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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 Two of Four

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	FIRST JUDICIAL CIRCUIT

CASES NO. 06-CP-18-1310
06-CP-18-1311
06-CP-18-1636

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

Plaintiffs,)

vs.)

The Bishop of Charleston, a Corpora tion)
Sole, and the Bishop of the Diocese of)
Charleston, in his official capacity,)

Defendants.)

Motion to Alter or Amend

The order approving the class settlement is objected to in the following particulars, on behalf of a number of individuals who are putative members of the class, specifically on behalf of Johns Doe C, D, H, J, K, L, M and Janes Doe G, I, K, and N.

Issues are raised in the order they are presented.

1. Withdrawn Objections. The order states that two objectors withdrew their objections, but gives no reason why or what accommodations were made to cause that to happen. Since there now appear to be certain ‘side deals,’ or arrangements that have been made regarding other putative class members and their counsel, or with the class representatives, some of which contentions are now contested by class counsel, the order should do more than just

acknowledge that the objections have been withdrawn. The order should reflect an inquiry into the circumstances of those withdrawn objections so that other putative class members might be fully informed as to what they are getting into, or opting out of, should the settlement ever be approved.

2. Objections not withdrawn. A. The order errs in concluding that objectors lack standing. First, the objectors stated their objections as directed by the order providing for notice of the fairness hearing. To conclude that those who followed that order somehow lack standing to undertake the very tasks provided by that order is nonsensical. As the order states, page 6, “The creation of a class makes those class members parties to the litigation.” Exhibit A provides “If you fail to file the Opt-out Form by the deadline, you will be considered a member of the class and your rights will be impacted as a result.” The order errs in providing different ways of opting out for only certain class members.

B. The original class proposal contained no statement as to whether it was an opt-in or an opt-out class. After that omission was noted by the objection, the class proposed was modified to state clearly that it was an opt-out class, and to provide for a method of opting out. Objectors who fall within the class cannot be said to have opted out prior to having an opportunity to review the court’s disposition of the stated objections. Nor can some class members, namely those with the temerity to state objections, receive different treatment for opting out than other class members. The opt-out period remains available to class members, and these class members should be treated the same as other class members for opt-out purposes. *Gould v. Alleco* and *Condon v. South Carolina* do not hold differently, since both concerned objections from those not members of the class. It is nonsensical to require intervention by those already within the

definition of the class. As the order states, page 6, “The creation of a class makes those class members parties to the litigation.” By terms of the order, there is nothing into which class members can intervene: the class members are already part of the litigation unless they opt-out through the same opt-out process available to all other members of the class. Class members cannot legitimately be “punished” for stating objections, particularly well-founded objections such as the lack of any declaration that the class is an opt-out class,

C. The opt-out period having been just approved by the order, opting-out cannot be imposed on class members by eliminating their opportunity to consider the court’s order. Putative class members cannot have their objections discarded or their rights affected by procedures not applicable to the entire class. No class member can opt-out prior to their being an opt-out period.

D. An opt-out period having been for the first time approved in the June 30 order, and since the notice of opt-out was conditioned on the substantial confusion of the class being clarified, the order errs in penalizing putative class members for asking the matter be clarified and for reserving their right to make that election. Objectors merely reserved their respective rights to opt-out, specifically reserving the right to re-evaluate that issue once the court ruled on the objections. No class member can properly have his opt-out rights eliminated.

E. The order concludes, at page 6, that the objections stated have no merit. Yet it is undeniable that the addendum altering the class definitions occurred after the objections noted the omissions cured by amending the class proposal. These post-objection modifications include the class being an opt-out class (previously unstated), the “unlinking” of consortium claims with the direct abuse claims (excluded by the class as originally defined), and an opt-out procedure (completely missing). None of those was modified prior to the stated objections, so while the

addendum claims these omissions were inadvertent, they were cured only when objections noted their absence, so the order incorrectly refers to the objections as without merit.

3. Class definition. The order denies the request to modify the class to include persons whose claims had been resolved prior to class approval, page 7, but then uses a different standard in approving class representatives, each of whose claim is noted, page 15 note 7, as having already been resolved prior to the June 30 order. A double standard should not apply, and it is error to apply. Objectors should not be excluded from the class when the class representatives are permitted to be included despite having their claims resolved outside the class structure. More on that problem below, as it also raises questions about the representatives being eligible for being class representatives where their claims are (a) resolved and (b) adjudicated outside the process applicable to the class (mediation versus arbitration).

4. Page 8, footnote 3 of the order notes an action dismissed after the decision in Doe v Crooks. The order errs in interpreting the objection as attempting to reverse that action. The question the court has not considered or ruled on is whether a person who is included in a pending class action, hence is included in the class as a party to the class litigation, can properly be excluded from the class prior to the opt-out period. This question is wholly independent from the second pending question the court has not ruled on, which is whether the Diocese can exclude this potential class member, John Doe L, from the benefits of the class when the Diocese failed to disclose that the class action was pending at the time of Judge Nicholson's order. John Doe L's contention is that the Diocese cannot exclude a class member by either means. John Doe L is included within the class action by definition, and remains included regardless of the

action taken by Judge Nicholson, and, independent of that point, the Diocese may not benefit by fraud in failing to disclose the class suit that was pending in April, 2006. The order rules on neither contention.

5. The order errs in its discussion on page 10 of *Ford v. Hutson*, misnamed in the order as *Ford v. Hudson*, and mis-cited as 276 S.E.2d 761 when the correct citation is 276 S.E.2d 776. *Ford* stands for the very opposite proposition claimed in the order. The order states that intentional infliction of emotional distress is “the only cause [of action] where compensation for emotional distress requires a showing of physical manifestations.” Order at 10. In fact, *Ford v. Hutson* holds that where behavior was extreme and outrageous, neither physical contact nor physical manifestations were necessary:

Although ‘severe’ emotional distress is usually manifested by ‘shock, illness or other bodily harm,’ such objective symptomatology is not an absolute prerequisite for recovery of damages for intentional ... infliction of emotional distress.

Ford v. Hutson, 276 S.E.2d 776, 778-779 (S.C. 1981), quoting with approval the Restatement (Second) of Torts, § 46, comment k. Indeed, *Ford* itself recognizes that emotional distress without physical impact was already recognized in South Carolina: “In *Padgett v. Colonial Wholesale Distributing Co.*, 232 S.C. 593, 103 S.E.2d 265 (1958), we affirmed recovery of damages for shock, fright, and emotional upset despite the absence of any physical impact between the plaintiff and defendant.” *Ford v. Hutson*, 276 SE.2d 776, 778 (S.C. 1981). Using a matrix restricted to gradations of physical touch to differentiate among those suffering psychological injury draws a distinction unrelated to the harm, and under South Carolina law is an arbitrary differentiation. Class member recovery should not be geared to an arbitrary matrix of physical touch but should be entitled to recovery based on the psychological injury, as is

already permitted under South Carolina law.

That is for the direct injury category of class members. Consortium claimants have never been restricted by a matrix related to physical touch, having always been recognized as entitled to claims of “indirect emotional distress.” Hubbard and Felix, South Carolina Law of Torts, 2d ed. (1997), at p. 43-44,. That history shows that a matrix of physical touch is an illogical means of sorting out categories of class members for recovery for psychological injury. Victims should share equally, and a distribution should be made of all allocated settlement funds. The operation of the matrix, even as modified, benefits only the Diocese in minimizing the proceeds paid to victims, and in permitting settlement funds to revert to the Diocese. If the settlement is treated as a \$12 million settlement for purposes of calculating the class counsel’s fee, then the court should order that all \$12 million be paid to the victims.

6. The order errs at page 11 in discussing, and concluding, “The law simply does not recognize a right of action of a parent to recover for the loss of consortium of a child. In my view, whether the *Glover* verdict would have survived an appeal is very doubtful.” Essentially, the court has concluded that consortium claimants are worth zero or very little, as they have no support in South Carolina law.

There are two problems with this conclusion. First, on what basis are direct injury class claimants (the “primary class”) required to share a settlement pool with consortium claimants if the consortium claimants have no cognizable claim? The order claims too much in derogating the claims of consortium class members, and creates irretrievable conflict among the direct injury and consortium class members.

Second, and more fundamentally, this conclusion overlooks three hundred years of

Common Law authority and a substantial number of South Carolina cases to the contrary.

Again, to quote Hubbard and Felix, South Carolina Law of Torts, 2d ed. at page 571 (1997):

There is no right of for children to sue for loss of parental consortium [citing Taylor v Medenica]. However, there is authority for allowing a parent to sue for loss of services (and perhaps companionship) of a child.”

Citing, as that authority, in footnote 76, *Wright v. Colleton County School District*, 391 S.E2d 564 (S.C. 1990), *Tollerson v. Atlantic Coast Line R.R. Co.*, 198 S.E. 164 (S.C. 1936), and *Webb v. Southern Ry. Co.*, 88 S.E. 297 (S.C. 1915). *Webb* is summarized by Hubbard and Felix as “Defendant intentionally placed child in a dangerous work situation where he was injured.”

Hubbard and Felix, South Carolina Law of Torts, 2d ed. at page 571 n. 76 (1997). Pertinent to this pleading, the opinion states, at 88 S.E. 299:

The mother was entitled to the services of her minor child. She was entitled to his companionship, and was entitled to place him at work with some one that she had confidence in, and put him to work in a business that was reasonably safe. The defendant persuaded him to leave this occupation, carried a minor beyond the state, and put him to work in a hazardous business without the consent of his mother. He was seriously injured, and the evidence is ample to sustain the verdict for actual and punitive damages. The defendant cannot send out agents acting within the scope of their authority to entice minors away from their parents without their consent and put them in a dangerous work and have them injured without paying damages.

But there are more South Carolina cases supporting claims by parents for injuries to children than are cited even by Hubbard and Felix. Claims by parents for injuries, both pecuniary and intangible, stemming from sexual misconduct with a child have long been recognized in South Carolina decisions, and such claims have been recognized at Common Law for over three hundred years. E.g., *Rumler v. Gantt*, 121 S.C. 117, 117, 113 S.E. 581, 581 (S.C. 1922) (“This action was brought for damages for loss of services of plaintiff’s daughter and for shame, humiliation, and mental anguish caused by the defendant’s seducing, debauching, and

carnally knowing her.”); *Villepigue v. Shuler*, 1849 WL 2667, 34 SCL 462, 3 Strob. 462 (S.C. 1849) (“This was an action on the case for seducing and getting with child the plaintiff’s daughter.”). The concept was most recently approved in *Manufacturers and Merchants Mutual Ins. Co. v. Harvey*, 330 S.C. 152, 498 S.E.2d 222 (Ct. App. 1998), where insurance coverage was found to exist for a parent’s claim when her children were sexually abused as a result of alleged negligence. There is no way to read *Harvey* without recognizing that a parent may make such a claim. There would be no insurance coverage for a claim which was not cognizable.

A parent’s right to assert claims for their own injuries after their child is injured, including injuries from sexual assault, was recognized at Common Law as early as 1653. E.g., *United States v. Standard Oil*, 332 U.S. 301, 311-312 and n.17, 67 S.Ct. 1604, 1610 and n. 17 (1947) (tracing to 1653 the Common Law Right of “the parent's right to indemnity for loss of a child's services, including his action for a daughter's seduction.”).² An example of such a claim at Common Law is *Tullidge v. Wade*, 95 Eng. Rep. 909, 909 (K.B. 1769) (upholding father’s damage award for his daughter’s seduction).

It is an ancient tradition, with Biblical roots. Deuteronomy 22: 28-29 (King James): “If a man find a damsel who is a virgin, who is not bethrothed, and lay hold on her, and lie with her, and they be found; then the man who lay with her shall give *unto the damsel’s father* fifty

² This is a direct, not a derivative, claim by the parents. E.g., *Stewart v. State Farm Mutual Automobile Ins Co.*, 341 S.C. 143, 156, 533 S.E.2d 597, 604 (Ct. App. 2000) (“Under South Carolina law, unlike that of some other states, loss of consortium is an independent action, not derivative.”); *Manufacturers and Merchants Mutual Ins. Co. v. Harvey*, 330 S.C. 152, 498 S.E.2d 222 (Ct. App. 1998) (finding insurance coverage for a parent’s claim when children were sexually abused); *Berry v. Myrick*, 260 S.C. 68, ___, 194 S.E.2d 240, 242 (1973) (“loss of services or consortium is an immediate rather than a delayed consequence of the defendant's negligence or wrongful act causing physical injury to plaintiff's spouse, *child*, or employee . . .,” *quoting*, 173 A.L.R. 755, *When Statutes of limitations Begin to Run Against Action for Loss of Services or Consortium*. Emphasis added.

shekels of silver” (emphasis added). Blackstone describes the husband’s right to make this claim for a child’s “ravishment” as being a writ available to him, “in the same manner as the husband may have it, on account of the abduction of his wife.” 3 Blackstone, Commentaries on the Laws of England Ch. 8, p. 141 (1979 facsimile edition of the First Edition of 1765-1769).

Nor is the claim unique to South Carolina, as Georgia, North Carolina, and Virginia, to name but a few, recognize the Common Law right of parents to recover intangible damages from sexual assault of their child. It was a typical claim at Common Law. E.g., *Kendrick v. McCrary*, 11 Ga. 603, 606 (1852) (permitting parent’s claim for seduction of even an *adult* daughter living at home and damages for the intangible “atrocious invasion of his household peace”); *Abbott v. Hancock*, 31 S.E. 268, 269 (N.C. 1898) (permitting widow to maintain action for daughter’s seduction); *Kinney v. Lauchenour*, 89 N.C. 365, 1883 WL 2531 (N.C. 1883) (permitting claim by step-father for seduction of step-daughter); *Briggs v. Evans*, 27 N.C. 16, 5 Ired. 16 (N.C. 1844) (authorizing damages for father’s intangible “outraged feelings”); *White v. Campbell*, 54 Va. 573, 573-574 (1856) (authorizing damages for intangible loss of “the peace and happiness of the injured father.”). One “A. Lincoln” successfully defended such a verdict in the Supreme Court of Illinois in 1842, representing the father of a seduced daughter. *Grable v. Margrave*, 4 Ill. 372, 1842 Ill. Lexis 9 (Ill. 1842). The appellate court upheld the intangible damage award to the father Lincoln represented.

The court errs and creates unnecessary conflict among classes of class members by this conclusion in the order that concludes that consortium claims have no legal foundation. The order’s conclusion that the Glover verdict would “probably” not have survived appeal, thereby is to be discounted, engages the court in speculation, without acknowledging that those cases were certified as a class, survived a series of motions for summary judgment, as well as survived

directed verdict motions at trial. The three hundred year Common Law history in support of such claims, which the order does not even address, bore heavily on those motions. The order appears to reflect that class counsel has brought a claim which does not satisfy SCRCP 11, which these objectors do not believe is the case, and creates an appearance that the parties are colluding to minimize recovery for victims.

The issue is actually pending before the South Carolina Supreme Court, and once that case is decided an adequacy objection by any direct injury class member objecting to the settlement will be ripe, regardless of the outcome of that appeal. If the appeal affirms the claim then the amount paid to consortium claimants will be subject to challenge from the rationale in the order for limiting the claims. If the appeal overturns the claim then the primary class members will object to sharing a settlement fund with persons who have no claim.

Finally, if class counsel is unaware of the legal support for the consortium claims for parents, the court should reconsider whether class counsel is “inadequate fairly to protect” the interests of the consortium class. SCRCP 23(d)(3). Alternatively, the court should reserve that issue pending the outcome of the appeal presently in the South Carolina Supreme Court.

7. Effect of Appeal. The order at pages 12 – 16 sets in motion time limits applicable to notice and claims, but makes no provision for the effect of an appeal from the court’s order. No provisions should be put into effect until any appeal is resolved, including the fees provisions, to avoid having to later disgorge fees, from objections noted below. Until entry of final judgment, the court retains authority to redefine or de-certify a class. E.g., *In re Unisys Savings Plan Litigation*, 1997 WL 230789 (E.D. Pa. 1997):

even though a court enters a class certification order, “[u]nder Rule 23(c)(1), the court retains the authority to redefine or decertify the class until the entry of final judgment on the merits. This capacity renders all certification orders conditional until the entry of judgment.” *In re Gen. Motors Corp. Pickup Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 792 n. 14 (3d Cir.), *cert. denied sub nom., General Motors Corp. v. French*, 116 S.Ct. 88 (1995).

Discovery of new facts, changes in parties (such as the class representatives), or changes in the substantive or procedural law may each require reconsideration of earlier orders about certification or how the class is defined. *Id.*, citing *Manual for Complex Litigation, Third* at § 30.18 (1995).

8. Notice. The order errs in not providing for a nationwide notice. Objectors’ counsel had been assured by class counsel that a nationwide notice provision would also be included, not simply notice through various state newspapers. Yet the order provides for notice only within South Carolina. Given the number of people who move across state lines, some national means of notice should be provided. The order errs in providing for only notice in South Carolina newspapers. Publication in either the USA Today or The New York Times would seem appropriate if the parties truly were interested in giving notice to potential class members.

9. The order has erred in awarding attorneys fees. A. Entry of final judgment has not occurred. The order approves fees for class counsel as if final judgment has been entered and class counsel has recovered \$12 million for abuse victims. That conclusion is clearly erroneous, as no awards have yet been made for any class members other than the class representatives. Awarding fees based on the *potential* award to class members is not a proper basis for an attorney’s fee award. Only the actual recovery for class members, not a theoretical recovery for

the class, is a proper basis for assessing attorney's fees, and only after entry of final judgment is the fee issue properly addressed. SCRCF 54(d) and (e). SCRCF 23 does not provide for interim awards of attorneys fee.

B. Class recovery is not yet known. The order is premature in awarding fees before any victim has recovered an award. The court should confront the fee award only when a class recovery is finished. Alternatively, the order may approve the attorney's fee at this point only by also ruling that the entire settlement fund of \$12 million will be distributed to claimants, pro rata or per capita, once the claims process is concluded. Should that modification be accepted then counsel will have earned the fee as assessed by the court, and need not wait for class distribution to be paid. Otherwise, the calculation that the fee is 20.8% of the recovery for all victims is simply incorrect, and clearly erroneous in that it precedes any benefit to the class.

If the fund for the class is irrevocably \$12 million, and will be distributed either per capita or pro rata after the claims period, this objection will be satisfied. If the "gross settlement" turns out to be less than \$5 million, for example, then the fee calculation would have to be revised substantially, and counsel should not be restricted to 20.8% of the actual recovery to the class, a sum which could be quite modest. If the "gross settlement" turns out to be \$2 million then counsel will have recovered more than 100% of the accumulated benefits to the class. \$12 million is only the maximum amount that the Diocese might have to pay. The order provides, at page 15, that the Diocese is required to fund only an "initial" fund of \$4,540,000. That may also prove to be the final fund, and only a portion of that \$4.5 million fund may be distributed, given the caps on class member recoveries. Exhibit A states that members who remain in the class may "possibly" receive money from the settlement.

It is error to base an attorney's fee on a potential result rather than an actual result. The

claims process should go forward and the fee calculated for approval after the benefit to the class is known, not on a hypothetical benefit that seems frankly to be remote. Again, unless the order is modified to provide for a pro rata or per capita distribution of what remains of the \$12 million potential pool for recovery.

C. The order errs in providing for fees to be paid in ten days. Unless the order is revised to pay \$12 million to all class members either pro rata or per capita at the conclusion of the claims process, no fees should be paid before all class members have been paid,.

D. The order errs in not setting forth if the fee is awarded on a contingency or lodestar scheme, or a hybrid.

10. The orders errs in authorizing or permitting class representatives to be paid before the class, and by different means. The order recites that class representatives have already been paid. Order at page 15, n. 7. To treat some class members outside of the class procedures raises issues about those persons being representative of the class, acting in the interest of the class, and acting so as to protect the class, and about whether claims of persons resolved prior to any claims process then satisfy the definition of a class member. It would seem those persons would become persons whose claims are resolved, and make them ineligible for class inclusion. It also suggests that the class representatives may have breached their duties to absent class members by being paid first, and through a different process (mediation) than applies to other class members (arbitration). New class representatives may need to be appointed, since the class representatives have no remaining claim.

Class representatives are often permitted to obtain a premium for conducting the litigation, and there is no objection to that concept. But the order does not disclose what the

class representatives have already received beyond the general statement that they have collectively been already paid a fund of \$460,000. The order should indicate to other class members what each class representative was paid. And, as noted above, the class representatives should not be paid outside of the very claims process that all other class members must participate in, or by different criteria. Since that is a fait accompli, new class representatives should be named.

The order should also disclose if the class representatives have paid attorneys fees from their recovery, or if the attorney fee authorized includes class counsel's time or actions for individual clients rather than the class.

11. Psychological Assessment and Counseling. The order and exhibits do not indicate who does these assessments and/or counseling. The order should indicate that it may be with a therapist of the victim's or family member's choosing, to be reimbursed by the Diocese, not a therapist dictated by the Diocese.

12. Exhibit A. The order errs in including persons abused by their parents or spouses. As written, the class would include those persons abused by parents or spouses, which is probably not an intended claimant. The first sentence should be two sentences:

This action applies to 1) any person born on or before August 30, 1980; 2) who, as a minor, was sexually abused; 3) at any time by any agent or employee of the Diocese of Charleston; 4) who has not previously had any similar claim adjudicated, resolved, or released. The action also applies to 5) the parent or spouse of any such minor, 6) who has not previously had any similar claim adjudicated, resolved, or released.

13. Exhibit B. The order errs in setting two different birth dates for claimants. The definition of the consortium class includes the spouses and parents of victims *who are not eligible to participate in the victims' class*. The primary class is defined as persons born before August 30, 1980, whereas spouses or parents who may participate are for those individuals born on or before August 30, 1998. This may be a typographic error, but the notice needs, above all, to be accurate. Documents to be sent to the class need to be prepared with care. The notice the court has approved needs clarified.

The definition of “sexual abuse” is obviously taken from a criminal statute. Many aspects of abuse do not neatly fit the legalistic definition, and many putative class members may not understand it. Notice to potential class members should be clear and readily understandable. If there is no way to avoid that definition, the notice should include “You should consult with a legal professional if you are uncertain about the meaning of ‘sexual abuse’ as applied to you or your spouse or child.”

The order states that if there is a dispute about whether a claim is *bona fide*, the claimant will have a chance to prove their claim, but does not set forth a procedure on how that will occur, except to say on page 3 of Exhibit B that the arbitrator has sole and final determination of the sums to be awarded, and in Exhibit H that the arbitrator alone determines if a person is a member of the class. Page 3 of Exhibit B states that the claim proceedings are confidential. Page 4 of Exhibit 4 provides for psychological counsel which can be used in support of the claim but deprives the Diocese of that information. In order for claimants to make an informed decision on whether to participate in the class, the notice should include that information on each aspect, since to submit the question to the arbitrator requires a waiver of appeal, and it is not clear from the forms if the Diocese can raise objections if it does not receive

all documents for claims.

The order errs in using a matrix of physical touch as the only means of separating subclasses of primary class members. Objections to the matrix are not restated here. The court's ruling to date is sufficient to submit those issues to an appellate court as a means of sorting out hard and fast subclasses of members of the primary class.

14. Exhibit C. The order errs in requiring Social Security Numbers for claimants, an unnecessary intrusion as a routine request. If it is needed to identify records or for another purpose, a provision can be made to that effect. The identity of their parents or spouses should be requested only if those persons have made a claim.

15. Exhibit D. Same concern as to Social Security Numbers.

The order and Exhibit errs in making no provision for parent claims if siblings have been molested. Does each parent get \$20,000 for each of their children who have been abused, or is a parent who is unfortunate enough to have two or more of their children abused by their priest only entitled to the same amount as a parent who only had one child abused? Assuming, of course, it is conceded that a parent's claim is cognizable, which the order at present disputes, even while proposing to make payment to parents for such claims.

16. Exhibit F. The form includes a voluntary waiver of appeal rights prior to the victim knowing whether they are considered by the arbitrator to be a class member. It should preserve that right until that determination is made. If the arbitrator determines that a person is not a member of the class, that person should revert back to opt-out status as of the date the first

class suit was filed.

Conclusion

The order should be modified in the particulars as noted above. Objectors request notice of any order entered by the Court and proper notice of any hearings for these objections.

Respectfully submitted,



Gregg Meyers
39 Broad Street, Suite 300
Charleston, S.C. 29401
843-720-8714

Attorney for putative class members

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	FIRST JUDICIAL CIRCUIT

CASES NO. 06-CP-18-1310
06-CP-18-1311
06-CP-18-1636

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

Plaintiffs,)

vs.)

The Bishop of Charleston, a Corpora tion)
Sole, and the Bishop of the Diocese of)
Charleston, in his official capacity,)

Defendants.)

Memorandum In Support of Motion to Alter or Amend

Counsel for class objectors has seen class counsel’s contention that the Diocese is colluding with “parties who seek to disrupt the Settlement.” This can be a reference only to the class members who have raised objections, but we would note for the Court’s attention that at no time have the class members stating objections sought to “disrupt” the settlement. Class members stating objections have sought to expand the recovery for victims of sexual abuse, and nowhere in the pleadings is there a request that the court disapprove the settlement. The most we have requested are modifications that would result in greater recovery for victims of the sexual abuse, both the direct victims class and the consortium class, but do so without increasing the funds committed to the settlement by the Diocese.

As was apparent at the March 9 hearing, it is class counsel's style to make personal attacks, and we accept that reality without reciprocating it. We do not believe it advances a resolution of the merits to do so. Our concern has been the merits of the court's order, which we believe contains unnecessary problems for various individuals who are undisputedly included within the class definition, as even class counsel acknowledges in his pleading. The motion we have filed addresses those concerns.

Class counsel's intensity, of course, likely derives from class members objecting to class counsel being paid a final attorney's fee *at this point*. It is regrettable, for example, that class counsel is so intense and so demanding on the issue of attorneys fees that it lends itself to, if not creates, the appearance that this case was brought to garner a large attorney fee with benefit to the class only an afterthought. That appearance could not exist but for the demand for payment of an attorney's fee that is far more than the class is likely to actually recover, and for immediate payment of that disproportionate fee, far ahead of the timetable for when class members will receive compensation.

As to the unsupported (and absurd) claim of collusion, note that the Diocese objects to the settlement being made a full \$12 million to victims, demonstrating that the Diocese does not expect to ultimately pay out \$12 million in this settlement, and class counsel objects to his fee being assessed based on the actual recovery to victims, demonstrating that class counsel also does not expect that \$12 million, or anything close to it, will be disbursed to victims once claims are made. So it appears no counsel who negotiated the settlement believe that anything close to \$12 million will actually be paid to victims, yet the recovery to the class is diminished by an attorney's fee predicated on a \$12 million payout and the Diocese has received the public relations value of posturing as if it is paying as much as \$12 million.

These issues could have been avoided with a more prudent approach by class counsel to the attorney's fees issues.

Conclusion

Counsel are usually most helpful to the court when they calm down, analyze the issues, and advocate on the merits rather than by personal attack. Perhaps it is too much to hope for given the personalities involved in this action. The court's order has created far more issues than it needs to towards resolving the problems of this settlement. This brief memorandum addresses only one. Class objectors are attempting in their motion to alert the court to those unnecessary issues so they can be cured. Objectors are not trying to "disrupt the Settlement," but to keep it from being delayed by a trip through the appellate courts. The present order, if unchanged, makes an appeal inevitable when an appeal might be avoided.

Respectfully submitted,



Gregg Meyers
39 Broad Street, Suite 300
Charleston, S.C. 29401
843-720-8714

Attorney for putative class members

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
06-CP-18-1310
06-CP-18-1311
06-CP-18-1636

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
Representatives of a class of people
similarly situated,

Plaintiffs,

v.

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

**PETITION TO APPEAR AS
AMICUS CURIAE**

NOW COMES THE SOUTH CAROLINA VICTIM ASSISTANCE NETWORK

("SCVAN"), by and through counsel, petitioning the Court to appear in this action as *amicus curiae* in order to point out to the Court numerous and serious problems with the purported resolution of this class action case brought allegedly on behalf of victims of sexual abuse by Catholic priests and other employees of the Diocese of Charleston.

The problems will be addressed herein, but preliminarily, the purpose of this petition is to bring to the attention of the Court, and hopefully the appellate courts of South Carolina, the grievous and offensive collusive nature of this settlement between the Bishop of Charleston; his general counsel Attorney Peter Shahid; some of the class counsel, particularly Attorney Lawrence Richter and his law firm; and possibly a Circuit Court judge.

In an effort to adequately advocate for the victims in this matter, SCVAN, with its long and rich history of fighting for crime victims across South Carolina intends to bring as much attention to this matter as possible in order to prevent these victims from being revictimized.

In support of this Petition, SCVAN would show the Court the following:

1. The South Carolina Victim Assistance Network, a 501(c)(3) organization, has been providing services and advocacy for victims of crime since 1984. It provides victim services, trains victim advocates, publicizes victim issues, and through its affiliate The South Carolina Crime Victim Legal Network provides direct *pro bono* representation to crime victims in criminal proceedings.
2. The Diocese of Charleston has a long and disturbing history of enabling and protecting pedophile priests in Charleston and other areas of South Carolina.
3. The Bishop Robert Baker who oversaw this collusive settlement has on at least one occasion sought to reinstate to active ministry a priest who admitted to sexually molesting a 10 year old girl.
4. The Bishop's general counsel Attorney Peter Shahid participated in that effort and sought comment from the victim's family as part of the Bishop's deliberative process.
5. The fact that a Catholic Bishop was entertaining the notion of placing a pedophile priest back into active ministry reveals that Bishop's intent to create opportunities for the pedophile priest to assault more children, in spite of his hollow public words which pretend to express sorrow for victims.
6. The Bishop's further words about justice for victims are clearly demonstrated to be false by this purported settlement which is among the worst of its kind in the United States of

America and was brought about by collusion between him, his general counsel, some of the class counsel, and potentially a Circuit Court judge.

7. Victims of sexual abuse have a difficult time trusting people. For that reason, it is imperative that they clearly understand the background of who is 'making deals' for them, and about potential personal (and professional) conflicts of interest of that person or persons. In his Affidavit in support of class counsel's request for a \$2.5 million fee, that was to be paid before any claimant even got to file a claim, Attorney Lawrence Richter states the following:

"My relationship with the Diocese of Charleston is lifelong. Since birth I have been a practicing catholic. My first twelve years of education was received in the catholic schools of Charleston. I am a graduate of Christ the King and Bishop England High School. My children are all Bishop England graduates. For many years I and my family have been active members of St. Mary's Church, and I have functioned in many capacities there including as Eucharistic Minister and Lector (positions now referred to as "Extraordinary Ministers"). I have many close ties and lifelong relationships in the catholic community and have enjoyed friendships with many priests and bishops of the diocese."

8. Mr. Richter offers this statement to the court after he has entered into the deal with his friend the Bishop, and after he has had the case transferred to a court of his choosing where he could receive approval of the deal pursuant to the scheme agreed upon by the parties.
9. During the course of this litigation, Richter has served in his official capacity as an Extraordinary Minister of the Diocese on at least one occasion, at a funeral.

10. Nowhere in any notice to any of the absent class members, or any other class members, is this information about Richter's close, deep and lifelong relationship to the supposed adverse party provided to the victims of sexual abuse perpetrated by priests and employees of the diocese, some of whom might have been friends of Mr. Richter. This constitutes a conflict of interest set forth in Rule 1.7 of the South Carolina Rules of Professional Conduct, and this information should have been provided to all class members prior to the time they were required to decide whether to participate in the deal that Richter had struck with his friend, the Bishop, but it was not.
11. It is axiomatic that a victim of sexual abuse should know that the person who purports to represent his or her interests is, in fact, an Extraordinary Minister of the very Diocese that is supposed to be the adversary in the litigation. This is especially true in light of the unusual and extremely questionable conduct in this case.
12. The billing records of The Richter Law Firm contain numerous questionable, and unethical, entries. These entries either were not adequately reviewed or were not reviewed at all by Judge Diane Goodstein when she approved the \$2.5 million fee requested. Some examples of these entries include, but are not limited to, the following:
- A single lawyer billing for more than 24 hours in a single day, always by Attorneys Larry Richter and his partner David Haller. This is done on numerous occasions, including numerous entries for 30 and 40 hours, and other entries of 51.5, 60, 80, and a whopping 92 hours in a single day!
 - The 92 hours in a day occurred on the day following one of the 80 hour entries.

- An attorney sending himself an e-mail 55 times in one night, and charging 0.5 hours for each transmission for a total of 22.5 hours, even though the e-mails were apparently sent simultaneously at midnight.
- An attorney billing 10 hours on the 30th of virtually every month for about three years for “Oversight and Review”, including in 2004 and 2005, billing on February 30th, a day that does not exist on regular calendars.
- A great percentage of the hours used to justify the unreasonable \$2.5 million fee predate the filing of the class action suit and were expended pursuing individual cases, and for which it is believed the lawyers may have already been compensated.
- No time entry for The Richter Law Firm is smaller than one half hour and all entries larger than a half hour are all in whole hour increments.
- A great deal of the time billed is to effectuate the inexplicable transfer of Charleston County cases to Dorchester County after they were settled in order for Judge Goodstein to handle the cases exclusively, to further the collusion being perpetrated on the court by the Bishop of Charleston, his general counsel Attorney Peter Shahid and The Richter Law Firm.

13. These cases were originally filed in Charleston County, where they belong. Two of the cases were filed in May and August of 2005. Attorney Richter says in his Affidavit in support of the \$2.5 million fee that he first met with the Bishop about this matter in October 2005. Two months after that, a class action complaint was filed.
14. Six months later, in June 2006, all of these pending cases were settled by way of mediation, in Charleston.

15. As part of the deal, the parties agreed to move the cases out of Charleston County and Attorney Larry Richter was given the sole authority to choose the venue. He chose Dorchester County.
16. Judge Goodstein, who presides in Dorchester County, and her husband are personal friends of Attorney Larry Richter.
17. When challenged as to why the cases were in Dorchester County, Richter's only response was, "Have you ever tried to get a motion scheduled in Charleston County?" He apparently believed, or must have known, that his friend would schedule motions for him promptly, which she in fact did.
18. Nothing in the public record demonstrates that there was ever a delay or difficulty in getting motions heard in Charleston County when the cases were pending there. In fact, what the record shows is that class counsel failed to file motions that should have been filed and heard in the cases before they were transferred to Dorchester County as part of the deal between the lawyers.
19. Apparently as part of the deal, the parties then set about on a course of conduct to mislead the court in Charleston County and transfer the already settled cases to Dorchester County, where in one of her first official acts in the cases, instead of questioning why settled cases were being refiled in her court, Judge Goodstein signed an Order declaring the cases as complex and assigning exclusive jurisdiction of them to herself.
20. At no time while the cases were pending in Charleston County did class counsel seek designation of the cases as complex or certification of the class pursuant to Rule 23 SCRPC.

21. In effectuating the transfer of the cases, the lawyers filed cases in Dorchester County on behalf of the clients who had already settled their cases in Charleston County. Then, two months later, they provided Consent Orders of Dismissal to a Judge in Charleston County to dismiss the still pending Charleston County cases. There is nothing in the public record that indicates that the Bishop or the lawyers ever alerted the judge in Charleston County that the cases were settled OR that they had already been refiled in Dorchester County. There is also nothing in the public record that indicates that class counsel complied with Rule 23 SCRCF to show to the court how the rights and interests of the absent class members were not adversely affected by the dismissal of the cases.
22. This is interesting in light of time entries for The Richter Law Firm which show that a Consent Order to Change Venue was worked on but apparently never presented to a judge. These time entries were used, however, as part of the time submitted to justify the unreasonable \$2.5 million fee.
23. Judge Goodstein tentatively approved the class settlement in January, 2007. She did so in spite of the fact that the class representatives were not proper representatives in that their claims were already settled, and they would not have to subject themselves to the arbitration process that all other class members were compelled to engage in after surrendering all rights of review and appeal. She merely put the court's imprimatur on the deal that had been struck between the Bishop, his lawyer and his Extraordinary Minister, Attorney Larry Richter, prior to the cases being moved from Charleston to her court, without any serious analysis or judicial oversight.
24. Notice that was provided to absent members was not adequate. Notice was published only in South Carolina papers, in spite of representations by class counsel that it would be

nationwide. Providing notice only to South Carolina residents ignores the reality, and the Bishop's own experience, that many victims of his priests' sexual deviancies move out of South Carolina. Judge Goodstein did not order any notice outside of South Carolina.

25. In fact, in the known record, there is not a single instance of Judge Goodstein taking issue with any aspect of the deal. Further, when significant errors and deficiencies were brought to her attention by way of proper objections to the deal, she responded by punishing the lawyer who filed them and his clients, even though the objections resulted in material and beneficial changes to the class.

26. In response to the material changes to the class settlement brought about by the objections, class counsel always responded that the deficiencies were 'scrivener's errors'.

27. The only time Judge Goodstein expressed any concern at all about the deal was when she ordered a solicitor to conduct an investigation regarding a document that was brought to her attention from the Diocese's files. It was an opportunity for her to utilize her judicial authority to insure that a fair and thorough investigation was conducted on behalf of the victims in this matter. In the end, however, she was satisfied when the solicitor reported back that he had spoken with someone in Massachusetts and with the general counsel of the Bishop, Attorney Peter Shahid, who as mentioned above had already been involved in trying to move a pedophile priest back into active ministry, and was to be transferred to another part of the country. Such a woefully inadequate investigation should not have been countenanced by this Judge. But, she apparently was satisfied and got the deal back on track.

28. It is not known at this time how many claimants entered into the arbitration process, or how much their total awards were, but the end result is very curious, and apparently the

Bishop, the lawyers, and the arbitrator, will say entirely coincidental. From a total potential pool of \$12 million, the \$2.5 million attorneys' fee and approximately \$100,000 in costs was paid first. The Diocese entered into a separate agreement with some of the objectors' counsel (negotiated by the undersigned) to resolve their claims outside of the class action process for a total of \$1.4 million.¹ So, the arbitrator, who mediated the original agreement, and who also mediated the side agreement with the objectors, knew that anything over \$8 million total to the claimants would require the Bishop to go back to Rome for more money to pay the side agreement with the objectors. He knew this was an issue of great concern for the Bishop. At the end of the arbitration process, while the exact amount of awards is not known, it is "very close to the limit, very close" according to the arbitrator. It may be a coincidence, but it certainly is a convenient one for the Bishop, his lawyer and his Extraordinary Minister.

29. It is interesting that all activity has now come to a halt in this class action case even though it was 'days away' from conclusion in February and a final proposed Order was reportedly submitted to Judge Goodstein in March. Apparently the parties and Judge Goodstein are waiting for the unrelated objectors' case pending in Charleston County to be transferred to this court before concluding the class action. The Diocese and its lawyer have filed a motion to have that case transferred to this court, and Judge Goodstein has made inquiry as to why that case is not in her court.

¹ The Bishop and his lawyer have refused to abide by this settlement and have required these objectors to file litigation in Charleston County to enforce the settlement. That agreement specifically provides that the monies to fund that settlement are not part of the \$12 million pool, but the Bishop did hope to use surplus funds from the \$12 million in that case. So, it was in his interest to have the class claimants' total awards not exceed \$8 million. Interestingly, the Bishop and his lawyer have filed a motion to have that case moved from Charleston County to Judge Goodstein's court in Dorchester County. That motion is currently pending. The undersigned is counsel of record in that case.

30. The rights of the class members, except for the class representatives, have been adversely impacted by this collusion between the Bishop, his lawyer and his Extraordinary Minister. Many victims who participated in the claims process were dissatisfied with the awards, but they had to relinquish any appeal or review rights before they could make a claim.
31. All of the above is clear evidence that something very disturbing is at the very heart of this 'deal'. An independent review of all of the above should be undertaken prior to any final orders being signed in this matter.
32. SCVAN does not seek to undo the financial compensation to the victims who have received it. Rather, it seeks to have the court determine a more reasonable fee for class counsel and to distribute the balance, once disgorged, to the victims on a *pro rata* basis, or to be used to compensate any additional victims who might come forward as a result of reasonable notice to absent members. Further, the Diocese should be compelled to pay the balance of the \$12 million pool to the victims. Justice requires nothing less.

WHEREFORE, THE PETITIONER SCVAN seeks *amicus curiae* status with this court to further develop and point out serious problems with 'The Deal', and the handling of it by the judge who took exclusive jurisdiction of the case for her personal friend. At a minimum, the following should occur prior to Judge Goodstein signing any more Orders or taking ANY further action in this matter:

1. Judge Diane Goodstein should recuse herself from this matter immediately;
2. A different Circuit Court Judge should appoint substitute class counsel, or at least a guardian for the victims, to review all of the matters pointed out herein and take all appropriate steps to protect the interests of the victims who have been

adversely impacted by this collusive deal struck between the Bishop and his Extraordinary Minister;

3. Notice should be given nationwide about this deal so that all interested absent class members can participate if they choose to;
4. The victims who have already participated in this deal's arbitration process should be given actual notice of the irregularities set forth herein so they may seek legal counsel, other than the Bishop's Extraordinary Minister, to be advised about their rights;
5. The lawyers presently at or formerly at The Richter Law Firm, specifically Larry Richter and David Haller, should self report themselves to the Office of Disciplinary Counsel for their unethical billing practices and for collusion;
6. Attorney Peter Shahid should self report himself for turning a blind eye to the unethical billing practices of The Richter Law Firm, for failing to fulfill his mandatory reporting obligation under the Rules of Professional Conduct, and for collusion;
7. Judge Goodstein should self report herself to the Commission on Judicial Conduct, a panel of which she is a member;
8. The balance of the \$12 million settlement pool should be paid into an escrow account free of the control of the Bishop, his Extraordinary Minister, or anyone else affiliated with this deal.;
9. Class counsel should disgorge all of the \$2.5 million fee it received and it be placed into an escrow fund free of the control of the Bishop, his Extraordinary

Minister, or anyone else affiliated with this deal, until an independent analysis may be done and a more reasonable fee awarded;

10. The entire claims process should be subjected to an independent review, including the matrix which was utilized to determine compensation to the victims, which was the product of the collusion between the Bishop, his lawyer and his Extraordinary Minister;
11. The claims process should be reopened and notice given nationwide so other victims may learn of it and participate in a modified process if they so choose;
12. If any of the \$2.5 million attorneys' fee is determined to be excessive, those funds should be distributed to the victims in the class on a *pro rata* basis;
13. Such other relief and participation as the court may grant to this *amicus*.

RESPECTFULLY SUBMITTED,



David Flowers, SC Bar # 15072
P.O. Box 8359
Greenville, SC 29604
864-421-0036

Attorney for Petitioner SCVAN

Date: June 19, 2008

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF DORCHESTER)

John Doe #53, John Doe 66, John Doe) Case Nos. 06-CP-18-1310
 66A, John Doe 67, Jane Doe 1, Jane Doe) 06-CP-18-1311
 2 and Rachel Roe individually and as) 06-CP-18-1636
 representatives of a class of people)
 similarly situated,)

Plaintiffs,)

v.)

NOTICE OF MOTION AND MOTION
 TO ENFORCE SETTLEMENT

The Bishop of Charleston, a Corporation)
 Sole, and The Bishop of the Diocese of)
 Charleston, in his official capacity,)

Defendants.)

**TO: THE PLAINTIFFS ABOVE NAMED AND TO THE DEFENDANTS ABOVE
 NAMED AND ALBERT P. SHAHID, JR., THEIR COUNSEL**

YOU WILL PLEASE TAKE NOTICE that the Primary and Consortium Classes, by and through their undersigned class counsel, will move, in ten (10) days before the Honorable Diane S. Goodstein at the Dorchester County Courthouse, or at such other time and place as the Court deems proper, for an order pursuant to SCRCP Rule 43(k) enforcing the settlement in this matter against the Diocese of Charleston as to certain potential class members. Potential class members John Doe 1, John Doe 2, Jane Doe 4 and John Doe 10 assert they did not receive notice of the settlement prior to the close of the claims period because they lived outside of South Carolina but they were entitled to notice because they were members of either the Primary or Consortium class. Class counsel are informed and believe these individuals are entitled to participate in the class settlement process under the terms and conditions of this Court's Orders approving settlement and enforcing the same, which orders are dated July 30, 2007 and August

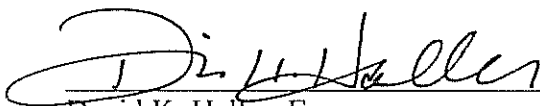
31, 2007. Class counsel prays the Diocese be ordered to open the claims process for these potential claimants.

Alternatively, class counsel asserts that if these potential claimants were not within the scope of the court's notice scheme, then they were not members of either class and not entitled to notice. Class counsel requests that the Court interpret its prior orders to determine the standing of these potential claimants to participate in the settlement process.

In addition, class counsel request that the Court approve a mechanism by which potential class members may bring claims in the settlement process by a showing that he or she was in the group of individuals to whom the Diocese was to provide notice, but failed to so do.

This motion will be based upon such affidavits and other documents as may be filed and served and the law in such cases made and provided.

Respectfully submitted,



David K. Haller, Esq.
Email: dhaller@hallerlawfirm.com
Haller Law Firm, LLC
115 River Landing Drive, Suite 102
Charleston, SC 29492
Phone: (843) 849-1834

ATTORNEYS FOR PLAINTIFFS AS
MEMBERS OF THE CLASS

April 16th, 2012

Charleston, South Carolina

State of South Carolina

In The Court of Common Pleas

John Does' #66 #66a
Case# 2005-cp-10-2053 et al
V
Bishop of Charleston et al

RECORD
2016 MAY 11 PM 2:14
CHIEF CLERK
DORCHESTER COUNTY

County of Dorchester
For The 1st Judicial Circuit

2006
Case # ~~2005~~-cp-18-1310
Case # ~~2005~~-cp-18-1311
2006

Motion for Post-Award Fairness Hearing

I have sent a copy of this motion to both Dorchester County and Charleston County, for Judge Nicholson. I don't know where these cases belong now. Some cases from the class action have been assigned to Judge Nicholson . According to the Clerk of Court in Charleston County, said cases have not been consolidated.

I am the person identified as John Doe #66 (SEE ATTACHMENT) in the civil action filed in Charleston County as 2005-CP-10-2053. My name is listed in the mediation agreement that apparently became a class action in these cases, which remain open. I am a member of the class and a class representative, and was formerly represented by Mr. Lawrence Richter and his law firm, until they abandoned me. He is not representing me now. The class action has not had a post-award fairness hearing. I did not know that until recently. The class action remains an open case.

In any post-award fairness hearing class counsels fee should be reviewed in regard of the actual class recovery as well as the orders approving his fee. It is my understanding that class council took more money than the court authorized him to take from victims of child spiritual/sexual abuse. No court has reviewed that allegation.

Class counsel stopped looking out for my best interest as a class member a long time ago. If needed the court should hire a trustee attorney, Desa Ballard, who appears to be familiar with the class action.

If not her then then someone else to advise the court and PROTECT the interests of the class. I am not a lawyer and can not accomplish that. I can only tell the

court that there has never been a post-award fairness hearing. It appears that the fees exceeded the \$2.5 million approved by orders of the court. Any unauthorized monies should go to the class members as well as victims who did not get notice of the class action.

The amount of the attorney fees should also be viewed in light of actual benefit to the class members.

This review should also consider the number of victims deliberately excluded by Lawrence Richter and his firm.

CONCLUSION

A post-award fairness hearing should be made of the class action settlement and class counsels fee.

Respectfully submitted,

5-11-16

CLERK OF COURT
DORCHESTER COUNTY

EXH. #1

General Terms of Settlement:

1. PARTIES Agree to create settlement class, subject to Court approval of:

- ① ACTUAL VICTIMS OF DOMESTIC ABUSE
- ② SPOUSAL &/or Parent claims deriving from victim abused

2. Class Settlement Fund will be for \$12,000,000 FUNDED AS FOLLOWS:

- ① \$3,000,000 by Letter of Credit, subject to Bank's willingness to issue. With a further obligation to procure additional Letter of Credit with \$7,000,000 limits once the \$5,000,000 Letter of Credit has been drawn down to \$1,000,000.

3. DETAILS of claim process in settlement class action shall be developed & include a payment matrix based on nature & severity of claims.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

John Doe #66

v.

The bishop of Charleston, a Corporation Sole, and
The Bishop of the Diocese of Charleston, in his
official capacity

CASE NO.: 2005-CP-10-2053

John Doe #66A

v.

The bishop of Charleston, a Corporation Sole, and
The Bishop of the Diocese of Charleston, in his
official capacity

CASE NO.: 2005-CP-10-3293

John Doe #53

v.

The bishop of Charleston, a Corporation Sole, and
The Bishop of the Diocese of Charleston, in his
official capacity

CASE NO.: 2005-CP-10-4913

IN THE COURT OF COMMON PLEAS
THE NINTH JUDICIAL CIRCUIT

Settlement Agreement

*See Terms
Attached on
E+H. #1*

CLERK OF COURT
DORCHESTER COUNTY
MAY 11 PM 2:14
RECORDED

In a mediation conducted on this _____ day of _____, 2006, the above named parties agreed to the following terms:

1. _____ shall pay to _____ \$_____.
2. Plaintiff/Respondent will execute a general release dismissing all claims on account of the matters raised in the above captioned lawsuit;
3. Plaintiff/ Respondent will cooperate in having a dismissal with prejudice entered by the court; and
4. The parties shall split the mediation fees _____.

By: _____

(Print Name)

Re: _____

Dated: _____

By: _____

(Print Name)

Re: _____

Dated: _____

EXHIBIT " 4 "

(12)

4. Court shall be asked to approve attorney's fee for class counsel at between \$950,000 + \$2.5 million, subject to Defendant's obtaining credit to secure the obligation.

5. Mr. _____ * shall be paid _____

Mr. _____ * shall be paid _____

Mr. _____ * shall be paid _____

Mr. _____ * shall be paid _____

* COLLECTIVELY paid \$460,000 to be divided among the 4 gentlemen above after accepted an agreed to.

6. If the Court fails to approve settlement class +/or provision of class settlement, the compromise settlement with the individuals in "5." above shall not be executed & shall proceed to settlement in the amount set out in "5." above with appropriate general releases +/or drafts with prejudice executed in favor of defendant.

~~Class settlement is approved~~

(3)

7. These terms are in the form of an offer by Defendants & shall be acted upon with reasonable promptness by Plaintiff/Claimants named in "5." above.

James DeLoe, Attorney

ON BEHALF OF DEFENDANTS

Attorney in and with authority of the
Superior of Charleston

June 14, 2006

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO. 2006-CP-18-1310
		2006-CP-18-1311
		2006-CP-18-1636
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	)	
representatives of a class of people	)	
similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
The Bishop of Charleston a corporation	)	
Sole, and The Bishop of the Diocese of	)	
Charleston, in his official capacity,	)	
	)	
Defendants.	)	
	)	

Response to Join 2016 Motion by John Doe 66
For Post-Award Fairness Hearing and,
Pursuant to SCRCP 23(d) to Appoint New Counsel for the class

Class members Julie McDonald and Richard McDonald join the 2016 motion by class representative John Doe 66 for a post-award fairness hearing and move for such a hearing in their own regard, after a reasonable period for discovery.

This class action litigation has never been concluded, let alone properly concluded, despite a 2009 order of the South Carolina Supreme Court that should have concluded it in 2009. No review has yet been made by any court of the propriety of the conduct of class counsel in the class action and in implementing the class action settlement. Substantial evidence that class counsel breached their duties to the class has been discovered by the McDonald class members.

Class counsel is plainly conflicted in representing the best interest of the class. Not only does John Doe 66 allege that he is no longer being represented by class counsel and was

“abandoned” by class counsel, he alleges that class counsel charged fees not authorized by any court order, meaning in excess of the \$2.5 million fee awarded by the court, and deliberately excluded class members, an excess fee allegation the McDonalds can confirm. The McDonalds join those allegations and can confirm that unauthorized fees were charged each of them..

As documents reflect, each of the McDonalds was charged by class counsel a 20% fee over and above the court-awarded fee for class counsel, and each was charged that fee without any disclosure that class counsel had already been awarded, and paid, both the \$2.5 million fee awarded by the court and a contingent fee never disclosed to the court.

No order authorized the 20% additional fee charged the McDonalds.

Additionally, it is now known that class counsel and the Diocese cooperated to (a) judge-shop, to move class action approval from Charleston County judges to a Dorchester County judge with long social ties to class counsel, (b) made substantial misrepresentations of fact to gain class settlement approval, (c) proposed implementing the settlement so as to place class counsel’s personal financial interests ahead of those of the class, (d) accelerated class counsel’s fee award ahead of any benefits being paid to class members, and (e) withheld from the circuit court that the Diocese had already paid to class counsel (in November 2006) a contingent fee for class counsel’s work on the individual cases encompassed within the class action for those later designated as class representatives.

The time records submitted to the circuit court to support class counsel’s fee request were not only inherently fraudulent (with many days in excess of 24 hours) but were almost entirely fraudulent in that nearly all of the time submitted in support of the fee award had already been paid for by a contingency fee payment from the Diocese for the individual cases which led to the

mediate class settlement in 2006. That payment was made by the Diocese on November 20, 2006, yet was never disclosed to the circuit court.

Among other things, a post-award fairness hearing should require class counsel to disclose all fees charged class members, to be assessed in light of the actual recovery by class members and the orders which governed class counsel's conduct. The total sum charged class members without any supporting order is conservatively estimated to exceed \$900,000, without regard to the fraud accompanying the \$2.5 million fee. Documents reflect that Julie McDonald, for example, was charged a fee of \$4,000, representing 20% of the payment obtain for her through the class settlement, but no disclosures were made to her about class counsel's conflicts of interest, the collusion in the class action, or of the fees already paid to class counsel (either the contingent fee that had been paid of the court-awarded fee that had been paid).

Discovery will gather additional information about the breach of duties by class counsel and the fraud on the court. Among the proof we expect to be able to present in a post-award fairness hearing so the court may review, for the first time, the collusive conduct involved in moving the class settlement to a shopped-for judge, the misrepresentations made to get the class settlement approved, the misrepresentations made to get the fee approved, and the actual performance of class counsel in implementing the class settlement are the following facts that are now known:

1. The class action settlement (reached in June 2006) was collusive, having been reached seven months after the class action was originally filed (in December, 2005, in Charleston) without a single motion decided or a single deposition having been taken. Instead, it was the product of an October 2005 meeting in which class counsel proposed to his own Bishop a class action as a means of "obtaining universal peace"

for the Diocese for sexual abuse claims, a secondary priority after the first priority of the class settlement: the fee obtained for class counsel. As opposed to a proper object of a class action: for class counsel to obtain a maximum recovery for sexual abuse victims. No class action has been filed prior to that meeting with the Bishop.

2. After the June 2006 class settlement was reached, the colluding parties ignored SCRCP 23 and judge-shopped so as to transfer class settlement approval away from Charleston County judges (where the class action case was pending and resolved) to move the class settlement oversight to a particular judge in Dorchester County, a judge with long personal and professional ties to class counsel. The shopping process is partially reflected in the public record.
3. That desired circuit judge agreed to be shopped-for by the parties to the collusive class settlement.
4. Reflecting the collusion of the class settlement, no publication to the class ever informed class members of (a) the collusive origin of the class action, (b) the collusive agreement to judge-shop to select the circuit judge willing to be shopped-for to oversee the class settlement, (c) class counsel's life-long ties to the Diocese, (d) class counsel's ongoing functions for and on behalf of the Diocese (even during the class action) as "Extraordinary minister" (the phrase used by class counsel), (e) class counsel's allegiance to, and deference to, the Bishop of the Diocese at the expense of the class they purported to represent, (f) the priority that class counsel's allegiance held over and above the interests of the class members, (g) that class counsel had already been paid a contingency fee for work done for the four individuals deemed class representatives in the 2006 class settlement, (h) that class counsel participated in

a separate settlement process in which objectors to the class action got better settlement terms than did class members, or (i) that class counsel or his clients contributed \$100,000 to fund those better settlement terms for objectors to the class action.

5. By order of October 17, 2006 the court designated the action as complex, and assigned the matter to herself.
6. Further reflecting the collusion of the class settlement, the class was never informed that (according to class counsel), between October 2006 and January 2007 the Bishop objected to giving nationwide notice to the class members who lived outside of South Carolina, saying (according to class counsel) that the proposed nationwide notice was “too expensive.” The notice originally proposed was newspaper advertising once a week for six weeks nationally (via *USAToday*) and locally in newspapers in and around South Carolina. According to class counsel, when the Bishop objected to nationwide notice, class counsel accommodated his “adversary,” at the expense of the out of state class members class counsel represented, by agreeing to eliminate notice that would run outside of South Carolina as originally proposed in the form of notice to be published each week over a six-week period in *USAToday*.
7. Eventually, after misrepresentations to the court by the Diocese and class counsel as to how class members who got no notice would be treated, the notice program was further reduced, by agreement, from publication over a six-week period to publication over a three-week period.
8. No notice to the class ever informed class members that class counsel deliberately disadvantaged class members to accommodate a request of class counsel’s Bishop.

9. Also reflecting the collusion of the class settlement, no notice to the class ever informed the class members of the conflict of interest represented by class counsel's ties to the shopped-for judge.
10. Class oversight and approval by the court was falsely implied to be an independent process when it was not.
11. By order signed January 19, 2007, the shopped-for judge ordered that the class settlement was "preliminarily approved, subject to the objection period and Fairness Hearing as set out in this order." The fairness hearing referred to in that order was held in March 2007, and additional orders in July and August 2007 concluded issues which arose from that March Fairness Hearing. After the August 2007 order the class action settlement was authorized to proceed, and a modified notice was published to the class.
12. In February 2007 class counsel submitted blatantly false and inflated records of time and expenses supposedly incurred in representing the class. In those records class counsel claimed many "workdays" on behalf of individuals later identified as class representatives which exceeded 24 hours and at times exceeded many multiples of 24 hours.
13. Reflecting the parties' collusion, the Diocese made no opposition to the blatant fraud in class counsel's time records.
14. Reflecting the judge-shopping process and the collusion of the parties, the shopped-for judge made no review of the blatant fraud within those time records, even after it was explicitly pointed out to her by proposed intervenors and objectors to the class action.

15. Class counsel submitted an expert's affidavit that contained material false statements of fact.
16. Reflecting the parties' collusion, the Diocese made no objection to those material false statements of fact.
17. Reflecting the judge-shopping process and the collusion of the parties, the shopped-for judge made no review of the material false statements in the expert's affidavit, even after those false statements were explicitly pointed out to her by proposed intervenors and objectors to the class action.
18. The colluding parties fraudulently withheld from the shopped-for judge that in November 2006, more than three months before class counsel submitted a claim for fees in the class action, class counsel was paid by the Diocese (by check 42982 dated November 20, 2006) a contingent fee of \$145,000, and a separate check (number 42983 on the same date) for \$345,000. Those two checks represented the settlement of all claims brought by the four class representatives identified in the 2006 mediated class settlement. Class counsel referred to these payments as the "initial settlement disbursement," but they are not included in the accounting of the class action funds.
19. Neither of those payments was ever disclosed to the shopped-for judge overseeing the collusive class action, or the class members, even though the time spent on the claims for those four class representatives constituted the vast majority of the time submitted through the fraudulent time records for the class. In other words, the colluding parties never disclosed to the shopped-for judge (or the class) that nearly 100% of the time submitted in support of class counsel's fee request in the collusive class action was time for which class counsel had already been paid a contingent fee.

20. No time by class counsel prior to November 21, 2006 was properly included in any fee award request.
21. A copy of each of the November 2006 checks is an attachment to this motion.
22. In other words, class counsel submitted a claim for fees for work done on the class action when (a) the time records submitted were inherently fraudulent and (b) was time for time for which class counsel had already been paid a contingency fee for work done on behalf of the four individuals who became class representatives for purposes of the class settlement.
23. Class counsel and the Diocese committed a fraud on the court and breached duties to the class members by failing to disclose that class counsel's fee request for \$2.5 million was a near 100% replication of time for which counsel had already been paid through the contingent fee for the claims of four individuals identified in the class settlement as being class representatives.
24. No notice to the class ever informed the class of the February 2007 fee requested by class counsel. Instead, before any notice was sent, class members were given only an eight-day period during which they had to discover, without notice, (a) that a class action was pending, (b) that they might be in the class, (c) that a fee had been requested, (d) obtain from the clerk of court the documents associated with the fee request, (e) discover the collusion associated with both the class settlement and the fee request itself (despite its fraudulent concealment by class counsel), and (f) prepare and file with the court written objections to the fee request.
25. Similarly, after the fee was awarded, no notice to the class published the fee that had been awarded.

26. As noted above, the fairness hearing associated with the court's preliminary approval order of January 19, 2007 was held in March, 2007.
27. Without comment from the Diocese about the blatantly fraudulent time records of class counsel, and without any disclosure of the contingent fee that had already paid for class counsel's time, the blatantly fraudulent time records were accepted by the shopped-for judge and class counsel was awarded a fee of \$2.5 million.
28. That fee was paid to class counsel not after final distribution of funds to class members and a post-award review of class counsel's performance in implementing the court's orders. Instead, class counsel was paid first, in September 2007, before the notice period of the class action had even begun, before a single class member had been identified, before any class member had submitted a claim, and before any class member had been awarded relief.
29. Class counsel's highest and first priority for the class action was class counsel's fee and, as actually occurred, a multiple fee recovery.
30. Class counsel's second priority for the class action was class counsel achieving "lasting peace" to protect his Bishop and Diocese.
31. Class counsel's third priority for the class action was contributing \$100,000 to help fund better settlement terms for those who objected to aspects of the class action, which is why class counsel provided no notice to the class which disclosed either class counsel's funding of those better settlement terms or the better terms themselves. Ach would have disclosed class counsel's breach of duty to the class.
32. Class counsel's fourth (or lower) priority was providing a recovery for class members.

33. The shopped-for circuit judge failed to protect the class members from class counsel's use of the class action to serve class counsel's own interests rather than serving the interests of the class members.
34. In addition to the undisclosed \$145,000 contingency fee and the fraudulently awarded \$2.5 million fee, class counsel charged each of the McDonalds, and apparently every other class member represented by class counsel, an additional fee of 20%.
35. No order from the shopped-for judge authorized that additional fee.
36. The McDonalds were charged that unauthorized additional fee in February 2008.
- Only within the last three years have the McDonalds learned of the fraudulent concealment by class counsel of information that should have been disclosed to them in 2008.
37. Before charging that fee of the McDonalds, class counsel failed to disclose either (a) the \$145,000 contingency fee that had already been paid in November 2006, (b) that the contingency fee paid for nearly all of the time class counsel then submitted for the court awarded fee, (c) that a \$2.5 million fee had been awarded and had already paid to class counsel in September 2007, (d) that no order authorized an additional fee to be charged the McDonalds (or any other class member), (e) that class counsel and the Diocese had colluded in the class settlement, in judge-shopping, and in withholding the contingent fee payment information from the shopped-for judge, (f) that class counsel had substantial conflicts of interest due to his life-long and ongoing affiliation with, and his functioning on behalf of, the Diocese, or (g) that class counsel had contributed \$100,000 to fund settlement terms for objectors better than class counsel achieved for class members.

38. As a matter of law, class counsel holds in constructive trust for the class members all fees paid. “If the class representative or class counsel breaches the fiduciary duties he assumes and receives and retains benefits flowing from the breach, he holds what he receives upon a constructive trust for the class.” *Premium Investment Corp. v. Green*, 324 S.E.2d 72, 76 (S.C. App. 1984). Class counsel breached fiduciary duties to the class members in obtaining an unjustified \$2.5 million fee, in charging unauthorized additional fees, and in funding superior settlement terms for class action objectors.
39. As noted above, the unauthorized fee charged the McDonalds and other class members appears to exceed \$900,000. All funds improperly awarded class counsel, whether from the fraudulently induced \$2.5 million fee award or the unauthorized fees charged, should be identified and disgorged to benefit the class members, including out of state class members.
40. No notice to class members ever informed the class that persons who objected to the class settlement received settlement terms more favorable than the terms for class members.
41. No notice to class members ever informed the class that class counsel was present for, and participated in, discussions that led to objectors receiving settlement terms superior to those of the class members.
42. No notice to class members ever informed the class that class counsel or his class representative clients paid \$100,000 towards funding the better terms received by persons who objected to the class settlement.
43. In March 2009 the South Carolina Supreme Court ordered the class action to be concluded by September 2009.

44. That Supreme Court order was ignored by class counsel, by the Diocese, and by the shopped-for circuit judge. Ignoring that order was a breach of class counsel's duty to the class and the parties colluded in ignoring that order so as to insulate the class action from appellate review.
45. Either some special criteria apply that permits orders of the Supreme Court to be ignored under certain circumstances, in which case the bench and bar would benefit from knowing about each such criteria or circumstance; or alternatively, any post-award fairness hearing should require class counsel, the Diocese and the shopped-for judge to account for why the Supreme Court's order was ignored, as well as why no request for an extension of time was made to the Supreme Court, as the Supreme Court's March 2009 order required.
46. The McDonalds have learned less than three years ago of these breaches of duty by class counsel and others involved in the class action settlement.

A post-award fairness hearing should be conducted under authority of SCRCP 23. To date, a class representative's motion in 2016 for a post-award fairness hearing has been ignored by the clerk of court. It has never been scheduled for a hearing.

This motion joins that 2016 motion by one of the class representatives for a post-award fairness hearing to be scheduled after discovery is complete.

Under SCRCP 23, no class action should ever be resolved without a review of whether parties have colluded in a class settlement. No such review was done of the parties' collusion in this class action settlement. No class action should ever omit a post-award review of whether parties have colluded in a class settlement, or whether class counsel has implemented a class settlement consistent with the orders approving of and authorizing such a settlement. SCRCP

23(d) authorizes the court to make appropriate orders “at any time” to “fairly and adequately protect” the class members.

Because this class action has never been concluded, because the collusion associated with it has been concealed, and because no such review of class counsel’s conduct has ever occurred for this class settlement, there has been no way for class members such as the McDonalds to detect that the parties to the class settlement colluded in the settlement, or that class counsel has served their own financial interests above those of the settlement classes they undertook to represent, or that fraud has been committed by class counsel on the court and duties owed by class counsel to the class were breached, or if any other aspect of Due Process has been denied.

No judge is presently assigned to the class action. To permit a period of discovery and to hold a post-award fairness hearing, a circuit judge must be appointed and assigned to the class action to replace the judge most recently assigned to the class action, who has retired.¹ New counsel should be appointed to represent the interests of the class members, as class counsel has extensive conflicts of interest with respect to the settlement classes and has committed a fraud upon the court and breached duties to class members. This motion seeks in part to mitigate the damage done by class counsel to the class they purported to represent.

For purposes of any post-award fairness hearing a new judge must be appointed by the Supreme Court. The circuit court clerk of court should provide a copy of this motion to the Supreme Court. As reflected in the footnote above, any new circuit judge appointed cannot be

¹ That now-retired judge had replaced other judges who, in turn, had been assigned the class action after the shopped-for judge recused herself from further proceedings in the class action in 2013. No reason was stated for the recusal. In case it does not go without saying, the shopped-for judge should not be appointed for this task, whether or not the unstated basis for the recusal remains present. Nor should present counsel for the McDonalds be considered for new counsel appointed for the class, as potential conflicts with the class could exist.

the judge originally shopped-for as she recused herself from the class action in 2013. A new judge should be assigned.

Notice of this motion and the 2016 motion filed by John Doe 66 should be ordered to be provided by class counsel to each class member and each class member should be provided time to evaluate the pending motions and to participate in discovery. Only after those steps should a hearing be scheduled to assess that colluding parties in a class action committed a fraud on the court and breached duties to class members.

Discovery will seek to compel class counsel to disclose precisely the extent of the breach of duties to class members by compiling all unauthorized fees, any writings sent to the class or class members by which class counsel claims the classes were informed of any of (a) the \$2.5 million in fees already paid class counsel, (b) the \$100,000 contributed to fund better settlement terms for those who objected to the class settlement, (c) the \$145,000 already paid to class counsel in 2006 for the time involved in the claims of four individuals including the class representative, (d) all time which was falsely submitted to the court in support of the \$2.5 million fee request but which had already been paid for by the \$145,000 payment in November 2006, (e) the judge-shopping associated with removing the class settlement from judicial oversight in Charleston County and moving that oversight to the shopped-for judge desired in Dorchester County, (f) the deliberate change to the notice program which disadvantaged out of state class members at the request of class counsel's Bishop, (g) paying the fee to class counsel before class counsel had implemented any part of the class settlement, (h) paying the fee to class counsel without any meaningful review of that fee request by any member of the class, and (i) all sums charged to individual class members.

Pursuant to SCRCP 23(d), unauthorized or improperly awarded fees should be ordered disgorged to benefit the class members, including to benefit persons who reside out of state who were abandoned by collusive conduct of class counsel.

Conclusion

A new circuit judge should be appointed by the SC Supreme Court to be responsible for the class action and the pending motions. New counsel should be appointed to represent the interests of the class. This motion and the motion filed in 2016 by John Doe 66 should be sent to each person who participated in the class action.

After a reasonable period for discovery, a post-award fairness hearing should be scheduled under authority of SCRCP 23. The entire class action settlement should be reviewed. The monetary extent of class counsel's financial misconduct and breach of duty as to the classes should be ascertained, as should the collusion by class counsel and the Diocese in the class settlement, the fraud on the court associated with the class action, and the breaches of duty to the class perpetrated by class counsel and the extent of participation in those breaches by the Diocese. All funds resulting from any of the various breaches of duty should be disgorged to the court and disbursed to benefit members of the class, including persons who reside out of state. Other sanctions should be awarded as appropriate.

Respectfully submitted,



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Attorney for the McDonalds

August 28, 2022

Look for: yellow background on the front of this check, and the imageSafe® logo on back. If not present, do not cash.

DIOCESE OF CHARLESTON
FINANCE OFFICE
1662 INGRAM RD.
CHARLESTON, SC 29407

42983

67-448/539 SC
2961

PAY TO THE ORDER OF Richter & Haller LLC - Client Trust Accounts DATE 11-20-06

DIOCESE OF CHARLESTON 345,000.00 DOLLARS 345,000.-

Bank of America

FOR [REDACTED] John Z Barker
Ann Marie Ruggieri MP

04 2983

Look for: yellow background on the front of this check, and the imageSafe® logo on back. If not present, do not cash.

DIOCESE OF CHARLESTON
FINANCE OFFICE
1662 INGRAM RD.
CHARLESTON, SC 29407

42982

67-448/539 SC
2961

PAY TO THE ORDER OF Richter & Haller, LLC DATE 11-20-06

DIOCESE OF CHARLESTON 145,000.00 DOLLARS \$ 145,000.-

Bank of America

FOR [REDACTED] John Z Barker
Ann Marie Ruggieri MP

04 2982

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO. 2006-CP-18-1310
		2006-CP-18-1311
		2006-CP-18-1636
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	)	
representatives of a class of people	)	
similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
The Bishop of Charleston a corporation	)	
Sole, and The Bishop of the Diocese of	)	
Charleston, in his official capacity,	)	
	)	
Defendants.	)	
	)	

Amended Offer of Proof With Attachments to Restore the Court's Record
And Memorandum in Support of Motions to Intervene
and For Post-Award Fairness Hearing

At the status conference held November 23, 2022 the court indicated that the clerk of court does not appear to have a complete file in this case, or even all of the orders. To provide the court basic documents that may be missing and also to explain more fully both why the McDonalds seek to intervene and why after the scheduled January 27, 2023 hearing a post-award fairness hearing should be scheduled, we attach, in chronological order, extensive attachments to this memorandum so the documents are both part of the record and are explained in context to orient the court.

The few attachments that are specific to the McDonalds are identified by letter labels, Exhibits A and B. Attachments to briefly explain the history of the case and to populate the court file are identified with number labels, starting with Attachment 01. All attachments referred to

were filed with the original memorandum in support, and are incorporated in this amended memorandum.

Class counsel claims that undersigned counsel's persistence concerning the issues from this class action stem from some vague and unsubstantiated personal motivation of undersigned counsel. That is entirely denied. We believe the court will see that genuine issues are present: of collusive conduct during the class action, of unprofessional conduct (such as judge-shopping, submitting patently fraudulent billing records, as well as withholding information from the court and clients), and of conflicts between class counsel and the class. Class counsel's interests were, and are, adverse to those of John Doe 66, the McDonalds, and to all other class members.

None of those issues has ever been addressed on the merits. They should be. Undersigned counsel's persistence is due entirely to various clients who continue to be adversely affected by the conduct of class counsel and the Diocese.

A Short History and Basic Facts of the Case, with Attachments for a Proffer

We proffer that we can prove the following narrative.

As reflected in Attachment 01, On May 12, 2005, a complaint was filed in Charleston County for John Doe 66 against the Diocese for his childhood sexual abuse. That complaint was amended in June 2005 (Att. 02). In August 2005 another complaint against the Diocese was brought on behalf of John Doe 66A. (Att. 03). Neither of those complaints made any class allegations.

In October 2005 the parties met ("we met with the Bishop," class counsel claimed, Att. 20, p. 23, ¶ 17) to explore a class settlement for "obtaining universal peace," as class counsel put it (Att. 04, October 2005 letter from class counsel). No class complaint was then pending. In

December 2005 a class complaint was filed, naming John Doe 53 as class representative of “victims of priest sex abuse.” (Att. 05, p. 1). No motion was filed for class certification.

The parties met again in early January 2006 to further discuss a class settlement (Att. 06 January 2006 letter from class counsel).

The court has been told the class action was contentious and hard fought. Yet without a single motion having been heard¹ or a single deposition having been taken, and within seven months of filing the class action complaint, in June 2006 the parties reached a class settlement in mediation (Att. 07, redacted for public filing).

At that point, if not before, the collusive conduct began.

When the settlement was reached in June 2006, three cases were then pending, all in Charleston County, as noted above. The 2006 handwritten settlement, Att. 07, refers to each of those three cases at p. 1. No sexual abuse case by class counsel was pending in Dorchester County or anywhere else.

One term of the 2006 settlement was that the claims of four individuals to be designated as class representatives would be ended for \$460,000 even if the class settlement was not approved (Att. 7 p. 3). More on that below.

SCRCP 23 requires any class settlement be approved by the court. Rather than submit the class settlement for approval, the parties agreed to judge-shop, so as to move the class settlement process away from judges in Charleston County to Judge Goodstein in Dorchester County.

The method of judge-shopping chosen for the June 2006 class settlement was to file in August 2006 in Dorchester County two new sex abuse class actions. Those cases (nos. 2006-CP-

¹ As the Charleston County public court docket reflects, each time the court scheduled motions for hearing the parties requested, and got, continuances.

18-1310 and -1311) were filed in August 2006 (they are Atts. 08² and 09, respectively).

Reflecting agreement with this method of judge-shopping, the Diocese both accepted service (Att. 10) and filed no motion to dismiss due to a prior pending action under SCRCP 12(b)(8).

Communications began with Judge Goodstein not later than August 21, 2006 (e.g., Att. 20 at p.66). Then the John Doe 53 class complaint (Att. 05), which had been pending in Charleston since December 2005, and which was part of the 2006 class settlement (Att. 07 at p. 1), and which was still pending in Charleston, was re-created, identical but for the county designation, and re-filed in October 2006 as a Dorchester County class action complaint (*compare*, Att. 05 with the identical-in-substance Dorchester County version at Att. 11). As a result, the same class action was pending in two counties. The same day the “cloned” John Doe 53 complaint was filed in Dorchester County, class counsel filed a motion to certify the classes and approve the class settlement (Att. 12). At p. 3, ¶ 3.a., that motion proposes the class be notified by nationwide publication via *USA Today*.³

Again, the Diocese made no motion under SCRCP 12(b)(8) even though the identical case was pending, and settled, in Charleston. To have done so would have defeated the purpose of shopping for Judge Goodstein.

² Counsel’s copy of this pleading appears to be missing page 6. The court will recall that at the start of the recent status conference John Doe 66 reported that class counsel had sent him mail for John Doe 66A, so asked if Doe 66A was a family member or a relation of his, a question class counsel refused to answer. It is a fair question. In Att. 03 at p. 1, Doe 66A is described as an adult abuse victim. No connection to Doe 66 is alleged. In Att. 08 at p. 1, ¶ 2, the plaintiff Jane Doe 2 is alleged to be “the wife of John Doe #66,” but in the order at Att. 19 at p.2 the plaintiff Jane Doe 2 is described as “the wife of John Doe 66A.” There is no reason class counsel cannot clarify for John Doe 66 the confusion created by these public documents and class counsel’s mailing to him a communication for John Doe 66A.

³ As discussed below, the nationwide notice to the class via *USA Today* was later removed.

On October 17, 2006, Judge Goodstein entered her first order, a consent order declaring the three cases complex, consolidating them, and assigning them to herself (Att. 13). The same day, class counsel wrote to the administrative judge in Charleston County (Judge Jefferson) to submit “proposed consent orders to dismiss” without prejudice the three cases that had been filed in 2005 in Charleston and settled in 2006 (Att. 14). Judge Jefferson was told nothing about a class settlement having been reached or the proceedings that had begun in Dorchester County after the class settlement had been reached. Those orders were entered.

The process of shopping for Judge Goodstein was complete, and the parties thereafter have consistently misrepresented, as has already been misrepresented to Your Honor, that the class action cases began in 2006 in Dorchester County.⁴

On November 20, 2006, the Diocese sent two checks to class counsel (Att. 15), one for \$345,000.00 (payable to the firm’s trust account) and one for \$145,000.00 (payable to the firm), to fulfill the mediation agreement (Att. 07 at p. 3) that claims of four individuals would be resolved even if the class settlement was not approved. Later, after the handwritten class settlement reached in the 2006 mediation (Att. 07) was typed up and submitted to the court in January 2007, the list of individuals whose claims were “released and these settlement funds will be paid by the Diocese regardless of whether the class certification and settlement are approved by the court” (Att. 17, p. 12, ¶ 4), had increased (obviously, by agreement) from four to seven and the sum involved had increased from \$460,000 to \$550,000. *Id.*

Pertinent to these proceedings, the \$145,000 fee payment to class counsel at Att. 15 was never disclosed to the court, a concealment obviously agreed to by the Diocese. Nor is that

⁴ Knowing whether this judge-shopping method is acceptable is useful for bench and bar.

November 2006 payment included in the 2008 accounting of how the class funds were disbursed (Att. 28, p. 1). Nearly all of the time submitted in 2007 as part of the attorney fee claim made in the class action (Att. 20), was the time involved in the four individual cases settled as reflected in the 2006 class settlement (Att. 07), for which the contingency fee payment had been made in 2006.

The 2007 motion submitting the typed version of the handwritten 2006 class settlement is Att. 16. The typed Agreement itself is Att. 17. We attach them separately for ease of discussion, and we begin with Att. 17, the typed settlement agreement rather than the motion to which it is attached.

In the fourth line from the top of page 2 of Att. 17 the three 2005 Charleston case numbers are listed explicitly as included in the class settlement. In paragraph 1 on p. 2 the two settlement classes are defined without geographic limitation. Meaning that neither the members of the “Primary Class” nor those of the “Consortium Class” was restricted to South Carolina residents. Each of the McDonalds resided out of state and were members of the “Consortium Class.”

The 2007 Agreement (Att. 17) refers to the 2006 mediation (at p. 3), sets out an arbitration process to determine sums to abuse victim claimants (at p. 4) and stipulated a \$20,000 payment for each of the “Consortium Class” members (at p. 5), such as the McDonalds. At p. 11, the agreement provided that “all costs associated with management of the class shall be paid from the settlement fund,” which included costs incurred by class counsel.⁵

⁵ Nevertheless, class counsel charged costs to the McDonalds, as Exhibits A and B reflect, and presumably similarly charged every other class member.

On pages 12-13 the agreement provided a type of “clear sailing” agreement, the Diocese agreeing to a range for court-awarded attorney’s fees to class counsel if the class settlement was approved. That fee was to pay for the work done by “plaintiffs’ counsel (past and future)” and “the work past and future and their role as class counsel.”⁶

Added by the parties between the 2006 handwritten agreement and the January 2007 Agreement at Att. 17 was ¶ 6.B, starting at p. 13 of Att. 17, which elevated the attorney fee over the payments to class members. The provision made the fee to class counsel fixed (once it was determined) and the recovery to class members variable, to be reduced *pro rata* should the class members recover too much.⁷ Also added by the parties was ¶ 6.C on p. 14, a reverter clause which returned to the Diocese any funds which remained after claims were paid. Each is an indicator of presumptive unfairness. E.g., *Briseno v. Henderson*, ____ F.3d ____, 2021 WL 2197968 (9th Cir. June 1, 2021); *Sylvester v. Cigna Corp.*, 369 F. Supp. 2d 34 (D. Me. 2005).

As noted above, the typed class settlement agreement was attached to an amended motion for class certification (Att. 16, the original 2006 motion being Att. 12). At page 2 of Att. 16, that 2007 motion claims the class action began in 2006 with “June 30, 2006” filings by John Doe 67, Jane Doe 1, Jane Doe 2 and Rachel Roe, affirmatively misstating the 2005 Charleston County filing history (Atts. 01, 02, 03, and 05), the 2006 mediated class settlement (Att. 07), and even the 2006 Dorchester County filings which, as the file-stamps on Atts. 08 and 09 show were filed August 15, 2006. The motion also claims, falsely (at p. 2), that Johns Doe 53, 66 and 66A “were

⁶ Nevertheless, class counsel charged a 20% fee of the McDonalds, as Exhibits A and B reflect, and presumably charged the same of every other class member, while collecting 10% for those claimants who had separate counsel..

⁷ Whether class counsel may make the attorney fee the highest priority of a class action, and may do so at the expense of class claimants, is useful for bench and bar.

subsequently added to the case,” when in fact the cases for those Charleston plaintiffs were the first filed and were the basis of the 2006 class settlement. It is the Dorchester County cases that were the ones “added.” Persistently misrepresenting to the court how the class settlement came about is presumably to obscure the judge-shopping done after the 2006 settlement was reached with only Charleston County cases pending.

As noted above, the notice proposed in the amended motion (Att. 17 p. 3) omitted the nationwide notice originally proposed through *USA Today* (Att. 12 at p. 2).⁸ Due to the reverter clause and the “fee priority” provision added to the class settlement between June 2006 and January 2007, each of class counsel and the Diocese had an economic interest in reducing the number of claimants. As Judge Dickson found, about one-quarter of the claimants were, like the McDonalds, residents of a state other than South Carolina. (Att. 38 at p. 4).

At p. 3 the motion sought approval for a two-stage approval process for the class settlement, described as “conditional approval” and then a “final approval of the settlement after notice to the class.” The post-award fairness hearing requested by John Doe 66 and by the McDonalds is not for purpose of again reviewing the class settlement structure but to review the conduct of class counsel in implementing the court’s orders, particularly the fee charged by class counsel in light of the result *actually achieved* for class members and how the court’s orders were *actually* implemented. No review of how class counsel implemented the orders issued concerning the class settlement, or the fees actually charged by class counsel, has been made. Only a review after a *full* accounting can determine if the court’s orders were followed.⁹

⁸ During a 2014 hearing in a related matter, class counsel represented to the court that they will testify that the nationwide notice was removed at the request of the Bishop.

⁹ Courts routinely use multiple hearings to consider the results actually achieved in approving class settlement as well as attorney fee requests. E.g., *Sylvester v. Cigna Corp.*, 369 F. Supp. 2d 34 (D. Me. 2005) (three fairness hearings held before the court rejected a proposed settlement

As discussed below, it appears the McDonalds (and other class members) were charged a fee which no order authorized, and were charged that fee without the full and proper disclosures required.

On January 18, 2007 Judge Goodstein issued an order related to matters addressed in a December 20, 2006 status conference (Att. 18). We provide that order in case the clerk has failed to preserve it, but we believe it has no bearing on the issues now before the court.

On January 23, 2007 Judge Goodstein issued an order granting the motion to certify the classes: “the proposed settlement agreement is preliminarily approved *subject to the objection period and Fairness Hearing* as set out in this order” (Att. 19 at p. 1, emphasis added). As reflected in Att. 19 at p. 3 n. 2, the Diocese took no position on class certification. As preliminary approval was subject to the fairness hearing to be held, the January approval did not begin the claims process. The fairness hearing that was part of the preliminary approval process was set for March 9, 2007, and notice of that hearing was ordered to run once a week for six weeks. (Att. 19 at p. 8).

On February 14, 2007 class counsel filed a Petition for Attorneys Fees (Att. 20), claiming many days of work in excess of 24 hours, among other issues.¹⁰ As noted above, the motion did

due to clear sailing and reverter provisions); *Carlin v. DairyAmerica, Inc.*, 380 F. Supp. 3d 998 (E.D. Cal. 2019) (class settlement after nine years of litigation preliminarily approved in 2018, then following notice to the class, objections and claims received, a final review in 2019 considered and approved disbursements and an attorney’s fee in light of actual performance of class counsel); *N.R. v. Raytheon Co.*, Civil Action 1:20-cv-10153-RGS (D. Mass. Sep. 21, 2022) (final fairness hearing set in 2023 after 2022 approval of notice and claims are processed so attorney fee request will be considered in light of actual class recovery); *1988 Tr. for Allen Children v. Banner Life Ins. Co.*, 28 F.4th 513, 523-24 (4th Cir. 2022) (February 2020 fairness hearing adjourned to allow an objector to do discovery, then resumed in May 2020).

¹⁰ Some states disbar or suspend lawyers who submit bills of more than 24 hours in a day. E.g., *Lawyer Disciplinary Board v. Tyson*, No. 20-1027 (W.Va. November 3, 2022) (disbarred); *Lawyer Disciplinary Bd. v. Grindo*, 842 S.E.2d 683 (W. Va. 2020) (2 year suspension); *Iowa*

not disclose the November 2006 contingent fee payment even though nearly all time submitted was for work within the cases for which the contingent fee had been paid.

Once written objections had been received, class counsel on March 1, 2007 proposed certain modifications to the settlement agreement to accommodate certain of the objections (Att. 21).

The fairness hearing was held March 9, 2007. Judge Goodstein took under advisement the issues from the Fairness Hearing.

On July 13, 2007 Judge Goodstein issued two consent orders between class counsel and the Diocese: one related to a motion to compel (Att. 22), and another order disclosing her “long social history” and professional connections to class counsel (Att. 23). The class was never informed of either class counsel’s lifelong conflicts of interest with the Diocese (including his functioning on behalf of the Diocese during the proceedings, and his many friendships with priests of the Diocese,¹¹ partially disclosed in Att. 20 at pp. 21 – 22, ¶¶ 14 - 15) or of the connections with Judge Goodstein.

Supreme Court Attorney Disciplinary Bd. v. Meyer, 944 N.W.2d 61 (Iowa 2020) (one year suspension); *Iowa Supreme Court Attorney Disciplinary Bd. v. Mathahs*, 918 N.W.2d 487 (Iowa 2018) (60 day suspension); *In re Disciplinary Proceedings Against Awen*, 211 Wis. 2d 172 (Wis. 1997) (90 day suspension); *Disciplinary Proceedings Against Kravat*, 193 Wis. 2d 152 (Wis. 1995) (disbarred); *People v. Walker*, 832 P.2d 935 (Colo. 1992) (90 day suspension). Class counsel claims their billing program estimated “the entire time” on a given matter, rather than the time spent on a given day, an explanation contradicted by the time records themselves.

Whether South Carolina permits billing more than 24 hours in a day, or use of a program that bills more than 24 hours in a day or records time on invented dates such as “February 30,” is useful for bench and bar.

¹¹ Class members might rightfully wanted to know if class counsel was friends with any of the 42 priests which were disclosed by the Diocese in 2019 as having been credibly accused of sexual misconduct. (https://www.postandcourier.com/news/diocese-of-charleston-releases-names-of-42-sc-priests-accused-of-sexual-misconduct/article_eb1ec7d0-525c-11e9-b7c6-a7c2ba4ed5bb.html, last visited December 5, 2022).

On July 30, 2007, Judge Goodstein issued an order concerning the fairness hearing and the objections raised during that hearing (Att. 24, at p. 1). The court approved the settlement (Att. 24 at pp. 11-12) and ordered a shortened notice period (reducing the six weeks requested in the motion to three weeks), to begin in ten days. (Att. 24 at p. 12). Nationwide notice was not ordered, nor did the court address the changes to the proposed notice program (reducing both the time of notice and geographic reach of notice).

Based on the inflated time records submitted, and without regard to the *actual* benefit obtained for the class, or the reverter clause in the settlement, or the *pro rata* reduction for claimant awards in deference to the fee, or of the change to delete nationwide notice, or the undisclosed conflicts of class counsel, the court awarded class counsel a \$2.5 million fee. Consistent with the motion seeking the fee, the order stated it was for time expended as well as “additional time expended, and to be expended, since that time and in carrying out the terms of the settlement.” (Att. 24 at p. 14). The fees were to be paid in ten days (Att. 24 at p. 15), before notice was given to the class and before the claims process had even begun.¹²

Objectors moved the court to alter or amend its order of July 30, 2007. Notice to the class and the claims process awaited disposition of that motion.

On August 30, 2007, objectors to the class settlement reached a separate settlement with the Diocese (Att. 25 at pp. 5 - 6), which class counsel agreed to partially fund.

On August 31, 2007 Judge Goodstein incorporated that agreement into an order and concluded the preliminary approval process that had begun with the January order (Att. 19). The

¹² The fee was based on a \$12 million benefit to the class, but that \$12 million was never realized. As the 2008 accounting shows, the sum actually distributed to claimants (Att. 28 p. 6) was \$7,615,000. The McDonalds and other class members were charged additional fees not authorized and not disclosed, which is among the reasons why *actual* implementation of the court’s orders should be fully disclosed and reviewed.

August 31 order authorized the class settlement agreement to proceed with notice and the claims process. (Att. 25). Class counsel contends this order is “final approval,” as if court oversight then ends. The McDonalds contend the order was merely “the end of the beginning” (to quote Churchill), the last step in the preliminary approval process that began with the January order (Tr. 19) subject to the Fairness Hearing held in March. But the McDonalds also contend that the label is meaningless, as the court “at all times, remains a fiduciary of the class,” *Sharp Farms v. Speaks*, 917 F.3d 276, 293 (4th Cir. 2019), obligated to protect the class, even from class counsel if orders have not been faithfully implemented.

Among the things not disclosed to the McDonalds, or to the class, was that “Mr. Richter and/or his clients” (Att. 25 at p. 6) had agreed to contribute \$100,000 to fund settlement terms reached with objectors to the class action.

On September 4, 2007, class counsel was paid the \$2.5 million fee by wire. (Att. 28 at p. 2).

On September 10, 2007, Judge Goodstein filed an August 29 order *nunc pro tunc* appointing Desa Ballard as “a consultant and assistant to the judge,” (Att. 26), tasked with investigating the undersigned counsel for his having represented objectors.

Nothing came of that investigation.

On October 28, 2007, Judge Goodstein signed a consent order authorizing the rate of hourly payment for Ellison Thomas, the CPA who served as escrow agent of the class fund, Ellison Thomas (Att. 27).

In December 2007 the period for class members to make claims ended.

In February 2008 the arbitrations took place for the class claimants and awards were made by the arbiter. Apparently, distributions were made, and residual funds reverted to the Diocese, without further court approval.

On March 10, 2008 the accounting at Att. 28 was submitted to Judge Goodstein, but was never acted upon. It was neither approved nor denied. In this long interim while waiting for final approval, SCRCF 23(e) has changed the obligations regarding the reverter clause, a change which has also never been considered.

It is now known that the 2008 accounting is incomplete, inaccurate, and misleading. It does not show the additional 20% fees charged the McDonalds (or other class members) by class counsel, or the 10% fees charged by class counsel for those class members who engaged other lawyers. It does not show the contingency fee payment we now know was made by the Diocese in 2006 to class counsel. In that regard the accounting misrepresents and understates the fee paid to class counsel. Nor were any of those payments or class counsel's conflicts disclosed to the McDonalds, as their previously filed statements reflect. Or to anyone else in the class. These are among the reasons why the court should permit a period of focused discovery.

On April 28, 2008, class counsel paid \$100,000.00 from the firm's trust account to the Diocese to help fund settlement with objectors to the class action (Att. 29, redacted). That payment also does not appear on the accounting for the class action, and it has not been disclosed if that payment was made and in what proportion by class counsel, or clients.

The Diocese failed to make payment as it had agreed in the separate settlement with the objectors, and an action was brought in Charleston County to enforce that agreement. The case was transferred to Judge Goodstein, even though objectors had opted out of the class and their

agreement with the Diocese was independent of the class action. In February 2009 Judge Goodstein issued an order in that action (Att. 30).

On March 19, 2009 the South Carolina Supreme Court declined to assert its original jurisdiction in a related case brought over issues with the class action and ordered the class action be closed in six months (Att. 31). That order required that any extension to the six-month deadline to close the class action could be granted only by the Supreme Court.

On March 23, 2009, Judge Goodstein issued another order in the related litigation that had been transferred to her from Charleston County and which had been made part of the class action (Att. 32).

On April 15, 2009, counsel then representing the Diocese sent to Judge Goodstein a consent order of dismissal for the class action that had been signed by class counsel and counsel for the Diocese (Att. 33). As with the 2008 accounting, Judge Goodstein took no action on that consent order of dismissal and the parties were content for her to take no action. By the September 2009 deadline set by the Supreme Court neither class counsel nor then-counsel for the Diocese sought an extension from the Supreme Court. The Supreme Court's deadline was simply ignored.

In April 2012 class counsel moved to enforce the class settlement and clarify the geographic scope of the class action (Att. 34).

On January 24, 2013 Judge Goodstein recused herself "from hearing any further matters" in the class action (Att. 35). No reason was stated.

On April 30, 2013, the Supreme Court assigned Judge Kinard to the class action (Att. 36).

As Judge Dickson explains in his December 17, 2013 order (Att. 38, p. 4, n. 1), despite the order assigning Judge Kinard to the class action, class counsel's 2012 motion had come to Judge Dickson as Resident Judge after Judge Goodstein recused herself. On June 17, 2013, Judge Dickson entered an order in the class action permitting certain information to be shared with an insurer (Att. 37), and on December 17, 2013 entered another (Att. 38), which found the class was not limited to only South Carolina residents. It does not appear Judge Kinard issued any order during his tenure.

In January 2014 the South Carolina Supreme Court decided *Doe v. Bishop*, 754 S.E. 2d 494 (S.C. 2014), a related case concerning adequacy of class counsel's representation of out of state class members who had received no notice. The court remanded the case to permit further proceedings¹³ but the circuit court would not permit the deposition of class counsel.

As noted above, in an April 10, 2014 hearing before Judge Nicholson in a related case, class counsel represented to the court that their testimony will be that the reason nationwide notice was removed from the class action was because the Bishop objected to nationwide notice, a fact of significance not because the McDonalds got no notice but because the explanation is yet another example of collusive conduct.¹⁴

Judge Kinard passed away in May 2015. On June 12, 2015 the South Carolina Supreme Court appointed Judge Nicholson to the class action (Att. 39).

¹³ *Doe v. Bishop*, 754 S.E.2d 494, 501 (S.C. 2014):

Should appellants establish on remand that they were denied due process owing to lack of notice or because of inadequate representation in the class action proceedings, and that the statute of limitations was tolled, they may proceed to further prosecution of their claims.

¹⁴ The Bishop disputed class counsel's claim. These and other transcripts can be made available, but it is the orders that govern this proceeding.

On May 11, 2016, John Doe 66 moved for a post-award fairness hearing, alleging issues about class counsel's conduct (Att. 40). That motion has never been scheduled, heard, or ruled upon.

In 2020, Judge Nicholson retired, having issued orders in a number of related cases but apparently no orders as to the class action.

In April 2021 the South Carolina Supreme Court assigned certain related cases to Judge Cole, but clarified that he was not assigned to the class action.

In August 2022 the McDonalds joined the Doe 66 motion for post-award fairness hearing and moved to intervene.

On November 10, 2022 Your Honor was appointed by the South Carolina Supreme Court to "hear and dispose of" the class action.

The McDonalds contend that if permitted to intervene and perform limited discovery for a post-award fairness hearing that the record will show collusive conduct and improper conduct by class counsel, including improper charges to class members. As fiduciary of the class, the court is authorized at any time by SCRCP 23 to issue orders to protect the class.

The McDonalds' Motion to Intervene.

How the orders in the class action were actually implemented by class counsel has never been reviewed. The McDonalds have moved to intervene, and have joined the motion by John Doe 66 for a post-award fairness hearing so that such a review can finally occur.

Intervention is discretionary with the court. *Ex parte GEICO*, 644 S.E.2d 699, 701 (S.C. 2007) ("The decision to grant or deny a motion to join an action pursuant to Rule 19, SCRCP, or

intervene in an action pursuant to Rule 24, SCRCP, lies within the sound discretion of the trial court.").

SCRCP 24 is to be liberally construed. *Berkeley Electric Coop. v. Mt. Pleasant*, 302 S.C. 186, 189 (S.C. 1990) ("We interpret the rules to permit liberal intervention . . ."). To support intervention of right under SCRCP 24(a), a movant must show:

(1) establish timely application; (2) assert an interest relating to the property or transaction which is the subject of the action; (3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and (4) demonstrate that its interest is inadequately represented by other parties.

Berkeley Elec. Coop., Inc. v. Town of Mt. Pleasant, 394 S.E.2d 712, 714 (S.C. 1990).

1. Timeliness. John Doe 66 moved for a post-award fairness hearing in 2016 (Att. 40). His motion has never been scheduled, heard or ruled on. The McDonalds' motion is timely, and will assist the court in getting this never-closed case concluded while protecting the interests of the class given that class counsel's interests are, and for some time have been, adverse to the class.

2. The McDonalds' interest related to the subject of the action. In the pending motion from John Doe 66 he alleges that he is a class representative, was abandoned by class counsel, is no longer represented by class counsel, and "It is my understanding that class counsel took more money than the court authorized him to take from victims of child spiritual/sexual abuse. No court has reviewed that allegation."

The misconduct allegations by the McDonalds are more specific than the general allegations of John Doe 66, although as the fiduciary of the class the court should consider all allegations in any post-award fairness hearing. The McDonalds participated in the class action and were each charged by class counsel a 20% fee and costs, as reflected in Exhibits A and B.

No order authorized that fee charged to the McDonalds, and the existing orders allocated costs to be paid by the class fund, not by the McDonalds or any other claimant.

The March 2008 “accounting” (Att. 28) conceals unauthorized fees and costs charged to the McDonalds and other class members. Discovery should be permitted to discover those unauthorized charges so they can be refunded to the class members. The only fee Att. 28 shows as paid to class counsel is the \$2,500,000.00 fee awarded by the court, paid September 4, 2007 by wire transfer. The accounting does not disclose, or account for in any way, any of (a) the 2006 contingency fee payment made by the Diocese to class counsel (Att. 15), or (b) the additional fees charged class members (such as the McDonalds) by class counsel that no order authorized (Exhbits A and B), or (c) the \$100,000.00 paid by “Mr. Richter and/or his clients” (Att. 25 at p. 6) to fund better settlement terms for persons who opted out of the class settlement (Att. 29). That 2008 accounting is incomplete and misleading in significant respects. No court has reviewed the way class funds were *actually* distributed.

Using the misleading 2008 accounting, and considering only the 20% additional fee class counsel charged the McDonalds and all other class members attributed to class counsel,¹⁵ an unauthorized fee in excess of \$1 million was collected by class counsel (\$1,070,999.99 to be exact). Considering all undisclosed fees paid to or charged by class counsel, the total fee charged by class counsel appears to have been not less than 51% of the \$7,615,000.00 distributed to class claimants. Limited discovery and a post-award fairness hearing can consider the evidence

¹⁵ Meaning we ignore for the moment the additional 10% charged by class counsel for those class members represented by other counsel when they split the 20% unauthorized fee (an additional \$142,000 in unauthorized fees to class counsel also not in the accounting), or the \$145,000 contingency fee payment.

supporting these allegations and can refund the improperly charged fees to the class members improperly charged.

3. Consequences if intervention is denied. Without intervention by the McDonalds these claims as to the misconduct in the class action will never be considered, just as they have not been considered to date. If the McDonalds are not permitted to present the issues to the court in this context, where the court is a fiduciary of the class and SCRCP 23 authorizes the court to remedy any misconduct it finds, the claims cannot be reached for the class. Otherwise, if they cannot present these claims in this action then the McDonalds can bring only their individual claims for their being overcharged by class counsel and without proper disclosures.¹⁶

In *Premium Investment Corp. v. Green*, 324 S.E.2d 72, 76 (S.C. App. 1984), the Court of Appeals held (emphases added, internal citations omitted):

a Plaintiff who sues on behalf of a class ***and the attorney representing the class assume a fiduciary obligation to absent members of the class, including the obligation to inform them*** of proposed compromises of the group action. * * * If the class representative ***or class counsel breaches the fiduciary duties*** he assumes and receives and retains benefits flowing from the breach, ***he holds what he receives upon a constructive trust*** for the class. * * * This is true although the benefit received by the class representative is not at the expense of the class. Under no circumstances will the fiduciary be permitted to profit from a breach of his duty as fiduciary.

Under *Premium Investment*, by operation of law the benefits invoked by the allegations of the McDonalds and of John Doe 66 are held by class counsel in trust for the class. That trust continues

¹⁶ Presently, the McDonalds are parties in a federal case before Judge Gergel with John Doe 305, an out of state resident who got no notice. The case alleges their individual claims for malpractice and breach of fiduciary duty against class counsel and other claims against the Diocese for aiding that breach. In this context, the McDonalds and Doe 66 raise issues common to all class members, which could at least partially mitigate their damage. The implications of the 2016 amendment to SCRCP 23(e), for example, which should apply to this never-closed class action as to the reverter clause and the residual fund the class settlement created, and the undisclosed fees for all class members cannot be addressed in any other context.

as the case has never been ended. SCRCP 23(d)(2) and SCRCP 23(d)(3) each authorize the court to protect class members “at any time” by appropriate orders and the court has its own fiduciary obligations to protect the class, even from class counsel. The unauthorized fees charged class members by class counsel, a sum in excess of \$1 million, should be refunded to each class member. The class funds distributed without any authorizing order from Judge Goodstein (or any other judge) should be ordered restored to benefit the class and the provisions of SCRCP 23(e) should be complied with as to the reverter clause.

No court has reviewed how class counsel implemented the orders for the class action settlement and how the residual funds of this never-closed class action complied or failed to comply with SCRCP 23(e). Before the McDonalds, class counsel concealed from the court the extra 20% attorney fee charged class members and the contingency fee payment the Diocese made in 2006. Given the class representative’s pending motion for a post-award fairness hearing, the best use of judicial economy is not separate suits by the more than 100 class members to address class counsel’s improper and undisclosed charges made against class members but a post-award fairness hearing concerning the sums improperly charged and paid, all of which are held in trust as a matter of law. The court can review the conduct of class counsel and the Diocese and issue orders correcting any misconduct or errors in implementing the court’s orders.

Class counsel has been more than amply rewarded with the court’s \$2.5 million fee award, given that class counsel’s fee was based on patently fraudulent time records (Att. 20) and given that all parties concealed from the court the 2006 contingency fee payment to class counsel (Att. 15). “Additional” fees are not properly charged or properly earned. Both intervention and judicial review are warranted.

4. Inadequate representation without intervention. The McDonalds are not adequately represented by class counsel. Nor have they or any other class member been adequately represented by class counsel since not later than June 14, 2006, the latest date after which the collusive conduct began if it had not begun at the inception of this settlement class when class counsel met with the Bishop to discuss a class action settlement before the first class action was filed. Particularly when class counsel and the Diocese changed the settlement to provide (in January 2007) that class counsel's fee took priority over payments to class claimants (Att. 17, p. 13, ¶ 6B) (payments to class members to be reduced *pro rata* if funds are insufficient after the fees are paid).

The McDonalds possess documents (Exhibits A and B) which infer that every class member (other than those who the 2008 accounting reflects proceeded *pro se*) has the same interests adverse to class counsel. The inherent conflict means class counsel cannot possibly represent the class. As fiduciary of the class, the court should order that the class members be informed of the claims made by Doe 66 and the McDonalds, the fees improperly charged, the substantial conflicts of class counsel and his ties to the Diocese and friendships with any of the 42 priests who engaged in sexual misconduct. Nor can class counsel present class member claims in a post-award fairness hearing. Someone other than class counsel or counsel for the McDonalds should be appointed to represent the interests of the class.

Intervention under SCRCP 24(a) should be permitted.

Alternatively, intervention should be permitted under SCCP 24(b). Permissive intervention is authorized under SCRCP 24(b) when a timely application is made and "an applicant's claim or defense and the main action have a question of law or fact in common."

As set forth above, the McDonalds' request is timely. And there are multiple questions "of law or fact in common" with the way this class action was conducted and the issues raised in the pending motions by John Doe 66 and the McDonalds. The McDonalds' claims are both more specific, and more comprehensive, than those of John Doe 66 as to the misconduct of class counsel in the class action, and should be heard on the merits.

The motion to intervene should be granted. Once granted, the court should schedule a post award fairness hearing and provide a brief time for focused discovery including a full and accurate accounting, the deposition of class counsel as to the collusive conduct, the fraudulent information submitted to the court, the fees and payments not disclosed to the class, counsel's substantial conflicts of interest with the Diocese, and the information withheld from the court.

Conclusion

The motion to intervene should be granted at the hearing set for January 27, 2023. After it is granted, a short period of focused discovery should be permitted before the motion for post-award fairness hearing is heard so class counsel can be compelled to disclose to the class, among other things, the actual implementation of the court's orders, the actual disclosures they contend were made to class claimants, the actual fees charged by and paid to class counsel, the conflicts class counsel has with the Diocese and his friendships with priests, the actual time worked on the cases which comprised the class action, the time paid for by the contingency fee payment, the actual benefits paid to class claimants, and so the court can review the impact of the present SCRCP 23(e) as to the residual fund.

Respectfully submitted,

s/ Gregg Meyers

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Certificate of Service

I certify that counsel in this action have been served this document via the court's efile system, and that Mr. Sires has been served by his @icloud.com email, a method to which he had agreed.

s/ Gregg Meyers

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Attorney for the McDonalds

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	Civil Action Nos.: 06-CP-18-1310
		06-CP-18-1311
		06-CP-18-1636

JOHN DOE #53, JOHN DOE 66, JOHN DOE 66A, JOHN DOE 67, JAN DOE 1 AND JANE DOE 2 AND RACHEL ROE, individually and as representatives of a class of people similarly situated,

Plaintiffs,

vs.

THE BISHOP OF CHARLESTON, a Corporation Sole, and THE BISHOP OF THE DIOCESE OF CHARLESTON, in his official capacity,

Defendants.

**OPPOSITION TO FILING SUBMITTED
BY ALAN SIRES**

Defendants Bishop of Charleston, a Corporation Sole, and the incorrectly named ecclesiastical office The Bishop of The Diocese of Charleston, in His Official Capacity (“the Diocese”), move to dismiss the pleadings filed by Alan Sires, who has filed petitions for a “post award fairness review” and has submitted additional filings that are unclear in what relief Sires seeks. Having fully resolved all claims against the Diocese in 2007, Sires has no standing before this Court and is not entitled to be heard on any matter.

FACTUAL BACKGROUND

Sires was one of the named plaintiffs in the 2006-2007 class action against the Diocese of Charleston, and he represented the class of victims of sexual abuse. In June of 2006, the parties to that suit agreed to settle the case on a class-wide basis. The class action settlement agreement was submitted to the Court for class certification and approval. On January 23, 2007, the Court granted

preliminary approval of the settlement and certified the settlement class. On July 30, 2007, the Court entered an Order approving the settlement agreement. On August 31, 2007, Court entered a supplemental Order that simply clarified certain issues identified by class members and their counsel. These orders approving the class settlement are final orders and judgments.

As part of the class-wide settlement, the Diocese paid \$100,000 to settle Sires' claims. The settlement was approved by the Court, although resolution of Sires' individual claims would not otherwise have required court approval. The claims process proceeded; the arbitration hearings went forward; the arbitrator made awards to the claimants; and the settlement funds were disbursed by the escrow agent. In 2009, a final accounting was provided to Judge Goodstein.

Now, some sixteen years later, Sires seeks reopen the class action case and have the Court reexamine claims that have long since been resolved and released. Yet, this is not the first time Sires has sought to interject himself into litigation involving these parties. Sires has unsuccessfully pleaded for leave to intervene in the following cases:

- *John Doe 245, et al. v. Bishop of Charleston, et al.*, 2015-CP-10-5486.
- *John Doe 297 v. Bishop of Charleston, et al.*, 2016-CP-10-1632.
- *John Doe 193 v. Bishop of Charleston, et al.*, 2016-CP-10-1632.
- *John Doe 194 v. Bishop of Charleston, et al.*, 2013-CP-10-4176.
- *John Doe 432 v. Bishop of Charleston, et al.*, 2019-CP-10-1120.

Having failed in his efforts to intervene in other plaintiffs' cases to seek the same relief he purports to seek here, Sires then went so far as to file a separate case – *John Doe 79 v. Bishop of Charleston*, 2021-CP-2491. That case was dismissed on a motion to dismiss pursuant to Rule 12(b)(6), SCRCp.

Sires has nothing about which to complain and has no standing to seek additional review of the matter he settled long ago. Sires' petition should be dismissed because he is barred by the principles of accord and satisfaction. The elements of an accord and satisfaction are an agreement between the parties to settle a dispute, and the payment of the consideration that supports the agreement.¹ Sires' settlement falls squarely within the elements of an accord and satisfaction. He cannot obtain any relief in derogation of his settlement now.

Additionally, Sires' petition should be dismissed because his claims are subject to a judgment of the Court and he is bound by that judgment. Any objection to his own settlement should have been raised in 2007 and not now. Sires signed his settlement agreement and accepted the funds promised. He simply cannot complain now and has no standing before the Court to challenge his own settlement.

CONCLUSION

Plaintiff has previously litigated and fully settled all his claims against the Diocese of Charleston. Because of his agreement, Sires has no standing to attack and up-end the long-concluded settlement. As a result, Sires' petition once again fails as a matter of law and the Court should not hear him on any matter.

Signature on following page

¹ *Wilson v. Builders Transp., Inc.*, 330 S.C. 287, 297, 498 S.E.2d 674, 680 (Ct. App. 1998).

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANT BISHOP OF
CHARLESTON, A CORPORATION SOLE**

January 23, 2023
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	Civil Action Nos.: 06-CP-18-1310
		06-CP-18-1311
		06-CP-18-1636

JOHN DOE #53, JOHN DOE 66, JOHN DOE 66A, JOHN DOE 67, JAN DOE 1 AND JANE DOE 2 AND RACHEL ROE, individually and as representatives of a class of people similarly situated,

Plaintiffs,

vs.

THE BISHOP OF CHARLESTON, a Corporation Sole, and THE BISHOP OF THE DIOCESE OF CHARLESTON, in his official capacity,

Defendants.

OPPOSITION TO MOTION TO INTERVENE

Bishop of Charleston, a Corporation Sole and the improperly named ecclesiastical office of “the Bishop of the Diocese of Charleston, in his official capacity” (collectively “Diocese”) opposes the motion to intervene filed by Julie and Richard McDonald and John Doe 305. In particular, the parties settled this action in 2007 and the claims process concluded in 2008. The South Carolina Supreme Court’s Order dated March 19, 2009, instructing that this matter be concluded by September, 2009, is self-executing, and this matter has been closed for nearly fifteen years. As such, there is no pending case in which petitioners can intervene – even if such were possible or advisable.

Second, there is no procedure under Rule 23 permitting or commanding courts to engage in something called a post-award fairness review. Proposed intervenors’ remedy simply does not

exist. The procedure suggested by petitioners should not be engrafted on Rule 23 at all and especially should not be invented out of whole cloth and applied to a case that is long over.

Systemic and procedural problems notwithstanding, what proposed intervenors ultimately seek is a wholly impermissible court-ordered reworking of the class action settlement agreement – to reallocate money that is no longer available, to redirect that money to persons who did not make claims within the period established by Judge Goodstein’s orders, and to reform the class action along terms to which the parties did not agree and that Judge Goodstein did not approve. The requested, and untimely, collateral attack on Judge Goodstein’s judgments in 2007 is in no way a proper allocation of Rule 24, SCRCP.

I. PROPOSED INTERVENORS SEEK NOTHING LESS THAN TO LAUNCH AN IMPERMISSIBLE COLLATERAL ATTACK ON THE JUDGMENTS OF THE CLASS ACTION COURT THAT WERE ENTERED MORE THAN FIFTEEN YEARS AGO.

A. Factual Background -- The 2007 Class Action Settlement.

It is indisputable that class counsel and the Diocese executed the class action settlement in accordance with the terms of the class action settlement agreement and the Circuit Court’s two orders approving settlement. As ordered, class counsel published notice of the class settlement in 11 South Carolina newspapers, the *Augusta Chronicle*, and in the Diocese’s publication, *The Catholic Miscellany*. *The Bishop of Charleston at the time of the class settlement testified under oath that he wanted the settlement to be as broad and inclusive as possible and that he was not consulted on the manner in which the class would be notified by class counsel.*¹ Class counsel and the Diocese also provided notice by First Class Mail to all individuals about whom the Diocese had prior actual notice of alleged abuse, but who had not previously made a claim

¹ See Deposition of Most Rev. Robert Baker, 21: 12-25; 46: 1 – 51:1 (*Exhibit A*)

(proposed intervenor John Doe 305 was not one of these individuals).² This, too, was exactly as ordered by the Court.³ As part of the class action settlement, the Diocese agreed not to raise a number of defenses, including the statute of limitations, charitable immunity, or other legal or equitable defenses, against anyone submitting a claim. Thus, any member of the class could submit a claim without regard to when and how long ago the alleged abuse took place.

Counsel for the proposed intervenors represented several objectors and opt-outs to the class action settlement. The objections raised many of the points asserted proposed intervenors assert now regarding the process of the class action settlement. Judge Goodstein's Order of July 30, 2007, overruled all objections with detailed analysis of each.⁴ Yet, no objector appealed any adverse ruling on any objection, and objectors' counsel ultimately withdrew all objections to the

² *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 94 S. Ct. 2140 (1974). There were a handful of individuals whom the parties could not locate, but who were entitled to actual notice of the class action.

³ MANUAL FOR COMPLEX LITIGATION 4TH (Federal Judicial Center, 2004), §21.312 recommends that the notice to the class should include:

- A definition of the class(es);
- Describe clearly the options open to the class members and the deadlines for taking action;
- Describe the essential terms of the proposed settlement;
- Disclose any special benefits provided to the class representatives;
- Provide information regarding attorney's fees;
- Indicate the time and place of the hearing to consider approval of the settlement;
- Describe the method for objecting to (or, in permitted, for opting out of) the settlement;
- Explain the procedures for allocating and distributing settlement funds;
- Explain the basis for nonmonetary benefits if the settlement includes them;
- Provide information that will enable class members to calculate or at least estimate their individual recoveries, including estimates of the size of the class and any subclasses; and,
- Prominently display the address and phone number of class counsel and how to make inquiries

Judge Goodstein's order contains all this information.

⁴ See Order Approving Settlement, pp. 6-11.

class action settlement.⁵ The objectors' claims were resolved and likewise paid in full, and the Diocese obtained releases from those claims.

Class counsel administered the settlement and collected claim forms from class members – both victims of sexual abuse and loss of consortium claimants. Again, the claim forms were handled exactly as ordered. The claimants each participated in arbitration proceedings as the settling parties agreed. The arbitrator then made awards to each claimant, with payments coming from an escrow account administered by a third party. All valid claims were paid in full. All claimants received offers of psychological treatment and pastoral care as well. The claims period concluded as approved by the Circuit Court. As is reflected in the report from the Escrow Agent, arbitral awards were paid from the settlement fund to class counsel (or to individual claimants or their separate counsel). No record of how claimants' counsel, including class counsel, handled disbursement to their clients was provided to the Diocese.

B. Proposed Intervenors Are Not Entitled to Second-Guess the Judgment of the Class Action Court

Put simply, permitting the proposed intervenors – two of whom took part in the class settlement process – to up-end the class action settlement and judgment by reopening the long-concluded class action case would turn class action practice on its head. Judge Goodstein properly conducted two lengthy hearings to approve the class action settlement. First, in January, 2007, she certified the two classes and gave preliminary approval of the settlement. In July, 2007, she gave final approval to the class action settlement after hearing, and overruling,

⁵ *Devlin v. Scardelletti*, 536 U.S. 1, 10, 122 S. Ct. 2005, 153 L. Ed. 2d 27 (2002) (“class members [are] allowed to appeal the approval of a settlement when they have objected at the fairness hearing. To hold otherwise would deprive nonnamed class members of the power to preserve their own interests in a settlement that will ultimately bind them, despite their expressed objections before the court”); 5 *Moore's Federal Practice - Civil* § 23.169 (2022)

the objections brought by Mr. Meyers' clients. As the MANUAL FOR COMPLEX LITIGATION provides – review of a proposed class action settlement generally involves two hearings – the first to make a preliminary fairness determination, and the second to give final approval.⁶ That process is exactly what happened. Counsel has located no case, no secondary source, no treatise, nor any law review articles calling for a third hearing to determine the fairness of the class action settlement after the claims have been submitted, the settlement fund has been distributed, and the defendants have been given their release.

One of the purposes the class action procedure is to promote finality and certainty for both defendants and the plaintiff class.⁷ That finality – and the *res judicata* and collateral estoppel afforded to class action judgments – is the reason courts are careful to analyze the settlement terms and conditions and to issue a judgment that the proposed settlement is fair, reasonable, and adequate, not just to the representative parties, but to the class as a whole.⁸ Finality is also one reason that class members are entitled to notice of the settlement and the opportunity to opt out or object.⁹ If a class member neither objects nor opts out of a class settlement, they are bound by the judgment. The only proper procedure for reviewing a court's findings regarding a class settlement is through direct appeal from the denial of an objection to the settlement.

Judge Goodstein's thorough analysis of the class settlement in her two orders approving the settlement are not subject to collateral attack now, more than fifteen years later. She

⁶ Manual for Complex Litigation, §21.632 citing *In re Amino Acid Lysine Antitrust Litigation*, MDL NO. 1083, 1996 U.S. Dist. LEXIS 5308 (N.D. Ill. April 22, 1996).

⁷ PRINCIPLES OF THE LAW OF AGGREGATE LITIGATION. §3.14, comment a. (American Law Institute, 2010).

⁸ Rule 23(d)(2), SCRCF; *see also* MANUAL FOR COMPLEX LITIGATION (FOURTH) § 21.62 AT 315-16 (2014); PRINCIPLES OF THE LAW OF AGGREGATE LITIGATION, §3.02 comment a.

⁹ Rule 23(b), SCRCF; *Salmonsens v. CGD, Inc.*, 377 S.C. 442, 661 S.E.2d 81 (2008); *see also Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985).

followed the requirements of both Rule 23(c), SCRCP, and the MANUAL FOR COMPLEX LITIGATION, §21.6. Judge Goodstein made factual findings regarding the fairness and adequacy of the class action settlement and gave the parties' agreement her blessing. She analyzed and overruled the numerous objections to the class settlement. No appeal was taken from her rulings in 2007.

Having participated in the class action settlement, the two McDonalds broadly released any claim they might have had against the Diocese or any of its employees. They further both explicitly and implicitly waived any right to challenge the fairness, reasonableness, or adequacy of the settlement. Doe 305's recent "objection" is plainly untimely. As was required under the Orders approving the settlement and the Notice provided to the members of the class, participating class members waived all right of appeal. The McDonalds cannot challenge the very terms of the settlement in which they participated. Notwithstanding that waiver, the McDonalds and Doe 305 are barred from raising objections to the class action settlement – the Court's preliminary approval set the deadline for objecting to the terms of the settlement of February 22, 2007.¹⁰ Failing to file a timely objection is fatal.¹¹ Failing to file a timely appeal of an order overruling a timely objection is doubly so.

Moreover, collateral review of a class settlement – such as that suggested by proposed intervenors – would undermine the entire process of class actions. Accepting the argument put forward by petitioners would render moot the careful and considered analysis that Rule 23 requires. Rule 23 commands a well-ordered procedure for settling class actions, with multiple levels of protection for absent class members' interests. The protections afforded to absent class

¹⁰ Order Preliminarily Approving Settlement, at 9.

¹¹ See *e.g. Farber v. Crestwood Midstream Partners, L.P.*, 863 F.3d 410 (5th Cir. 2017)(Court lacked jurisdiction to consider appeal of denied objection where the objection was untimely).

members by the court's Rule 23(c) approval of the settlement and determination that settlements are fair to the absent class members, would always be open to collateral attack by frustrated class members who fail, for whatever reason, to make a claim in the class action. Importantly, neither class action courts nor appellate courts are permitted to rewrite a proposed class-wide settlement agreement in any respect.¹²

The American Law Institute's PRINCIPLES OF THE LAW OF AGGREGATE LITIGATION is instructive and clearly precludes this purported collateral assault on the 2007 class settlement:

§ 3.14 Postjudgment Challenges to Settlement

- (a) The normal vehicle for challenging a settlement is a direct appeal from the order or judgment approving the settlement. Apart from appeal, a judgment embodying a class-action settlement may not be challenged, except:
 - (1) before the court in which the settlement occurred on grounds generally applicable under the governing rules of civil procedure for obtaining relief from judgment; or
 - (2) before the same or a different court on the ground that the settlement court lacked personal or subject-matter jurisdiction, failed to make the necessary findings of adequate representation, or failed to afford class members reasonable notice and an opportunity to be heard as required by applicable law.
- (b) In restricting collateral challenges to a class settlement, this Section leaves unchanged existing law governing class members' ability to pursue claims of malpractice or breach of fiduciary duty against class counsel as permitted by applicable law.¹³

If proposed intervenors' position is to be accepted, contrary to all law and common sense, the specter of unending challenges to any settlement would wreak havoc on any class action practice. Parties simply could not settle any matter on a class-wide basis for fear of never-ending

¹² See *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)(the settlement must stand or fall in its entirety).

¹³ PRINCIPLES OF THE LAW OF AGGREGATE LITIGATION, §3.14

challenges to court-approved and court-ordered processes and virtually unlimited future exposure. Without any guarantee of finality and a bar on future suits, no reasonable party would agree to settle a class action. Allowing full-on collateral attacks on class action judgments would impose profound challenges to the courts and to any party faced with class claims.

Rather, as PRINCIPLES OF THE LAW OF AGGREGATE LITIGATION suggests, the McDonalds' and Doe 305's remedy lies with class counsel, if with anyone. In that way, the finality of the class action judgment is given its due respect without permitting collateral attacks on a judgment in a long-resolved case.

C. Proposed Intervenor's Request to Retroactively Apply the 2016 Amendment to Rule 23, SCRPC, should be dismissed out of hand.

The 2016 addition of Rule 23(e) regarding disposition of residual funds cannot be applied retroactively to the 2007 class action settlement. Proposed intervenors seek an impermissible court-ordered modification of the class action settlement agreement itself that was not agreed to by the parties at any time. Moreover, proposed intervenors suggest that the judgments of the class action court approving settlement should be altered and amended based on a subsequent amendment to Rule 23.¹⁴

Proposed intervenors' motion is patently absurd and would derail the entire concept of agreements to settle cases and judgments approving those settlements. Proposed intervenors' motion is no more workable than a request by any settling party to have one of the representative plaintiffs, or the members of the plaintiff class, refund the amounts awarded under the class action settlement agreement. Such an order would be nothing less than arbitrary, capricious, and lacking any procedural, legal, or equitable basis.

¹⁴ Under the clear terms of the court-approved class action settlement agreement, there is no residual in any event.

II. NOTWITHSTANDING THE BASELESS AND UNWARRANTED COLLATERAL ATTACK ON THE 2007 CLASS ACTION SETTLEMENT, THESE PROPOSED INTERVENORS CANNOT ESTABLISH THE REQUIRED ELEMENTS FOR INTERVENTION UNDER RULE 24, SCRCP.

The class action into which proposed intervenors have filed their petition has been closed for more than a decade. The South Carolina Supreme Court ordered that the case be concluded within six months of its March 19, 2009 Order. The Court specifically provided that no extension of the deadline was allowed without prior permission from the Court. No extension has ever been granted and the case was closed by the Supreme Court's action. There is, quite simply, no case in which these petitioners can intervene.

Notwithstanding that, petitioners' motion to intervene must be denied under the terms of Rule 24, SCRCP.

A. Irrespective of whether proposed intervenors seek intervention as of right or permissive intervention, their motion is untimely.

Both Rules 24(a) and 24(b) begin with the following – “Upon timely application” The South Carolina Supreme Court has established a four-part test to ascertain timeliness:

- (1) The time that has passed since applicant knew or should have known of his or her interest in the suit;
- (2) The reason for the delay;
- (3) The stage to which the litigation has progressed; and
- (4) The prejudice the original parties would suffer from granting intervention and the applicant would suffer from denial.¹⁵

¹⁵ *Davis v. Jennings* 304 S.C. 502, 504, 405 S.E.2d 601, 603 (1991).

Proposed intervenors fail on every single element and their motion must be denied as untimely. The McDonalds knew about, and made claims in, the class action in 2007. By not objecting to the settlement, and accepting payment for their claims, they expressly waived their right to appeal or challenge the settlement. There is no justification for their revisiting the class action settlement in which they participated.

Doe 305 likewise cannot satisfy any criterion for timeliness – he has waited fifteen years after the class action claims process concluded and more than thirteen years after the case was administratively closed by the Supreme Court’s Order. No reason could warrant a fifteen-year delay before attempting to intervene in a case that has settled, all the proceeds have been distributed, and all parties have gone their separate ways. His late attempt to reopen a case that was closed more than a decade ago strains any common sense.

The motions to intervene should be summarily denied as untimely.

B. Proposed intervenors cannot intervene in the class action under Rule 24(a).

Rule 24(a)’s intervention of right is limited to two circumstances, neither of which apply in this matter. First, a party may be permitted to intervene upon timely application where a statute confers an unconditional right to intervene. Proposed intervenors cannot point to any South Carolina statute giving them the unconditional right to intervene.

The second basis for intervening of right is limited to situations when:

an applicant claims an interest relating to the property or transaction with is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest unless the applicant’s interest is adequately represented by the existing parties.

Proposed intervenors do not qualify for intervention under Rule 24(a)(2). A party seeking to intervene under Rule 24(a)(2) must: (1) establish timely application (discussed above); (2) assert an interest relating to the property or transaction which is the subject of the

action; (3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and (4) demonstrate that its interest is inadequately represented by other parties.¹⁶

There is no property or transaction on which the class action was based. Proposed intervenors have not established that the parties to the class action could not, or did not, represent their interests adequately. In fact, the class action court found that the class representatives *could* represent the interests of the class adequately, otherwise, the class could not have been certified in the first place.

In short, there is no basis for permitting intervention of right.

C. Proposed intervenors have established no grounds for intervention under Rule 24(b).

Proposed intervenors likewise have failed to establish the factors required for intervention under Rule 24(b). An intervenor seeking permissive intervention must: (1) establish timely application; (2) assert a claim or defense that has a question of law or fact in common with the underlying action; and (3) prove his participation in the underlying action will not delay or prejudice the adjudication of the rights of the original parties.¹⁷ Again, proposed intervenors fail every requirement for permissive intervention.

As noted above, their application to intervene is entirely untimely. That they have waited more than fifteen years after the class action concluded is reason enough to deny the motion. There is just no justification for allowing the class action to be opened again and questioned by these petitioners now.

¹⁶ See *In re: SCDHEC v. Columbia Organic Chemical, Inc.*, 310 S.C. 495, 498, 427 S.E.2d 661, 663 (1993). (

¹⁷ *Builders Mut. Ins. Co. v. Island Pointe, LLC*, 431 S.C. 93, 847 S.E.2d 87 (2020).

As to element two – the McDonalds no longer have any claim at all. Their claims were settled and released in 2007. There is nothing in common any longer. Doe 305 may have had a similar claim, as similar as Rule 23 commonality requires, but his claims are barred by Judge Goodstein’s orders. Doe 305 cannot overcome the *res judicata* and collateral estoppel of Judge Goodstein’s orders by engaging in a clever procedural maneuver of attempting to intervene in this ancient and closed case. The rules do not contemplate a non-party being able to intervene in a concluded case to have a court consider objections to how the case was resolved by the parties to the litigation.

Finally, allowing these petitioners to re-open and challenge the court-approved class action settlement is grossly, and impermissibly, prejudicial to the settling defendants. In the end, the Diocese reached a satisfactory resolution of a class of claims with the representative class members and with class counsels’ acquiescence and approval. The parties went through the extensive process to finalize the class settlement and concluded the matter. To allow strangers to come in fifteen years later to challenge the terms of the settlement is profoundly prejudicial. If, after all the procedural safeguards have been met and court approvals obtained, a party cannot rely on those judgments and depend on the finality of a class-wide settlement, there would be no justification for resolving a case.

CONCLUSION

The petition to intervene must be denied. The McDonalds’ and Doe 305’s quixotic attempt to entangle themselves in the class action is doomed. The class action case has been closed – by Order of the Supreme Court no less – for more than a decade. Further, they seek remedies that do not exist in the law or under the Rules of Civil Procedure, which remedies would create a parade of horrors for parties to any class action. The petitioners seek to

undermine and overturn the very finality on which parties to a class action settlement depend. Without the finality of those class action judgments, entering a class-wide settlement would be utterly futile and pointless.

Additionally, the McDonalds and Doe 305 cannot satisfy *any* element for either permissive intervention or intervention as of right. Their motion amounts to nothing more than a request to manipulate Rule 24 in ways the rule was not meant to be applied. Their attempt to use Rule 24 to open a long-closed matter is entirely improper and should be denied.

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ATTORNEYS FOR BISHOP OF CHARLESTON,
A CORPORATION SOLE AND THE BISHOP OF
THE DIOCESE OF CHARLESTON IN HIS
OFFICIAL CAPACITY.

January 24, 2023

Charleston, South Carolina

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1 attitude the way he handled me and the Diocese and I
2 just said I don't want to settle with this man, give
3 me another attorney, not him. And then I also
4 wondered how many cases there were, because in my
5 own mind I thought it was only a handful, if that.
6 So I just didn't see why we could bark up that tree
7 period.
8 Q. And what was it -- when you eventually
9 embraced the idea of the settlement, what did you
10 perceive to be the merit of doing that for the
11 Diocese?
12 A. Well, this process brought out the value of
13 ending this whole discussion with putting finality
14 to the discussion, which made sense to me. Why
15 carry it out forever and ever if you can come up
16 with a class action that would end it. Everybody
17 could have a chance to be at peace with the Diocese.
18 So that there were arguments in the process that I
19 picked up that made sense. And then, you know,
20 everybody likes a terminus to these kind of things.
21 So I felt that was the main reason probably, a
22 terminus to the discussion about these cases. And
23 my understanding that it could be done in a fair
24 way, so it seemed to me it was probably the best
25 route to go in the aftermath. I still didn't like

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1 settling with Mr. Richter.
2 Q. Was there any consideration from your
3 perspective given to Mr. Richter's experience or
4 inexperience with class actions?
5 A. It wasn't that. I mean, I didn't know what
6 experience. He had been a judge so he had some
7 experience, but I was more -- I wasn't intimidated
8 by him. I wasn't appreciating the way he handled
9 the Diocese confrontational; and he is a Catholic.
10 Q. He may have -- I'm sorry. He doesn't
11 represent at any point that I can see that he has
12 ever done any class actions before.
13 A. I don't know.
14 Q. But that was not an element that factored into
15 your consideration?
16 A. No, it was not.
17 MS. WALL: Object to the form.
18 Q. You mentioned that Mr. Richter was Catholic.
19 Did you ever have any contact with him just as a
20 parishioner?
21 A. Yes.
22 Q. In what capacity?
23 A. I would see him come in the church and I guess
24 one time I said, Larry, I know what you are doing, I
25 know why you are doing it, and I respect you, I just

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1 don't agree with you. And I was his bishop so,
2 mean, he understood me and I understood him and
3 wasn't trying to undermine his faith and, you know
4 he carried on his faith. We were in a legal
5 confrontation.
6 Q. Is it correct to understand that each of you
7 made an effort to separate out role of --
8 A. Correct.
9 Q. -- bishop/parishioner versus lawyer/adversary?
10 A. I would think so. I respect the lawyers for
11 what their position is. I respect you for your
12 position and we could still be friends.
13 Q. And was there any consideration given among
14 those discussing this on the Diocese side about any
15 disclosure to make to the class about Mr. Richter's
16 affiliation with the Catholic Diocese?
17 A. Can you repeat that. I don't understand the
18 question.
19 Q. I couldn't see any place where Mr. Richter's
20 connections to the Diocese and what he describes as
21 his lifelong membership was ever disclosed to the
22 class. In other words, it was known to you and to
23 people on your side as they were, but it doesn't
24 appear ever to have been disclosed. I didn't know
25 if there was any consideration by the Diocese of

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1 that fact assuming I am correct?
2 MS. WALL: Object to the form.
3 A. I can answer that?
4 Q. Yes.
5 MR. SHAHID: As long as it does not
6 involve any attorney/client communication.
7 Q. (By Mr. Meyers) Yes. Let's try to clarify
8 this. First, the convention in a deposition is if
9 there is an objection made, we are all doing that to
10 preserve the record which later gets submitted to a
11 judge for resolution. If we had a judge here
12 because we were in a courtroom, we would get a
13 decision made immediately. But for purposes of
14 deposition, we take the objection and unless you are
15 instructed by Mr. Shahid or Mr. Geoly or Mr. Ayers
16 not to answer the question, you answer the question.
17 A. Can you repeat the question.
18 Q. Yes; in a moment I will. The second
19 consideration is Mr. Shahid has raised -- I am
20 asking a question about deliberations that went on
21 the Catholic Diocese side of the class action. He
22 is trying to make you appreciate that in answering
23 the question, he doesn't want you to disclose
24 information, any confidences, that went on as to the
25 Diocese between attorney and client; is that fair?

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1 the Diocese. What month and what time?
2 Q. It's October 2006.
3 A. **October 2006, I would have been there.**
4 Q. It's still in your tenure.
5 A. **So your question is what?**
6 Q. Well, I wanted to first lay out, at least, the
7 factual representation to you that that motion was
8 made in October of 2006 about how they wanted the
9 court to give notice to the class members.
10 A. **By Mr. Richter?**
11 Q. Yes. They had defined in the agreement that
12 is attached to your affidavit the way the class
13 should be defined. In other words, they had
14 proposed a definition of the class to the court.
15 A. **When you say they, you mean?**
16 Q. Class counsel in their motion.
17 A. **Mr. Richter.**
18 Q. Yes. Now the settlement has this language.
19 As far as you know -- so let me back up. I am
20 backing up topics now to talk about the definition
21 of the class.
22 MS. WALL: I'm objecting to the form.
23 Q. (By Mr. Meyers) Did the Diocese initiate how
24 the class was to be defined or was that work by
25 class counsel?

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1 MS. WALL: Object to the form.
2 A. **My understanding is the Diocese in that**
3 **written was helping form how this was to be formed.**
4 **That our responsibility, as I understand it, was**
5 **strictly to commit the amount of money that we were**
6 **to come up with and to the careful provision of who**
7 **the plaintiffs were, that they were legitimate**
8 **plaintiffs, and we would follow through. And then**
9 **my understanding is that my counsel left to Mr.**
10 **Richter to serve on the nation how everything was**
11 **done. Those two areas, I think, were our primary**
12 **commitments. And then as I understand it, the rest**
13 **was left to Mr. Richter to work out with the**
14 **mediator and the judge.**
15 Q. As you recall your decision making, were you
16 called on at any point to try to decide how the
17 notice provision should work with respect to class?
18 A. **I don't remember ever being consulted.**
19 Q. So now let me reach where I had inadvertently
20 started too early.
21 A. **Okay.**
22 Q. This proposal made in October of 2006 to make
23 a nationwide notice was changed at the time of the
24 agreement submitted to the court in January of 2007
25 and the nationwide notice was pulled out. The

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1 notice was then restricted to South Carolina and
2 immediately around South Carolina near Augusta; all
3 right?
4 MS. WALL: Object to the form. You are
5 testifying.
6 Q. (By Mr. Meyers) I am representing to you what
7 the facts are; okay. And assuming that
8 representation is accurate, and it's all documented,
9 assuming that's correct, was that a decision to
10 change the notice method that you initiated?
11 MS. WALL: Object to the form.
12 A. **I didn't have anything to do with that part**
13 **after this settlement agreement took place. In**
14 **other words, my understanding is my attorneys --**
15 MR. SHAHID: Object to any conversation
16 that you had with your attorneys.
17 Q. If you are describing what action they took,
18 that's fine, but don't --
19 A. **I am just talking about the action. That**
20 **their action restricted solely to the amount of**
21 **money, how it was to be distributed, and the careful**
22 **supervision of the plaintiffs to determine that they**
23 **were legitimate plaintiffs was my understanding in**
24 **the role we played in the Diocese of Charleston, not**
25 **more.**

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1 Q. Is it correct for me to understand that when
2 the notice provision was changed from nationwide to
3 less than nationwide, that that was a decision that
4 you were not asked to --
5 A. **I have no recollection of that at all.**
6 MS. WALL: Object to the form.
7 A. (By the Witness) **I have no recollection of**
8 **being asked about it at all by anybody.**
9 Q. When it was put into the agreement that was
10 submitted to the court and -- I'm sorry, it's not in
11 the settlement agreement, I don't think, but it's in
12 the motion that was submitted to the court. That
13 motion was not submitted by the Diocese, it was
14 submitted by class counsel, so I represent that to
15 you.
16 MS. WALL: Object to the form.
17 Q. (By Mr. Meyers) Were you asked specifically to
18 agree to a change in the notice?
19 A. **No.**
20 MS. WALL: Object to the form.
21 Q. Mr. Richter contends that you objected to him
22 that nationwide notice was too expensive. What is
23 your memory of that?
24 A. **I don't remember that.**
25 MS. WALL: Object to the form.

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1 A. (By the Witness) I had no involvement with any
2 of that, to my knowledge. I would like to know
3 where that's written and where that's ever been
4 documented that I ever had anything -- at that point
5 I would not have known enough. I would not have
6 been -- I don't think I would have any consultation
7 on any of that. And I probably would have said keep
8 it nationwide.
9 Q. Let me read for you the exact representation
10 that was made to the court last April by Mr. Bruner
11 which represents Mr. Richter and the Richter and
12 Haller firm; okay. I am reading from the transcript
13 of the hearing held April 10, 2014, page 42. Mr.
14 Brunner says this: "Our testimony will be that we
15 proposed that to the Bishop {referring to the
16 nationwide notice provision} and that the Bishop
17 said no, that's too expensive. So from our point of
18 view, the Bishop bought the degree of res judicata
19 that he was willing to pay for." That ends my
20 quote from the transcript. Does that --
21 A. False.
22 MS. WALL: Object to the form.
23 Q. Let me finish the question.
24 MR. SHAHID: He'll stop, then you start.
25 Q. (By Mr. Meyers) Does that recitation strike

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1 you as being accurate or inaccurate?
2 A. Inaccurate.
3 MS. WALL: Object to the form.
4 Q. Were you at any point asked to express an
5 opinion about the extent of notice you desired?
6 A. I don't recall ever that. I don't recall
7 that. But let me just say my own gut feeling would
8 be go as far out as you can and find out as much
9 information. That would be my feeling how I would
10 have handled it, but I just don't remember that
11 coming up.
12 Q. Do you recall any discussions about taking a
13 position on the question of notice?
14 A. I don't.
15 Q. In other words, the Diocese taking a position?
16 A. What would the date be on that? I can't
17 imagine when that was.
18 Q. This is in between January of 2007 and the
19 court's approval in July of 2007 where the decisions
20 were made.
21 A. I have no recollection of that. I don't say
22 that I couldn't be making a mistake, but I just
23 don't remember that. I don't remember. I would
24 guess my gut feeling would be that I would try to be
25 all inclusive as possible knowing this objection

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1 could be brought up.
2 Q. Is it fair to say that the positions taken by
3 counsel for the Diocese in the court proceedings
4 that took place on the class action were actions
5 authorized by the Diocese?
6 A. Yes.
7 Q. Have you had any specific contact with any of
8 the plaintiffs --
9 MS. WALL: Is there an answer to it? If
10 there was, I didn't hear it.
11 MR. GEOLY: Yes.
12 MR. MEYERS: The answer was yes.
13 Q. (By Mr. Meyers) Have you had any contact with
14 any of the individuals who are presently engaged as
15 plaintiffs that I represent?
16 A. I don't believe I have.
17 Q. As far as you know, are there records kept in
18 the Diocese of your calendars from when you were
19 bishop?
20 A. There could be, but I don't think so. I think
21 they probably are no longer there. I don't think
22 so, but we can check.
23 Q. I was just curious about whether you recalled
24 if the record keeping of the Diocese included the
25 record of your activities as bishop and in what way

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1 it did if it did.
2 A. Just that we used a liturgical calendar with
3 scheduling appointments, that kind of thing.
4 Q. There was a concern that we identified in
5 these cases about the time records submitted by
6 class counsel to support the fee that they sought
7 from the court. Do you have any awareness of that
8 objection?
9 A. The fee that class counsel sought from the
10 court?
11 Q. The time records they submitted to the court
12 about their fee.
13 A. I have no knowledge of that.
14 Q. And at any point did you direct your counsel
15 to object to those time records?
16 A. No.
17 Q. Have you ever examined their time records?
18 A. No.
19 Q. Did you ever direct anyone to object to class
20 counsel taking for themselves a fixed fee and
21 proposing to the court that they get a fixed fee but
22 their clients get a variable recovery and doing that
23 simultaneously?
24 MS. WALL: Object to the form.
25 A. Did I what?

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	
John Doe #53, John Doe 66, John Doe	)	Case Nos. 2006-CP-18-1310
66A, John Doe 67, Jane Doe 1 and Jane	)	2006-CP-18-1311
and Rachel Roe, individually and as	)	2006-CP-18-1636
representatives of a class of people	)	
similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
The Bishop of Charleston, a Corporation	)	
Sole, and The Bishop of the Diocese of	)	
Charleston, in his official capacity,	)	
	)	
Defendants.	)	
	)	

**MEMORANDUM IN OPPOSITION TO
MOTIONS TO INTERVENE AND FOR POST-AWARD FAIRNESS HEARING**

THIS MATTER is before the Court upon three motions filed in the above-captioned cases:

- (i) Motion for Post-Award Fairness Hearing filed May 11, 2016 by Mr. Allen Sires, *pro se*;
- (ii) Motion to Intervene filed August 29, 2022 on behalf of Julie McDonald and Richard McDonald (“the McDonalds”); and
- (iii) Response to Join 2016 Motion by John Doe 66 For Post-Award Fairness Hearing and, Pursuant to SCRCF 23(d) to Appoint New Counsel for the class filed August 29, 2022 on behalf of the McDonalds.

For the reasons set forth below, the Court should deny all motions.

FACTUAL AND PROCEDURAL BACKGROUND

This matter arises from a class action settlement that was noticed, administered, and approved pursuant to Rule 23, SCRCF, in the Dorchester County Court of Common Pleas in 2007. The movants, Mr. Sires and the McDonalds, request a “post-award fairness hearing,” ostensibly

so they may launch objections to the terms of the class settlement fifteen years after they settled their claims and were paid.

On August 15, 2006, the first two of the three above-captioned class actions were commenced on behalf of victims who suffered sex abuse at the hands of persons under the aegis of The Bishop of Charleston, a Corporation Sole (“the Diocese”). (Complaints filed in C/A Nos. 2006-CP-18-1310 and 2006-CP-18-1310.) The third suit was commenced on October 6, 2006. (Complaint filed in C/A No. 2006-CP-18-1636.) The cases were designated complex by order entered October 17, 2006. (Order Designating Case Complex, October 17, 2006.)

On January 17, 2007, the plaintiffs moved for certification of the classes and for preliminary approval of the class settlement. (Motion to Certify Classes and for Preliminary Approval of Class Settlement, January 17, 2007.) The class action court granted that motion by order entered January 19, 2007. (Order Certifying Classes and Giving Preliminary Approval to Settlement, January 19, 2007.) As part of its order, the class action court required that class counsel submit its petition for attorneys’ fees and costs by February 14, 2007, and scheduled a fairness hearing for March 9, 2007. Id. Pursuant to the class action court’s order, class counsel filed a petition for attorneys’ fees and costs on February 14, 2007, together with supporting documents. (Plaintiffs’ Petition for an Award of Attorneys’ Fees and Litigation Costs, February 14, 2007.) In all, the petition totaled 174 pages. The supporting documents included affidavits from Mr. Richter, Mr. Haller, Mr. Churchill, Mr. Sinclair, Mr. Lofton, an employee of Mr. Lofton’s firm, records from those attorneys’ respective firms supporting their estimates of time expended, as well as a supporting affidavit from the late John P. Freeman, Esquire, a law professor and well-known expert on professional responsibility and legal ethics. Id.

On March 9, 2007, the class action court presided over the fairness hearing. (Transcript of Hearing, March 9, 2007.) Present at the hearing were the five attorneys representing the plaintiffs, attorneys for the Diocese, as well as attorneys for objectors, including Gregg Meyers, Esquire. Id. at 2.

Mr. Meyers raised four objections to the settlement, one of which had been resolved prior to the fairness hearing. He argued the remaining objections, which were to the class definitions, to the proposed amount of recovery for consortium claims, and to the criteria in the proposed damages matrix. (Id. at page 31, line 21 to page 82, line 1.) Meyers began his argument by praising the class settlement:

Your Honor, I do want to start by acknowledging the positive development by both the diocese and class counsel in even bringing the resolution this far. I do have concerns about it, but I really want to commend both the diocese and class counsel for generating what has brought us here today. It's a good thing. It's a good thing for the organization, it's a good thing for the people they have served and the interest they attempted to serve in the first place.

(Id. at page 32, lines 4 to 15) (emphasis added). In addition to hearing arguments on class certification, approval of the proposed settlement, class counsel's fee petition, and objections, the class action court discussed engaging the First Circuit Solicitor to investigate Diocese records and locate victims whose abuse had been reported to the Diocese, whose identities should have been available, but whose identities the Diocese had not theretofore reported.

On July 13, 2007, the class action court held a hearing on a motion to compel the Plaintiffs filed. (Transcript of Hearing, July 13, 2007.) During that hearing, the class action court also received an update on the Solicitor's investigation that had been initiated in March 2007, as referenced above. Id.

On July 30, 2007, the class action court entered an Order approving the class action settlement and awarding class counsel the maximum fee of \$2.5 Million, and overruling the

objections Meyers made on behalf of John Does A through N. That order approved the January 12, 2007 settlement agreement “as a final settlement” and, therefore, had the effect of a final judgment.

On August 1, 2007, Meyers filed an Objection to Proposed Order advancing *fifteen* different objections (not the three or four previously raised) to the class action settlement. (Objections to Proposed Order, August 1, 2007.) As final approval of the settlement had drawn closer, Meyers had demanded \$1.46 million to settle the objections and claims of the objectors he purported to represent. (Transcript of Hearing, August 9, 2007, page 22, line 17 to page 23, line 1.) Meyers subsequently filed a motion to alter or amend the Order Approving Settlement and a supporting memorandum based on his objections to the settlement terms. (Mot. To Alter, Amend from Objectors, August 7, 2007; Memo. Supp. Mot. to Alter, Amend, August 22, 2007.) The objections and motions threatened the finality of the Order Approving Settlement, gave rise to the prospect of an appeal, and created angst on the part of the Diocese to fund the settlement pursuant to the court-approved terms. (Transcript of Hearing, August 9, 2007, page 23, line 1 to page 29, line 15.) As summarized by the class action court, which had overruled the objections,

What I am hearing is that the defendants still would like nothing better than to go forward and fund this settlement and proceed with these claims. But the concerns, the primary concerns really don't have anything to do with the plaintiffs at this point, the plaintiff class. But where the defendants have found themselves at this point is that they have found themselves in a position where, pursuant to the terms of the agreement, they have come to the Court preliminarily and in final hearing to say to the Court we believe this agreement is fair. We are asking the Court together to review and find it fair. Plaintiffs' counsel for the class believes it's fair; defense thinks it's fair.

There is an objection raised at the fairness hearing, completely unassociated with both plaintiff and defendant, and the Court overruled the objection. Without any role on behalf of the plaintiffs' class, defendants find themselves in a position where this objector, overruled, comes to the defendant and says to the defendant we want to be included in some sort of resolution with you or we're going to file a motion to alter and amend and here it is. And we're going to appeal, and if you don't include us or pay us in some form or fashion, we're going to try to undo your settlement.

(Transcript of Hearing, August 9, 2007, page 29, line 24 to page 30, line 22; page 43, lines 1 to 16.) Meyers subsequently settled the objectors' claims for \$1.375 million to be paid out of the surplus funds, if any, from the \$12 million settlement after the claims process was completed. In the event of insufficient surplus funds, the Diocese was obligated to pay the \$1.375 million nonetheless. The terms of that settlement were incorporated into an order the class action court entered August 31, 2007. (Order, August 31, 2007.)

Following the final settlement approval and disposition of Meyers' Rule 59, SCRCP,¹ motion, the Diocese funded the settlement, the claims of class members were administered pursuant to the terms of the court-approved settlement through the court-appointed escrow agent and court-appointed arbitrator. On March 10, 2008, following disbursements to the claimants, the class action court was provided a final accounting of the disbursements signed by the escrow agent. (Letter to Court with enclosures, March 10, 2008.) According to the pending motions at bar, the disbursements made included payments to the movants, Mr. Sires and the McDonalds. At that time, the claims and issues had been disposed of, and there was nothing more for the class action court to decide with regard to the plaintiffs' claims. The litigation involving the class action claims was concluded.

However, filings continued under the class action caption because a dispute arose between the Diocese and objectors Meyers represented. (Complaint in C/A No. 2008-CP-10-01274, March

¹ It is important to note that Mr. Meyers moved under Rule 59(e), SCRCP, because that rule applies only to **judgments**, not interlocutory orders, and suggests the August 31, 2007 Order ended the case. While the motion to alter or amend does not refer to any specific rule, Meyers stated in subsequent filings the motion was made pursuant to Rule 59(e), SCRCP (See Additional Documents and Reply submitted by Meyers, pp. 3–4 (“Before that July 30 order became final, a Rule 59(e) motion was filed”; “. . . the Rule 59(e) motion was resolved, and the July 30 order became final;” “The agreement resolved the pending Rule 59(e) motion.”). See also Transcript of Hearing, January 29, 2009, page 33, line 16 to page 35, line 7 (discussing objectors' claims for interest under higher, post-judgment interest rate, rather than lower, prejudgment rate).)

6, 2008; Mot. to Enforce Settlement Agreement filed by Diocese, July 25, 2008; Mot. by Diocese for Leave to Deposit Funds into Court, July 25.) Meyers commenced a new action against the Diocese in the Charleston County Court of Common Pleas alleging claims for breach of contract and fraudulent inducement to contract. Meyers took the position the claims process had been completed, while the Diocese took the opposite position.

Meanwhile, Meyers and his co-counsel, David Flowers, Esquire,² commenced a campaign to disrupt the entire class settlement and completed claims, which had been arbitrated and paid. (See Petition to Appear as Amicus Curiae, July 19, 2008, filed by (alleging “grievous and offensive collusive nature of this settlement between the Bishop of Charleston; his general counsel Attorney Peter Shahid; some of the class counsel, particularly Attorney Lawrence Richter and his law firm; and possibly a Circuit Court judge.”); Aff. of Infinger, July 22, 2008 (disproving allegations of collusion and impropriety and testifying about settlement with “with Meyers’ and Flowers’ clients on” the objectors’ claims); Motion for Recusal, September 24, 2008; and Transcript of Hearing, January 29, 2009, page 114, line 19 to page 120, line 10 (discussing on record e-mail from Flowers).)

The class action court held a hearing on January 29, 2009 on the then-pending motions: (i) Meyers’ motion for recusal, (ii) the Diocese motions to enforce settlement and for leave to deposit funds into court; (iii) Meyers’ motion to dismiss the motions filed by the Diocese; and (iv) the Petition to Appear as Amicus Curiae. With regard to the *amicus* petition, Flowers argued his and

² Meyers and Flowers both represented the objectors. (Transcript of Hearing, January 29, 2009, page 105, lines 11 to 12 (Flowers argued “. . . about this agreement with Mr. Meyer and my – Mr. Meyers’ and my clients. . .”); page 105, lines 23 to 25 (“Court: . . . ‘You said, “Mr. Meyers” and my clients.’ . . . ‘Mr. Flowers: Yes, ma’am.’”). Mr. Flowers surrendered his law license in 2019. See In the Matter of J. David Flowers, Appellate Case No. 2019-000503 (S.C. Sup. Ct. order filed May 13, 2019); and In the Matter of J. David Flowers, Op. No. 27243 (S.C. Sup. Ct. order filed April 24, 2013).

Meyers' clients should be entitled to a post-award fairness hearing to investigate the issues, old and new, Meyers and Flowers were raising with the class settlement:

[I]f the Court rules today, that the agreement is part of this litigation, it raises a new issue; and that is whether the class members -- absent class members -- need to be notified about this agreement with Mr. Meyer and my -- Mr. Meyers' and my clients, so that they can come in if there is going to be a final fairness hearing held in this litigation -- which I think there should be -- they should be notified about the terms of that agreement so they could come in and complain or question as to why they didn't get the same agreement; and why their class counsel agreed to pay \$100,000, either out of his own pocket or their pockets; and they've not had an opportunity to be heard on that, as well as a number of other issues they haven't had an opportunity to be heard on.

(Transcript of Hearing, January 29, 2009, page 105, lines 13 to 22.) The Court then denied Meyers' and Flowers' motions and petition.³ With regard to the ethical issues Meyers raised about class counsel's petition and supporting documents, the class action court held:

Mr. Meyers alleges that he has reported a series of irregularities, including patently false and fraudulent billing charges by other members of the bar, all of which were approved without objection by the Court and which are now the subject of independent and ongoing investigation. Mr. Meyers's position regarding the Court is meritless. First, Mr. Meyers raised his objection to class counsel's fees in his Rule 59(e) motion which was withdrawn in consideration of the \$1.375 million to be paid to him by the defendants. Secondly, clearly the Court's Order of July 30, 2007, unobjected to and unappealed from, articulated numerous considerations for the award of fees, only one of which was the 3,700 plus hours spent on the case. Of note is the Court's determination, *inter alia*, "... [b]ut for the settlement, the claims of the individuals in the class might already be barred by significant legal defenses, including the statute of limitations and charitable immunity. Class Counsel has been able to succeed in this case where other lawyers, in identical cases, have failed..." Order dated July 30, 2007. No one knows this more plainly than Mr. Meyers as he was one such counsel to lose his case(s) on this basis.

³ Order, February 3, 2009; Order, March 23, 2009; Transcript of Hearing, January 29, 2009, page 11, lines 17 to 21 ("Very well. respectfully deny your Motion to Recuse. All right. And I will And -- and I just put on the record that again, those issues have been dealt with in a different forum, and I am satisfied and hope -- I -- I am satisfied that they have been laid to rest."); page 31, lines 14 to 19 ("[T]he Court's concern here is the class action and that settlement. I mean, that's just part of this -- part of this litigation in my mind. Long story short, I do believe there is jurisdiction and I would deny respectfully your Motion to Dismiss, noting your exception thereto."); page 112, lines 14 to 15.)

(Order, March 23, 2009 at 5.) In addition, the court denied Meyers' request for pre- and post-judgment interest. Id. at 18.

Within a week of the March 23, 2009 order, counsel circulated a proposed consent order formally ending the litigation. On April 15, 2009, counsel for the diocese sent the proposed order to the class action judge formally concluding the case. (Letter from Shahid to Court, April 15, 2009.)

Meyers then appealed the March 23, 2009 order and, in addition, filed the first of a series of lawsuits against the diocese class counsel, and counsel for the Diocese alleging corruption, collusion, judge-shopping, conspiracy, and other wrongdoings that had previously been raised before and rejected by the class action court. (See Ex parte John Does C, et al., Op. No. 26984 (S.C. Sup. Ct. filed June 13, 2011); and Complaint, John Doe 1 and John Doe 2 v. The Diocese of Charleston, et al., 2:09-cv-00955-cwh, April 13, 2009.). The Supreme Court of South Carolina dismissed the appeal, but the filings continued, in this court and other forums. Ex parte John Does C, et al., Op. No. 26984 (S.C. Sup. Ct. filed June 13, 2011).

In all, Meyers and Flowers have filed **thirteen** different lawsuits against class counsel advancing the same allegations, three of which remain pending. After years of litigation, the Court of Common Pleas for Charleston County granted summary judgment in favor of class counsel in all the then-pending cases. That order was affirmed on appeal. The summary judgment order, however, did not stop the filings.

On May 11, 2016, Mr. Sires filed a motion *pro se* requesting a “post-award fairness hearing.” An attorney representing class counsel in the malpractice cases notified the Clerk of Court that Judge J. C. Nicholson had been appointed over the matter. (Judge Nicholson had also been appointed over the then-pending cases in Charleston County against class counsel.) The

motion was not scheduled for a hearing, likely because the Court's records reflected all three actions as dismissed.

In the Fall of 2020, Meyers filed a petition on behalf of the McDonalds with the Supreme Court of South Carolina requesting the Court exercise original jurisdiction. The petition outlined the same grievances that had been advanced unsuccessfully since 2008. The Supreme Court denied that petition on April 19, 2021. Over sixteen months later, on August 29, 2022, the McDonalds' motion to intervene was filed. The following day, a new lawsuit was filed on their behalf against class counsel, too. That lawsuit is pending.

As noted above, the current pending matters before this Court are three motions filed by Mr. Sires and the McDonalds. In his motion, Mr. Sires requests a "post-award fairness hearing" because "it is [his] understanding that class council [sic] took more money than the court authorized. . . ." (Motion for Post-Award Fairness Hearing, May 11, 2016.) Mr. Sires does not say who told him that or upon what his belief is based. Mr. Sires also alleges class counsel deliberately excluded victims, but again he does not say who told him that or what facts he knows upon which to base that belief. Id. Mr. Sires subsequently filed a supplemental memorandum. (Supp. Memo., January 6, 2023.)

In their motion, the McDonalds seek leave to intervene in the case for the purpose of conducting an investigation into the fairness of the class settlement, the propriety of class counsel continuing to represent the class, and their malpractice claims. In essence, they seek to intervene to pursue malpractice and fee dispute claims on behalf of the class as a whole.

Class counsel would respectfully show the pending motions should be denied. This litigation was concluded fifteen years ago. Despite the objections and continual disruptions, the class settlement was indeed funded and class claims were arbitrated, processed, and paid pursuant

to the court orders approving the settlement. Class counsel would therefore show that contrary to the movants' allegations, this litigation was concluded in 2007. The filings after that time have been post-judgment practice fueled largely by objectors and disrupters, sometimes referred to as "spoilers." Courts have recognized the scale of effort exerted by both the parties' attorneys and the class action judge prior to the settlement and have rejected the efforts of the objectors and disrupters. This Court should do the same. Class counsel would further show the motions should be denied because the movants have no standing to seek relief in this litigation. Finally, class counsel would show the motions should be denied on their merit because the McDonalds have failed to demonstrate grounds to be permitted to intervene or for this Court to engage in a "post-award fairness hearing."

DISCUSSION

Counsel would first show that contrary to the arguments of the movants, these actions were concluded years prior to the initial motion for a post-award fairness hearing. Next, because the decision on the motion to intervene could dispose of the McDonald's second motion, counsel addresses the merits of the motion to intervene. Finally, counsel argues the reasons why the motion for a post-award fairness hearing should be denied, as well as the request for disqualification of class counsel.

I. The Class Actions have been Concluded

Movants contend the class actions were never concluded. The record belies that argument. The July 30, 2007 Order giving final approval to the settlement was a final judgment that concluded the class action. Proof of that fact is in the Rule 59(e), SCRCF, motion Meyers filed in August of 2007 asking the class action court to alter or amend the judgment. (*See* Motion to Alter, Amend, August 6, 2007; Order, March 3, 2009.) Indeed, the language in the Rule unequivocally

states it applies only to “judgments.” Thus, there is no meritorious basis for the contention that the class action litigation was not concluded in 2007. While filings continued post-judgment to enforce the settlement and to raise other issues, the class action lawsuits were concluded in 2007, and the claims were all extinguished in 2008 when the claims were arbitrated, paid, and releases given in exchange.

The McDonalds make much of the South Carolina Supreme Court’s Order dated March 19, 2009. They imply the order was the result of class counsel’s malfeasance, misfeasance, or nonfeasance. That suggestion is inaccurate. In fact, the Supreme Court wrote,

Plaintiff [then represented by Flowers] has filed a complaint and a petition asking this Court to accept the complaint in our original jurisdiction. Defendants have filed returns to the petition. The petition is denied.

However, we are concerned by the delay that filings such as the one at hand have caused in finally resolving the underlying matters pending in Dorchester County. Accordingly, we hereby direct that the underlying matters be concluded within six months of the date of this order. No extension shall be granted absent prior permission by this Court.

(Order of Supreme Court, March 19, 2009) (emphasis added). Notably, that order was filed in response to a petition David Flowers filed on December 17, 2008. After that petition, and the class action held a hearing on all pending matters in January, and the issued an order disposing of some issues on February 3, 2009. Following the supreme Court’s Order, the class action court entered an order on March 23, 2009 disposing of the remaining issues in the class action litigation. However, the objectors’ filings continued, further delaying finality of the matter. Meyers appealed the March 23, 2009 order. The appeal lasted over two years.

These facts in the record directly contradict the positions the movants now advance that class counsel delayed the conclusion of the class action court and that the class action court and the attorneys ignored the Supreme Court’s order.

It is axiomatic that every lawsuit must end. That principle applies equally to class actions. After fifteen years, the parties deserve finality. The Court deserves finality. The parties' attorneys deserve finality. There is no basis to exhume the class action litigation fifteen years after the fact, when witness memories have blurred, inevitably other witnesses have passed away or disappeared, records have been moved, and obtaining evidence proves infinitely more difficult if not impossible.

The Court should confirm the conclusion of the class action litigation and leave it be.

II. The Movants Have No Standing

It is well-established in South Carolina that a party must have standing to sue. “[T]o have standing, one must generally have a personal stake in the subject matter of the lawsuit, *i.e.*, one must be a *real party in interest*.” Baird v. Charleston Cnty., 333 S.C. 519, 530, 511 S.E.2d 69, 75 (1999) (emphasis in original) (citing Glaze v. Grooms, 324 S.C. 249, 478 S.E.2d 841 (1996); and Townsend v. Townsend, 323 S.C. 309, 474 S.E.2d 424 (1996)). “A real party in interest is one with a real, material, or substantial interest.” Id. (citing Anchor Point Inc. v. Shoals Sewer Co., 308 S.C. 422, 418 S.E.2d 546 (1992)). See also Sierra Club v. Morton, 405 U.S. 727, 734–35, 92 S. Ct. 1361, 1366, 31 L. Ed. 2d 636 (1972) (Holding that “the ‘injury in fact’ test requires more than an injury to a cognizable interest. It requires that the party seeking review be himself among the injured.”). Here, the movants have no interest in this litigation. Any injury they claimed that qualified them as class members has been extinguished. Therefore, they have no standing to seek relief here.

To put it succinctly, the gravamen of the complaint the movants raise is wholly separate from the nature of the abuse alleged against the Diocese in the class complaints. As Mr. Sires argues, he was a class representative who settled his claims under the January 12, 2007 settlement agreement. The class action court’s July 30, 2007 Order Approving Settlement was a final

judgment that finally resolved the class claims. That order was amended by the August 30, 2007 Order, which approved the settlement to the objectors represented by Messrs. Meyers and Flowers. Mr. Sires was paid, and he gave a release in exchange. His claim was extinguished. Having resolved his claims in this litigation through the settlement, Mr. Sires has no further interest in this litigation. His arguments that certain victims were excluded and that class counsel's fees were excessive were raised by Mr. Meyers during the March 9, 2007 fairness hearing and, in addition, afterward. Mr. Sires cannot demonstrate standing by simply raising those same arguments again, fifteen years⁴ after the class claims had been arbitrated, processed, and paid pursuant to the class action court's orders. He has no real, material, or substantial interest in this litigation, and therefore has no standing to move for a post-award fairness hearing.

The McDonalds also lack standing. They seek to intervene to move this Court (i) to re-open the class litigation, (ii) to disqualify class counsel, (iii) to appoint new class counsel, (iv) to then preside over an extended fact-finding process, discovery issues, an evidentiary proceeding, and deciding the merits of their fee disputes and malpractice allegations, all of which they contend should be conducted as part of a "post-award fairness hearing." However, the McDonalds have failed to articulate how they have a real, material, or substantial interest in this litigation. They have not explained how they have standing to intervene and become class representatives after they settled their claims. They allege class counsel should be disqualified and new class counsel appointed (to a class action that has been concluded for fifteen years), but the alleged conflict is based on allegations fueled by their counsel; the same allegations that have been repeatedly rejected by South Carolina courts. In truth, what the McDonalds seek is to re-open the wounds the class settlement resolved to relitigate issues the class action court repeatedly rejected and

⁴ Even if the Court uses the date Sires filed his motion in 2016, the nine-year delay resulted in substantial undue prejudice to everyone involved.

claims the McDonalds have known about since at least 2008. If anything, the McDonalds' allegations illustrate the inordinate level of contention through the class action litigation. Even more, it underscores the achievement of class counsel to usher through the monumental class settlement for the benefit of victims despite obstructions early in the process from the Diocese, and late in the process from objectors. Whatever objections the McDonalds had to the settlement or class counsel fees could have been raised prior to the final order approving settlement. The McDonalds made no such objection. Any injury the McDonalds allege against class counsel was known in February 2008 and has long been barred by the statute of limitations.

Therefore, the McDonalds have no real, material, or substantial interest in this litigation, and they lack standing to move for a post-award fairness hearing.

III. Motion to Intervene

Rule 24, SCRCPP, governs intervention. Rule 24(a), SCRCPP, provides guidance on “intervention of right”:

Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

The Supreme Court of South Carolina “has explained an entity seeking intervention as a matter of right under Rule 24(a)(2) must necessarily:

(1) establish timely application; (2) assert an interest relating to the property or transaction which is the subject of the action; (3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and (4) demonstrate that its interest is inadequately represented by other parties.

Ex parte Builders Mut. Ins. Co., 431 S.C. 93, 99, 847 S.E.2d 87, 90 (2020) (citing Berkeley Elec. Coop., Inc. v. Town of Mt. Pleasant, 302 S.C. 186, 189, 394 S.E.2d 712, 714 (1990)).

“Intervention of right requires a direct, substantial, legally protectable interest in the proceedings.”

Ex parte Reichlyn, 310 S.C. 495, 499, 427 S.E.2d 661, 664 (1993) (citing State of Arizona v. Motorola, Inc., 139 F.R.D. 141, 144 (D.Ariz.1991) (not followed by 9th Cir. in later opinion)).

Permissive intervention is governed by Rule 24(b), SCRCP:

Upon timely application anyone may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

“An intervenor seeking permissive intervention must: (1) establish timely application; (2) assert a claim or defense that has a question of law or fact in common with the underlying action; and (3) prove his participation in the underlying action will not delay or prejudice the adjudication of the rights of the original parties.” Builders Mut., at 101, 847 S.E.2d at 91.

“The decision to grant or deny a motion to join an action pursuant to Rule 19, SCRCP, or intervene in an action pursuant to Rule 24, SCRCP, lies within the sound discretion of the trial court.” Id., at 98, 847 S.E.2d at 90 (quoting Ex parte Gov’t Emps. Ins. Co. (Ex parte GEICO), 373 S.C. 132, 135, 644 S.E.2d 699, 701 (2007)). While intervention should generally be liberally granted, the unique facts of each case should be examined in context. See In re Horry Cnty. State Bank, 361 S.C. 503, 507, 604 S.E.2d 723, 725 (Ct. App. 2004) (citing Berkeley Elec. Co-op., Inc., at 189, 394 S.E.2d at 714).

“On appeal, [the appellate court] will not disturb the trial court's decision absent a manifest abuse of discretion that results in an error of law.” Builders Mut., at 98–99, 847 S.E.2d at 90 (quoting Jeter v. S.C. Dep’t of Transp., 369 S.C. 433, 438, 633 S.E.2d 143, 145 (2006)).

“Moreover, the error of law must be so opposed to the trial court’s sound discretion ‘as to amount to a deprivation of the legal rights of the party.’” Id. “A reversal of a denial of permissive intervention has been termed ‘so unusual as to be almost unique.’” Builders Mut., at 101, 847 S.E.2d at 91 (quoting S.C. Tax Comm’n v. Union Cty. Treasurer, 295 S.C. 257, 262, 368 S.E.2d 72, 75 (Ct. App. 1988)).

The McDonalds’ motion to intervene should therefore be denied.

A. The Motion to Intervene is Untimely

Rule 24 requires that any application to intervene be timely. South Carolina courts have established that timeliness is decided based on a four-part test:

(1) the time that has passed since the applicant knew or should have known of his or her interest in the suit; (2) the reason for the delay; (3) the stage to which the litigation has progressed; and (4) the prejudice the original parties would suffer from granting intervention and the applicant would suffer from denial.

Davis v. Jennings, 304 S.C. 502, 504, 405 S.E.2d 601, 603 (1991) (citing Mokhiber v. Davis, 537 A.2d 1100, 1104 (D.C. App. 1988), and Public Citizen v. Liggett Group, Inc., 858 F.2d 775, 785–787 (1st Cir.1988), cert. denied 488 U.S. 1030, 109 S.Ct. 838, 102 L.Ed.2d 970 (1989)).

In the seminal case adopting the four-part test for timeliness, the Supreme Court of South Carolina held a newspaper’s motion to intervene for the purpose of objecting to an order sealing court records satisfied the first two elements of this test because the newspaper “had no reason to seek intervention prior to the sealing of the records,” and that the motion was filed “within one month of the order.” Davis, at 504–05, 405 S.E.2d at 603. By contrast, in this case over one dozen years passed since the McDonalds knew about their interest in these suits.

Two years later, in Ex parte Reichlyn, the court affirmed the denial of motion to intervene where a creditor sought to join a governmental enforcement action against the debtor. Applying the four-part test from Davis, the Reichlyn court held “the stage to which the litigation ha[d]

progressed and the prejudice to the original parties support[ed] a conclusion that Reichlyn's motion to intervene was untimely." Ex parte Reichlyn, at 500, 427 S.E.2d at 664.

Applying the same four-part test here renders the conclusion that the McDonalds' motion is untimely. The McDonalds did not just recently learn of their interest in the class action cases. They learned in 2007 when they received the notices. Notice of the class actions was publicized in 2007 pursuant to the class action court's orders, and counsel is informed and believes the McDonalds attended the fairness hearing on March 9, 2007. If that is true, then they were present when class counsel argued in support of the settlement, explained the terms of the settlement, and explained class counsel's petition for fees and costs. The class settlement forms provided every claimant the right to opt out, and the McDonalds were no exception. Other claimants exercised their option and opted out, choosing for Mr. Meyers to represent them rather than submitting their claims to the arbitration process in the class settlement—a fact which has been touted as rendering the objectors a "better" result. The McDonalds elected not to object and instead submitted their claims to the claims process as set forth in the court-approved settlement agreement. They each received an award of \$20,000 for their respective loss of consortium claims. At the latest, they received the awards in March of 2008. To the extent they feel any fees were improperly requested or charged, the time to raise that issue was within three years of receiving the payouts. They failed to do so.

On October 21, 2019, the McDonalds filed a petition in the original jurisdiction of the Supreme Court of South Carolina with a proposed complaint and exhibits. The combined filings were 101 pages and requested that the Court exercise original jurisdiction over claims for declaratory relief, legal malpractice, breach of fiduciary duty and indemnification based upon the same allegations of collusion, judge-shopping, conflicts of interest and excessive and improper

fees.⁵ The Supreme Court denied that petition.⁶ The McDonalds received the order denying their petition, but they did move to intervene in these class action cases. Instead, they waited nearly three years to file the motion. They offer no explanation either for the initial eleven-year delay or for the additional three-year delay.

The McDonalds' extended delay is significant because it prevents this Court, the parties, and their respective attorneys from engaging in a reliable process. The true impact of the McDonalds' delay in asserting their claims of collusion, judge-shopping, conflict-of-interest, and excessive fees cannot be measured. State v. Hunsberger, 418 S.C. 335, 351, 794 S.E.2d 368, 376 (2016) ("The United States Supreme Court also recognized that excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or even identify . . . This is so because 'time's erosion of exculpatory evidence and testimony "can rarely be shown."') (quoting Doggett v. U.S., 505 U.S. 647, 655, 112 S.Ct. 2686, 120 L.Ed.2d 520 (1992)). Therefore, the first two elements suggest the motion to intervene is untimely.

The third element—the stage to which the litigation has progressed—weighs against the McDonalds, too. The unique facts of this case simply do not warrant granting a motion to intervene over a decade after a class action settlement has been concluded to relitigate issues the Court decided in 2007 and 2008. In Davis, the court reasoned that where a newspaper sought access to public court records within one month of the order of dismissal, the dismissal alone did not bar the motion to intervene. Had the newspaper waited fifteen years to file its motion, as the McDonalds have, the outcome would have been different. Not only do the unique facts of this case weigh heavily in favor of denying the motion to intervene, they compel that result. See In re Horry Cnty.

⁵ McDonalds' Petition for Original Jurisdiction and Complaint with Exhibit A through D, October 20, 2020.

⁶ Orders filed in Appellate Case No. 2020-001415, April 19, 2021, and June 15, 2021.

State Bank, *supra*. Allowing individuals to intervene in a class action case—fifteen years after the class settlement has been discussed in open court, approved, and administered—for the purpose of relitigating issues of fairness of the settlement and class counsel’s ability to represent the class will open the door to endless class action litigation. The documents and information being touted as newly discovered evidence of fraud on the court is, in a word, hyperbole. They knew fifteen years ago the case was concluded. They voluntarily submitted their claims, received awards, and signed releases as part of the administration of the settlement pursuant to the class action court order. At the latest, they would have discovered their alleged claims when they received the payout from class counsel following the arbitration award. They have no further interest in this litigation, and the Court should not permit them to intervene.

The fourth and final element of the timeliness test assesses the prejudice the original parties would suffer from granting intervention and the applicant would suffer from denial. “It is necessary to ask *why* a would-be intervenor seeks to participate, for if the desired intervention relates to an ancillary issue and will not disrupt the resolution of the underlying merits, untimely intervention is much less likely to prejudice the parties.” Davis, at 505, 405 S.E.2d at 603 (quoting Public Citizen, at 786 (emphasis in original)). In this case, the McDonalds seek intervention for the very reason of disrupting the underlying merits of the class action case, namely the approval of the settlement. If, as the Supreme Court noted, untimely intervention is much less likely to prejudice the parties when the intervention relates to an ancillary issue like unsealing court records, *id.*, then it stands to reason that untimely intervention is much *more* likely to prejudice the parties when the intervention seeks to review critical and material issues like the fairness of a fifteen-year-old class settlement. Furthermore, where, as here, the would-be intervenor has a separate pending action asserting the same allegations and causes of action for the same relief, denying the motion

to intervene will not cause the applicant any undue prejudice. Therefore, the fourth element also weighs against granting the motion.

For these reasons, the motion to intervene should be denied as untimely.

B. The McDonalds Have No Right to Intervene under Rule 24(a), SCRCP

In addition to a timely application, the McDonalds must: (i) assert an interest relating to the litigation; (ii) demonstrate they are in a position such that without intervention, disposition of the action may impair or impede their ability to protect that interest; and (iii) demonstrate that their interest is inadequately represented by other parties. Builders Mut., at 99, 847 S.E.2d at 90 (citing Berkeley Elec., at 189, 394 S.E.2d at 714). “Intervention of right requires a direct, substantial, legally protectable interest in the proceedings.” Reichlyn, at 499, 427 S.E.2d at 664 (citing Motorola, Inc., at 144 (not followed by 9th Cir. in later opinion)). The McDonalds have provided nothing upon which the Court can find they satisfy any of these elements.

First, there is no ongoing action into which the McDonalds can intervene. In Reichlyn, the court reasoned that in addition to the untimeliness of the motion to intervene, there was “no ongoing judicial ‘action’ into which Reichlyn [could] intervene” because the parties to the litigation had entered a consent order. Reichlyn, at 500, 427 S.E.2d at 664. Similarly here, the parties to the litigation entered a settlement agreement that was court-approved in a final order entered August 31, 2007.

Second, intervention of right requires that the movant have “constitutional standing, in that the intervenor must be a ‘real party in interest.’” Builders Mut., at 99, 847 S.E.2d at 90 (citing Ex parte GEICO), at 138–39, 644 S.E.2d at 702–03). The McDonalds are not real parties in interest and have no direct interest in these cases because they voluntarily submitted their claims to the arbitration process in 2007 under the settlement agreement, received awards in 2008, and signed

releases. Any interest they had in the litigation was resolved and disposed of. See id. (holding insurance company was not a “real party in interest” in the litigation and therefore had no “direct interest” in the litigation so as to satisfy requirements for intervention as a matter of right even though insurance company had duty to defend and duty to indemnify).

Third, the McDonalds also cannot show that without intervention, disposition of the action may impair or impede their ability to protect that interest. They attended the fairness hearing and received the settlement notices. They submitted their claims to the arbitration process as part of the settlement. Therefore, they have no further interest in this litigation. Any interest they had was concluded and settled when they submitted their claims to the settlement process, were paid, and gave releases in exchange. To the extent the McDonalds had a legitimate interest or meritorious claim to assert involving the administration of the class settlement, which is a point of debate, they knew or should have known about those claims fifteen years ago when they received their disbursements.

For these reasons, the McDonalds have failed to show they are entitled to intervention as a matter of right.

C. The McDonalds Have Not Proven Grounds for Permissive Intervention

While the McDonalds have not sought permissive intervention, they may argue for permissive intervention at the hearing. To the extent they do, they have failed to prove the necessary elements. In addition to a timely application, the McDonalds must satisfy two elements for permissive intervention: (i) assert a claim or defense that has a question of law or fact in common with the underlying action; and (ii) prove their participation in the underlying action will not delay or prejudice the adjudication of the rights of the original parties. Builders Mut., at 101, 847 S.E.2d at 91. They have done neither. There are no pending questions of law or fact in the

class action cases because, as noted above, the class action cases have been settled and the settlement approved pursuant to Rule 23, SCRCP, and the class action court's orders. The final order approving settlement was entered August 31, 2007. No appeal was taken from that final order. Therefore, similar to Reichlyn, there is "no ongoing judicial 'action'" into which the McDonalds could intervene. Reichlyn, at 500, 427 S.E.2d at 664. What the McDonalds raise are not common issues (as the Rule contemplates) but rather new issues which they seek to inject into the class action case fifteen years after the settlement to challenge *post hoc* the fairness of the fee award and to obtain a complete disgorgement of class counsel's fee. Nothing in Rule 24, SCRCP, contemplates or authorizes intervention for such a purpose.

Finally, the McDonalds have failed to prove their participation in the underlying action will not delay or prejudice the adjudication of the rights of the original parties. To the contrary, the McDonalds seek to inject new arguments challenge the terms of the class settlement, threatening the finality of rulings and disbursements pursuant to the settlement that were made fifteen years ago, and placing at risk the rights of all class members and all parties to the litigation who for the past fifteen years have lived and operated under the belief the court order approving the class settlement was final.

Therefore, the McDonalds have failed to prove they should be permitted to intervene under Rule 24(b)(2), SCRCP.

IV. Motion for Post-Award Fairness Hearing

There is no authority for the "post-award fairness hearing" the movants request. Rule 23, SCRCP, empowers a class action court to exercise broad discretion, including the approval of class settlements. However, nothing in that rule contemplates reopening the case fifteen years later, after the entry of the final judgment approving the settlement, after the funds from the settlement

fund have been disbursed, and after the surplus has been paid as provided by the court-approved settlement. To the contrary, Newberg and Rubenstein on Class Actions explains that class action settlements contemplate have three stages:

First, the parties present a proposed settlement to the court for so-called “preliminary approval.” If a class has not yet been certified, the parties will typically simultaneously ask the court to conditionally certify a settlement class.

Second, if the court does preliminarily approve the settlement (and conditionally certify the class), notice is sent to the class describing the terms of the proposed settlement, class members are given an opportunity to object or, in Rule 23(b)(3) class actions, to opt out of the settlement, and the court holds a fairness hearing at which class members may appear and support or object to the settlement.

Third, taking account of all of the information learned during that process, the court decides whether or not to give “final approval” to the settlement. As the parties may also have moved for class certification at this point in the litigation, final approval can also encompass a decision certifying the class. Rule 23(e)(2) conditions final approval of any class action settlement on a judicial finding that the terms are “fair, adequate, and reasonable.” While this decision is left to the discretion of the trial court, most circuits created detailed, multifactor tests to guide the trial judge's decision. In 2018, Congress amended Rule 23 to codify a list of such factors.

Newberg and Rubenstein on Class Actions § 13:1 (6th ed.). While South Carolina's rule read differently from the federal rule, it contemplates the same approach to approval of class settlements. Here, the parties, their attorneys, and the class action court followed that very process. Preliminary approval was sought, and the class was certified pending a fairness hearing. Notice was provided to the entire class, attracting the objectors. The class action court held the fairness hearing on March 9, 2007, and heard all objections. Following more status conferences, another hearing, and a court-initiated investigation by the First Circuit Solicitor, the class action court finally approved the settlement. That settlement established the maximum amount of the fund, appointed an escrow agent, appointed the arbitrator, and established the damages matrix the arbitrator was to follow. Notice of the settlement was provide, the claims were submitted, and the claims were arbitrated and paid pursuant to the settlement terms. There is no basis for this court

to now reopen the case and unwind the disbursements.

Movants suggest every class action court should require a post award fairness procedure to review the administration of class settlements and disbursements. That suggestion, however, disregards the extent to which class counsel had to go to obtain class certification and the monumental effort the class action exerted to ensure the class was adequately represented by both class representatives and class counsel and that the settlement was fair. A post-award fairness hearing would merely give objectors such as Meyers and Flowers yet another opportunity to disrupt a settlement. While objectors can serve a useful function, Newberg and Rubenstein observe:

Some objections . . . are made for improper purposes, and benefit only the objectors and their attorneys (e.g., by seeking additional compensation to withdraw even ill-founded objections). An objection, even of little merit, can be costly and significantly delay implementation of a class settlement. Even a weak objection may have more influence than its merits justify in light of the inherent difficulties that surround review and approval of a class settlement. Objections may be motivated by self-interest rather than a desire to win significant improvements in the class settlement. A challenge for the judge is to distinguish between meritorious objections and those advanced for improper purposes.

Newberg and Rubenstein on Class Actions § 13:21 (6th ed.). Several accepted mechanisms have been used by class counsel to combat professional objectors, including “quick pay” provisions allowing class counsel to be paid before appeals are concluded. In this context, it is not surprising that counsel for the McDonalds, frustrated by the “quick pay” provision in this class settlement, mischaracterizes the “quick pay” provision as something proving class counsel negotiated to place their own interest ahead of the class members’ interests.

For these reasons, the Court should decline to exhume this case and deny the motion for a post-award fairness hearing.

V. Disqualification of Class Counsel

The McDonalds contend class counsel should be disqualified and replaced with new counsel to-be-determined. As noted above, the class action was concluded in 2007, and the class claims were arbitrated and paid in February 2008. In exchange for payment, the claimants gave releases, and their claims were extinguished. As a practical matter, therefore, there is no class action. The consolidated lawsuits ended in 2007. The post-judgment activity does not alter that truth or prevent the finality of the class action court's orders. The case was concluded. There is no more class action. The request to disqualify counsel should be denied as moot.

CONCLUSION

For the reasons set forth above, counsel would therefore show the Court should deny Mr. Sires' motion for a post-award fairness hearing, deny the McDonalds' motion to intervene and for a post-award fairness hearing, find the July 30, 2007 was a final judgment, and enter an order formally concluding these proceedings.

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January 26, 2023

Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO. 2006-CP-18-1310
		2006-CP-18-1311
		2006-CP-18-1636
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	)	
representatives of a class of people	)	
similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
The Bishop of Charleston a corporation	)	
Sole, and The Bishop of the Diocese of	)	
Charleston, in his official capacity,	)	
	)	
Defendants.	)	
	)	

Motion to Alter or Amend a Judgement

Pursuant to SCRCP 59(e), class members Julie McDonald and Richard McDonald move to alter or amend the judgment embodied in the court's order of March 24, 2023.

Grounds for the motion are:

1. The order makes no explicit analysis or ruling on the court's fiduciary obligation to the class, which requires the court to protect the class. E.g., SCRCP 23(d)(2) (the court is to "fairly and adequately protect" the class); *Shelton v. Pargo, Inc.*, 582 F.2d 1298, 1305 (4th Cir. 1978) (the Court "should be zealous" in supervising class actions); *In re Green*, 354 S.E.2d 557 (S.C. 1987) (discussing the fiduciary obligations which stem from alleging a class).

2. The order errs in contending, at page 4, that no authority was cited to hold a post-award fairness hearing. SCRCP 23, which was cited, explicitly states that no class action may be dismissed "without the approval of the court." SCRCP 23(d)(2) authorizes the court "at any

time” to protect the class by “appropriate orders.” Both SCRCP 23 and the court’s fiduciary responsibility for the class were each cited.

We contend SCRCP 23(c) does not refer to a merely ministerial act before a class action may be dismissed. In short, SCRCP 23 itself both authorizes and *obligates* the court to protect the class when, prior to dismissal, any information appears that the interests of the class have not been protected — such as class counsel having charged class members a fee not authorized by any order.¹

It is undisputed, as the order states, that no order of dismissal has ever been entered in the class action before the March 24, 2023 order. The court has erred in concluding it lacks authority to review class counsel’s conduct in implementing the class settlement when SCRCP 23 explicitly provides for such review before a class action is dismissed. The court is not being asked to “create a right or remedy where one does not exist,” but is being asked to exercise the fiduciary duties imposed by SCRCP 23, using the procedure embedded in SCRCP 23(c) that before dismissing a class action the court assure itself that the class has not been mistreated, as this class plainly has been. SCRCP 23 contains no exception for colluding parties, or for counsel or parties who are politically connected, or for counsel who are social and professional friends of the judge for whom the colluding parties shopped and for whom they engaged in elaborate maneuvers (not anywhere authorized in SCRCP 23) to get the class settlement process before.

3. The explicit provisions of SCRCP 23 requiring court approval before a class action is dismissed in no way conflicts with the July 30, 2007 order which authorized the class

¹ Particularly given that the court awarded fee amply overpaid class counsel in light of (a) the patently fraudulent time records submitted to support the fee award, and (b) that the parties colluded to conceal from Judge Goodstein that class counsel had already been paid a contingent fee covering nearly 100% of the time submitted in those fraudulent time records. No court should enable such Murdaugh-style corruption and overcharging class members.

settlement agreement to be implemented. Indeed, such a review would seek to enforce the order. To make sure it was complied with. Court approval before dismissal is precisely a post-award fairness hearing, not to re-examine settlement approval but to examine if the orders approving the settlement were complied with.

The McDonalds allege the orders were not complied with, in that class counsel took it upon themselves to collect even more fee than any order authorized. For class counsel, it was not enough to have grossly distorted the time records and agreed with their colluding “adversary” to conceal the contingent payment which had already been received. When the court chose to stop looking, despite SCRCP 23(c), class counsel charged class members an additional fee which no order authorized. That is to be permitted? Bench and bar need to know.

4. Similarly, neither the “law of the case” nor SCRCP 43(l) (the “two judge rule”) conflicts with the requirement in SCRCP 23(c) for court approval before any class action is dismissed. The post-award review examines whether class counsel has *complied* with the order authorizing the class settlement, it does not “overrule” it. It enforces it. Particularly given that it is now demonstrable that the parties colluded to conceal information from Judge Goodstein (the undisclosed contingency fee), and the wildly inflated time records which were never examined with any care, the court should treat seriously the extra bit of corruption the McDonalds can each demonstrate in the form of overcharging the class an entirely unauthorized fee. Such a review would be examining different facts (“was the class settlement order complied with?”, not “should the class settlement be approved?”), so would not in any way conflict with the two judge rule embedded in SCRCP 43(l).

Nor does the two-judge rule even apply after a judge has recused herself from a case. The judge newly assigned replaces that judge, and necessarily has authority to take any action he or

she considers appropriate. The November 10, 2022 order which appointed Your Honor says the court is to “decide all matters pertaining to this case,” not “decide all matters pertaining to this case except for anything ruled on by Judge Goodstein.” Or of any other judge which preceded Your Honor since Judge Goodstein recused herself.

5. At p. 1 the order gives an incorrect history of the litigation. The order states, incorrectly, that “On August 15, 2006, the first two of the three above-captioned class actions were commenced,” and that the “third suit,” referring to civil action 2006-CP-18-1636, “was commenced October 6, 2006.” This assertion is factually incorrect, and the court was provided the documents to show that the complaint in 2008-CP-18-1636 was identical to the class action previously filed in Charleston County on December 2, 2005 (as case 2005-CP-10-4913). That class action, along with two other 2005 Charleston County cases (2005-CP-10-2053 and -3293) was mediated in June 2006, and in that mediation the class settlement was reached. The handwritten agreement of that class settlement is dated June 14, 2006 and was provided to the court. It is captioned with those Charleston case numbers. That the cases started in 2006 is a false pretense, designed to elide extensive collusive acts taken by the parties when the class settlement was reached in Charleston County then moved to Dorchester County.

As other examples, the late Professor Freeman, in his affidavit filed February 14, 2007 (submitted in support of class counsel’s fee request) states, at paragraph 7, “The lawsuit was filed in June of 2005....” The amended motion to certify the class and approve the settlement, filed January 17, 2007, refers to “other actions” that “have been of record since at least May of 2005.” Class counsel submitted time records which reflect the 2005 case filings. The public record reflects those filings. Sustaining the pretense that the class action began in 2006 is a

bizarre, but is certainly the party line maintained by class counsel, despite the actual, plainly demonstrable, facts.

The essential allegations of the motions which the court has denied are that class counsel served his own ends, to the disadvantage of the class members. Mr. Sires, a class representative, alleges he was abandoned by class counsel. The McDonalds allege that class counsel charged them (and apparently every other class member) fees no order authorized. The record demonstrates that the class action was collusive, and that if not before June 14, 2006 then certainly after June 14, 2006 class counsel and the diocese colluded to, among many other things, judge-shop. Contrary to SCRCP 23, the goal of the judge-shopping was to move to Judge Goodstein the class settlement approval process. Judge Goodstein apparently agreed to be shopped-for, and once she assigned the cases to herself, the parties colluded to maneuver to Dorchester County, also contrary to SCRCP 23, the June 2006 class settlement reached in the Charleston cases (including 2005-CP-10-4913), the only cases then pending. Before any Dorchester County case was filed, each was already included in the class settlement.

It matters that the court affirmatively mis-states the history of the cases, and it matters that the parties engaged in collusive conduct, as each relates directly to (a) the erroneous concept that once a class settlement is initially approved then class counsel is free to depart from the order granting initial approval and serve his own ends at the expense of the class members he represents, and (b) Judge Goodstein failed to perform the court's role as fiduciary of the class and to protect the class, even after evidence of class counsel's misconduct was given to her. Accompanying the McDonalds' motion was direct evidence that class counsel charged the McDonalds, and apparently every other class member, a fee which no order authorized. The court errs in permitted class members to be overcharged by class counsel acting

in their own interest at the expense of the class he represents. We contend doing so is a breach of class counsel's duties to the class, which the court's own fiduciary obligations to the class imposed by SCRCP 23 obligates the court to consider, not ignore.

6. The order does not articulate what connections or status of counsel permits counsel or parties to ignore orders of the South Carolina Supreme Court, important information for bench and bar which the order should explain.

7. At page 2 the order states, "the claims of class members were administered *pursuant to the terms of the court-approved settlement*" (emphasis added), a statement which presumes exactly what the motions contend, and demonstrate, did not occur: the entire class was overcharged by what is conservatively estimated to be over \$900,000. The court's order fails to consider, without analysis, the allegations of the motion and its supporting documentation that demonstrate that the order approving the class settlement was not properly implemented. Class counsel saw, and took, an opportunity to charge even more fee than the court approved. Will the courts simply overlook such conduct? Do all lawyers now get to conceal from the court fees received and submit time records claiming more than 24 hour days?

8. At page 2 the order states a final accounting for the class settlement was provided on March 10, 2008. In fact, there were two "final accounting" documents, the second of which is dated March 24, 2009 and which was filed with the court on January 30, 2023. Neither makes a full disclosure of payments charged by or made to class counsel, as other filings have demonstrated.

9. At page 2 the order concludes, referring to March 10, 2008, that "there was nothing more for the court to decide with regard to the claims of the class members." The order errs in this respect as it omits that SCRCP 23(c) required, starting in March 2008 and extending

to this day, the court to not dismiss the class action without reviewing whether class counsel had complied with the court's orders in implementing the class settlement. As the motions demonstrate, class counsel did not faithfully implement the court's orders, class counsel overcharged the class members, and the court has erred by neglecting its fiduciary obligations to the class before dismissing the class action, when what SCRCp 23(c) requires the court to do before dismissing the class action is exactly what Mr. Sires' motion and the McDonalds' motion seeks the court to address.

10. Beginning at the bottom of page 2, in reference to a January 29, 2009 hearing and orders in February and March of 2009, and also on page 4, the court incorrectly conflates with the class action an entirely separate breach of contract case brought against the Diocese by persons who had opted out of the class action and had a separate settlement on better terms than was provided to class members. The Diocese failed to pay that settlement as it had agreed. That case had been filed in Charleston County (civil action 2008-CP-10-1274) and was transferred, over objection, to Judge Goodstein. We agree that case was appealed, and ruled on by the Supreme Court (*Ex Parte Doe*, 711 S.E.2d 892 (2011)), but that appeal was not about the class action settlement. It involved individual plaintiffs who were not part of either settlement class.

11. At page 3 the order refers to the "unknown" reason why no final order was entered in the class action before 2023. The court has erred by accepting that unknown, as opposed to demanding, before dismissal, that class counsel and the Diocese account to the court for why they ignored the Supreme Court's 2009 order to conclude the class action by September 19, 2009. The colluding parties neither complied with the Supreme Court's order nor sought from the Supreme Court (as the order required) any extension of time.

If Supreme Court orders may be ignored, the court's March 24, 2023 order should articulate what connections or status of counsel or parties permits counsel or parties to ignore orders of the South Carolina Supreme Court, important information for bench and bar. The McDonalds, of course, contend that the reason no order of dismissal was entered from 2008 to 2023 was to prevent appellate review, which has never taken place.

12. At page 3 the order erroneously omits that class counsel themselves filed a motion in the class action on April 16, 2012. Obviously, in 2012 class counsel did not regard the class action as closed, but as ongoing. A copy of that motion is Exhibit A to this motion. Judge Goodstein then recused herself while that motion was pending. Exhibit B is Judge Dickson's 2013 order on that motion by class counsel. Note that no one contended the "law of the case" or the "two judge rule" contended Judge Dickson was powerless to act on the motion.

Conclusion

Protecting members of a class from class counsel having colluded so as to line their own pockets at the expense of class members is fairly within SCRCP 23. The court is authorized by, indeed is obligated by, SCRCP 23(c) to conduct such a review before any class action is dismissed. Making sure collusion is not permitted to run amok in a class action should not be outside the reach of the court. This class action record is a mess because the class action settlement was allowed to be manipulated without any meaningful judicial scrutiny and by collusive conduct. Processes in SCRCP 23 are intended to "fairly and adequately protect the interests of the persons on whose behalf the action was brought," as SCRCP 23(d)(2) puts it. The court should not look away and permit colluding parties to manipulate Rule 23, even if they are personal friends with a circuit judge. The rule of law requires such corruption be regulated, even when it is among people known to the court.

The order should be revised and the review should be conducted.

Respectfully submitted,

s/ Gregg Meyers

Gregg Meyers, SC Bar No. 9908
217 Lucas Street, Unit F-1
Mt. Pleasant SC 29464
843-324-1589
attygm@gmail.com

Attorney for the McDonalds

Certificate of Service

I certify that on April 3, 2023 opposing counsel in this action were served this document via the court's e-file system as well as by email, and that Mr. Sires has been served by his @icloud.com email, a method of service to which he had agreed.

s/ Gregg Meyers

Gregg Meyers, SC Bar No. 9908
217 Lucas Street, Unit F-1
Mt. Pleasant SC 29464
843-324-1589
attygm@gmail.com

Attorney for the McDonalds

Exhibit A

2012 Motion by Class Counsel

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

John Doe #53, Et al.

☒ Plaintiff

IN THE COURT OF COMMON PLEAS

CASE NO.

2006-CP-18-1310

2006-CP-18-1311

2006-CP-18-1636

v.

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

The Bishop Of Charleston, Et Al.

☐ Defendant.

Plaintiff's Attorney:

David Haller, Bar No.

Address:

115 River Landing Drive, Suite 102

Charleston, SC 29492

phone: 843-849-1384 fax: 843-853-9377

e-mail: dhaller@hallerlawfirm.com other:

Defendant's Attorney:

Albert P. Shahid, Jr., Bar No.

Address:

89 Broad Street

Charleston, SC 29401

phone: 843-853-4500 fax: 843-722-1119

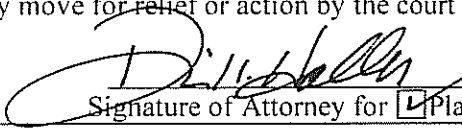
e-mail: shahidlo@bellsouth.net other:

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**SECTION I: Hearing Information**

Nature of Motion: Motion to Enforce Settlement

Estimated Time Needed: 30 min Court Reporter Needed: ☒ YES / ☐ NO**SECTION II: Motion/Order Type**☒ Written motion attached☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for ☒ Plaintiff / ☐ Defendant

April 16, 2012

Date submitted

SECTION III: Motion Fee☒ PAID - AMOUNT: 25.00☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support(check reason) ☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☐ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCF)☐ Proposed order submitted at request of the court; or,

reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:**JUDGE'S SECTION**☐ Motion Fee to be paid upon filing of the attached order.☐ Other:

JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF DORCHESTER)

John Doe #53, John Doe 66, John Doe) Case Nos. 06-CP-18-1310
 66A, John Doe 67, Jane Doe 1, Jane Doe) 06-CP-18-1311
 2 and Rachel Roe individually and as) 06-CP-18-1636
 representatives of a class of people)
 similarly situated,)

Plaintiffs,)

v.)

NOTICE OF MOTION AND MOTION
 TO ENFORCE SETTLEMENT

The Bishop of Charleston, a Corporation)
 Sole, and The Bishop of the Diocese of)
 Charleston, in his official capacity,)

Defendants.)

**TO: THE PLAINTIFFS ABOVE NAMED AND TO THE DEFENDANTS ABOVE
 NAMED AND ALBERT P. SHAHID, JR., THEIR COUNSEL**

YOU WILL PLEASE TAKE NOTICE that the Primary and Consortium Classes, by and through their undersigned class counsel, will move, in ten (10) days before the Honorable Diane S. Goodstein at the Dorchester County Courthouse, or at such other time and place as the Court deems proper, for an order pursuant to SCRCP Rule 43(k) enforcing the settlement in this matter against the Diocese of Charleston as to certain potential class members. Potential class members John Doe 1, John Doe 2, Jane Doe 4 and John Doe 10 assert they did not receive notice of the settlement prior to the close of the claims period because they lived outside of South Carolina but they were entitled to notice because they were members of either the Primary or Consortium class. Class counsel are informed and believe these individuals are entitled to participate in the class settlement process under the terms and conditions of this Court's Orders approving settlement and enforcing the same, which orders are dated July 30, 2007 and August

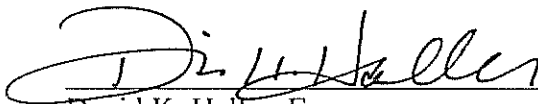
31, 2007. Class counsel prays the Diocese be ordered to open the claims process for these potential claimants.

Alternatively, class counsel asserts that if these potential claimants were not within the scope of the court's notice scheme, then they were not members of either class and not entitled to notice. Class counsel requests that the Court interpret its prior orders to determine the standing of these potential claimants to participate in the settlement process.

In addition, class counsel request that the Court approve a mechanism by which potential class members may bring claims in the settlement process by a showing that he or she was in the group of individuals to whom the Diocese was to provide notice, but failed to so do.

This motion will be based upon such affidavits and other documents as may be filed and served and the law in such cases made and provided.

Respectfully submitted,



David K. Haller, Esq.
Email: dhaller@hallerlawfirm.com
Haller Law Firm, LLC
115 River Landing Drive, Suite 102
Charleston, SC 29492
Phone: (843) 849-1834

ATTORNEYS FOR PLAINTIFFS AS
MEMBERS OF THE CLASS

April 16th, 2012

Charleston, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

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

Plaintiffs,)

v.)

The Bishop of Charleston, a Corporation)
 Sole, and The Bishop of the Diocese of)
 Charleston, in his official capacity,)

Defendants.)

Case Nos. 06-CP-18-1310

06-CP-18-1311

06-CP-18-1636

CERTIFICATE OF SERVICE

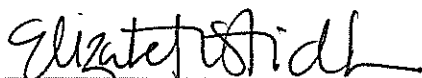
I certify that a copy of the foregoing **NOTICE OF MOTION AND MOTION TO ENFORCE SETTLEMENT** has been served upon the following counsel of record by mailing a copy of the same to them, postage prepaid, in the United States Mail, addressed as shown below this 16th day of April, 2012:

Gregg Meyers, Esq.
 Jeff Anderson & Associates, P.A.
 1 Poston Road, Suite 110
 Charleston, SC 29407

Albert P. Shahid, Jr., Esq.
 Shahid Law Office, LLC
 89 Broad Street
 Charleston, SC 29401

Attorney for Plaintiffs in related cases

*Attorney for Defendants The Bishop of
 Charleston, a Corporation Sole, and The
 Bishop of the Diocese of Charleston, in his
 Official Capacity*



Haller Law Firm, LLC
 115 River Landing Drive, Suite 102
 Charleston, SC 29492

Exhibit B

2013 Order by Judge Dickson

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2006CP1801310

CERTIFIED COPY

Jane #1 Doe

Jane #2 Doe

2013 DEC 17 PM 1:25

Bishop of charleston

Bishop of the diocese of
charl

Rachel Roe
John #66 Doe
John #67 Doe

John #53 Doe
John 66A Doe

CLERK OF COURT
DORCHESTER COUNTY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Edgar Dickson

2153

12/16/2013

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on ¹⁷12/16/2013, and a copy mailed first class or placed in the appropriate attorney's box on ¹⁷12/16/2013, to attorneys of record or to parties (when appearing pro se) as follows:

David K. Haller 115 River Landing Drive Suite 102
Charleston, SC 29492
John Sinclair III 115 River Landing Dr. Ste. 102
Charleston, SC 29492
Gregg E. Meyers 366 Jackson Street Suite 100 St Paul, MN
55101

ATTORNEY(S) FOR THE PLAINTIFF(S)

Lionel S. Lofton 225 Seven Farms Dr. Ste. 109 Charleston,
SC 29492
Albert P. Shahid Jr. 89 Broad St. Charleston, SC 29401
David K. Haller 115 River Landing Drive Suite 102
Charleston, SC 29492
George J. Kefalos 46A State St. Charleston, SC 29401

ATTORNEY(S) FOR THE DEFENDANT(S)


Cheryl Graham - Clerk of Court

Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

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

Plaintiffs,)

v.)

The Bishop of Charleston, a Corporation)
Sole, and The Bishop of the Diocese of)
Charleston, in his official capacity,)

Defendants.)

Case Nos. 06-CP-18-1310
06-CP-18-1311
06-CP-18-1636

**ORDER ON MOTION TO
ENFORCE SETTLEMENT**

2013 DEC 17 PM 1:25
CERTIFIED COPY
CLERK OF COURT
DORCHESTER COUNTY

THIS MATTER came on for hearing on April 12, 2013 on Plaintiffs' Motion to Enforce Settlement. Specifically, this Court was asked to interpret the July 31, 2007, Order (hereinafter "Order") in these cases and determine whether the class action court, in creating the class pursuant to SCRCP Rule 23, intended that the class be comprised only of individuals residing in South Carolina during the claims period. Having reviewed the Order and proceedings, I determine the class action court did not intend such limitation.

SCRCP Rule 23 governs the procedures used in certifying class actions in South Carolina and subsequently carrying them out. The rule's scheme imposes on the class action court the duty to protect individual class members through a notice publication scheme sufficient to reach those the court believes are the intended beneficiaries of the settlement and/or orders of the court who fall within the class definition. Specifically, Rule 23(c) directs that settlements of class claims cannot be had without court approval and further requires that, "notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court

1/3 *as*

directs.” Rule 23(c), SCRPC. Rule 23(d) grants the class action court wide authority to, “impose such terms as shall fairly and adequately protect the interest of the persons on whose behalf the action is brought or defended” and to “impose additional conditions to protect the interests of absent persons.” Rule 23(d)(2) and (3), SCRPC. The record before me illustrates the lengths to which the class action judge, The Honorable Diane S. Goodstein¹, went to ensure the protection of class members in this case. Judge Goodstein’s orders are the law of the case. *Cherry v. Myers Timber Co., Inc.*, 404 S.C. 596, 745 S.E.2d 405 (Ct. App. 2013).

The cardinal rule of interpreting documents is to discern the intent of the document by evaluating the document(s) as a whole. See *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 713 S.E.2d 278 (2011) (“In interpreting a statute, the language of the statute must be read in a sense that harmonizes with its subject matter and accords with its general purpose”); *Gardner v. Mazingo*, 293 S.C. 23, 25, 358 S.E.2d 390, 392 (Ct. App. 1987) (Grantor’s intent must be found from the four corners of a deed, giving the entire deed its fair reading).

Applying this rule, this Court finds that Judge Goodstein’s 2007 Order did not define a class comprised exclusively of South Carolina residents. The structure and language in the Order indicate the class included persons “born on or before August 30, 1980 who, as minors, were sexually abused at any time by agents or employees of the Diocese of Charleston who have not previously had any similar claim adjudicated, resolved, or released,” and their family members who suffered a loss of consortium as a result of the abuse. There was no express provision providing that the class was for in-state residents only. Furthermore, the class claimants to the settlement consisted of approximately one-quarter out-of-state residents. The

¹ Judge Goodstein, who was assigned this case as a complex matter, has recused herself. It came to the undersigned as Resident Judge for the First Judicial Circuit. The case was subsequently assigned by the Chief Justice of the South Carolina Supreme Court to The Honorable Ernest Kinard.

Court believes it would be unreasonable to infer an in state resident requirement without an express statement to that effect by the class action court. Therefore, the Court finds that the class action court intended the class to include victims of Diocesan abuse, as defined above, regardless of state of residence at the time of the claims period.

AND IT IS SO ORDERED!



Edgar W. Dickson, Presiding Judge

This 21st day of Nov., 2013.

Orangeburg, South Carolina

COPY

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF DORCHESTER) CASE NOS. 2006-CP-18-1310,
1311, 1636

JOHN DOE 53, JOHN DOE) TRANSCRIPT OF RECORD
66, JOHN DOE 66A, JANE)
DOE 1 AND JANE DOE 2 AND) SETTLEMENT AGREEMENT
RACHEL ROE INDIVIDUALLY)
AND AS REPRESENTATIVES) March 9, 2007
OF A CLASS OF PEOPLE)
SIMILARLY SITUATED,) St. George, South Carolina
Plaintiffs,)

-versus-

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

B E F O R E:
The Honorable Diane S. Goodstein

A P P E A R A N C E S:
Lawrence Richter, Esquire
David Haller, Esquire
Richter & Haller
622 Johnnie Dodds Boulevard
Mt. Pleasant, SC 29464
For the Plaintiffs

A. Peter Shahid, Jr., Esquire
Shahid Law Offices, LLC
15 State Street
P. O. Box 591
Charleston, SC 29402-0591

-and-

James C. Geoly, Esquire
Burke, Warren, McKay & Serritella, PC
22nd Floor, IBM Plaza
330 North Wabash Avenue
Chicago, IL 60611-3607
For the Defendants

Robin L. Keil, RMR.
Resident Court Reporter
First Judicial Circuit

A L S O P R E S E N T :

Gregg Meyers, Esquire
Walter Bilbro, Esquire
Matthew Creech, Esquire
Marvin Infinger, Esquire
Lionel Lofton, Esquire
Jack Sinclair, Esquire
Glenn Churchill, Esquire

COURT'S EXHIBIT(S):

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
C-1	Crimen Sollicitationis	157	

March 9, 2007

John Doe, et al v. The Bishop of Charleston, et al

(March 9, 2007.)

THE COURT: Thank you all so much and
please be seated.

Let me just share with everyone
what counsel was discussing with me in the
back. First of all, they have -- they wanted
me to know that there had been some agreement
to change some of the language in the
proposed resolution and ultimately order, and
they wanted me to know that and they wanted
to have an opportunity to publish that for
the Court and, of course, for everyone, the
class members.

And those are the objections, they
wanted to do that first, and then they wanted
to have an idea of what the schedule might be
this morning.

And what I shared with them I
thought made sense would be to place those
proposed amendments, supplementations on the
record and then next I want to hear from
those with objections and I'd like to hear
them in this order: The ones proposed by
Mr. Parker first, then the objections
proposed by Mr. Bilbro and last, but not

March 9, 2007

John Doe, et al v. The Bishop of Charleston, et al

1 least, certainly not Mr. Meyers, because
2 Mr. Meyers, he has more grounds if you will
3 and I thought we would take the ones at least
4 that appeared to be perhaps not as lengthy.

5 And then once those matters are
6 concluded, we'll probably take a little break
7 because y'all will probably be ready for a
8 little break at that point. And then I'll
9 hear the issues regarding expenses and fees
10 and the like if any of those remain.

11 So my sense is that that will give
12 us some order. That's what we were
13 discussing so that we would have that -- that
14 organization this morning.

15 And without further ado, who would
16 like to tell me about the either amendment or
17 supplementation, however you would refer to
18 it?

19 MR. RICHTER: Your Honor, Lawrence
20 Richter together with David Haller for the
21 plaintiffs. And we appear as class counsel,
22 Your Honor.

23 I think that there are only two
24 matters that need to be amended. This has
25 been accomplished, as you know, this order

March 9, 2007

John Doe, et al v. The Bishop of Charleston, et al

1 and the settlement agreement and all the
2 documents that have come together to get us
3 where we are today, have been put together
4 over a period of many months and over the
5 expenditure of many hours before Your Honor
6 and in Your Honor's chamber. We all join in
7 thanking you for your accessibility and your
8 input in that regard.

9 I suppose it was inevitable there
10 was going to be some kind of drafting error
11 or at least an unclear statement. And I
12 think that has occurred in a couple of
13 instances.

14 Somewhere in the transcriptions the
15 words "opt out" were left out. And clearly
16 that is not the intent. We have drafted
17 language specifically providing, as we must,
18 the rule does, that anyone has a right to opt
19 out of the class. They are not mandated into
20 the class.

21 That is a matter that Mr. Parker
22 and his office made objection about and I
23 think Mr. Bilbro, yes, and Mr. Bilbro also
24 made objection and Mr. Meyers did as well.
25 So hopefully -- and we've got language to

March 9, 2007

John Doe, et al v. The Bishop of Charleston, et al

1 hand up to you simply correcting what was
2 some of our errors. We're not laying any
3 blame on anybody, we should have been clearer
4 in what we said.

5 THE COURT: All right. Let me ask you
6 this question. Have counsel with objections,
7 has that language been shared with them?
8 Because you may just publish it, you may not
9 have copies for everyone.

10 MR. RICHTER: We served all of the
11 objecting counsel.

12 THE COURT: Okay. Great. Good. All
13 right. Well, either if you will publish it
14 or pass up, either way would be fine.

15 MR. RICHTER: We propose just rewording
16 what is paragraph 3W.

17 THE COURT: Okay.

18 MR. RICHTER: As follows: Any person
19 who satisfies the definition of either class
20 is a member of that class to the full extent
21 allowed by law, unless they opt out of either
22 class. Any individual who believes he or she
23 is or may be a member of either of the
24 plaintiffs' classes, but does not wish to
25 participate in the settlement for any reason,

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1 may opt out of the settlement and/or the
2 classes by completing the court-approved opt
3 out form, which we have submission for Your
4 Honor -- we've shared it around -- and
5 transmitting it to class counsel. Given the
6 sensitive nature of the claim which here have
7 or may be alleged, the parties agree that
8 they will jointly request that the Court have
9 class counsel serve as the initial repository
10 of the opt out forms. At the close of the
11 time in which the forms can be completed,
12 class counsel shall send a copy of the forms
13 to counsel for the diocese and then file the
14 original forms with the Dorchester County
15 clerk of court under seal.

16 Typically opt out -- often, I
17 should say often, not typically, often opt
18 outs are accomplished by mailing in to the
19 clerk.

20 THE COURT: Right.

21 MR. RICHTER: The difficulty here is the
22 nature of the claims, everyone's desire to
23 preserve identity as fully as we can. That's
24 the reason that we outlined this procedure.

25 As far as we know, it's

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1 satisfactory to everybody. I don't think
2 anybody has any difficulty. Walter, are you
3 all right with that?

4 MR. BILBRO: No problem.

5 MR. RICHTER: Everyone has indicated to
6 us that was fine. That was the first.

7 And the second, Your Honor --

8 THE COURT: Wait. Let me stop right
9 there, if I may. And with the opt out
10 language changed, first of all I'll ask from
11 the diocese is that acceptable?

12 MR. SHAHID: Yes, ma'am.

13 THE COURT: Very well. And then -- and
14 if you are uncomfortable, counsel who are
15 here with the objections, at all in
16 expressing your position now, let me know and
17 I'll hear you fully. But I'd ask,
18 Mr. Bilbro, first from you.

19 MR. BILBRO: Since the language has been
20 changed, we're going to withdraw our opt out
21 request since we will have some additional
22 time, because it would be premature at this
23 point. I have to meet with Mr. Richter on
24 some matters.

25 THE COURT: Very well. So the language

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1 as proposed is acceptable?

2 MR. BILBRO: It is acceptable.

3 THE COURT: Very well.

4 MR. CREECH: Matthew Creech here for
5 Johnny Parker. I haven't had an opportunity
6 to review it, but from listening to
7 Mr. Richter I think that language is fine;
8 we're willing to comply with it.

9 THE COURT: Yes, sir, Mr. Meyers.

10 MR. MEYERS: I, too, thought that
11 language addressed the concern that I
12 expressed.

13 THE COURT: Thank you so much. All
14 right.

15 MR. SHAHID: Judge, I didn't identify
16 myself for the record. Just so the record's
17 clear, Peter Shahid and Jim Geoly.

18 THE COURT: Yes. Thank you, Mr. Shahid.
19 All right.

20 Now, all right, then the amendment
21 as proposed would simply be added without
22 further discussion regarding that and the
23 language as you have published it as everyone
24 has reviewed would be added.

25 Now, next issue.

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1 MR. RICHTER: The next issue deals with
2 the consortium class definition. And I am an
3 English major, but from a state, I shouldn't
4 say but from a state university, although I
5 think quite a fancy state university, and I
6 don't know whether all of us were involved in
7 this drafting process as you may remember.
8 We could now recognize that there can be some
9 difficulty in reading our drafted language
10 perhaps in another way.

11 THE COURT: All right.

12 MR. RICHTER: For that reason we wish to
13 clarify what as in the first instance has
14 always been the intent of all of the parties
15 to this litigation. So we would propose the
16 following as the now new amended paragraph
17 concerning the definition of the consortium
18 class.

19 THE COURT: All right. Now, tell me
20 where we are in the document.

21 MR. RICHTER: Paragraph 1, Your Honor.

22 THE COURT: Got it, okay. I'm there.

23 Page 2.

24 MR. RICHTER: Page 2, paragraph 1. The
25 spouses and parents of all individuals born

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1 on or before August 30, 1980 who as minors
2 were sexually abused at any time by agents or
3 employees of the Diocese of Charleston who
4 suffered a loss of the individual's
5 consortium and, who as spouses and parents,
6 have not previously had any similar claim
7 adjudicated, resolved or released.

8 And it had been read in a more
9 restrictive way by some persons who had an
10 interest in this matter. And I think that
11 everybody has seen this; is that correct?
12 Everyone has, all the interested objectors
13 and certainly all of us, we've all signed off
14 on it, the interested objectors have had it
15 provided to them. And as far as we know that
16 satisfies, really it's only Gregg I think as
17 to the consortium claim.

18 THE COURT: Let me ask this of you.
19 What you read though just now, and it could
20 be significant, let me begin with the phrase
21 who suffered a loss of the abused
22 individual's consortium.

23 MR. RICHTER: That's right.

24 THE COURT: Did you mean to not include
25 the word abused individual's consortium?

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1 MR. RICHTER: We do mean to include
2 that.

3 THE COURT: In other words, as it is
4 written on page 2, paragraph 1 is the
5 intended language?

6 MR. RICHTER: Yes, ma'am. Who suffered
7 the loss of abused, the individual. That's
8 the only person, consortium, who they could
9 have claimed to have lost in this matter.

10 THE COURT: Sure. And I ask again, was
11 this proposed language circulated to those --
12 first of all, to the diocese and then those
13 who had concerns?

14 MR. RICHTER: The diocese was a part of
15 the drafting, Your Honor, their signature is
16 affixed --

17 THE COURT: Okay. Yes.

18 MR. RICHTER: -- together with ours on
19 the document submitted to you.

20 Can you answer that for the Court?

21 MR. HALLER: Yes, ma'am. David Haller
22 for the class. The motion for the approval
23 of the addendum was served on, together with
24 the diocese, all of the objectors.

25 THE COURT: Okay. Very well. All

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1 right. And the language as proposed is the
2 language also proposed by the diocese?

3 MR. SHAHID: That's correct, Your Honor.

4 THE COURT: Okay.

5 MR. SHAHID: As written in the addendum
6 page 2, paragraph number 1, that language
7 we've agreed to.

8 THE COURT: Okay. And, Mr. Bilbro, that
9 was not a concern that you had, nor on behalf
10 of Mr. Parker?

11 MR. BILBRO: No.

12 MR. CREECH: No, Your Honor.

13 THE COURT: Okay. Very well.
14 Mr. Meyers, and again I'll leave it to you,
15 you may wish to address it now or not, it's
16 completely up to you.

17 MR. MEYERS: I will hold off --

18 THE COURT: Okay.

19 MR. MEYERS: -- Your Honor, take it up
20 later. It goes a long way though. It's
21 helpful, it's almost there.

22 THE COURT: All right. Very well.
23 Thank you. Thank you for that.

24 All right. What then -- that's
25 then been addressed. When Mr. Meyers has had

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1 an opportunity to address it more fully,
2 we'll see where we are, all right?

3 MR. RICHTER: Thank you.

4 THE COURT: Any other proposed changes
5 in the language?

6 MR. RICHTER: Your Honor needs to sign
7 off ultimately on the forms to be utilized.
8 Those have been submitted to the Court and
9 circulated to the interested parties.

10 THE COURT: Okay.

11 MR. RICHTER: And to my knowledge
12 there's no disagreement about anything
13 concerning the forms.

14 THE COURT: Okay. All right. Very
15 well.

16 MR. SHAHID: Your Honor, there were --
17 in the addendum there was paragraph 2,
18 paragraph 3. Do you want to address those
19 now as well?

20 THE COURT: Yes.

21 MR. RICHTER: Oh, I'm sorry, yes. Yeah,
22 I'm sorry. The sentence -- number 2
23 indicates a sentence to be added at the end
24 of paragraph 3 as follows: It is the
25 intention of the parties that the arbitrator

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1 be given discretion in using the above-stated
2 guidelines to award damages based on the
3 circumstances of each individual claimant.

4 We think that's a restatement of
5 the obvious. If you remember, the matrix
6 create categories, somebody will fall in that
7 category. What the evidence presented and
8 what the facts are as to that individual
9 claimant may vary from person -- from
10 claimant to claimant.

11 Pursuant to the Court's instruction
12 earlier the arbitrator, Marvin Infinger, of
13 the Charleston Bar is present should Your
14 Honor need him for examination or for any
15 instruction.

16 THE COURT: Okay.

17 MR. RICHTER: The second, paragraph 3,
18 the next paragraph, 3, reads as follows:
19 Paragraph 3E is amended to read: Any primary
20 class or consortium class claimant whose
21 claim has been otherwise adjudicated, settled
22 or resolved is barred from filing a claim or
23 collecting any funds of this class.

24 Which the diocese and class counsel
25 are fully in agreement with that. We believe

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1 that is a restatement of the law, but for
2 whatever reason the only person who has
3 raised an issue is Gregg Meyers about that
4 and I can't say that he's in agreement with
5 this language.

6 THE COURT: Was this language which was
7 requested be added by the diocese,
8 Mr. Shahid?

9 MR. SHAHID: Quite frankly, I don't
10 remember. I think what happened is that when
11 the objections came in, they provided us
12 opportunity to go through the agreement one
13 more time and as we were going through it
14 things popped up, so to speak.

15 THE COURT: Okay.

16 MR. SHAHID: And there was an issue
17 about it. I'm not sure if it came from class
18 counsel our us, but it was something we
19 discussed openly and freely and we came to
20 the same conclusion that this should be
21 included in there. I think that's true for
22 both number 2 and number 3 on page 2 of the
23 addendum. I just don't recall how that
24 generated.

25 MR. RICHTER: We think it's -- some of

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1 us think that it is surplusage, Your Honor,
2 in the sense that a matter that is res
3 judicata, is res judicata as a matter of law
4 not because of this Court's ruling or not
5 ruling. It either is res judicata or not, so
6 this is the plaintiffs' possible statement
7 for lay consumption. The law is the law.

8 MR. GEOLY: Your Honor, may I just
9 remind the Court that the definitions of the
10 classes already have language in them that
11 define people in or out on this basis. This
12 is just to make it crystal clear in a section
13 of the agreement that deals with the claims
14 process so there would just be no ambiguity.
15 I do think it's belt and suspenders, in other
16 words.

17 THE COURT: Okay. All right.

18 And, Mr. Meyers, is this language
19 that -- I'm not quite sure whether this is
20 language which would be encompassed within
21 your objection or not?

22 MR. MEYERS: It is and I'll be glad to
23 address it when I get a chance.

24 THE COURT: Okay. All right. All
25 right. Okay. And then paragraph --

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1 MR. RICHTER: We've done the rest of it,
2 Your Honor.

3 THE COURT: We've done 4. Okay. All
4 right. Well, then that would conclude it
5 then, all right. Okay. Any other additional
6 language? I think that concludes, does it
7 not, the amendment or supplementation?

8 MR. RICHTER: It does, Your Honor.

9 MR. SHAHID: It does. Thank you, Judge.

10 THE COURT: Okay. All right. Very
11 well. Now, with regards to the objections,
12 and again on behalf of Mr. Parker I was going
13 to hear his first. You all are now with the
14 opt out language as amended?

15 MR. CREECH: We're satisfied.

16 THE COURT: You're satisfied?

17 MR. CREECH: Yes, ma'am.

18 THE COURT: Very well. Thank you so
19 much.

20 And, Mr. Bilbro?

21 MR. BILBRO: Your Honor, we have some
22 concerns about the fairness of the issue
23 because of the ongoing -- fairness on page 4.
24 My concerns are that --

25 MR. RICHTER: Your Honor, excuse me for

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1 interrupting counsel, but I believe that
2 his -- the only objection Mr. Bilbro stated
3 was the one that has heretofore been
4 addressed. We object to expanding beyond
5 anything we've had notice of.

6 THE COURT: Okay.

7 MR. BILBRO: I believe we said in the
8 language we put, we said we wanted to opt out
9 because we didn't feel that it was fair. And
10 I understood this was to be a fairness issue.
11 Since we are withdrawing our opt out, we
12 still want to address the fairness issues and
13 we put information in our motion to deal with
14 that. My John Doe is in recent years, in I
15 would say the last two, two and a half years
16 is not only getting psychological but
17 psychiatric treatment. He's had suicidal
18 attempts. I think to limit his wife who is
19 having to go through all this with him to
20 only \$20,000, I think there should be another
21 category because some of this is becoming
22 very aggravated. My man over the last two
23 and a half years has lost more wages and more
24 income than he did --

25 THE COURT: Hold on one second for me

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1 there. I want to be sure that we're crafting
2 the issue, Mr. Bilbro.

3 MR. BILBRO: Looking at number 3 and
4 number 4 primarily, Your Honor.

5 THE COURT: Okay. All right. Number 3
6 states that your client wishes to opt out and
7 number 4 says -- it seems to me that what is
8 referred to in your objection repeatedly is
9 your client's simply -- your client's desire
10 to opt out of the class.

11 MR. BILBRO: No. Because we did not
12 think it was fair to them, that was our
13 reason. We understood we were making it for
14 both. Number one, there was no opt out
15 procedure; but number two, if there was we
16 were going to have to opt out because it
17 wasn't fair because they weren't being
18 adequately cared for with all the problems
19 that have occurred in the last two and a half
20 years. And that's why we put that language
21 in there.

22 THE COURT: Okay.

23 MR. BILBRO: Obviously at this point we
24 want to set aside, wish to opt out, we don't
25 want to reduce what our concerns about the

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1 fairness of the class are.

2 THE COURT: Okay. Okay. All right.

3 Well, I think what I want you to -- hold
4 that.

5 MR. BILBRO: Yes, ma'am.

6 THE COURT: Because I certainly want to
7 hear that as well and -- because as I
8 understand it the -- your concern regarding
9 the fairness has to be -- has to do with the
10 amounts of money and treatment, etcetera,
11 which are a part of the settlement; is that
12 right?

13 MR. BILBRO: That is correct. And it's
14 ongoing.

15 THE COURT: Okay. Hold that for me
16 then, Mr. Bilbro --

17 MR. BILBRO: Thank you.

18 THE COURT: -- okay, if you will?

19 And, Mr. Meyers, of course I want
20 to hear fully about just the underlying
21 concern about the fairness of the proposed
22 moneys and treatment and the like, but you
23 had some other concerns with the language as
24 proposed, I certainly want to hear from you
25 on that as well, okay?

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1 MR. MEYERS: Yes, Your Honor.

2 THE COURT: Then we'll get to just the
3 underlying concern about I gather the
4 amounts, etcetera, okay? All right.

5 MR. MEYERS: Thank you very much, Your
6 Honor. In the past I had represented a
7 handful of people who have either present or
8 past claims involving agents and employees of
9 the diocese. And --

10 THE COURT: Let me tell you what's got
11 me concerned. I'm a little bit concerned
12 because we don't have a table. You know --
13 oh, no, no, that's fine, because we have this
14 one here. I know it's hard for counsel to
15 stand and not have a table. There's a table
16 here, why don't you come -- as you all argue
17 your objections, you can come on use this
18 table. We'll just push them --

19 MR. MEYERS: Why don't I wheel the
20 podium over here, park myself?

21 THE COURT: That's great, if you're
22 happy with that.

23 MR. RICHTER: I'm advised by someone in
24 the crowd here that apparently -- I can't see
25 what's behind me, but apparently there's

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1 filming taking place and that it is panning
2 the crowd. I don't know, I can't see it,
3 haven't seen any of it. I call that to your
4 attention only because I know of your concern
5 about respecting the identities of the
6 parties involved.

7 THE COURT: Okay. And you are correct
8 we certainly -- I certainly want to be
9 sensitive to those issues. At this point the
10 plaintiffs, of course, are identified
11 anonymously.

12 MR. MEYERS: Right.

13 THE COURT: And I don't -- as -- and,
14 counsel, I'll hear from you fully about it,
15 but this is certainly a public place and it
16 is appropriate that the press be present.

17 MR. MEYERS: If I might suggest, Your
18 Honor.

19 THE COURT: Sure.

20 MR. MEYERS: It seems to me a -- the
21 only concern is whether someone uses a name
22 or uses an image.

23 MR. RICHTER: That's correct. We do not
24 intend to do either of those things, nor does
25 the diocese is our understanding.

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1 MR. MEYERS: And no one has.

2 THE COURT: Okay.

3 MR. MEYERS: No one has verbally said
4 anything about identifying themselves as a
5 victim, but with the press present with the
6 appropriate public issue being resolved from
7 this point forward in this courtroom, from
8 this bar forward where the Court's presence
9 and decision making is taking place and the
10 arguments of counsel are taking place, even
11 though Mr. Bilbro and I and Mr. Parker's
12 representative stood from the bench, but if
13 we could -- if the Court would entertain
14 restricting the press's use of any images
15 today from the point of the bar forward then
16 I think it resolves the legitimate concerns
17 the victims may have.

18 THE COURT: I understand. Whose -- I
19 know -- I know I've got press members here
20 with the cameras and the -- and the -- but
21 let me just ask, is there any concern, do you
22 all want to take a short recess so you can
23 call your counsel? It seems to me to be an
24 easy resolution. I don't know that the
25 audience that's in the courtroom, whether or

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1 not that's appropriate, but by the same token
2 I want you to have an opportunity to have
3 your lawyers consulted if you feel that
4 that's appropriate.

5 So if you would like to take a
6 short recess, those of you who are here from
7 the press, raise your hand and we'll do that.
8 If you just want to ask, ask your counsel, I
9 want you to feel free to do that. Just raise
10 your hand if you need to do that for me.
11 Because clearly at least on first blush
12 that's reasonable to ask the press to concern
13 yourselves with what is occurring beyond the
14 bar, if you will.

15 And if anyone wants to consult your
16 lawyer I want you to have that opportunity,
17 because there may be issues that could help
18 me make that determination as well. Anyone
19 concerned? If so raise your hand. You all
20 are caucusing. Feel free to caucus, that's
21 okay.

22 MEMBER OF THE PRESS: Judge, if we
23 choose not to identify them, if we choose not
24 to identify, we need to know who we should
25 shoot and who we should not shoot. So we'd

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1 almost need to identify the victims to know
2 who not to put on camera to make sure that we
3 don't get those images.

4 THE COURT: I think what -- I think if I
5 can -- got your point, first of all, I got
6 your point and but I think here's the
7 concern. The concern is, is that -- and
8 Mr. Meyers and Mr. Richter have stated that
9 if the -- clearly the lawyers and the
10 determinations being made beyond the rail, if
11 you will, in this area, and if you shoot
12 these folks up here, clearly there's not a
13 problem. Clearly there's not a problem.

14 Now, obviously, obviously though
15 I've been communicating with folks in the
16 audience to some extent because the lawyers
17 have been there. We can bring them forward
18 as they argue and that certainly can be
19 remedied so that we know if -- that there
20 wouldn't be anyone filmed who is a potential
21 victim.

22 Having said that, obviously there
23 are many -- there are going to be many --
24 this is a public place and there could be
25 many people who are not, who are interested,

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1 who for whatever reason are in the
2 courthouse. So the -- I guess the easiest
3 determination is if we're above the rail it's
4 easy.

5 Having said that, I don't want to
6 limit you all from having a conversation if
7 you think it might matter. And that really
8 is where I'm -- it's just what's easy, what I
9 know is safe, what I know will accommodate.
10 But again, if you all have any concerns I
11 certainly want you to -- I don't want you to
12 go back to the station, they're like why
13 don't you call, do you know what I mean? I'm
14 willing to recess for you all to do that
15 because I don't want you all to have any
16 repercussions, quite frankly, that there's
17 something you felt like you needed to do.

18 MEMBER OF THE PRESS: Can we recess for
19 a moment then?

20 THE COURT: I think that's a brilliant
21 idea. We'll take about 15 minutes. Now,
22 having said that, I'm well aware that there
23 is a sign on the back of the courtroom that
24 says you can't have any cell phones. So
25 there are phones in the back behind the

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1 courtroom. If you all need to access them, I
2 want you to have that ability. If you snuck
3 and just turned it off and stuck it in your
4 briefcase or whatever, that's okay too, if
5 you'll just step out. And we'll take 15
6 minutes to give you all an opportunity to do
7 that.

8 MEMBER OF THE PRESS: Thank you.

9 THE COURT: Not a problem at all.

10 (Recess, from 10:35 a.m. to 10:54 a.m.)

11 THE COURT: Thank you, everyone. Please
12 be seated. All right. I'm looking at my
13 caucus over here. Were you all able to
14 make -- oh, great.

15 MR. SMITH: I'm not sure what we
16 resolved. I'm Bruce Smith with the
17 Associated Press. We've contacted Jay
18 Bender, our attorney.

19 THE COURT: Absolutely.

20 MR. SMITH: I doubt that he's -- cell
21 phone doesn't answer, not in the office, I
22 don't know, on a Friday like this he may be
23 gone.

24 THE COURT: Well, you know he's
25 partially retired. And if he's not teaching

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1 today, finding him is probably, you are
2 exactly right, going to be problematic.

3 MR. SMITH: I've asked him to call you
4 if he gets the message; my cell phone is in
5 the car.

6 THE COURT: Great.

7 MR. SMITH: And again I think the issue
8 is it's conflict between a public place and
9 identifying folks and we understand that.
10 But I don't -- I just wanted to get what his.

11 THE COURT: Absolutely. What his input
12 would be. All right. Very well. And did
13 you -- do you have anything to add to that
14 anyone?

15 MS. BEAHM: I'm Grace Beahm with the
16 Post & Courier. And in order to illustrate
17 the emotions of the courtroom and the people
18 that are here for the interests of this case,
19 it's important that we have permission to
20 photograph in the courtroom, permission to
21 photograph the audience.

22 THE COURT: Sure. You know, I think
23 under these circumstances I'm going to ask
24 you all to -- to -- to keep your -- not pan
25 the audience because of the -- because of the

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1 issues. Typically and normally when the
2 coverage is the issues involved in the
3 litigation, that's normal. It's very rare
4 that I've ever seen, I don't know that I have
5 ever seen, not that it doesn't happen, the
6 panning of the courtroom.

7 My concern is, is if there is
8 panning of the courtroom, the clear intention
9 for the panning of the courtroom is to
10 identify the -- potentially the anonymous
11 litigants and I certainly have sensitivity to
12 that. So I'm going to ask you to please feel
13 free to film anything above the -- above the
14 bar. Please do position yourself where you
15 can do that. But much as we try to protect
16 jurors, I think it's reasonable to ask that
17 we likewise protect those anonymous litigants
18 who are allowed, under our law, to be
19 anonymous.

20 And if we go into this afternoon
21 and you all reach Mr. Bender or anyone else
22 and they wish to be heard, just let me know,
23 all right? Great. Thank you so much.

24 MS. DeMARCO: Judge?

25 THE COURT: With all that where are

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1 they?

2 MS. DeMARCO: I'm Sarah DeMarco with
3 Channel 4. May the exception be maybe we
4 could shoot in the courtroom without faces?
5 That would give our photographers a little
6 more room to cover today's story without
7 identifying anyone sensitive to this issue.

8 THE COURT: What does that mean?

9 MS. DeMARCO: Basically shoot hands,
10 people sitting. Back there like a wide shot
11 so you don't actually see someone's face.

12 THE COURT: Back of the head, that
13 doesn't identify folks, yeah, that's
14 reasonable. Absolutely.

15 MS. DeMARCO: Thank you, Judge.

16 THE COURT: You do realize it's going to
17 be very traumatic for those that didn't style
18 the back of their hair today, but alas. All
19 right. Very well.

20 Mr. Meyers.

21 MR. MEYERS: Thank you, Your Honor.

22 THE COURT: Absolutely.

23 MR. MEYERS: And it really is with
24 respect to the press as much as what they run
25 as opposed to what they shoot, so if they're

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1 just careful about getting permission for
2 what they choose to run.

3 THE COURT: All right.

4 MR. MEYERS: Your Honor, I do want to
5 start by acknowledging the positive
6 development by both the diocese and class
7 counsel in even bringing the resolution this
8 far. I do have concerns about it, but I
9 really want to commend both the diocese and
10 class counsel for generating what has brought
11 us here today. It's a good thing. It's a
12 good thing for the organization, it's a good
13 thing for the people they have served and the
14 interest they attempted to serve in the first
15 place.

16 Let me say the -- we filed four
17 objections. The opt in/opt out issue is
18 clarified and that one has gone away.

19 We had a concern about the class
20 definitions. One of those concerns has been
21 addressed, it was the unlinking of a parent's
22 claim and a child's claim. Because the way
23 the class definitions originally were
24 written, for a consortium claim to happen a
25 child's claim had to be unresolved. And as I

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1 read these pleadings, and I would simply ask
2 for confirmation of this, it appears to me
3 they have indeed unlinked them. And so a
4 consortium claim could exist even if a
5 child's claim had been previously adjudicated
6 or resolved or released.

7 MR. RICHTER: That is -- if it will aid
8 the Court, that is certainly a statement of
9 the law. Consortium claim is not a
10 derivative claim, it is a claim which stands
11 on its own feet anyway and so I think that is
12 again a restatement of the law. To the
13 extent that that was unclear before, this is
14 what I was referring to about the verbiage
15 being construable in more than one way by
16 different readers. Certainly we anticipate
17 that anybody who has such a claim, it is an
18 independent claim.

19 THE COURT: Okay.

20 MR. MEYERS: All right. That addresses
21 that one concern.

22 Two concerns remain and they have a
23 few pieces. Well, there's actually --
24 it's -- I still have one concern, but let
25 me -- let me back up and start by restating

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1 Rule 23 addresses the Court and asks the
2 Court to have -- to approve something that
3 is -- that fairly and adequately protects the
4 interests of the persons on whose behalf the
5 action was brought.

6 This is a very unusual settlement
7 in the sense that the diocese has taken the
8 initiative in response to the suits to extend
9 themselves very consciously beyond the
10 statute of limitations. They do not have to
11 do that. They could fight every one of these
12 cases as they have done in the past and
13 sought to grind them all to the ground on the
14 basis of the statute of limitations.

15 But having done that, having
16 extended themselves beyond the statute of
17 limitations, the concern that we've expressed
18 is that some of my clients were the previous
19 people challenging the diocese against whom
20 the statute of limitations was asserted.
21 They have no right to bring another case.
22 They have no right to make a claim. They are
23 excluded by this class definition. And
24 certainly there is a res judicata element
25 that works on them as a matter of law. But

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1 this is a settlement. And it is a settlement
2 predicated on -- from the very beginning
3 predicated on extending beyond the statute of
4 limitations.

5 The objection I am seeking to
6 accommodate does not require the diocese to
7 pay any additional funds. It simply allows
8 into the tent, so to speak, the very people
9 the settlement tries to address, but for them
10 having the temerity, as I put it in the past,
11 to have attempted to do the very thing that's
12 happening today: Seek compensation, ask the
13 diocese to hold themselves accountable and to
14 make a response on a pastoral level, if
15 nothing else, to them.

16 So the way the definition is
17 crafted, and this is the only definition
18 issue I have, is the way we're going to
19 interpret the word minor and claim
20 adjudicated, resolved or released. We had
21 proposed that the class be limited to those
22 who had made no previous recovery. And we
23 filed a proposed alternative definition.

24 If it is expanded to be no previous
25 recovery, then the diocese is not committed

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1 to anything more. We are simply not making a
2 distinction between those persons barred by
3 the statute of limitations in theory and
4 those who have been barred in fact. And I
5 think there would be no basis for this
6 objection if the settlement was not
7 predicated on from the beginning reaching
8 beyond the statute of limitations.

9 The case of Doe v. Crooks would bar
10 anyone who was attempting to use anything
11 other than the new statute of limitations
12 that I think was passed August 30th in 2000
13 that extends the time, page 27. And on --
14 that was the concern. We put proposed
15 language in the objection so the Court could
16 really contemplate that in a very concrete
17 way.

18 I mentioned the word minor.
19 We've -- the definition goes back to those
20 people, persons born before August 30th,
21 1980, but then says who as minors were
22 sexually abused. The age of majority has
23 changed. It changed in 1975 from 21 to 18.
24 And so if you had to be abused as a minor,
25 that could actually involve persons of a

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1 different age. And the way the notice papers
2 are written it is only 18. And I was
3 concerned that that would be misleading.

4 And let me give you a very concrete
5 example. The diocese runs parochial schools.
6 One of my victims, clients, was female and
7 molested by a female teacher at a parochial
8 school. But the teacher was very astute and
9 made sure that there was nothing beyond
10 inappropriate touching of what would be
11 considered the mild category under this
12 matrix that I don't like so much until she
13 was 18. She was still a student, but she was
14 not 18. I mean, she was past 18.

15 THE COURT: Yes.

16 MR. MEYERS: And so under this
17 settlement you could be molested as a student
18 at a parochial school, but if the pedophile
19 was astute enough to wait until you were 18,
20 the diocese has no responsibility.

21 Now, if it said minor or parochial
22 school student, that issue also would be
23 addressed. And it is a nuance that I have
24 come to appreciate from other cases where --
25 and surely the diocese doesn't intend to say,

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1 as no school intends to say, that once our
2 students reach age 18 they are fair game for
3 any teacher who wants to be sexually involved
4 with them, surely that is not a position they
5 want to espouse.

6 The -- let me turn now to the last
7 two points. The -- and let me make number
8 four first. The second point is the value
9 escribed to the consortium claims. I have
10 stated in my objection that we know that that
11 is completely disproportionate to what a jury
12 has done in Charleston County with such a
13 claim and that it seems very inappropriate to
14 be so restricting to a consortium claim and
15 the arbitrator does not have the discretion,
16 even though he has discretion within the
17 guidelines, does not have discretion the way
18 this is written to go outside the guidelines.
19 And so no consortium claim could ever be
20 valued at above that amount.

21 I have presently both persons
22 abused as minors and parents of persons
23 abused as minors who could be in the
24 settlement turning on this issue because the
25 parents surely will respond if they feel

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1 their children are being addressed. And that
2 goes to the point I was talking about
3 earlier, whether those children could be in
4 probably will determine whether parents are
5 in. But parents will have to defend their
6 own children. And my experience has been the
7 parents defend their own children pretty
8 vigorously and will probably be as aggressive
9 as they feel like they perhaps should be.
10 And there's not much risk if the only upside
11 for them is a number that is so
12 disproportionate to what a jury has done.

13 We have stated no objection to
14 having parents recover less than the minors
15 who were actually touched, but because of the
16 same rationale that underlies my objection to
17 the matrix itself and what it turns on, we
18 have been very concerned about the number
19 chosen, the fairness and adequacy of the
20 number chosen for the consortium claims. And
21 again, this does not require the diocese to
22 pay any more money, it simply allocates
23 within the claimants differently the moneys
24 awarded.

25 THE COURT: Let me ask this question of

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1 you, Mr. Meyers, just to be sure that I
2 understand the issue. The issue is twofold.
3 Number one, you have concerns about the
4 potential limitation on -- on those
5 individuals who may have been beyond the age
6 of majority still in parochial school when
7 the age of majority went from 21 to 18 in
8 1975 and that -- I have a concern about that.

9 MR. MEYERS: It's actually independent
10 of the issue of the age. Because if 21 was
11 the age of the majority, you're out of
12 school. But once the age of majority after
13 '75 dropped to 18 you get into this small --

14 THE COURT: Right.

15 MR. MEYERS: -- ambiguity period. And
16 if it said minor or parochial school student,
17 it would address that.

18 THE COURT: All right. And that was a
19 concern. And then, of course, you expressed
20 a concern regarding the value allowable under
21 the settlement to the consortium claim.

22 MR. MEYERS: Right, that entire class.

23 THE COURT: And, of course, your concern
24 that there may be those who have litigated
25 issues in the past, been unsuccessful as a

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1 result of the statute of limitations and
2 would be excluded because they -- because
3 they are those who have been involved in
4 litigation and not been successful.

5 MR. MEYERS: Right. And again, I think
6 we distinguish between res judicata which
7 certainly would bar, but this is a
8 settlement, and a settlement to be fair and
9 adequate since the settlement is predicated
10 on extending beyond, I think there is a
11 fairness issue about limiting only those
12 people who have previously brought suit.

13 THE COURT: Yes. And so this is, of
14 course, this is a settlement, this is not
15 anything imposed by the Court and, of course,
16 this is a fairness hearing. And do you
17 maintain that because of these issues that
18 the settlement as proposed is not fair? That
19 would be, I guess, my first question.

20 And but I probably want to ask --
21 that's maybe my second question. And my
22 first question is, have you addressed those
23 issues to proposed class counsel as well as
24 to the diocese? Because I think that this
25 hearing is one to determine the fairness as

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1 proposed, because this is settlement and the
2 proposals as I have heard them from you are
3 different, they contain different language.
4 And as you've indicated, perhaps from the
5 perspective of the diocese, they wouldn't be
6 paying any more money potentially. It is
7 different than what is proposed.

8 And so my first question, I guess,
9 is have you addressed your requests with the
10 class, proposed class counsel and the
11 diocese?

12 MR. MEYERS: I have only very slightly.

13 THE COURT: Okay.

14 MR. MEYERS: I sent them, of course,
15 what my objection was.

16 THE COURT: Sure.

17 MR. MEYERS: And talked very overtly
18 with class counsel yesterday and have talked
19 with diocese counsel, but only this morning.

20 THE COURT: Sure.

21 MR. MEYERS: So, and I intend to
22 continue those discussions after today's
23 hearing.

24 THE COURT: Okay.

25 MR. MEYERS: What I would say, though,

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1 is that what I'm trying to do is stay within
2 Rule 23.

3 THE COURT: Yes.

4 MR. MEYERS: And to talk about whether
5 we are fair -- it's not so much an issue of
6 fairness, it's more an issue of adequacy.

7 THE COURT: Okay.

8 MR. MEYERS: Because Rule 23 talks about
9 the interests of the persons on whose behalf
10 the claim was brought. And if the claim is
11 brought on behalf of anybody who hasn't
12 previously sued, then my concerns can be
13 swept off the table.

14 THE COURT: And your position is under
15 Rule 23 that the Court can change the terms
16 of the settlement, or simply disallow the
17 settlement?

18 MR. MEYERS: No. The Court has
19 authority under Rule 23 to change the terms.
20 And the parties I guess could say, well, then
21 we don't like it, I'm not going to do it, but
22 in terms of passing muster with the Court, I
23 think the Court has some fair amount of
24 latitude under Rule 23.

25 THE COURT: No question but the Court

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1 can clearly say based on everything that the
2 Court has heard; not going -- don't think
3 it's fair.

4 MR. MEYERS: What you would really be
5 saying is I don't think it's fair this way,
6 it would be fair that way.

7 THE COURT: I understand. I understand.
8 All right. I think that -- I want to be
9 sure, because I may have cut you off.

10 MR. MEYERS: I got one more.

11 THE COURT: Okay.

12 MR. MEYERS: We had devoted the most
13 time in our objection to the matrix being
14 proposed.

15 THE COURT: Yes.

16 MR. MEYERS: Because the matrix is
17 predicated on touch. We need a touch for the
18 violation, but the problem we have with the
19 matrix is that it uses the touch as the
20 categorization method. So this is not an
21 objection so much to the values in the
22 matrix, it is that the criterion by which you
23 move from one category to another has to do
24 with the extent of touch.

25 But the psychological damage from

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1 these cases, as the order expresses this is
2 about psychological damage, is not a function
3 of touch, it is a function of betrayal, it is
4 a function of trust being broken, but it --
5 it's a subtle point in some respects because
6 a touch is necessary for there to be a claim.
7 But to use the extent of touch as the
8 criterion by which the arbiter must choose
9 one value or another, seems to be
10 disassociated and unfairly and inadequately
11 disassociated from the nature of the injury.

12 It's not lasting physical injury
13 from the touch that plagues people's lives,
14 it is the incredible turmoil created in them
15 on a psychological basis because of the
16 betrayals. And our concern was that the
17 categories should not be segregated based on
18 touch, they can stay as they are, but be
19 disconnected from the criterion used to move
20 from one to another.

21 I'm completely comfortable with
22 using the upper limit and the lower limit and
23 giving the arbiter discretion, but not
24 restricting the arbiter as he's presently
25 restricted from using the criterion that are

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1 being proposed. And I think that is also a
2 nuance that the Court, again, could have a
3 say-so about and again does not require the
4 diocese necessarily to commit any further
5 funds to it.

6 Those are my -- those are the
7 objections that we stated and those are the
8 concerns that we have.

9 THE COURT: All right. In other words,
10 just to be sure that I understand, and it
11 would be your position that once touch is
12 established as the criteria, then the guiding
13 factor would be the psychological effect?

14 MR. MEYERS: Right. How it has
15 reverberated through someone's life, what
16 problems have they had. Very typical have
17 problems with authority figures, substance
18 abuse problems, problems with intimacy and
19 problems with family relations.

20 THE COURT: And then the arbitrator
21 once -- once the touch has been --

22 MR. MEYERS: It's merely the starting
23 point, right.

24 THE COURT: -- shown, then the range
25 would be less limited.

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1 MR. MEYERS: And the arbiter could even
2 use the extent of touch as one criterion, but
3 not the sole criterion to separate out from
4 one category to another, that was what our
5 concern was.

6 THE COURT: Okay.

7 MR. MEYERS: It's not irrelevant, but it
8 is not the only factor. And right now the
9 way it's structured that is the only factor
10 that moves you from one category to another.
11 And similarly, Your Honor, with that
12 consortium issue could also be folded into
13 this same aspect. In other words, there's
14 two ways to go at the limitations now in the
15 consortium claim. One is to adjust the
16 dollar amount, another is to simply put the
17 parents into the same matrix and to say you
18 as a parent might also be able to demonstrate
19 an enormous dislocation in your life.

20 Many parents don't even understand
21 why their children spend time in jail
22 repeatedly, continue to have substance abuse
23 problems, and parents turn themselves inside
24 out. And there's so many times in my
25 experience with these cases where the "ah-ha"

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1 moment doesn't occur until they finally
2 understand their child was molested as a
3 child, then many things make sense and things
4 can again for the first time be effectively
5 dealt with.

6 THE COURT: Okay.

7 MR. MEYERS: And I think there's -- it's
8 hard to imagine as a parent, for any parent
9 to imagine that as a parent that would not be
10 distressing to know what happened to your
11 child, which creates under South Carolina law
12 an injury in you as a parent. And I think
13 the cases have recognized that pretty well.
14 I've actually -- I'm arguing that issue again
15 up in the Supreme Court in May. But right
16 now the law is very clear that exists. It is
17 cognizable, independently cognizable as
18 Mr. Richter alluded to earlier. Thank you so
19 much.

20 THE COURT: Thank you so much. Thank
21 you so much. And you can just, if you want
22 to, you're welcome to just stay with us here
23 if you will.

24 MR. MEYERS: Glad to.

25 THE COURT: Thank you. Yes, sir.

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1 MR. RICHTER: May it please the Court.
2 Your Honor, I'll try to run quickly through
3 in order Mr. Meyers's objections and
4 comments. I need to clarify for the record,
5 however, one matter before I do that.

6 THE COURT: All right.

7 MR. RICHTER: Mr. Meyers filed his
8 objections on behalf of certain people.
9 Clearly those were not named and we
10 understand that we're all seeking to preserve
11 identity as fully as we can. We represent
12 the interests of many people in a class, so
13 both the diocese and us inquired of
14 Mr. Meyers as to those individuals thereby
15 meeting our obligations about fictitious
16 people, fraudulent claims. And I'm not
17 suggesting any of that, but -- and he, of
18 course, cooperated fully by sending us a
19 letter listing out all of those people.

20 I just need to put in the record
21 here now, if you would allow me, just a
22 statement from Mr. Meyers, if he will,
23 verifying that the people he's appearing for
24 are the people that he sent -- he gave us a
25 John Doe plus the identity of the individuals

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1 in the letter and we would just like him to
2 say those are the people I'm appearing for
3 and not somebody else.

4 THE COURT: And the letter went to both
5 sides, to the diocese as well as --

6 MR. SHAHID: When we received the
7 objections, Your Honor, it was difficult
8 to -- I understand who the John Does are, had
9 an idea, but for clarity I wrote Mr. Meyers a
10 letter asking him to provide me with the
11 actual names and I told him I would keep that
12 in confidence. He complied with my request,
13 and so I was able to then clarify what
14 individuals fit into these John Does and have
15 a better idea now that he's spoken. Some of
16 the other identities I didn't recognize.

17 So we have the names and we have --
18 some of the names, as I understand them, are
19 parents or spouses I think of the actual
20 claimant which helps us identify them as well
21 too.

22 MR. RICHTER: We made a similar request
23 then and Mr. Meyers said just tell Peter to
24 send, or maybe he told Peter to send the
25 letter to us, maybe he sent a us a copy of

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1 the letter he sent to Peter, but he
2 immediately accommodated our need to know as
3 well. We're just simply trying to make the
4 record clear that that's who he appears for
5 and not somebody else.

6 THE COURT: I'm with you completely.

7 MR. RICHTER: We're not seeking to put
8 the name in the record.

9 MR. MEYERS: Here's what I did. When I
10 got notice there was class resolution, I went
11 through every abuse-related case I had ever
12 been in. It's a pretty long list. But
13 anybody who had contact with the diocese
14 agent or employee I marked that person,
15 pulled out the name and then framed my
16 objections using that mix.

17 Now, some of these are persons I
18 represented some years ago, and in one
19 instance I sent a letter saying here's what's
20 going on, I think you need to know about it.
21 It came back to me because the person's
22 moved.

23 So these are individuals who I've
24 previously represented or their parents and
25 that's the list that I'm using. They're all

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1 real people. I have presumed parents for
2 people when I -- like that individual who the
3 letter came back from, haven't spoken to them
4 yet. His parents could be deceased, so there
5 is not more than those people, there is --
6 and I've made note of that one individual, he
7 was not on my list, but I added him to the
8 letter saying I haven't heard back from him.
9 So that is, indeed, on whose behalf I stated
10 my objections.

11 THE COURT: And when you transmitted
12 those names to counsel, was it your
13 understanding that the transmission of those
14 names was done in a protected fashion?

15 MR. MEYERS: Yeah, it was. Both the
16 expressed assurance by Mr. Shahid and by
17 Mr. Haller. And it certainly fits with the
18 Court's order to date ascribing
19 confidentiality to everyone who is
20 participating in the process.

21 THE COURT: I would certainly,
22 gentlemen, entertain an order, consent order
23 from the three of you to that effect since
24 that was your agreement.

25 MR. RICHTER: Here we have a problem

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1 greater than that, Your Honor.

2 THE COURT: All right.

3 MR. RICHTER: We represent the interests
4 of persons who may be here today, may not be
5 here today, may not have made a claim yet, a
6 class, punitive class or actual class,
7 punitive initially, now an actual class. My
8 concern is I have to defend positions for the
9 persons I represent.

10 THE COURT: Yes.

11 MR. RICHTER: If a lawyer comes in here,
12 files a pleading that says I'm filing this
13 pleading on behalf of these people, that must
14 mean I represent these people. He hasn't
15 said that. And my concern is, and I'm not
16 accusing Mr. Meyers of this in any way, but I
17 know something about mass litigation,
18 parachute lawyers and lawyers who challenge
19 classes. And I'm not suggesting Mr. Meyers
20 is in that category, I'm simply saying I've
21 been through it before and I know what
22 motivates a lot of people and it's money.

23 So to be candid with you, I can't
24 stand here and let him represent to you that
25 he's making all these arguments seeking to

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1 broaden the class beyond, as I'll argue in a
2 moment, what the law provides for, for people
3 he doesn't even represent. He's got no
4 standing to be in here. Worse than that, if
5 they've opted out, he doesn't have a right to
6 say anything anymore, unless he's intervened
7 under Rule 24. He hasn't tried to do that.

8 Most compellingly, I'm not going to
9 sit idly by, I'm not accusing him of any ill
10 motive at all, I can't as an officer of the
11 Court or as counsel for a member of this
12 class, I'm here arguing for the rights of a
13 long list of people and in the face of that
14 list saying so and so, a certain John Doe
15 whose name is provided D, and then naming
16 John Doe E as being John Doe D's father whose
17 name I do not yet know. I do know it. I
18 went to church with the family. He's dead.
19 I object to that.

20 I don't think anybody ought to
21 represent to this Court or any court they
22 represent -- I don't think you can represent
23 to the Court that you represent somebody if
24 you don't. There are requirements about
25 taking on a representation.

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1 So among the objections we're going
2 to have in a moment to his substantive
3 points, is that he doesn't have any client.
4 So that's why I said we got to know who he
5 represents. And he says the people. I
6 think, he hasn't said it yet, he either
7 represents or doesn't represent. Who is live
8 on this list that he represents, I guess is
9 what we're asking.

10 And let me -- and I'm being candid
11 with the Court, people on this list have
12 called me and asked me to represent them in
13 this matter.

14 THE COURT: All right. Again, which
15 underscores my comment to you earlier that I
16 will entertain an order protecting the names
17 of those individuals, because obviously those
18 names would not be protected under the
19 attorney/client privilege or under work
20 product. So they're out there. And what
21 concerns me is that the names, no doubt in
22 good faith, were provided pursuant to request
23 of counsel and without the Court's order to
24 protect those names.

25 MR. RICHTER: Yes, ma'am.

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1 THE COURT: There is no protection
2 either on the work product or under
3 attorney/client to protect those names and
4 they've now been communicated, okay?

5 So irrespective, in order to do
6 what I think counsel intended to do, was to
7 have the benefit of the information, and no
8 doubt Mr. Meyers hasn't intended to harm
9 anyone. I would say by communicating that
10 pursuant to your request there needs to be a
11 court order in place, okay? That's the first
12 issue.

13 The second issue is the -- the
14 potentiality of -- of Mr. Meyers's argument.
15 And he tells me that these are individuals
16 that he has in the past represented,
17 particularly those whose litigation came no
18 doubt to his mind an early demise and that
19 he's contacted those individuals and no doubt
20 one or more have said please proceed in this
21 regard.

22 MR. MEYERS: And there are only two
23 cases.

24 THE COURT: You know, one of the
25 benefits of having practiced law in this

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1 courthouse for about 15 years and being a
2 judge for about nine, I know my trains.. I
3 know my trains. Okay. I'm sorry, go ahead.

4 MR. MEYERS: In only two instances, if I
5 remember the list right, was there a prior
6 claim that was taken all the way to the
7 litigation. In another instance it was a
8 letter to Mr. Shahid and no litigation
9 followed.

10 But what I'm actually trying to do
11 today is increase the number of clients in
12 Mr. Richter's class. The invitation in the
13 Court's order was to state objections to the
14 fairness and the adequacy of the proposed
15 settlement. And some of these people have
16 explicitly called in, said here's my concern.
17 Many of them I have encouraged to call
18 Mr. Richter. So I'm not in competition with
19 Mr. Richter.

20 MR. RICHTER: That's not the issue.

21 MR. MEYERS: And I don't want him to
22 feel like I am.

23 THE COURT: That's -- that's not a
24 matter that concerns me in the least. The
25 question has been who are you here

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1 representing. There have been a number of
2 people that you have given -- in your attempt
3 to be candid, my question to you is are you
4 here representing one person?

5 MR. MEYERS: Yes.

6 THE COURT: Very well. That's enough.
7 Enough said on that issue. All right. At a
8 later time those issues can be clarified.

9 MR. RICHTER: Sure.

10 THE COURT: My concern today is now
11 satisfied. Okay.

12 MR. RICHTER: Thank you. And now if I
13 can have a merits argument, please.

14 THE COURT: Yes.

15 MR. RICHTER: If you don't mind I'll
16 stay here, Your Honor.

17 THE COURT: Sure.

18 MR. RICHTER: I'm going to ask
19 Mr. Haller to hand out a brief that we have
20 containing authorities about this point, hand
21 it up to your clerk and a copy for the Court.
22 And while he's doing that -- I'm a stickler
23 for accuracy, Your Honor, as best I can
24 accomplish it. And while we didn't come here
25 to fight back and forth today certainly

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1 between the diocese and the class, I've got
2 to correct what Mr. -- it would be an
3 injustice to the victims in this case if I
4 didn't correct the statement that Mr. Meyers
5 made in the beginning of his presentation
6 when he said that the diocese took the
7 initiative to do what has been done here and
8 expand the availability of claims well
9 outside the statute of limitations.

10 I want to say publicly that the
11 diocese did nothing of its own initiative.
12 The diocese was brought here kicking and
13 screaming. And you'll hear more about that
14 perhaps depending upon certain positions the
15 diocese takes.

16 Now, that having been said, I want
17 to further clarify, Mr. Meyers made reference
18 to the Doe case which dealt with the statute
19 of limitations. And what he said was that
20 the Doe case said nobody could proceed except
21 now under that statute of limitations and
22 that authority. What the Doe case didn't do,
23 is it didn't take away any defenses to the
24 statute of limitations. There are defenses
25 to the statute of limitations. For example,

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1 fraudulent concealment is a defense to the
2 statute of limitations. There are others.

3 It's the burden of effective
4 counsel to defeat the statute of limitations
5 or to raise a substantial obstacle for those
6 seeking to assert a statute of limitations
7 building in for them the fear that they may,
8 in fact, not prevail on that argument. We
9 don't come here to self-aggrandize, but I
10 must now say to you because of the argument
11 that was made earlier, we did that and that's
12 why this class exists in part, in large part.
13 There are other issues that helped us --
14 other positions that we took that helped us
15 get around the statute of limitations.

16 Every issue in this case was hotly
17 contested. Professor Freeman has submitted
18 an affidavit having reviewed everything.
19 That's one of the things he says in his
20 affidavit. You have before you the
21 arbitrator, who had been the mediator in this
22 case in a multi-day mediation. If anybody
23 can attest to the tenacity with which the
24 issues were propounded and defended in this
25 case, I know cocounsel will join me, opposing

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1 counsel will join me in making that
2 representation, certainly the independent
3 mediator, now arbitrator, will also, I'm
4 certain, substantiate those comments.

5 So Doe didn't take away any defense
6 to the statute of limitations and we don't
7 seek to, obviously, in this class.

8 As to the issue about minor, 18
9 versus 21, all the class definition says is
10 while a minor. Nobody's rights are taken
11 from them. Any right any client Mr. Meyers
12 may have who fell into the category of being
13 over 18 but under 21 at any particular time,
14 that right, if that person has a right, is
15 not taken away. That person can litigate
16 from here to kingdom come outside this class.
17 Mr. Meyers has done that in many instances.
18 So nobody's rights are taken away at all.
19 Many people will enjoy the benefit, however,
20 of us having gotten over the statute of
21 limitations issues, and if they were abused
22 as minors we have agreed, after hard
23 negotiations with the diocese, that that's
24 who makes up this class.

25 Adding these other people would

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1 have an effect, we believe, outside the law,
2 but it may also have a very large effect on
3 what is -- what individual claimants could
4 then recover in the matter. So I do think --
5 I'm not arguing that, I'm just saying that's
6 a consideration, that it's appropriate for
7 Your Honor to take.

8 As to lifting the cap on the
9 consortium claim, Mr. Meyers makes reference
10 to a very large verdict that he obtained
11 against, if I recall, Porter Gaud school and
12 several individuals, maybe only two
13 individuals or their estates. And I am
14 familiar as he, I believe, noted in his
15 submission to the Court, we are -- we, too,
16 represented people in the Porter Gaud
17 litigation.

18 So I'm familiar with how that went
19 down and I'm not at liberty to offer specific
20 numbers, but this argument having been raised
21 by counsel, I feel that I am compelled to
22 note that obtaining a very large verdict and
23 collecting, I would guess, less than
24 2 percent of that verdict is very different
25 from obtaining a certain recovery for all the

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1 people who are going to appear in this -- in
2 this class. And I believe that's what
3 happened as to that, quote, very large
4 verdict.

5 We say in our brief, only half
6 tongue and cheek, the jury verdict in that
7 case may be quite useful for placement on a
8 wall, but it doesn't have much utility of
9 putting money in the bank. This does.

10 Now, as to the matrix objection,
11 Mr. Meyers says that there's something wrong
12 with the degree of sexual abuse claim
13 triggering where you are placed in a matrix.
14 So that the Court can be clear or anybody
15 else who is involved in these arguments can
16 be clear, a distinction has been made if an
17 offender patted someone on the posterior
18 through clothing, that person may consider
19 that a sexual touching and may make a claim
20 herein. Quite different from fellatio,
21 digital penetration, a plethora of other
22 matters, some over some period of time. So
23 there is a range of injuries.

24 South Carolina in Harvey is it, in
25 The Harvey case cited in our memorandum,

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1 particularly page 8 and 9, clearly recognizes
2 that the nature of a sexual offense in the
3 realm of torts, the nature of a sexual
4 offense, is so intrusive as to impugn intent.
5 So even the touching, as I described earlier
6 on the fanny, the single slap, qualifies and
7 is a trigger mechanism, but clearly degrees
8 are recognized.

9 And the most concrete and current
10 example I can give you is from the diocese of
11 Covington, Kentucky. And I'm not sure that's
12 the proper name of that diocese. Is that
13 correct? Covington, Kentucky, I believe is
14 the correct name, Mr. Geoly tells me, in
15 which, you know, we -- and again, this is --
16 we don't claim to be any more or better than
17 what we are, but we worked pretty hard on
18 this matter, we've been opposed pretty hard
19 by able counsel on the other side, and at the
20 end of the day we've all tried to make sort
21 of the best that we can make of this.

22 And on our behalf and behalf of
23 those potential class members we've been
24 working for, we looked at every settlement in
25 the United States of America. I'm sure

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1 that -- Mr. Geoly is from Chicago and this is
2 what he does, has been doing, sadly, across
3 the nation for the last little while, so I'm
4 sure he has done at least and Mr. Shahid
5 probably, too, all the same things.

6 In Covington, Kentucky, a matrix is
7 adopted, an Exhibit A is captioned "Sexual
8 Abuse Categories and Ranges of Award." Then
9 even in more detail than we do, it starts
10 with individual remarks about a minor's
11 genitals, breasts, buttocks, etcetera,
12 etcetera. Starts at a \$5,000 level down
13 here. My point is it's a matrix and it goes
14 the whole way up and it is tied squarely to
15 the degree of the activity perpetrated upon
16 that -- the various victims.

17 So it is very clear and very fair,
18 I might add, precedent that exists about this
19 approach. We didn't just dream this up.

20 So all of that having been said, it
21 would be great if all lawyers who try cases
22 and don't prevail -- I say this as a
23 lawyer -- could come back and get another
24 chance to make your claim again. The law
25 won't stand that, reason won't stand that.

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1 Now, I understand that there can be
2 reasons why a settlement is defective or
3 someone can seek to set it aside or
4 consideration can fail, various things. I
5 certainly recognize all of that. And we
6 don't seek to restrict anybody's rights about
7 filing their claim and saying whatever facts
8 may exist however they cut.

9 But the idea of saving everybody's
10 rights who have already been to the bar of
11 justice and didn't prevail, either from
12 letting time run, for example, by striking
13 cases pursuant to a rule that requires within
14 a year you can put it back and missing that
15 time frame in perhaps two cases, just as an
16 example I offer that, to not propounding the
17 arguments and not making the points and
18 issues that we have so vigorously pursued in
19 this case which have succeeded in bringing a
20 very recalcitrant, proud diocese to heel in
21 this case to the extent of getting rid of the
22 statute of limitations, charitable immunity
23 cases.

24 We've heard from one person who is
25 52 years old. You could be 114 and have been

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1 abused when you were six years old and under
2 this class, if you haven't adjudicated that,
3 you can be heard. That's the best we can do.
4 And frankly, we've been adversaries the whole
5 way, still are adversaries, the truth is the
6 truth, that's probably the best they can do
7 as well.

8 So that's our argument, Your Honor,
9 our legal positions. If you can give counsel
10 a copy. Our legal positions, the authorities
11 that support those arguments are all set
12 forth in this brief. Thank you for hearing
13 me.

14 THE COURT: Thank you.

15 Mr. Shahid, Mr. Geoly.

16 MR. SHAHID: Thank you, Judge.

17 THE COURT: Yeah.

18 MR. SHAHID: Your Honor, I want to say
19 that from the outset that the one thing
20 that's been a theme which is a fact of this
21 case is that the Diocese of Charleston is a
22 charitable, religious organization and that
23 while we may have come in here as adversaries
24 with class counsel, the mere fact of the
25 matter is that we have reached an agreement

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1 and it's not court imposed, it's an agreement
2 between the parties.

3 And it may have been a hard road to
4 get there, it may have been that we fought
5 back and forth over a period of time, but the
6 bottom line and what -- is that everybody
7 take recognition of this is an agreement. In
8 litigation courts encourage agreements,
9 courts like to see us reach an agreement and
10 that is what we have done. And that's, I
11 think, a credit to everybody at these tables
12 this morning, this afternoon.

13 We are a church. And in response
14 to some of the comments made by Mr. Meyers
15 about people who have litigated and sort of
16 lost out, over the past ten years we have
17 addressed claimants who have come forth
18 either with or without counsel and we have
19 looked at the defenses that have been made
20 available to us. And first charitable
21 immunity has been a complete bar, statute of
22 limitations have been a complete bar, lack of
23 notice by that person, propensity has been a
24 bar.

25 But we have attempted to address

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1 those claims in the way that looks at the
2 nature of the abuse, the extent of the abuse,
3 the actor involved in the abuse, the victim,
4 the victim's family, the whole set of
5 circumstances and factors. And we have
6 settled these cases knowing the pitfalls of
7 litigation as it applies to the diocese and
8 as it may apply to the victim.

9 I say that so that the Court and
10 the public is aware that this agreement was
11 reached with that type of backdrop. And
12 we've settled cases, maybe not because a
13 person could legally proceed with that, they
14 may have been barred by the statute of
15 limitations or charitable immunity, but
16 several cases of being pastoral.

17 The issues that Mr. Meyers has
18 brought up I think applies to two particular
19 folks whose claims may now not be eligible to
20 be a member of this class. And that's sort
21 of the gamble, unfortunately, that we take as
22 lawyers when we initiate a claim and we're
23 not successful with it.

24 Nothing prevents the diocese from
25 addressing Mr. Meyers's particular claims now

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1 outside of the class. Nothing prevents us
2 from addressing that now in the pastoral
3 approach. I'm not saying we will do it or
4 offer more money, but we have other ways of
5 addressing those concerns outside the strict
6 definitions of this class.

7 There has to be boundaries, there
8 have been borders, there have to be
9 deadlines, there have to be clear definition
10 of minor and filing a claim and things of
11 that nature. The one particular case that
12 Mr. Meyers referenced involved a minor. He
13 brought that to my attention several years
14 ago; we have addressed that. No other claim
15 was brought forth at the time because of some
16 discussions that we had.

17 That particular case the definition
18 of minor has got to be, as Mr. Richter said,
19 it's nothing taken away from that person, but
20 we cannot expand it beyond what the law
21 allows us or disallows us to do. Mr. Richter
22 used the Covington approach as to the
23 specifics as to the amount of money contained
24 in the matrix.

25 THE COURT: But before you move on, let

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1 me ask this question of you, Mr. Shahid,
2 because I sense you're moving to a different
3 topic. Am I given to understand that the --
4 that this litigation was, as argued by
5 counsel, that this was an adversarial process
6 and contested in this instance or more of the
7 pastoral nature?

8 MR. SHAHID: Judge, it was a
9 combination. They brought a lawsuit and we
10 were adversaries. We got to mediation and
11 the mediator, God bless him, got us together
12 and deserves all the credit in the land for
13 getting us to this point. And it took that
14 process to go through it.

15 THE COURT: Okay.

16 MR. SHAHID: So it was adversarial.

17 THE COURT: Okay. I was going to note
18 for the record that I had the occasion to
19 speak to you, Mr. Shahid, and to Mr. Richter,
20 with Mr. Geoly also on the line and
21 Mr. Haller, and I was just going to reflect I
22 noticed a certain heat from your responses.

23 MR. SHAHID: You're being very kind in
24 saying it that way, Judge.

25 THE COURT: You know, and we were only

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1 talking about do we meet on a Tuesday or
2 Thursday. So it wasn't like it was
3 substantive and difficult, so I just wanted
4 to be sure that I had not caught you all on a
5 bad day.

6 MR. SHAHID: No. I think that it's sort
7 of just been this very odd relationship, I
8 guess, when we clearly are adversaries but we
9 clearly were generating and sort of pedaling
10 in the same direction and the direction was
11 to get to this agreement.

12 THE COURT: That's not unusual when --
13 that is not unusual certainly based on my
14 experience, because at some point if you're
15 going to try to craft a settlement in a class
16 action that -- and they are all complicated,
17 even the simplest ones are complicated, there
18 has to be cooperation to just get through the
19 process to come up with a process.

20 So I just -- my only interest was
21 to be sure that I understood that the --
22 certainly until there reached -- there
23 reached the point where there was some
24 discussion of settlement, that it was
25 adversarial. Because one of the concerns,

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1 obviously, particularly in the class action
2 realm is -- is that resolution in class
3 actions are not borne out of the adversarial
4 process.

5 MR. SHAHID: Right.

6 THE COURT: And I just wanted to be sure
7 that I was clear about that, because
8 certainly my participation in it certainly --
9 certainly appeared that it was adversarial, I
10 mean, particularly there were some occasions
11 where, you know, Mr. Geoly, you know, had to
12 not separate the two of you, I don't mean to
13 use that strong of language, but he had to
14 come in to sort of be the voice of reason, if
15 you will.

16 MR. RICHTER: Your Honor, not to
17 interrupt my friend.

18 THE COURT: Yes.

19 MR. RICHTER: But to the extent I know
20 he will join me in this, I mentioned to you
21 earlier that the mediator, now arbitrator, is
22 present in the courtroom.

23 THE COURT: Okay.

24 MR. RICHTER: We certainly have no -- if
25 you just want some independent verification

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1 for the record about the adversarial nature
2 of these proceedings, you can sure get it
3 there.

4 THE COURT: Okay. Thank you.

5 MR. SHAHID: But I see that just sort of
6 the spirit that, you know, it's -- in
7 Covington, and I've talked to the lawyer who
8 addressed in Covington, I mean, that was --
9 that literally was something shoved down
10 their throat. A court, a judge said this is
11 what you're going to do against your
12 opposition. Well, we didn't -- we mediated
13 it, we got an agreement, and that's, I think,
14 the point I just want the public to
15 understand is we've reached a consensus, be
16 that as it may.

17 Your Honor, as to the matrix issue
18 and Mr. Richter addressed this with how he
19 looked at the Covington matrix. Mr. Geoly
20 has more of a national exposure to these
21 types of cases and has been involved in other
22 jurisdictions and we're certainly aware of
23 what other jurisdictions have done in
24 resolving these cases.

25 And we have, unfortunately, a

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1 history of comparing how these kind of cases
2 have settled and been resolved based upon
3 what's outlined in the matrix. And
4 unfortunately you've got to create something
5 of a box as to the nature and extent of as,
6 Mr. Meyers said, a touch. Because that's the
7 initial part. You've got to have that
8 activity or the intent of that activity to
9 get you to the starting block.

10 What we have done is on page 9 of
11 the agreement, paragraph -- subparagraph O,
12 we provide for -- the agreement, I should
13 say, provides for that, that at any time a
14 claimant can have a psychological assessment
15 by Dr. Wade and that assessment at the
16 claimant's choice can be presented to the
17 arbitrator.

18 Now, what that does is it gives the
19 arbitrator a clear document to help him look
20 at the nature and extent of the injuries by
21 the claimant that takes in consideration
22 something more than just the touch part, that
23 takes in consideration concerns that
24 Mr. Meyers brought up, such as position of
25 trust, the extent over a period of time of

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1 the injury, how it affects that person, that
2 person's family, holding a job, substance
3 abuse problems, marriage problems,
4 relationship problems, all those things,
5 those intangibles that we, as lawyers, have
6 to deal with from time to time in resolving
7 personal injury cases.

8 And in this context gives the
9 arbitrator not just a clear black and white
10 as there's a touch, but it also gives the
11 arbitrator opportunity to then evaluate,
12 based on Dr. Wade's report, how much this has
13 affected that particular claimant. So we
14 haven't not ignored and we're not trying to
15 be mechanical with this, I think we were
16 attempting to use experience, what other
17 dioceses have used, what we have seen
18 nationally and what we have seen in our own
19 diocese where these cases kind of fit.

20 And that's why the range is
21 somewhat, I think, generous and I think
22 appropriate, for the way we came up to this
23 conclusion or this agreement.

24 THE COURT: Of course there is a
25 counseling component to the settlement.

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1 MR. SHAHID: Exactly.

2 THE COURT: And it's -- it's -- it has a.
3 limitation, but it certainly is included.

4 MR. SHAHID: Right. Thank you, Judge.

5 THE COURT: All right. Let me see.

6 MR. GEOLY: Your Honor, may we make one
7 additional comment?

8 THE COURT: Yes.

9 MR. GEOLY: And I think Mr. Richter may
10 have addressed this as well. But Mr. Meyers
11 did raise the issue of the age of the victim
12 in the parochial school setting. And I think
13 that it's just important to state that the
14 purpose here was to deal with child sexual
15 abuse claims. That's not to say those are
16 the only torts that any agent of the diocese
17 will ever commit, unfortunately, and to the
18 extent there are other claims that are not
19 child sexual abuse related, well, we're here
20 and available to talk to whomever wants to
21 come forward.

22 But you have to define a class
23 somehow. And wherever you draw the line,
24 there will be people who are just there
25 beyond where you drew the line. They're that

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1 much older or it happened that much later or
2 they were that much younger or it's this
3 slightly different kind of tort, or however
4 you draw the line you are including and
5 excluding, it just goes with the territory.

6 The idea was to address a very
7 broad concept, but one that could at least be
8 defined, and that was child sexual abuse
9 claims. So while there may be people who are
10 over 18 in a school setting, if under the law
11 at the time they were not minors, they're not
12 included in the class, and that is by intent.
13 And it's not to be arbitrary, it's to be
14 clear.

15 THE COURT: Okay. All right. And just
16 for the record, since the mediator now
17 arbitrator is here, if you'd come on forward,
18 come in front of the bar so that -- there we
19 go. And do you -- both counsel have made
20 reference to the mediation as being a
21 mediation which, I gather, would have
22 depicted certainly in your presence, as both
23 have indicated, that this settlement was one
24 borne out of an adversarial procedure?

25 MR. INFINGER: Your Honor, Marvin

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1 Infinger for the record.

2 THE COURT: Yes.

3 MR. INFINGER: And I can attest that the
4 advocacy was absolutely wonderful, if not
5 overly vigorous at times by both sides.
6 Absolutely no question but that there were
7 very strong legal positions taken, factual
8 positions taken, and it was very, very much
9 adversarial.

10 THE COURT: Okay. Very well. And
11 you're very bold to remain.

12 MR. INFINGER: Well, didn't get beat up,
13 didn't have to separate Mr. Shahid and
14 Mr. Richter luckily.

15 THE COURT: Very well. All right.

16 All right. Mr. Meyers, I'm going
17 to turn to you for response.

18 MR. MEYERS: Thank you, Your Honor.
19 There's really -- just on the personal side
20 there's a few just incorrect statements in
21 Mr. Richter's pleading which I don't think
22 relate to anything having to do with that,
23 it's really attacks he made about me
24 personally which I set aside in past cases
25 and things like that.

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1 I think the main issue is whether
2 the Court is really satisfied with the
3 fairness and adequacy and I think that's
4 almost completely driven by the Court's
5 conception of who is trying to be addressed.

6 The language from Rule 23, the
7 persons who are to be addressed by the
8 litigation I think is the exact language of
9 the statute. The interests of the person on
10 whose behalf the action is brought. And if
11 that is conceived of as children who are in
12 the diocese system as students, whether
13 they're 18 or 17 and 350 days, I think that
14 drives the first issue that we were talking
15 about where that line is drawn.

16 Certainly you have to draw the
17 line, but on whose behalf is the litigation
18 brought, I think is the lens through which I
19 would encourage the Court to look at that.
20 And I think that helps to clarify some of the
21 issues.

22 The issue of the matrix, I
23 appreciate that it's often used. I just
24 think it is a very bad fit for what is really
25 going on in these cases and that's why I

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1 encourage the Court to create a better
2 template that I think more adequately creates
3 both the fluidity for the arbitrator and
4 the -- plugs into the real mechanisms of what
5 is going on.

6 THE COURT: And part of your concern is
7 that -- the example is used as the pat on the
8 bottom, and for whatever reason for this
9 person the pat on the bottom could be an
10 overwhelmingly -- for whatever reason, for
11 that individual, could be an overwhelmingly
12 damaging event psychologically. And your
13 concern is -- is placing the matrix on the
14 physicalness rather than the psychological
15 basis.

16 MR. MEYERS: Right.

17 THE COURT: Do I understand your
18 argument?

19 MR. MEYERS: Exactly. And again we
20 don't object to it being a factor, the
21 physical touch being a factor, but once you
22 cross the starting line it shouldn't be
23 arbitrarily limited by the nature of the
24 touch.

25 THE COURT: Very well.

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1 MR. MEYERS: Thanks, Your Honor.

2 THE COURT: Thank you so much.

3 And all right, Mr. Bilbro.

4 MR. BILBRO: First of all, Your Honor, I
5 would like to --

6 THE COURT: Hold on so they -- because
7 I've restricted our folks from the press.
8 Come on forward and now begin.

9 MR. BILBRO: Okay. My name is Walter
10 Bilbro. I represent two claimants. I was
11 concerned about the fairness. I, like
12 Mr. Gregg Meyers, was concerned about the
13 matrix not taking in what I thought was very
14 serious psychological factors which I put in
15 my objection to how they were setting up the
16 class and so forth.

17 The other thing I was concerned
18 about, Your Honor, and I've maybe refined a
19 little more after listening to him today, was
20 if you look at page 5 of the agreement,
21 specifically the first full paragraph.

22 THE COURT: Okay.

23 MR. BILBRO: It says, The criteria for
24 the arbitrator to determine the amount of the
25 award for sexual abuse claims shall include,

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1 among other things, the type of abuse, its
2 duration and the extent of injuries suffered
3 by the claimant.

4 I believe, Your Honor, because
5 since there are ongoing injuries, ongoing
6 psychological problems I thought there should
7 be inserted to make it more clear after the
8 word injuries and damages, because there are
9 things like loss of income, and used the word
10 suffered, suffered is past tense, so I think
11 we leave it suffered by the claimant and in
12 the future. So there's no question when the
13 arbitrator's actually considering this, that
14 it is anticipated.

15 And in talking with them earlier
16 this morning, and it is anticipated, but I
17 think -- and I don't want to criticize the
18 artfulness or inartfulness of the drafting, I
19 do think that it does need to be a little
20 more specific because it is ambiguity in that
21 particular sentence.

22 The next sentence in which it says,
23 The award for a claim for a loss of
24 consortium, it should be \$20,000 for each.
25 Based on my understanding, it sounds like

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1 based for each living parent of a claimant.

2 I may be mistaken, but that's what I

3 understood.

4 MR. SHAHID: Yes, that's correct.

5 MR. GEOLY: Yes, that's correct.

6 MR. BILBRO: Number two, And \$20,000 for
7 the spouse of a claimant. I don't know if
8 that means a former spouse?

9 MR. GEOLY: No.

10 MR. BILBRO: A present spouse?

11 MR. GEOLY: Yes.

12 MR. BILBRO: Can we say present spouse?
13 I think we just need to be a little clearer.
14 Other than that, I'm satisfied with the
15 agreement.

16 THE COURT: Okay. Very well. Thank you
17 so much. All right.

18 All right. And does that prompt
19 anything, the discussion? If so, come on
20 forward and let's put that on the record.

21 MR. CREECH: Thank you, Your Honor.

22 THE COURT: Just again identify yourself
23 for the record.

24 MR. CREECH: Matthew Creech here for
25 Johnny Parker.

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1 THE COURT: Yes.

2 MR. CREECH: Having listened, I think
3 that our concerns still have been basically
4 met. Mr. Parker filed a lawsuit 17 months
5 ago, which has been vigorously prosecuted,
6 defended as well, and our only concern is
7 that we are allowed to opt out and continue
8 our claim separate from this action. So
9 we're satisfied.

10 THE COURT: Very well. Thank you all
11 for that, because I certainly would not have
12 wanted that to be unclear, so, as so often
13 lawyers help the court immensely, and that
14 certainly is an example of that, because it
15 certainly does need to be crystal clear that
16 this class is intended to be opt out, so I am
17 grateful for that for sure.

18 All right. Now, it is
19 twelve o'clock and we've been at it for quite
20 sometime. We're going to take a break
21 because, as I understand, our remaining issue
22 has to do with fees and expenses. And we'll
23 take -- I think we'll probably take about 15
24 minutes and then hopefully we'll be able to
25 conclude that by one o'clock. So we'll take

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1 about a -- take a break for about 15 minutes.
2 Thank you all. And that's the official clock
3 in the back of the courtroom in case anyone
4 is interested.

5 (Recess, from 12:00 p.m. to 12:20 p.m.)

6 THE COURT: Okay. Great. All right.
7 Now on to the issue of expenses, fees and
8 costs.

9 MR. RICHTER: Your Honor, we have
10 submitted to the Court and to the opposing
11 counsel a pretty -- I think a pretty broad
12 and comprehensive petition. I would like --
13 we certainly rely on the petition including
14 specifically the affidavits, most
15 specifically even, the expert affidavit found
16 at Tab 5 and all the attachments to that
17 affidavit and to this.

18 I think what I'd like to do that
19 would be most beneficial, most efficient and
20 least likely to lead us into a conflict among
21 counsel here, is I'd like to just summarize
22 some of the statements that are made in this
23 affidavit. I don't want to read this
24 affidavit to you, but I think that having
25 done that we can say -- all of us who are

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1 counsel and have joined in this petition, we
2 can say that we rely on that, adopt those
3 statements and positions, they've all been
4 supplemented by our own affidavits and we can
5 give you as much showing or answer as much
6 inquiry as the Court desires.

7 But let me begin, and I'll do this
8 very briefly, by referring to page 2 of the
9 affidavit of John Freeman. John Freeman is a
10 very well renowned and well qualified expert
11 in certain fields. He is a graduate of the
12 University of Notre Dame Law School and
13 practiced broadly and has taught at the
14 University of South Carolina Law School for
15 some 34 years now where he's received
16 numerous awards and been widely published.
17 He is the consensus, class, corporate, issue
18 and ethics expert in the state of South
19 Carolina and has been, I think from the first
20 day I met him which was those 30 some years
21 ago.

22 We asked him to express an opinion
23 in this matter as an expert opinion based on
24 his training, his teaching status, his
25 practice status and the fact that he has

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1 independently handled these kinds of claims
2 on a fairly -- in a fairly broad-based
3 manner. In addition, he has been called upon
4 by courts throughout the state and recognized
5 as an expert in these very kinds of issues.
6 So for those reasons we've asked Professor
7 Freeman to submit this affidavit.

8 He indicates what his assignment is
9 as being to express an opinion as to the
10 reasonableness of the settlement's
11 substantive terms and the reasonableness of
12 the fee award sought by class counsel. He
13 goes on to say that the fee petition is
14 restricted in its amount, and I'm going to
15 use round number 20 percent, it doesn't come
16 out precisely to that round number of
17 20 percent of the -- of the class. And as
18 you see in the agreement, there have been
19 ranges that have been put forth within the
20 agreement between .95 and 2.5, low and high
21 end.

22 Now, I don't mean to imply from our
23 standpoint by that nor I'm sure does the
24 diocese mean to imply by its standpoint, we
25 think our services are frankly worth

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1 substantially more than that. I'm sure
2 the -- I shouldn't say I'm sure, I hope they
3 don't think our services are worth a lot less
4 than what the low end is, but that was a
5 very, very difficult part of the
6 negotiations. And, again, Mr. Infinger
7 oversaw of those.

8 He recommends, Professor Freeman,
9 that the approval of the settlement and the
10 grant of the petition in its entirety, which
11 is the 2.5 petition. Now, he says in
12 supporting his opinion that this is a very
13 difficult case and that the facts extend back
14 in time, Professor Freeman says 30 years. We
15 are now learning that they extend back about
16 50 years and so it's even more than what we
17 thought it was going to be.

18 He further goes on to say that the
19 issues pertaining to statutes of limitations,
20 charitable immunity, lack of notice to the
21 defendants, negligence issues, were hotly
22 contested and that everyone recognized the
23 difficulty of the legal issues first, but
24 then difficulties of proof in proving large
25 damage numbers for injuries that are almost

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1 entirely psychological as we have been made
2 to see them thus far at least.

3 He says, quote, the effort of class
4 counsel was very substantial. Strong and
5 aggressive lawyering from defense counsel on
6 behalf of an esteemed and important entity
7 charged with serious wrongdoing is what class
8 counsel met. And I represent to you that
9 that is 100 percent accurate. The potential
10 for being a harrowing, profoundly unpleasant
11 experience for many people on both sides is
12 what this litigation, that was its etiology.

13 He says that in his opinion this
14 particular case is a class disposition case,
15 is a case that is ideal for class
16 disposition. He says the defendants need
17 that just as clearly as the plaintiffs need
18 it, because defendants need closure and
19 closure's in the best interest, he says, of
20 the parties and he notes the community. And
21 none of us have argued that to you, but
22 frankly this is more than -- more than a
23 lawsuit and will impact the community at
24 large and in hopefully a very positive way.

25 He says the case is ideal for a

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1 generous fee award because it was a difficult
2 case. He says, and I offer this again not on
3 a self-aggrandizing way, he says staffed by
4 excellent, experienced, tenacious lawyers on
5 both sides.

6 There is, he says, in the diocese
7 settlement an implicit apology for the wrongs
8 and errors that have been endured by the
9 plaintiff class. The result in this case
10 should and will send a message forward in
11 time to others who might be attempted to
12 engage in similar abusive behavior. He calls
13 that a laudable result and he specifically
14 calls it a laudable result compared with the
15 terms reached in similar cases.

16 He has researched fully through our
17 file, he says in his affidavit, and has
18 independently researched and actually
19 attaches as an exhibit to his -- Exhibit 2, I
20 believe B, to his affidavit, a printout
21 which -- from a certain website which tracks
22 these matters nationwide. So he has had the
23 comparative analysis ability independently of
24 just us and our files.

25 He says the cases against the

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1 diocese are not easy in light of the defenses
2 available which have been used successfully
3 in the past. Any parent with a consortium
4 claim will have a far easier time recovering
5 under the settlement than outside it. I echo
6 those sentiments. The same is true for
7 spouses. As for victims, Professor Freeman
8 says, the diocese is barred from using its
9 biggest defensive weapons, particularly the
10 statute of limitations defense. This
11 enhances substantially the ability of these
12 claimants to recover.

13 He then specifically at page 5 of
14 his affidavit begins an analysis of the fee
15 award factors which have been established
16 under South Carolina law. He specifically
17 addresses the six factors laid out in Jackson
18 v. Speed. And let me -- for the sake of the
19 record, let me say that those factors are the
20 nature, extent and difficulty of the case,
21 the time necessarily devoted to the case, the
22 professional standing of counsel, the
23 contingency of compensation, the beneficial
24 results obtained and customary legal fees for
25 similar services.

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1 We have -- the lawyers who have
2 done this work on the class side of the case
3 have submitted independently affidavits and
4 documentation to the Court as part of this
5 petition setting forth our own professional
6 standing and experience and a detailed
7 listing of time expenditures, which honestly
8 by -- and I'm sure counsel for the diocese
9 would join me in saying this, would not -- in
10 and of themselves are not of sufficient
11 measure because of what really was involved
12 here.

13 We spent -- I'm digressing now, I
14 said I wasn't going to do that, but we spent
15 endless hours conceptualizing this claim. We
16 had some individual plaintiffs and we were
17 trying to figure the away to get them to the
18 end, but also the concept of serving the
19 bigger need, and frankly the strategical
20 value of that kind of an exposure to our
21 adversary, the diocese.

22 And again, I'm not
23 self-aggrandizing, but I can't avoid saying
24 this has never been done before. This is a
25 fight they've never had to face before. And

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1 it was executed, we believe, in the most high
2 quality manner and it was heated at times and
3 it was difficult at times, but on all sides,
4 all of the positions taken were honorably and
5 reasonably taken and were just fought
6 through. And again, I'm sure that counsel
7 for the diocese will echo that sentiment,
8 albeit they've been in an adversary position
9 throughout this thing.

10 Back to Professor Freeman. He says
11 that he agrees with class counsel that the
12 amount sought would be a fair and reasonable
13 fee when the totality of the six factors is
14 considered. He then turns his attention to
15 each specific factor of the South Carolina
16 Supreme Court six-factor test. And he says
17 that based on his own knowledge he has no
18 hesitation in saying that class counsel's
19 industry, ingenuity and determination in
20 prosecuting this case has been exemplary.
21 The team of class counsel has consistently
22 fought well against a very powerful and
23 resourceful adversary. I believe that few,
24 if any other counsel in South Carolina or
25 anywhere else, would have had the combination

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1 of drive, expertise, resources and creativity
2 to achieve the result they did under the
3 uniquely difficult circumstances presented by
4 this case. The first, therefore, South
5 Carolina fee award factor strongly supports a
6 substantial fee award says Professor Freeman.

7 We submitted to him our entire
8 files. Those time records showed the
9 expenditure of at least 3,500 hours in the
10 handling of the case and the processing. And
11 that includes nothing going forward, this is
12 actual time recorded. And as Your Honor must
13 remember from practice days, what gets
14 recorded and what you lose in your car is --
15 is two different things or at your home or
16 wherever you are.

17 Significantly Professor Freeman
18 says his review shows no padding of time or
19 unnecessary duplication. You have to be
20 careful when you have multiple lawyers not to
21 duplicate each other's efforts and we tried
22 to be very diligent about that. He goes on
23 to say there's a reason why so many hours
24 have been spent on the case. The diocese
25 chose to require class counsel to fight for

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1 every inch of turf, which it had a perfect
2 right to do. By dogged persistence and
3 dedication, class counsel demonstrated the
4 ability to protect class members and secure a
5 substantial award.

6 When I corrected Mr. Meyers this
7 morning I was not shooting at the diocese, I
8 was simply trying to say that it was a fight
9 and it was a fight honorably conducted, but
10 it was a first-rate fight.

11 He goes on to say that the class
12 has had the benefit of truly outstanding
13 advocacy, that there was no need for
14 on-the-job training. This is a considerable
15 factor in the sense that if the lawyer goes
16 in and has to learn the ropes, time is
17 expended and really wasted in that process.

18 I, myself, am an AB rated
19 Martindale Hubble lawyer, which Your Honor
20 knows is the highest rating available to
21 members of the bar. My firm is so rated and
22 I'm sorry I don't know offhand the ratings of
23 other counsel, but I do know Mr. Lofton, he's
24 been in it so long, enjoys the same status I
25 do. But the point of it was there was no

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1 ramp-up time when we hit the ground. We hit
2 the ground with in my case, experience from
3 1971, 36 years of experience now. Wow.

4 At any rate, he says there was no
5 need for on-the-job training and he goes on
6 to say that the outstanding reputation for
7 integrity and professionalism of class
8 counsel leads him to have full confidence in
9 the records, the recordkeeping, the
10 pleadings, the documentation, all those
11 items.

12 He then cites the contingency of
13 compensation and, of course, we went into
14 this matter fully willing to expend however
15 many hours it took, being obligated to expend
16 however many hours it took and we had to
17 front the cost as well and, of course, there
18 was no certainty whatsoever that we'd ever
19 recover one dollar.

20 So one of the significant
21 considerable factors is the contingency of
22 compensation which means you might lose, and
23 if you lose you might be back asking for a
24 second bite at the apple which our law
25 doesn't allow.

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1 In any event, he goes on then to
2 praise us undertaking the action on a
3 contingency basis, getting no money for it in
4 other words.

5 THE COURT: Sure.

6 MR. RICHTER: Then he turns to the
7 beneficial result obtained and says that this
8 is one of the largest common fund recoveries
9 in South Carolina history. He says that the
10 plaintiffs' case was prepared with all the
11 care needed for class counsel to do a
12 first-rate job. This case has been marked
13 from the start by careful determination,
14 dogged preparation and obviously a very good
15 final result.

16 I would like to parenthetically
17 note for Your Honor that we -- yesterday we
18 were looking for something and we Googled not
19 ourselves, but we Googled some things about
20 class settlement in this case and this case.
21 I had no idea how broadly this was reported.
22 We were reported all over the United States
23 of America and in the *Harold Tribune*
24 internationally. What other national
25 publications, I don't know.

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1 I offered that point to say you
2 heard three people come in this morning with
3 some kind of either objection, criticism or
4 suggestion in some of these cases. Your
5 Honor will have to pass on what motivates
6 people to do that, but you heard three. And
7 my point is that we've been -- we've had to
8 advertise now publicly on six separate weekly
9 occasions throughout South Carolina and we've
10 been in every newspaper -- anybody in the
11 country could have read about this who can
12 read a newspaper and apparently so around the
13 world. And what you heard this morning was
14 all that anybody had to offer about how
15 something might be better or how something
16 could be tweaked.

17 And we're not -- there's no pride
18 in authorship, we want to get it as best we
19 can all get it. Again, I know I speak for
20 these fellows as well when I say that. But I
21 think it's extraordinary. I embarrassed, I
22 sound like I'm blowing our own horns, I don't
23 mean that, but it is extraordinary that no
24 more suggestion or criticism could be
25 generated than that having had the exposure

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1 this case has had.

2 And, of course, in the communities
3 legal, victim, advocate and other related
4 communities, nobody, and that's, of course,
5 where you are most likely to hear from
6 somebody, those people broadly are interested
7 in it and intimately familiar, as sending
8 someone in from another state just two days
9 ago to have some kind of press conference in
10 front of the diocese building.

11 He then addresses -- in closing
12 that analysis he says that we have given the
13 clients an outstanding result. He then
14 addresses customary legal fees for similar
15 services. There are few ways that courts
16 address that issue and seek to -- seek to
17 reach a fair fee arrangement. One of them,
18 of course, is a straight hourly calculation,
19 one of them is a load star analysis, a kicker
20 for the benefit of if I can use another word.
21 Others are flat fees, contingency fees.

22 This case we took on as a
23 contingency fee because that's the kind of --
24 generally the kind of fee mechanism that
25 injured parties need because nobody who is a

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1 claimant here had the ability, of course, to
2 finance this thing.

3 We've spent, I think, 100 some
4 thousand dollars so far. We've submitted the
5 petition, it's in the petition, if you could
6 pull the exact numbers out, please. And as
7 you know we're going to have to publish
8 further, because we're not through meeting
9 the requirements that you're fixing to set in
10 that regard, I believe.

11 So at least half of that again will
12 be -- will be spent. First round of
13 publication was 50, in round numbers \$50,000..
14 It's a little more than that, I believe.

15 So he analyzed, Professor Freeman
16 analyzed all those things and even discounted
17 an hourly basis analysis. And long story
18 short, at the end of it recommends that what
19 we have requested; and again I use the figure
20 20 percent in round number -- as a round
21 number, it's 20 point something, but it's
22 not -- you know, it's not 21 or it's not 19,
23 he suggests that that is a more than fair fee
24 because the typical fee arrangement, and then
25 he cites all the cases in which the South

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1 Carolina Supreme Court has acknowledged this,
2 the typical contingent fee arrangement is
3 from 33 1/3 to 50 percent depending upon all
4 other six factors that we went through
5 before. I said something incorrect. I said
6 \$100,000. It's \$85,259.50 as of
7 February 14th, not including anything
8 perspective.

9 THE COURT: Uh-huh.

10 MR. RICHTER: Now, that's what Professor
11 Freeman has said.

12 This -- all of us have submitted
13 our own affidavits. And in a general
14 description without necessity of you hearing
15 from everybody, we have all talked about our
16 own experience base, where we've come from,
17 what we've done at the law and our abilities
18 to handle this kind of litigation and then
19 our abilities proving themselves and
20 obtaining what frankly is -- must be
21 described as an extraordinary result.

22 Having done that, although I think
23 mine is the only affidavit that says this, I
24 am not the only person affected in the way
25 that I'm about to mention. But one of the

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1 considerations that courts typically make is
2 about unpopularity of a cause or difficulty
3 as it's sometimes referred to, difficulty of
4 a cause.

5 I'm a Roman Catholic and I have --
6 my family is all Catholic and we have been
7 very active in the Catholic church here.
8 I've served in numbers of capacities and done
9 numbers of things for the diocese. I
10 received 12 years of parochial school
11 education here in Charleston. I've known
12 great men who were priests, great men who
13 have given their entire lives to the service
14 of their fellow man and their church, their
15 God.

16 I am sickened that a few perverts
17 have besmirched the good name of my religion
18 and I am sickened that the administration of
19 my church and my diocese have handled this
20 heretofore in what I believe is the poorest
21 possible way.

22 So I went to see the bishop and had
23 this conversation and said this is difficult
24 for me, but I have thought all of this
25 through and have decided for myself that I

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1 just must stand for what I believe to be
2 right, I've always done that and I am against
3 child abuse period. I would fight anybody
4 today over child abuse period. So I, not
5 threatening the bishop, but having an open
6 exchange with him, told him very frankly I'm
7 going to the mat on this case and it is going
8 to be very vigorously pursued and so we did.

9 I simply offer that to say to you
10 that Jack Sinclair and Glenn Churchill having
11 made references, for example, in their
12 affidavits submitted to you to similar
13 difficulties, but we have again as my friends
14 here can tell you, I've had the finger of my
15 pastor, my confessor, a vicar general of this
16 diocese shaken in my face about what I was
17 doing.

18 So while that doesn't require legal
19 expertise to be treated that way, I do think
20 it is fair that we at least comment that this
21 is not the typical intersectional wreck case
22 where there are no emotions involved on any
23 side. And we have been scrupulous in
24 checking our emotions to advocate and
25 accomplish the rights of the persons who we

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1 represent in this matter.

2 So to the extent that that's
3 considerable, we urge it upon Your Honor.
4 All counsel who have worked with us are here.
5 David Haller, Lionel Lofton, Jack Sinclair
6 and Glenn Churchill are all available to Your
7 Honor should you desire anything from them.
8 I can tell you that I have caucused with all
9 of them and they join me in these comments,
10 they join me in this submission. As you can
11 see from the reading from it, the submission,
12 I don't know how big this is, it must be a
13 couple hundred pages at least. But we are
14 all available to the Court for anything that
15 you may want from us.

16 We request the award of 2.5 and do
17 that calling to your attention that that
18 would equate to right at 20 percent of the
19 pool recovered. And normally in these cases
20 we would have charged 40 percent for any
21 individual claimant.

22 THE COURT: I think Professor Freeman
23 refers to 17 percent.

24 MR. RICHTER: Yeah, and it's a little
25 higher than that. I'm sorry to use a round

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1 number, but it is a little higher than that.

2 THE COURT: Okay. Okay. All right.

3 One of the things that I want to be -- and I
4 just want to have it articulated and now is
5 as good a time as any. This class, this
6 class, as I understand it, is a class of
7 people who are no longer minors by the
8 chronology of the class, but at the time of
9 the events would have been children. Would
10 have been minors. And the period of time
11 covered by this class is the period of time
12 for which the statute of limitations argument
13 existed.

14 MR. RICHTER: Existed and would -- in my
15 view would be fatal almost certainly and was
16 fatal as you've heard here today in so many
17 cases where someone actually brought on some
18 different theory or something else, I don't
19 know what, but brought these claims and
20 didn't succeed.

21 THE COURT: All right. And I think it's
22 important to note that this is not --
23 these -- that the terminating date for this
24 class is 1980 and before.

25 MR. RICHTER: Any person born before

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1 August the 30th of 1980 who was abused as a
2 minor can come forward, irrespective of the
3 statute of limitations, irrespective of the
4 fact that South Carolina didn't allow suits
5 against charitable institutions, irrespective
6 of any other defense that could be propounded
7 against them, and no defense can be
8 propounded against them and they will
9 certainly recover.

10 Where they fit in the scheme, how
11 much they will recover, I don't -- I don't
12 know the individual cases at this time
13 because the claims period hasn't even begun
14 yet. But, yes, all of those people are
15 covered. Nobody's rights are taken from
16 them. Not one person loses one right that
17 any person has today. Anybody can, A, not
18 take part in this by opting out; or B, be
19 outside of what the definition of the class
20 is and pursue whatever claims that they wish
21 to pursue. That's what this class is and
22 that's what we fought over.

23 That is a substantial
24 accomplishment to get -- I've never seen
25 anybody admit that from a particular date to

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1 the beginning of time we give up all defenses,
2 and all persons who may have a claim can come
3 forward and we can't even defend against the
4 claim, except in cases of where if someone
5 propounded a fraudulent claim we have a
6 screening process to guard against that kind
7 of thing.

8 THE COURT: Of course.

9 MR. RICHTER: So that -- so, yes, ma'am,
10 you do read right the terms and breadth and
11 purpose of the class. That is the recovery
12 purpose of the class. The intangible
13 purposes of the class are what Professor
14 Freeman made reference to.

15 THE COURT: Yes.

16 MR. RICHTER: The diocese has been
17 brought forth and cannot and does not try --
18 does not seek to or try to avoid the apology
19 that goes with this kind of formation of this
20 kind of class giving this kind of
21 compensation. I wish it was a lot more. We
22 tried to do perhaps amateurish demographic
23 work to figure how many Catholics in South
24 Carolina over these various years. It used
25 to be very small. All my growing up life it

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1 was, you know, maybe 1 percent.

2 But we went around the country and
3 took groups of claimants from various places,
4 Covington, Boston, Dallas, Forth Worth, all
5 around and tried to do projections. And we
6 looked at demographics information, how many
7 Catholics were there, what period of time,
8 etcetera. I don't know of anybody that had
9 the breadth of claim time and ability that
10 this group had. Jim Geoly can tell you,
11 because he sees it daily on a national basis
12 whether anybody has broader rights, but I
13 don't know of any and I would be surprised if
14 they do.

15 So that's what we sought to
16 accomplish. And we fought over it and the
17 diocese does not try to say -- I mean, they
18 can say what they want to, but they don't
19 come up here and say we're not apologizing,
20 Judge. That has been accomplished in this
21 payment. They have to -- you have ordered
22 that today they deposit with you in
23 guaranteed funds \$12 million, five and seven.
24 And we have -- when we get to that at the end
25 of all of this we have, I should tell you,

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1 the escrow agent who is a CPA, forensic CPA
2 actually here in South Carolina present in
3 the courtroom to address anything you need
4 about that as well.

5 But that's our petition. And we
6 urge it upon you. And do you want me to
7 bring anyone else up here now, Your Honor?

8 THE COURT: I don't want to keep anyone
9 from speaking, certainly not. Counsel, I
10 have affidavits and I'm happy to hear from
11 whomever. There are a number of --

12 MR. RICHTER: I don't think it's
13 necessary for anybody to speak. Again, we've
14 caucused about this and we've been authorized
15 to make these comments for them. Thank you
16 very much.

17 THE COURT: Very well. Mr. Geoly.

18 MR. GEOLY: It's nice to be up here.
19 I'd like to say a word about the spirit in
20 which I'm standing before you right now.
21 Because this is our response to the class
22 counsel's fee petition, we have certain
23 objections we'd like to lodge with you and
24 for the record.

25 THE COURT: Certainly.

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1 MR. GEOLY: But I think it's important
2 to say and to echo Mr. Richter's comments
3 that both sides in this case worked extremely
4 hard and there were ups and there were downs,
5 but diligence was not lacking. The counsel
6 on both sides fought hard over the issues,
7 fought in good faith over the issues.

8 The fact that you have a range of
9 attorneys' fees agreed to in the settlement
10 agreement rather than a number that
11 represents attorneys' fees that were agreed
12 to, I think bespeaks the kind of advocacy and
13 certain adversarial practices that went on in
14 this case.

15 Class counsel have requested that
16 you award as fees the complete total maximum
17 number allowed in that range. And I think
18 that before I get to the number I would like
19 to give you kind of a -- a window on our
20 perception of this.

21 THE COURT: Uh-huh.

22 MR. GEOLY: We come to the table as a
23 charitable organization. The assets at stake
24 in this settlement are charitable assets.
25 They're donated and the proceeds are donated

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1 assets. The structure of the settlement is
2 such that while there is a \$12 million,
3 potential \$12 million fund available in two
4 funds, five and seven, it is not necessarily
5 the case that \$12 million will be spent. It
6 really depends on how many people come
7 forward and what the claims process results
8 in.

9 And so it's fair to say that the
10 level of the attorneys' fees awarded is an
11 expense to the diocese. It's not coming from
12 money that's already necessarily been given
13 up, it is money we will spend. And if it
14 isn't spent on attorneys' fees, then we won't
15 be spending it, or at least it will be
16 available for the larger fund that will be
17 available for claims satisfaction.

18 And that's why we care so much,
19 because we certainly are not here to try to
20 in any way cast aspersions on class counsels'
21 work or the efforts they've made in this
22 case, nor to take issue with their statements
23 about the challenges they faced and the legal
24 challenges that they faced.

25 One point I'd like to make that is

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1 I think reflected in the petition already,
2 but I want to -- I want to just make sure
3 it's clear, is that our settlement agreement
4 makes clear that the maximum attorneys' fee
5 award --

6 THE COURT: I'm looking for that part of
7 the --

8 MR. GEOLY: Well, it's quoted in the fee
9 petition, it's on page 1 of the fee petition,
10 it's paragraph 5 of the settlement agreement.

11 THE COURT: All right. I'm in the
12 agreement, so let me go there. Okay. Go
13 ahead.

14 MR. GEOLY: Maximum attorney' fees
15 award, no more than \$2.5 million. This is to
16 represent, and going to the first sentence of
17 the section, substantial efforts of
18 plaintiffs' counsel, quote, past and future.
19 I just want to be clear that whatever fee
20 award Your Honor makes, that is the fee award
21 for this case. There are no future
22 attorneys' fees awarded as the claims
23 administration process goes forward. The
24 maximum exposure to the diocese for
25 attorneys' fees here is \$2.5 million.

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1 That was hard bargained on both
2 ends, on the low end and on the high end, and
3 we at least deserve the benefit of that
4 bargain. I don't think there should be a
5 back door, I don't think there is one, I just
6 want to make clear that that's our
7 understanding.

8 THE COURT: Let me be clear. Based on
9 my reading while Mr. Richter was arguing, I
10 want to be sure, as I understand it, there
11 can be a contractual arrangement with each
12 claimant for fees for the work done on each
13 individual claim, but that amount is to be
14 approved by the arbitrator with an
15 appreciation for the amounts awarded for
16 class counsel.

17 Now, that would -- what I'm
18 speaking of would not entail an arrangement,
19 a fee request from the diocese, but would be
20 a matter of contract between class counsel
21 and the individual claimants.

22 MR. GEOLY: That's my understanding,
23 too.

24 THE COURT: Okay.

25 MR. GEOLY: In that instance it's really

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1 the claimant who is providing the funding --

2 THE COURT: Yes. Yes.

3 MR. GEOLY: -- even though the funding
4 is coming out of the claimant's award.

5 THE COURT: I just wanted to be clear on
6 that.

7 MR. GEOLY: Yes, Your Honor, that's my
8 understanding as well.

9 THE COURT: Okay.

10 MR. GEOLY: Let me turn to our
11 objections. We think that the Court in the
12 first instance in addition to the factors
13 raised by Mr. Richter, should look at the
14 bargain that's been struck. And I think that
15 the range of 950,000 to 2.5 million suggests
16 to the Court that a fair outcome would not
17 necessarily be either extreme in that range,
18 that that obviously was as far as the parties
19 got in their bargaining, and we were hoping
20 that the Court would do the rest of the work
21 for us because we wanted the settlement to
22 happen and didn't want it to break up over an
23 attorney fee award.

24 And this is really a plea to the
25 Court's equitable instincts, I suppose.

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1 THE COURT: Sure.

2 MR. GEOLY: In saying that, you know,
3 this is diocesan, these are charitable funds
4 that should be respected. That's not in any
5 way to take away from the work Mr. Richter
6 and his colleagues have done.

7 You have heard a lot about opting
8 out today. There appear to be a significant
9 number of people who will opt out of this
10 settlement. In that sense they are not being
11 served by class counsel, the diocese will
12 still face those claims, and to the extent
13 those were not anticipated at the time the
14 fee negotiations were made, that is a greater
15 exposure to the diocese. And I'm going to
16 say it like this and it's not going to sound
17 good when it come out of my mouth, but I
18 don't mean it quite the way it sounds. Less
19 of an accomplishment by class counsel, in the
20 sense those folks are not represented by
21 class counsel and are not the receivers of
22 the benefit of this bargain.

23 THE COURT: Uh-huh.

24 MR. GEOLY: In terms of the work that
25 was performed, I believe Mr. Richter's

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1 petition states that 3,500 hours have been
2 expended. He's made a request for a \$500 an
3 hour fee. I think I come out with
4 \$1.75 million if he got every penny of that.
5 We have purposely not -- we have chosen to
6 purposely not quibble with Mr. Richter's and
7 his colleagues' time sheets. That's not the
8 spirit of today's proceeding. And again, we
9 are not at all contesting it. He's done a
10 lot of work.

11 We think that \$500 an hour is a bit
12 steep for the prevailing rates in the
13 Charleston area. We're not trying to nickle
14 and dime him. It's a matter, again, of you
15 using your equitable instincts in deciding
16 what would be fair. That combined with the
17 fact that even if you multiply the fee -- the
18 rate times the hours, you come out with a
19 number below \$2 million we think should weigh
20 on your decision.

21 Going forward nobody knows how many
22 people will come forward to this class, but
23 as much as we could estimate what we would be
24 facing in this claims administration process,
25 I don't think either side is anticipating a

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1 flood of claimants. We're not looking at
2 hundreds of claimants. The amount of work
3 expected to be done in the future, while it
4 will be substantial in the sense of being
5 important, may not be massive in the sense of
6 volume. And I don't think that should be --
7 play a huge role in the fee award. I think
8 the accomplishment of achieving the
9 settlement is a major accomplishment and I
10 think that is really more where the focus is.

11 Indeed, the claims administration
12 process is very user friendly. The claimants
13 are encouraged to participate in it and once
14 they do they receive -- it's almost
15 self-executing. The lack of any adversarial
16 component I think significantly decreases the
17 amount of work either counsel have to do once
18 the claim process goes forward.

19 I guess I want to close with -- by
20 returning to the accomplishment that we've
21 made here. Mr. Richter spoke about it to
22 some extent. This is a very good day for the
23 victims who are represented in this case and
24 for the diocese. And it's a very good day
25 not just because important legal hurdles were

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1 overcome, it's a good day because both sides
2 have an interest in a -- really a
3 reconciliation over this issue.

4 To the extent the legal papers
5 create any ambiguity, I think it is very
6 important to say that not just the diocese,
7 but the Catholic church as its faced this
8 issue deeply and sincerely apologizes for the
9 wrongs that have occurred in the past. We
10 are not shy about that.

11 THE COURT: Well, Mr. Geoly, to that end
12 I suppose I was a little bit surprised that
13 with the objection that there was no
14 objection from the diocese, because as you
15 know from my review of these documents early
16 on I've been quite surprised that the
17 diocese, that the bishop and the bishop's
18 individuals were willing to meet with these
19 folks for purposes, as I understand it, of
20 apologizing one on one.

21 MR. GEOLY: It's absolutely true. The
22 bishop stands ready to meet with victims.
23 And the settlement agreement, as you know,
24 specifically provides for the ability of
25 people who have been through this claim

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1 process to come forward and address the
2 Sexual Abuse Advisory Board -- I hope I have
3 that name right -- the Sexual Abuse Advisory
4 Board, which has the official function of
5 forming diocesan policy on the issue
6 rendering advice to the bishop. That's not
7 to replace direct contact with the bishop,
8 but it's actually the formal way one could
9 have an impact on the issue that's been
10 important to both sides.

11 It's a moment, I think it's an
12 opportunity today to really turn a corner.
13 And I don't want to parrot Mr. Richter's
14 words, I don't want to pat ourselves on the
15 back, but I do think that what Mr. Meyers
16 said is true, that we deserve some credit for
17 doing something that is unique, that is
18 creative and that reaches out beyond the law
19 to people who need help.

20 Now, Mr. Richter thinks we came
21 kicking and screaming, maybe that's true,
22 maybe that's advocacy, maybe that's the
23 nature of adversarial process. What's
24 important is that both sides eventually were
25 able to put that aside and are here today.

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1 You know, in response to this fee
2 petition, I think we're really on an issue
3 here of administration. And I don't want it
4 to be taken as in any way sour grapes about
5 the process of casting aspersions on counsel.
6 What's important, though, is that just
7 because we got here doesn't necessarily mean
8 that every last penny that could possibly
9 have been awarded, ought to be awarded.
10 We're asking you to use your equitable
11 instincts and your good judgment about value.
12 And there's value on both sides here and I
13 think that's what we're asking you to
14 consider.

15 THE COURT: Thank you so much.

16 MR. RICHTER: Your Honor, may I briefly
17 respond?

18 THE COURT: Of course.

19 MR. RICHTER: Just a couple of things
20 briefly concerning Mr. Geoly's argument in
21 opposition to the petition for fee approval.
22 I need to clarify. I don't mean to imply
23 that load star, as I referenced before, is
24 the accepted South Carolina method. I
25 simply -- I think I said it is a method that

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1 has been utilized in making these
2 determinations. I don't mean to imply that
3 South Carolina has promulgated a load star.

4 Secondly, Mr. Geoly indicated that
5 all these opt out people that he referred to,
6 not so many that you heard from, at least
7 thus far, were not anticipated. Not
8 anticipated. That's what he said.

9 Now, we submitted to you a petition
10 clarifying certain language. We talked about
11 this earlier.

12 THE COURT: Yes.

13 MR. RICHTER: I want to call to your
14 attention, as you will have it before Your
15 Honor, that the signatures of class counsel
16 and counsel for the defendants, the diocese,
17 are affixed jointly to this petition. And
18 I'll call your attention to the bottom of
19 page first, page 1, which in the whereas
20 clauses, the second, third whereas clause,
21 says, Whereas, the parties have determined
22 that the agreement requires clarification in
23 certain particulars in order to fully
24 effectuate the original intention of the
25 parties.

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1 There is no doubt about what the
2 intention of the parties is, and they have
3 affixed their name to a document writing and
4 handing to Your Honor that that was our
5 original intention. So the idea that we
6 didn't intend opt out people is -- his memory
7 just lapsed, I suppose.

8 MR. GEOLY: Your Honor, very briefly may
9 I --

10 THE COURT: Just a moment. Yeah, I'll
11 hear you in just a moment. Let him finish.

12 MR. RICHTER: I failed to mention to you
13 some things earlier because I -- I'm not here
14 to have a fight with how recalcitrant, how
15 recalcitrant the diocese was about coming to
16 this or what we accomplished. I think, Your
17 Honor, because of your personal legal breadth
18 of experience and certainly your experience
19 in the breadth of matters you have presided
20 over on this court, I think Your Honor is
21 fully familiar, at least with what it is that
22 we've accomplished. It's impossible to tell
23 you everything that -- every step that went
24 into this -- into the process of
25 accomplishing these things, although I do

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1 have a time line for my own reference and I
2 note that it -- and I can do this in
3 painstaking detail, I don't seek to, but I do
4 want to remind Your Honor as to what we've
5 accomplished and how hard it was.

6 On June the 14th, on the second day
7 of a mediation of 2006, June the 14th, 2006
8 we agreed with the diocese, wrote an
9 agreement, signed our names to it as did --
10 under the good auspices of Mr. Infinger, that
11 day agreed to many things, including setting
12 a very narrow time frame in which the diocese
13 was going to --

14 THE COURT: I'm smiling at you because
15 I'm well aware of this, because this is how I
16 know that there has been great advocacy in
17 this case because I have heard -- yes, I've
18 heard your upset about this many times, yes.

19 MR. RICHTER: The point is it was
20 represented to us the diocese was going
21 Monday to the bank, they could get letters of
22 credit with no problem, that there was a very
23 short fuse, therefore, for funding this
24 thing. That was in June, June 14th of 2006.

25 Today the diocese has not put up

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1 one dollar and you have ordered ultimately
2 that no later than today they got to post
3 \$12 million in guaranteed funds. We're going
4 to get to that as soon as we finish this, but
5 I give you a preview. I don't think they
6 have it, I don't think they have guaranteed
7 funds, although you're going to see and read
8 perhaps about the 36 or \$46 million of
9 unencumbered, unrestricted funds held by the
10 diocese. That's the next issue. That's not
11 this issue.

12 I want to just though make a couple
13 of comments about the breadth of what we
14 accomplished. We have -- we had input on
15 board representation, Mr. Geoly was telling
16 you about one of the diocesan boards.

17 THE COURT: Yes.

18 MR. RICHTER: We had input into that,
19 both of makeup and function. That's an
20 extraordinarily important aspect of this
21 case.

22 THE COURT: Just so our record is clear
23 and my consideration is accurate, you are
24 talking about -- I was just looking again at
25 the different bodies. There's the -- there

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1 are a couple of groups. Here it is. It's
2 under the section of the agreement called
3 Pastoral Outreach and Protection of Children
4 by the Diocese, there's discussion about
5 comprehensive policies. The reports of all
6 accusations to the solicitor, victim,
7 assistant minister.

8 MR. RICHTER: That's right.

9 THE COURT: Sexual Abuse Advisory Board.

10 MR. RICHTER: That's correct.

11 THE COURT: Presentation by class
12 representatives or members to the Sexual
13 Abuse Advisory Board.

14 MR. RICHTER: That's correct. There's
15 not a dollar sign attached to any one of
16 those. That's not what this is about, but it
17 is an accomplishment helping to shape the
18 functioning of this diocese and the treatment
19 of the faithful who have been abused at the
20 hands, or who may in the future have been,
21 and hopefully we now avoid abuse at the hands
22 of agents, representatives and particularly
23 religious representatives of this diocese.

24 That -- all of that further
25 projects itself as follows: The diocese has

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1 reported to us 28 known abusers since 1950 in
2 their secret records. Twenty-six of whom
3 were priests, two were non priests. That's
4 what they reported to us. Nine priests in
5 South Carolina have been found or pled guilty
6 in these matters and not one day of jail time
7 to one of those perpetrators has been imposed
8 as a sentence. I think that is now over. I
9 think this case bespeaks the end of that kind
10 of treatment for sexual predators in our
11 state.

12 But we tried to do even more in
13 fairness. In fairness, it's not fair for me,
14 I suppose, to say give us the highest range
15 of this fee without saying to you but we
16 really didn't recover the highest things that
17 we wanted, didn't accomplish the highest
18 things that we wanted, like to have more
19 money for the claimants for one. We got
20 \$12 million, that's all. We'd like -- but we
21 did a lot of things that you now need to know
22 about.

23 We subpoenaed the records of what
24 is called the secret archives of the diocese
25 and that's where is locked up all of the

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1 information that would lay bare priest abuse
2 in South Carolina and other matters. Our
3 focus was that.

4 We subpoenaed from two parishes,
5 only two parishes in this state and only back
6 to 1950, all records of gambling operations,
7 illegal lotteries, raffles, drawings --

8 MR. SHAHID: Your Honor, I have an
9 objection to this. Excuse me for a second,
10 Mr. Richter. The purpose of this phase of
11 this hearing is to -- for the Court to
12 determine the award of the fees that
13 Mr. Richter and class counsel's entitled to
14 have. He made a presentation that we replied
15 to. The issue that he's trying to raise I
16 think has gone outside the boundaries of
17 where we are with this fee arrangement.

18 Whether or not there are such thing
19 as a secret archives and whether or not he's
20 subpoenaed records about gambling and stuff,
21 he's -- his work that he has done has been
22 addressed in his affidavit and he went
23 through painstakingly what he did with
24 Professor Freeman's affidavit. That's all
25 been addressed already. This is unnecessary.

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1 And there's no benefit to the Court as to
2 this line of argument that he's now trying to
3 present.

4 We have agreed that he has spent
5 3,500 hours plus and we have agreed that he
6 has expenses of close to \$90,000 on this
7 stuff. We have not gone back and nitpicked
8 those things intentionally because we've come
9 here in good faith to just address the
10 Court's latitude between one range or
11 another.

12 And that's sort of where we are
13 right now. And where else we're going in to
14 this arena that he's seeking to go into, I
15 think is inappropriate.

16 MR. RICHTER: May I respond to that,
17 Your Honor?

18 THE COURT: Sure.

19 MR. RICHTER: All of what you have now
20 learned, because this is what made opposing
21 counsel stand up and try to shut me up,
22 you've now learned the beginnings of how this
23 settlement got accomplished. The last thing
24 the diocese wants us to do is see the inside
25 of the secret archives. And that's why he

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1 now stood up.

2 MR. SHAHID: Judge, that is absolutely
3 not true. And I take exception to that
4 comment.

5 MR. RICHTER: Well, fine, it's easy. If
6 you just let me go on for 30 seconds I can
7 lay it to rest. Because I hereby --

8 THE COURT: Hold on. There's an
9 objection. I got to rule on it.

10 MR. RICHTER: I'm sorry.

11 THE COURT: So the nature of the
12 objection, Mr. Shahid, is that Mr. Richter's
13 comment is unresponsive to the argument?

14 MR. SHAHID: His initial -- he stood up.

15 THE COURT: Yes.

16 MR. SHAHID: And presented his petition.

17 THE COURT: Right.

18 MR. SHAHID: His affidavits, and he went
19 through all that.

20 THE COURT: Yes. Right.

21 MR. SHAHID: We presented a very limited
22 response.

23 THE COURT: Yes.

24 MR. SHAHID: His reply to that response
25 should be restricted to our response.

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1 THE COURT: Yes.

2 MR. SHAHID: And he's gone beyond that.

3 THE COURT: Yes. The response, as I
4 understood it, was really twofold. Number
5 one, there was a concern expressed by
6 Mr. Geoly regarding the folks who were here
7 that the diocese had concern, and I certainly
8 don't think it's unreasonable that there were
9 now cases that there would be an opt out
10 provision for which the diocese really didn't
11 contemplate perhaps, and here they were and
12 there was some concern about that. And the
13 argument was please be mindful of that as you
14 determine these fees.

15 MR. SHAHID: Yes, ma'am.

16 THE COURT: And also please be mindful
17 of the fact that what we are dealing with is
18 that we are dealing with a charitable
19 organization and these are funds which are
20 voluntarily given and these are charity
21 donations that are made by individuals, and
22 please be mindful of that as well as -- as --
23 as you make -- as you make that
24 determination.

25 I gather that the response, I

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1 gather, is to the argument of please be
2 mindful that these are -- these are
3 charitable funds that are given and I gather
4 that this argument is made to offset that
5 argument of the -- that this is no more than
6 taking of charitable funds.

7 MR. RICHTER: I was not allowed to
8 finish the point yet about charity, but
9 you're exactly right. And as I say, I can
10 close that circle in a minute or two minutes
11 so that you'll understand.

12 THE COURT: I think perhaps some limited
13 comment to be made --

14 MR. RICHTER: Thank you.

15 THE COURT: -- obviously.

16 MR. RICHTER: Thank you, Your Honor.

17 THE COURT: And then I have a couple of
18 questions.

19 MR. RICHTER: I made reference to the
20 secret archives and that's what got us off to
21 where we are now. Mr. Shahid has said if
22 they do exist or if they don't exist. I
23 represent to the Court as an officer of this
24 Court they exist. But as to charity, this is
25 the second of the killer issues that other

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1 cases have been -- and again I'm not
2 self-aggrandizing, please -- that other cases
3 have been lost on because other lawyers or
4 teams of lawyers have not known how or had
5 the vigor or the wherewithal, the acumen to
6 conceive and then execute on issues such as
7 charity. They did argue it's a charity.
8 Very sympathetic. Very sympathetic.

9 Among the issues we approached as
10 to charity are the following: We subpoenaed
11 the records from only two parishes, they
12 resisted this of course, only two parishes
13 seeking all of the records from 1950 forward
14 concerning lotteries, raffles, drawings,
15 bingos, all of which qualifies -- and I know
16 something about this because I learned it in
17 the video poker litigation which we
18 handled -- all of which qualifies as illegal
19 gambling operations.

20 We can show, we could have shown
21 had we -- had these people not come to the
22 table, that the diocese, I went to 12 years
23 of Catholic schools on bingos and raffles in
24 a large part, I'm not touchy about that, I
25 don't have thin skin about that, I understand.

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1 how churches raise money. The fact is those
2 are illegal gambling operations as a matter
3 of law. Not canon law, South Carolina law.
4 They're illegal gambling operations.

5 So we subpoenaed the records of
6 those illegal gambling operations from only
7 two parishes. Had they not come to the
8 table, had they not paid up, we would have
9 subpoenaed those from every diocese in the
10 state from 1950 forward. And I think, and we
11 told the bishop and everybody else who runs
12 the diocese or shakes their finger in my face
13 in that capacity, told them that we believe
14 that was going to jeopardize the 501(c)(3)
15 status of this charity, because under our
16 system of laws charities can't engage in
17 patterns of illegal gambling.

18 Now, I represent -- I don't
19 represent the diocese, I represent a class of
20 counsel seeking to recover. We have done
21 that when nobody else could. Part of it is
22 for that reason. But all of this forthcoming
23 good natured, good hardiness, public spirit,
24 reconciliation and healing and apology that
25 these fellows are now standing up telling you

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1 is on the side of the diocese, and all of
2 this -- these issues that they find offensive
3 and objected to and sought legal protection
4 from the Court about, are easily answered.

5 I did this not in a formal forum
6 like this, but I do it now as public record.
7 I call on the Bishop of the Diocese of
8 Charleston to release the names of all known
9 perpetrators. I call on the Bishop to
10 release their locations so that our children
11 in South Carolina and their parents can know
12 they don't live next door to them or get
13 taught by them. I call on the Bishop to
14 release all the reports mandated by statute,
15 all the reports made to law enforcement,
16 prosecutors or child protection agencies
17 concerning abuse by priests in the diocese on
18 minors. We don't have to argue about it.
19 Those aren't in.

20 Those things aren't in this
21 settlement agreement, so in seeking a fee
22 from you we've asked for the top of the
23 range, but I must tell you we didn't
24 accomplish everything that we would like to
25 have accomplished. We would like to have

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1 accomplished that. Not just for the members
2 of the class, but we'd like to have
3 accomplished that for the people.

4 Now, I have in my hand 53
5 plaintiffs who have contacted us since
6 advertising has begun. Mr. Meyers made
7 reference to many more. The stories that
8 these claimants have to tell are
9 extraordinary and are important here not for
10 purpose -- not for purposes of any --
11 striking any blows on the diocese or
12 embarrassing anyone or for any other purpose
13 than that which we now address. An opposed
14 fee petition. Because you're entitled to
15 know what we have been dealing with in this
16 litigation.

17 This was not removing a speck from
18 an eyelid. This was heart surgery. You're
19 entitled to know that because they've chosen
20 to oppose this fee, this cooperative and
21 healing-oriented group.

22 I'm going to -- there was a child
23 in this courtroom. Take that child out,
24 please.

25 THE COURT: Whoa. Stop. Just hold on a

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1 second. Wait, I'm sorry. Hold on one
2 second. If you're going to exclude somebody,
3 you got to address that to me.

4 MR. RICHTER: I'm sorry. I apologize.

5 THE COURT: I know you're worked up, but
6 you got to address that to the Court.

7 MR. RICHTER: I apologize.

8 THE COURT: Do you intend to go into an
9 area that you maintain it would not be
10 appropriate for a child?

11 MR. RICHTER: I do.

12 THE COURT: All right. Very well..

13 MR. RICHTER: I apologize.

14 THE COURT: And, you know, I don't know
15 what it is. Normally and typically I don't
16 allow children in the courtroom, because
17 typically what goes on in the courtroom are
18 those topics that I certainly don't want
19 little ones to hear, but she's -- I noticed
20 her and she has absolutely been just so
21 perfect and it's also an educational place,
22 so if -- but based upon what I am told,
23 perhaps you would want to consider that. All
24 right. Very well.

25 MR. RICHTER: And I apologize for

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1 usurping your function.

2 THE COURT: Now, stop. Whoa. Whoa.
3 Okay. Well, hold on right where we are.
4 Now, it is my understanding that the argument
5 to this point has to do with the request for
6 fee; is that right?

7 MR. RICHTER: That is correct. And it
8 will not get away from that.

9 THE COURT: All right. Okay. Well, let
10 me hold -- hold on at that point. Because
11 two things really are in my mind. Number
12 one, I certainly want to give the diocese an
13 opportunity to address the very strong
14 argument regarding the subpoenas and I want
15 to hear from you, I want you to be able to be
16 heard on that.

17 Having -- so that's number one. I
18 certainly want you to have an opportunity to
19 be heard on that. Secondly, it is very -- it
20 is very clear to me, it is very clear to the
21 Court, and I'll say this at this juncture, it
22 is very clear to the Court that no matter the
23 defendant, when there is a defense such as
24 the statute of limitations which is one of
25 the strongest defenses available to any

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1 defendant under the law and there -- that
2 defense is yielded in a settlement such as
3 this, it's clear to me that there has been a
4 great amount of advocacy that has been
5 ongoing.

6 I think and would say that once
7 it's established that there was advocacy,
8 then -- then it's very clear that there's
9 been a substantial amount of advocacy. And
10 there are those class actions, and I don't
11 speak it in terms of South Carolina because
12 I'm not aware of it occurring in South
13 Carolina, but I am aware that there's been
14 some concern on a nationwide basis that there
15 can be concern about a class action being
16 created, being created because what the
17 defendants get out of a class action is they
18 get res judicata which brings to closure many
19 of the issues. And oft times that's all a
20 defendant gets out of a class action..

21 And I wanted to be satisfied,
22 although -- although I must again say that I
23 was pretty satisfied before we came in here
24 today that this was not one of those kinds of
25 class actions based on my interaction.

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1 I say that because you are Catholic
2 and you put that on the record. That you
3 went to parochial schools, you are Catholic,
4 although you are ably assisted by your law
5 partner who is not Catholic and I'm aware of
6 that as well.

7 So having -- having said that, in
8 terms of the issue of what legally has been
9 accomplished in terms of the advocacy of
10 this, I'm satisfied --

11 MR. RICHTER: Thank you.

12 THE COURT: -- with regards to that.

13 MR. RICHTER: I understand.

14 THE COURT: Having said that, and the
15 reason for that is, is I'm probably less
16 concerned about when you talk about the
17 subpoenas and the like. That's good strong
18 advocacy. And when a case doesn't come to
19 conclusion, then you take the snapshot at
20 that moment. And I don't want to disserve
21 our system of justice either, because when
22 cases are resolved, they are resolved for any
23 number of reasons. Some of it is because of
24 good strong advocacy, some of them is -- for
25 as many reasons as there are litigants and

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1 lawyers.

2 I am satisfied and I think that my
3 concern was to establish that there was good
4 and substantial advocacy and of that I'm
5 satisfied.

6 I'm also aware of where
7 contributions come from. They come from --
8 they begin with the contributions of
9 individuals. There can be appropriate
10 investments made and the like. I'm well
11 aware of that, so I don't know that we add
12 anything to that. So I don't know -- I don't
13 know in terms of an argument over the fee
14 issue that I am -- that I need any more along
15 those lines.

16 Now, is everyone clear about that
17 much? And certainly again I certainly want
18 to hear from Mr. Geoly with regards to -- to
19 the arguments that you've made because I know
20 he wants to address those.

21 MR. GEOLY: Only briefly, Your Honor. I
22 have very little to say.

23 THE COURT: Huh?

24 MR. GEOLY: I have very little to say.

25 THE COURT: Absolutely. And then I

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1 don't want to keep you from telling me what
2 you need, but I was hoping that would be --

3 MR. RICHTER: That goes a long way.

4 THE COURT: That would be a guidance.

5 Now, when you all finish though,
6 then you have --

7 MR. RICHTER: Then it's on you.

8 THE COURT: Then I have an issue, so....

9 MR. RICHTER: I will -- I will refrain
10 from what I was -- this file folder and go
11 back to what I think you will find to be --
12 and this will only be a couple of minutes, go
13 back to what you, I believe, will find to be
14 extraordinarily brief.

15 Please, Your Honor, understand that
16 I am now faced with the prospect of a record
17 I must make here because this is now a
18 controverted issue. The fee petition is now
19 contested by the diocese and should there
20 ever be any appellate remedy sought by
21 anybody in this matter, I have to be
22 concerned about the record I make here or I
23 don't -- I would have given up what I had not
24 put in the record.

25 THE COURT: How so?

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1 MR. RICHTER: Well, I can only -- I can
2 only --

3 THE COURT: This is a settlement.

4 MR. RICHTER: I'm sorry?

5 THE COURT: It's a settlement. It's a
6 settlement.

7 MR. RICHTER: Well, it is a settlement
8 but Your Honor has to rule on an issue that
9 is a controverted issue. The settlement only
10 set parameters. Your Honor's going to have
11 to rule on within those parameters if they're
12 not satisfied about that.

13 THE COURT: If I stay within the --

14 MR. RICHTER: If I stay within, it's
15 probably not appealable.

16 THE COURT: If I stay within the
17 parameters it's your position that --

18 MR. RICHTER: No. No, it's not.

19 THE COURT: I thought maybe you got
20 yourself a little worked up.

21 MR. RICHTER: Okay. But I would still
22 like to, because you've heard comments here,
23 that you can't understand what this -- you
24 can't in considering these matters understand
25 what this is about if I let comments stand

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1 like Mr. Shahid saying secret archives, if
2 there are secret archives. Not that
3 that's --

4 THE COURT: And I'm only smiling
5 because, again, if anyone had any question
6 that this is the result of anything other
7 than advocacy just, yes, that you would be
8 Exhibit A.

9 MR. RICHTER: Well, I'll quit with this,
10 but I would like you, please, to hear me just
11 as to this last issue.

12 THE COURT: All right. Yes, sir. Of
13 course.

14 MR. RICHTER: So that you can again
15 understand how they got to the table and how
16 they got to the process of agreeing to
17 this -- to this resolution for these dollars.
18 And it will lay to rest whether or not,
19 incidentally, there are secret archives.

20 Among the things that we utilized
21 in this litigation -- and this is filed in
22 the record, so I'm only telling you something
23 that's in the records of the court -- among
24 the things that we used is a document which
25 is titled "An Instruction," and it says

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1 "Instruction on the Manner of Proceedings in
2 Cases of solicitation." This document bears
3 the date 1962 and it is a document
4 promulgated, I'm sorry, embarrassed and
5 ashamed to say by the Holy See, Rome, the
6 head of the Catholic church.

7 This document requires secrecy.
8 That was one of the positions that we took.
9 They challenged that position and said, Oh,
10 it only applies to the confessional where we
11 even had a legal privilege. I just want to
12 make a few references to this so you can
13 understand how we got to where we are.

14 This text is to be diligently
15 stored in the secret archives of the Curia as
16 is -- as strictly confidential. What does it
17 deal with? The crime of solicitation, that's
18 what it was -- I read you the title a moment
19 ago. Takes place when a priest tempts a
20 penitent, whoever that person may be, either,
21 either that's disjunctive, either in the act
22 of sacramental confession, that's one place
23 it can happen, whether before the act of
24 confession, or immediately afterwards, it
25 could happen after confession, it's a little

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1 bit now outside the privilege of the
2 priest/penitent, isn't it? Whether on the
3 occasion of a confession or the pretext of a
4 confession, whether even outside the times
5 for confession. And it goes on and on and
6 on.

7 At our mediation this was pretty
8 heatedly exchanged. We engaged -- among our
9 costs, we incurred the cost for a canon law
10 expert from another part of the country.
11 That's the beginning of this very multipage
12 document.

13 And it goes on to say that the one
14 denouncing, which means in this language
15 accusing the priest, should be presented an
16 oath of observing the secret, threatening
17 him, I'm quoting, threatening him if there is
18 need with an excommunication. That's being
19 thrown out of your faith. That's the person
20 making the complaint.

21 It goes on to say, if you want to
22 know the attitude of the church about people
23 reporting, and I hope we have changed this
24 attitude is the reason I'm arguing this to
25 you right now, that there are certain areas

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1 that the inquiry must then, the diocese
2 inquiry must delve into, and the third of
3 those is other persons, whether other persons
4 have been solicited by the same priest. Now
5 I'm quoting, whether any of them, as not
6 rarely happens, have been persuaded to make
7 the denunciation accusation by those
8 denouncing.

9 What that says is we assume that
10 people who accuse priests of molesting them,
11 go out and try to get other people to say
12 that the priest did it to them too. That's
13 disgraceful.

14 It goes on to say, as often as in
15 the prudent judgment of the ordinary, the
16 governance, I'll call it of the diocese, it
17 seems necessary, for various reasons, as to a
18 soliciting or offending priest, sexually
19 offending priest, there should be added a
20 prescription for a prohibition of remaining
21 in a certain place. That translates move
22 them someplace else. If any priest condemned
23 of the crime of solicitation, sexual
24 misbehavior, should transfer his residence to
25 another territory, so they anticipate that

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1 the priests will be moved around. This was
2 1962 this came down.

3 Goes on to say that all of these
4 official communications, it lays out a
5 process for how to adjudicate these matters,
6 shall be made under the secret of the Holy
7 Office. In other words, don't let the
8 faithful know who the abusing priest is. I'm
9 embarrassed by that and ashamed by it and
10 disgusted by it. And I hope that this
11 church, my church, will be better in the
12 future for me standing here right now and
13 doing what I'm doing. At least I think it
14 shouldn't oppose a fee for a lawyer who
15 accomplishes what we've accomplished in this
16 matter.

17 There should be read to the
18 denouncing person, let's say the child who
19 went and got abused by the priest and then
20 told, there should be read to the denouncing
21 person everything which was given in writing,
22 statements concerning the matter that the
23 diocese has now looked into, and having given
24 an account, having said to him, don't forget
25 you took an oath, having given an account of

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1 his taking an oath to observe the secret, he
2 should be dismissed. So before we send him
3 out of the room we remind him that he took an
4 oath and that he can be excommunicated if he
5 tells about this. So he can't go to civil
6 authorities, I guess is what this says.

7 Now, you want to know why these
8 people have damages? Because this is how the
9 church in this diocese and all the other
10 dioceses heretofore has been treating these
11 matters. It's dark ages. And hopefully they
12 have now been brought to light.

13 I can go on with this. This is a
14 multipage document. But I close by reminding
15 you that this text is to be diligently stored
16 in the secret archives from Rome.

17 THE COURT: The document will now be
18 made the Court's Exhibit.

19 MR. RICHTER: Thank you. I have written
20 on this and I'll hand up, if it's okay, a
21 clean one. Thank you.

22 THE COURT: All right.

23 MR. RICHTER: And it is attached to the
24 complaint in this matter.

25 THE COURT: Very well. I'm a little bit

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1 concerned about -- Mr. Geoly, come on and
2 make your comments and then at that point we
3 very well may take a short lunch break.

4 MR. GEOLY: Your Honor, if all
5 Mr. Richter was saying is that he believes
6 he's accomplished something in this case, and
7 that is the reason he took us through the
8 document known as "Crimen Sollicitationis,"
9 I'm not sure why we had to hear that. I
10 don't think anything in my comments or my
11 objections to the fee petition in any way
12 implied that class counsel did not do work,
13 did not work hard, did not accomplish
14 anything here, did not adequately or well
15 represent their clients or that there was any
16 lack of advocacy on either side.

17 I think what I pointed to was that
18 there was a range agreed to and directed the
19 Court to what I felt was an equitable
20 approach to that range.

21 That is not implying that class
22 counsel don't deserve a fee. It's implying
23 that the Court simply be judicious in what
24 the fee should be within an agreed range.

25 As to the document, unfortunately

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1 Mr. Richter felt the need to go through that
2 detail and now I've got to take your time to
3 at least respond to some of it.

4 As you know because there's a
5 settlement in this case, nothing about this
6 document has been adjudicated in this case,
7 including Mr. Richter's, I guess, canonical
8 expertise about what the document means.
9 Now, I'm sure he thinks he has a canon law
10 expert who will say what he thinks that
11 expert should say. Let he tell you the Roman
12 Catholic Church also thinks it knows what its
13 own canonical document means.

14 That document is not, and never was
15 intended to be, a prohibition on anyone
16 coming forward with any claim against anyone
17 in the secular world. That document is a
18 canonical document dealing with a canon law
19 process internal to the church for dealing
20 with priests who misuse the sacrament of
21 confession and the moments and circumstances
22 surrounding before, after, around or related
23 to confession. Confession itself being under
24 a canonical seal, all proceedings to
25 discipline priests for a violation of the.

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1 seal of confession themselves require oaths
2 of secrecy. It is a parallel universe and it
3 has absolutely no threat of excommunication
4 or any other sanction to any member of the
5 laity who has a criminal accusation to make
6 against a priest in any context.

7 Now, of course a priest would not
8 be free to reveal in public anything that
9 occurred in the confessional. He would face
10 a sanction. But the layperson is free to
11 reveal what occurs in their own confession in
12 some other context. But if you want the
13 church to discipline the priest, if you want
14 a canonical sanction for a canonical process,
15 then the rules of confession have to be
16 observed. That is why that structure was
17 created. That is at least how I understand
18 the document. That is at least how the
19 canonists who we've consulted with understand
20 the document.

21 The next thing is that document did
22 not come from the Diocese of Charleston. We
23 have searched and have not been able to
24 locate it anywhere in the diocese's files.
25 We have no record of the diocese ever

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1 receiving it, and certainly of the diocese
2 ever following it. Certainly the diocese
3 would observe all the rules related to the
4 seal of confession under any circumstances.
5 That just does not happen to be a document
6 anywhere in our files.

7 With regard to secret archives:
8 Canon law is a very colorful body of language
9 and uses descriptive and colorful phrases and
10 it has been extremely useful to plaintiffs'
11 counsel around the country to refer to and
12 repeat the phrase "secret archives" because
13 the word "secret" implies something sinister.
14 But in American business parlance that is
15 nothing more than confidential records and
16 they are no more confidential than they would
17 otherwise be than if we didn't call them
18 secret archives.

19 If they happen to contain mental
20 health records, they may well be protected
21 from disclosure. If they happen not to
22 contain privileged material that the law
23 recognizes, then they are not protected from
24 disclosure. That has always been at least
25 our approach and this diocese's approach.

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1 Whether a confidential file cabinet
2 is called secret archives or not, is entitled
3 to no special melodrama, I guess is the
4 point. And the fact that counsel issued a
5 bunch of subpoenas in this case is neither
6 entitled to any special melodrama. He's a
7 diligent lawyer and he issues a lot of
8 subpoenas. He issued subpoenas or threatened
9 to for today as well. That's fine. I don't
10 think that any way detracts from the work
11 he's done and I don't think it in any way
12 adds to the work he's done.

13 Your Honor has already observed
14 that both sides worked very hard here. No
15 one is contesting that. So, I mean, it's
16 wonderful that he issued subpoenas and that
17 he was getting ready to litigate his case.
18 More credit to him. But I'm not sure where
19 it cuts on the fee petition.

20 The opt outs. I was either not
21 clear or counsel misrepresented what I said
22 or he understood me but I just didn't make it
23 clear, so let me make it clear now. I was
24 not saying we were not aware that nobody
25 could opt out of the settlement. It's true

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1 we signed a motion that says that the true
2 meaning of this agreement was always to
3 recognize opt outs.

4 My point was we did not know how
5 many people would opt out. We didn't know
6 the scope or the magnitude of that. It
7 appears there are more than we anticipated.
8 Yes, we anticipated that some people would
9 have the right to opt out here.

10 I think it is an accomplishment of
11 both sides that the pastoral mission of the
12 church has been joined with the compensatory
13 aim of litigation in this case. And I don't
14 want to take anything away from anyone's
15 accomplishment, because pastoral aims are
16 served by this settlement.

17 But I do want to be clear that
18 every pastoral item in that settlement
19 agreement, except Item E, presentation to the
20 Sexual Abuse Advisory Board, reflects what
21 the diocese was already doing before this
22 litigation was instituted. Those are our
23 policies. But it is important that those are
24 major concerns and people need to know why
25 there wasn't a need to compel us to do those

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1 things. Well, we've documented that we were
2 already doing them. And having satisfied
3 that obligation, we reflected that in a
4 settlement agreement.

5 That doesn't take anything away
6 from Mr. Richter's fee. I simply want it
7 clear on the record that we did not have to
8 be dragged kicking and screaming to have a
9 Sexual Abuse Advisory Board, to have
10 policies, to have a victim assistance
11 minister, those are things we were previously
12 doing.

13 Finally, it's true that Mr. Richter
14 was going to argue that the diocese was not
15 properly a charity and, therefore, not
16 entitled to charitable immunity. The two
17 sides were getting ready to litigate that
18 issue and the case moved on into settlement
19 mode so it did not get resolved. I'm
20 disappointed that he felt the need to make
21 accusations and assert his side of that case
22 before you today when what was in front of
23 you was the issue of his fee petition. He
24 did. I'm just going to tell you the diocese
25 has its side of the story. We believe we

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1 would have prevailed on the issue; I believe
2 Mr. Richter believes he would have prevailed
3 on issue. That's not why we're here. We're
4 not here to fight about that. We settled
5 this case. That's all I have to say. Thank
6 you, Your Honor.

7 THE COURT: Very well. All right.
8 We're going to take -- I think there are some
9 additional issues and we're going to take a
10 lunch break and I will see everyone back here
11 at 2:30. I know that's short, but we do need
12 to conclude today. 2:30.

13 MR. RICHTER: Thank you, Your Honor.

14 THE COURT: And that document needs to
15 be made an exhibit.

16 And, Robin, bring it to me.

17 (Lunch recess taken from 1:49 p.m. to 2:39
18 p.m.)

19 (Marked for purposes of the record was
20 Court's Exhibit 1, Crimen Sollicitationis.)

21 THE COURT: Thank you all so much. And
22 please be seated. All right. Tell me what
23 now remains issue wise.

24 MR. RICHTER: Your Honor, the only issue
25 that I'm aware of that remains is that you

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1 had previously issued an order in this
2 matter, and among the things you addressed
3 was the issue about the diocese posting the
4 money. And you required that as of today
5 they had to post the money by guaranteed
6 funds. So I assume they're going to walk up
7 here and do that and we'll be out of here and
8 that's the last thing I think we need to do.

9 THE COURT: Okay. Great. All right.
10 Where are we?

11 MR. GEOLY: Your Honor, what the diocese
12 has done is segregate two specific funds that
13 are in existence now. One is a money market
14 fund in which the \$5 million obligation under
15 the settlement agreement is satisfied. The
16 balance in the account is less than
17 \$5 million because of certain advances on the
18 settlement that have been made, but it
19 complies with the \$5 million obligation.
20 That is the \$5 million fund.

21 The \$7 million obligation is
22 addressed with a fund that has a 50/50 split
23 of corporate and treasury bonds valued as of
24 the February statement at \$9 million.

25 As the Court has probably heard

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1 directly or indirectly, the diocese is in the
2 process of procuring a letter of credit to
3 fulfill the \$7 million guarantee obligation,
4 but since that was not prepared and issued in
5 time for today, this fund which is in
6 existence is.

7 And the idea would be, obviously
8 with notice to the Court and approval, that
9 at such time as the letter of credit is
10 actually issued by the bank we would simply
11 swap the letter of credit for this particular
12 account. But in the meantime, the account is
13 fully ready to be tendered as the guarantee
14 for the \$7 million obligation.

15 I am a little bit unclear about the
16 procedure, so I'll just say it out loud and
17 make sure that we all know what we're
18 supposed to do. My understanding is that
19 after you've considered everything from
20 today, at some point today or some other day
21 you're going to issue a final order
22 encompassing all of this. And that upon
23 receipt of that order we will be executing
24 papers to vest control over these accounts in
25 the escrow agent who is, I think, here today.

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1 And I just -- that's my understanding of what
2 we were supposed to do.

3 I do know from the chief financial
4 officer of the diocese that he's already done
5 the homework of what papers those need to be,
6 they're not complicated, and can be done on,
7 you know, less than 24 hours' notice. So
8 upon -- my understanding is upon receipt of
9 the order we're prepared to simply vest
10 complete control over these funds in the
11 escrow agent. That's where we are.

12 THE COURT: I understand. Now, just let
13 me see if I'm clear. There is a money market
14 fund of \$5 million, but it's something less
15 than \$5 million.

16 MR. GEOLY: Let me give you the exact
17 balance, I don't mean to be vague. As of the
18 February 28th, 2007 statement the money
19 market has \$4,544,000 in it leaving off the
20 change, the loose change, \$44,000 of which I
21 believe is interest that's been earned in the
22 account. There was a previous advance of
23 some of the settlement funds made, that's the
24 only reason this is less than \$5 million, but
25 both sides agree that this fund satisfies the

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1 \$5 million obligation. That this amount
2 satisfies the \$5 million obligation.

3 THE COURT: I understand. And what do
4 you propose to do with the money market fund?

5 MR. GEOLY: We propose to sign a paper
6 directing the institution holding the funds
7 changing control over the account.

8 THE COURT: Okay.

9 MR. GEOLY: And vesting control in this
10 money market account in the escrow agent who
11 would then be governed by the settlement
12 agreement in terms of how he could, would
13 have access to the money.

14 THE COURT: Okay. And that is the
15 moneys to satisfy the \$5 million part of the
16 settlement. Very well. And what I think
17 you're telling me, Mr. Geoly, is that the
18 diocese would propose to keep that money
19 unaffected other than it would continue to
20 earn interest, I gather, until such time as
21 assuming that the agreement is -- there's a
22 final order entered regarding the agreement,
23 at that point it would be then turned over to
24 the escrow agent.

25 MR. GEOLY: Upon receipt of your order,

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1 right. We would not propose giving the money
2 over because we haven't yet received the
3 settlement.

4 THE COURT: Right. Right, exactly.

5 MR. GEOLY: But with your order, this
6 settlement is effective and I think that is
7 simultaneously our obligation to tender the
8 funds.

9 THE COURT: Right. Exactly. I'm afraid
10 I'm not being clear because it's really a
11 two-step process.

12 MR. GEOLY: Sure.

13 THE COURT: One of the concerns, as I
14 have understood it from counsel, is that the
15 diocese was to obligate, set aside funds.

16 MR. GEOLY: Correct.

17 THE COURT: And then there's been some
18 concern because as you all have gone through
19 this process that hadn't occurred.

20 MR. GEOLY: Correct.

21 THE COURT: And I agree with you
22 completely, you wouldn't relinquish control
23 until such time as the settlement is --
24 becomes a court order. All right. But just
25 so I'm clear, the money market fund that

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1 you've just mentioned satisfies that element
2 of having the funds obligated in the event
3 that the settlement is approved.

4 MR. GEOLY: Correct.

5 THE COURT: Okay.

6 MR. GEOLY: And they are the actual
7 funds that will be handed over, or control of
8 which will be handed over to the escrow
9 agent.

10 THE COURT: Got it. And the second
11 prong would be the \$7 million fund, what
12 you're saying is actually going to be funded
13 with a \$9 million --

14 MR. GEOLY: Account.

15 THE COURT: -- account.

16 MR. GEOLY: Yes.

17 THE COURT: And that it would be the
18 intention, however, of the diocese to
19 substitute the irrevocable line of credit
20 letter for that \$9 million fund and that the
21 control of that would be relinquished also to
22 the escrow agent.

23 MR. GEOLY: Right. We're not going to
24 ask anybody to wait. Upon receipt of your
25 order immediate control of the fund will be

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1 relinquished.

2 THE COURT: Okay.

3 MR. GEOLY: But the swapping would occur
4 later when the letter of credit is actually
5 issued.

6 THE COURT: Sure. I understand.

7 MR. GEOLY: That's what we wish to do.

8 THE COURT: I understand. And at this
9 point what you're doing to satisfy that
10 concern that the money be obligated, you have
11 two items. Number one, the money market
12 5 million which is actually 4,544,000, right?

13 MR. GEOLY: Yes.

14 THE COURT: And then the second fund
15 that you were referring to that actually has
16 about \$9 million in it.

17 MR. GEOLY: Your Honor, as of
18 February 28th, 2007 the balance is 9,000,653
19 and change.

20 THE COURT: All right. And have you
21 identified those accounts and numbers and all
22 to the plaintiffs?

23 MR. GEOLY: We're happy to do that, Your
24 Honor. We have one concern which I don't
25 think will be a problem for anyone. Simply

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1 for the financial privacy of the diocese,
2 we'd like to provide the account numbers and
3 the institutions to counsel confidentially.

4 THE COURT: Sure.

5 MR. GEOLY: And I don't think that as
6 long as they're satisfied that these accounts
7 exist, I think that should be sufficient.

8 THE COURT: I have no problem with that
9 at all --

10 MR. GEOLY: Thank you.

11 THE COURT: -- to maintain the
12 confidentiality at this point at all.

13 MR. GEOLY: Thank you.

14 THE COURT: I certainly do not. All
15 right. Thank you. Let me hear from --

16 MR. GEOLY: Your Honor.

17 THE COURT: Yeah, sure.

18 MR. GEOLY: I have a housekeeping matter.
19 and it's my own -- I should have clarified
20 this earlier before we took the break, but I
21 just wanted to understand something and God
22 knows I don't want to reopen a closed issue.

23 You had asked Mr. Richter to put
24 into the record the "Crimes Solicitationis"
25 document.

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1 THE COURT: Yes.

2 MR. GEOLY: As you probably know, it is
3 attached to the complaint that was filed,
4 it's in the pleadings this case, so it's
5 there. But I wasn't understanding the
6 capacity in which you were taking it into the
7 record.

8 THE COURT: Thank you. Thank you.

9 MR. GEOLY: If it's admitted in
10 evidence, then we do have an objection. If
11 it's in because you wanted to see the
12 document that he was referring to, and it is
13 in the pleadings already, then we don't have
14 an objection. So I just -- I just want to
15 know so I know whether to make an objection
16 for the record.

17 THE COURT: Make the objection for the
18 record.

19 MR. GEOLY: My objection for the record
20 is that the document lacks authentication and
21 is hearsay. Thank you, Your Honor.

22 THE COURT: Thank you. Very well.

23 Anything further from class counsel.
24 at this point regarding --

25 MR. RICHTER: This issue?

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1 THE COURT: Yes, the funds.

2 MR. RICHTER: Yes, ma'am. Your order,
3 Your Honor, specifically required that
4 guaranteed funds be posted. There's a good
5 reason for that, of course, and there's a
6 good reason to get it out of the diocese and
7 in to the escrow agent, because if tomorrow
8 afternoon somebody came in and attached all
9 the assets of the diocese for whatever
10 reason, then this class wouldn't be funded,
11 although it was supposed to have been many
12 months ago.

13 Our concern is we'd like to read
14 the guarantee. They haven't told us who's
15 guaranteeing these funds and what the
16 guarantee is. Now, I know a little something
17 about corporate bonds. T bills are one
18 thing, corporate bonds are a very different
19 issue.

20 Secondly, we -- I don't think these
21 are IOLTA funds. We have looked at that, and
22 I just want to make sure they have looked at
23 that issue and that none of us are doing
24 something that we're not allowed to do about
25 how we classify these funds. I just offer

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1 that for everybody's benefit.

2 And then the last thing, the last
3 thing is depending upon what you're going to
4 do, we obviously have been going back and
5 forth and meeting about all this, we didn't
6 just come in here today cold. And last
7 evening they told us, afternoon late they
8 told us about these two funds. Previously
9 the chief financial officer told us he was
10 only posting \$5 million today, wasn't
11 obligated to post any more than that. But in
12 any event.... And they said we're getting a
13 letter of credit, but it will be a seven- to
14 14-day delay.

15 Now, we met with you for four hours
16 on our initial meeting, all counsel, and
17 these counsel represented to you, as they had
18 consistently represented to us, that the bank
19 was a holdup, that the bank couldn't get --
20 they needed one more thing, they needed one
21 more thing, they needed one more thing. I
22 don't know if you remember this way back in
23 October or so.

24 We were skeptical of that because
25 we had been hearing that since June. I have

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1 subpoenaed Ms. Creed Jennings who is the
2 bank --

3 THE COURT: B of A, Bank of America.

4 MR. RICHTER: B of A, yeah, the B of A
5 representative of this client account, client
6 transactions. I've also subpoenaed her file
7 records concerning requests by the diocese
8 for the issuance of letter of credit since
9 June the 14th of 2006 for the reason that
10 we're now being asked -- they're saying to
11 you, without saying it, your order doesn't
12 mean a thing to us, we're the diocese, and
13 although you said we got to have guaranteed
14 funds, we're not going to do it still today.
15 We're going to give you something else that's
16 not guaranteed.

17 In addition to that, I'm concerned
18 about the representations that have been
19 made, and by brief inquiry of this witness we
20 believe that it will be shown to this Court
21 when a request for the letters of credit
22 which would have solved this problem was
23 made. So that's the reason that she is here
24 and we'd like to hear from her in that
25 regard. And she may say day one. If she

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1 says day one, I understand, may be all the
2 bank's fault.

3 THE COURT: Okay.

4 MR. GEOLY: Your Honor, I object to
5 this. For one thing, it's utterly
6 irrelevant. You scheduled this hearing for
7 today. We're here today. We're supposed to
8 have money. We have the money. What is the
9 point of this?

10 Number two, the settlement
11 agreement says simply that the funds shall be
12 guaranteed by the issuing bank to be
13 available. Well, they're in the account. If
14 they want to receive assurance from our bank
15 that the funds are really in the account, we
16 have no objection to that. We've been
17 providing the assurances, we have the bank
18 statements, we'll provide them again. I
19 don't see the point of calling our banker to
20 the stand to delve into when we contacted
21 them and what we said to them going back to
22 June of 2006. That's not what's before you.

23 MR. RICHTER: We can't get the funds
24 from the bank. If tomorrow we needed the
25 funds, we'd have to now go deal with some

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1 corporate issuer of some bond. I don't know
2 anything about the restrictions on calling
3 that bond, I don't know anything about a
4 penalty for any of those things. And they're
5 not guaranteed as funds.

6 What he's saying to you is, we're
7 willing to represent to you that we've got
8 some bonds. One set of government, one set
9 of private corporate. Don't know anything
10 about the litigation that these corporations
11 are in, their final viability at any point in
12 time. But I do know that the diocese has
13 either 36 or \$46 million of unrestricted
14 funds, which I assume unrestricted funds
15 means they can place with this Court and
16 satisfy this obligation.

17 And I do know that since June of
18 last year, I believe, the diocese hasn't
19 asked for a letter of credit until very
20 recently, and I do know that we don't have
21 the letters of credit still today, which we
22 could then -- not us, but the escrow agent
23 could call and the bank must honor upon
24 our -- I'm saying our, not literally our.

25 THE COURT: Right.

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1 MR. GEOLY: Your Honor, first of all the
2 settlement agreement says letters of credit
3 of other pools of funds. It anticipates
4 specifically we may not ever use a letter of
5 credit. That was in our discretion.

6 Number two, the \$5 million
7 obligation is sitting in a money market
8 account as cash money available to spend
9 tomorrow on the fee that counsel has so
10 vigorously argued for.

11 Number three, there isn't a dime of
12 the settlement pool that can be spent
13 tomorrow on claim satisfaction. As you know,
14 there's a 120-day period before people can
15 even -- even close the claims process.

16 If more assurances are needed -- I
17 mean, my understanding is that with an
18 instruction from the escrow agent the bond
19 fund -- it's a fund of bonds is liquidated,
20 and the money's made available. If counsel
21 needs more assurance on how that's done or
22 what the actual terms are, we're happy to
23 provide that to him. The real point is we
24 had a \$5 million and a \$7 million obligation,
25 we've met them. And what he wants to do is

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1 now go back and dredge up whether he thinks
2 we were keeping our word since June and
3 trying to find out if somebody told him that
4 we were trying to get money from the bank
5 when he thinks we really weren't.

6 None of that is at issue before you
7 today. Are we here meeting our obligations?
8 We are. You have an agreement to finalize
9 and to consider. I don't -- I don't see why
10 calling our banker to the stand over what
11 occurred in June is relevant to your task
12 here.

13 THE COURT: Okay. And here's just --
14 just so that I'm real clear about what has
15 occurred, the money, you're telling me that
16 the two funds exist, that those -- that
17 the -- those funds will remain, that the --

18 MR. GEOLY: Upon your order we will sign
19 the funds over to the escrow agent.

20 THE COURT: Okay. And that the -- and
21 that there may be a substitution for the
22 letter of credit for the \$9 million fund.

23 MR. GEOLY: Correct.

24 THE COURT: Okay. Very well. Now,
25 counsel, I want to talk to you because I'm

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1 happy to get your position on where I think I
2 am at this juncture because it causes me
3 grave concern.

4 There are two pieces of information
5 that I now have that concern me. And in all
6 candor in the settlement, in my settlement
7 conference with counsel and, of course, both
8 of you were there, both of these -- all four
9 of you lawyers were here. Mr. Lofton wasn't
10 present, but outside Mr. Lofton the four of
11 you were present and we met and went through
12 the settlement proposal and talked about the
13 settlement. But today there are two new
14 pieces of information and those two pieces of
15 information cause me great concern. Great
16 concern.

17 The first, of course, is what has
18 been marked as Court's Exhibit Number 1. And
19 that -- this document causes me great concern
20 which is why, Mr. Geoly, I wanted you to put
21 any objections to the document that you felt
22 compelled to place on the record.

23 And secondly I am concerned with
24 counsel's representation that there is -- not
25 representation, let me call it argument, that

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1 there is a difference between the number of
2 priests who have engaged in sexual assault or
3 abuse and the real number. And that the real
4 number may be somewhere hidden or undisclosed
5 or secret.

6 That, of course, would be a
7 violation of the criminal laws of the State
8 of South Carolina, both in the form of
9 obstruction of justice as well as any
10 underlying crimes which may or may not have
11 been committed against children of this
12 state. That now predominates in my mind.

13 I have so informed our solicitor
14 David Pascoe. And I contacted David Pascoe
15 because you are in the First Judicial
16 Circuit..

17 I will order Solicitor Pascoe to
18 undertake an investigation. I will share
19 with him what has now been marked as the
20 Court's Exhibit Number 1, because the Court
21 has an obligation where there is information
22 that comes directly to the Court that there
23 have been crimes that have been committed
24 that the Court take appropriate action. I
25 have, and will, order Solicitor Pascoe to do

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1 that. That must happen before I can approve .
2 the settlement for this reason: Because if
3 it is true that which has been argued that
4 there are children who have been abused and
5 been undisclosed, and their only remedy is to
6 receive newspaper publication and then to
7 come forward, that is insufficient in my mind
8 because those would be names that would be
9 known and they are entitled to more attention
10 than that.

11 So, that is where we are at this
12 point. I'm happy to hear from counsel, but
13 in my mind that is where we are. I must have
14 assurances that there are no known crimes
15 that have been committed against children,
16 now adults, that have been undisclosed to law
17 enforcement before I can go forward any
18 further with regards to the settlement.

19 I'll hear first from plaintiffs'
20 counsel.

21 MR. RICHTER: Thank you, Your Honor.
22 The -- I'm sorry that you had to undertake
23 the actions that you've had to undertake, but
24 I am most appreciative of your public sense
25 of concern, particularly for those who as

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1 children don't have the wherewithal otherwise
2 internally or certainly by their standing in
3 line to proceed on their own. It is my
4 sincere hope that the diocese has not -- has
5 not covered up the abuse of any child.

6 If -- and I know there's a lot of
7 money at stake here -- this proceeding today
8 and this lawsuit keeps one further child from
9 being abused, or uncovers any coverup
10 whatsoever by this diocese, then the money
11 pales in comparison of importance.

12 So while we don't want to delay,
13 and I understand it, I think the good news is
14 that the diocese is the repository of that
15 information and can make it, I hope, readily
16 available to the solicitor.

17 We have had many contacts from
18 people during the duration of this litigation
19 and particularly during this advertising
20 period. And while we certainly agree to keep
21 everything confidential, we -- that is
22 information at least for matching purposes or
23 scope of remedy available to these people
24 that we would like to know in processing
25 claims for the class as well. Thank you.

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1 MR. GEOLY: Your Honor, first of all my
2 understanding has been and is that it has
3 been the policy of the diocese for some time
4 to report every allegation it receives
5 directly to the solicitor and to encourage
6 anyone who comes forward to go to the
7 solicitor.

8 We are not aware, and I've just
9 conferred with Mr. Shahid, of any known
10 claims against the diocese involving child
11 sexual abuse that have not been reported to
12 the solicitor. We will, of course, cooperate
13 fully with any inquiry from the solicitor.

14 But I am trying to understand what
15 has -- the source of the concern that there
16 are undisclosed claims. You know, the
17 diocese has, especially of late, had to
18 inventory all the claims back to 1950 and
19 make a report of them. That's the number
20 that's been shared in the public. And my
21 understanding is that they've all been
22 reported.

23 Again, we're happy to go through
24 this step. If there's a delay in
25 implementing the settlement, then so be it,

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1 but if there's something I could address that
2 was sort of the cause of the concern, I would
3 be happy to address it I guess is what I'm
4 trying to say.

5 THE COURT: Absolutely. And I
6 appreciate that so much, Mr. Geoly, which is
7 another reason why I am not pressing any more
8 with regards to the funding. Because there
9 is a delay, and I don't want the diocese at
10 this point, I'm very comfortable with the
11 diocese not relinquishing control at this
12 moment to the trustee.--

13 MR. GEOLY: Okay.

14 THE COURT: -- for that reason. I'm
15 very comfortable with it where it is. You
16 know, and obligation of the judiciary is such
17 that when you hear things, even in the
18 context of a civil matter that may be
19 applicable to the criminal law, it is
20 incumbent upon that judge to stop and to be
21 sure that -- to be sure that those -- that
22 those matters are satisfied in terms of the
23 criminal law. That is all that this -- that
24 this is. This is not a finding.

25 MR. GEOLY: Fair enough.

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1 THE COURT: This is no more than we must,
2 proceed appropriately.

3 MR. GEOLY: Very good.

4 THE COURT: That would be the -- that
5 would be the appropriate first step. It
6 is -- it would be a wonderful thing and a
7 wonderful thing if this step is very short.
8 If everyone is satisfied, if law enforcement
9 is satisfied that these matters are of no
10 concern and that communicates back, then
11 we'll be able to go forward.

12 MR. GEOLY: We'll cooperate fully with
13 the solicitor, Your Honor.

14 THE COURT: And please understand at no
15 point did I intend to communicate otherwise,
16 because I absolutely believe that to be true.

17 MR. GEOLY: Thank you, Your Honor.

18 THE COURT: Thank you.

19 MR. GEOLY: Mr. Shahid I think has one.

20 THE COURT: Sure.

21 MR. SHAHID: As a matter of procedure --

22 THE COURT: Yes.

23 MR. SHAHID: -- do we reconvene? How do
24 we initiate the process? How do we get back
25 to you? What is your intent on where we go

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1 from here?

2 THE COURT: There are a couple of
3 scenarios that could occur. Now, I will
4 articulate these and neither one of these
5 will happen because I articulate them, it
6 will be something that I cannot even think of
7 that will occur.

8 One thing that could occur is that
9 there will be an investigation by the
10 solicitor. The solicitor could say, you know
11 what, I'm satisfied these matters have been
12 heard, there are -- you know, there are no
13 new concerns, proceed onward, at which point
14 I don't need any further argument at all.

15 MR. SHAHID: Okay.

16 THE COURT: I don't need any further
17 argument because I have all the information
18 that I need to make my decision if nothing
19 else changes from this moment. And I would
20 issue my decision. That would be the first
21 thing.

22 The second thing that could occur,
23 and please, as I articulate this I do this by
24 example only because you have asked. I have
25 no information whatsoever that this would

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1 occur, so please don't think that I have --
2 that I have any feeling about this because I
3 don't. But let's say that 100 new cases of
4 abuse surfaced that were to that moment
5 unknown. Well, obviously, obviously at that
6 point I'm going to need to know that. I'm
7 going to need to hear from you, both sides.

8 MR. SHAHID: Sure.

9 THE COURT: How do you feel about that?
10 What, if any, effect on these proceedings, on
11 this settlement does that have? It would be
12 impossible for you to know or for me to know
13 how or what that effect might be. But again,
14 please understand I have no feeling
15 whatsoever about that occurring, I really
16 don't. I just know that this is the
17 appropriate thing to do.

18 MR. SHAHID: Okay.

19 THE COURT: Having said, again, those
20 two scenarios, neither one of those will
21 probably happen, it will probably be
22 something that none of us have anticipated.

23 It would be my intention that --
24 that our solicitor would communicate with
25 both of you and anyone else that they need

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1 to, and I think clearly the place to begin is
2 with you and I have told him that I will give
3 to him this document. He may want a
4 transcript of these proceedings, and beyond
5 that he will do what he does. Maybe he will
6 keep it, maybe it goes to the attorney
7 general, but it will go to someone other
8 than -- other than the Court, obviously, at
9 this point and then we will -- once that
10 has -- once that process is either concluded
11 or come to some other juncture, then we may
12 need to get together and let me hear from you
13 at that point, but at this juncture I think
14 it's very difficult to know what is the next
15 step.

16 MR. SHAHID: Okay.

17 THE COURT: And it very well may be that
18 it is clear and I'll go forward and make my
19 decision.

20 MR. SHAHID: Okay. Thank you, Judge.

21 THE COURT: Thank all so much. Anything
22 further?

23 MR. RICHTER: Nothing from plaintiffs.

24 MR. SHAHID: Nothing from us.

25 THE COURT: I want to thank all of you

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1 for being here today and for your patience as.
2 I have gone through these matters to learn
3 about these issues. I know it has been long.
4 I hope nobody's blood sugar plummeted
5 dramatically, but thank you all for the time
6 you have given me, counsel, today and your
7 explanation and we will -- I suppose the best
8 thing to say is we will be in touch. Thank
9 you so much.

10 MR. SHAHID: Thank you, Judge.

11 THE COURT: We'll be convened with these
12 proceedings today.

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March 9, 2007

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER) : C E R T I F I C A T E

I, Robin L. Keil, Registered Merit Reporter and First Judicial Circuit Court Reporter, certify that the preceding pages are a true and correct transcript of the proceedings had at the aforesaid time and place.

I certify that the same was reduced to typewritten form from my original stenograph notes by computer-aided transcription.

I further certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF I have hereunto set my hand this the 16th day of March 2007.

S/

Robin L. Keil, RMR
Resident Court Reporter
First Judicial Circuit

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THE COURT: Let the record reflect that the Chinese firewall has taken effect and I am sending my law clerk on his very last day on the very last hearing out of the courtroom.

MR. SHAHID: I don't know if you need to be on the record, Judge, but I guess we're just trying to push forward.

THE COURT: Good.

MR. SHAHID: And we sent letters, I sent you a letter late yesterday afternoon.

THE COURT: And I wasn't real sure what we were doing. It's like, hum.

MR. SHAHID: It was just to announce that we had reached an agreement.

THE COURT: I felt like the Sony dog. Okay. You want to stop? Do you want to stop? On our of off?

MR. SHAHID: We don't need to be on the record, do you think?

MR. RICHTER: I think, yeah, I do. Why not? I mean, if you don't mind, let's be on the record. Because I don't know what you -- I don't know what we're talking about. Go

1
2

ahead, shoot. What?

MR. SHAHID: Judge, I sent by fax a

July 13 2007.txt
letter to you yesterday.

THE COURT: Right, yeah.

MR. SHAHID: And I copied Mr. Richter, Mr. Haller, the other class counsel attorneys simply to announce the progress we have been making regarding this case.

THE COURT: wonderful.

MR. SHAHID: One was resolving this issue in a motion. In my conversation with Mr. Pascoe in the courtroom today.

THE COURT: Yes.

MR. SHAHID: It was my understanding he was either going to chat with you, provide you with an interim report as to where he stood. And Mr. Haller and I have been on the phone I think about every day this week, one of the things.

The main concern was the diocese's position on this creation of a subclass and we've had very frank discussions with class counsel about that and we just don't think in, all due respect to what --

THE COURT: That it's necessary.

3

MR. SHAHID: It's necessary. And we quite frankly think the diocese, quite frankly, thinks that it is going to create more of a problem than what the Court is trying to avoid happening.

THE COURT: Okay.

MR. SHAHID: And what we're trying to do
Page 2

8 is take care of those victims to make sure
9 that they are included in the class and they
10 get notice of the class and try to stop
11 whatever potential loophole they may be -- if
12 something strange happens, I guess in which
13 someone pops back up who should have gotten
14 notice who didn't get notice.

15 And I think that after talking with
16 Mr. Haller about that and class counsel about
17 that, I think we have an understanding as to
18 what would happen to those particular folks,
19 which would be really our problem, and I
20 think that what we've discussed allows us to
21 proceed with the agreement we've signed on
22 January 12th. And then if that person -- as
23 remote as it may be, but if that person shows
24 up then we would have to deal with it.

25 THE COURT: Let me ask you this

4

1 question: It is my understanding that, and
2 I'm not going to be as crisp as I would want
3 to be because I really was not anticipating
4 this issue today.

5 MR. SHAHID: Right.

6 THE COURT: I was anticipating only the
7 motion to compel, but there was, as I
8 understand it, a list of some 40 names ab
9 initio that the diocese had and I am not
10 talking about the individuals that the
11 plaintiffs' counsel already knew about,

July 13 2007.txt
12 pursuant to notice already knew about. I'm
13 talking about sum total of 40 individuals
14 that the diocese was aware of had made at
15 some point through going through old records
16 pursuant to -- really to working with
17 solicitor Pascoe's request, that there were
18 some 40 individuals who were identified as
19 being individuals that were potentially or
20 were sexually abused by priests, by
21 individuals from the diocese and that
22 pursuant to our status conferences I wanted
23 obviously the solicitor have all the
24 information that you have had and I think
25 you've shared that with the solicitor.

5

1 And additionally, although he would
2 certainly speak for himself, but my
3 understanding was that you all had shared
4 that with him and that out of that 40 there
5 were 20 people that you all have really been
6 trying to locate and that out of that 20 you
7 got 15 and then there are five folks for
8 which I wanted you all to enter into a
9 protective order and those five names be
10 given to the plaintiff and allow the
11 plaintiff to try to find those five
12 individuals but not contact those people
13 until the diocese had an opportunity to
14 contact them since they had originally come
15 to the diocese.

16 with regards to the other 20 while
Page 4

July 13 2007.txt

17 there was some information about those folks
18 coming out of the file -- out of the old
19 files, archive, that there was a real problem
20 with determining really what the status of
21 those other 20 were, that it was less clear
22 about those 20 folks. Go ahead, yes, sir.
23 And that's my memory. Those are the people
24 that have -- let me just for the record, in
25 our discussions and the discussions with the

6

1 solicitor's office, I -- my concern has been
2 that I know that there are some individuals
3 out there for which there's pretty specific
4 indications that they ought to be included in
5 this class, I've wanted them to be included
6 in this class and in the attempts to sort of
7 move -- move those folks that we knew about
8 and the ones that had already responded and
9 there was a real concern and I think
10 legitimately so for those folks that we knew
11 about that had come forward that really the
12 fairness hearing, they had participated in,
13 made contact with plaintiffs' class counsel,
14 that those folks kind of needed to move
15 forward, and yet I know of these 20 people
16 and that 15 we now know of and I think the
17 diocese is trying to make contact, there's
18 another five people that the plaintiffs are
19 specifically going to reach and I don't know
20 about the other 20. You can put on the

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21 record whatever you need to. My concern was,
22 I wanted to be able to go forward on those
23 people that have already gone forward that
24 everybody sort of knows about.
25 MR. SHAHID: Right.

7

1 THE COURT: But I'm not of a mind to
2 force the solicitor, our solicitor has number
3 one gone outside his judicial circuit and I
4 think done a lion's job of really going into
5 Charleston, I think the diocese has done so
6 far a wonderful job of cooperating. He's had
7 to contact the attorney general, U. S.
8 attorney's office, he's dealt with this --
9 sort of this document that's been floating
10 around out there, he's made contacts with the
11 United States attorney's office, with -- he's
12 reached out to the United States attorney's
13 office in Massachusetts, he's talked to not
14 only plain old garden variety lay lawyers,
15 but those with more familiarity as I
16 understand it with the (C)ccracy okracy and
17 to try to ascertain what the words mean and
18 done research, worked with the attorney
19 general's office to do the same.

20 And my concern was, was that I did
21 not -- A, I didn't want the solicitor who is
22 obviously working incredibly diligently, I
23 didn't want him disturbed, I wanted him to
24 continue doing what he was doing but I didn't
25 want to hold these other folks up because

1 they seemed to want to go forward.

2 I wanted to fashion a way because
3 it didn't seem fair to me that when we
4 identify actual people, individuals who ought
5 to be included in the class, it didn't quite
6 seem fair to me to just say, listen, either
7 come forward based on publication or you
8 don't because these people already have come
9 forward at some point in their lives. And it
10 just didn't seem fair to me to exclude those
11 folks that ought to have more individual
12 notice. That was the reason that I thought
13 maybe the solution was to come up with some
14 sort of, if you will, additional class or
15 subsection or that we could sort of hold
16 something for those folks and yet go forward
17 on the other ones. We certainly have done
18 that in other class actions that I've been
19 involved in, so I know that the procedure
20 exists so that was my concern in short.

21 So I want you to put on the record
22 for me, please, Mr. Shahid, about the 40 and
23 that breakdown.

24 MR. SHAHID: well, it was actually
25 through the file review the Court alluded, to

1 the diocese has gone through there were
2 actually 20 -- we had dwindled the number

3 down to 20 folks who had -- we believe had
4 come forward.

5 THE COURT: Yes.

6 MR. SHAHID: Either directly or through
7 a third source.

8 THE COURT: Right.

9 MR. SHAHID: And that source could have
10 been through either a parent or a person
11 saying I believe John Doe or Jane Doe may
12 have been abused as well. We located
13 initially 15 we thought were good addresses,
14 solid addresses, of those 20 the Court
15 ordered us through a protective order to turn
16 over five names to class counsel for them to
17 use the sources they had. In the interim we
18 located another name, the number actually was
19 reduced from five to four.

20 THE COURT: Okay.

21 MR. SHAHID: So I received from
22 Mr. Haller actually e-mail yesterday as to
23 his efforts from his investigator regarding,
24 I think, two of the four, I do not recall.
25 And so we will follow up on that. So the 20

10

1 is down to four names and some of those
2 names, as I recall, are the result of not
3 exactly a direct claim but through a second
4 or third source.

5 There was a list of folks that we
6 have that we were concerned that were not
7 reported to law enforcement authorities and

8 so that is a -- whose claims may have been
9 adjudicated through some process outside of
10 what we have done in here. And so we were in
11 the process of identifying the counties that
12 would be the most appropriate county to make
13 that report to. So we have -- that was the
14 second leg of what we've done.

15 Those -- I think those folks, those
16 20-odd folks, those cases have already been
17 adjudicated. In other words, there may have
18 been settlement between them and the diocese
19 and that case has been resolved so they would
20 not be -- they would not qualify as a class
21 member.

22 THE COURT: Okay.

23 MR. SHAHID: And those folks would --
24 would not qualify to be part of this action.

25 THE COURT: Okay. Okay.

11

1 MR. SHAHID: So the essential concern is
2 what the Court had said earlier, is to make
3 sure that those people had somehow through
4 either directly or indirectly come to the
5 diocese's attention those people should have
6 gotten direct notice and we've done the best
7 we can in finding them and locating them and
8 will continue that process.

9 THE COURT: And those are the ones, too,
10 I want you to give the names to the
11 solicitor.

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12 MR. SHAHID: Yes, we can do that.

13 THE COURT: Great. I thought there were
14 40 individuals we began some discussions
15 about. I thought there were 40. No?

16 MR. SHAHID: The number was at one point
17 45, I think and we had split it, the 45 into
18 two categories, one was not being reported to
19 law enforcement authorities and another crowd
20 being the ones who had not had their case
21 adjudicated and may or may not have been
22 reported to the authorities. And there was
23 some overlay in that because some cases in
24 which the name was reported to law
25 enforcement authorities but had not been made

12

1 directly aware of this action.

2 THE COURT: Right, okay. Oh, yeah,
3 yeah. And those were some folks I was
4 concerned about. The other subcategory, the
5 other group that I was concerned about was
6 that anyone that through Solicitor Pascoe's
7 efforts that we -- because he's -- I mean,
8 obviously he's not involved in the civil
9 matter, he has no dog in that fight so to
10 speak, that is not his focus.

11 MR. SHAHID: Right.

12 THE COURT: His focus simply comes from
13 the position of law enforcement to be sure
14 that there is not information of individuals
15 who were -- had crimes committed against them
16 over time for which law enforcement was never

Page 10

17 informed.

18 MR. SHAHID: Right.

19 THE COURT: And that was his interest.

20 Of course his investigation is not -- his
21 investigation is his investigation and I am
22 so grateful to the diocese for the
23 cooperation that they've given him, but his
24 investigation belongs to him in doing what he
25 needs to do. But in the event that he

13

1 disclosed individuals who ought have more
2 individualized, you know, contact or notice,
3 those were the folks I was interested in
4 which is very unusual because it's people we
5 don't know about that could potentially
6 exist. But I don't want him put in a
7 position that for the civil matter he's got
8 to alter what we would normally do in his
9 investigation.

10 So that was the -- and I know that
11 this is a strange group, my concern is, is
12 that I have some concern that those
13 individuals who might be disclosed in that
14 process and ought be afforded an opportunity
15 to participate in the class not be excluded
16 and that was my interest.

17 MR. SHAHID: Right.

18 THE COURT: Yeah.

19 MR. SHAHID: And hopefully I think that
20 we have --

21 THE COURT: Done that.
22 MR. SHAHID: -- done that to the best of
23 our ability.
24 THE COURT: Yeah, great.
25 MR. SHAHID: I will say that we --

14

1 Judge, I view that responsibility as ongoing
2 and so that we got to find the other four and
3 we've got to find anybody else who has kind
4 of, lack of a better word, comes out of the
5 woodwork.

6 THE COURT: Absolutely. And I know the
7 record ought to reflect that I have on a
8 weekly basis been apprised of the efforts and
9 I think that they have been reasonable and
10 more than reasonable, those efforts based on
11 what I know.

12 MR. SHAHID: Thank you.

13 THE COURT: Yes.

14 MR. RICHTER: Your Honor, I think that
15 you -- if we make doubly clear what
16 Mr. Shahid went through, I think you'll feel
17 very comfortable about where we are which I
18 think is -- the end is where we are or
19 virtually at the end.

20 THE COURT: Yes, for the civil matter.

21 MR. RICHTER: Yes, ma'am. Let me
22 preface my remarks, however, by saying that,
23 and I certainly don't do this in any
24 patronizing way to anybody, I genuinely mean
25 this, and I know my co-counsel joins me in

1 this statement. I want to thank you for your
2 concern that you have just been referring to,
3 it's a legitimate concern, it's a legitimate
4 legal concern, but it's a very legitimate
5 humane concern as well. I have shared, as I
6 think has been displayed to Your Honor, a
7 similar set of concerns. I thank you for
8 that and I think that cat is skinned in a
9 good fashion now.

10 I would also like to thank the
11 solicitor for two things: For performing the
12 function that was imposed upon him by this
13 Court, but I had a chance to meet with him in
14 this process and speak with him more than one
15 time about these matters and I want to thank
16 him in this record for caring again in a
17 legal way, but he too caring in a very
18 personal and humane way about this concerning
19 the best interests of persons who may have
20 not had their best interests heretofore
21 properly looked after and I genuinely salute
22 him for that.

23 This circuit is fortunate, indeed,
24 not only to have -- I know Mr. Pascoe's legal
25 talents because I've known him for years in

1 this environment, but beyond that this
2 circuit is very fortunate to have a decent

3 man hold the position that he holds.
4 Now, that having been said, I think
5 that what Mr. Shahid has said to you, and I
6 know that we have written you, both
7 Mr. Shahid and us we have indicated as class
8 counsel in our letter that the subclass idea
9 was a thing that was acceptable to us. We
10 are satisfied and we really have worked very
11 hard.

12 THE COURT: I know you have.

13 MR. RICHTER: Very much together on this
14 thing.

15 THE COURT: I know you have.

16 MR. RICHTER: We really think that it's
17 not necessary because of what the diocese has
18 come to. And what the diocese has come to is
19 that if anybody has been missed or if there
20 is anybody who responds as a result of these
21 who have been identified to, the diocese
22 waives all the same defenses that they have
23 given up in this class settlement, consents
24 to the same method of compensation, consents
25 to the same early disposition of that claim

17

1 by a same arbitration method, the whole nine
2 yards.

3 THE COURT: Wow.

4 MR. RICHTER: And we have put those
5 terms in the letters that we have both
6 submitted to Your Honor -- both sides
7 submitted to Your Honor yesterday and, of

8 course, they'll be submitted to you in a
9 formal way assuming that Your Honor is now
10 comfortable with that. But we are completely
11 now comfortable with that. So that's said.

12 Next, as to -- we were initially
13 given five names as I think Your Honor knows.
14 Secondly, as Mr. Shahid told you, that was
15 reduced --

16 THE COURT: Four.

17 MR. RICHTER: -- to four names. And I
18 have in my hand and he had to leave here
19 because of an involvement that he has with
20 the fire tragedy in Charleston, I have in my
21 hand an affidavit of Steven A. Smith who is
22 the person who we utilized to perform the
23 same functions that Mr. Brucetti has been
24 performing for the diocese and I realize we
25 discussed all this with you before, but I

18

1 just want to make a final record here.

2 THE COURT: Sure.

3 MR. RICHTER: So that nobody can have
4 any question about where we are and what
5 we've done. I have this affidavit I'd like
6 to hand up. And attached to it we have the
7 curriculum vitae or the résumé of Mr. Smith.
8 In summary it is as impressive a law
9 enforcement and expert résumé as any one I
10 have ever seen anywhere and I think opposing
11 counsel and Mr. Brucetti as well will second

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12 my statement in that regard.
13 Stephen Smith is twice a retiree,
14 he's a full bird colonel retiree on the
15 military side and he's a 30-year SLED, South
16 Carolina Law Enforcement Division retiree on
17 the law enforcement side having done, I
18 think, 25 years of narcotics including
19 undercover work for many years and five
20 years -- his last five years as the deputy
21 director of SLED, I'm not sure which exactly
22 five years, I can't say that, but he finished
23 his career as a deputy director of SLED and
24 is now retired. He has taught all over the
25 country and the world, including teaching in

19

1 Russia. He is, as I say, a true expert.

2 He has followed on Mr. Brucetti's
3 efforts as to these four persons, four names
4 that we have been supplied and I'm -- if you
5 would allow I'd like to hand up his affidavit
6 and CV and I'll work from a copy of this
7 thing. May I hand this up to you, please?

8 THE COURT: Okay.

9 MR. RICHTER: The affidavit simply
10 states what I have just said, who he is and
11 how he got to this. The crux of the
12 affidavit is in paragraphs four, five and
13 six. Six -- in four he simply says he used
14 recognized methods. We're a little hammered
15 in the sense that we don't have name, rank,
16 serial number, middle name, father and

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17 mother's maiden names or whatever to make the
18 finding process that much easier, but as you
19 can see on number one in paragraph five he
20 goes through the four victims.

21 The first was identified as a
22 person living in Georgetown. We were
23 supplied a name, he has not included the
24 names here, and given a relative age. He
25 searched on both sides of those ages, that

20

1 age by two years. We know -- we have
2 confidence, all of us have confidence about
3 the time frame because we know the alleged
4 perpetrator and the assignment as to where
5 the alleged perpetrator would have been, so
6 that we have some comfort about the time
7 frame we're looking in and the locale we're
8 looking in so we then focus on the individual
9 alleged victim.

10 As you can see his search revealed
11 231 potential entries, some were in South
12 Carolina, none of which had the first name
13 which matched or were sufficiently close to
14 the victim, so he then moves to a nationwide
15 analysis where he came up with 117
16 individuals. Again, none appeared to have
17 any connection, one of those 117 had any
18 Georgetown correction -- connection.
19 However, he did identify one who
20 interestingly enough is now a Catholic priest

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21 in Arkansas, so that we have reported all of
22 that back to the diocese for them now to take
23 the next most appropriate action. Similar
24 accounts for all of these.
25 Number two again in the Georgetown

21

1 area we identified, had someone identified by
2 close proximity in age and he found a person
3 in close proximity and age and with a Social
4 Security number which was a South Carolina
5 security -- Social Security and which person
6 had a Georgetown address. We think that's on
7 the money then. That person found has been
8 given, again, the next step under the plan
9 that Your Honor laid out at our last time
10 before you, that goes back to the diocese.

11 C, there were 269 entries
12 nationwide with the first and last name of
13 that individual and 631 entries with the last
14 name of that individual. However, none gave
15 him sufficient confidence to raise his
16 comfort level at all. He's informed that --
17 Mr. Smith represents to you in this affidavit
18 that he has been informed the victim C may
19 not, in fact, be an actual victim. This
20 person did not come forward to the diocese
21 and declare himself a victim, rather another
22 person according to the diocese files had
23 this person's name mentioned in that alleged
24 victim's files. As I understand it -- did
25 Mr. Shahid or Mr. Smith make contact with

Page 18

1 that person? As I understand it Mr. Shahid
2 has actually made contact with that person
3 who has indicated --

4 THE COURT: He has a great expression on
5 his face like I did, I did, I did?

6 MR. SHAHID: Tell me which one you're
7 talking about. Actually what I did is I made
8 contact with the source of the person.

9 MR. RICHTER: Yeah, okay.

10 MR. SHAHID: It was a very interesting
11 conversation.

12 MR. RICHTER: He was able to make a much
13 more direct -- a much more closer contact
14 than Mr. Smith could do because of the way
15 we're working this thing.

16 THE COURT: Got it.

17 MR. SHAHID: I shared this with David.
18 He, quite frankly, said he didn't believe
19 that person was a victim but we're still
20 going to follow through.

21 THE COURT: Okay. Great.

22 MR. RICHTER: So we expect that there is
23 nothing to that. But even as to that person,
24 the diocese has given up all of what we
25 recited a while ago it had given up.

1 THE COURT: Great.

2 MR. RICHTER: And then there is a person

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3 who has a common name here in South Carolina
4 at least, he had 79 entries Mr. Smith found
5 for that name in South Carolina, a
6 significant number of which were in and
7 around the lowcountry. However, we were
8 not -- we don't know where that person may
9 live, so that is the worst of the findings so
10 far.

11 We think this translates that two
12 are out, maybe three are out and one may
13 still be there, but in short order we're
14 going to know that.

15 The last thing I think that we need
16 to tell you, and I say this for everybody's
17 benefit but mostly for your own comfort level
18 as to how many times you need to see us again
19 or what else we need to deal with, if you
20 recall when we started this Mr. Parker's
21 firm, Mr. Bilbro's and Mr. Myers had filed
22 objections, you dealt with Mr. Parker here on
23 the spot and that was over and withdrawn.
24 Mr. Bilbro by writing withdrew his and
25 Mr. Haller tells me and/or Mr. Shahid, I

24

1 don't know which one told me, I didn't talk
2 to Mr. Myers personally, one or both of them
3 report to me that they have spoken with
4 Mr. Myers who has also withdrawn his, the
5 writing on that. However, Peter has -- Peter
6 Shahid has a meeting on Wednesday of this
7 week because we would like to have that

8 withdrawal in a form that we could have in
9 our hands, in our files which would mean that
10 there are no objections.

11 Myers is important only to this
12 extent: If you remember -- I don't know how
13 to characterize it -- he raised an issue
14 about consortium and we huddled, and when I
15 say we, both sides huddled and really as we
16 didn't think there was any legal relief he
17 was entitled to, but as an accommodation to
18 Mr. Myers and to move the matter forward we
19 agreed to do a certain thing. He is now
20 going to withdraw that so that there are no
21 objection issues whatsoever anywhere in the
22 record so that Your Honor can know that you
23 are really at an end about all of that.

24 So our point is with the diocese
25 having dealt with this in the way it has and

25

1 so broadly and accepting, if there is further
2 exposure from any of these people who were
3 entitled to direct notice, but didn't get it,
4 we think that -- we actually think that if we
5 created a subclass and did it and some of
6 them still didn't show up we'd really do more
7 harm in the sense of really now cutting off
8 the rights of those persons. We have now got
9 the diocese saying --

10 THE COURT: Absolutely, I agree.

11 MR. RICHTER: -- my arm's wide open to

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those people.

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THE COURT: There is nothing more that the diocese could possibly do that I am aware of. I mean, at the point in time when the diocese obligates itself to do as it has been described, there is nothing more that they can possibly do insofar as I can even imagine, Mr. Shahid, truly. I mean, what they say is if you come forward in the future we will treat you just the same as we have treated these individuals and the relief is available for you. I know of nothing more that could be done. So I certainly would approve that.

26

1

MR. SHAHID: Well, good.

2

THE COURT: Yeah.

3

MR. SHAHID: Just a little caveat.

4

THE COURT: Uh-huh.

5

6

7

8

MR. SHAHID: My meeting with Mr. Myers hopefully, and I'm confident that it will, but until the rubber hits the road kind of test.

9

10

THE COURT: If it doesn't, I'm prepared to rule.

11

12

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16

MR. SHAHID: I'm confident that we've chatted and we just got to iron out those little problems to iron out, and so hopefully by Wednesday or sometime next week we'll have one minor or Mr. Myers saying that's done.

THE COURT: Okay.
Page 22

17 MR. RICHTER: I left one thing out, if
18 you don't mind, just let me add this to the
19 record because I think your Honor is entitled
20 to an explanation.

21 THE COURT: Yeah.

22 MR. RICHTER: On March 9th is when all
23 of this path started being gone down, the
24 path that we have now been dealing with with
25 our various recent appearances before you and

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1 our largely -- or appearance today.

2 I want to make sure that the
3 record's clear, but Your Honor is clear and
4 the diocese as well as to how and why that
5 came up. It came about in an argument about
6 legal fees is actually about how the issue of
7 this instruction came up. Mr. Pascoe is
8 entitled to both explanation and credit and I
9 would -- in a minute I can do this if you'll
10 indulge me.

11 I don't think, didn't think then,
12 don't think now that the Church had done
13 right about not reporting these persons who
14 had revealed themselves to the Church as
15 having been abuse victims and didn't have any
16 right to do that and so that issue was
17 raised, and in part to stop that activity
18 Mr. Pascoe has dealt with that, the diocese
19 has dealt with that and hopefully for
20 everybody's benefit, not just everybody here,

21 but for the public's benefit as well that
22 practice now has been recognized and modified
23 appropriately so that we don't find ourselves
24 back here before you ten years down the line.
25 And so again I want to thank Mr. Pascoe for

28

1 helping to accomplish that and the diocese
2 for helping to accomplish the same thing.
3 And I think with that we have covered the
4 water front, haven't we, Peter?

5 MR. SHAHID: I think so. Let me just
6 echo a little bit of what Mr. Richter's
7 saying, Judge. Mr. Pascoe and I have had
8 very -- I think very frank conversations
9 regarding the application of reporting
10 statutes and the law and things of that
11 nature and that our bishop has clearly stated
12 that he wants to be transparent on this issue
13 and that arguable there was no obligation to
14 legally maybe, and I say that arguably, to
15 have reported, but there is an obligation in
16 another sense to report and so -- and some of
17 the folks who came forward were adults when
18 their report was made and not just always a
19 justification, but an explanation I think,
20 and some people wanted anonymity and the
21 Church tried to honor the victims' request
22 for anonymity, but we're trying to make sure
23 and we will to the best of our ability so
24 that those individuals will be reported to
25 the appropriate law enforcement agency and
Page 24

1 let the solicitor or sheriff or whatever
2 agency needs to make that call, make that
3 call with hopefully that person's
4 participation and involvement in that.

5 so hopefully that is the absolute
6 last "t" that needs to be crossed and the
7 last "i" that needs to be dotted with all of
8 this and that's what we're trying to get to.
9 I think we just want complete healing, and if
10 this accommodates that healing, we hope that
11 it will, that it will take that. And so
12 we're here I think all on a common goal to
13 get that magic signature on a magic order.

14 THE COURT: Absolutely. A couple of
15 things I would say and I think what I want to
16 do is I want to direct to the civil and then
17 to the other part, Solicitor Pascoe's
18 participation. First of all, the civil
19 matter. I will await to see what Mr. Myers'
20 position is, but again, I am prepared to rule
21 in the event that that doesn't happen and but
22 I would ask for a proposed order from
23 plaintiffs' counsel about that in the event
24 that that is needed. And I'm delighted that
25 he is satisfied, that's always a better place

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1 for people to be in a place where they can
2 accept and can join in to and I'm excited

3 about that, so that's the first thing. And I
4 look for an order in that regard.

5 Secondly with regards to the
6 attorneys' fees and, of course, I had the
7 opportunity to review Professor Freeman's
8 extensive affidavit about that and, of
9 course, I know him and know him well and have
10 had the opportunity to know him when I
11 practiced law as well as to know him since
12 I've been on the bench and found that along
13 with the other affidavits, but his probably
14 primarily to be most informative.

15 Aside from that, my own experience
16 in class actions has also been helpful, but
17 also, also reality is when you have an
18 opportunity to sit where I get to sit and
19 watch lawyers on both sides, but I'm going to
20 speak for the moment to the plaintiffs'
21 lawyers, it's like you just want to stand up
22 and cheer because it's what makes me really
23 love lawyers. And I mean that, because
24 lawyers, particularly these lawyers, just go
25 wading into places that lots of -- no one

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1 other than a lawyer would ever wade there,
2 but particularly these groups of lawyers have
3 gone there and have gone to a place that
4 supposedly there was no remedy and made a
5 remedy.

6 MR. RICHTER: Thank you.

7 THE COURT: Boy that is fantastic,
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8 that's the best lawyering in my book. So I
9 celebrate everything that you have done and
10 it's extraordinary and it's wonderful and
11 it's all about being a lawyer and why it
12 matters to the world and why it matters to
13 this country that you did and I'm just so
14 proud for you and of you.

15 MR. RICHTER: Thank you.

16 THE COURT: Let me also say that the
17 fees, there was a range of fees in this case
18 went up to 2 1/2 million dollars and that's
19 an appropriate fee. Under all the
20 circumstances that's an appropriate fee and
21 that is the fee that I will order be paid --

22 MR. RICHTER: Thank you.

23 THE COURT: -- happily. On the basis of
24 the time, the energy, the effort, the effort
25 going forward to deal with the kind of

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1 heartbreak that wonderful lawyers deal with,
2 get their hands dirty in, care about and
3 that's the reason this fee not only has been
4 earned, but will continue to be earned, and
5 I'm happy to order that, think it's
6 appropriate absolutely. So I'll look for an
7 order in that regard as well.

8 I want to also say that I have
9 been -- as much as any piece of litigation I
10 have ever been involved in been touched by,
11 noticed that there has been an intention on

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12 these lawyers and I know that it comes from
13 probably perhaps a change in the -- perhaps a
14 change in the theory and, but you're right,
15 there's been a real need, Mr. Shahid, for
16 transparency and I've watched it. I've
17 watched it. You know, and Mr. Richter is
18 about as aggressive a lawyer as there is.
19 There are those that say he practices law
20 like the Texas chainsaw massacre, he takes no
21 prisoners, and even in the most gentle status
22 conferences he's been ready to, you know,
23 take you and Mr. ((Geoly out most every time.
24 And you all have been most patient. And
25 particularly I've watched Mr. ((Geoly also,

33

1 just hear the angst and keep moving forward
2 even when you would be gritting your teeth.
3 And so the diocese has been very, very
4 committed to this process being a healing one
5 and I got it.

6 MR. SHAHID: Thank you.

7 THE COURT: Irrespective of where they
8 may have been in the past, ain't no question
9 in this process they have been very
10 interested in the healing part of the process
11 so I thank you for that.

12 MR. SHAHID: Thank you, Judge.

13 THE COURT: And applaud those efforts, I
14 truly do. And Mr. Brucetti, goodness knows
15 all the work you've been there as well,
16 so.... Now, that's the civil matter.

17 with regards to the criminal
18 matter, you know, my solicitor, of course,
19 you know, I've sung his praises, but I expect
20 his solicitor, and interesting the diocese,
21 as I have been concerned, have been twofold,
22 he and I have had some discussions about it,
23 what you worried about he knows it's twofold,
24 I agreed with you, there certainly has been a
25 period of time that the duty to report didn't

34

1 exist, okay, statutorily.
2 But it transcends that, it
3 transcends that because the reality is, that
4 there are individuals against whom crimes
5 have been committed and the information lies
6 with the diocese and the solicitor is charged
7 with the responsibility to enforce the law.
8 So on a portion of it may be reporting, but
9 on a portion of it -- it's not about
10 reporting, but the information that crimes
11 have been committed lies with the diocese.
12 And I certainly have sensed the diocese has
13 been forthcoming with that information.

14 Having said that, my solicitor is
15 charged with the responsibility to transcend
16 that. You know, I think, I think and I don't
17 demean in any regard or I have no interest in
18 demeaning the Church and its position in our
19 society and the ancient nature of it.
20 However, there is a little bit of an element

21 that I have to be mindful of that I have to
22 look to my solicitor to obtain whatever
23 information is appropriate to determine
24 whether or not the solicitor has the
25 information of all the victims. To some

35

1 extent you can liken it to the person that's
2 trying to come clean on all the bad checks
3 that they have written, but it's incumbent
4 not on the victim -- not on the person who is
5 if you will re-pen tent at the time of the
6 checks it's incumbent upon the solicitor and
7 law enforcement to satisfy himself and
8 themselves that they have all of that
9 information as to those victims and potential
10 victims. And I am very satisfied that our
11 solicitor will do that.

12 I do not see -- finally, I do not
13 see the victim that the civil matter is ended
14 as any more than, Mr. Shahid, and the diocese
15 in a wonderful way allowing the civil matter
16 to go forward and for that I am grateful and
17 I applaud that because it allows those who
18 are hurting to avail themselves of this
19 wonderful settlement that the diocese and the
20 plaintiffs have come to and I applaud that.

21 That being said, that is a
22 completely different track, that is a
23 completely different circumstance than what
24 my solicitor is doing and they just happen to
25 be parallel perhaps. The fact that you all

1 will go wherever you all will go is of no
2 moment to the solicitor in that sense because
3 his obligations are different and he will do
4 those things that I know he will do to
5 conclude his investigation.

6 Having said that, I am so grateful,
7 Mr. Shahid, to yours and the church's
8 continuing cooperation and I know that if
9 that should change, no question that I will
10 hear about it from the solicitor as will you.

11 So I think that, Mr. Solicitor,
12 Mr. Pascoe, anything you need to add? Just
13 continue to do your work.

14 MR. PASCOE: No, ma'am. Thank you, Your
15 Honor. I would agree 100 percent that I
16 think my matter has nothing whatsoever to do
17 with the civil action that's taking place.

18 THE COURT: Not at all.

19 MR. PASCOE: I will add this: I want to
20 thank both sides, all of the attorneys in
21 this case, they have been an absolute
22 pleasure and an honor to work with, the
23 lawyers of this caliber. Mr. Shahid and I
24 talk at least two or three times a week,
25 Mr. Lofton has been great to work with,

1 Mr. Richter. Very seldom do attorneys from
2 Charleston take the time to come meet with me

3 in the big city of St. Matthews to answer my
4 questions and he did that on 12 hours'
5 notice. So it's been an honor and a pleasure
6 to work with these lawyers. Thank you, Your
7 Honor.

8 THE COURT: Thank you. So much.
9 Obviously if you are in the need of my
10 assistance at any point, you know, you're
11 there because of my request, my order, and so
12 I continue to be interested if you have
13 anything for me.

14 MR. PASCOE: Thank you.

15 THE COURT: All right. I will look -- I
16 am on vacation next week and I see -- unless
17 you all see of, I see of no reason for us to
18 continue meeting like this. I am prepared, I
19 am ready to sign orders. And again, in the
20 event that Mr. Myers withdraws, that's fine,
21 I look for an order to reflect that. In the
22 event he doesn't, I'm looking for a proposed
23 order. Otherwise I'm looking for an order of
24 attorneys' fees. I approve the settlement, I
25 shared that with you. You all were so

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1 gracious and kind to inform me of it, I think
2 it's extraordinary and I will look for orders
3 when I return from vacation. I will be in
4 St. George the week of the 23rd, for your
5 information. I'm looking for orders from you
6 that week. The week after that, I think the
7 next week I'm actually in St. George, if not

8 St. George, Orangeburg. I'm either in
9 St. George or Orangeburg for the three weeks
10 after this coming week for -- after my
11 vacation and would like your orders from you
12 just as soon as they're ready.

13 MR. RICHTER: We'll have it for you
14 thank. You very much.

15 THE COURT: Thank you. Thank you all so
16 much.

17 MR. SHAHID: Thanks, Judge.

18

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24

25

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
2006-CP-18-1310
2006-CP-18-1311
2006-CP-18-1636

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 REPRESENTATIVES OF A CLASS)
OF PEOPLE SIMILARLY SITUATED,)

PLAINTIFFS,)

VS.)

TRANSCRIPT OF RECORD

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

DEFENDANT.)

AUGUST 9, 2007

ORANGEBURG, 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:

DAVID K. HALLER, ESQUIRE
V. LYNN LOFTON, ESQUIRE
LAWRENCE E. RICHTER, JR., ESQUIRE
WILLIAM H. WARING, III, ESQUIRE
ATTORNEYS FOR THE PLAINTIFFS

RICHARD S. DUKES, JR., ESQUIRE
JAMES C. GEOLY, ESQUIRE
A. PETER SHAHID, JR., ESQUIRE
ATTORNEYS FOR THE DEFENDANTS

ELIZABETH B. HARRIS, CVR
CIRCUIT COURT REPORTER

I N D E X

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>

NO EXHIBITS INTRODUCED.

1 THE COURT: Let me tell you one other document I need
2 because I believe there were some notes made after the
3 mediation in June of '06, the mediation from June the 13th
4 and 14th. Weren't there notes of agreement made on June
5 14th?

6 MR. RICHTER: There were, Your Honor.

7 THE COURT: Handwritten.

8 MR. RICHTER: And I don't think any of us anticipated
9 that would be needed today, but we don't -- I don't think
10 we have any disagreement. We can tell you what those notes
11 were. I think we're all in agreement about what they were.
12 Certainly Mr. Infinger has been here previously and spoke
13 to the Court.

14 Your Honor, I believe I'm correct in stating the fact,
15 I think in October after the initial June mediated
16 settlement, you ruled that whatever was in that agreement
17 was going to be superseded by your order because we were
18 giving you terms that were different in payment than we had
19 actually written in that agreement. And we all in open
20 court, I think, all agreed to -- Mr. Geoly's indicating
21 agreement with my summary. We all agreed to that in open
22 court. And I don't know that you issued a written order,
23 but certainly you made it the oral order, and that was all
24 the case -- and we all agreed to it.

25 MR. SHAHID: Judge, I'll do one more better than that.

1 The January 12th agreement, page 1, bottom of page 1:

2 This agreement represents the formal settlement and
3 arbitration agreement, in quotations, formalizing the
4 agreement agreed between the representatives of the
5 diocese and supersedes all other agreements and/or
6 writings previously executed by the parties.

7 So, that written agreement, I think, merged or took a
8 backseat to the January 12th order.

9 THE COURT: Okay. Now, yesterday when we talked, I
10 told you all that if you could come to an agreement
11 regarding the order in which these matters would be heard,
12 that I would consider hearing them outside of the order in
13 which the motions in the matters had been filed. And I
14 would just simply ask, and I'll start with plaintiffs'
15 counsel, whether or not such an agreement has been reached.

16 MR. RICHTER: It has not, Your Honor.

17 THE COURT: All right, you concur with that, Mr.
18 Shahid?

19 MR. SHAHID: Yes, ma'am.

20 THE COURT: All right. Well, then we will go
21 chronologically, and chronologically ---

22 MR. RICHTER: Your Honor, before you do, could I put
23 something in the record, please?

24 THE COURT: Okay.

25 MR. RICHTER: Because properly I'm sure the bar and

1 the Supreme Court itself is very particular now about these
2 kinds of matters.

3 THE COURT: Yes.

4 MR. RICHTER: I know that throughout, we all know that
5 throughout this litigation, Your Honor internally walled
6 off Mr. Will Waring, who was then your clerk, from having
7 any substantial contact with us. None of us had, I'm
8 confident -- I know from our side, and I'm confident in
9 saying that from their side I'm sure it's true, too. None
10 of us had any such contact Mr. Waring. Our only contacts
11 with him were we may have gotten a call saying you're
12 scheduled for a hearing at 3:00 on next Tuesday or
13 whatever.

14 But I want to make clear now Mr. Waring is now in
15 private practice and engaged by my firm. He is an active,
16 desires to be an active participant in all the litigation
17 that my firm is involved in. And I want the record to be
18 clear for his benefit, for my benefit, for your benefit,
19 for theirs, for everybody's benefit, that he was clearly
20 walled off when he existed in your employ, and that he is
21 under no disability in now appearing as counsel in this
22 matter. If anyone has any different recollection or
23 opinion about that, please let me ask it be stated.

24 THE COURT: All right, Ms. Lofton is here. She is
25 certainly a plaintiff's counsel also and not in your law

1 firm. I gather you are comfortable with Mr. Waring. We'll
2 start with plaintiffs' side, Ms. Lofton.

3 MS. LOFTON: Yes, Your Honor.

4 THE COURT: Okay, very well. Mr. Shahid, it's up to
5 you all and you and Mr. Geoly completely. He was walled
6 off from the litigation when he was with me, and I want you
7 all completely, one hundred percent comfortable, and he
8 will vacate the courtroom if you have even a moment's worth
9 of concern.

10 (DEFENSE COUNSELORS CONFER.)

11 MR. SHAHID: Judge, as I, just so I'm clear on the
12 record with all of this.

13 THE COURT: Certainly.

14 MR. SHAHID: As I understand it, he was your law clerk
15 until the fall or August of 2006?

16 THE COURT: No. He was my law clerk, and he began in
17 August of 2006, was my law clerk until about a month ago
18 when he left my employ.

19 MR. SHAHID: Okay.

20 THE COURT: And at the point in time when he began to
21 look for employment and had interviewed, whoever he
22 interviewed with as he was going through that process, as
23 he began to interview with those folks, he got walled off
24 from that, the litigation, once he was seeking employment.
25 And particularly once he had decided to take the employment.

1 with Mr. Richter's law firm. He was walled off on all
2 their litigation, and I think this is all I've got
3 involving that particular law firm.

4 And, quite frankly, quite frankly it became a bit of a
5 difficulty, yes, because the more he interviewed, the less
6 law clerk I had.

7 MR. SHAHID: As I recall this, Judge, and I'm just
8 going back several months now.

9 THE COURT: Sure, sure.

10 MR. SHAHID: To make sure that we're all -- this is
11 brought up. There was some controversy, I guess, or
12 advocacy that started probably after October 2006, and
13 those things got worked out in January of '07.

14 THE COURT: Right, right.

15 MR. SHAHID: That's when the agreement got, the
16 agreement got signed on January 12th of '07. So, I'm
17 trying to put this in context that we're all clear on the
18 record as to when his active participation for employment
19 seeking started.

20 THE COURT: Sure, sure.

21 MR. SHAHID: And I'm just -- and that would help for
22 the record, I think, if we got all that.

23 THE COURT: I don't remember; in all candor, I don't
24 remember. I do know obviously I want to say by January I
25 don't think he was -- I really don't remember. I really

1 don't remember, in all candor. I don't remember him being
2 in and around this litigation.

3 I do remember having -- when you all, I remember when
4 you all came to me and wanted me to review the agreement
5 and the documents, Mr. Geoly, that was the marathon three
6 and a half, four-hour meeting. He did not participate in
7 that.

8 MR. GEOLY: No. That was in October of '06.

9 THE COURT: That was in October of '06?

10 MR. RICHTER: And we can document that, Your Honor, by
11 how far the chicken went.

12 THE COURT: Exactly. Exactly.

13 MR. RICHTER: I very clearly remember that.

14 MR. GEOLY: I will agree to that.

15 THE COURT: And I don't remember him, I don't remember
16 him -- I remember him not being involved in that. Am I
17 right with that?

18 MR. SHAHID: He was not involved in the October '06
19 conference we had in your chambers.

20 THE COURT: And I don't remember. I know he wasn't
21 involved in the January. I say I know he wasn't. I mean
22 I'm confident that he wasn't.

23 MR. SHAHID: Judge, I ---

24 THE COURT: Well, that's, wait a minute now.

25 MR. SHAHID: That's not true, Judge.

1 THE COURT: That's not true. No, because I -- no,
2 because I remember, I remember, actually remember having
3 conversations with him because he didn't understand the
4 procedure, and he didn't understand. I do remember he was
5 there because he did not understand how we could spend
6 three and a half hours on a document and it wasn't
7 approved, in all candor. And I do remember he was
8 nonplused about that and having that discussion with him:
9 Judge, what in the world just happened.

10 MR. RICHTER: Your Honor, maybe I can make this easier
11 for all of us. I called this to your attention because
12 there is actually a rule about this, but what the rule says
13 is that if your clerk has substantial involvement with a
14 case. Now, that substantial involvement I think is used as
15 a term of art. It doesn't mean asking you a question about
16 it, how a thing happens, which may happen in any case. It
17 says is substantially involved with a particular case.

18 In that instance, if that had happened, we'd have to
19 wall him off. But by you walling him ahead of that, which
20 is also provided for, it precludes the, quote, substantial
21 involvement in the case. I don't know of any legal issue
22 anywhere in our many, many visits with you and appearances
23 before you that Mr. Waring was ever involved in at all.
24 And if I'm wrong, I certainly stand corrected, but he's
25 sitting right here, and he can represent that to you as

1 well.

2 THE COURT: I don't know that he was and I don't think
3 that he was, but I don't want these folks uncomfortable.

4 MR. SHAHID: Judge, I'm just trying to reconstruct.

5 THE COURT: Yes, absolutely.

6 MR. SHAHID: And I'm just making sure the record's
7 clear so we're all protected.

8 THE COURT: But after, yes, after -- I was trying to
9 think. After January, the issues -- because when we met in
10 January, that was the hearing. That was the hearing, of
11 course, on the issue of fairness, and certainly you all
12 were singing on the same sheet of music ---

13 MR. SHAHID: In March.

14 THE COURT: Well, in January.

15 MR. SHAHID: In January, in March.

16 THE COURT: Early in the hearing, early in the
17 hearing.

18 MR. SHAHID: That's right. That's correct.

19 THE COURT: Early in the hearing, and then the only
20 reason it didn't go forward at that point obviously *sua*
21 *sponte* from the Court.

22 MR. SHAHID: And the only conflict or controversy or
23 adversarial role I think we really had was sometime in late
24 December or early January. I think it was more of late
25 December, like the 5th or the 15th of December. It sort of

1 sticks in my mind and that's -- I just don't remember what
2 role he had in some of the walling off process at that
3 time. There was a motion filed by the -- to compel or
4 something along those lines, and -- because there was an
5 issue getting the funding all together. And that was -- I
6 remember being there, Mr. Richter, Mr. Haller, myself, my
7 law clerk, and it was around Christmas time and we all --
8 and you set out specific parameters on dates on which
9 certain things had to be done. And I'm saying this. I
10 just don't remember his participation, and I'm asking that
11 out loud.

12 THE COURT: I appreciate you doing it, Mr. Shahid, in
13 all candor.

14 MR. SHAHID: And I'm just, and I just...

15 THE COURT: I don't remember.

16 MR. SHAHID: I don't remember.

17 THE COURT: I don't know. Did he have any ---

18 MR. SHAHID: I don't remember him being there in
19 December.

20 THE COURT: I don't know if he did or not. I don't
21 remember him having any participation in it or not.

22 MR. RICHTER: Well, let me suggest that if anybody
23 wants to know whether Will Waring has been substantially
24 involved in this case as your clerk, he was so
25 substantially involved that nobody remembered.

1 THE COURT: That's kind of embarrassing for him, isn't
2 it?

3 MR. RICHTER: It's almost a self-answering situation.

4 THE COURT: We have a brand new clerk that's watching
5 this, going this poor clerk wasn't remembered. What a
6 horrible thing.

7 MR. SHAHID: The reason I say that, that is my only
8 ---

9 THE COURT: I don't remember. Y'all help me if you
10 remember. I don't remember him being involved in it.

11 MR. SHAHID: My contact with him was simply he called
12 to say the judge wants to see you on this date, and I don't
13 remember him in the courtroom on the hearing in December,
14 and that's why I'm asking because that's the only time I
15 would recall anything of an adversarial relationship that
16 we may have had between plaintiffs' counsel and defense
17 counsel, and that's it. That's all I recall. Otherwise,
18 it was mainly ---

19 THE COURT: Yes, I don't remember.

20 MR. RICHTER: Your Honor, could Mr. Waring make a
21 representation to you?

22 THE COURT: Yes, absolutely.

23 MR. WARING: Your Honor, the only involvement I ever
24 had with the case was, at that time or at any other time,
25 was that I was actually scheduling some kind of hearing or

1 status conference for you on behalf of all the parties.
2 And I think I spoke to Mr. Shahid first, and then I spoke
3 to Mr. Richter, and then to Mr. Shahid again. So, I was
4 trying to coordinate a date for you to meet with them.

5 (MR. RICHTER AND MR. WARING CONFER.)

6 MR. WARING: No, there was nothing substantive about
7 it at all. That's all I did.

8 Now, I was in attendance at the March 9th fairness
9 hearing. I was in attendance at that hearing, if you
10 recall, and then after that, that was it. That was
11 completely it.

12 THE COURT: That's the one where you were wondering
13 how could this have been worked out, and yet it blew up.

14 MR. WARING: That, yes. I had no knowledge of
15 anything that went on between any of the parties before
16 that March 9th hearing.

17 THE COURT: And again, y'all ---

18 MR. SHAHID: That's fine.

19 THE COURT: --- remember more about it than I do.

20 MR. SHAHID: Which is okay and as I said, I was just
21 trying to go through for the sake of trying ---

22 THE COURT: Sure.

23 MR. SHAHID: So we could just reconstruct.

24 THE COURT: I do remember, I absolutely, though, I
25 remember feeling very strongly that at the point in time

1 when Mr. Waring began to interview that, you know, when you
2 learn things in your background when you practice law and
3 you remember things, I just remember real strongly going
4 whoa, you've got to be Chinese walled. And even at that
5 point, I don't even remember wanting him to make phone
6 calls back and forth scheduling things. I think my
7 secretary and other people did that because I didn't want
8 him to do that.

9 MR. RICHTER: We primarily, I can tell you we
10 primarily dealt with Stephanie, Stephanie I think was her
11 name.

12 THE COURT: Yes, yes, exactly because I didn't want
13 him to, I just didn't want him to have any interaction at
14 all with the case or with you guys at that point, either
15 side, because it doesn't look wonderful at that point.

16 MR. RICHTER: If it makes everybody feel any better,
17 he hasn't shown any knowledge of the case to me so far.

18 THE COURT: So, in any event, but again, Mr. Shahid,
19 please know your comfort is most important.

20 MR. SHAHID: No, Judge, and really, my exercise with
21 you then was just to reconstruct to make sure the record
22 was clear. My recollection was only that one possible time
23 that he was there in December, and if he said he wasn't
24 there, he wasn't there. And that's the only time I would
25 think of that, besides when I mentioned about the telephone

1 calls. So, we're comfortable.

2 THE COURT: Okay, and if that changes, please let me
3 know.

4 MR. SHAHID: I will. Okay.

5 THE COURT: If at any point, please, please let me
6 know.

7 MR. RICHTER: Thank you, Your Honor.

8 MR. SHAHID: While I'm standing, Judge.

9 THE COURT: Yes.

10 MR. SHAHID: At our phone status conference yesterday.

11 THE COURT: Yes.

12 MR. SHAHID: You did, you did say that you would
13 reserve the right, and you have obviously, to reshuffle the
14 decks as I asked you concerning how these motions would be
15 heard because there is importance on the order of these
16 motions being brought to your attention besides the order
17 that they were filed by chronological date as opposed to
18 the implications that these orders may have on this rule to
19 show cause.

20 THE COURT: I don't think so. Let me tell you why I
21 don't. What concerned me about that is that I'll first
22 hear from the rule to show cause. But what's real
23 important to me in the context of the rule is when you all
24 saw language -- I'm concerned about that, but I think
25 that's a part of it, in all candor, part of the rule to

1 show cause because one of the concerns that you have is
2 that you all say that you all thought the order was
3 presented to the Court before it was presented to you guys,
4 and you know that is not appropriate under our rules. So,
5 I'm kind of keyed on that; I'm concerned about that. I'm
6 concerned that I would have received the order faster than
7 you all have because that's not the rule. The rule is that
8 you must receive it at the same time or earlier, and that
9 concerns me.

10 But along that same line, I'm concerned that days
11 would have gone passed and I didn't hear from you all that
12 the language wasn't language with which you were
13 comfortable. And I'll just put this out there for
14 everyone's edification. If this was a case that was more
15 in the normal course where there's very little interaction
16 with the Court, I would feel probably one way.

17 But I'm very concerned at the way this comes to me and
18 how it is at this juncture when this is a case that I have
19 had as much interaction with lawyers as ever in any case
20 that I have been involved in in ten years. And in all
21 candor, I'm a little bit nonplused to say the least by it,
22 nonplused. And in all candor, I don't know how we're here.
23 I don't know how we're here, and I am very concerned that
24 we are here.

25 I know that, and these are just my general

1 observations, there have been times in this litigation that
2 I felt like I was talking with both sides all the time
3 about everything. And the funding of this settlement has
4 been one of those issues that I feel like plaintiffs have
5 been screaming about. And I have been saying, you know,
6 quit. Stop accusing the defendants of not acting in good
7 faith to fund this settlement because I'm not going there
8 with you at this point. They have separated the funds.
9 I'll order that they separate these funds, and stop already
10 with the grouching, the grouching about the failure to fund
11 the settlement. And I feel as though I have kept that at
12 bay to allow both sides to work on the terms of the
13 settlement.

14 So, I am concerned, based on everything that I have
15 seen to this date, that there has been a change of position
16 on behalf of the defendant. And, quite frankly, I don't
17 understand it. I don't understand. I mean, I almost --
18 well, I'm going to allow you all to certainly argue. But
19 both sides please be mindful: I do not come to this case
20 anew. I have been mired in this case now for how many
21 months? When did y'all first -- October? Is that first
22 when you, October?

23 MR. RICHTER: The fall at least, yes.

24 THE COURT: A lot, a whole lot. I am not a stranger
25 to this case, and do not treat me like one, and I do not

1 understand why we are where we are. I almost want to turn
2 to the defense for that.

3 MR. SHAHID: But, Your Honor, if I, I may be able to
4 short circuit all of that.

5 THE COURT: Okay.

6 MR. SHAHID: And explain.

7 THE COURT: Okay.

8 MR. SHAHID: Because I get a sense that the Court's
9 frustrated with us.

10 THE COURT: Very. I am very frustrated.

11 MR. SHAHID: And if I could be candid with the Court?

12 THE COURT: Sure.

13 MR. SHAHID: I mean, I think that's unfair to us to
14 have that kind of frustration because when you boil all
15 this out, the motions we've filed and the rule to show
16 cause that they filed, it comes down to a single question
17 that just needs to be resolved that will take care of
18 everything, okay, I think. In my humble opinion, I think
19 it will take care of everything.

20 The question is this. In the event there is an appeal
21 to your order, and I think that's a pretty good chance
22 that's going to happen because Mr. Myers has filed his
23 motion to alter or amend yesterday.

24 THE COURT: Okay.

25 MR. SHAHID: And in the event the Court of Appeals or

1 three of the five Supreme Court justices says Mr. Myers is
2 correct and your order is wrong and kicks out the order,
3 and in the event that we have funded 5 million dollars or 7
4 million dollars, if we have to tap into the 7 million
5 dollars, and in the event we have paid out in advance 2.6
6 million dollars in attorneys' fees and costs and the order
7 is gone, the order is reversed, the question I have, the
8 question the diocese has is what do we do with the 2.6
9 that's already been paid out or any funds that have been
10 paid out? Because all we need to do is address the issue
11 as to what happens in that event. How do we protect those
12 funds?

13 That's the question. I mean, that's really the
14 question. And because if the money is going out, that's
15 sort of like the toothpaste going out of the tube. How do
16 you put the money back in? And so the question is how to
17 protect those funds as we've paid those out to the escrow
18 agent, and we paid those out to plaintiffs' counsel. How
19 do we get that money back in the event, and it may be a one
20 percent probability, it may be a five percent probability.

21 But the bottom line is he's going, I promise -- I know
22 he's -- I'm pretty sure he's going to appeal because he's
23 filed his motion to alter or amend. In the event that
24 happens, how do we protect that money? That's really the
25 bottom-line question of why we're here.

1 THE COURT: Okay, let me ask, let me explore that with
2 you. As I recall the objection, and please help me if I
3 recall it incorrectly. But as I recall the objection, the
4 objection was as to the definition of the class because the
5 class excluded people that he had represented for which *res*
6 *judicata* had been granted. It was not an objection to set
7 aside the settlement. It was an objection on the basis
8 that his former clients had been excluded and the exclusion
9 being based on *res judicata* because there were cases for
10 which there had already been adjudication. And this class,
11 by its very definition, excluded that. It didn't include
12 people for whom the diocese had already had litigation and
13 those matters had been resolved.

14 So, as I see that, as I see your concern, it seems to
15 me that in the event, and there's a definite number of
16 those individuals because he mentioned the number and I
17 don't remember the number, but I don't remember it being
18 any extraordinary number of people. I want to say
19 twenties, perhaps fifties. I don't remember the number,
20 but it was not hundreds; it was a hundred, substantially
21 under a hundred. But that in the event there would be an
22 appeal, based upon counsel, what both sides have told him
23 about the health of this class financially, I don't think
24 that's a realistic problem. I just don't, and given that
25 it causes the numbers to be increased -- does anyone

1 remember the number that he argued for? I don't remember.

2 MR. RICHTER: He represented to you it was fifteen. I
3 challenged that number because some of the people he had
4 named in a letter to us I represent. One of these we think
5 is dead, and I asked that Your Honor at that time require
6 him to state the names and place into the record in a
7 protective way the names. And then Your Honor did not do
8 that but asked Mr. Myers do you represent at least one
9 person, and he said yes. He has now -- I'm going off into
10 argument. Fifteen.

11 THE COURT: So, that certainly is my thought. I, in
12 all candor, in all candor, given our discussions as you all
13 talked about the numbers, and again I heard an awful lot of
14 agreement with all of you about these numbers and the
15 financial health of this class, okay? I mean, in all
16 candor, okay.

17 You all, the diocese, again I'm nonplused because the
18 diocese in our discussion has been remarkable in its
19 willingness to even be inclusive of people that we don't
20 think exist realistically but theoretically could, and the
21 church has been -- I've never seen a defendant do it in all
22 candor, Mr. Shahid. The diocese has been willing to say if
23 these people exist, we will not call the statute of
24 limitations on them. We will include them in the class no
25 matter when they arise. So, given the perspective that I

1 have had, I frankly haven't seen it as, I don't see it as
2 an issue.

3 MR. SHAHID: And, Judge, you know, the odd thing of
4 all this.

5 THE COURT: Yes.

6 MR. SHAHID: And you've asked this several times.

7 THE COURT: Yes.

8 MR. SHAHID: Because you wanted to make sure there was
9 enough controversy between the two of us, and there has
10 been.

11 THE COURT: Oh, yes, and I've heard that, too.

12 MR. SHAHID: I know that, but in spite of that
13 controversy, we all have pulled in the direction, I think,
14 of making sure the January 12th agreement got approved by
15 this Court, and that's our -- I mean, that has not changed.
16 That position by the diocese has not changed, and we've
17 tried to address every hurdle. And I've met with Mr.
18 Myers, as I told the Court I was going to do.

19 THE COURT: Yes.

20 MR. SHAHID: I sat down with Mr. Myers.

21 THE COURT: You thought he was going to withdraw the
22 objection, with all candor.

23 MR. SHAHID: I wrote him a letter saying this is to
24 confirm my understanding that we've reached an agreement on
25 everything, how long I thought the agreement was. And then

1 I get a demand back from him of 1.46, 1.46 million dollars.
2 And so the whole -- and so understand that how this, this
3 is developing, Judge.

4 And so it concerns me that you think the diocese has
5 not done what it's supposed to do, which is just, it's not,
6 that's not the issue. The issue is I, I, the diocese, have
7 got to deal now with this objector, okay, who is raising
8 questions. And I can't argue the validity of his
9 arguments. I'm not in a position to do that because when
10 an appeal is brought, you know, like I said, two, two on
11 the Court of Appeals, three on the Supreme Court can agree
12 with him. And if that happens, my question is just protect
13 us to a point so that in the event and how far reaching
14 that may be, in the event an appeal is taken and in the
15 event an appeal is successful, how do we put the toothpaste
16 back in the tube? That's all we're asking for. How do we
17 protect the diocese payment out, the 2.6 million? That's,
18 that's it.

19 I mean, that really has been the heart of this because
20 we are ready, willing and able. We dedicated all the staff
21 necessary to fund this thing.

22 THE COURT: Now, you said 2.6. Tell me what money
23 specifically you're talking about, the 2.6.

24 MR. SHAHID: Right, the initial pool was 5 million
25 dollars.

1 THE COURT: Right, I know that.

2 MR. SHAHID: We -- so, the payment is really 4.5
3 million.

4 THE COURT: Right.

5 MR. SHAHID: That could be done in a sneeze; it could
6 be done in a sneeze to give the escrow agent that money.
7 And we've -- that's why we made the motion to deposit the
8 money with the Court because we're -- here it is. We're
9 not worried about that. Here's the, here's the money to
10 the escrow agent or to the Court, all right, as the Court
11 directs us to do. Whatever the order tells us to do or
12 whatever this agreement says, we're here. We can do it.
13 That's not the issue. The question is if Mr. Myers is
14 successful on appeal and we have paid out the 2.6 million
15 for attorneys' fees and costs and the order is reversed,
16 that money is gone.

17 Now, what I'm saying is this. At some point in time
18 Greg Myers or whoever, let's say Greg Myers who I know he's
19 filed the motion to alter or amend, is his motion to alter
20 or amend is denied by the Court, okay? Or you make some
21 changes to it, but still he's not satisfied and he then
22 appeals. He's got thirty days from that date to appeal.
23 Now, he may not be in a position to appeal. He may have
24 waived, and I've had this discussion with Mr. Richter. He
25 may have waived his ability or excluded himself to have

1 standing to appeal. I don't know that for certain, but
2 that's a pretty good argument.

3 But assuming that he does have standing to appeal,
4 okay, and he does appeal, then he's going to either appear
5 before you or the Court of Appeals and petition that order
6 be stayed. At that point, there's going to be conditions
7 placed on his ability to appeal or to stay, stay the
8 matter. At that point, whatever conditions they might be,
9 like a bond, for instance, he may not be able to meet those
10 conditions. He goes away. That's it. But if he does meet
11 all those conditions, if he does appeal and it runs the
12 gauntlet of a full appeal and that order is reversed, the
13 money that's been paid out already is money that should not
14 have been paid out because an order that granted the money
15 being paid out is no longer around. And the money that was
16 paid out on attorneys' fees, they're not entitled to
17 receive.

18 THE COURT: Well, the problem with that is that you
19 have to, under our law, you have to raise an issue in order
20 for there -- you've got to raise it in order for it to be
21 raised on appeal with very few exceptions.

22 MR. SHAHID: Right.

23 THE COURT: His objection had to do with the identity
24 of the class excluding fifteen people.

25 MR. SHAHID: Right.

1 THE COURT: Okay?

2 MR. SHAHID: I'm with you on that.

3 THE COURT: So, are you saying you believe if he is
4 successful on appeal, that the Court of Appeals would
5 endeavor to either decertify the class or set the
6 settlement completely aside? What do you think the remedy
7 -- what remedy are you concerned about?

8 MR. SHAHID: Well, what I'm talking about is this
9 motion to alter or amend. He attacks the payment of the
10 attorneys' fees, the advancement of attorneys' fees. He
11 addresses the payment of the funds to the -- to certain
12 claimants as too low in certain circumstances.

13 MR. DUKES: Judge, have you seen the motion to alter
14 or ---

15 THE COURT: It's not been served on me.

16 MR. SHAHID: Do you want it? But that's what -- he's
17 raised all those ---

18 THE COURT: I don't know.

19 MR. SHAHID: I mean, he has raised those issues in his
20 motion to alter or amend. I mean, that's what is -- that's
21 what's in ---

22 MR. GEOLY: The disadvantage, Your Honor ---

23 MR. RICHTER: I object. It's not before the Court.

24 THE COURT: It's not.

25 MR. DUKES: I understand, Your Honor.

1 THE COURT: I don't want you to serve it on me.

2 MR. DUKES: Okay.

3 MR. SHAHID: At some point in time, Judge, you're
4 going to have to review the motion to alter or amend, and
5 you're going to have make an issue of ruling on the ---

6 THE COURT: If he serves it properly under the rules.

7 MR. SHAHID: I know. He's got to serve it on you.

8 THE COURT: Yes, he does.

9 MR. SHAHID: I know.

10 THE COURT: That's why I didn't want y'all to do it.

11 MR. SHAHID: We won't do it, okay.

12 MR. RICHTER: They'll no doubt go back and call Mr.
13 Myers.

14 MR. SHAHID: I'm not going to do anything along those
15 lines. I mean, my conversation with him was, you know,
16 because he filed or he sent to me objections to the
17 proposed order. I asked him about how that all came about.
18 And, you know, then he told me he was working on a motion
19 to alter or amend. That's why I mentioned that to you
20 yesterday. I asked had that come to your attention because
21 it -- and after I hung up with you, he walks in the door.
22 I'm not going, you know, I'm not going to tell somebody
23 what to do, what not to do. That's not my job.

24 But at some point in time -- he knows what the rules
25 are. If he does all this stuff and you, then you have to

1 issue an order addressing those issues raised in there,
2 then if he doesn't have standing, if he's kicked out,
3 that's, that's the one thing we don't have to worry about.
4 But if he does create an ability for him to appeal and he
5 does appeal and it is reversed, where are we? And that's,
6 that's the cold question. That's the bottom-line question
7 because I don't, I don't think -- I mean, in my humble
8 opinion in going through all this, I don't think he's got a
9 snowball's chance of being successful. That's my opinion,
10 but I'm not up there in Columbia making that decision.

11 You know, I wish -- you know, if I was -- I know how
12 I'd rule on it, but it's not me to do that. It's not you
13 and it's not Mr. Richter and it's not plaintiffs' counsel
14 to do that. Those folks up there, I don't know what
15 they're going to do. But in the event there's 2.6 million
16 that is gone, and that's all we're asking for is to address
17 it so that we can proceed with this in an orderly fashion
18 to protect the 2.6 million that's advanced out. That's all
19 we're asking to do.

20 If I could say just one more thing, Judge, just so
21 that everybody's clear? When I met with Mr. Myers, we made
22 concessions to him to allow him to have people come that we
23 had by all legal right to tell him to go away, take a hike
24 because it is in the diocese's best interest that his
25 objections go away. And I tried to do that. I tried to

1 accommodate his objections. I tried to accommodate him on
2 folks who were not entitled to any more counseling, to give
3 some folks counseling. People who had -- who, by the way
4 the definition was formed, to let them back in because they
5 could argue it's a technicality how they were excluded but
6 to let those people back in. He had questions about
7 certain people, and I said I don't have any objection to
8 these people, this list that he presented.

9 It's in the diocese's best interest that Mr. Myers'
10 objections be resolved and taken care of, and I tried to do
11 that, and I thought it had been resolved. And, you know, I
12 don't want him to raise an appeal; I don't want him to file
13 his motion to alter or amend. That doesn't help us one
14 bit, but I just know that that is a wild card out that has
15 got to be addressed.

16 THE COURT: Is he here today, Mr. Myers?

17 MR. RICHTER: To our knowledge, no.

18 MR. SHAHID: I did not tell him about the hearing,
19 Judge.

20 THE COURT: There's something, there's a
21 communications technique called reflective listening, so
22 I'm going to reflect, try to reflect what I am hearing.
23 Let's see where we are.

24 What I am hearing is that the defendants still would
25 like nothing better than to go forward and fund this

1 settlement and proceed with these claims. But the
2 concerns, the primary concerns really don't have anything
3 to do with the plaintiffs at this point, the plaintiff
4 class. But where the defendants have found themselves at
5 this point is that they have found themselves in a position
6 where, pursuant to the terms of the agreement, they have
7 come to the Court preliminarily and in final hearing to say
8 to the Court we believe this agreement is fair. We are
9 asking the Court together to review and find it fair.
10 Plaintiffs' counsel for the class believes it's fair;
11 defense thinks it's fair.

12 There is an objection raised at the fairness hearing,
13 completely unassociated with both plaintiff and defendant,
14 and the Court overruled the objection. Without any role on
15 behalf of the plaintiffs' class, defendants find themselves
16 in a position where this objector, overruled, comes to the
17 defendant and says to the defendant we want to be included
18 in some sort of resolution with you or we're going to file
19 a motion to alter and amend and here it is. And we're
20 going to appeal, and if you don't include us or pay us in
21 some form or fashion, we're going to try to undo your
22 settlement. Is that correct?

23 MR. SHAHID: That's a very good summary, Judge.

24 THE COURT: Okay. I'm not so sure that the rule to
25 show cause has been filed against the correct party. How

1 about that? This is what I would like to have happen
2 interimly. I would still like to have, I would like to
3 have the class funded, and that is all. I would like to be
4 in a position that I know that my defendants are serious
5 about going forward with this settlement, and then no more.

6 And then, counsel, I am very concerned about a
7 litigant, an objector who's been overruled and to my
8 knowledge there's been nothing served on me, alter and
9 amend disturbing this settlement, attempting, based on what
10 you're telling me, disturbing this settlement. I am
11 concerned sufficiently that I want to hear from that
12 person. Entitled to file a motion to alter and amend,
13 serve it on the Court and have it argued. Entitled to
14 appeal but not entitled, I don't believe, perhaps to some
15 of the conduct that has occurred, and I am concerned about
16 it. I am concerned about it.

17 Let me say, because I think the record needs to
18 reflect, to conclude where I think we are. Plaintiffs and
19 defendant have come to court repeatedly together to say
20 there are people who are hurting. There are people in
21 pain, and we understand your concern about the solicitor
22 and the solicitor's involvement. But, Judge, there are
23 people in pain, and we have to proceed to the settlement
24 because now we have opened these wounds anew, and we have
25 to proceed. That came from both of you. Came from the

1 defendants, also.

2 I've not heard from the plaintiff, and doesn't seem
3 quite right when one normally -- this is begun by the
4 plaintiff. Mr. Richter, do you understand my concern? My
5 concern is that I'm feeling a little bit like Alice in
6 Wonderland, in all candor.

7 MR. RICHTER: I understand your concern, and as I said
8 at our last appearance before you, thank you again for your
9 accessibility. You made a comment at the beginning about
10 how much you've been accessible and how much you've been
11 involved. Nobody could -- possibly involved in this
12 litigation could possibly say that the Court has not been
13 accessible.

14 And I hear what you're saying, and I do understand
15 what you're saying. And I see the color on your face,
16 which from this side of the bench is apparent and your
17 pallor which exists, because I think I understand not only
18 what is going on not only through your brain but through
19 your heart as you address this matter.

20 But there is another whole characterization of this
21 than what you've heard, and I would like to have the right
22 to make that characterization before you ultimately decide
23 what you want to do. So, if you would allow me to do that?

24 THE COURT: Sure.

25 MR. RICHTER: Thank you. This not about Greg Myers.

1 Another day will be about Greg Myers. This is about money
2 in large part and a lot of wringing of hands to keep from
3 being held to the responsibility of being separated from
4 money.

5 Greg Myers, Mr. Shahid represented to you, went to him
6 and said he wanted 1.46 million dollars and he'd go away.
7 We have all represented to you what we think about the
8 number of claimants, the size of the class, how much money
9 there was going to be to go around, and there's aplenty.
10 All of us, none of us have guaranteed that to you because
11 we can't, but we all think we're right and have a pretty
12 good handle on that. If these people wanted to solve this
13 properly, they would escrow 1.46 million dollars of money
14 and deal with Mr. Myers. They didn't suggest that because
15 that involves parting with money, and they don't want to
16 part with money. So, here's what I have to say, Your
17 Honor, and please indulge me.

18 On June the 12th and 13th or 14th of 2006, a
19 settlement was reached, a mediation of this matter. I
20 think that was a Thursday or a Friday. I don't remember
21 which day. Jim knows because he had to fly back to
22 Chicago. We left with the representation from the diocese
23 that on Monday, they were going to the bank -- happens to
24 be the Bank of America -- to get the letters of credit to
25 fund this matter June the 12th of 2006. It didn't happen.

1 They had signed, of course, a mediation agreement to that
2 effect.

3 Not until January the 12th -- I started complaining,
4 as you know, in the fall. On January the 12th of 2007, for
5 the first time the diocese deigned to put its name on the
6 settlement and arbitration agreement. So, from June to
7 January, they wouldn't even sign the agreement. That's why
8 I started complaining, if you remember.

9 We had multiple status conferences before Your Honor.
10 Now, March we had hearings before you. On March the 9th,
11 we had a big hearing before Your Honor. That was five
12 months ago today. Among the things that I argued about at
13 these various appearances before you was that I said to you
14 I think there's an obligation on opposing counsel under the
15 canons of ethics to be candid with the tribunal because it
16 kept saying it's not so. They're not going to do what
17 they're telling you they're going to do because I had some
18 experience about it since June. I'd met with the bishop
19 the October before. That's not part of this record, but
20 that's what happened and they were there. Mr. Shahid was
21 there.

22 So, we had a hearing. March the 9th was a significant
23 hearing. How significant? Five months ago today was when
24 it was. So significant that in that hearing, see if Your
25 Honor may remember this, please, Mr. Geoly stood up and

1 said -- because I was complaining about them not putting up
2 the money. They would not part with the money. Mr. Geoly
3 said we will part with the money, we will fund it the day
4 the order is signed. It's in the record. Now, that's the
5 representation of counsel to the tribunal.

6 There was never in any of these meetings that we had
7 over all the months that I've now been referring to, never,
8 ever one time a mention of an escrow agreement. Everything
9 else was mentioned. We said who the escrow agent was going
10 to be, what his duties were going to be, how he was going
11 to handle the funds. Everything else was mentioned over
12 and over and over again all in good faith representations,
13 according to these defendants, good faith representations
14 that they were going to do these things. And this was
15 hunky dory. Everything was fine, and I kept saying I don't
16 believe them. They don't honor their word, and you kept
17 saying calm down. They tell me they're going to do it;
18 they're going to do it. So, I sat down. Then the next
19 time I came back ---

20 THE COURT: You notice he didn't say calm.

21 MR. RICHTER: Well, I don't mean to seem animated
22 about this except to the extent that I think you know I'm
23 against this kind of thing. I'm against the sexual abuse
24 of children by priests, number one. I'm against not being
25 candid with the tribunal. I'm against saying things to you

1 that are not true. I'm against them saying oh, the only
2 problem is, well, what about if Richter gets his attorneys'
3 fees and they get their costs back, then things go away. I
4 mean, these arguments are ludicrous. Instead of saying,
5 well, we'll just escrow 1.46 million dollars and Myers will
6 be satisfied. That's what he demanded and then we'll have
7 to pay some other day. And there's more than enough money
8 in the fund, of course, to do that. But on March 9th, Mr.
9 Geoly said we'll pay money the day the order is signed or
10 similar words.

11 We have now learned that when all these meetings were
12 going on and all these representations were being made to
13 you, whose name ultimately had to be put on, in good faith
14 a signature was being induced out of you, a judicial act.
15 We now learn that Elaine Fowler was hired in May of 2007
16 two months before your July 13th hearing at which you
17 approved or made your final order and instructed us to
18 draft it into written form. Two months before that, they
19 had hired somebody to write a lot of other terms, but they
20 didn't tell you that; they didn't tell me that. They
21 secreted that from the litigants, from the victims who have
22 been waiting patiently and painfully.

23 And most importantly, they induced Your Honor to act,
24 and I don't care that it's Your Honor. I mean, I don't
25 mean this that way, but Your Honor, any honor. They

1 induced the Court, this institution to act in the face of
2 the knowledge that they had no intention of adhering to
3 what they were asking you to do and representing to you
4 that they would honor and do. They hired two months before
5 that a lawyer to alter those terms and didn't disclose it.
6 I think that's horrible; I think that's reprehensible. I
7 think it's bad faith, and it ought to be dealt with. And
8 you -- fortunately in our -- it's in her affidavit. She,
9 of course, admits she was hired in May two months before.
10 And yesterday on the telephone she said to you I was hired
11 in May two months before.

12 Mr. Geoly said the diocese is going to pay; Mr. Shahid
13 said the diocese is going to pay. Ms. Fowler, when I
14 finally on the 23rd got this document altering the terms of
15 your order, she said the diocese was going to pay. They
16 told Mr. Maybank, who is here subpoenaed as a witness from
17 Smith Barney, they told him they were going to pay. They
18 set forth the mechanism for paying. Poor Mr. Maybank was
19 put square in the middle trying to be honorable, and he was
20 about the whole thing clearly embarrassed. Ms. Fowler was
21 clearly embarrassed in her telephone conversations with me
22 because they told her. She wrote me an e-mail at night
23 that says tomorrow morning, tomorrow morning. They just
24 told me tomorrow morning. Told me John Barker's going to
25 fax his signature over; it's going to be done tomorrow

1 morning. Every, every conversation I had with Elaine
2 Fowler I said I hope you're right, but it is not true. It
3 will not happen.

4 Mr. Maybank will testify if we go forward with
5 evidence today that in every conversation I had with him in
6 which he in the best of faith, best of faith represented
7 that it was all going to happen because the diocese had
8 told him that, and he had talked with the diocesan
9 officials in the best of faith. And in the best of effort
10 to help everybody get to the ending, Mr. Maybank made those
11 representations to me, and in every conversation I had with
12 him, I said it's not true. They won't do it. They're
13 saying something that is not true; they won't honor their
14 word.

15 And, sure enough, I sat in Mr. Maybank's office with
16 Ellie Thomas, the escrow agent, like bumps on a log
17 waiting. Tried to get somebody on the phone representing
18 the diocese, finally to have Elaine Fowler to call us back
19 and say we're not going to do it, and that's what got us to
20 here.

21 Now, we negotiated this settlement. These cases first
22 came to Jack Sinclair's office I believe in 2002. I don't
23 have the dates in front of me. I know we opened our file
24 in 2003 because I can tell by our case number. These
25 people have been led around and have been hanging around

1 and have been misled since that time struggling to get
2 justice.

3 Ellie Thomas is the appointed escrow agent. He's a
4 forensic certified public accountant here. I think he's
5 testified or appeared before Your Honor in the past. He's
6 appeared before many courts. His wife's mother died right
7 when everybody was saying tomorrow, tomorrow, tomorrow. He
8 left his wife alone at the funeral to come to the backdoor
9 of my office to sign the document that Mr. Maybank again in
10 the best of faith said they needed to effectuate the money
11 which was coming the first thing the next morning from the
12 diocese. He did that with his three year-old child in the
13 backseat, and he signed that document and then went back to
14 the funeral home. The next day was the funeral for his
15 wife's mother.

16 After the funeral, the family went to Mr. Thomas's
17 house, as I did. I was a lector at the funeral. After the
18 funeral, the family, the bereaved gathered and Mr. Thomas
19 again left his wife and family and two young children and
20 all of his in-laws to go with me to Mr. Maybank's office
21 because he had to be there at this particular time frame to
22 execute the documents that Mr. Maybank had been instructed
23 by the diocese were going to be necessary to have this
24 happen.

25 We went and sat in Mr. Maybank's office and sat and

1 sat. All the way down, I tried to get Peter Shahid on the
2 phone. Couldn't do it. He was on the phone. Ultimately,
3 I tried from the office. Couldn't get him. Ultimately, I
4 asked Mr. Maybank to try. He had better luck, if I recall
5 this correctly, and got through, but Mr. Shahid said you're
6 going to get a call in just a little while from Elaine
7 Fowler. Take it. That's all.

8 We're sitting, waiting in the Smith Barney office --
9 and he's here to verify all this -- bumps on a log because
10 of the representations of the defendants, the diocese of
11 Charleston, the Catholic Church of South Carolina whose
12 word we ought to be able to rely on. And, of course, Ms.
13 Fowler ultimately told us that we're not going to do it.
14 They're not. Not we. They're not going to do it. She
15 said, you know, we'll tomorrow make another arrangement. I
16 said Ms. Fowler, I have an order that says they've got to
17 do it. They don't have any choice about doing it. They
18 induced the judge to sign this order saying you've got to
19 do it upon the issuance of the order, which was the 30th of
20 July.

21 I'm saying this to tell you that more people's lives
22 have been touched. I haven't even mentioned the victims.
23 More people's lives have been touched by this in an Alice
24 in Wonderland way as Your Honor alluded a while ago.

25 I settled a case on June the 12th of 2006. I must say

1 to you as to what position we take about this matter, and I
2 take no pleasure in saying this. I'm embarrassed and
3 ashamed of the activities of the diocese. I've got to tell
4 you, Your Honor, in candor that the diocese's word is no
5 good; the defendant's word is no good. Their written
6 agreement is no good. The sexual abuse of the boys by
7 priests of the diocese is no good. The refusal to report
8 the sexual abuse of children, which you've come to be
9 familiar with in this litigation, even though that
10 reporting is required by South Carolina law is no good.
11 The transfer of known sex offenders to different places
12 where they can victimize new children is no good. The
13 wide-spread effort to cover up these activities is no good.
14 The failure to be candid with this tribunal, mandated, the
15 failure to do that is no good. The refusal to abide by the
16 terms of the very agreement and order that the defendants
17 themselves induced this Court to sign is no good.

18 Now, all of this besmirches our judicial process.
19 It's more than just this case. It's nothing but money, but
20 it besmirches our judicial process. It compromises the
21 rights and the remedies of child victims of priests' sexual
22 abuse, and it at least delays justice. That, in turn,
23 denies justice, and that's got to be stopped. So, it's
24 nothing but money.

25 These people could not have read the controlling case

1 law authority about the validity of Mr. Myers' objections.
2 They wouldn't be here today except that these are people
3 who have come before you in the past and said we're going
4 to fund it on the day you issue your order. They have no
5 intention to do it. That's our prediction.

6 MR. GEOLY: Your Honor, I have a brief comment.

7 THE COURT: Yes.

8 MR. GEOLY: I consider it almost a matter of personal
9 privilege.

10 THE COURT: Yes.

11 MR. GEOLY: Since Mr. Richter did purport to quote me.

12 THE COURT: Yes.

13 MR. GEOLY: At which point Mr. Shahid will continue.

14 THE COURT: All right.

15 MR. GEOLY: I have never represented to a tribunal
16 anything that is untrue, and I have not represented
17 anything to this tribunal anything that is untrue. And the
18 diocese has moved for leave to tender these funds to the
19 Court. We are not trying to withhold the funds; we are not
20 trying to avoid our responsibilities. The point of that
21 comment at the previous hearing, and I don't have the
22 benefit of the transcript in front of me. It doesn't even
23 matter because I understand the point of the quote was to
24 say the funds are available, the funds are secured, the
25 funds are ready to be used upon the Court's order.

1 However, that in no way addressed the technical legal
2 question of finality of this Court's order, which I think
3 is the issue Mr. Shahid had raised with you before.

4 The final order, if you pay on a final order,
5 obviously it's not appealable anymore. The thirty days has
6 run. The order is final and enforceable and there is no
7 risk. If you pay before an order is final and the order is
8 reversed, what happens to your payment? That was a
9 legitimate legal question that was raised.

10 The diocese tendered the final -- has made a motion to
11 tender these funds to the Court. We are not trying to
12 grasp and hold and retain monies that were promised in this
13 agreement. We want the benefit of our bargain in this
14 agreement and so does that class, and we're trying to
15 effectuate that. And I, and I do object to any inference
16 that I in any way made a misrepresentation to this Court.

17 MR. SHAHID: Judge?

18 THE COURT: Yes.

19 MR. SHAHID: I can't sit silent when another member of
20 the bar impugns my character or my reputation, and I take
21 great exception to Mr. Richter making that type of
22 accusation against me.

23 I will state for the Court that Mr. Barker and I,
24 following the June mediation session, did in fact meet with
25 representatives of the bank to start this process of

1 funding these claims. I will say that. I said that a
2 hundred times. I'll say it a thousand times. We did, in
3 fact, meet with the bank to get this process rolling. We
4 did, the diocese did hire Turner Padgett to help us make
5 sure we were following the letter of the law, spirit of the
6 order, the letter of the order to make sure that this
7 finding was going to be taken, taken care of properly and
8 one hundred percent.

9 The escrow agreement that Mr. Richter has raised was
10 not to modify, change, alter, in any way supersede the
11 order of this Court. We offered it as a way to make sure
12 that all parties were protected on how the money was
13 disbursed. And, in fact, Judge, as I understand it, the
14 parties have looked this agreement over. They have at
15 points agreed to terms of this escrow agreement, think it
16 was a good idea. I talked with Mr. Thomas, and to my
17 knowledge the escrow agreement, if we execute it or not, is
18 not the critical part of what we're here for about. But it
19 would be a good thing to have to be prudent on how these
20 monies will be disbursed.

21 To say that we've not, that I've not, that Mr. Geoly
22 or anyone else who's represented the diocese is not a
23 person of their word, I take extreme personal offense. I
24 have represented to this Court with all due candor my
25 position, my client's position, and I hope the Court will

1 take judicial notice of that. Just because we don't agree
2 with their position or their suggestion of how to handle
3 Mr. Myers, we're now the bad guys on this thing. We tried
4 to deal with Mr. Myers the best way we know how to
5 accommodate his objections and to bring him into the party,
6 and now we're chastised because we won't do the
7 recommendation that he has presented to the -- or presented
8 to Your Honor.

9 We're trying to get this thing agreed upon, to get it
10 resolved, to get it taken care of, to be finalized with it.
11 As somebody said to you earlier, to close the barn door on
12 this thing, and that's what we want to do, just close the
13 barn door on this thing and be done with it. The Court's
14 suggestion or the Court's order to just do nothing else so
15 we can move on, that, as I said earlier, that could be
16 done. That will be done. And if anything else just far as
17 a catchall, the other matters, I think it's an appropriate
18 remedy for what we're seeking to do this afternoon.

19 THE COURT: Well, let's go back. Let me tell you what
20 the controlling document is in this case, and that is the
21 12th day of January 2007 document. That's the agreement
22 and that must be the agreement that controls your actions.
23 It seems -- I've not seen an escrow agreement, and I did
24 not recall an additional escrow agreement being referenced
25 in the settlement and arbitration agreement signed January

1 the 12th. I just don't remember it.

2 MR. SHAHID: You're right. It's not there.

3 THE COURT: Okay.

4 MR. RICHTER: Not only is it not there, it has never
5 been referenced to this Court and never to us until the
6 23rd day of July.

7 THE COURT: And it doesn't matter. This is the
8 operative document. So, there can be no escrow agreement
9 that can interfere with the settlement documents; it just
10 can't be. This agreement has been approved by the Court.
11 So, tell me.

12 ORDER OF THE COURT:

13 All right, this is what I want to do. I want the
14 settlement funded; I want the settlement funded without
15 further ado. And having said that, the amount, as I
16 understand it, is the four and a half million. I want it
17 funded, not the ---

18 MR. RICHTER: In round numbers, that is correct.

19 THE COURT: That's right, and you all have been very
20 precise with that number because there's been some that's
21 been paid.

22 MR. SHAHID: That's right.

23 THE COURT: But the remainder of the funds, and of
24 course it's way too late today, but I want it funded
25 tomorrow. What's tomorrow, Friday? Tomorrow.

1 Next week, this is what I want, and it's very specific
2 insofar as I believe. With an eye towards the arbitration
3 and the settlement agreement, I want briefs regarding what
4 is the effect of an appeal from an objection on the
5 underlying class. Not an objection by class member, not an
6 objection by a defendant, but someone outside the class. I
7 think I know the answer, but I want it researched because
8 in order for -- and you all research this for me, but I
9 think that in order for someone to be successful to set
10 aside the class, they've got to be someone who would be
11 included within the class in order to object to the
12 fairness of the class. In other words, this is someone
13 objecting to the class definition and the remedies provided
14 in the class who is not a member of the class, of the
15 class's own definitions.

16 MR. GEOLY: Just a clarifying question, Your Honor.

17 THE COURT: Sure.

18 MR. GEOLY: Whether he's right or he's wrong, at least
19 my understanding is that Mr. Myers purports to represent at
20 least one, I think what he's saying is at least one person
21 who he claims is, would be, could be a member of the class.
22 So, in terms of Your Honor resolving questions here, should
23 the legal question you're asking us be so limited, or
24 should we try to help you on even if he has somebody who
25 purports to be a member of the class?

1 THE COURT: Yes.

2 MR. GEOLY: Then what?

3 THE COURT: Thank you, Mr. Geoly.

4 MR. DUKES: And his, Mr. Myers' motion ---

5 THE COURT: Don't publish that to me, please.

6 MR. GEOLY: That's why I phrased it ---

7 MR. DUKES: It references the ---

8 MR. GEOLY: --- the way I do.

9 THE COURT: Because let me be clear. I am where I am.

10 MR. GEOLY: Right.

11 THE COURT: This job, it is complicated enough what I
12 do than for lawyers to start talking about pleadings that
13 are not pleadings to me.

14 MR. GEOLY: Right, so I say if we frame your legal
15 question a little more broadly, that way you're covered.

16 THE COURT: I would, yes. I want you to go back to
17 what it was that he raised at the hearing. He cannot tell
18 me now something other than he told me at the underlying
19 hearing: that is, at the time the objection was raised.
20 I'm not interested if he wants to expand it or change it or
21 dress it up at all. He is bound by what he raised to the
22 Court at the point where the Court's order allowed him to
23 raise the objection. And I have no idea because remember
24 I've not been served with anything. So, your concern has
25 to do with the objection that was raised. I'm only

1 interested in the objection as it was raised at ---

2 MR. GEOLY: To the extent he's purporting to represent
3 somebody.

4 THE COURT: If he did it on that occasion, certainly.
5 If he does it now, it comes too late.

6 MR. RICHTER: Just so that everyone can feel a little
7 better about this, these persons may, may, person or
8 persons may have been putative members of a class. There
9 were not named parties, the plaintiffs, although they may
10 be a putative member at the time that we were dealing with
11 them.

12 THE COURT: Okay.

13 MR. RICHTER: There is authority about this, and the
14 bright line distinction as we read the cases is that there
15 is an opt-out provision. If you recall at the time Mr.
16 Myers objected that there -- or somebody objected that
17 there was no opt-out provision, which we made a mistake,
18 all counsel here present today just made a mistake on. We
19 said that at the time.

20 THE COURT: Yes.

21 MR. RICHTER: And so of course there's an opt-out, and
22 what that means, of course, is that that putative member's
23 rights are then not bound by anything that we agreed to in
24 the settlement of this case because they have the opt-out
25 and can litigate the next day if that's what they so

1 desire.

2 THE COURT: If they are included, but he also alleges
3 that those who are not included in the class definition
4 ought be included in the class definition. But there's
5 nothing to keep them from doing whatever they wish to do in
6 terms of beginning a new litigation.

7 MR. RICHTER: I don't want to run afoul of the Court's
8 order, and I don't want to stop you from you finishing
9 making it, but I do want you to know there's another whole
10 side to this we may be out 2.6 million dollars. In finding
11 that our attorneys' fees are appropriate at the amount that
12 you set, that means that we've earned that amount. That
13 means we've done something; we've expended that amount of
14 time or legal talent or whatever it is. So, in the sense
15 you could say class counsel is out that amount today that
16 they don't want to be out. Certainly as to hard costs,
17 that's long since gone. And today, notices started running
18 around the state on borrowed money that we had to borrow
19 because it's very expensive, as I think we've told Your
20 Honor, to publish those things today because I can't get my
21 hands on the attorneys' fees or the costs that you've
22 ordered that we have access to.

23 And so I don't -- when they put the money in the
24 Court, as I understand it, your order is still your order.
25 Whatever the terms of that are still the terms of that

1 order. Are you saying that you're going to impose some
2 further delay on us to get what you've ordered we could
3 have? I mean, if that's the case, we will have lost all
4 these legal arguments today without them ever winning any
5 of the legal arguments of today.

6 The legal interest rate is twelve and a half percent,
7 judgement interest rate is twelve and a half percent. In
8 ten days, that equates to \$9,300 or so. I don't know how
9 much is it per day. Mr. Thomas came to testify \$890 per
10 day in interest is what -- is we're being cost now in this
11 process. And, you know, it's been a long time. We haven't
12 -- as I said earlier, it's been a long time coming.

13 MR. GEOLY: Your Honor, I don't think we've suggested
14 that counsel hasn't worked for his fees. We're beyond that
15 argument at this point. Your order's not a final order.
16 I've never heard of interest accruing on an order or a
17 judgment for money that's not a final judgement. I think
18 what Your Honor was suggesting to us is that we have a
19 practical question here and a procedural one, and you want
20 law on what the impact of it is. And our only objection
21 here, and that's why we're tendering money to the Court.
22 We're not to retain it for ourselves and ourselves keep the
23 interest on it. We're just saying that there is a problem
24 here and what is the -- how should the money be managed so
25 that -- because the difference is that if your order were

1 overturned on appeal, the fact is we wouldn't owe the
2 money.

3 THE COURT: Let me tell you what my concern is about
4 that because that does a good job in underscoring that for
5 me. If there is case law that exists that the Court is
6 obligated to stay a settlement in a class action when there
7 is an objection raised and an appeal had absent terms
8 within the settlement itself, that is what I'm interested
9 in knowing, you see?

10 MR. RICHTER: I understand.

11 THE COURT: Yes.

12 MR. RICHTER: To our knowledge, it doesn't exist.
13 We've researched that.

14 THE COURT: Well, I don't know that because I've not
15 researched it. I want you to research it because you all
16 have a stinging interest, both, to do that for me. Be
17 mindful and be aware if the law does not require me to do
18 that as a matter of course, the terms of your settlement
19 are set insofar as I am concerned. And if the law does not
20 require me to place such a savings on it, I will not alter
21 the terms of the settlement. That's why the reason is
22 important to me. That is the reason for the pause at this
23 juncture as I learn that information. But if the law does
24 not require me to stop the imposition of this settlement
25 without the terms within the settlement itself, I will not

1 do that, and ---

2 MR. GEOLY: So, until Your Honor receives briefing.

3 THE COURT: Yes.

4 MR. GEOLY: The money will be very promptly paid into
5 escrow.

6 THE COURT: No.

7 MR. GEOLY: But -- or to the Court?

8 THE COURT: Yes. The money's paid into escrow
9 tomorrow.

10 MR. GEOLY: And held.

11 THE COURT: Yes.

12 MR. GEOLY: Until you've had a chance to review the
13 law?

14 THE COURT: Indeed, indeed, and I would like -- this
15 is a very exquisite issue, and there's absolutely no reason
16 why I could not have, and I'm not looking for anything -- I
17 just want the information and however you all -- if you
18 would be so kind as to get that to me, I see no reason why
19 I ought not be able to receive it on Wednesday because
20 there is an awful lot of money at stake. And I feel
21 compelled to get it done and at least get my decisions
22 concluded.

23 I'd like to have the memorandum by Wednesday at 5. I
24 will be in Horry County, but you all don't have to track me
25 down to the Horry County courthouse. If you get it to St.

1 George, fax it, my administrative assistant can fax it to
2 me or email it to me.

3 But that's the reason I feel compelled to answer that
4 question. If you all -- if it must be a term of the
5 settlement documents in order for there to be a stay, then
6 so be it. Otherwise, otherwise, there could be a very
7 difficult result for all class-action settlements. And
8 that is that irrespective of the quality or the merit of an
9 issue, class actions could be stayed even without
10 appropriate standards being met.

11 I don't mean to say that's what's ongoing here, but
12 I'm concerned. I'm concerned, Mr. Shahid, when you had the
13 kind of conversation that you had. I'm very concerned
14 about that.

15 All right, great, by Wednesday, and I would
16 appreciate, along with the memorandum, proposed orders.
17 Please, remember please, counselor, you must send whatever
18 you send me at least as quickly, if not quicker, to your
19 opposing counsel. So, please be mindful of that.

20 MR. RICHTER: Your Honor, we have two people here who
21 are under subpoena.

22 THE COURT: Oh, my.

23 MR. RICHTER: And Mr. Maybank, John Maybank is ---

24 THE COURT: Who was stuck in traffic for hours.

25 MR. RICHTER: That's true. Mr. Thomas, Ellie Thomas

1 who stepped out for a moment, is the other. Mr. Maybank
2 could not have been more accommodating to us throughout
3 this transaction, and we have tried to equally accommodate
4 him through issues of service and that sort of thing.

5 If it is all right with everybody and if Your Honor
6 would so require, rather than us in the event that you need
7 to reconvene, rather than us resubpoenaing him and making
8 him come back, I'm prepared to just extend that subpoena,
9 and same thing with Mr. Thomas. And if anybody objects to
10 it ---

11 THE COURT: Well, I'm less concerned about Mr. Thomas
12 because he's the escrow agent. He's in this thing. Mr.
13 Maybank is just, he's just at work.

14 MR. RICHTER: He's the keeper of the key.

15 THE COURT: He's just at work and he gets caught up in
16 it, so I'm very concerned about Mr. Maybank. You know, is
17 it all right? Can we agree, everyone, that if Mr.
18 Maybank's testimony is needed, that we'll try to do that by
19 phone or something much more convenient? I mean, I know he
20 loves being in Orangeburg and loves coming up I-26 forever,
21 but if we could agree to do that, I'd certainly want to.
22 In other words, my court reporter is usually ---

23 MR. RICHTER: Or he may be able to -- we may be able
24 to draft an affidavit for him.

25 THE COURT: Something like that.

1 MR. SHAHID: That's fine.

2 MR. GEOLY: Your Honor, we either, we either got
3 distracted or we just didn't pay close enough attention.

4 THE COURT: Let me short circuit. Mr. Maybank is here
5 under a ---

6 MR. GEOLY: No, on this I understand, but I'm jumping
7 backwards to something that you said just before.

8 THE COURT: You're good to go. We're going to take
9 care of you so that if we need you again, we're going to
10 make it easy.

11 MR. MAYBANK: Thank you.

12 THE COURT: Which one is Mr. Maybank?

13 MR. MAYBANK: Me.

14 THE COURT: I should have been looking at you.

15 MR. GEOLY: That's his boss with him.

16 THE COURT: Thank y'all so much. We sure will try to
17 make it easy, guys. Thank you.

18 MR. GEOLY: Did you ask us for a proposed order today?

19 THE COURT: No, not today. Just, yes, when you send
20 me your research, send me a little proposed order, too.

21 MR. GEOLY: With the research?

22 THE COURT: Yes.

23 MR. GEOLY: With the memo?

24 THE COURT: Yes, yes, yes, yes, and to each other
25 quick, same speed or quicker. And I'm going to resolve

1 this, I'm going to resolve it no later than next Friday.

2 Enough, enough.

3 MR. SHAHID: Judge, we're going to put the money into
4 escrow agreed upon tomorrow, and there's just sort of --
5 nothing else happens with that money until some time after
6 Wednesday and we send you this brief?

7 THE COURT: The money will just percolate.

8 MR. SHAHID: Just percolate?

9 THE COURT: It will be percolating.

10 MR. SHAHID: That's right.

11 THE COURT: Okay. Very well, thank you all so much.

12 MR. GEOLY: I have one more question.

13 THE COURT: Yes.

14 MR. GEOLY: And I hate to open up a new issue, but I
15 don't think that there's any disagreement between the
16 parties on it, so it hopefully won't cost us much time. In
17 -- and I realize in a sense you're going to revisit the
18 order you entered on July 30th by virtue of the briefs that
19 are coming.

20 THE COURT: Yes.

21 MR. GEOLY: There is language concerning members of
22 the class who are entitled to actual notice of the
23 settlement agreement and of the class action and of the
24 whole process. And a window is left open for such people
25 if they don't receive actual notice. It turns out that

1 this relatively small group of people who've been
2 identified don't actually get notice, they, in fact, are
3 not barred and that was something that the diocese had
4 agreed to.

5 There was -- we saw some ambiguity in the language and
6 I just, I wanted, I guess I wanted to clarify with the
7 Court that that was the intent. You weren't opening up
8 future litigation to those who were not on the list of
9 those entitled to notice of the settlement.

10 THE COURT: Not at all.

11 MR. GEOLY: Thank you.

12 THE COURT: Not at all. Thank you. I'm glad you did
13 that, and let the record reflect that that is limited to
14 those people that, despite all of the efforts that the
15 diocese has given and class counsel's investigator and
16 class counsel, despite all those efforts, that there are
17 these people that are really -- don't leave me -- that we
18 learn of in the process that they have agreed to do that.

19 Basically the solicitor -- I hate to use the term, but
20 the solicitor discovers. But let me say this and let me
21 tell you of this conversation, everything that I know of
22 this conversation, and I will do no more than that and ask
23 both sides to learn of this on your own.

24 I received a telephone call yesterday from Carolyn
25 Ayers, who is the civil court coordinator for Dorchester

1 County for our clerk's office. Her name is Caroline Ayers.
2 Ms. Ayers has received a letter, a letter sent to the clerk
3 of court. Not a telephone conversation but a letter. And
4 this letter says that this individual is someone who would
5 fall within the class. May I say no more than that? I
6 don't know why. They are articulating some sort of abuse.
7 They say that the diocese knows specifically of them, and
8 that they have attempted repeatedly to contact class
9 counsel, and that no one will talk to this person.

10 I thought it was just best to raise it with you all
11 because that's, if I may, a little counterintuitive. My
12 experience in this case that no one, that forty-five people
13 from both sides wouldn't have been talking to this person,
14 okay? So, I share that with you for your continuing --
15 check it out.

16 MR. GEOLY: Okay. Your Honor, should that person be
17 referred to Marvin Infinger once the matter is final?

18 THE COURT: I think you guys ---

19 MR. GEOLY: We'll just get the letter.

20 THE COURT: I think you guys get the letter, and I am
21 satisfied ---

22 MR. GEOLY: Very good, Your Honor.

23 THE COURT: --- that what needs to happen is going to
24 happen with it, okay? I just wanted you all to know that
25 that, in all candor, that that had happened because I was,

1 to use my favorite word today, I was a little nonplused
2 that that had happened in this case.

3 All right, guys, I'll look for something Wednesday
4 from y'all. Y'all look for something no later than Friday
5 from me, okay? Thank you guys so much.

6 Now, who's going to give me the happy phone call
7 tomorrow that the settlement has been signed and -- both of
8 you? Okay, what time? No later than 4.

9 MR. SHAHID: I'm supposed be in Aiken on the James
10 Brown matter. I'll figure out how to get that word to you.

11 MR. DUKES: Judge, if Peter can't, Richard Dukes, I
12 will call you.

13 THE COURT: That will be great. That would be great.
14 Y'all just on the phone and give me a call. Everybody's
15 got my cell. All right, thank you so much.

16 --- END OF TRANSCRIPT OF RECORD ---

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF DORCHESTER

FIRST JUDICIAL CIRCUIT

CASE NO. 06-CP-18-1310

06-CP-18-1311

06-CP-18-1636

JOHN DOE #53, ET AL.,

)

)

PLAINTIFFS,

)

STATUS CONFERENCE

TRANSCRIPT OF RECORD

versus

)

DATE:

THE DIOCESE OF CHARLESTON,

)

OCTOBER 2, 2008

DEFENDANT

)

BEFORE:

HONORABLE DIANNE S. GOODSTEIN, PRESIDING JUDGE

APPEARANCES:

GREGG MEYERS, ESQUIRE

DAVID FLOWERS, ESQUIRE

LAWRENCE E. RICHTER, JR., ESQUIRE

A .PETER SHAHID, JR., ESQUIRE

ERIN GROEBER, ESQUIRE

KENNETH C. KRAWCHECK, ESQUIRE

DAVID HALLER, ESQUIRE

ATTORNEYS AT LAW

HARRY A. WALKER (MRS.)

COURT REPORTER, FIRST JUDICIAL CIRCUIT

POST OFFICE BOX 127

ROWESVILLE, SOUTH CAROLINA 29133

1 DATE:

2 OCTOBER 2, 2008

3 THE COURT: THANK YOU ALL FOR BEING
4 HERE TODAY, I REALLY APPRECIATE THE EFFORT THAT YOU ALL
5 HAVE MADE TO GET HERE TODAY. WHAT I WANTED TO DO, WHAT
6 MY INTENTION IS TODAY IS TO TRY TO DETERMINE HOW LONG WE
7 NEED FOR THE MOTIONS THAT ARE PENDING, AND THEN I WANTED
8 TO TRY TO SCHEDULE THE TIME TO GET THAT WORK DONE. SO,
9 THANK YOU ALL FOR BEING HERE THIS MORNING.

10 NOW, I HAVE RECEIVED SOME
11 CORRESPONDENCE, I RECEIVED CORRESPONDENCE FROM MR. MYERS
12 AND FROM MR. SHAHID, REGARDING JUST DIFFERENT MOTIONS,
13 AND I WOULD SHARE WITH ALL OF YOU THAT THE MOTIONS THAT
14 WE CURRENTLY HAVE FILED AS OF THIS MORNING, THERE IS THE
15 PETITION TO APPEAR IN AMICUS, THE DEFENDANT'S MOTION TO
16 ENFORCE SETTLEMENT, AND THE DEFENDANT'S MOTION FOR LEAVE
17 TO DEPOSIT SETTLEMENT FUNDS INTO COURT. NOW, IN MR.
18 MYERS'S CORRESPONDENCE HE INDICATED THAT THERE HAD BEEN
19 OTHER MOTIONS WHICH WERE BEING FILED OR HAD BEEN FILED,
20 THEY HAVE NOT BEEN FILED AS OF THIS MORNING, MAYBE
21 THEY'RE IN ROUTE, I DON'T KNOW, BUT - - -

22 MR. MYERS: I HAVE FILE STAMPED
23 COPIES BACK FROM THE CLERK OF COURT.

24 THE COURT: WELL, YOU MIGHT WANT TO
25 CHECK DOWNSTAIRS, MR. MYERS, BECAUSE I ASKED THEM THIS

1 MORNING, I SENT MY LAW CLERK DOWN TO ASK THAT VERY
2 QUESTION, AND SAID, MR. MYERS TELLS ME IN A LETTER THAT
3 HE'S FILED OTHER MOTIONS, AND THEY WERE NOT DOWN THERE
4 THIS MORNING, SO YOU MIGHT WANT TO JUST CHECK ON YOUR
5 WAY OUT. BUT I KNOW FROM YOUR LETTER WHAT YOU'RE
6 PURPORTING THEM TO BE. SO, IS THE MOTION TO RECUSE AND
7 THE MOTION TO END OUT - - -

8 MR. MEYERS: DISMISS FOR LACK OF
9 JURISDICTION.

10 THE COURT: MOTION TO DISMISS - - -

11 MR. MEYERS: FOR LACK OF
12 JURISDICTION AS TO ALL OF MY CLIENTS.

13 THE COURT: THE MOTION TO DISMISS
14 THE COMPLAINT?

15 MR. MEYERS: MOTION TO DISMISS ANY
16 PROCEEDING IN THE COURTS TO AFFECT MY CLIENTS IN THIS
17 CASE.

18 THE COURT: I'VE GOT IT. IN OTHER
19 WORDS, IT HAS TO DO WITH -- YOU HAVE A MOTION TO DISMISS
20 ANOTHER MOTION?

21 MR. MEYERS: YEAH, ANY PROCEEDINGS
22 IN THIS CASE, SINCE MY PEOPLE HAVE BEEN RULED OUT, HAVE
23 OPTED OUT - - -

24 THE COURT: OKAY, YEAH.

25 MR. MEYERS: --- IN A SEPARATE

1 SETTLEMENT AGREEMENT - - -

2 THE COURT: YEAH.

3 MR. MEYERS: --- AND ARE OUT BY
4 DEFINITION FOR THE LONG HAUL. SO, - - -

5 THE COURT: VERY WELL, ALRIGHT. IN
6 OTHER WORDS, WHAT YOU'RE TELLING ME, MR. MEYERS, IS THAT
7 -- AND I THINK YOU MENTIONED THAT IN YOUR FIRST LETTER
8 THAT THERE ARE MOTIONS THAT YOU WERE GOING TO FILE IN
9 RESPONSE, AND MEMOS IN RESPONSE TO MR. SHAHID'S. SO,
10 YOUR MOTION TO DISMISS WOULD BE THE MOTION TO DISMISS
11 FOR LACK OF JURISDICTION SOMETHING THAT MR. SHAHID HAS
12 FILED WHICH I GATHER IS A MOTION TO ENFORCE SETTLEMENT
13 OR TO DEPOSIT THE FUNDS, RIGHT?

14 MR. MEYERS: RIGHT.

15 THE COURT: OKAY, GREAT, I'VE GOT
16 IT. OKAY.

17 NOW, THAT'S GOING TO TAKE, WHAT DO
18 Y'ALL THINK IT'S GOING TO TAKE, A COUPLE OF HOURS TO GET
19 THAT DONE, DOES THAT MAKE SENSE? Y'ALL SORT OF -- FOR
20 ONCE, Y'ALL SORT OF DON'T HAVE A DOG IN THE FIGHT.

21 MR. RICHTER: SORT OF, SORT OF NOT,
22 WE GOT A NOTICE AND WE'RE HERE, YOUR HONOR.

23 THE COURT: OKAY. VERY WELL. A
24 COUPLE OF HOURS DO YOU THINK, MR. SHAHID?

25 MR. SHAHID: WELL, JUDGE, I WOULD --

1 NOT TO BE TOO PRESUMPTUOUS, BUT THE MOTION TO RECUSE I
2 THINK WOULD BE, IF YOU WANT A SCHEDULE THIS WOULD BE
3 PROBABLY THE FIRST ORDER OF BUSINESS.

4 THE COURT: YEAH, THAT'S RIGHT.

5 MR. SHAHID: THE MOTION TO DISMISS,
6 THE SECOND ORDER OF BUSINESS, AND THEN I'M NOT SURE HOW
7 YOU WANT TO THEN HANDLE MR. FLOWERS'S PETITION, A COUPLE
8 OF OUR MOTIONS TO ENFORCE THE DEPOSITS, SO I THINK IT'S
9 GOING TO TAKE MORE THAN A COUPLE OF HOURS, QUITE
10 FRANKLY.

11 THE COURT: OKAY. YOU THINK MAYBE
12 DO A HALF A DAY, GO AHEAD AND - - -

13 MR. SHAHID: HALF A DAY, I THINK.

14 THE COURT: --- JUST SET IT ASIDE
15 AND IF WE NEED IT, WE NEED IT, IF WE DON'T, WE DON'T?

16 MR. SHAHID: RIGHT.

17 THE COURT: OKAY. ALRIGHT. I HOPE
18 Y'ALL HAVE YOUR CALENDARS WITH YOU, AND I'M LOOKING AT
19 THE TWO OF YOU, AND, BECAUSE AGAIN WHAT'S RELEVANT IS
20 WHO, WHO HAS DOGS IN FIGHTS. CAN YOU TELL ME, BECAUSE
21 I DON'T THINK THAT THE SCHEDULED NON-JURY TERM IS GOING
22 TO PROVIDE SUFFICIENT TIME, BECAUSE THAT WEEK MAY BE A
23 LITTLE SHORTER THAN NORMAL, AND JUST GIVEN THE NATURE OF
24 THE NON-JURY WEEKS, I'M GOING TO HAVE TO SET IT SOME
25 OTHER TIME. AND THIS IS GOING TO GIVE YOU A LOT MORE

1 INFORMATION THAN YOU PROBABLY NEED, BUT THEY'RE DOING
2 CONSTRUCTION IN ORANGEBURG NEXT WEEK, AND I ACTUALLY MAY
3 GET, THERE MAY BE NO SEATS IN ORANGEBURG IN THE
4 COURTHOUSE NEXT WEEK. I THINK THEY'RE BRINGING FOLDING
5 CHAIRS FOR THE JURY. SO, AND IT MAY WORSEN AS THE WEEK
6 GOES BY. IT'S LIKE, WHAT WOULD ONE DO IF ONE WAS
7 HOLDING COURT WITH NO CHAIRS? SO, WE MAY ACTUALLY HAVE
8 SOME TIME NEXT WEEK, BUT MY SENSE IS, YOU ALL WANT MORE
9 NOTICE THAN THAT, DON'T YOU?

10 MR. SHAHID: I THINK SO, WE PROBABLY
11 NEED TO DO A RESPONSE TO THOSE TWO MOTIONS WE HAVEN'T
12 DONE, AND - - -

13 THE COURT: OKAY. I'M WITH YOU.
14 OKAY. AND MR. MEYERS, YOU WERE, LIKE, SHAKING YOUR HEAD
15 LIKE YOU'RE READY TO GO WHENEVER?

16 MR. MEYERS: WHENEVER, JUDGE.

17 THE COURT: OKAY. ALRIGHT. SO, AND
18 I TRULY DON'T KNOW WHAT THAT SCHEDULE'S GOING TO BE. DO
19 YOU ALL WANT ME TO CALL AND LET YOU KNOW THAT THAT IS A
20 POSSIBILITY, IF THAT IN FACT COMES TO FRUITION, LET YOU
21 GUYS KNOW, DO YOU WANT ME TO DO THAT OR JUST, OR NOT,
22 OR JUST GO AHEAD AND SET SOMETHING PRETTY FIRM?

23 MR. SHAHID: ARE YOU TALKING THE
24 TWENTY-SEVENTH STILL, JUDGE, OR ARE YOU NOT?

25 THE COURT: THE TWENTY-SEVENTH OF -

1 -- --

2 MR. SHAHID: OCTOBER?

3 THE COURT: NO, THAT'S NEXT WEEK.

4 MR. RICHTER: NO, IT'S LIKE THREE
5 DAYS, TODAY IS THE SECOND OR THIRD.

6 THE COURT: YEAH, RIGHT NOW I'M
7 TALKING ABOUT NEXT WEEK.

8 MR. SHAHID: OH, NEXT WEEK I THINK
9 -- WELL, TODAY IS THURSDAY, WE COULD PROBABLY HAVE
10 RESPONSES BY, WHAT, TUESDAY, WE COULD HAVE OUR RESPONSES
11 FILED BY MONDAY OR TUESDAY OF NEXT WEEK.

12 THE COURT: WHY DON'T I DO THIS, WHY
13 DON'T I DO THIS - - -

14 MR. SHAHID: OKAY.

15 THE COURT: --- IF THE TIME PRESENTS
16 ITSELF I WILL LET YOU ALL KNOW.

17 MR. SHAHID: OKAY.

18 THE COURT: AND IF IT'S, IF WE CAN
19 DO THAT THURSDAY OF NEXT WEEK THEN WE'LL TRY TO DO THAT.
20 IF IT DOESN'T WORK, IT DOESN'T WORK. OKAY. AND, BUT I
21 DO WANT TO GO AHEAD AND DO A FIRM TIME SO WE CAN KNOW
22 THAT WE CAN GET THIS DONE.

23 MR. RICHTER: YOUR HONOR, IF I COULD
24 ASK, - - -

25 THE COURT: YEAH.

1 MR. RICHTER: --- I'M SORRY TO DO
2 IT, BUT THURSDAY AND FRIDAY OF NEXT WEEK I'M SUPPOSED TO
3 BE OUT OF STATE.

4 THE COURT: THEN WE WON'T EVEN WORRY
5 ABOUT NEXT WEEK. HOW ABOUT THAT? OKAY. SO, NOW, NOW
6 THE NEXT OPPORTUNITY THAT I KNOW THAT I'M GOING TO HAVE
7 A HALF DAY IS GOING TO BE THE WEEK OF THANKSGIVING, THAT
8 WEEK. AND OF COURSE, THAT'S THE WEEK OF NOVEMBER THE
9 TWENTY-FOURTH.

10 MR. SHAHID: IF I COULD BE SPARED,
11 I AM THE DIRECTOR OF A RACE THAT'S ON THANKSGIVING DAY,
12 AND THAT IS AN EXTREMELY BUSY TIME FOR - - -

13 THE COURT: WHAT KIND OF RACE?

14 MR. SHAHID: IT'S THE TURKEY DAY RUN
15 AND GOBBLE WOBBLE THAT THE -- CLUB PUTS ON, IT'S THE
16 THIRTY-FIRST -- BUT THAT'S A REALLY BIG HAPPENING.

17 THE COURT: DO YOU WOBBLE, WOBBLE?
18 WE WOULDN'T WANT TO INTERRUPT THE WOBBLE WOBBLE.

19 MR. SHAHID: THE GOBBLE WOBBLE.

20 THE COURT: THE GOBBLE WOBBLE.

21 MR. SHAHID: GOBBLE WOBBLE.

22 THE COURT: GREAT, OKAY. WELL,
23 THEN, YOU ALL WILL HAVE TO LEAVE IT WITH ME, AND WHAT
24 I'LL DO IS, I'LL JUST CONTACT THE SOLICITOR'S OFFICE AND
25 MAYBE I CAN ASK THEM TO GIVE US A FRIDAY IF THAT WORKS

1 WITH THEIR SCHEDULE. I HAVE ABSOLUTELY NO WAY OF KNOWING
2 WHETHER OR NOT THAT WILL WORK FOR THEM OR NOT, BUT I
3 WILL DO MY BEST.

4 NOW, ANYBODY GOT ANYTHING, GOT ANY
5 DATE CERTAINS THAT ARE SCHEDULED AT THIS POINT, DO YOU
6 HAVE ANY VACATIONS THAT ARE SCHEDULED, GOT ANYMORE
7 GOBBLY WOBBLY OR WHATEVER SO I CAN KNOW THAT?

8 MR. FLOWERS: YOUR HONOR, DAVID
9 FLOWERS. YOU'RE LOOKING AT FRIDAY, OCTOBER SEVENTEENTH,
10 I'M SCHEDULED TO BE IN CHICAGO, I'M GOING PERSONALLY.

11 THE COURT: OKAY. RIGHT. WAIT A
12 MINUTE, NOW, OCTOBER SEVENTEENTH?

13 MR. FLOWERS: YES.

14 THE COURT: THANK YOU.

15 MR. MEYERS: AND YOUR HONOR, THE
16 TWENTY-FOURTH I'M SUPPOSED TO BE MINDING MY GRANDCHILD.
17 I CAN OBVIOUSLY REARRANGE THAT, BUT I WAS - - -

18 THE COURT: WELL, YOU KNOW, IF I'M
19 GOING TO ASK, YOU KNOW -- OKAY, ANYBODY ELSE GOT ANY
20 OTHER GOBBLE WOBBLE?

21 MR. FLOWERS: YOUR HONOR, IF I MAY,
22 I KNOW YOU'RE NOT, IT SOUNDS LIKE YOU'RE NOT INCLINED TO
23 HEAR MUCH TODAY, BUT - - -

24 THE COURT: RIGHT.

25 MR. FLOWERS: --- IN SPITE OF WHAT

1 THE DEFENDANT SAYS THERE IS CLEAR AUTHORITY FOR AMICUS
2 PETITIONS IN TRIAL COURTS IN SOUTH CAROLINA. SO, I'M
3 NOT SURE THERE'S MUCH TO ARGUE ABOUT THAT. I DROVE ALL
4 THE WAY DOWN FROM GREENVILLE TODAY. IF THE COURT IS
5 INCLINED TO HEAR THAT THEN WE COULD AT LEAST MOVE
6 FORWARD WITH THAT ASPECT OF THE CASE TODAY. I'D JUST
7 ASK THE COURT'S INDULGENCE.

8 THE COURT: SURE. WELL, YOU KNOW,
9 I'M GOING TO LEAVE IT UP TO COUNSEL SIMPLY BECAUSE THIS
10 WAS A STATUS CONFERENCE, AND I'M SO GLAD YOU ARE HERE,
11 AND I APPRECIATE YOU BEING HERE, MR. FLOWERS, BUT I'LL
12 LEAVE IT UP TO, I'LL LEAVE IT UP TO COUNSEL. AND HOW
13 DOES CLASS COUNSEL FEEL ABOUT THAT?

14 MR. RICHTER: YOUR HONOR, WE
15 HONESTLY DIDN'T COME PREPARED TO ARGUE ANYTHING.

16 THE COURT: YEAH, I KNOW, WELL, - -
17 -

18 MR. RICHTER: YOU CAN SEE THE
19 LITTLE BIT OF THE FILE THAT WE BROUGHT.

20 THE COURT: THAT'S ENOUGH, THAT'S
21 ENOUGH SAID, BECAUSE I DON'T WANT ANYBODY MISLED.

22 MR. RICHTER: WHAT I'M SAYING, YOU
23 HAD ASKED ABOUT DATES.

24 THE COURT: YEAH.

25 MR. RICHTER: BEGINNING NOVEMBER THE

1 SIXTEENTH I'M GOING TO BE IN THE STATE OF NEW YORK FOR
2 ABOUT SIX DAYS. THANK YOU.

3 THE COURT: OKAY. THANK YOU. OKAY.
4 ALRIGHT. WELL, THIS IS WHAT I'M GOING TO DO, I AM GOING
5 TO GO BACK TO MY OFFICE, THAT'S THE PURPOSE OF HAVING
6 CHAMBERS WEEK, AND I AM GOING TO ATTEMPT TO FIND SOME
7 TIME THAT WE CAN GET THIS WORK DONE. IF, IF I AM
8 UNLUCKY GETTING A TIME THAT SUITS US ALL, THE LAST TWO
9 WEEKS OF THE YEAR WE ARE IN CHAMBERS, AND IT MAY BE THAT
10 WE HAVE TO DO THIS WORK DURING THAT LAST TWO WEEKS OF
11 THE YEAR. ANYBODY GOT ANY TRIPS OR PLANNING TRIPS OR
12 THINK YOU'RE GOING TO PLAN A TRIP TO GO AWAY?

13 MR. MEYERS: CHRISTMAS DAY TO
14 JANUARY SECOND.

15 THE COURT: THANK YOU, MR. MEYERS.
16 WAIT A MINUTE NOW, CHRISTMAS DAY TO JANUARY SECOND.
17 OKAY.

18 MR. FLOWERS: YOUR HONOR, IF I MAY
19 JUST MAKE ANOTHER INQUIRY?

20 THE COURT: SURE.

21 MR. FLOWERS: THERE IS A CASE THAT
22 I'M SURE YOUR HONOR IS AWARE OF THAT'S PENDING IN
23 CHARLESTON COUNTY.

24 THE COURT: YES.

25 MR. FLOWERS: BECAUSE OF THE MOTIONS

1 THAT HAVE BEEN FILED IN THIS CASE MR. SHAHID HAS GOTTEN
2 A STAY ON ALL OF THE DISCOVERY AND PROCEEDINGS IN THAT
3 CASE.

4 THE COURT: RIGHT.

5 MR. FLOWERS: IF WE'RE GOING TO BE
6 PUSHED TO THE END OF THE YEAR WE WOULD LIKE TO HAVE THIS
7 STAY AT LEAST ON DISCOVERY IN THAT CASE LIFTED SO THAT
8 WE CAN AT LEAST MOVE THAT CASE FORWARD AND IT'S NOT
9 STOPPED COLD IN ITS TRACKS FOR WHAT WILL BE BY THAT TIME
10 ABOUT NINE MONTHS THAT IT WILL BE ON DOCKET. WE'D LIKE
11 TO MOVE FORWARD WITH DISCOVERY.

12 THE COURT: WELL, I DON'T THINK I
13 HAVE, I DON'T THINK THAT'S BEFORE ME, MR. FLOWERS, I
14 THINK YOU'LL HAVE TO TAKE THAT UP WITH WHOMEVER IN
15 CHARLESTON, AND AS YOU'VE BEEN HERE THIS MORNING, I'M
16 TRYING TO WORK WITH EVERYONE TO ACCOMMODATE YOUR
17 SCHEDULE AND OTHER COUNSELS' SCHEDULES AND GET THIS
18 HEARD TRULY JUST AS SOON AS I CAN.

19 MR. FLOWERS: NO, I UNDERSTAND THAT,
20 JUDGE, BUT JUDGE POUGH DID RULE THAT HE WAS GOING TO
21 STAY IT UNTIL THEY HAD AN OPPORTUNITY TO FILE SOMETHING
22 HERE - - -

23 THE COURT: RIGHT.

24 MR. FLOWERS: --- AND I THINK YOUR
25 COURT CERTAINLY HAS THE OPPORTUNITY OR THE POWER TO

1 RELEASE THAT ASPECT OF THE STAY JUST WITH RESPECT TO
2 DISCOVERY IN THE CASE, THAT'S ALL I'M ASKING.

3 THE COURT: YES, SIR, I THINK YOU'RE
4 GOING TO HAVE TO TAKE THAT UP IN CHARLESTON COUNTY, SIR.
5 OKAY. VERY WELL. I WILL, I WILL ENDEAVOR TO FIND A
6 TIME JUST AS QUICKLY AS I CAN. IT'S PROBABLY AGAIN
7 GOING TO BE FRIDAY JUST BECAUSE IT'S EASIER, IF YOU'RE
8 GOING TO TRY TO TAKE THE TIME AWAY FROM ANOTHER TERM TO
9 DO THAT ON FRIDAY, BUT IF I CAN GET A MONDAY OR A
10 TUESDAY I WILL CERTAINLY LET YOU ALL KNOW, AND I'D JUST
11 ASK YOU TO WORK WITH ME AS BEST YOU ALL CAN SO THAT WE
12 CAN GET THIS WORK DONE. AND AGAIN, THANK YOU ALL SO
13 MUCH FOR BEING HERE TODAY.
14