever you want to do. I don't
16 require anything. But if you want to file a memo or
17 anything like that, that's fine, but I don't require it.
18 I always hated filing those things myself. But if you
19 just want to come argue that's fine too.

20 All right. So we got -- so right now there are --
21 there's a motion to intervene and a motion for a post
22 award fairness hearing; is there anything else
23 outstanding?

24 MR. MYERS: As far as I know that's it, Your Honor,
25 presently.

1 THE COURT: And, Mr. Myers, just so I'm clear, the
2 motion to intervene is filed on behalf of the
3 McDonald's, but they were already members of the class;
4 correct?

5 MR. MYERS: Yes, sir.

6 THE COURT: Okay.

7 MR. SIRES: Your Honor, I had mail come to my
8 residence regarding John Doe 66 and John Doe 66A. When
9 I inquired about that, I was simply told that I was John
10 Doe 66. However, I haven't been able to find out who
11 John Doe 66A, is it a spouse of mine, a parent as laid
12 out in their class action suit. So if anybody would
13 care to clarify that at this time, I'd appreciate it.

14 THE COURT: Okay. And you want to know who --

15 MR. SIRES: Or quite possibly could be one of my
16 children, I don't know. The Diocese has been pretty
17 open to the format, the structure being what it is.
18 It's just not that much money to quibble over what might
19 be a dubious claim.

20 THE COURT: Okay. Mr. Haller?

21 MR. HALLER: Your Honor, in terms of identifying who
22 the various Doe's are around her that Judge Goodstein's
23 order is ironclad in maintaining the sanctity of those
24 people's identities even to our own clients. So --

25 MR. SIRES: Thank you.

1 MR. HALLER: We're not at liberty to share that
2 information unless Your Honor -- or, you know, unless
3 Your Honor orders us to do so. But that was a key part
4 of the agreement and the -- a key element for the manner
5 in which this -- the settlement was structured was to
6 maintain the confidentiality, the identities of the
7 victims and their families.

8 THE COURT: Right.

9 MR. HALLER: So as to Mr. Sires, you know, Mr. Sires
10 is brave enough to come forward himself, you know,
11 uncloaking his Doe and congratulations for him having
12 the strength to do that, but everybody else is entitled
13 to their confidentiality.

14 THE COURT: Okay. Yeah, I would tend to agree with
15 that. I don't --

16 MR. SIRES: Your Honor, it's been in the newspaper
17 that spousal claims are a part of this show as well as
18 parents. So when my name was thrown out there by the
19 Diocese of Boston in the community that became clear to
20 any relatives of mine that might want to jump in. So
21 it's pretty clear that that opportunity was there. I'd
22 just like to know if they got the money they needed.

23 THE COURT: Well, again, I think Mr. Haller is
24 correct that there is pretty strict confidentiality
25 requirements in the original order. And, I mean, if you

1 wanted to file a motion to unseal it or something, I'll
2 be happy to hear you on it. But I don't think as of
3 right now --

4 MR. SIRES: No, sir. I'd just like -- if Mr. Haller
5 has contact with 66A and he tells me that they got the
6 money and they're -- that they expected or the apology,
7 whatever took place with that. If they're satisfied
8 then that's fine.

9 THE COURT: Okay.

10 MR. MYERS: And also in 2014, Your Honor, we by
11 consent allowed information to be shared among the
12 litigants. There was a -- it didn't involve me, but
13 there was some insurance claim I think at issue and so
14 the adjustors needed to know who was who and we all did
15 that by consent.

16 THE COURT: Okay.

17 MR. HALLER: It was Judge Dickson.

18 THE COURT: Right. I've seen that order. All right.
19 Anything else? Okay. Well, let's plan on January 27th
20 at 10 a.m. in Dorchester. And if anything else comes
21 up, y'all are free to let me, you know, reach out to me
22 and let me know. If there's -- I certainly would
23 appreciate any copies of the pleadings and other
24 outstanding orders that you can get me. So I can make
25 sure I have a good handle. I mean, I think I pretty

1 well understand where we are. Now, I saw an accounting,
2 I think it was on your memo?

3 MR. DUKES: Yes, Your Honor. I found that in
4 Peter's files.

5 THE COURT: Right. Has any -- and I don't see where
6 one was ever filed. Was one required to be filed?

7 MR. DUKES: No, sir.

8 THE COURT: And I didn't see it in the order that
9 required a formal accounting.

10 MR. DUKES: I think Mr. Richter and Mr. Shade
11 provided that to Judge Goodstein when all the claims
12 have been paid, all the expenses have been paid,
13 everything was zeroed out just to let her know it was
14 over.

15 THE COURT: Okay.

16 MR. BRUNER: That's correct and that's in the
17 hyperlink too. That was a letter and enclosures
18 provided to Judge Goodstein following the claims process
19 and the payments. It was initialed by Mr. Enfinger and
20 by Mr. Todd who is was the CPA who handled the funds.
21 And all that was provided to the judge. Whether that,
22 you know, was ever formally stamped or whether it just
23 went into the Court's file whether it did not --

24 MR. DUKES: I think it probably just went into the
25 circular file.

1 MR. BRUNER: And it may have, Your Honor.

2 THE COURT: And it may have gone in her personal
3 file that she keeps as well. I don't see anywhere -- I
4 see there was an order at some point in February of '09,
5 it just says order/order trust account. I don't know.
6 Again, I haven't seen it.

7 MR. BRUNER: Right. And we may be -- part of this
8 exercise may lead us into esoteric inquiries about what
9 constitutes an order; right, and what is required by
10 law. I've seen an order for continuance. There was a
11 letter requesting continuance with handwriting to the
12 judge, sent over and, you know, what happens to those.
13 So we may hit some of those here in the near future.

14 THE COURT: Okay.

15 MR. BRUNER: But, yes, that accounting of the
16 settlement funds was provided to the court.

17 THE COURT: Okay. And based on my review of it, it
18 appears -- I mean, the account was zeroed out. There
19 are no funds left?

20 MR. DUKES: No, there's nothing left.

21 THE COURT: And there are no outstanding claims or
22 northing like that?

23 MR. DUKES: No.

24 THE COURT: Okay. I mean, you agree with that,
25 Mr. Myers?

1 MR. MYERS: I don't know for sure, Your Honor. That
2 sounds right to me. But I wanted to point out that I'm
3 pretty sure it's the August 30th or 31st order from
4 Judge Goodstein refers to getting an accounting in the
5 future. So I think their reference was there. It makes
6 sense for an accounting to be submitted to the court.

7 THE COURT: Okay. I'll check the order again.
8 Probably was not looking for it, but now that I thought
9 of it, the reason I asked. All right. Anything else?
10 Okay. Well, I appreciate y'all coming down or coming
11 up. Some came up. Some came down. Again, I wanted to
12 meet everybody and, you know, see where we were and make
13 sure I have a decent grasp of where we are. Obviously,
14 y'all have been living with this case a lot longer than
15 I have, so I wanted to, you know, just touch base with
16 you personally.

17 So, again, if you have anything, anything pops up,
18 you think of anything I need to see prior to January
19 27th, just let me know. Otherwise, y'all have a good
20 Thanksgiving.

21 - - -END OF REQUESTED TRANSCRIPT OF RECORD- - -
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

I, KATHERINE A. SPIRES, Registered Professional Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Charleston County, South Carolina, on the 23rd of November, 2022.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

February 28, 2023

s/Katherine A. Spires

Katherine A. Spires

Registered Professional Reporter

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF DORCHESTER) FIRST JUDICIAL CIRCUIT

JOHN DOE #53, JOHN DOE 66, JOHN) NOS. 2006-CP-18-1310; -1311;
DOE 66A, JOHN DOE 67, JANE DOE 1)
and JANE AND RACHEL ROE, indiv.) and -1636
and as representatives of a class)
of people similarly situated)

VS.

) TRANSCRIPT OF RECORD

THE BISHOP OF CHARLESTON, a)
Corporation Sole, and THE BISHOP)
OF THE DIOCESE OF CHARLESTON, in)
his official capacity)

) Motions

B E F O R E:

The Honorable Heath P. Taylor, Judge

Orangeburg, South Carolina

DATE: Friday, January 27, 2023

9:59 a.m.

Reported by: Cathy J. Provost, RMR, Official Court Reporter

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INDEX TO WITNESSES

(No witnesses called.)

INDEX TO EXHIBITS

(No exhibits marked.)

- - - - -

COURT REPORTER LEGEND:

dash -- intentional/purposeful interruption; change in thought
ellipses ... trailing off
[ph] phonetically written
[sic] written as said
[indiscernible] unable to be understood due to low volume or
quality of audio

1 -- P R O C E E D I N G S --

2 THE COURT: We've got a couple motions to hear. I think we
3 have, I guess, three: A motion for a post-award fairness hearing
4 by Mr. Sires; and I believe Mr. Meyers has a motion to intervene,
5 and joins in the motion for a post-award fairness hearing.

6 Is there anything else before us today?

7 ATTORNEY HALLER: Good morning, Your Honor. I'm David
8 Haller for the plaintiffs.

9 THE COURT: Yes, sir.

10 ATTORNEY HALLER: No, sir. Nothing.

11 THE COURT: All right. Well, who wants to go first?

12 ATTORNEY MEYERS: Your Honor, I'll be very brief. Greg
13 Meyers for the McDonalds.

14 THE COURT: All right.

15 ATTORNEY MEYERS: Let me know -- I was told that this would
16 be held on the third floor. I passed that on to Mr. Sires --

17 THE COURT: Okay.

18 ATTORNEY MEYERS: -- but I have advised him just a moment
19 ago by text that it's the second floor.

20 THE COURT: I think he's here now.

21 ATTORNEY MEYERS: Oh, good. I was afraid he --

22 THE COURT: We were originally up there because Judge
23 Goodstein was down here with a jury, but they left, and there's a
24 little more room in here and I was able to get the glass taken
25 down. The glass is still up up there and it drives me crazy.

1 ATTORNEY MEYERS: I got my colleagues' responses yesterday
2 and last night and read through them, and what they don't say, I
3 think, is the most significant thing. They don't say Mr. Meyers
4 is reading the orders wrong; we were authorized to charge the
5 McDonalds fees and costs. They're not, under the settlement
6 agreement and under the order that approved the settlement
7 agreement.

8 So when they discovered that they had been charged without a
9 proper order authorizing it and without the disclosures of class
10 counsel's conflicts with the Diocese, so his conflicts
11 financially with the class, and without being told that he had
12 already been awarded a two-and-a-half-million-dollar fee, they
13 went to talk to a lawyer, and that lawyer sent them to me.

14 THE COURT: Okay.

15 ATTORNEY MEYERS: They are in the case already as class
16 members. We seek to elevate them as individual members of the
17 case, not to be class representatives, as class counsel argues.

18 THE COURT: Well, that's what I was, I guess, trying to run
19 through my mind. If they are already class members, how are
20 they -- how can they intervene in something they're already a
21 member of?

22 ATTORNEY MEYERS: Well, I think it's a fair question and,
23 really, my motion is in an abundance of caution --

24 THE COURT: Okay.

25 ATTORNEY MEYERS: -- because Judge Goodstein had interesting

1 ideas about who was entitled to intervene and who wasn't, and I
2 wanted to make sure no stone was left unturn. So I think they're
3 in the case already.

4 THE COURT: And that was my opinion, too. If they were
5 class members, they're class members, so if they're objecting or
6 if they had issues with how something was done, unless I'm
7 missing something, they're already in. So, really, the
8 intervention issue is sort of moot.

9 ATTORNEY MEYERS: And I think it is moot. And yet they --
10 as class members, they're represented by class counsel --

11 THE COURT: Right.

12 ATTORNEY MEYERS: -- but they're adverse to class counsel,
13 as we think are every other member of the class who is improperly
14 charged.

15 THE COURT: Okay.

16 ATTORNEY MEYERS: So because this case was never closed, it
17 seemed to me the appropriate thing was to say, Well, this is an
18 issue that affects the whole class; Mr. Sires has made this
19 motion, let me join in that motion, because he's also -- he's a
20 class representative, and he says, I was abandoned by my lawyer
21 and they're not serving my interest.

22 So I think what Your Honor has in front of you is a fairly
23 straightforward question, not about redistributing the whole
24 settlement or changing it or anything. It's to say a fee and
25 costs were charged when settlement agreement says it has no

1 authority to do that and says the costs are coming out of the
2 corpus of the settlement fund. So that's --

3 THE COURT: Explain to me then, just so I know I have my
4 head wrapped around it, what fees and costs are you alleging were
5 charged.

6 ATTORNEY MEYERS: The McDonalds were charged a 20 percent
7 fee on top of the court-awarded fee, and the court-awarded fee
8 simply doesn't make room for that. And, you know, I have
9 mentioned the billing records, which are kind of obscene, in my
10 view. However, it's not to say you should get into challenging
11 the two-and-a-half-million-dollar fee. It's to say they've been
12 vastly overpaid already for the work they did. But the order
13 says this is for the work you've done and the work you're going
14 to do and the work you're doing to effectuate the settlement.

15 THE COURT: All right. So you're saying -- so Mr. Haller
16 and Mr. Richter represented the McDonalds --

17 ATTORNEY MEYERS: Yes.

18 THE COURT: -- and charged them an additional 20 percent fee
19 in addition to their class counsel fee?

20 ATTORNEY MEYERS: Right. And we provided the documentation
21 that reflects that billing against the McDonalds.

22 THE COURT: Well, say, for instance, I had sent a client to
23 the class, and I helped them distribute -- or, I received the
24 money in my trust account because they were class members, and
25 the accountant -- I can't remember his name -- sent me the check,

1 and not as a judge, obviously, as a lawyer. Would I not have
2 charged him a 20 percent fee?

3 ATTORNEY MEYERS: You would not have been awarded a fee by
4 the Court for all of the work as part of the settlement, so, yes,
5 you could --

6 THE COURT: Okay.

7 ATTORNEY MEYERS: -- because you were not already awarded a
8 fee under certain conditions, with certain parameters. So my
9 understanding is they also took a piece of that. They took a
10 10 percent piece whenever there was a different lawyer who
11 represented a claimant.

12 So, I mean, Mr. Sires would have been better off filing a
13 claim in the case than being a class representative, represented
14 by class counsel. He would have gotten, most likely would have
15 gotten, a bigger recovery from the arbitration. But that's not
16 my fight.

17 My fight is about fees and costs that the order does not
18 provide for. And that's why the McDonalds have a disagreement
19 with class counsel, and the failure to make proper disclosures.
20 That's the heart of what I have to talk about.

21 THE COURT: Did they file -- or, did they sign a separate
22 fee agreement?

23 ATTORNEY MEYERS: Not that I'm aware of. And, Your Honor,
24 in reading the responses from my colleagues, what came to mind
25 was a case I did not cite but I want to cite to you now. It's

1 called *True v. Montieth* where a lawyer failed to disclose a
2 conflict he had with a commercial tenant. He also represented
3 the landlord and didn't tell her, and 17 years later she found
4 out and brought a case against the lawyer, and the Supreme Court
5 said, That's okay, you can proceed.

6 So that breach of fiduciary duty is taken seriously by the
7 Supreme Court, and it's taken seriously by the McDonalds. So
8 that's the reason I have filed what I filed.

9 THE COURT: Did they file anything with the fee dispute
10 board?

11 ATTORNEY MEYERS: I don't think so.

12 THE COURT: Okay.

13 ATTORNEY MEYERS: Now, I laid out the history of this case.
14 Class counsel is still insisting these cases didn't start until
15 2006. I've given you all the documentation and the history that
16 they started in '05, and how that got to be up here. But what
17 governs this proceeding are the orders that were issued, and I'm
18 saying there's no authorization in those orders, and nobody
19 claims there is.

20 And I know Mr. Dukes, because he and I talk from time to
21 time and we have a cordial adversarial relationship, but in my
22 mind -- and I know he's going to address this -- Rule 23 gives
23 you the authority to enter, at any time, an order to protect the
24 class. And the court is a fiduciary of the class, so it's an
25 unusual situation where it's not just the parties that have

1 obligations to the class, the court also does.

2 And we think the court is well within its authority to say,
3 I want a full accounting. There's never been a full accounting
4 given. The '08 accounting that was sent in was changed in '09.
5 There's a different accounting that's never been submitted to the
6 Court. It's not changed substantially, but there's one new
7 payment to class counsel, and there's a redistribution of how
8 claimants got paid reflected in that accounting.

9 But no accounting has disclosed the contingent fee payment
10 made by the Diocese to class counsel that accounted for almost
11 90 percent, or almost 100 percent, of the time they used to
12 justify the court-awarded fee.

13 So I think where you need to start is with a full
14 accounting, give me a brief period of discovery, and we can lay
15 these issues in front of the Court. And if clients were
16 overcharged, under *Premium Investment*, the *Premium Investment*
17 case that we cited, these funds are held in trust and they need
18 to be disgorged back to the class members that were improperly
19 charged.

20 That's what I have to say, Your Honor. So unless there's
21 any questions, I'll turn it over to my friends and colleagues.

22 THE COURT: Well, I mean, I do have a question. You and
23 Mr. Sires are requesting essentially what you call a post-award
24 fairness hearing, and by no means do I claim to be a class action
25 expert, but I have looked, and I can't find any authority for

1 anything of that nature. I can't. I mean, I even Googled it,
2 and it doesn't even come up in Google as, I think, not much less
3 a legal doctrine or, you know, procedure, or avenue for you all
4 to proceed.

5 ATTORNEY MEYERS: Well, I'll start by saying this is odd,
6 because they elevated the fee to the front instead of waiting to
7 see the actual performance of class counsel. His fee's based on
8 a hypothetical performance. So right out of the box this class
9 action settlement was weirdly sequenced.

10 Now, I claim that's because the fee was the priority of this
11 class action; and the second priority was protecting the Diocese
12 that class counsel belonged to; and the third priority was, well,
13 to do all those things, we have to provide some money to the
14 beneficiaries.

15 And, listen, it took me a while to figure out the history of
16 this case. I wasn't snapped in on what had gone on for two years
17 when I was here in '07 representing objectors because we didn't
18 make objections about judge shopping and those things. We didn't
19 know about it. That had been concealed. And their basic
20 position is, Look, we've gotten way with this since 2007. Don't
21 fuss at us now. We've been successful all this time. They just
22 weren't authorized to do what they did.

23 Now, specifically in response to your question, yeah, there
24 aren't -- and certainly in South Carolina there's no case that
25 lays out kind of a procedural sequence.

1 THE COURT: I mean, I haven't found one in the country.

2 ATTORNEY MEYERS: No. No. We cited cases in the footnotes
3 in my memorandum.

4 THE COURT: Well, yeah, but, I mean, I hadn't really
5 addressed this by rule or anything.

6 ATTORNEY MEYERS: What I'm saying is that occasionally
7 courts need to get deeper into the nuts and bolts of a fairness
8 proceeding. But this is a simple fairness proceeding, because
9 what I'm talking about is not the entirety of the settlement; I'm
10 talking about a very specific charge made to class members that
11 wasn't authorized.

12 So the ball has been hidden from the Court on this respect
13 because of the way the accounting, so to speak, has been done.
14 They didn't disclose these other payments. They should. We
15 should know with certainty what the fee was. By my calculation,
16 it's over half of the corpus of the fund, so the two-and-a-half
17 million amply pays class counsel. This extra stuff, they just --
18 they figure nobody's looking; why not try it.

19 THE COURT: Well, what about the position like I mentioned,
20 that if I was a lawyer and I referred someone in, I mean, aren't
21 those things sort of outside of the class? The class is here.
22 They got paid for establishing a class and making sure there was
23 a fund for folks that had been abused --

24 ATTORNEY MEYERS: Yes.

25 THE COURT: -- to be compensated.

1 ATTORNEY MEYERS: Right, which was a good thing.

2 THE COURT: Yes. But aren't those other things sort of --
3 just like me as a lawyer, if I sent somebody to the class, they
4 sent the money to me, I took my 20 percent fee, aren't those the
5 same type thing; they're separate transactions outside of the
6 class?

7 ATTORNEY MEYERS: Well, except for, as I said before, the
8 outside lawyers weren't the recipients of a court-awarded fee
9 from the corpus of the settlement. So class counsel asked for
10 and volunteered for the job of fiduciary to the class. You can't
11 charge a fiduciary what you are not authorized to charge them.
12 And if there's an order that's come out and you want to charge
13 more than the order allows, you ask the judge to amend the award.

14 So they never did that. They were content just to pocket
15 the money and not disclose it to the court, not disclose the
16 contingent payment the Diocese made. Nobody disclosed that to
17 Judge Goodstein.

18 So there's a lot of funny business that went on that's
19 centered around putting as much money as possible into class
20 counsel. You know, making their fee the priority of the case
21 was -- in the face of the settlement agreement, everybody seemed
22 okay with that, but at that time I figured the Diocese was
23 actually an adversary, and they weren't, because starting after
24 they got this class settlement, if not before, they've been all
25 in together about moving the case around and getting stuff

1 approved. But I'm the first adversary that showed up in this
2 case, if I do say so myself.

3 But anyway, that's the rationale for it. And I think Rule
4 23 is what you have to rely on, Your Honor, because, yes, it's
5 unusual because we got lawyers who were insistent on first
6 getting to the fee, and then getting around to putting money in
7 claimants' pockets, but also making sure they got some of that
8 money into their own pocket.

9 THE COURT: So is your position, though, that even though
10 they handled these, I mean, they were clients that they
11 ultimately brought to the class, and they weren't entitled to
12 charge a fee -- say, for instance, like McGowan, Hood & Felder
13 got a check, McGowan, Hood & Felder was authorized to charge
14 their client a fee, right?

15 ATTORNEY MEYERS: Sure, because they did not get a
16 court-awarded fee that set out what the fee was for.

17 THE COURT: Okay.

18 ATTORNEY MEYERS: And McGowan and Felder even had -- as I
19 understand it, they had to share that fee with class counsel.

20 THE COURT: Okay.

21 ATTORNEY MEYERS: So they can complain about it, I suppose.
22 The McDonalds are complaining about the fee they paid they
23 shouldn't have been paid, the costs they paid they shouldn't have
24 paid, and it affected every class member, as near as I can tell,
25 except maybe the pro se class members.

1 So it's a weird proceeding. Class actions are always
2 strange. There's not a lot of law in South Carolina about it.
3 The federal rules are slightly different on class action
4 management. But, I don't think this was done right. I don't
5 think it was done aboveboard. I think people paid money they
6 shouldn't have paid. They should have the benefit of that. And
7 that's the reason I'm here.

8 THE COURT: And you have also filed other actions to
9 litigate that issue in other courts, correct?

10 ATTORNEY MEYERS: Yes. Right. And once I saw this case
11 still had not been closed, I thought it was my obligation to also
12 bring it to the class and the attention of Your Honor.

13 THE COURT: Okay. Anything else?

14 ATTORNEY MEYERS: Last thing.

15 THE COURT: Yes, sir.

16 ATTORNEY MEYERS: My colleagues say, Well, this case was
17 closed in 2009. The Diocese argues that the Supreme Court's
18 order was self-actuating -- self-executed. The order was for
19 parties to close the case. They didn't do it. They didn't ask
20 for more time.

21 Class counsel filed a motion in this case in 2012. Odd to
22 do if it's a closed case. Judge Dickson issued an order in 2013.
23 Odd to do. Supreme Court keeps appointing people like Your Honor
24 to pick this up, and I don't know why they would do that if they
25 thought they had closed the case. So I think that's very much a

1 red herring. But that's the heart of what I have to say, Your
2 Honor.

3 And *Ortiz v. Fibreboard Corporation*, which is a Supreme
4 Court case, 527 U.S. 815, talks about how, you know -- a final
5 fairness hearing. Usually this is not hard because you wait to
6 award the attorney fee after you've distributed to the class, but
7 because they elevated that for the front end no one has ever
8 looked to see how did class counsel actually implement the
9 settlement. And that's the problem. They didn't follow the
10 orders that Judge Goodstein set out.

11 THE COURT: All right. Anything else?

12 ATTORNEY MEYERS: No.

13 THE COURT: All right. Who wants to go next? Why don't I
14 hear from Mr. Sires.

15 ATTORNEY DUKES: For the record, Your Honor, I'm going to
16 object to your hearing from Mr. Sires.

17 THE COURT: Okay.

18 ATTORNEY DUKES: He has no standing before this Court, and
19 he settled his claims, released his claims. His claims are over,
20 and he has no standing to complain about anything anymore.

21 THE COURT: All right.

22 ATTORNEY DUKES: So I just put that objection on the record.

23 THE COURT: Okay. Your objection is noted, Mr. Dukes.

24 MR. SIRES: As I've said in my affidavit -- did Your Honor
25 get a copy?

1 THE COURT: Yes, sir, I did.

2 MR. SIRES: What made -- was clear to the folks that I
3 talked to, friends and such, as the facts, is at no time did
4 anybody tell me that I was a class representative from 2003 to --
5 well, they never said that, no one.

6 I happen to be one of the people that were in the criminal
7 case versus -- the *State v. James Nyhan*. My entire family and
8 the families of the people that were involved in the criminal
9 case against James Nyhan were subject to threats, harassment,
10 constant barrages of telephone calls, prank phone calls, threats
11 of all kinds, physical assaults upon myself. That's just the tip
12 of the iceberg.

13 I would think that seasoned attorneys would know that that
14 is what happens when you're talking about a church and its local
15 parishioners. This is not Exxon oil spill. But that's the main
16 point. They named me as a class representative and did not even
17 tell me what my responsibilities were. Even if they had, I
18 seriously doubt I could have fulfilled them at that time.
19 There's no way. It's kind of hard to think when you're being
20 threatened with your life.

21 That being said, I meant to get this document in to the
22 Court, from May 19th, 2006. This letter is from Comings Gibb
23 [sic], whether he was a class lawyer or representing family
24 members of mine who were available for whatever damages they see
25 fit, but he ended up being a family court lawyer, and he emailed

1 Peter Shahid, Jack Sinclaire, Glenn Churchill, Larry Richter,
2 David Haller. Mr. Haller's here today. That's May 19th.
3 Mr. Gibbs made his problems with me apparent to the class lawyers
4 on January 9th, 2006. By the nature of these letters, it's clear
5 to me that Mr. Gibbs, Mr. Haller, and Mr. Richter were in
6 communications, without my knowledge, before January 9th of 2006.
7 They knew my family was falling apart, and they proceeded with
8 this bullshit anyway.

9 THE COURT: I'd ask you to use appropriate language before
10 the Court, okay, that you don't curse in here. And I get it, I
11 know you're frustrated and this is very personal for you, but I
12 don't let the lawyers do that, and I can't let pro se folks do
13 that, as well, so just caution yourself, please.

14 MR. SIRES: There was zero forethought put into the
15 formation of this class action. To my knowledge, it's
16 unprecedented. I'm not a lawyer, but it absolutely makes no
17 sense to create a product that includes ex-wives, dysfunctional
18 families from every socio and economic class in the nation and
19 pull them into one work product and force signatures amongst
20 warring families. That -- it was immoral from the very
21 beginning.

22 And as far as the fees, and the other folks I've come across
23 over the years, as they all know, I haven't stopped throwing red
24 flags since 2003. They all know that this was just a toxic mess.

25 Mr. Dukes is certainly a good-enough attorney, been around

1 long enough to know it's a bad idea. So is Mr. Haller and
2 Mr. Richter. Mr. Richter participates in church functions at a
3 level I did not know.

4 Now, most of us that grow up in Catholic schools from 1st
5 grade to 12th grade, we don't ever say a word about this stuff.
6 It's stupid. It's guaranteed economic destruction to rat out a
7 priest. That's a given. It's guaranteed. There's nothing
8 special about me except I'm still breathing.

9 But this letter and the other documents that I have, there's
10 no way anybody -- if this is the forum that the Court chooses to
11 acknowledge this abuse and compensate victims, then I submit to
12 that.

13 And, as the class representative, I'm supposed to know
14 what's good for the class. It's taken me 20 years to get to that
15 point where I can say, Yeah, Your Honor, I can approve or
16 disapprove and tell these men and women and their children and
17 parents that are out of their damn minds -- excuse me -- they are
18 out of their minds with either shame, or fear, or of being told
19 the fact that it's their fault. And, hell, some of the parents
20 did sell their children to these priests upfront in the '70s.
21 This is a mess. I mean, I hate to say it, but it's true.
22 Parents --

23 THE COURT: Mr. Sires, exactly what are you asking the Court
24 to do?

25 MR. SIRES: Do everything in its power to make sure that

1 every single person that was roped into this class action gets
2 heard.

3 THE COURT: Well, we're a little bit further down the road
4 from that. I mean, it's been approved. I can't go back and undo
5 Judge Goodstein's order approving the settlement and the
6 distribution of the claims.

7 MR. SIRES: Then at the very least I don't see a problem
8 with the memorandum that I sent in. All it takes is a simple
9 signature from the Bishop of Charleston. Nonmonetary
10 consideration.

11 THE COURT: I have that right here.

12 MR. SIRES: Your Honor, Mr. Dukes, I haven't heard him say
13 he thinks that's a bad idea.

14 THE COURT: Well, and what I'm asking you -- and I
15 understand you're not a lawyer, okay, but there has to be a legal
16 venue, or legal vehicle, rather, to do that, and nobody has given
17 me one yet. There has to be a way. If I were to agree with
18 you -- and I'm not saying I'm not agreeing with you, I'm not
19 saying I am, but if I were -- I still need a legal mechanism to
20 do that, and I haven't been provided one.

21 MR. SIRES: I can't -- I can't give the Court or these class
22 lawyers the names of the people I've run across that had money
23 taken out of the settlement agreement. As I understood the
24 language in the -- and when I got a chance to read it, as I
25 understood the language in the class settlement, the idea of

1 having set attorneys fees was so that they did not have to take
2 money out of people's/victims' -- the most exploited people on
3 the planet. It would be pretty ugly to take 33 percent out of a
4 victim's money. It's ugly. That's my understanding of the
5 language, is why there was a set fee upfront, so they didn't have
6 to do that. And --

7 THE COURT: I understand that. I'm just asking if you have
8 any -- because as a judge, you may have heard this has been in
9 the news quite a bit -- I don't get to legislate from up here. I
10 don't get to make laws. I have to craft a remedy with what I
11 have. And right now I haven't seen, again, a vehicle for me, if
12 I did agree with you. Say I did. I haven't seen a way for me to
13 get to where you want me to be without me making up some remedy,
14 and I can't do that. I mean, some other judges might, but I'm
15 not gonna.

16 MR. SIREs: I understand that. The only judges can, that I
17 know of, is the appearance of impropriety, and that, you have
18 discretion over. I feel like via affidavit, the documents I
19 tried to submit last night and the ones I brought today, there is
20 an appearance of impropriety to move forward with a class
21 representative, Allen Sires, with people threatening your class
22 representative. And I haven't seen anybody say, Hey, y'all, stop
23 that, or, Geez, maybe we should wait a minute until the family
24 court cases are over. That is not proper.

25 Mr. Haller is fully aware that these family court cases were

1 brewing as a result of, quote, all that money.

2 My God, Your Honor, there was a \$12 million headline in the
3 dang newspaper. I don't know about where you all come from, but
4 if your relatives get the stupid idea for some reason you're
5 worth \$12 million, he's lucky to be alive. And that happens all
6 the time.

7 THE COURT: Yes, sir, it does. People definitely take
8 advantage of others when they know they're coming into some
9 money. I hear you.

10 MR. SIRES: They don't dispute the threats? I've got police
11 reports of these assaults out there in Ravenel.

12 THE COURT: They're not still occurring today, are they?

13 MR. SIRES: That can occur at any time.

14 THE COURT: Well, certainly, but you're not being threatened
15 or anything as a result of the class action as we sit here today,
16 are you?

17 MR. SIRES: Oh, I certainly have been alienated into a hole
18 that where any accusation against me is just fine by this counsel
19 and this counsel.

20 THE COURT: Okay.

21 MR. SIRES: Any. Any. And I know that. The blame has
22 constantly stayed on me, both in their desire to have this class
23 action and their desire to keep me in it. I've been the
24 adversary for both sides since -- well, since whoever issued this
25 mandate, and you cannot tell me that these lawyers came up with

1 this idea. If Your Honor would look at that payment matrix,
2 there is nothing about medical bills, there is nothing about
3 therapy, there is --

4 THE COURT: Well, see, again, I can't go back and --

5 MR. SIRES: Again --

6 THE COURT: I don't have the authority to go back and say
7 Judge Goodstein was wrong and her order should be stricken, and
8 we need to look at this thing all over again.

9 MR. SIRES: Ironically, from what I read from Mr. Meyers,
10 Judge Goodstein quit after I was struck down on my motorcycle in
11 Tucson. I was in ICU. She quit the next day.

12 THE COURT: Quit what?

13 MR. SIRES: She took leave of court and gave no reasons
14 for -- she just wasn't going to hear any more of these things and
15 gave the court no reason for leaving. I'm left to believe that
16 she actually had some sense and said, I'm not having anymore to
17 do with this. My god, you're letting your clients get mowed down
18 by cars.

19 How can you all go along leaving me in a threatened position
20 for 20 years, since 2003, coming up on 20 years. They know I was
21 in a vulnerable spot. Any prosecutor knows I'm in a vulnerable
22 spot. Any defense attorney knows I'm in a vulnerable spot trying
23 to testify against a popular priest. And these knuckleheads --
24 excuse me -- these gentlemen want to make me a class
25 representative, and I'm supposed to decide what's good for the

1 class and what's not. Well, I'm sorry I'm late, but I'd like to
2 hear more about it.

3 And if all the Court can do is get these women their money
4 back, that's fine by me. They're coming up \$6,000 short. And
5 I'll be glad to hand that over to somebody, but I'm not handing
6 it over to these rascals, sir. I'm not giving up any victims'
7 names to these people. Thank you.

8 THE COURT: All right. Thank you, sir, and thank you for
9 being here. All right. Who would like to go next?

10 ATTORNEY HALLER: Good morning, Your Honor. I'm David
11 Haller for the plaintiffs. Mr. Richter sends his regards and
12 apologizes for not being able to be here this morning.

13 As Your Honor mentioned a few moments ago, the allegations
14 that are floating around this morning have been floating around
15 now for, oh, going on 13 years. Mr. Meyers has filed numerous
16 claims against Mr. Richter and I, all of which, the vast majority
17 of which, at this time have all been dismissed.

18 We have had the honor of being represented by Mr. Bruner and
19 Mr. Cuttino. And if Your Honor pleases, I'm happy to answer any
20 questions about the factual matters, but if they may take the
21 legal argument, I would appreciate that.

22 THE COURT: Certainly.

23 ATTORNEY HALLER: Thank you, Your Honor.

24 ATTORNEY BRUNER: I'm going to step to the podium, Your
25 Honor.

1 THE COURT: Yes, sir, Mr. Bruner.

2 ATTORNEY BRUNER: Good morning. It is still morning, isn't
3 it?

4 THE COURT: Yes, it is.

5 ATTORNEY BRUNER: I always try to answer one overarching
6 question in hearings like this. And this is an important hearing
7 because from the position you're sitting in, one thing you have
8 to figure out first is, Why are we here? And I think it would
9 help to understand how we got here.

10 THE COURT: Okay.

11 ATTORNEY BRUNER: Class counsel's brief is at length. We
12 submitted the brief yesterday. I hope Your Honor's had a chance
13 to review it.

14 THE COURT: I've had a chance to review everything.

15 ATTORNEY BRUNER: It is dense, it is detailed, but I believe
16 the endeavor that was undertaken was to explain, based on the
17 record without, as I like to say, without the use of gratuitous
18 adverbs, based on the record, what has happened in this case.
19 And I think when the Court looks at the record, you'll be able to
20 see and discern what actually has happened in this case and, more
21 importantly, why we are here.

22 We are not here because of ethical violations. We are not
23 here because of patently fraudulent billing records. And we are
24 not here to litigate legal malpractice claims. We are here
25 because there are, ostensibly, objections to the terms of the

1 class settlement that are being levied today, 15 years later.

2 There are practical, very tangible and practical, reasons
3 why the Court has no remedy to give the movants today. Witness
4 memories fade, records, offices move, people move. Evidence is
5 unattainable 15 years later that may have been attainable in
6 February and March of 2008.

7 I do want to make a distinction because I think I've
8 spent an inordinate amount of time trying to go back through
9 Rules 1 through 3, the basic fundamentals of the Rules of Civil
10 Procedure, and the underpinnings of what is a civil action and
11 when is something concluded.

12 The civil actions that were consolidated -- and this is what
13 the record shows. The three civil actions in Dorchester County
14 that were consolidated were concluded, with finality, by the
15 July 2007 order approving settlement that Judge Goodstein
16 entered.

17 Thereafter there was a motion to alter or amend pursuant
18 Rule 59(e). Rule 59(e) applies to judgments, final orders,
19 further underscoring the fact that the civil action was
20 concluded. It was then amended only by an August 31st, 2007,
21 order. The civil action was, therefore, concluded, period.

22 That is what we mean when we say the case was over. The
23 class action litigation was over. The class claims -- before I
24 get to that point -- I'm going to try to take this
25 chronologically.

1 THE COURT: Yes, sir.

2 ATTORNEY BRUNER: That's how I understand things. It's
3 easier to understand. When the class action was approved, it
4 contemplated a subsequent period of litigation in arbitration.

5 As you can see, everything you've heard today only shows how
6 valuable and beneficial this class settlement was to these
7 victims. These are gruesome claims, and these are broken
8 families suffering from gruesome claims that existed --

9 THE COURT: Most of which were probably beyond the Statute
10 of Limitations.

11 ATTORNEY BRUNER: -- most of which were barred --

12 ATTORNEY DUKES: Almost all of them.

13 ATTORNEY BRUNER: Most of which were barred by defenses that
14 my clients negotiated around, which other lawyers had failed to
15 negotiate, successfully, around. Judge Goodstein recognized that
16 when she approved the settlement. She recognized that after she
17 approved the settlement when these attacks on the class
18 settlement occurred. She knew it.

19 And not only that, it's one thing to fight a defendant, a
20 large defendant, with those defenses. That's contentious enough.
21 Well, in addition to fighting your adversary, in the class
22 context you're also fighting objectors who see an opportunity.

23 Now the settlement was reached and approved, but we've been
24 fighting the objectors ever since. When some objectors' claims
25 are gone, others ostensibly appear. Same allegations, same

1 character of the allegations, same facts alleged, different name
2 at the top of the caption. I don't know how these people are
3 learning about this or who's telling them what they base their
4 belief on, but I think for purposes of this Court's exercise
5 today the focus is here, why are we here, right.

6 The main point Mr. Meyers has made is the 20 percent fee
7 after the fact. And you're exactly right. Was that contemplated
8 as part of the class settlement? Absolutely. Was the class
9 action court aware of the fees? He doesn't know what she was
10 told and what she was not. He does not.

11 And, by the way, you don't think all this was raised to
12 Judge Goodstein before she recused herself? Mr. Meyers'
13 cocounsel at the time, who no longer has a license, on the
14 record, asked for a post-award fairness hearing. Mr. Meyers
15 argued, patently fraudulent billing records.

16 The judge who heard it from start to finish, who knew it --
17 and by the way, I think we need to think about, we need to
18 appreciate that she knew what she ordered, she knew what she
19 meant, and she rejected those arguments.

20 So are we going to go back now and are we going to ask all
21 of these law firms who received disbursements during the
22 arbitration phase, which was contemplated -- there was no
23 surprise there -- are we going to go back and we're going to
24 review all that 15 years later? Do all those law firms exist?
25 Are those lawyers even around anymore? How are we going to do

1 that?

2 The civil action was concluded in 2007. Thereafter, as
3 contemplated by the settlement, there was an arbitration.
4 There's more litigation. That happened in February of 2008. My
5 clients did not decide where the money went. That was a
6 court-appointed, highly respected individual. There have been no
7 allegation against him. There have been no allegations against
8 the arbitrator who made that decision.

9 The claims were paid. Judge Goodstein knew who got what.
10 They were paid out. If someone was unhappy with their net, net,
11 net, result following that arbitration, they knew in 2008. They
12 did not discover it when a lawyer told them they had a claim
13 later.

14 The discovery rule in this state requires -- and for claims
15 like this -- an individual to bring it -- let me restate it. The
16 discovery rule is triggered when an individual is on inquiry
17 notice.

18 THE COURT: Knew or should have known.

19 ATTORNEY BRUNER: Knew or should have known. I have a
20 partner who describes it this way: If you are in a room and the
21 lights go out, pitch-black dark, someone slaps you in the face,
22 lights go up, you've got three years. You don't have three years
23 from when you appreciate the gravity of the situation or from
24 when you find out who it was. You've got three years.

25 We're 15 years down the road. The class claims were

1 extinguished in 2008, including the McDonalds' claim. Anything
2 they had afterwards arose in 2008.

3 Thereafter -- Mr. Meyers referred to subsequent filings.
4 How is the case closed if we have subsequent filings? I'll tell
5 you exactly how. There was a motion to enforce the settlement
6 filed by the Diocese because a dispute arose between Mr. Meyers'
7 objectors and the Diocese, and the class action court retained
8 jurisdiction to enforce the settlement. There were a series of
9 other filings, motion to recuse, all in connection.

10 Then there was a hearing in January of 2009. If Your
11 Honor -- I believe Your Honor has all the transcripts of the
12 hearings, but the transcripts tell the story, the transcripts and
13 the orders from the class action court. They go into painful
14 detail, and they show how tumultuous this case has been from the
15 beginning.

16 All of that, to me, it doesn't show any misdeed; it
17 underscores the success of the class action settlement. These
18 victims didn't have to go into public against a priest. They
19 were able to go to private arbitration and arbitrate claims and
20 get awards, many of whom had defenses that they'd have to go up
21 against. All of that underscores the success. The class action
22 court knew that, she appreciated that, and she saw what was
23 happening in 2008 and 2009.

24 The Supreme Court's order that has allegedly been ignored,
25 when going back through the record, I don't know how an attorney

1 can make that argument in good faith four days after that order.
2 Four days after that order Judge Goodstein disposed of all
3 pending issues. I don't know of many orders that are followed
4 more quickly. Four days later.

5 So now we have a civil action, the class -- the civil action
6 with the class litigation concluded in 2007. We have
7 post-judgment practice, in essence, that began in 2008. That was
8 concluded in 2009. The case is still over.

9 Why was it -- what happened after that? Well, the order was
10 appealed by one of the lawyers sitting in this room. It was
11 perpetuated. The Supreme Court -- and that was on a prejudgment
12 interest issue. Supreme Court disposed of that appeal. What
13 happened later? The proceedings before Judge Dickson, another
14 motion to enforce settlement. All of it's post-judgment
15 practice.

16 And it has been suggested that the Supreme Court ordered the
17 parties to close the case. I'm not aware of any authority giving
18 a party the power to order anything in a case. The parties don't
19 wear the robe; you do. The presiding judge in that case does.
20 The parties could not close the case, but the case was closed by
21 the class action judge.

22 Every time judges have been appointed thereafter, it has
23 been -- well, it was the motion to enforce the settlement.
24 There's nothing improper about that, or when there have been
25 other ancillary filings which are perpetuated, and repeated, and

1 repeated.

2 There have been allegations of conflicts that weren't
3 disclosed, Your Honor. If you look at the basis for those
4 alleged conflicts, they're the same factual allegations that have
5 been rejected since 2008 -- well, 2007. I don't know how many
6 times a lawyer has to defend the same allegations over, and over,
7 and over, in different forums. It has to end.

8 I've mentioned the passage of time. As a practical matter,
9 it is a problem for this Court fashioning a remedy. What are we
10 going to do moving forward if we do have this post-award fairness
11 hearing? What does that look like?

12 And, by the way, I've learned a lot about class actions
13 myself during this litigation, and my understanding is that, in
14 the realm of class settlements, there are three phases: There's
15 preliminary approval; there's a fairness hearing, there's a
16 procedure to determine whether it's fair; and then there's final
17 approval. That is what's contemplated. That's what happened
18 here with the additional post-judgment litigation that was raised
19 by objectors and Mr. Meyers' cocounsel alleging wrongdoing.

20 Your Honor, I'd be happy to answer any questions. I think
21 I've covered my main bullet points. I may check with my cohorts
22 over here.

23 Procedurally I think it is evident that this action was
24 ended in 2007; that the post-judgment issues that have arisen
25 were actually concluded pursuant to Supreme Court order. This

1 thing needs to be over.

2 THE COURT: Does anybody, or you, or anybody, know why an
3 order of dismissal never was issued?

4 ATTORNEY DUKES: We do know that class counsel and the
5 Diocese's counsel, my predecessor, sent in a proposed order.

6 THE COURT: I saw that somewhere.

7 ATTORNEY DUKES: And it never got signed.

8 THE COURT: Okay.

9 ATTORNEY DUKES: And we don't know why.

10 ATTORNEY BRUNER: I don't know. I would have to look back
11 through. I mentioned some other filings in other forums. I
12 believe either we've mentioned that in our brief or other --
13 there maybe some other filing that occurred in some other forum
14 that --

15 THE COURT: Somebody thought was supposed to be in this.
16 That's what it looked like.

17 ATTORNEY BRUNER: Well, more importantly --

18 THE COURT: In addition to everything you all sent me, I
19 mean, we went to Saint George and got the file. I have the
20 entire file in there. And it appears that an order of dismissal
21 was at sometime contemplated, maybe, by Judge Nicholson.

22 ATTORNEY BRUNER: My understanding is that when Judge
23 Nicholson was on the case he directed that. Now, that's not
24 directly from the judge, but that he directed closure of the
25 case. That may have been a verbal order.

1 ATTORNEY DUKES: Judge Nicholson told me in court one day
2 after a hearing on another matter, he said, Mr. Duke, come up. I
3 went on to close that class action case. Is that okay?

4 THE COURT: Yeah. It's just like it never happened.

5 ATTORNEY DUKES: I don't know. I don't know.

6 ATTORNEY BRUNER: I know at that time there was no
7 pending -- there's nothing pending in it. It was ostensibly
8 ministerial. At the time in 2009 -- now, we'd have to go back
9 and look. We'd have to look at the timing, but if,
10 hypothetically, a judge's integrity is being questioned, that
11 judge may have concerns about issuing further orders --

12 THE COURT: Right.

13 ATTORNEY BRUNER: -- which would perpetuate the class action
14 and give what are, ostensibly, objectors, counsel finding new
15 people to represent to argue that the class action has never been
16 concluded.

17 So short answer, I don't know for certain why it was never
18 entered. However, I don't think it matters. The March 2009
19 order ended everything. If there are any legitimate claims or
20 issues about the arbitration process and the disbursement and the
21 net, net received, those have long since extinguished.

22 THE COURT: Well, it would seem to me -- and I explored this
23 some with Mr. Meyers, but -- wouldn't those seem to be agreements
24 with lawyers outside of the terms of the class? Because, I mean,
25 I see -- I know Mr. Richter and Mr. Haller had a lot, a number,

1 of class claimants, and they got checks. I mean, I'm looking at
2 the accounting here. And there were other law firms, too, I can
3 see.

4 ATTORNEY BRUNER: Correct. And I do believe those are --
5 those are outside of the fee paid, their terms. And the class
6 action judge knew that that was happening. She knew that
7 claimants would have the ability to go pro se or to engage
8 counsel, whoever that may be.

9 THE COURT: And you don't dispute that there were fees taken
10 outside of the class by class counsel, right?

11 ATTORNEY BRUNER: I can't tell you one way or another. I
12 haven't dug into that, primarily because it's been so long after.

13 ATTORNEY HALLER: Your Honor, I'm at the risk of getting my
14 hand slapped by my lawyer. May I answer your question?

15 THE COURT: Yes, sir.

16 ATTORNEY HALLER: Your Honor, we were paid a separate fee
17 for separate work, so the class fee -- and I think you were on to
18 this earlier when you were discussing this with Mr. Meyers -- the
19 class fee was for the creation of the class, which included
20 creating, essentially, a cause of action to go -- of the actual
21 victims against the Diocese, which got us around two major
22 defenses, the charitable immunity and the Statute of Limitation,
23 creating a cause of action for a consortium class in which
24 otherwise, by law, did not exist --

25 THE COURT: Right.

1 ATTORNEY HALLER: -- negotiating the terms of how, of the
2 process, and collecting the money that would then be distributed
3 to the class. That was one set of work.

4 Then the members of the class had a way in which they could
5 go through an arbitration process. They could hire a lawyer;
6 they could not hire a lawyer.

7 Many of them, most of them, hired Mr. Richter and I for that
8 separate set of work, which included meeting with the clients,
9 oftentimes for the first time that they ever spoke with anybody
10 about the nature of the abuse that they had; collecting the
11 information about their abuse; completing the forms necessary to
12 make them a member of the class so that the Diocese could then
13 review, to see it; to the extent that there was an objection from
14 the Diocese, litigating that objection in front of the
15 arbitrator; then litigating with the arbitrator, going with them
16 to the arbitration hearing, litigating them with the arbitrator
17 the amount of money they were due.

18 So it was -- one process was filing a lawsuit, creating and
19 crafting the class and the class process, having that approved by
20 the class, and then subjecting ourselves to multiple legal
21 malpractice claims. And then the second piece of work was
22 actually litigating it through the process.

23 THE COURT: Basically shepherding the class members through
24 the class process.

25 ATTORNEY HALLER: The settlement contained a specific

1 process by which each claimant was able to prove their claim.

2 THE COURT: And this was different, I guess, than like a
3 consumer class action where -- like I had one one time over a
4 shotgun, where I just sat there, and they sent me a check for a
5 \$100.

6 ATTORNEY HALLER: That's exactly right.

7 THE COURT: This one had an arbitration process where you
8 were vetting the claim, so to speak.

9 ATTORNEY HALLER: The individual claimants had to, number
10 one, prove that they were -- they didn't have to prove it, but
11 they had to show some proof that they had actually been at the
12 location at which the priest, or the abuser, would have been at.

13 THE COURT: Okay.

14 ATTORNEY HALLER: So, for example, to use Mr. Sires since
15 he's already spoken to it, Mr. Sires attended Nativity Church, a
16 Nativity School on James Island, so his family would have been a
17 member of that parish, or should have been a member of that
18 parish, and then would have been able -- the Diocese could take
19 that information, tie to it who they believe this came from,
20 Mr. Sires, Father Nyhan, the Diocese would know that Father Nyhan
21 and Mr. Sires were there at the same time. Once they knew that,
22 the Diocese then lost all rights to objection. All right. And
23 that was a part of what we negotiated.

24 Then, without the Diocese input, there was a separate
25 process by which we then had to prove the level of the abuse that

1 they received, or had. So for that level of abuse, you would
2 have gotten, an actual abused victim would have gotten, a certain
3 amount of money, depending upon what the level of the abuse was.

4 THE COURT: Right.

5 ATTORNEY HALLER: Now, the McDonalds are a member of the
6 consortium class, which there was also a very similar sort of
7 process, but theirs was a flat fee. They got that flat 20
8 percent. But we still had to do processing the claims, meeting
9 with the clients, proving that they actually were a member, or
10 had a person, who had been abused, because the abused person, to
11 get the consortium claim, which, again, is a claim that we
12 created out of thin air. There is no law in South Carolina that
13 a parent or a spouse -- well, a spouse can, but a parent can get
14 consortium money. We still had to go through that same process,
15 though, even though -- of -- that they were tied to the two
16 specific church. Thank you, Your Honor.

17 ATTORNEY BRUNER: I think he said 20 percent. I think he
18 meant flat 20,000 for the consortium claim.

19 ATTORNEY HALLER: Yes. Excuse me.

20 ATTORNEY BRUNER: And I think the distinction is this. This
21 is where this gets important. You've got to look at the nature
22 of this class action and the settlement, right. This wasn't a
23 typical -- there was no customer list.

24 THE COURT: Right.

25 ATTORNEY BRUNER: It's not a consumer claim where you have a

1 customer list and billing records and someone, without talking to
2 these victims, can figure out exactly what they're entitled to.

3 The damages matrix, which was objected to -- and those
4 objections were overruled -- the damages matrix set up categories
5 of harm and ranges within those categories, so it did necessitate
6 further arbitration of the damages to set up a fund that was
7 extremely beneficial for the victims. It set up a fund for an
8 arbitrator to do that in a private context. And there were
9 objections to claims. There's a transcript about that.

10 THE COURT: Okay.

11 ATTORNEY BRUNER: I'll make this one last point, and then
12 I'll shut up and sit down, Your Honor. Everything has to come to
13 an end. This case, in particular, every time a new complaint is
14 filed, every time a new motion is filed relating to this
15 litigation, every time that happens, victims are dragged back
16 through, records are exchanged, the identities that should remain
17 secret are at risk of disclosure every time. Every time.

18 So what we're asking, respectfully, is that you deny the
19 motions; that you let this action remain in its grave and not
20 exhume it 15 years after the fact to conduct an evidentiary
21 proceeding that I don't know how it could go forward; that you
22 find it's concluded, and we all move on.

23 THE COURT: All right.

24 ATTORNEY BRUNER: Thank you, Your Honor.

25 THE COURT: Mr. Cuttino? Mr. Dukes?

1 ATTORNEY CUTTINO: Yes, sir. A couple things, if I may.

2 THE COURT: Okay.

3 ATTORNEY CUTTINO: As counsel for Mr. Haller, let me just
4 add this. First of all, I want to adopt all the arguments that
5 Mr. Bruner made as applicable to Mr. Haller's as well. I'll just
6 say this. And this is an effort to lend some, I guess, maybe,
7 systemic perspective to this whole process.

8 I've been doing this for 40 years, and among the things I
9 have learned is that the law and the system that we have favors
10 finality for all litigants, not just for plaintiffs or defense,
11 but for everyone. You know, that's expressed in statutes of
12 limitations; it's expressed in statutes of repose; it's expressed
13 in, you know, laches doctrines. There has to be a stopping
14 point.

15 We see this played out every week when we get an advance
16 sheet where the appellate courts make observations that a party's
17 had an opportunity to raise issues and did not, and that while
18 they're placed where their positions may be meritorious, they
19 can't continue if they haven't followed the rules or raised
20 things at an appropriate time, and it's only in the rarest of
21 occasion that those concepts of finality are just ignored and
22 thrown away.

23 I think it's worth saying, also, that the very fact that we
24 are here struggling to reconstruct micro-events and conversations
25 and positions taken 15 years ago is the best evidence of why

1 finality is important. It's nearly impossible to re-live all
2 this. I think Mr. Bruner was not even out of law school 15 years
3 ago. I think Judge Dickson was not even on the bench, and he's
4 served with distinction several terms and retired, and now you're
5 his successor.

6 THE COURT: Just got his portrait on the wall.

7 ATTORNEY CUTTINO: Yes. You know, in lawyer lives, time
8 passes fast, but when you put it in perspective of how long 15
9 years ago was, John Waller was on the Supreme Court; so was Jim
10 Moore. Fifteen years ago is a long time. It is a long time,
11 even in lawyer years. And to renavigate and relitigate and
12 reopen and second-guess things that qualified people, with either
13 all the facts before them or the opportunity to present facts to
14 a tribunal that long ago, I can't think of any worse folly than
15 to go down that path.

16 I think one of the hardest things, also, that anybody that
17 practices law, and certainly for laymen to come to grips with, is
18 that the court system has to have a set of rules; it has to have
19 finality. It is not a court of equity where every moral wrong or
20 every perceived wrong can be addressed at any time. It is a
21 court of law, and there are lanes of traffic, and there are
22 rules, and there are opportunities, but we all have to follow
23 that.

24 The system does the best to render justice that it can with
25 the rules and the law that it has. And as you have observed

1 earlier today, we can't just make up a remedy because we have a
2 hunch that something may have not been done to our liking or the
3 way another judge would have done it or another lawyer would have
4 done it 15 years ago. That is just an visitation for disaster.

5 And I question how can it be argued that reopening all this,
6 reopening these mental and psychological wounds for all these
7 people involved, how could that not be worse than allowing the
8 finality that's really been in place for a long time to remain in
9 place.

10 Because I think Mr. Bruner's exactly right, the relitigation
11 and the revisitation of all these issues is of major consequence
12 to everybody involved. It's not just the McDonalds; it's not
13 just one or two people; it is the entirety of the process that
14 gets threatened and disrupted and compromised and second-guessed
15 and marginalized every time one of these things comes back up.

16 It doesn't mean the feelings of these people aren't real.
17 It means that the system worked to the best of its ability. And,
18 quite frankly, given all of the obstacles to recovery, it seems
19 to me that it did a magnificent job, and -- to use Mr. Bruner's
20 appropriate word -- to exhume that and second-guess that all this
21 time later seems to me to be a prescription for disaster.

22 So I would ask the Court to consider those things. Thank
23 you.

24 THE COURT: Okay. Thank you, Mr. Cuttino.

25 ATTORNEY DUKES: I'll be very brief.

1 THE COURT: I've got all day.

2 ATTORNEY DUKES: I came into this class action case right at
3 the very end for a discrete purpose because, as you may have
4 noticed from my brief, while I don't claim to be an expert in
5 class actions, I handle them, and I've settled many of them. And
6 contrary to what Mr. Meyers said, oftentimes the attorney's fee
7 is paid before the claims are paid. That happens.

8 And in this settlement there was a clear-sailing
9 provision -- that's what they call it, clear-sailing provision --
10 but the settling defendant will agree not to object to attorney's
11 fees above "X" amount. And everybody knows that, or it's just
12 assumed that, when you put in a settlement agreement, We won't
13 object to a fee above "X", "X" is going to be the fee. That's
14 just the way it works.

15 Mr. Haller mentioned it and, you know, they worked very
16 hard. And if you counted up the number of times one or the other
17 of the parties moved for sanctions against the other during the
18 course of this settlement -- this was adversarial. It was
19 hard-fought. And the plaintiffs' lawyers did an excellent job
20 for their clients, and the Diocese, I think, did an excellent job
21 to help victims recover from what happened to them.

22 We've read in the papers in the last few years a lot of
23 other Catholic dioceses creating victims' compensations fund or
24 some way to compensate victims, and states are rejiggering the
25 statute of limitations and their bankruptcies. All that's in the

1 past for this Diocese because they paid \$12 million to get some
2 peace for the victims, to extinguish claims, and to bring it to a
3 close in our diocese. And, in large part, that's happened. And
4 that's a good thing.

5 Mr. Haller mentioned that, you know, we had a vetting
6 process, and all the Diocese looked at was, Were these two people
7 likely at the same place at the same time? And once that
8 happened, we didn't object anymore. And under the settlement
9 agreement, the Diocese wasn't allowed to be there for the
10 arbitration proceeding. That's correct, isn't it? So, you know,
11 these two were in the same place at the same time. Go for it.
12 Get your money. Hopefully get some peace. And an offer of
13 psychological counseling was part of the settlement agreement.

14 We didn't have to have anything to do with what happened
15 after everything went to arbitration. I do have to make sure the
16 record's clear that our understanding, my client's
17 understanding -- and this is from the March 9th, 2007 hearing.
18 My colleague, Jim Geoly from Chicago made this statement: The
19 maximum attorney's fee award, no more than two-and-a-half-million
20 dollars. This is to represent and go into the first sentence of
21 subsection -- of substantial efforts of plaintiff's counsel,
22 quote, past and future. I want to be clear, whatever fee award
23 Your Honor makes, that fee -- that's the fee award for the case.
24 There are no future attorney's fees awarded as the claims of
25 administration process goes forward.

1 That was my client's understanding of the situation, but we
2 weren't involved in the arbitration proceeding, so I don't know.
3 That was by design. We wouldn't know what happened afterwards.

4 As my former law partner, Mr. Cuttino, said, finality's
5 important, and in class actions that's the point, is to end it.
6 Our position is that, at the earliest this case concluded, in
7 August of 2007, and it was over, at that point everything went to
8 Marvin Infinger to conduct the arbitrations. The claims process
9 would continue. There were procedures in place. The Court had
10 continuing jurisdiction if somebody complained about what
11 happened in the claims process, but the litigation side was done
12 and it was just claims administration after that.

13 These continual objections to how the class settlement,
14 Judge Goodstein considered those and rejected them, and they keep
15 getting brought up, but that's over, and it's important that the
16 -- we would argue that the Court should give respect to Judge
17 Goodstein's judgments, enforce those judgments, and determine
18 that this case was closed and there's nothing to intervene in.

19 So I appreciate it, Your Honor. And I'm sorry that we -- I
20 dumped a bunch of pleadings on you to try to figure this mess
21 out, but I appreciate your attention.

22 THE COURT: That's all right. I appreciate everybody
23 providing what they did. It's been helpful. It's quite a bit to
24 go through, but that's okay. That's what I'm here for.

25 All right. Mr. Meyers, anything in reply?

1 ATTORNEY MEYERS: Very briefly, Your Honor.

2 THE COURT: Yes, sir.

3 ATTORNEY MEYERS: And I'll just work backwards through my
4 notes. All the associated litigation that's happened since 2008
5 has -- none of that's been involving class members; it involved
6 people who were out of state. And when class counsel explained
7 that they didn't give Nationwide notice because the bishop asked
8 them not to --

9 ATTORNEY DUKES: I object to that, Your Honor.

10 THE COURT: Okay.

11 ATTORNEY MEYERS: -- Bishop disagreed with that. He doesn't
12 agree with that statement. It doesn't make a whole lot of sense,
13 but that's class counsel's story, on the record, represented to
14 Judge Nicholson.

15 THE COURT: Okay.

16 ATTORNEY MEYERS: Our testimony will be, is the way that
17 starts in the transcript. And, you know, it's a little amazing
18 for somebody to say, Well, my adversary asked me to eliminate
19 notice to my clients, some of them, so I did. So most of the
20 litigation has been brought by people who lived out of state, who
21 never got notice and, through that process, got chipped away a
22 little bit. They're not bound by the class action.

23 But no court has addressed the merits of what I'm talking
24 about. Now, maybe we just look the other way, maybe that's what
25 we do. Or, maybe for some people, that's what we do. But

1 nothing that Judge Goodstein decided, that was about enforcing
2 the settlement, because the Diocese wouldn't pay my separate
3 settlement. We negotiated. My people got paid better than the
4 class members, by the way.

5 And I appreciate Mr. Haller taking credit for the work I've
6 done in abuse cases to create the loss of consortium type claim.
7 It's actually a loss of services claim, but they say it's loss of
8 consortium, which the Supreme Court says doesn't exist. Let's
9 give them credit for that.

10 But the idea that Judge Goodstein knew what was happening,
11 Mr. Dukes has just given you reference to the transcript where
12 Geoly said it's just two and a half million, right. They talked
13 about this possibility, but that's not what the order says. The
14 order says I'll give it to you for the work to date, the work in
15 the future, and the work to effectuate the settlement.

16 So the distinction Mr. Haller wants to make that this is
17 separate work is not borne out by the order. That is my point.
18 And this is the first and only case where class members have been
19 present, at least represented by me. Everybody else that I've
20 represented has been an out-of-state person.

21 Mr. Dukes and I chatted briefly before we got started this
22 morning so I could say to him, Look, John Doe 305 is not in this
23 case. He talks a little bit about John Doe 305. That's an
24 out-of-state resident. He lives in Florida.

25 ATTORNEY DUKES: And I will say that's my mistake. And I

1 apologize for that.

2 ATTORNEY MEYERS: So these are not the same allegations.
3 These allegations have never been brought in front of a court,
4 and event the past allegations have not been looked at. They
5 weren't looked at by Judge Goodstein, and they have not been
6 looked at by anybody else.

7 I don't know what to say about the case ended in 2007. That
8 means it ended before the claims process even started. Under
9 that theory, they could have paid \$12 million into the trust.
10 The lawyers could have decided to keep it all, and no one would
11 have the authority to look at whether they followed the order.

12 THE COURT: Well, there's probably somebody in Walterboro
13 that feels a little different about that right now.

14 ATTORNEY MEYERS: Something might have happened, but it
15 wouldn't have happened by a Court. As happened in Walterboro,
16 the partners said, Hey, what's going on? But if the theory is
17 that all court ability, under Rule 23, ends when there's
18 preliminary approval of a settlement and start the claims
19 process, then there is complete discretion in class counsel to
20 breach any fiduciary duty he wants to. And what we're saying is,
21 they breached the fiduciary duty. The Supreme Court says that's
22 serious enough that even 17 years is not too long, and we don't
23 think it's too long in this situation.

24 We think this is a very narrow, focused issue about costs
25 and fees that weren't authorized to be charged. That's narrow

1 discovery, focused discovery. We lay it out for you. You
2 actually get an actual accounting, not the, let me call it, fake
3 accounting that was presented that doesn't show all the
4 disbursements to class counsel. And on that basis, and only on
5 that basis, should the Court make a decision.

6 That's what I have to say. Thanks, Your Honor.

7 THE COURT: All right. Anybody got anything in reply?

8 ATTORNEY BRUNER: I do, Your Honor, based on the arguments
9 that were made after mine, if I may take a little more of your
10 time this morning.

11 THE COURT: That's no problem.

12 ATTORNEY BRUNER: It is still morning.

13 THE COURT: That's right.

14 ATTORNEY BRUNER: The argument that we are making is not
15 that the case was concluded on preliminary approval of the class
16 settlement in January of 2007. Apparently it has been perceived
17 that way. The argument is that the civil action, as a matter of
18 law, was concluded. The claims were later extinguished. The
19 claims were processed pursuant to the class action terms, i.e.,
20 arbitration of the damages.

21 Mr. Dukes is accurate, exactly right. He read from the
22 transcript of the fairness hearing, in compliance with Rule 23,
23 before Judge Goodstein. It was a lengthy hearing. It is a thick
24 transcript. Mr. Meyers was at that hearing and argued for
25 objectors. My understanding is the McDonalds were there, too.

1 And I know that to be true. Perhaps Mr. Meyers can confirm or
2 deny that here.

3 And there was a statement by Mr. Geoly on page 113 of that
4 transcript. There are no future attorneys' fees as part of this
5 as the claims administration process goes forward.

6 What has not been pointed out, and if you saw me flipping
7 through my notebook -- as soon as the 20 percent became the focus
8 of the proceedings this morning I began looking in the transcript
9 for what I found. And on the following page, after Mr. Geoly
10 makes that statement to the Court about what the fees are for, on
11 page 114 of the transcript, beginning on Line 8, the judge says:
12 Let me be clear. Based on my reading while Mr. Richter was
13 arguing, I want to be sure. As I understand it, there can be a
14 contractual agreement with each claimant for fees for the work
15 done on each individual claim, that that amount is to be approved
16 by the arbitrator with an appreciation for the amounts awarded
17 for class counsel. Now, that would -- what I'm speaking of would
18 not entail an arrangement, a fee request from the Diocese but
19 would be a matter of contract between class counsel and the
20 individual claimants.

21 So while her order approving the settlement does not go deep
22 down into the weeds enough to confirm what she says here, to say
23 that she didn't contemplate an additional fee award, or the
24 availability for people to hire counsel to be represented when
25 they are presenting their damages, is directly contrary to what

1 this transcript says. It was part of the process. They knew it.
2 If they thought it was wrong, they knew it in 2008; the
3 McDonalds, that is.

4 There's a suggestion that perhaps if the class action is
5 deemed concluded in 2007, that the attorneys could have just kept
6 all the money. Well, let's examine that for a minute, because
7 there are a lot of broad, overarching, general accusations that
8 have been launched through the various cases, and when you
9 stop -- and there are many in number. But when you stop and look
10 at the veracity, they're unraveled quickly.

11 The lawyers could have kept the money. Well, let's look at
12 that. Did the lawyers get the money? No. The 12 million --
13 well, it was funded in phases. The settlement funds went to a
14 third-party escrow agent; they did not go to my client's trust
15 account for them to do with what they pleased.

16 There was an arbitrator, and there was an independent escrow
17 agent. They were two separate gentlemen, highly respected, and
18 still are today, who were involved in that process, because the
19 class action court made sure the interests of the class were
20 protected. It did the right thing. It did it at the urging of
21 the parties and their counsel.

22 So these suggestions that a ruling against the McDonalds
23 would just enable lawyers to steal money from class actions, I
24 don't see the merit in the factual basis of those arguments. I
25 don't see it here.

1 That's all I have, Your Honor. Thank you.

2 ATTORNEY MEYERS: May I, Your Honor?

3 THE COURT: Sure.

4 ATTORNEY MEYERS: The problem is it's not in the order.

5 That's the problem. So, yes, as I mentioned, they talked about
6 this separate contract. Didn't provide for it in the order. And
7 that's the touchstone of everything in a class action.

8 And I'm not contending they kept all the money. That's a
9 hypothetical. But if there's no judicial oversight, the judicial
10 oversight ended on January of 2007, and in August of 2007 as has
11 been argued here today, then nothing would stop a lawyer from
12 doing that until time caught up with them eventually, but it
13 might take years after that, whereas Rule 23 says at any time the
14 court can protect the interest of the class. That's what we're
15 asking you to do.

16 THE COURT: Well, tell me this. Because you agreed with me
17 that McGowan, Hood & Felder, or whatever, Taylor Law Firm, could
18 charge a 20 percent fee for helping the client through the
19 arbitration process.

20 ATTORNEY MEYERS: Sure.

21 THE COURT: What made Mr. Haller and Mr. Richter different?
22 And I understand they were class counsel and they were
23 compensated for their class, but how -- it almost seems like
24 they're being treated -- you want me to treat them differently.

25 ATTORNEY MEYERS: Well, they are being treated differently.

1 They're hand two-and-a-half-million dollars for a vastly
2 overblown body of work --

3 THE COURT: Well, I understand that --

4 ATTORNEY MEYERS: -- so the time is not reasonable, even
5 with that. And the judge said, I'm giving you this also for the
6 future work. So that's the difference between this law firm and
7 any other. And they signed up for this when they alleged a class
8 in two different counties at the same time for the same client.

9 THE COURT: So it's your position even though the class is a
10 client, they weren't entitled to get a fee from, again, as Judge
11 Goodstein called it, a matter of a contract between class counsel
12 and the claimant?

13 ATTORNEY MEYERS: Not when the order says this is for the
14 work you've done already and the work you're going to do and the
15 work you're going to do to effectuate the settlement. It's the
16 order that describes what the payment was for.

17 If the order didn't say that, they would have an argument,
18 that, Well, we were doing something separate. But the order
19 encompassed the whole process, and they were well-overpaid
20 already. So, fine, they've kept all that money for a fraction of
21 the actual work they claimed to have done and didn't disclose the
22 payment they had already received for that work. So, I mean,
23 maybe this is just funny business that we allow, but I don't
24 think we should.

25 THE COURT: Okay.

1 ATTORNEY MEYERS: Thank you, Your Honor.

2 THE COURT: Anybody got anything else? All right. Well,
3 thank you all for coming. I'll take it under advisement and let
4 you all know something shortly.

5 (End of Transcript of Record.)

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9
10 CERTIFICATE OF REPORTER

11 I, Cathy J. Provost, Official Court Reporter for the
12 Fourteenth Judicial Circuit of the State of South Carolina, do
13 hereby certify that the foregoing is a true, accurate and
14 complete Transcript of Record of the proceedings had and evidence
15 introduced in the trial/proceedings of the captioned case in the
16 Court of Common Pleas for Dorchester County, South Carolina, on
17 the 27th day of January, 2022.

18 I do further certify that I am neither of kin, counsel, nor
19 interest to any party hereto.

20 Date: February 6, 2023

21
22 \s\ Cathy J. Provost
23 Cathy J. Provost, RMR
24 Official Circuit Reporter
25