

The State of South Carolina
In The Court of Appeals

Appeal from Charleston County
Hon. William C. McMaster III, Circuit Court Judge

Appeal 2026-000191

Case Nos. 2022-CP-10-04031
2019-CP-10-05892
2018-CP-10-05802

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SC Court of Appeals

John Doe 305, Julie McDonald, and Richard McDonald, Appellants,

v.

Lawrence E. Richter, Jr., David K. Haller, Richter and Haller, LLC, and
The Bishop of Charleston a corporation Sole, Defendants

AND

Jane Doe 304, Appellant,

v.

Lawrence E. Richter, Jr., David K. Haller, Richter and Haller, LLC, and
The Bishop of Charleston a corporation Sole, and Robert E. Guglielmone,
Bishop Of Charleston, Defendants,

AND

Robert Chimento, Appellant,

v.

Lawrence E. Richter, Jr., David K. Haller, Richter and Haller, LLC, and The
Bishop of Charleston a corporation Sole, and Robert E. Guglielmone,
Bishop Of Charleston, Defendants,

of which Lawrence E. Richter, Jr., David K. Haller, and Richter and Haller, LLC, are the Respondents.

Record on Appeal
Volume One of Eight

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP1005802

Robert Chimento
PLAINTIFF(S)

Lawrence E Richter, Jr et al
DEFENDANT(S)

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.
- ☐ **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
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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:

Defendants Lawrence E. Richter, David K. Haller, and Richter & Haller, LLC's Motions to Dismiss came before this Court on October 7, 2025. Gregg Meyers was present on behalf of the Plaintiff. Benjamin Bruner was present on behalf of Defendants Lawrence E. Richter and Richter & Haller, LLC. John Cuttino was present on behalf of Defendant David K. Haller. After careful consideration of the materials filed and the arguments of the parties, Defendants' Motions to Dismiss are GRANTED. This Court agrees with the reasoning contained in Judge J. C. Nicholson's Order filed August 11, 2017 in connection to Case No. 2010-CP-10-04175, which discusses and disposes of the same causes of action asserted in this case. Defense counsel is to prepare a formal Order within 10 days.

It is so Ordered.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/05/2025 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Robert Chimento VS Lawrence E Richter Jr , defendant, et al

Case Number: 2018CP1005802

Type: Order/Electronic Form 4

So Ordered

William C. McMaster, III

Electronically signed on 2025-11-05 14:40:48 page 3 of 3

JULIE J. ARMSTRONG

CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258

RETURN SERVICE REQUESTED



clerkofcourt.charlestoncounty.org

Gregg E. Meyers
114 4Th Ave NW
Byron, MN 55920

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Order/Defts Motion to Dismiss is Granted

CASE NO: 2018CP1005802

Robert Chimento VS Lawrence E Richter Jr , defendant, et al

This judgment was entered on the 06th day of November, 2025, and notice mailed first class on Friday, November 07, 2025, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at <http://clerkofcourt.charlestoncounty.org> or obtain a copy in person at the Clerk of Court's Office during regular Charleston County business hours.

Record on Appeal - 0004

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Robert Chimento,
Plaintiff,

C/A No.: 2018-CP-10-5802

v.

**ORDER ON LAWYER DEFENDANTS'
MOTIONS TO DISMISS**

Lawrence E. Richter, Jr., David K. Haller,
Richter and Haller, LLC, The Bishop of
Charleston, A Corporation Sole; and Robert E.
Gugliemone, Bishop of Charleston,
Defendants.

THESE MATTERS CAME BEFORE THE COURT for an in-person hearing at the Charleston County Courthouse on October 7, 2025, on motions of Defendants Lawrence E. Richter, Jr., David A. Haller and Richter and Haller, LLC (“the Lawyer Defendants”) to dismiss pursuant to Rule 12, SCRCP. At the hearing, Gregg E. Meyers, Esquire appeared on behalf of the Plaintiff. Benjamin C. Bruner, Esquire appeared on behalf of Defendants Lawrence E. Richter and Richter & Haller, LLC. John E. Cuttino, Esquire appeared on behalf of Defendant David K. Haller. After careful consideration of the materials filed and the arguments of the parties, the Court finds the Lawyer Defendants’ Motions to Dismiss should be GRANTED.

FACTUAL & PROCEDURAL BACKGROUND

This action is the ninth one filed in Charleston County against the Lawyer Defendants arising out of a 2007 class action settlement in which the Lawyer Defendants served as class counsel involving sexual abuse claims against the Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity (“the Diocese”). In this case, the Plaintiff does not allege any claim against the Diocese related to the sexual abuse he alleges to have suffered. Instead, he alleges a claim against the Lawyer Defendants for professional negligence and breach

of fiduciary duty in connection with their handling of the class action cases. Against the Diocese, the Plaintiff alleges only aiding and abetting breach of fiduciary duty.

In his Complaint, Chimento alleges he was a non-resident of South Carolina and an absent class member in the underlying class action (“Underlying Case”) who was sexually abused by a priest of the Diocese of Charleston between 1973 and 1975. (Compl. ¶¶ 1, 11, and 12.) He alleges the Lawyer Defendants “(a) pled a class action in 2005, (b) settled that class action in 2006, and (c) sought, and obtained, class certification in 2007 by a South Carolina court as part of that class action. The classes defined in that action included a class of individuals who were sexually abused by persons employed by the Bishop of Charleston.” (Compl. ¶ 13.)

Plaintiff was not one of the named parties in the underlying class action. Rather, he was an absent class member to whom the Lawyer Defendants “assumed” fiduciary duties “[i]n pleading the class action, as a matter of law[.]” (Compl. ¶ 15.) Plaintiff further alleges, “Presently an order from a trial court maintains that no fiduciary duty was imposed by law on the [Lawyer Defendants] as to the plaintiff or any other absent class member, so to that extent this complaint overtly depends on the outcome of an appeal presently pending in the South Carolina Court of Appeals. However, this complaint also alleges that the [Lawyer Defendants] voluntarily assumed a fiduciary duty as to the plaintiff, which was breached.” (Compl. ¶ 15.)

The Order to which the Plaintiff refers is an August 11, 2017 Order by Judge Nicholson granting the Lawyer Defendants summary judgment in eight consolidated cases brought by Plaintiff’s counsel on behalf of ten other individuals.¹ The parties all acknowledge the appeal to

¹ C/A Nos. 2010-CP-10-5520, 2010-CP-10-7233, 2012-CP-10-5559, 2013-CP-10-3733, 2013-CP-10-4175, 2013-CP-10-4176, 2015-CP-10-5486, and 2016-CP-10-1632.

which the Plaintiff refers is Appellate Case No. 2017-001996, in which the Court of Appeals affirmed Judge Nicholson's 2017 Order.²

Plaintiff filed his Complaint on December 6, 2018. (Compl. at 1.) Attached to the Complaint was the Affidavit of Michael J. Virzi dated December 5, 2018.

On May 1, 2019, Haller moved to dismiss based upon Judge Nicholson's Order and the Plaintiff's failure to satisfy the expert affidavit requirement in S.C. Code Ann. 15-36-100. (Haller Motion to Dismiss served May 1, 2019, and filed May 6, 2019, at 1-2.) Haller attached Judge Nicholson's August 11, 2017 Order and the notice of appeal to the motion as exhibits.

Also on May 1, 2019, Richter and Richter & Haller, LLC moved to dismiss on the same grounds as Haller's motion. (Richter Motion to Dismiss served May 1, 2019, and filed May 3, 2019.) They also attached Judge Nicholson's Order to their motion as an exhibit.

On September 24, 2019, the Court scheduled the Defendants' motions for a hearing to take place on October 30, 2019. On October 27, 2019, Plaintiff filed a memorandum opposing the Defendants' motions to dismiss. He also re-filed the December 2018 affidavit from Virzi along with the missing 2016 affidavit that had been omitted when the Complaint was filed. Plaintiff also filed an August 31, 2007 Order in the Underlying Case.

In his memorandum Plaintiff argued,

Richter, Haller, and their firm were class counsel for a 2007 class action settlement. Complaint ¶ 12. The plaintiff was an absent member of that class, as he resided out of state, Complaint ¶ 1, where there was no advertising made of the class action. As noted above in Complaint ¶ 16, the lawyer defendants voluntarily assumed fiduciary duties to the plaintiff and other absent members of the class. See generally, Complaint ¶¶ 15 to 19.

(Pl. Memo. Opp. at 2, October 28, 2019.)

² The appeal did not reach the Supreme Court.

The October 30, 2019, hearing proceeded as scheduled. However, before the presiding judge ruled on the motions, the Supreme Court issued an Order appointing the Honorable J. Derham Cole to preside over the remaining of the proceedings in this case.³

On June 1, 2022, the Plaintiff submitted a twenty-three-page memorandum in opposition to the motions along with 275 pages of exhibits.⁴ In his brief, the Plaintiff argued his claims “arise out of the conduct of a class action lawsuit” where “[t]he [Lawyer Defendants] and their firm were class counsel.” (Pl.’s Consolidated Memorandum Opp. Defendants’ Motions, June 1, 2022, at 2.)

On April 30, 2024, Plaintiff filed a Notice of Supplemental Authority in opposition to the Lawyer Defendants’ motions together with fifty-nine pages of exhibits.

On September 10, 2025, the Supreme Court reassigned the case to the undersigned.⁵ After being assigned to the case, the Court scheduled a hearing for October 7, 2025. Prior to the hearing, the Lawyer Defendants and the Plaintiff submitted additional briefing and other materials, including the record from the Underlying Case and the record from the appeal of Judge Nicholson’s Order.

At the October 7th hearing, counsel for the parties appeared in person and argued the Lawyer Defendants’ motions thoroughly. The Court noted the materials the Lawyer Defendants had provided (Tr. p. 5, lines 14 – p. 6, line 1, page 6, lines 7-10)), and both sides presented arguments based on the Complaint and additional materials they had submitted. For example, arguments on behalf of the Lawyer Defendants included the following,

- “I implore, your Honor, to read in detail the August 11, 2017 Order granting summary judgment to the lawyer defendants.” (Tr. p. 11, lines 2-4);

³ While the presiding judge entered an Order granting the defendants’ motions, he vacated that Order upon Plaintiff’s Motion to Alter or Amend after the Supreme Court’s Order was brought to his attention.

⁴ Plaintiff’s Consolidated Memorandum Opposing Defendants’ Motions, June 1, 2022.

⁵ Order entered September 10, 2025 in Appellate Case 2020-001415.

- “We have transcripts of these [class action settlement] hearings. This was not done behind closed doors in the conference room. The transcripts of these hearings we've provided many of the transcripts to your Honor, and - - and I want your Honor to read those to see the work that Judge Goodstein put into this -- this settlement and approving it and ensuring it was fair.” (Tr. p. 11, lines 18-23);
- “Judge Nicholson rejected that in his well-reasoned decision. And I will note that on appeal in a per curiam decision, the Court of Appeals rejected the arguments to -- to overturn Judge Nicholson's Order. In particular -- in particular, the Court of Appeals affirmed that Order based on the lack of a proximate cause.” (Tr. p. 13, lines 8-13);
- Facts surrounding the March 2009 Orders of the Supreme Court and of the Class Action Court (Tr. p. 43, line 18 – p.45, line 14.); and
- “With the Court's permission, I -- I may look back in that folder and make sure all these transcripts are, in fact, uploaded, if that's okay with plaintiff's counsel.” (Tr. p. 57, lines 17-20).

In response, Plaintiff's counsel argued, *inter alia*,

- “And we also [briefed] all the questions pretty extensively in the three different cases, and submitted a number of materials to the Court, particularly in the [Chimento and] 304 filings. They were filed jointly. So appear in each case.” (Tr. p. 27, lines 1-5);
- “that issue could be addressed conceivable in the appeal that's going up now from the class action.” (Tr. p. 29, lines 12-13);
- “they ignored the Supreme Court's Order in 2009 to close the class.” (Tr. p. 29, lines 14-15);
- “and then they reach this agreement to not give any notice to people outside the state.” (Tr. p. 30, lines 5-6);
- “This is what Judge Nicholson didn't talk. He decided he could ignore the two appellate decisions, Green and Premium Investment, and just focus on one paragraph in one of the complaints in Dorchester County.” (Tr. p. 31, lines 7-10);
- “So the weakness of Judge Nicholson's theory if the Court adopts it and -- you throw me out, but the weakness of Judge Nicholson's theory is that he didn't work with what the -- how the class was defined, how it was approved by the Court.” (Tr. p. 31, lines 11-15);

- “That is that in 2013, in response to a motion from class counsel, Judge Dixon, in Dorchester County, determined that the class action, in fact included people from out of state.” (Tr. p. 31, lines 20-23)
- “But now we have a problem where the class counsels your right for part of the class, totally excluded everybody who lived out state by changing the notice provision from nationwide notice to state-only notice. (Tr. p. 33, lines 2-6);
- “I did not plead that in the earliest cases because you have to ignore a couple of Supreme Court cases that impose that as a matter of law. But those have been ignored and -- by Judge Nicholson [and the] Court of Appeals.” (Tr. p. 36, lines 16-19.)
- “But listen, Judge, this is a very complicated record. These are pretty complicated civil procedure issues turning on very unusual questions of class action practice.” (Tr. p. 54, lines 8-11.); and
- “Judge, do you want the transcript as a prelude to our sufficiency on the jurisdiction?” (Tr. p. 58, lines 3-4).

Following the hearing, the Court took the motions under advisement.

On November 6, 2025, the Court entered a Form 4 Order granting the motions and directing, “Defense counsel is to prepare a formal Order within 10 days.” The Court subsequently extended defense counsel’s time to provide the proposed Order to permit time for defense counsel to receive the transcript of the hearing.

Having carefully considered the motions, the supporting and opposing memoranda and additional materials submitted by the parties, the arguments of counsel, and applicable law, I find and conclude the Lawyer Defendants’ motions should be granted.

STANDARD

“Under Rule 12(b)(6), SCRCPP, a party may move to dismiss a complaint against him based on a failure to state facts sufficient to constitute a cause of action.” *Cole Vision Corp. v. Hobbs*, 394 S.C. 144, 148, 714 S.E.2d 537, 539 (2011) (citing *Spence v. Spence*, 368 S.C. 106, 116, 628

S.E.2d 869, 874 (2006)). “In considering a motion to dismiss under Rule 12(b)(6), the circuit court must base its ruling solely on the allegations set forth in the complaint.” 394 S.C. at 148, 714 S.E.2d at 539 (citing *Doe v. Marion*, 373 S.C. 390, 645 S.E.2d 245 (2007)). The court may also consider documents incorporated by reference or attached to the complaint when considering a Rule 12(b)(6) motion. *Brazell v. Windsor*, 384 S.C. 512, 516, 682 S.E.2d, 824, 826 (2009) (“In our view, allowing a trial court to consider documents that are incorporated by reference in the complaint but not actually attached thereto prevents a plaintiff from benefiting from his own oversight or from surviving a motion to dismiss by intentionally omitting documents upon which their claims are based.”). “Such a motion may not be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case.” *Hobbs*, 394 S.C. at 148-49, 714 S.E.2d at 539 (citing *Doe v. Marion*, *supra*). “The question is whether, in the light most favorable to the plaintiff and with every doubt resolved in his behalf, the complaint states any valid claim for relief. *Id.*”

“If, on a motion . . . to dismiss for failure of the pleading to state facts sufficient to constitute a cause of action, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.” Rule 12, SCRPC. Under Rule 56, SCRPC, “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact[, then] the moving party is entitled to a judgment as a matter of law.” *Patterson v. Witter*, 425 S.C. 213, 226, 821 S.E.2d 677, 684 (2018) (quoting Rule 56(c), SCRPC). “In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to

the nonmoving party.” *Patterson*, 425 S.C. at 226, 821 S.E.2d at 684 (quoting *Pye v. Estate of Fox*, 369 S.C. 555, 563, 633 S.E.2d 505, 509 (2006) (citations omitted)). “Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.” *Patterson*, 425 S.C. at 226, 821 S.E.2d at 684 (quoting *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 653, 661 S.E.2d 791, 796 (2008) (quoting *Middleborough Horizontal Prop. Regime Council of Co-Owners v. Montedison S.p.A.*, 320 S.C. 470, 479, 465 S.E.2d 765, 771 (Ct. App. 1995))).

ANALYSIS

“A plaintiff in a legal malpractice action must establish four elements: (1) the existence of an attorney-client relationship, (2) a breach of duty by the attorney, (3) damage to the client, and (4) proximate causation of the client's damages by the breach. *RFT Mgmt. Co., L.L.C. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 331, 732 S.E.2d 166, 170 (2012) (citing *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009); *Smith v. Haynsworth, Marion, McKay & Geurard*, 322 S.C. 433, 435 n.2, 472 S.E.2d 612, 613 n.2 (1996)). Similarly, “[t]o establish a claim for breach of fiduciary duty, the plaintiff must prove (1) the existence of a fiduciary duty, (2) a breach of that duty owed to the plaintiff by the defendant, and (3) damages proximately resulting from the wrongful conduct of the defendant.” *RFT Mgmt. Co.*, 399 S.C. at 335-36, 732 S.E.2d at 173 (citing *Moore v. Moore*, 360 S.C. 241, 599 S.E.2d 467 (Ct. App. 2004), and *Spence v. Wingate*, 395 S.C. 148, 158, 716 S.E.2d 920, 926 (2011) (“Our courts have long recognized that an attorney-client relationship is, by its very nature, a fiduciary relationship.”))

The Lawyer Defendants move for dismissal based upon Judge Nicholson’s August 11, 2017 Order and deficiencies in the Plaintiff’s expert affidavit. The Court finds the reasoning in Judge Nicholson’s Order persuasive. In particular, the Plaintiff’s allegations mirror those of other absent

class member plaintiffs who filed the prior cases which Judge Nicholson decided. Plaintiff even alleges his claim “overtly” depends on the outcome of the appeal of Judge Nicholson’s Order. That appeal was decided in the Lawyer Defendants’ favor.

Here, the Lawyer Defendants argue:

- I. The Court of Appeals’ decision is fatal to the Plaintiff’s claim because he alleges his “complaint overtly depends on the outcome of an appeal presently pending in the South Carolina Court of Appeals,” which affirmed Judge Nicholson’s August 11, 2017 Order granting the Lawyer Defendants summary judgment;
- II. The Plaintiff has failed to allege facts establishing an attorney-client or other fiduciary relationship existed between the Lawyer Defendants and the Plaintiff, who was an unnamed class members; and
- III. The Plaintiff has failed to allege any damages proximately caused by the Lawyer Defendants.

The Court will address each of these arguments in turn.

I. The Effect of the Outcome of the Appeal Referenced in the Complaint.

In his Complaint, the Plaintiff alleges his claim “overtly depends on the outcome of an appeal presently pending in the South Carolina Court of Appeals.” (Compl. ¶ 15.)

“It is well settled that parties are judicially bound by their pleadings unless withdrawn, altered or stricken by amendment or otherwise.” *Charleston Cnty. Sch. Dist. v. Laidlaw Transit, Inc.*, 348 S.C. 420, 425, 559 S.E.2d 362, 364 (Ct. App. 2001) (quoting *Postal v. Mann*, 308 S.C. 385, 387, 418 S.E.2d 322, 323 (Ct. App. 1992)). “Any allegations, statements, or admissions contained in a pleading are conclusive against the pleader, and a party cannot subsequently take a contrary or inconsistent position.” *Id.*

As noted by the record, the appeal which the Plaintiff references in his Complaint was the appeal of Judge Nicholson’s August 11, 2017 Order granting the Lawyer Defendants summary judgment in eight lawsuits filed on behalf of ten other plaintiffs, nearly all of whom also alleged to

be absent members of the same classes involved in the class action litigation against the Diocese. That appeal concluded with a per curiam Order affirming Judge Nicholson's Order. (Opinion, March 3, 2021, Appellate Case Number 2017-001996.) While the Plaintiff presented argument against Judge Nicholson's Order and the Court of Appeals decision affirming it, he is bound by his pleadings. Because the Plaintiff alleges his claim depends on the outcome of appeal, which was resolved in favor of the Lawyer Defendants, by his own admission the Plaintiff has no claim.

II. Lack of Attorney-Client or Fiduciary Relationship

The Lawyer Defendants also contend Plaintiffs' claims are barred because there was no attorney-client or fiduciary relationship with the Plaintiffs. In response, the Plaintiff contends an attorney-client or fiduciary relationship arose between the Lawyer Defendants and the Plaintiff at the time the lawyers filed the class action complaints in the Underlying Case. Alternatively, the Plaintiff alleges the Lawyer Defendants assumed a fiduciary duty. I find the reasoning set forth in Judge Nicholson's Order persuasive.

A. The Majority Rule.

The majority rule in the United States appears to be that class counsel does not represent unnamed, absent class members unless and until the class is certified. *Bobryk v. Durand Glass Mfg. Co.*, No. 12-cv-5360 (NLH/JS), 2013 U.S. Dist. LEXIS 145758, at *29-31 (D.N.J. Oct. 9, 2013) (noting "the majority of case law that holds that the attorney-client relationship with putative class members 'does not begin until the class has been certified and the time for opting out by a potential member of the class has expired'."); *Palumbo v. Tele-Communications, Inc.*, 157 F.R.D. 129, 133 (D.D.C. 1994) (stating class certification confers status of litigant on absent class members and creates attorney-client relationship with class counsel); *Garret v. Metro Life Ins. Co.*, No. 95-CIV-2406, 1996 WL 325725, at *6 (S.D.N.Y. June 12, 1996) ("before class certification, the putative

class members are not ‘represented’ by the class counsel.”); *Formento v. Joyce*, 168 Ill.App.3d 429, 522 N.E.2d 312 (Ill. App. Ct. 1988) (finding that defendant attorneys owed no duty to plaintiffs, the unnamed members of an uncertified class action); *Restatement (Third) of the Law Governing Lawyers* § 99 cmt. 1 (“prior to certification, only those class members with whom the lawyer maintains a personal client-lawyer relationship are clients”); *Resnick v. Am. Dental Ass’n*, 95 F.R.D. 372, 376 (N.D. Ill. 1982) (“Without question the unnamed class members, once the class has been certified, are ‘represented by’ the class counsel.”); *Gillespie v. Scherr*, 987 S.W.2d 129, 1998 Tex. App. LEXIS 8089 (Tex. App. 1998) (“[W]e have found no case finding an implied attorney-client relationship to exist before class certification between an attorney who files the class action and any unnamed class members”).

The majority rule is persuasive to this Court for several reasons. The identity of absent class members and the exact nature of their interests in the action is not known until class certification. 3 H. Newberg, *Class Actions* § 5050 (1977); *United States Parole Comm’n v. Geraghty*, 445 U.S. 388, 415, 100 S.Ct. 1202, 1218, 63 L Ed.2d 479, 502, 1980 U.S. LEXIS 12, *49, 29 Fed. R. Serv. 2d (Callaghan) 20 (U.S. Mar. 19, 1980). Similarly, in federal court, class counsel is appointed by the class action court when the class is certified. Fed. R. Civ. P. 23(c)(1)(B) (“An order that certifies a class action must define the class and the class claims, issues, or defenses, and must appoint class counsel under Rule 23(g)”). Under Rule 23(a), SCRCF, the heading specifies that there is no class action until the Court finds certain “Prerequisites”.⁶ Only after class certification can the absent class members be bound to the outcome of the case.

⁶ When the Underlying Case was filed and adjudicated, South Carolina had enacted Rule 23, SCRCF, drawn principally from Federal Rule 23.

In his Complaint, the Plaintiff alleges, “In pleading that class action, as a matter of law the Richter defendants assumed fiduciary duties to the Plaintiff[.]” (Compl. ¶ 15.) He later alleges fiduciary obligations “imposed by law on the Richter Defendants when they (a) pleaded a class defined so as to include the Plaintiff, and then (b) when the Richter defendants chose to reach a class settlement with a class defined so as to include the Plaintiff.” He also argues he was intentionally omitted from the class notice procedure. Notably, the Plaintiff does not allege the Lawyer Defendants failed to follow the court-approved notice procedure or to follow the class action court’s Orders. He alleges simply that the class as presented, and the notice plan, as designed, was “known to be under-inclusive.”

At the time the class definitions and notice plan were presented to the class action court, the class had not been certified. It appears from the parties’ submissions that in the Underlying Case, the Primary and Consortium Classes were not certified until January 19, 2007, when Judge Goodstein entered the Order Certifying Classes and Giving Preliminary Approval to Settlement. Prior to that, a decision was made between October 2006 and January 2007 to change the scope of the notice and that decision was made before Judge Goodstein signed the Order Certifying Classes and Giving Preliminary Approval to Settlement. Therefore, the very basis of Plaintiff’s Complaint took place *before* the classes in the Underlying Case were certified – at a point in time when an attorney-client relationship did not exist between the Plaintiff and the Lawyer Defendants.

Applying the majority rule to the facts of the Underlying Case, there was no attorney-client relationship between the Lawyer Defendants and the Plaintiffs at the time the alleged duties were allegedly breached. Absent an attorney-client relationship, the Plaintiffs’ claims for professional negligence must fail.

B. *Premium Investment Corp. v. Green*

Plaintiff posits that *Premium Investment Corp. v. Green*, *supra*, supports his contention that the attorney-client relationship and its attendant duties arose by operation of law when the Lawyer Defendants filed the class action complaints in the Underlying Cases. Plaintiff's counsel presented this same argument in the prior eight cases to no avail. The Court sees no reason to adopt a different approach here. *Premium Investment Corp.* was a constructive class certification case that predated Rule 23, SCRCP. In contrast, the Underlying Case at issue here was an actual certification case under Rule 23.

In *Premium Investment Corp.*, a lawyer filed a complaint on behalf of a homeowner "individually and as a representative of a class of property owners" against the developer of a subdivision. After a hearing, the trial court entered an order finding that the homeowner brought two class actions: (i) as a member of a class owning property adjoining the lake, and (ii) as a member of a class owning property in the subdivision. The court found in favor of the plaintiffs and enjoined the developer. The developer appealed, and the case settled while on appeal.

Years later, Premium Investment Corp., a property owner in the subdivision, sued the homeowner and the lawyer to recover the proceeds of the two settlements. The Court of Appeals affirmed the trial court's order granting relief to Premium Investment. In considering whether the underlying case was a class action the Court of Appeals agreed that "court certification of the class is an important step in a class action," observing:

It represents a judicial finding that injured parties other than the named plaintiff exist. It also provides a definition by which they can be identified. Certification identifies and sharpens the interests of unnamed class members in the outcome; only thereafter will they be bound by the outcome. After certification, class members can be certain that the action will not be settled or dismissed without appropriate notice. *United States Parole Commission v. Geraghty*,

445 U.S. 388, 415 n. 8, 100 S. Ct. 1202, 1218 n. 8, 63 L. Ed. (2d) 479 (1980) (Powell, J., dissenting).

283 S.C. 470, 324 S.E.2d at 76.

The Court of Appeals struggled to determine what constituted class certification where there was no formal or actual class certification and concluded that in the case at hand, where there was no formal certification order, the trial court had “constructively certified” the class when it identified “those persons with an interest in and entitled to benefit” from the action. 283 S.C. 471, 324 S.E.2d at 76. It found that certification had occurred simultaneously with the judgment on the merits.

Thus, *Premium Investment Corp.* stands for the proposition that where there is a class that has not been formally certified (like the formal certification contemplated in Rule 23, SCRCP), a lawyer’s and a class representative’s duties to absent class members arise with the constructive certification of the class. *Premium Investment Corp.* is in line with the majority rule that an attorney-client relationship does not arise between absent class members and class counsel until class certification. Since its adoption in 1985, Rule 23(a) has required specific prerequisites to certification and pursuit of a class action, while *Premium Investment Corp.*, which predates Rule 23, allows for constructive certification.

The materials referenced in the Complaint and submission of the parties leave no question that Judge Goodstein observed and adhered to Rule 23, SCRCP, during the Underlying Case, and nowhere does the Plaintiff allege or suggest the Underlying Case involved constructive certification. Therefore, constructive certification is not at issue before me, and *Premium Investment Corp.* does not apply.

C. Assumption of Fiduciary Duties

In an effort to save his claim, the Plaintiff alleges the Lawyer Defendants assumed fiduciary

duties by filing the class action complaints. That argument fails as a matter of law.

The question of whether a duty exists is an issue of law. *Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Sols.*, 388 S.C. 394, 400, 697 S.E.2d 551, 554 (2010); *see also RFT Mgmt. Co., supra*.

1. Fiduciary Duty

“A confidential or fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience is bound to act in good faith and with due regard to the interests of the one imposing the confidence.” *RFT Mgmt. Co., L.L.C. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 335, 732 S.E.2d 166, 173 (2012). The Complaint contains no indication the Plaintiff imposed any degree of confidence in the Lawyer Defendants—or that he has ever corresponded with them at all. Rather, the Plaintiff alleges the alleged fiduciary duties derive from the Lawyer Defendants filing the class action complaints and making certain decisions prior to class certification. As discussed above, those filings did not create any attorney-client relationship. The Plaintiff does not allege any fact or circumstance outside of an attorney-client relationship giving rise to his fiduciary duty claim. Therefore, while he labels the duties as “fiduciary” and “assumed,” they are duplicative of the attorney-client duties he alleges. *See RFT Mgmt, supra*. As stated above, the Lawyer Defendants had no attorney-client relationship with the Plaintiff and therefore owed him no duty as his attorney.

2. Voluntary Assumption of Fiduciary Duties to Absent Class Members

In an effort to circumvent the impact of there being no attorney-client relationship, the Plaintiff alleges the Lawyer Defendants assumed fiduciary duties toward him. While creative, that argument is not persuasive.

The question of whether a duty exists is an issue of law. *Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Sols.*, 388 S.C. 394, 400, 697 S.E.2d 551, 554 (2010); see also *RFT Mgmt. Co.*, *supra*. When a defendant—here, an attorney—is alleged to have assumed a duty, the issue is a mixed one of law and fact. *Moore v. Weinberg*, 373 S.C. 209, 221, 644 S.E.2d 740, 746 (Ct. App. 2007). “First, the court must determine, as a matter of law, whether the law recognizes a particular duty...If there is no duty, the defendant is entitled to a judgment as a matter of law.” *Id.* (citing *Ellis v. Niles*, 324 S.C. 223, 479 S.E.2d 47 (1996)).

In support of his argument, Plaintiff cites *Roundtree Villas Assn. v. 4701 Kings Corp.* and *Sherer v. James*. In *Roundtree Villas*, a property owners association sued six different defendants for construction defects. One of the defendants was a lender that had accepted deeds from the builder of the condominium building in lieu of foreclosure. The lender formed a limited liability company to take title to the units the builder had not sold, as well as the rights and common elements of the condominium project. *Roundtree Villas Assn. v. 4701 Kings Corp.*, 282 S.C. 415, 420, 321 S.E.2d 46, 49 (1984). The jury entered a general verdict of \$300,000 against two of the defendants, including the lender, and the lender appealed. 282 S.C. at 419, 321 S.E.2d 46, 49. The Supreme Court held that while the lender was not liable for negligence on the part of any of the other defendants, it assumed a duty of care when it took over the project: “[W]hen the Lender, in effect, took over the project and undertook to market the units through a corporation it had created and when it undertook to repair defects which existed to promote sales, a common law duty to use due care arose.” *Id.* at 423, 321 S.E.2d at 51 (citing Restatement (Second) of Torts § 323).

In *Sherer*, a plaintiff filed a medical malpractice claim alleging an amputation could have been avoided had the pediatrician, who was called on the phone, not failed to accurately diagnose the patient’s condition. The Court recognized, “At common law, when there is no duty to act but

an act is voluntarily undertaken, the actor assumes a duty to use due care.” *Sherer v. James*, 290 S.C. 404, 406, 351 S.E.2d 148, 150 (1986) (citing *Roundtree Villas, supra.*). The Court explicated on the history of the assumed duty theory and its roots in Section 323(a) of the Restatement. The Court held that under that section, an assumed duty is “a duty on one who undertakes to render services for the protection of another *to use due care* to avoid increasing the risk of harm.” 290 S.C. at 407-08, 351 S.E.2d at 150 (emphasis in provided) (citing *Curry v. Summer*, 136 Ill. App. 468, 91, Ill. Dec. 365, 371, 483 N.E.2d 711, 717 (1985)). The Court emphasized that an assumed duty argument does not relax the burden of proof for a plaintiff in a professional malpractice case. 290 S.C. at 408, 351 S.E.2d at 151 (“We are unwilling to relax the plaintiff’s burden of proof in a medical malpractice case. *See Hanselmann v. McCardle, supra.* A defendant physician is entitled to put the medical malpractice plaintiff to proof equally as stringent as that required of plaintiffs in other negligence actions.”).

In a more recent opinion, the Supreme Court explained,

“The recognition of a voluntarily assumed duty in South Carolina jurisprudence is rooted in section 323 of the Restatement (Second) of Torts (1965),² which provides:

One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other’s person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if

- (a) his failure to exercise such care increases the risk of such harm, or
- (b) the harm is suffered because of the other’s reliance upon the undertaking.

Under section 323, the voluntary undertaking does not create a duty of care unless (a) the undertaker’s failure to exercise reasonable care in performing the undertaking increased the risk of harm to the plaintiff, or (b) the plaintiff suffered harm because she relied upon the undertaking.

Wright v. PRG Real Estate Mgmt., 426 S.C. 202, 213, 826 S.E.2d 285, 290-91 (2019) (citing *Roundtree Villas, supra* (holding a common law duty of care arose under section 323 when a lender undertook to market condominium units and to repair defects in those units); and *Sherer, supra* (“Section 323(a) simply establishes a duty on one who undertakes to render services for the protection of another to use due care to avoid increasing the risk of harm. We agree with this rationale.”)).

Applying these cases to the action at bar, the Court finds the Plaintiff’s assumed duty theory is contrary to South Carolina law. Plaintiff alleges the Lawyer Defendants voluntarily assumed fiduciary duties by pleading the class action, by choosing how to define the classes, and by negotiating the class settlement. (Compl. ¶¶ 15, 17.) First, under the test set forth in section 323 of the Restatement, the Plaintiff has failed to allege any “physical harm.” He alleges only monetary damages. Second, the Plaintiff does not allege or indicated in any way that he relied on the Lawyer Defendants’ alleged undertaking, another key component of the test under section 323. Third, the authority in which Plaintiff relies is not for fiduciary duties but rather a duty of due care not to cause physical injury. Furthermore, as noted above, the fiduciary obligations which Plaintiff alleges the Lawyer Defendants assumed are duplicative of the duties “inherent in the attorney-client relationship,” and they arise out of the same facts as his professional negligence theory. *See RFT Mgmt, supra*. Plaintiff has provided no authority supporting his argument that it is even possible for an attorney to “assume” fiduciary obligations to absent members of a purported class prior to class certification. Indeed, Plaintiff’s argument appears to be based on a misapprehension of *Premium Investment* and Rule 23.

For these reasons, the Court finds the Plaintiff’s argument that the Lawyer Defendants assumed fiduciary duties toward him fails as a matter of law.

III. Lack of Proximate Cause

In addition to other elements, the cause of action Plaintiff alleges requires proof of proximate cause. *RFT Mgmt. Co., supra*.

The crux of the Plaintiff's claim is that he was omitted from the class action settlement, which now precludes him from recovering for abuse he alleges he suffered at the hands of the Diocese. Even viewing the parties' submissions in the light most favorable to him, the Plaintiff has failed to articulate damages sustained due to the alleged legal malpractice. While the Plaintiff alleges the Lawyer Defendants "omitted" him from the settlement, his arguments and submissions in opposition to the Lawyer Defendants' motions to dismiss attempting to clarify his position show his claim depends on him being precluded from recovering from the Diocese. Those submissions and argument highlight the fundamental flaw in the Plaintiff's claim. During the hearing, Plaintiff's counsel argued,

What we now know is that the Court interprets the orders of the class action to say "You don't get the relief of the class action, and here's the damage to you and to the absent class members. You now don't get the waiver of defense to your claim against the diocese. You got that benefit in class action to limitations charitable immunity." These are considerable defenses the diocese has. So, if I can make a claim against the diocese now -- which is questionable for each of my 304, and 305, and [Chimento] plaintiffs, I may encounter a defense that is fatal to my claim.

When we get in the weeds on those claims, we'll know that -- but they -- I now have to confront those defenses only because the lawyers chose not to give them notice when they wanted to make sure they got paid first, and in full, and changed the class settlement to provide that for themselves.

(Tr. p. 35, line 22 – p. 36, line 6.) Contrary to Plaintiff's argument, the defense of charitable immunity does not apply to intentional torts like the sexual abuse claim Plaintiff alleges to have against the Diocese, *Doe v. Charleston*, 445 S.C. 31, 34, 911 S.E.2d 323, 324 (2025), and the Court is not required to accept as true Plaintiff's inaccurate legal conclusions. If anything, the Plaintiff's allegations, submissions, and arguments demonstrate that he is in the same position as he would be

in had there been no class action case at all. Absent damages, the Plaintiff has no claim against the Lawyer Defendants. *RFT Mgmt. Co., supra*.

IV. Law of the Case

In an April 30, 2024 filing, Plaintiff also argues that a December 17, 2013 Order from Judge Dickson is now the law of the case. The Order Plaintiff references was entered in the Underlying Case, not the case at bar. The Lawyer Defendants were not parties to the Underlying Case. Therefore, the law of the case doctrine does not apply. *Builders Mut. Ins. Co. v. Bob Wire Elec., Inc.*, 424 S.C. 161, 165, 817 S.E.2d 807, 809 (Ct. App. 2018) (“[T]he doctrine of ‘law of the case’ is just that—the law of the case in which it was made[.]”) (citing *Lifschultz Fast Freight, Inc. v. Haynsworth, Marion, McKay & Guerard*, 334 S.C. 244, 245, 513 S.E.2d 96, 96-97 (1999) (law of the case doctrine “applies only to subsequent proceedings in the same litigation following an appellate decision”); *Flexon v. PHC-Jasper, Inc.*, 413 S.C. 561, 571-72, 776 S.E.2d 397, 403 (Ct. App. 2015) (collecting cases and noting law of case doctrine prohibits matters decided on appeal from being relitigated in the trial court in the same case). *See also Messenger v. Anderson*, 225 U.S. 436, 444, 32 S. Ct. 739, 56 L. Ed. 1152 (1912) (“[T]he phrase, ‘law of the case,’ as applied to the effect of previous orders on the later action of the court rendering them in the same case, merely expresses the practice of courts generally to refuse to reopen what has been decided, not a limit to their power.”); Wright & Miller, Fed. Prac. & Proc. § 4478 (2d. ed.) (law of the case rules “do not apply between separate actions”).

CONCLUSION

Having considered the motions made and filed by the Lawyer Defendants, the supporting and opposing memoranda submitted by the parties, the arguments of counsel, and applicable law, I find and conclude the Lawyer Defendants’ motions should be granted.

NOW, THEREFORE, IT IS ORDERED that all claims alleged against Defendants Lawrence E. Richter, Jr., David A. Haller and Richter and Haller, LLC should be, and hereby are, dismissed with prejudice.

IT IS SO ORDERED.

[JUDGE'S SIGNATURE ON FOLLOWING PAGE]



Charleston Common Pleas

Case Caption: Robert Chimento VS Lawrence E Richter Jr , defendant, et al

Case Number: 2018CP1005802

Type: Order/Dismissal

So Ordered

William C. McMaster, III

Electronically signed on 2025-12-05 14:47:14 page 22 of 22

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP1005802

Robert Chimento
PLAINTIFF(S)

Lawrence E Richter, Jr et al
DEFENDANT(S)

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.
- ☐ **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
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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:

Plaintiff's Motion to Alter or Amend Judgment pursuant to Rule 59, SCRPC, was filed with this Court on December 15, 2025. After careful consideration of the arguments and filings of counsel, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded, and further finds no error of law or fact not appropriately considered. Therefore, Plaintiff's Motion is DENIED.

It is so Ordered.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/30/2025 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Robert Chimento VS Lawrence E Richter Jr , defendant, et al

Case Number: 2018CP1005802

Type: Order/Electronic Form 4

So Ordered

William C. McMaster, III

Electronically signed on 2025-12-30 11:16:41 page 3 of 3

2019-CP-10-5892

Orders on Motions

2:19-cv-03409-SAL Doe 304 v.

Richter et al

FLORENCE, JURY, LC 1

U.S. District Court

District of South Carolina

FILED
2020 FEB 20 PM 3:15
JULIE A. HARRINGTON
CLERK OF COURT

Notice of Electronic Filing

The following transaction was entered on 2/20/2020 at 12:31 PM EST and filed on 2/20/2020

Case Name: Doe 304 v. Richter et al

Case Number: 2:19-cv-03409-SAL

Filer:

Document Number: 11 (No document attached)

Docket Text:

TEXT ORDER granting [5] Joint Motion to Remand to State Court. Under 28 U.S.C. § 1441(a), a defendant is permitted to remove a case to federal court if the court would have original jurisdiction over the matter. District courts have original jurisdiction in cases "where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between... citizens of different states." 28 U.S.C. § 1332(a)(1). "The burden of establishing federal jurisdiction is placed upon the party seeking removal," Mulcahey v. Columbia Organic Chems. Co., Inc., 29 F.3d 148, 151 (4th Cir. 1994). The forum defendant rule, 28 U.S.C. § 1441(b)(2), provides that "[a] civil action otherwise removable solely on the basis of [diversity jurisdiction] may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought." Defendants Bishop of Charleston, a Corporation Sole and Robert E. Guglielmone, Bishop of Charleston--forum defendants--removed this action solely on the basis of diversity of citizenship, but claimed removal was proper because no defendants were served with the complaint at the time of the filing of the notice of removal. Defendants Lawrence Richter, Jr., David K. Haller, and Richter & Haller LLC moved to remand the case to state court, arguing several grounds including that the removal by forum defendants was improper. The court notes the modern trend of finding that the forum defendant rule bars removal of such cases, notwithstanding the timing of service, as recognized by the Honorable Richard M. Gergel in In re Lipitor (Atorvastatin Calcium) Marketing, Sales Practices and Products Liability Litigation, MDL No. 2:14-mn-02502, 2016 WL 7338594, at *2 (D.S.C. Nov. 21, 2016). Neither Defendants Bishop of Charleston, a Corporation Sole and Robert E. Guglielmone, Bishop of Charleston, nor Plaintiff responded in opposition to the motion to remand. And, on January 17, 2020, Defendants Bishop of Charleston, a Corporation Sole and Robert E. Guglielmone, Bishop of Charleston submitted a response in support of the motion to remand, consenting to the remand of the case to the Court of Common Pleas for Charleston County. In light of the circumstances, the requirement to resolve all doubts regarding the propriety of removal in favor of retained state court jurisdiction, and the consent to remand, the court GRANTS the motion to remand

and REMANDS the case to the Court of Common Pleas for Charleston County. As a result, [9] Motion to Stay is rendered MOOT. Signed by the Honorable Sherri A. Lydon on 2/20/2020. (hcic,)

TRUE CERTIFIED COPY:
ROBIN L. BLUME, CLERK
BY: s/H.Ciccolella, Deputy Clerk,
2/20/2020



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2019-CP-10-5892

JANE DOE 304,

Plaintiff,

v.

LAWRENCE E. RICHTER, JR.,
DAVID K. HALLER,
RICHTER AND HALLER, LLC,
THE BISHOP OF CHARLESTON, A
CORPORATION SOLE; and
ROBERT E. GUGLIEMONE, BISHOP OF
CHARLESTON,

Defendants.

ORDER

THIS MATTER came before the Court on the Joint Motion to Stay Case filed by Plaintiff Jane Doe 304 and Defendants Lawrence E. Richter, Jr.; Richter & Haller, LLC; and David K. Haller. The Court is advised that the only other parties to the case, Defendants the Bishop of Charleston, a corporation sole, and Robert E. Guglielmone, Bishop of Charleston, do not oppose the motion. The Court has reviewed the motion, arguments of counsel, and applicable law.

WHEREFORE, for good cause shown, it is hereby ordered that this case is STAYED pending final appellate disposition of *John Doe 2, et al. v. Bishop of Charleston, et al.*, Appellate Case No. 2017-001996.

IT IS SO ORDERED.

The Honorable Jennifer B. McCoy
Chief Administrative Judge
Ninth Judicial Circuit

_____, 2020
Charleston, South Carolina



Charleston Common Pleas

Case Caption: Jane Doe 304 , plaintiff, et al VS Lawrence E Richter Jr , defendant, et al
Case Number: 2019CP1005892
Type: Order/Stay

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2020-06-08 09:27:18 page 2 of 2

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP1005892

Jane Doe 304 et al
PLAINTIFF(S)

Lawrence E Richter, Jr et al
DEFENDANT(S)

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.
- ☐ **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
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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:

Defendants Lawrence E. Richter, David K. Haller, and Richter & Haller, LLC's Motion to Dismiss came before this Court on October 7, 2025. Gregg Meyers was present on behalf of the Plaintiff. Benjamin Bruner was present on behalf of Defendants Lawrence E. Richter and Richter & Haller, LLC. John Cuttino was present on behalf of Defendant David K. Haller. After careful consideration of the materials filed and the arguments of the parties, Defendants' Motions to Dismiss are GRANTED. This Court agrees with the reasoning contained in Judge J. C. Nicholson's Order filed August 11, 2017 in connection to Case No. 2010-CP-10-04175, which discusses and disposes of the same causes of action asserted in this case. Defense counsel is to prepare a formal Order within 10 days.

It is so Ordered.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/05/2025 .

Bishop of Charleston

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Jane Doe 304 , plaintiff, et al VS Lawrence E Richter Jr , defendant, et al
Case Number: 2019CP1005892
Type: Order/Electronic Form 4

So Ordered

William C. McMaster, III

Electronically signed on 2025-11-05 14:41:18 page 3 of 3

JULIE J. ARMSTRONG

CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258

RETURN SERVICE REQUESTED



clerkofcourt.charlestoncounty.org

Gregg E. Meyers
114 4Th Ave NW
Byron, MN 55920

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRCP

Order/Defnts Motion to Dismiss is Granted

CASE NO: 2019CP1005892

Jane Doe 304 , plaintiff, et al VS Lawrence E Richter Jr , defendant, et al

This judgment was entered on the 06th day of November, 2025, and notice mailed first class on Friday, November 07, 2025, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at <http://clerkofcourt.charlestoncounty.org> or obtain a copy in person at the Clerk of Court's Office during regular Charleston County business hours.

Record on Appeal - 0037

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Jane Doe 304,
Plaintiff,

C/A No.: 2019-CP-10-5892

v.

**ORDER ON LAWYER DEFENDANTS'
MOTIONS TO DISMISS**

Lawrence E. Richter, Jr., David K. Haller,
Richter and Haller, LLC, The Bishop of
Charleston, a corporation Sole; and Robert E.
Gugliemone, Bishop of Charleston,
Defendants.

THESE MATTERS CAME BEFORE THE COURT for an in-person hearing at the Charleston County Courthouse on October 7, 2025, on motions of Defendants Lawrence E. Richter, Jr., David A. Haller and Richter and Haller, LLC (“the Lawyer Defendants”) to dismiss pursuant to Rule 12, SCRCP. At the hearing, Gregg E. Meyers, Esquire appeared on behalf of the Plaintiff. Benjamin C. Bruner, Esquire appeared on behalf of Defendants Lawrence E. Richter and Richter & Haller, LLC. John E. Cuttino, Esquire appeared on behalf of Defendant David K. Haller. After careful consideration of the materials filed and the arguments of the parties, the Court finds the Lawyer Defendants’ Motions to Dismiss should be GRANTED.

FACTUAL & PROCEDURAL BACKGROUND

This action is the tenth one filed in Charleston County against the Lawyer Defendants arising out of a 2007 class action settlement in which the Lawyer Defendants served as class counsel involving sexual abuse claims against the Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity (“the Diocese”). In this case, the Plaintiff does not allege any claim against the Diocese related to the sexual abuse she alleges to have suffered. Instead, she alleges a claim against the Lawyer Defendants for professional negligence and breach

of fiduciary duty in connection with their handling of the class action cases. Against the Diocese, the Plaintiff alleges only aiding and abetting breach of fiduciary duty.

In her Complaint, Jane Doe 304 alleges she was a non-resident of South Carolina and an absent class member in the underlying class action (“Underlying Case”) who was sexually abused by a priest of the Diocese of Charleston between 1959 and 1962. (Second Am. Compl. ¶¶ 1, 14, and 15.) She alleges the Lawyer Defendants “a. pled a class action in 2005, b. settled that class action in a 2006 mediation, c. sought by a 2006 motion a class certification that included a nationwide notice program, d. obtained class certification in 2007 from a South Carolina court after amending the notice program to eliminate nationwide notice. The classes defined in that action included a class of individuals who were sexually abused by persons employed by the Bishop of Charleston.” (Second Am. Compl. ¶ 17.)

Plaintiff was not one of the named parties in the underlying class action. Rather, she was an absent class member to whom the Lawyer Defendants “assumed” fiduciary duties “[i]n pleading the class action, as a matter of law[.]” (Second Am. Compl. ¶ 21.) Plaintiff further alleges, “Presently an order from a trial court maintains that no fiduciary duty was imposed by law on the [Lawyer Defendants] as to the plaintiff or any other absent class member, which order conflicts with other orders of other state trial courts, including the one who issued that order, so to that extent this complaint overtly depends on the outcome of an appeal presently pending in the South Carolina appellate courts. However, this complaint also alleges, and the record shows, that the [Lawyer Defendants] voluntarily assumed a fiduciary duty as to the plaintiff, which was breached.” *Id.*

The Order to which the Plaintiff refers is an August 11, 2017 Order by Judge Nicholson granting the Lawyer Defendants summary judgment in eight consolidated cases brought by

Plaintiff's counsel on behalf of ten other individuals.¹ The parties all acknowledge the appeal to which the Plaintiff refers is Appellate Case No. 2017-001996, in which the Court of Appeals affirmed Judge Nicholson's 2017 Order.² The record to which the Plaintiff refers in her Complaint is the record of various court filings in the Underlying Case.

Plaintiff filed her Complaint on November 10, 2019. (Second Am. Compl. at 1.) Although the Complaint alleges a cause of action for professional negligence, Plaintiff did not file an expert affidavit with her Complaint. Rather, she alleged, "Pursuant to S.C. Code § 15-36-100, this complaint will be timely amended to include an affidavit such as has already been provided in similar cases specifying the various negligent acts or omissions of the [Lawyer Defendants], and the factual basis of the negligent acts or omissions of the [Lawyer Defendants] which constitute the breach of fiduciary duty." (Second Am. Compl. ¶ 52.)

On December 9, 2019, the Diocese defendants removed the case to federal court. On December 23, 2019, while the case was still pending in federal court, the Plaintiff filed an amended Complaint together with a twelve-page expert affidavit from Michael J. Virzi. The Lawyer Defendants moved to remand the case to state court. On February 20, 2020, the District Court remanded the case back to the Court of Common Pleas for Charleston County.

On February 27, 2020, the Plaintiff filed an amended summons and second amended Complaint. On March 18, 2020, Defendant Haller moved to dismiss based upon Judge Nicholson's Order and the Plaintiff's failure to satisfy the expert affidavit requirement in S.C. Code Ann. 15-36-100. Haller attached Judge Nicholson's twenty-one-page August 11, 2017 Order and the notice of appeal to the motion as exhibits.

¹ C/A Nos. 2010-CP-10-5520, 2010-CP-10-7233, 2012-CP-10-5559, 2013-CP-10-3733, 2013-CP-10-4175, 2013-CP-10-4176, 2015-CP-10-5486, and 2016-CP-10-1632.

² The appeal did not reach the Supreme Court.

On March 6, 2020, Plaintiff served the amended summons and second amended Complaint on Defendants Richter and Richter & Haller, LLC. The Richter Defendants moved to dismiss on April 6, 2020, on the same grounds as Haller in addition to the statute of limitations.

On June 3, 2020, the parties jointly moved the Court “to stay this case in light of the similarity of issues presented in this case and a series of cases currently pending before the Court of Appeals on appeal from a grant of summary judgment in favor of all defendants, bearing the name *John Doe 2, et al. v. Bishop of Charleston, et al.*, Appellate Case No. 2017-001996. The moving parties believe that staying this case pending a final appellate decision will serve the interests of preserving judicial resources and efficiency, as any decision resulting from the appeal will have a significant effect on the issues in this case.” (Joint Motion, June 3, 2020.) The Circuit Court granted the motion and entered an Order on June 8, 2020 staying the case “pending final appellate disposition of *John Doe 2, et al. v. Bishop of Charleston, et al.*, Appellate Case No. 2017-001996.” (Order, June 8, 2020.)

On June 1, 2022, the Plaintiff submitted a twenty-three-page memorandum in opposition to the motions along with 275 pages of exhibits.³ In her brief, the Plaintiff argued her claims “arise out of the conduct of a class action lawsuit” where “[t]he [Lawyer Defendants] and their firm were class counsel.” (Pl.’s Consolidated Memorandum Opp. Defendants’ Motions, June 1, 2022, at 2.)

On April 30, 2024, Plaintiff filed a Notice of Supplemental Authority in opposition to the Lawyer Defendants’ motions together with fifty-nine pages of exhibits.

On June 24, 2021, the Court of Appeals issued the remittitur after affirming Judge Nicholson’s Order.

³ Plaintiff’s Consolidated Memorandum Opposing Defendants’ Motions, June 1, 2022.

On September 10, 2025, the Supreme Court reassigned the case to the undersigned.⁴ After being assigned to the case, the Court scheduled a hearing for October 7, 2025. Prior to the hearing, the Lawyer Defendants and the Plaintiff submitted additional briefing and other materials, including the record from the Underlying Case and the record from the appeal of Judge Nicholson's Order.

At the October 7th hearing, counsel for the parties appeared in person and argued the Lawyer Defendants' motions thoroughly. The Court noted the materials the Lawyer Defendants had provided (Tr. p. 5, lines 14 – p. 6, line 1, page 6, lines 7-10)), and both sides presented arguments based on the Complaint and additional materials they had submitted. For example, arguments on behalf of the Lawyer Defendants included the following,

- "I implore, your Honor, to read in detail the August 11, 2017 order granting summary judgment to the lawyer defendants." (Tr. p. 11, lines 2-4);
- "We have transcripts of these [class action settlement] hearings. This was not done behind closed doors in the conference room. The transcripts of these hearings we've provided many of the transcripts to your Honor, and - - and I want your Honor to read those to see the work that Judge Goodstein put into this -- this settlement and approving it and ensuring it was fair." (Tr. p. 11, lines 18-23);
- "Judge Nicholson rejected that in his well-reasoned decision. And I will note that on appeal in a per curiam decision, the Court of Appeals rejected the arguments to -- to overturn Judge Nicholson's order. In particular – in particular, the Court of Appeals affirmed that order based on the lack of a proximate cause." (Tr. p. 13, lines 8-13);
- Facts surrounding the March 2009 Orders of the Supreme Court and of the Class Action Court (Tr. p. 43, line 18 – p.45, line 14.); and
- "With the Court's permission, I -- I may look back in that folder and make sure all these transcripts are, in fact, uploaded, if that's okay with plaintiff's counsel." (Tr. p. 57, lines 17-20).

In response, Plaintiff's counsel argued, *inter alia*,

⁴ Order entered September 10, 2025 in Appellate Case 2020-001415.

- “And we also [briefed] all the questions pretty extensively in the three different cases, and submitted a number of materials to the Court, particularly in the [Chimento and] 304 filings. They were filed jointly. So appear in each case.” (Tr. p. 27, lines 1-5);
- “that issue could be addressed conceivable in the appeal that's going up now from the class action.” (Tr. p. 29, lines 12-13);
- “they ignored the Supreme Court's order in 2009 to close the class.” (Tr. p. 29, lines 14-15);
- “and then they reach this agreement to not give any notice to people outside the state.” (Tr. p. 30, lines 5-6);
- “This is what Judge Nicholson didn't talk. He decided he could ignore the two appellate decisions, Green and Premium Investment, and just focus on one paragraph in one of the complaints in Dorchester County.” (Tr. p. 31, lines 7-10);
- “So the weakness of Judge Nicholson's theory if the Court adopts it and -- you throw me out, but the weakness of Judge Nicholson's theory is that he didn't work with what the -- how the class was defined, how it was approved by the Court.” (Tr. p. 31, lines 11-15);
- “That is that in 2013, in response to a motion from class counsel, Judge Dixon, in Dorchester County, determined that the class action, in fact included people from out of state.” (Tr. p. 31, lines 20-23)
- “But now we have a problem where the class counsels your right for part of the class, totally excluded everybody who lived out state by changing the notice provision from nationwide notice to state-only notice. (Tr. p. 33, lines 2-6);
- “I did not plead that in the earliest cases because you have to ignore a couple of Supreme Court cases that impose that as a matter of law. But those have been ignored and -- by Judge Nicholson [and the] Court of Appeals.” (Tr. p. 36, lines 16-19.)
- “But listen, Judge, this is a very complicated record. These are pretty complicated civil procedure issues turning on very unusual questions of class action practice.” (Tr. p. 54, lines 8-11.); and
- “Judge, do you want the transcript as a prelude to our sufficiency on the jurisdiction?” (Tr. p. 58, lines 3-4).

Following the hearing, the Court took the motions under advisement.

On November 6, 2025, the Court entered a Form 4 Order granting the motions and directing, “Defense counsel is to prepare a formal Order within 10 days.” The Court subsequently extended defense counsel’s time to provide the proposed Order to permit time for defense counsel to receive the transcript of the hearing.

Having carefully considered the motions, the supporting and opposing memoranda and additional materials submitted by the parties, the arguments of counsel, and applicable law, I find and conclude the Lawyer Defendants’ motions should be granted.

STANDARD

“Under Rule 12(b)(6), SCRPC, a party may move to dismiss a complaint against him based on a failure to state facts sufficient to constitute a cause of action.” *Cole Vision Corp. v. Hobbs*, 394 S.C. 144, 148, 714 S.E.2d 537, 539 (2011) (citing *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006)). “In considering a motion to dismiss under Rule 12(b)(6), the circuit court must base its ruling solely on the allegations set forth in the complaint.” 394 S.C. at 148, 714 S.E.2d at 539 (citing *Doe v. Marion*, 373 S.C. 390, 645 S.E.2d 245 (2007)). The court may also consider documents incorporated by reference or attached to the complaint when considering a Rule 12(b)(6) motion. *Brazell v. Windsor*, 384 S.C. 512, 516, 682 S.E.2d, 824, 826 (2009) (“In our view, allowing a trial court to consider documents that are incorporated by reference in the complaint but not actually attached thereto prevents a plaintiff from benefiting from his own oversight or from surviving a motion to dismiss by intentionally omitting documents upon which their claims are based.”). “Such a motion may not be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case.” *Hobbs*, 394 S.C. at 148-49, 714 S.E.2d at 539 (citing *Doe v. Marion*, *supra*). “The question is whether, in the

light most favorable to the plaintiff and with every doubt resolved in his behalf, the complaint states any valid claim for relief. *Id.*

“If, on a motion . . . to dismiss for failure of the pleading to state facts sufficient to constitute a cause of action, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.” Rule 12, SCRCPP. Under Rule 56, SCRCPP, “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact[, then] the moving party is entitled to a judgment as a matter of law.” *Patterson v. Witter*, 425 S.C. 213, 226, 821 S.E.2d 677, 684 (2018) (quoting Rule 56(c), SCRCPP). “In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party.” *Patterson*, 425 S.C.at 226, 821 S.E.2d at 684 (quoting *Pye v. Estate of Fox*, 369 S.C. 555, 563, 633 S.E.2d 505, 509 (2006) (citations omitted)). “Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.” *Patterson*, 425 S.C.at 226, 821 S.E.2d at 684 (quoting *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 653, 661 S.E.2d 791, 796 (2008) (quoting *Middleborough Horizontal Prop. Regime Council of Co-Owners v. Montedison S.p.A.*, 320 S.C. 470, 479, 465 S.E.2d 765, 771 (Ct. App. 1995))).

ANALYSIS

“A plaintiff in a legal malpractice action must establish four elements: (1) the existence of an attorney-client relationship, (2) a breach of duty by the attorney, (3) damage to the client, and (4) proximate causation of the client's damages by the breach. *RFT Mgmt. Co., L.L.C. v. Tinsley &*

Adams L.L.P., 399 S.C. 322, 331, 732 S.E.2d 166, 170 (2012) (citing *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009); *Smith v. Haynsworth, Marion, McKay & Geurard*, 322 S.C. 433, 435 n.2, 472 S.E.2d 612, 613 n.2 (1996)). Similarly, “[t]o establish a claim for breach of fiduciary duty, the plaintiff must prove (1) the existence of a fiduciary duty, (2) a breach of that duty owed to the plaintiff by the defendant, and (3) damages proximately resulting from the wrongful conduct of the defendant.” *RFT Mgmt. Co.*, 399 S.C. at 335-36, 732 S.E.2d at 173 (citing *Moore v. Moore*, 360 S.C. 241, 599 S.E.2d 467 (Ct. App. 2004), and *Spence v. Wingate*, 395 S.C. 148, 158, 716 S.E.2d 920, 926 (2011) (“Our courts have long recognized that an attorney-client relationship is, by its very nature, a fiduciary relationship.”))

The Lawyer Defendants move for dismissal based upon Judge Nicholson’s August 11, 2017 Order and deficiencies in the Plaintiff’s expert affidavit. The Court finds the reasoning in Judge Nicholson’s Order persuasive. In particular, the Plaintiff’s allegations mirror those of other absent class member plaintiffs who filed the prior cases which Judge Nicholson decided. Plaintiff even alleges her claim “overtly” depends on the outcome of the appeal of Judge Nicholson’s Order. That appeal was decided in the Lawyer Defendants’ favor.

Here, the Lawyer Defendants argue:

- I. The Court of Appeals’ decision is fatal to the Plaintiff’s claim because he alleges her “complaint overtly depends on the outcome of an appeal presently pending in the South Carolina Court of Appeals,” which affirmed Judge Nicholson’s August 11, 2017 Order granting the Lawyer Defendants summary judgment;
- II. The Plaintiff has failed to allege facts establishing an attorney-client or other fiduciary relationship existed between the Lawyer Defendants and the Plaintiff, who was an unnamed class members; and
- III. The Plaintiff has failed to allege any damages proximately caused by the Lawyer Defendants.

The Court will address each of these arguments in turn.

I. The Effect of the Outcome of the Appeal Referenced in the Complaint.

In her Complaint, the Plaintiff alleges her claim “overtly depends on the outcome of an appeal presently pending in the South Carolina Court of Appeals.” (Second Am. Compl. ¶ 21.)

“It is well settled that parties are judicially bound by their pleadings unless withdrawn, altered or stricken by amendment or otherwise.” *Charleston Cnty. Sch. Dist. v. Laidlaw Transit, Inc.*, 348 S.C. 420, 425, 559 S.E.2d 362, 364 (Ct. App. 2001) (quoting *Postal v. Mann*, 308 S.C. 385, 387, 418 S.E.2d 322, 323 (Ct. App. 1992)). “Any allegations, statements, or admissions contained in a pleading are conclusive against the pleader, and a party cannot subsequently take a contrary or inconsistent position.” *Id.*

As noted by the record, the appeal which the Plaintiff references in her Complaint was the appeal of Judge Nicholson’s August 11, 2017 Order granting the Lawyer Defendants summary judgment in eight lawsuits filed on behalf of ten other plaintiffs, nearly all of whom also alleged to be absent members of the same classes involved in the class action litigation against the Diocese. That appeal concluded with a per curiam Order affirming Judge Nicholson’s Order. (Opinion, March 3, 2021, Appellate Case Number 2017-001996.) While the Plaintiff has presented argument against Judge Nicholson’s Order and the Court of Appeals decision affirming it, she is bound by her pleadings. Because the Plaintiff alleges her claim depends on the outcome of appeal, which was resolved in favor of the Lawyer Defendants, by her own admission the Plaintiff has no claim.

II. Lack of Attorney-Client or Fiduciary Relationship

The Lawyer Defendants also contend Plaintiffs’ claims are barred because there was no attorney-client or fiduciary relationship with the Plaintiffs. In response, the Plaintiff contends an attorney-client or fiduciary relationship arose between the Lawyer Defendants and the Plaintiff at the time the lawyers filed the class action complaints in the Underlying Case. Alternatively, the

Plaintiff alleges the Lawyer Defendants assumed a fiduciary duty. I find the reasoning set forth in Judge Nicholson's Order persuasive.

A. The Majority Rule.

The majority rule in the United States appears to be that class counsel does not represent unnamed, absent class members unless and until the class is certified. *Bobryk v. Durand Glass Mfg. Co.*, No. 12-cv-5360 (NLH/JS), 2013 U.S. Dist. LEXIS 145758, at *29-31 (D.N.J. Oct. 9, 2013) (noting "the majority of case law that holds that the attorney-client relationship with putative class members 'does not begin until the class has been certified and the time for opting out by a potential member of the class has expired' ."); *Palumbo v. Tele-Communications, Inc.*, 157 F.R.D. 129, 133 (D.D.C. 1994) (stating class certification confers status of litigant on absent class members and creates attorney-client relationship with class counsel); *Garret v. Metro Life Ins. Co.*, No. 95-CIV-2406, 1996 WL 325725, at *6 (S.D.N.Y. June 12, 1996) ("before class certification, the putative class members are not 'represented' by the class counsel."); *Formento v. Joyce*, 168 Ill.App.3d 429, 522 N.E.2d 312 (Ill. App. Ct. 1988) (finding that defendant attorneys owed no duty to plaintiffs, the unnamed members of an uncertified class action); *Restatement (Third) of the Law Governing Lawyers* § 99 cmt. 1 ("prior to certification, only those class members with whom the lawyer maintains a personal client-lawyer relationship are clients"); *Resnick v. Am. Dental Ass'n*, 95 F.R.D. 372, 376 (N.D. Ill. 1982) ("Without question the unnamed class members, once the class has been certified, are 'represented by' the class counsel."); *Gillespie v. Scherr*, 987 S.W.2d 129, 1998 Tex. App. LEXIS 8089 (Tex. App. 1998) ("[W]e have found no case finding an implied attorney-client relationship to exist before class certification between an attorney who files the class action and any unnamed class members").

The majority rule is persuasive to this Court for several reasons. The identity of absent class members and the exact nature of their interests in the action is not known until class certification. 3 H. Newberg, *Class Actions* § 5050 (1977); *United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 415, 100 S.Ct. 1202, 1218, 63 L Ed.2d 479, 502, 1980 U.S. LEXIS 12, *49, 29 Fed. R. Serv. 2d (Callaghan) 20 (U.S. Mar. 19, 1980). Similarly, in federal court, class counsel is appointed by the class action court when the class is certified. Fed. R. Civ. P. 23(c)(1)(B) (“An order that certifies a class action must define the class and the class claims, issues, or defenses, and must appoint class counsel under Rule 23(g)”). Under Rule 23(a), SCRCF, the heading specifies that there is no class action until the Court finds certain “Prerequisites”.⁵ Only after class certification can the absent class members be bound to the outcome of the case.

In her Complaint, the Plaintiff alleges, “In pleading that class action, as a matter of law the Richter defendants assumed fiduciary duties to the Plaintiff[.]” (Second Am. Compl. ¶ 21.) She later alleges fiduciary obligations “imposed by law on the [Lawyer Defendants] when they (a) pleaded a class defined so as to include the Plaintiff, and then (b) when the [Lawyer Defendants] chose to reach a class settlement with a class defined so as to include the Plaintiff.” (Second Am. Compl. ¶ 23.) She also argues she was intentionally omitted from the class notice procedure. Notably, the Plaintiff does not allege the Lawyer Defendants failed to follow the court-approved notice procedure or to follow the class action court’s Orders. She alleges simply that the class as presented, and the notice plan, as designed, was “known to be under-inclusive.” (Second Am. Compl. ¶ 34.)

⁵ When the Underlying Case was filed and adjudicated, South Carolina had enacted Rule 23, SCRCF, drawn principally from Federal Rule 23.

At the time the class definitions and notice plan were presented to the class action court, the class had not been certified. It appears from the parties' submissions that in the Underlying Case, the Primary and Consortium Classes were not certified until January 19, 2007 when Judge Goodstein entered the Order Certifying Classes and Giving Preliminary Approval to Settlement. Prior to that, a decision was made between October 2006 and January 2007 to change the scope of the notice and that decision was made before Judge Goodstein signed the Order Certifying Classes and Giving Preliminary Approval to Settlement. Therefore, the very basis of Plaintiff's Complaint took place *before* the classes in the Underlying Case were certified – at a point in time when an attorney-client relationship did not exist between the Plaintiff and the Lawyer Defendants.

Applying the majority rule to the facts of the Underlying Case, there was no attorney-client relationship between the Lawyer Defendants and the Plaintiffs at the time the alleged duties were allegedly breached. Absent an attorney-client relationship, the Plaintiffs' claims for professional negligence must fail.

B. *Premium Investment Corp. v. Green*

Plaintiff posits that *Premium Investment Corp. v. Green*, *supra*, supports her contention that the attorney-client relationship and its attendant duties arose by operation of law when the Lawyer Defendants filed the class action complaints in the Underlying Cases. Plaintiff's counsel presented this same argument in the prior eight cases to no avail. The Court sees no reason to adopt a different approach here. *Premium Investment Corp.* was a constructive class certification case that predated Rule 23, SCRCF. In contrast, the Underlying Case at issue here was a formal or actual certification case under Rule 23.

In *Premium Investment Corp.*, a lawyer filed a complaint on behalf of a homeowner “individually and as a representative of a class of property owners” against the developer of a

subdivision. After a hearing, the trial court entered an order finding that the homeowner brought two class actions: (i) as a member of a class owning property adjoining the lake, and (ii) as a member of a class owning property in the subdivision. The court found in favor of the plaintiffs and enjoined the developer. The developer appealed, and the case settled while on appeal.

Years later, Premium Investment Corp., a property owner in the subdivision, sued the homeowner and the lawyer to recover the proceeds of the two settlements. The Court of Appeals affirmed the trial court's order granting relief to Premium Investment. In considering whether the underlying case was a class action, the Court of Appeals agreed that "court certification of the class is an important step in a class action," observing:

It represents a judicial finding that injured parties other than the named plaintiff exist. It also provides a definition by which they can be identified. Certification identifies and sharpens the interests of unnamed class members in the outcome; only thereafter will they be bound by the outcome. After certification, class members can be certain that the action will not be settled or dismissed without appropriate notice. *United States Parole Commission v. Geraghty*, 445 U.S. 388, 415 n. 8, 100 S. Ct. 1202, 1218 n. 8, 63 L. Ed. (2d) 479 (1980) (Powell, J., dissenting).

283 S.C. 470, 324 S.E.2d at 76.

The Court of Appeals struggled to determine what constituted class certification where there was no formal or actual class certification and concluded that in the case at hand, where there was no formal certification order, the trial court had "constructively certified" the class when it identified "those persons with an interest in and entitled to benefit" from the action. 283 S.C. 471, 324 S.E.2d at 76. It found that certification had occurred simultaneously with the judgment on the merits.

Thus, *Premium Investment Corp.* stands for the proposition that where there is a class that has not been formally certified (like the formal certification contemplated in Rule 23, SCRCP), a lawyer's and a class representative's duties to absent class members arise with the constructive

certification of the class. *Premium Investment Corp.* is in line with the majority rule that an attorney-client relationship does not arise between absent class members and class counsel until class certification. Since its adoption in 1985, Rule 23(a) has required specific prerequisites to certification and pursuit of a class action, while *Premium Investment Corp.*, which predates Rule 23, allows for constructive certification.

The materials referenced in the Complaint and submission of the parties leave no question that Judge Goodstein observed and adhered to Rule 23, SCRCF, during the Underlying Case, and nowhere does the Plaintiff allege or suggest the Underlying Case involved constructive certification. Therefore, constructive certification is not at issue before me, and *Premium Investment Corp.* does not apply.

C. Assumption of Fiduciary Duties

In an effort to save her claim, the Plaintiff alleges the Lawyer Defendants assumed fiduciary duties by filing the class action complaints. That argument fails as a matter of law.

The question of whether a duty exists is an issue of law. *Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Sols.*, 388 S.C. 394, 400, 697 S.E.2d 551, 554 (2010); *see also RFT Mgmt. Co., supra*.

1. Fiduciary Duty

“A confidential or fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience is bound to act in good faith and with due regard to the interests of the one imposing the confidence.” *RFT Mgmt. Co., L.L.C. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 335, 732 S.E.2d 166, 173 (2012). The Complaint contains no indication the Plaintiff imposed any degree of confidence in the Lawyer Defendants—or that she has ever corresponded with them at all. Rather, the Plaintiff alleges the alleged fiduciary duties

derive from the Lawyer Defendants filing the class action complaints and making certain decisions prior to class certification. As discussed above, those filings did not create any attorney-client relationship. The Plaintiff does not allege any fact or circumstance outside of an attorney-client relationship giving rise to her fiduciary duty claim. Therefore, while she labels the duties as “fiduciary” and “assumed,” they are duplicative of the attorney-client duties he alleges. See *RFT Mgmt, supra*. As stated above, the Lawyer Defendants had no attorney-client relationship with the Plaintiff and therefore owed her no duty as her attorney.

2. Voluntary Assumption of Fiduciary Duties to Absent Class Members

In an effort to circumvent the impact of there being no attorney-client relationship, the Plaintiff alleges the Lawyer Defendants assumed fiduciary duties toward her. While creative, that argument is not persuasive.

The question of whether a duty exists is an issue of law. *Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Sols.*, 388 S.C. 394, 400, 697 S.E.2d 551, 554 (2010); see also *RFT Mgmt. Co., supra*. When a defendant—here, an attorney—is alleged to have assumed a duty, the issue is a mixed one of law and fact. *Moore v. Weinberg*, 373 S.C. 209, 221, 644 S.E.2d 740, 746 (Ct. App. 2007). “First, the court must determine, as a matter of law, whether the law recognizes a particular duty...If there is no duty, the defendant is entitled to a judgment as a matter of law.” *Id.* (citing *Ellis v. Niles*, 324 S.C. 223, 479 S.E.2d 47 (1996)).

In support of her argument, Plaintiff cites *Roundtree Villas Assn. v. 4701 Kings Corp.* and *Sherer v. James*. In *Roundtree Villas*, a property owners association sued six different defendants for construction defects. One of the defendants was a lender that had accepted deeds from the builder of the condominium building in lieu of foreclosure. The lender formed a limited liability company to take title to the units the builder had not sold, as well as the rights and common elements

of the condominium project. *Roundtree Villas Assn. v. 4701 Kings Corp.*, 282 S.C. 415, 420, 321 S.E.2d 46, 49 (1984). The jury entered a general verdict of \$300,000 against two of the defendants, including the lender, and the lender appealed. 282 S.C. at 419, 321 S.E.2d 46, 49. The Supreme Court held that while the lender was not liable for negligence on the part of any of the other defendants, it assumed a duty of care when it took over the project: “[W]hen the Lender, in effect, took over the project and undertook to market the units through a corporation it had created and when it undertook to repair defects which existed to promote sales, a common law duty to use due care arose.” *Id.* at 423, 321 S.E.2d at 51 (citing Restatement (Second) of Torts § 323).

In *Sherer*, a plaintiff filed a medical malpractice claim alleging an amputation could have been avoided had the pediatrician, who was called on the phone, not failed to accurately diagnose the patient’s condition. The Court recognized, “At common law, when there is no duty to act but an act is voluntarily undertaken, the actor assumes a duty to use due care.” *Sherer v. James*, 290 S.C. 404, 406, 351 S.E.2d 148, 150 (1986) (citing *Roundtree Villas, supra.*). The Court explicated on the history of the assumed duty theory and its roots in section 323(a) of the Restatement. The Court held that under that section an assumed duty is “a duty on one who undertakes to render services for the protection of another *to use due care* to avoid increasing the risk of harm.” 290 S.C. at 407-08, 351 S.E.2d at 150 (emphasis in provided) (citing *Curry v. Summer*, 136 Ill. App. 468, 91, Ill. Dec. 365, 371, 483 N.E.2d 711, 717 (1985)). The Court emphasized that an assumed duty argument does not relax the burden of proof for a plaintiff in a professional malpractice case. 290 S.C. at 408, 351 S.E.2d at 151 (“We are unwilling to relax the plaintiff's burden of proof in a medical malpractice case. *See Hanselmann v. McCardle, supra.* A defendant physician is entitled to put the medical malpractice plaintiff to proof equally as stringent as that required of plaintiffs in other negligence actions.”).

In a more recent opinion, the Supreme Court explained,

“The recognition of a voluntarily assumed duty in South Carolina jurisprudence is rooted in section 323 of the Restatement (Second) of Torts (1965),² which provides:

One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other’s person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if

(a) his failure to exercise such care increases the risk of such harm, or

(b) the harm is suffered because of the other’s reliance upon the undertaking.

Under section 323, the voluntary undertaking does not create a duty of care unless (a) the undertaker’s failure to exercise reasonable care in performing the undertaking increased the risk of harm to the plaintiff, or (b) the plaintiff suffered harm because she relied upon the undertaking.

Wright v. PRG Real Estate Mgmt., 426 S.C. 202, 213, 826 S.E.2d 285, 290-91 (2019) (citing *Roundtree Villas, supra* (holding a common law duty of care arose under section 323 when a lender undertook to market condominium units and to repair defects in those units); and *Sherer, supra* (“Section 323(a) simply establishes a duty on one who undertakes to render services for the protection of another to use due care to avoid increasing the risk of harm. We agree with this rationale.”).

Applying these cases to the action at bar, the Court finds the Plaintiff’s assumed duty theory is contrary to South Carolina law. Plaintiff alleges the Lawyer Defendants voluntarily assumed fiduciary duties by pleading the class action, by choosing how to define the classes, and by negotiating the class settlement. (Compl. ¶¶ 21, 23.) First, under the test set forth in Section 323 of the Restatement, the Plaintiff has failed to allege any “physical harm.” She alleges only monetary damages. Second, the Plaintiff does not allege or indicated in any way that she relied on the Lawyer Defendants’ alleged undertaking, another key component of the test under Section 323. Third, the

authority on which Plaintiff relies is not for fiduciary duties but rather a duty of due care not to cause physical injury. Furthermore, as noted above, the fiduciary obligations which Plaintiff alleges the Lawyer Defendants assumed are duplicative of the duties “inherent in the attorney-client relationship,” and they arise out of the same facts as her professional negligence theory. *See RFT Mgmt, supra*. Plaintiff has provided no authority supporting her argument that it is even possible for an attorney to “assume” fiduciary obligations to absent members of a purported class prior to class certification. Indeed, Plaintiff’s argument appears to be based on a misapprehension of *Premium Investment* and Rule 23.

For these reasons, the Court finds the Plaintiff’s argument that the Lawyer Defendants assumed fiduciary duties to her fails as a matter of law.

III. Lack of Proximate Cause

In addition to other elements, the Plaintiff’s claim requires proof of proximate cause. *RFT Mgmt. Co., supra*.

The crux of the Plaintiff’s claim is that she was omitted from the class action settlement, which now precludes her from recovering for abuse she alleges she suffered at the hands of the Diocese. Even viewing the parties’ submissions in the light most favorable to her, the Plaintiff has failed to articulate damages sustained due to the alleged legal malpractice. While the Plaintiff alleges the Lawyer Defendants excluded her from the settlement, her arguments and submissions in opposition to the Lawyer Defendants’ motions to dismiss attempting to clarify her position show her claim depends on her being precluded from recovering from the Diocese. Those submissions and arguments highlight the fundamental flaw in the Plaintiff’s claim. During the hearing, Plaintiff’s counsel argued,

What we now know is that the Court interprets the orders of the class action to say
“You don’t get the relief of the class action, and here’s the damage to you and to the

absent class members. You now don't get the waiver of defense to your claim against the diocese. You got that benefit in class action to limitations charitable immunity.” These are considerable defenses the diocese has. So, if I can make a claim against the diocese now -- which is questionable for each of my 304, and 305, and [Chimento] plaintiffs, I may encounter a defense that is fatal to my claim.

When we get in the weeds on those claims, we'll know that -- but they -- I now have to confront those defenses only because the lawyers chose not to give them notice when they wanted to make sure they got paid first, and in full, and changed the class settlement to provide that for themselves.

(Tr. p. 35, line 22 – p. 36, line 6.) In essence, Plaintiff alleges she must now face defenses she otherwise would not have to face. Contrary to that argument, however, the defense of charitable immunity does not apply to intentional torts like the sexual abuse claim Plaintiff alleges to have against the Diocese, *Doe v. Charleston*, 445 S.C. 31, 34, 911 S.E.2d 323, 324 (2025), and the Court is not required to accept as true Plaintiff's inaccurate legal conclusions. If anything, the Plaintiff's allegations, submissions, and arguments demonstrate that she is in the same position as she would be in had there been no class action case at all. Absent damages, the Plaintiff has no claim against the Lawyer Defendants. *RFT Mgmt. Co., supra*.

IV. Law of the Case

In her April 30, 2024 filing, Plaintiff also argues that a December 17, 2013 Order from Judge Dickson is now the law of the case. The Order Plaintiff references was entered in the Underlying Case, not the case at bar. The Lawyer Defendants were not parties to the Underlying Case. Therefore, the law of the case doctrine does not apply. *Builders Mut. Ins. Co. v. Bob Wire Elec., Inc.*, 424 S.C. 161, 165, 817 S.E.2d 807, 809 (Ct. App. 2018) (“[T]he doctrine of ‘law of the case’ is just that—the law of the case in which it was made[.]”) (citing *Lifschultz Fast Freight, Inc. v. Haynsworth, Marion, McKay & Guerard*, 334 S.C. 244, 245, 513 S.E.2d 96, 96-97 (1999) (law of the case doctrine “applies only to subsequent proceedings in the same litigation following an appellate decision”); *Flexon v. PHC-Jasper, Inc.*, 413 S.C. 561, 571-72, 776 S.E.2d 397, 403 (Ct.

App. 2015) (collecting cases and noting law of case doctrine prohibits matters decided on appeal from being relitigated in the trial court in the same case). *See also Messenger v. Anderson*, 225 U.S. 436, 444, 32 S. Ct. 739, 56 L. Ed. 1152 (1912) (“[T]he phrase, ‘law of the case,’ as applied to the effect of previous orders on the later action of the court rendering them in the same case, merely expresses the practice of courts generally to refuse to reopen what has been decided, not a limit to their power.”); Wright & Miller, Fed. Prac. & Proc. § 4478 (2d. ed.) (law of the case rules “do not apply between separate actions”).

CONCLUSION

Having considered the motions made and filed by the Lawyer Defendants, the supporting and opposing memoranda submitted by the parties, the arguments of counsel, and applicable law, I find and conclude the Lawyer Defendants’ motions should be granted.

NOW, THEREFORE, IT IS ORDERED that all claims alleged against Defendants Lawrence E. Richter, Jr., David A. Haller and Richter and Haller, LLC should be, and hereby are, dismissed with prejudice.

IT IS SO ORDERED.

[JUDGE’S SIGNATURE ON FOLLOWING PAGE]



Charleston Common Pleas

Case Caption: Jane Doe 304 , plaintiff, et al VS Lawrence E Richter Jr , defendant, et al

Case Number: 2019CP1005892

Type: Order/Dismissal

So Ordered

William C. McMaster, III

Electronically signed on 2025-12-05 14:46:54 page 22 of 22

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP1005892

Jane Doe 304 et al
PLAINTIFF(S)

Lawrence E Richter, Jr et al
DEFENDANT(S)

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.
- ☐ **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
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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:

Plaintiff's Motion to Alter or Amend Judgment pursuant to Rule 59, SCRPC, was filed with this Court on December 15, 2025. After careful consideration of the arguments and filings of counsel, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded, and further finds no error of law or fact not appropriately considered. Therefore, Plaintiff's Motion is DENIED.

It is so Ordered.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/30/2025 .

Bishop of Charleston

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Jane Doe 304 , plaintiff, et al VS Lawrence E Richter Jr , defendant, et al
Case Number: 2019CP1005892
Type: Order/Electronic Form 4

So Ordered

William C. McMaster, III

Electronically signed on 2025-12-30 11:16:55 page 3 of 3

The Supreme Court of South Carolina

John Doe 305, Julie McDonald, and Richard McDonald,
Petitioners,

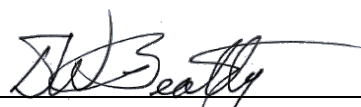
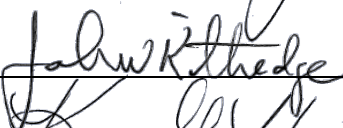
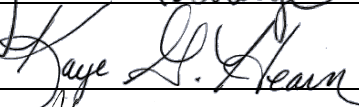
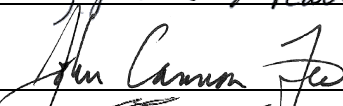
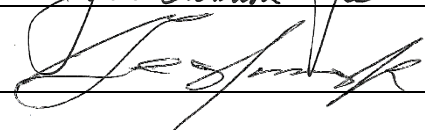
v.

The Bishop of Charleston, a Corporation Solo, Robert
Gugliemone, The Bishop of Charleston, in his official
capacity, Lawrence E. Richter, Jr., David K. Haller, and
Richter and Haller, LLC, Respondents.

Appellate Case No. 2020-001415

ORDER

Petitioners ask this Court to hear this matter in our original jurisdiction. We deny the petition. The Honorable J. Derham Cole is hereby appointed to preside over the remainder of the proceedings below in this matter.

	C.J.
	J.
	J.
	J.
	J.

Columbia, South Carolina
April 19, 2021

cc: Gregg E. Meyers, Esquire
Lawrence E. Richter, Jr., Esquire

Richard S. Dukes, Jr., Esquire
R. Hawthorne Barrett, Esquire
Chelsea Jaqueline Clark, Esquire
Benjamin C. Bruner, Esquire
Susan Taylor Wall, Esquire
Henry Wilkins Frampton, IV, Esquire
The Honorable J. Derham Cole

The Supreme Court of South Carolina

John Doe 305, Julie McDonald, and Richard McDonald,
Petitioners-Plaintiffs,

v.

The Bishop of Charleston, a Corporation Solo, Robert
Gugliemone, The Bishop of Charleston, in his official
capacity, Lawrence E. Richter, Jr., David K. Haller, and
Richter and Haller, LLC, Respondents-Defendants.

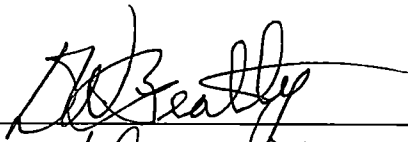
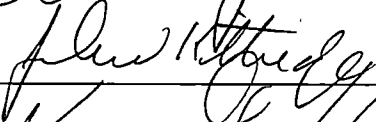
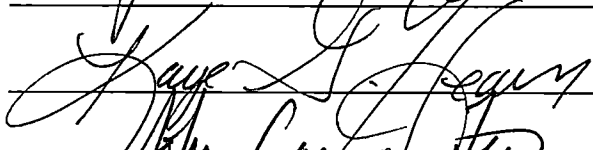
Appellate Case No. 2020-001415

ORDER

By order dated April 19, 2021, this Court denied Petitioners' petition for original jurisdiction and appointed the Honorable J. Derham Cole "to preside over the remainder of the proceedings below in this matter." Petitioners have now filed a motion seeking clarification of the scope of Judge Cole's appointment.

We grant the motion to clarify. All cases currently pending in this matter not arising from professional negligence and breach of fiduciary duties claims against Respondents Lawrence Richter, David Haller, and Richter and Haller, LLC, are held in abeyance pending resolution of the professional negligence and breach of fiduciary duties claims. The two cases against Respondents Lawrence Richter, David Haller, and Richter and Haller, LLC,¹ shall be heard by Judge Cole on an expedited basis. These are the only actions over which Judge Cole shall preside.

¹ Case numbers 2018-CP-10-05802 and 2019-CP-10-05892.

	C.J.
	J.
	J.
	J.
	J.

Columbia, South Carolina
June 15, 2021

cc:

Gregg E. Meyers, Esquire
Lawrence E. Richter, Jr., Esquire
Richard S. Dukes, Jr., Esquire
R. Hawthorne Barrett, Esquire
Chelsea Jaqueline Clark, Esquire
Benjamin C. Bruner, Esquire
Susan Taylor Wall, Esquire
Henry Wilkins Frampton, IV, Esquire
The Honorable J. Derham Cole

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

John Doe 305, Julie McDonald, and
Richard McDonald

Plaintiffs,

v.

Lawrence E. Richter, Jr., David K. Haller,
Richter & Haller, LLC, and the Bishop of
Charleston,

Defendants.

Case No. 2:22-cv-02940-RMG

ORDER AND OPINION

This matter is before the Court on Defendants Lawrence Richter, David Haller, and Richter & Haller, LLC (collectively, “Lawyer Defendants”) Joint Motion to Remand. (Dkt. No. 7). Plaintiffs filed a response (Dkt. No. 13), Defendant Bishop of Charleston also filed a response (Dkt. No. 14), and the Lawyer Defendants filed a reply (Dkt. No. 16). For the reasons set forth below, the Court grants the motion to remand and remands this action to the Court of Common Pleas for Charleston County, South Carolina.

I. Background

On August 29, 2022, Plaintiffs filed this case in the Court of Common Pleas for Charleston County. (Dkt. No. 1-1 at 37). Two days later, on September 1, 2022, Defendant Bishop of Charleston filed a notice of removal arguing that this Court has original jurisdiction based upon diversity of citizenship. (Dkt. No. 1, ¶ 5). At the time the notice was filed, none of the four Defendants had been served. (Dkt. Nos. 7 at 3; 13 at 1; 14 at 1). All of the Defendants in this case are citizens of South Carolina. (Dkt. No. 1-1, ¶¶ 11, 17-19).

Lawyer Defendants now move to remand this case pursuant to the forum-defendant rule. (Dkt. No. 7). Plaintiffs do not oppose remand, but states that they did not see a proper basis to

claim the removal was improper. (Dkt. No. 13 at 1-2). Defendant Bishop of Charleston opposes remand. (Dkt. No. 14). Lawyer Defendants submitted a reply to Plaintiffs' and Defendant Bishop of Charleston's responses. (Dkt. No. 16). The matter is now ripe for the Court's review.

II. Standard

As the party invoking the Court's jurisdiction, Defendant Bishop of Charleston bears the burden of establishing that the case was properly removed from state court. *Mulcahey v. Columbia Organic Chem. Co.*, 29 F.3d 148, 151 (4th Cir. 1994); *see also Bennett v. Bally Mfg. Corp.*, 785 F. Supp. 559, 560 (D.S.C. 1992). The Court should strictly construe removal jurisdiction because it "raises significant federalism concerns." *Mulcahey*, 29 F.3d at 151 (citing *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100 (1941)); *see also S.C. v. Boehringer Ingelheim Roxane, Inc.*, No. 3:07-cv-00665-CMC, 2007 WL 1232156, at *1 (D.S.C. Apr. 26, 2007). Doubts as to the Court's jurisdiction should weigh in favor of remanding to state court. *Mulcahey*, 29 F.3d at 151.

III. Discussion

A. Motion to Remand

There is no dispute there is complete diversity between the parties and the amount in controversy exceeds \$75,000.00. In addition, there is no dispute that Plaintiffs did not serve any Defendant with the Complaint prior to the removal of this action. The issue in dispute is whether the forum-defendant rule bars Bishop of Charleston from removing this action before Plaintiff served Defendants with the complaint. Courts refer to removal by a forum defendant before they have received service of process as "snap removal."

Separate and apart from the statute conferring diversity jurisdiction, 28 U.S.C. § 1332, the forum-defendant rule confines removal based on diversity jurisdiction to instances where no defendant is a citizen of the forum state. *Phillips Constr. LLC v. Daniels Law Firm, PLLC*, 93 F.

Supp. 3d 544, 548 (S.D. W. Va. 2015). The forum-defendant rule reads that “[a] civil action otherwise removable solely on the basis of [diversity jurisdiction] may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.” 28 U.S.C. § 1441(b)(2).

Courts across the country disagree as to propriety of snap removal.

While the Fourth Circuit has not addressed the issue, several circuits interpret the plain meaning of § 1441(b)(2)’s “properly joined as served” language as permitting pre-service removal when a forum defendant is sued because it is in keeping with the literal language of the statute. *See Texas Brine Co., LLC v. Am. Arbitration Ass’n, Inc.*, 955 F.3d 482, 485 (5th Cir. 2020); *Encompass Ins. Co. v. Stone Mansion Rest. Inc.*, 902 F.3d 147 (3d Cir. 2018); *McCall v. Scott*, 239 F.3d 808, 813 n.2 (6th Cir. 2001); *Gibbons v. Bristol-Myers Squibb Co.*, 919 F.3d 699 (2d Cir. 2019) (rejecting argument that a literal interpretation of the statute produces an absurd result because Congress adopted the “properly joined and served” requirement to provide a bright line rule). On the other hand, the Eleventh Circuit explained that pre-service removal pursuant to § 1441(b)(2) when a forum defendant is sued is prohibited because such removal is at odds with the legislative intent of the forum-defendant rule, to prevent gamesmanship. *See Goodwin v. Reynolds*, 757 F.3d 1216, 1221 (11th Cir. 2014) (upholding dismissal without prejudice, reasoning that the “properly joined and served” language in § 1441(b)(2) should not be read to prevent district court from exercising discretion under Rule 41(a)(2)).

District Courts within the Fourth Circuit are similarly split on the issue. *See In re Lipitor (Atorvastatin Calcium) Mktg., Sales Practices & Prod. Liab. Litig.*, No. 2:14-MN-02502-RMG, 2016 WL 7338594, at *2 (D.S.C. Nov. 21, 2016); *Phillips Construction, LLC v. Daniels Law Firm, PLLC*, 93 F. Supp. 3d 544, 548 (S.D.W. Va. 2015) (discussing split of authority and holding

removal by unserved forum defendants is barred by forum-defendant rule, at least when all defendants are residents of forum state); *Oxendine v. Merck & Co.*, 236 F. Supp. 2d 517, 526 (D. Md. 2002) (noting that removability “cannot rationally turn on the timing or sequence of service of process.”). *Contra Bloom v. Library Corp.*, 112 F. Supp. 3d 498, 506 (N.D. W. Va. 2015); *Wensil v. E.I. DuPont de Nemours & Co.*, 792 F. Supp. 447, 449 (D.S.C. 1992) (explaining that § 1441(b)(2) is clear and the “presence of unserved resident defendants does not defeat removal where complete diversity exists.”). Recently, in *Turtle Factory Bldg. Corp. v. McGrath Real Est. Holdings, LLC*, No. 2:20-CV-03099-RMG, 2021 WL 688697, at *3 (D.S.C. Jan. 28, 2021), this Court granted a plaintiff’s motion to remand under circumstances similar to those present here. *Id.* (holding that “the literal application of § 1441(b)(2) is contrary to congressional intent and creates absurd results”).

After considering the parties’ respective briefing, the Court finds no reason to deviate from its holding in *Turtle Factory*:

[T]he Court is persuaded by the opinions that find the literal application of § 1441(b)(2) is contrary to congressional intent and creates absurd results. One of the principal purposes of diversity jurisdiction was to give a “citizen of one state access to an unbiased court to protect him from parochialism if he was forced into litigation in another state in which he was a stranger and of which his opponent was a citizen.” *Ziady v. Curley*, 396 F.2d 873, 875 (4th Cir. 1968).

The forum-defendant rule appears to recognize that there is no need to protect out-of-state defendants from local prejudice where the defendant is a citizen of the state in which the case is brought. *Lively v. Wild Oats Markets, Inc.*, 456 F.3d 933, 940 (9th Cir. 2006); *Morris v. Nuzzo*, 718 F.3d 660, 665 (7th Cir. 2013).

The addition of the “properly joined and served” language to § 1441(b)(2) has been interpreted as an effort to prevent gamesmanship by plaintiffs from joining forum defendants merely to preclude federal jurisdiction. *Goodwin*, 757 F.3d at 1221 (quoting *Sullivan v. Novartis Pharm. Corp.*, 575 F. Supp. 2d 640, 644 (D.N.J. 2008) (abrogated by *Encompass Ins. Co. v. Stone Mansion Rest. Inc.*, 902 F.3d 147 (3d Cir. 2018))). Further, if the forum-defendant rule were read to allow pre-service removal, it would provide an incentive for defendants to employ gamesmanship by racing to remove newly filed actions, which would stand in contrast to the purpose behind the inclusion of the language to prevent gamesmanship. *Id.*; *Phillips Construction, LLC*, 93 F. Supp. 3d at 553; *Little v. Wyndham Worldwide Operations, Inc.*, 251 F. Supp. 3d 1215, 1221 (M.D. Tenn. 2017) (finding based on statutory scheme “permitting pre-service removals when a forum defendant is sued runs counter to the reasons underlying the forum-defendant rule and is not a result that Congress could have envisioned ... when it enacted the rule to protect out of state defendants from local juries). Removal statutes are to be strictly construed and the removing party bears the burden of establishing the right to removal *Mulcahey*, 29 F.3d at 151. Courts are clearly split as to this issue and the propriety of removal in this case is doubtful. As such, the Court weighs in favor of remanding to state court.

Turtle Factory, 2021 WL 688697, at *3 (remanding action on basis of forum-defendant rule where nonresident defendant was served and removed action to federal court before service of resident defendant was completed). Additionally, District Courts in this Circuit have noted the clear absurdity of snap removal when the only defendants are forum defendants. *See Active Res., Inc. v. Hagewood*, 22-cv-00172, 2022 WL 2346398, at *3 (S.D. W. Va. June 29, 2022) (“[U]nlike cases where there are both forum and non-forum defendants, when the only defendants are forum defendants, it defeats the purpose of the rule and removal statute to allow those forum defendants to remove the case”); *Phillips Construction*, 93 F. Supp. 3d at 556 (“[T]he Court finds that, in cases involving only resident defendants, the forum-defendant rule bars the resident defendants from removing an action pursuant to diversity jurisdiction before effectuation of service.”).

Accordingly, the Court grants Plaintiff's motion to remand.

B. Request for Attorney's Fees

In addition to its motion to remand, Lawyer Defendants seek attorney's fees incurred in connection with the improper removal of this action. (Dkt. No. 16 at 7-9). They argue that the Defendant Bishop of Charleston lacked an objectively reasonable basis for seeking removal based on diversity jurisdiction where all Defendants are forum defendants. (*Id.* at 9). The Defendants argue that even if the Court determines removal was improper, attorney's fees are unwarranted because there are several circuit court cases, and district court cases in the Fourth Circuit, interpreting 28 U.S.C. § 1441(b)(2) in a manner that would render removal here proper. (Dkt. No. 16 at 10).

An order remanding the case may require payment of just costs and any actual expenses including attorney's fees, incurred as a result of removal.” 28 U.S.C. § 1447(c). The Fourth Circuit has held that 28 U.S.C. § 1447(c) “provides the district court with discretion to award fees when remanding a case” where it finds such awards appropriate. *In re Lowe*, 102 F.3d 731, 733 n.2 (4th Cir. 1996). A court does not “abuse its discretion in denying party's motion for attorney fees incurred as result of removal of action which was remanded to state court where there was no evidence of bad faith on part of parties, and it was not obvious that federal jurisdiction in action was lacking.” *Id.* The Supreme Court has held that “[a]bsent unusual circumstances, courts may award attorney's fees under § 1447(c) only where the removing party lacked an objectively reasonable basis for seeking removal. Conversely, when an objectively reasonable basis exists, fees should be denied.” *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 141, 126 S.Ct. 704, 163 (2005).

Here, the Court finds that snap removal is a contested issue with supporting caselaw that the Fourth Circuit has not ruled on. This is shown by Lawyer Defendants’ brief which notes that

District Courts in the Fourth Circuit have both denied and allowed snap removal. (Dkt. No. 7 at 7). Under these circumstances, the Court declines to award Lawyer Defendants the fees and costs it incurred because of the removal.

IV. Conclusion

For the reasons stated above, the Lawyer Defendants' Motion to Remand (Dkt. No. 7) is **GRANTED**. The Court **REMANDS** the action to the Court of Common Pleas for Charleston County, South Carolina for adjudication on the merits. The Lawyer Defendants' request for Attorney's Fees is **DENIED**.

AND IT IS SO ORDERED.

s/ Richard Mark Gergel
Richard Mark Gergel
United States District Judge

June 12, 2023
Charleston, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP1004031

John Doe 305 et al
PLAINTIFF(S)

Lawrence E Richter, Jr et al
DEFENDANT(S)

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.
- ☐ **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
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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:

It is hereby ordered that exclusive jurisdiction over this case be assigned to the Honorable J. Derham Cole, Sr., to hear and handle all pretrial motions, other matters pertaining to this case, and trial. This assignment is made with the permission of the Chief Justice and is intended to keep this case assigned along with cases 2018CP1005802 and 2019CP1005892, which were already assigned to Judge Cole, Sr. by Order of the Supreme Court dated June 15, 2021.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/26/2025 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: John Doe 305 , plaintiff, et al VS Lawrence E Richter Jr , defendant, et al
Case Number: 2022CP1004031
Type: Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2025-03-26 12:33:24 page 3 of 3

The Supreme Court of South Carolina

John Doe 305, Julie McDonald, and Richard McDonald,
Petitioners-Plaintiffs,

v.

The Bishop of Charleston, a Corporation Solo, Robert
Gugliemone, The Bishop of Charleston, in his official
capacity, Lawrence E. Richter, Jr., David K. Haller, and
Richter and Haller, LLC, Respondents-Defendants.

Appellate Case No. 2020-001415

ORDER

By order dated April 19, 2021, this Court denied Petitioners' petition for original jurisdiction and appointed the Honorable J. Derham Cole "to preside over the remainder of the proceedings below" in two cases—2018-CP-10-05802 and 2019-CP-10-05892. The Court subsequently granted Petitioners' motion for clarification of the scope of Judge Cole's appointment and ordered:

All cases currently pending in this matter not arising from professional negligence and breach of fiduciary duties claims against Respondents Lawrence Richter, David Haller, and Richter and Haller, LLC, are held in abeyance pending resolution of the professional negligence and breach of fiduciary duties claims. The two cases against Respondents Lawrence Richter, David Haller, and Richter and Haller, LLC, shall be heard by Judge Cole on an expedited basis. These are the only actions over which Judge Cole shall preside.¹

Doe v. The Bishop of Charleston, S.C. Sup. Ct. Order dated June 15, 2021.

Petitioners have now filed a second motion for clarification of the June 15, 2021

¹ Another related case (2022-CP-10-04031) was assigned to Judge Cole by Chief Administrative Judge Jennifer B. McCoy on March 26, 2025.

order. They ask the Court to clarify whether the claims against the Diocese held in abeyance should continue in abeyance and request that the abeyance period end. If the matters remain held in abeyance, Petitioners ask to be allowed to engage in discovery to obtain information from the Diocese about the negligence and breach of duty claims against Lawrence E. Richter, Jr., David K. Haller, and Richter and Haller, LLC (the Respondent Attorneys). Finally, Petitioners ask the Court to appoint a new judge to handle the cases originally assigned to Judge Cole.

We deny the request to end the abeyance period for the claims against the Diocese. The Honorable William C. McMaster, III, is appointed to preside over the remainder of the proceedings in Case Nos. 2018-CP-10-05802, 2019-CP-10-05892, and 2022-CP-10-04031 and any related cases arising out of the claims against the Respondent Attorneys in this matter. Judge McMaster shall hold a status conference, either virtual or in Charleston, on these actions within forty-five days of the date of this order to determine whether the actions should move forward or be dismissed and removed from the docket. Any questions concerning the scope of discovery shall be raised to Judge McMaster.

 C.J.
FOR THE COURT

Columbia, South Carolina
September 10, 2025

cc:

Gregg E. Meyers
Lawrence E. Richter, Jr.
Richard S. Dukes, Jr.
R. Hawthorne Barrett
Chelsea Jaqueline Clark
Benjamin C. Bruner
Susan Taylor Wall
Henry Wilkins Frampton, IV
John Edward Cuttino
Carmelo Barone Sammataro
The Honorable J. Derham Cole
The Honorable William C. McMaster, III

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP1004031

John Doe 305 et al
PLAINTIFF(S)

Lawrence E Richter, Jr et al
DEFENDANT(S)

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.
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☐ 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
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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:

Defendants Lawrence E. Richter, David K. Haller, and Richter & Haller, LLC's Motion to Dismiss came before this Court on October 7, 2025. Gregg Meyers was present on behalf of the Plaintiff. Benjamin Bruner was present on behalf of Defendants Lawrence E. Richter and Richter & Haller, LLC. John Cuttino was present on behalf of Defendant David K. Haller. After careful consideration of the materials filed and the arguments of the parties, Defendants' Motion to Dismiss is GRANTED for lack of service pursuant to Rule 3 and Rule 4, SCRPC. Defense counsel is to prepare a formal Order within 10 days.

It is so Ordered.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/05/2025 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: John Doe 305 , plaintiff, et al VS Lawrence E Richter Jr , defendant, et al

Case Number: 2022CP1004031

Type: Order/Electronic Form 4

So Ordered

William C. McMaster, III

Electronically signed on 2025-11-05 14:39:58 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

John Doe 305, Julie McDonald, and
Richard McDonald,

Plaintiffs,

v.

Lawrence E. Richter, Jr., David K. Haller,
Richter & Haller, LLC, The Bishop of
Charleston a corporation sole,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2022-CP-10-04031

**ORDER GRANTING LAWYER
DEFENDANTS' MOTIONS TO DISMISS**

THIS MATTER CAME BEFORE THE COURT for an in-person hearing at the Charleston County Courthouse on October 7, 2025, on motions of Defendants Lawrence E. Richter, Jr., David A. Haller and Richter and Haller, LLC (“the Lawyer Defendants”) to dismiss pursuant to Rule 12, SCRCF. At the hearing, Gregg E. Meyers, Esquire appeared on behalf of the Plaintiffs. Benjamin C. Bruner, Esquire appeared on behalf of Lawrence E. Richter and Richter & Haller, LLC. John E. Cuttino, Esquire appeared on behalf of David K. Haller. Carmelo Barone Sammataro appeared on behalf of The Bishop of Charleston a corporation sole. After careful consideration of the materials filed and the arguments of the parties, the Court finds the Lawyer Defendants’ Motions to Dismiss should be GRANTED.

FACTUAL & PROCEDURAL BACKGROUND

This action is the eleventh such one filed against the Lawyer Defendants arising out of a 2007 class action settlement in which the Lawyer Defendants served as class counsel for claims against the Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity (“the Diocese”) relating to alleged sexual abuse by priests of the Diocese.

In this case, the Plaintiffs do not allege any claims against the Diocese related to the sexual abuse they allege to have suffered. Instead, they allege a claim against the Lawyer Defendants for declaratory relief, professional negligence and breach of fiduciary duty, civil conspiracy, conversion, accounting, and disgorgement in connection with the class action cases. Against the Diocese, the Plaintiff alleges only aiding and abetting breach of fiduciary duty.

Plaintiffs filed this case on August 30, 2022.¹ Two days later, The Bishop of Charleston a corporation sole (“the Diocese”) removed the case to the United States District Court for the District of South Carolina (a “snap removal”). On September 16, 2022, the Lawyer Defendants filed a Motion to Remand.² Five days later, the Lawyer Defendants filed a motion requesting that the District Court stay “all deadlines, including responsive pleadings and discovery, until the Lawyer Defendants’ motion to remand this matter to state court is decided.”³ On October 7, 2022, the Lawyer Defendants filed a motion to dismiss “in an abundance of caution and subject to their Motion to Remand [Docket Entry No. 7] or the Motion to Stay All Deadlines [Docket Entry No. 8], which have not been decided.”⁴ On June 12, 2023, Judge Gergel granted the Motion to Remand.⁵ The following day, a certified copy of his Order was transmitted to and filed with this action.⁶

Plaintiffs never served the summons and complaint, either before the removal, during the removal, or after the remand.⁷ On September 1, 2023, Richter and Richter & Haller, LLC filed a

¹ Complaint, August 30, 2022.

² Joint Motion to Remand of Lawyer Defs., September 16, 2022.

³ Joint Motion of Lawyer Defs. To Stay All Deadlines, September 21, 2022.

⁴ Motion to Dismiss on Behalf of Lawyer Defendants, October 7, 2022, at 1.

⁵ Order and Opinion, C/A No. 2:22-cv-02940-RMG (June 12, 2023).

⁶ Certified Order and Opinion, C/A No. 2022-CP-10-4031 (June 13, 2023).

⁷ Pls.’ Memo Opp. Mot. to Dismiss, October 2, 2025, at 5 (“We agree the summons and complaint were never served on class counsel.”)

motion to dismiss based upon the Plaintiffs' failure to serve the summons and complaint, among other grounds. On September 5, 2023, Haller filed a similar motion.

On September 10, 2025, the Supreme Court assigned this case to the undersigned.⁸ After being assigned to the case, the Court scheduled a hearing for October 7, 2025.

At the October 7th hearing, counsel for the parties appeared in person and argued the Lawyer Defendants' motions thoroughly. Following the hearing, the Court took the matter under advisement and requested additional briefing. On November 6, 2025, the Court entered a Form 4 Order granting the motions and directing, "Defense counsel is to prepare a formal Order within 10 days." The Court subsequently extended defense counsel's time to provide the proposed order to permit time for defense counsel to receive the transcript of the hearing.

Having carefully considered the motions, the supporting and opposing memoranda and additional materials submitted by the parties, the arguments of counsel, and applicable law, I find and conclude the Lawyer Defendants' motions should be granted.

STANDARD

Under Rule 3(a), SCRCF, "A civil action is commenced when the summons and complaint are filed with the clerk of court if: (1) the summons and complaint are served within the statute of limitations in any manner prescribed by law; or (2) if not served within the statute of limitations, actual service must be accomplished not later than one hundred twenty days after filing." Rule 4(a), SCRCF, requires the plaintiff or plaintiff's counsel to issue the summons and to serve copies of the original "upon each defendant." "Voluntary appearance by defendant is equivalent to personal service; and written notice of appearance by a party or his attorney shall be effective upon mailing, or may be served as provided in this rule." Rule 4(d), SCRCF.

⁸ Order entered September 10, 2025 in Appellate Case 2020-001415.

“The purpose of the summons is to acquire jurisdiction of the person of the defendant and to give him notice of the action and an opportunity to appear and defend.” *White Oak Manor, Inc. v. Lexington Ins. Co.*, 407 S.C. 1, 8–9, 753 S.E.2d 537, 541 (2014) (quoting *State v. Sanders*, 118 S.C. 498, 502–03, 110 S.E. 808, 810 (1920)).

“Upon failure to serve the summons and complaint, the action may be dismissed by the court on the court's own initiative or upon application of any party.” Rule 5(d), SCRCPP. *See also* Rule 12(b)(2), SCRCPP (providing for dismissal for lack of jurisdiction over the person), *and* Rule 12(b)(5), SCRCPP (providing for dismissal for insufficiency of service).

ANALYSIS

I. Failure to Serve Summons and Complaint

Plaintiffs concede they never served the summons and complaint. Therefore, disposition of the Lawyer Defendants’ motions turn on whether the Lawyer Defendants voluntarily appeared in this action. Plaintiffs argue the Lawyer Defendants voluntarily appeared through the motion to dismiss filed in the District Court before the case was remanded back to state court. They also argue the Lawyer Defendants voluntarily appeared by filing the motions to dismiss at bar. The Court is not persuaded by those arguments and finds the motions to dismiss should be granted.

As noted above, the law requires service to establish personal jurisdiction. *White Oak Manor, supra*. “[P]arties are generally permitted to agree to particular methods of service or waiving service altogether.” *Id.* (citing *Fin. Fed. Credit Inc. v. Brown*, 384 S.C. 555, 565, 683 S.E.2d 486, 491 (2009) (“[W]here service is accomplished in a manner consented to by the defendant, service of process is valid and a court has jurisdiction over the defendant for purposes of entering judgment.”); *Myrtle Beach Lumber Co. v. Globe Int’l Corp.*, 281 S.C. 290, 292, 315 S.E.2d 142, 143 (Ct.App.1984) (“[A] defendant may waive personal service by consent or by designating an agent to receive service of process.”)).

Under Rule 4(d), SCRCP, “Voluntary appearance by defendant is equivalent to personal service[.]” When determining whether a party has waived service of process, “courts decide on a case by case basis whether a defendant's act demonstrates an *intent to submit to the court's jurisdiction.*” *Stearns Bank Nat. Ass'n v. Glenwood Falls, LP*, 373 S.C. 331, 338, 644 S.E.2d 793, 796 (2007) (emphasis added). A defendant demonstrating his intent to submit to the state court’s jurisdiction amounts to waiver of the right challenge personal jurisdiction, which requires some evidence the defendant voluntarily and intentionally abandoned that defense. *Trustgard Ins. Co. v. Full Logistics, Inc.*, 442 S.C. 485, 507, 900 S.E.2d 448, 459 (Ct. App. 2023) (“Objections to personal jurisdiction, unlike subject matter jurisdiction, are waived unless raised...A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Waiver requires a party to have known of a right and known that right was being abandoned.”) (internal quotations and citations omitted). While the Lawyer Defendants did file a motion to dismiss in the District Court and filed motions to dismiss following remand to this Court, none of those actions evidenced their intent to submit to this Court’s jurisdiction notwithstanding the Plaintiffs’ failure to serve the summons and complaint.

With regard to the motion filed in federal court, I am not persuaded by the Plaintiffs’ argument. First, at the time of that filing, this Court was divested of jurisdiction entirely. *Limehouse v. Hulsey*, 404 S.C. 93, 105, 744 S.E.2d 566, 573 (2013) (“Removal proceedings impact the jurisdiction of the state court in that removal of a state case to federal court ‘divests’ the state court of jurisdiction.”) (internal quotation omitted). *See also* 28 U.S.C.A. § 1446 (LexisNexis, Lexis Advance through Public Law 119-36, approved September 5, 2025) (providing that upon removal “the State court shall proceed no further unless and until the case is remanded.”); *and Roman Catholic Archdiocese v. Acevedo-Feliciano*, 589, U.S. 57, 64, 140 S.Ct. 696, 700 (2020).

The Plaintiffs cite no authority for their theory that a filing in a federal court also serves as an appearance in a state court.

Second, the Plaintiffs point to no specific statement in the Lawyer Defendants' motion evidencing any intent to submit to the jurisdiction of the state court (which had no jurisdiction at the time). Instead, Plaintiffs rely on the mere fact the motion was filed. In response, the Lawyer Defendants argue the motion was made with specific reservations because their motion to remand was pending and, in addition, the filings in the District Court are immaterial in this action because upon remand, this Court was bound under *Limehouse* to proceed as though the removal had never been attempted.

Having considered the parties' submissions and arguments, submitted both before, during, and after the October 7th hearing, the Court finds the Lawyer Defendants did not demonstrate any intent to submit to the jurisdiction of the state court and therefore did not voluntarily appear in this action by filing the motion to dismiss in the District Court. *See Limehouse*, 404 S.C. at 112, 744 S.E.2d at 577 ("When the state court resumed jurisdiction, it had a duty "to proceed as though no removal had been attempted.") (quoting *State v. Columbia Ry., Gas & Elec. Co.*, 112 S.C. 528, 537, 100 S.E. 355, 357 (1919)) (emphasis added). *See also* Wagstaffe, *Prac Guide: Fed Civil Proc Before Trial* § 8-XII ("State law—both court made and statutory—will largely determine what effect actions taken in federal court—including appearances and filings—while the matter was still pending will have in state court.") (citing *Ayres v. Wiswall*, 112 U.S. 187, 190–191 (1884) ("It will be for the state court, when the case gets back there, to determine what shall be done with pleadings filed and testimony taken during the pendency of the suit in the other jurisdiction"); *Pellebon v. State ex rel. Bd. of Regents of Univ. of Oklahoma*, 358 P.3d 288, 292 (Okla. App. 2015) (noting after remand, "the issue of the viability and effect to be given to pleadings filed in federal court is left to the state courts"); and *Laguna Vill., Inc. v. Laborers'*

Internat. Union of N. Am., 35 Cal.3d 174, 180 (1983) (collecting state court cases giving effect to federal pleadings filed before remand)).

The Court further finds the Lawyer Defendants did not voluntarily appear by moving for dismissal following remand. Their motion asserted the lack of service and lack of personal jurisdiction among the grounds for dismissal. South Carolina courts have long permitted a defendant to move for dismissal on those grounds without deeming the defendant to have waived the defenses merely by filing the motion. *See, e.g., Christian v. Healy*, 435 S.C. 507, 510-11, 868 S.E.2d 403, 405 (Ct. App. 2021) (“Upon failure to serve the summons and complaint, the action may be dismissed by the court on the court's own initiative or upon application of any party...A party may assert a defense of insufficiency of service of process before filing a responsive pleading.”) (internal citations omitted). *See also* Rule 12(b), SCRCP (“No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion.”); Rule 12(g), SCRCP (“A party who makes a motion under this rule may join with it any other motions herein provided for and then available to him.”); Rule 12(h)(1), SCRCP (“A defense of lack of jurisdiction over the person...insufficiency of process, insufficiency of service of process...is waived (A) if omitted from a motion in the circumstances described in subdivision (g) or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.”). Further support for this conclusion is drawn from correspondence between counsel submitted with the supplemental briefing following the hearing. On September 1, 2023, defense counsel pointed out that the summons and complaint were never served and requested that Plaintiffs’ counsel provide the date the time to answer began to run if he contended the Lawyer Defendants were in default. Despite the additional time the Court has afforded the parties before rendering its decision, the record contains no evidence that Plaintiff’s counsel ever responded to that request.

The Court therefore finds the Lawyer Defendants never voluntarily appeared in this action. Based upon that finding and the Plaintiffs' admission that they never served the summons and complaint—even after the Lawyer Defendants filed their motions over two years ago—the Court is bound to grant the motions and dismiss this action because the Plaintiffs failed to obtain service, or its equivalent, within the time prescribed in Rule 3. Consequently, the action has not been commenced pursuant to the Rule. *See* Rule 3(a), SCRCPP. Even after tolling the time allowed for service while the Circuit Court's jurisdiction was suspended during removal, the Plaintiffs' time to serve the summons and complaint expired long ago. *See Limehouse, supra*.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Lawyer Defendants motions to dismiss shall be and hereby are GRANTED and all claims and causes of action against the Lawyer Defendants are DISMISSED.

IT IS SO ORDERED.

[Judge's Signature on Following Page]



Charleston Common Pleas

Case Caption: John Doe 305 , plaintiff, et al VS Lawrence E Richter Jr , defendant, et al
Case Number: 2022CP1004031
Type: Order/Dismissal

So Ordered

William C. McMaster, III

Electronically signed on 2025-12-05 14:45:55 page 9 of 9

JULIE J. ARMSTRONG

CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258

RETURN SERVICE REQUESTED



clerkofcourt.charlestoncounty.org

3734



GREGG E. MEYERS
114 4TH AVE NW
BYRON MN 55920-1232

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Order/Defts Motion to Dismiss is Granted

CASE NO: 2022CP1004031

John Doe 305 , plaintiff, et al VS Lawrence E Richter Jr , defendant, et al

This judgment was entered on the 06th day of November, 2025, and notice mailed first class on Friday, November 07, 2025, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at <http://clerkofcourt.charlestoncounty.org> or obtain a copy in person at the Clerk of Court's Office during regular Charleston County business hours.

Record on Appeal - 0082

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP1004031

John Doe 305 et al
PLAINTIFF(S)

Lawrence E Richter, Jr et al
DEFENDANT(S)

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.
- ☐ **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
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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:

Plaintiffs' Motion to Alter or Amend Judgment pursuant to Rule 59, SCRPC, was filed with this Court on December 15, 2025. After careful consideration of the arguments and filings of counsel, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded, and further finds no error of law or fact not appropriately considered. Therefore, Plaintiffs' Motion is DENIED.

It is so Ordered.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/30/2025 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: John Doe 305 , plaintiff, et al VS Lawrence E Richter Jr , defendant, et al
Case Number: 2022CP1004031
Type: Order/Electronic Form 4

So Ordered

William C. McMaster, III

Electronically signed on 2025-12-30 11:16:58 page 3 of 3

OK 5016
25.00/
cla

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE No. 06-CP-18-1310
CASE No. 06-CP-18-1311
CASE No. 06-CP-18-1434

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.

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

Defendants.

ORDER DESIGNATING CASE
COMPLEX

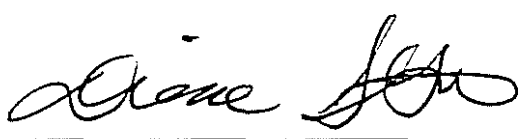
FILED - RECORDED
2006 OCT 17 PM 3:55
CLERK OF COURT
DORCHESTER COUNTY

THIS MATTER was before me, as Chief Administrative Judge for the First Judicial Circuit, for a status conference by telephone on September 29, 2006. This is a action seeking class certification of two classes of individuals. After hearing from counsel for all parties to the matter, and pursuant to the Order of Chief Justice Jean H. Toal dated July 26, 2006, I find that the ends of just in the disposition of the case are best served by designating this case complex.

Further, as Chief Administrative Judge, I find the interests of justice are served by assigning the case to me for exclusive jurisdiction to hear the case from beginning to end.

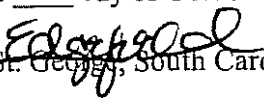
To the extent necessary, this matter shall not be called for trial before August 15, 2007.

AND IT IS SO ORDERED!



The Hon. Diane S. Goodstein
Chief Administrative Judge of the First Judicial Circuit

This 10 day of October, 2006

At St. George, South Carolina


25.00/
Cla

representative of a class of other persons)
similarly situated as victims of priest)
sex abuse in South Carolina,)

Plaintiff,)

vs.)

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

Defendants.)

FILED-RECORDED
2006 OCT 17 PM 3:55
CLERK OF COURT
DORCHESTER COUNTY

PURSUANT TO SCRCP Rule 42(a), and with the consent of the parties, it is

ORDERED that the above captioned matters are consolidated for trials; and

IT IS FURTHER ORDERED that the following captioned shall be used hereafter for these
matters:

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE No. 06-CP-18-1310
CASE No. 06-CP-18-1311
CASE No. 06-CP-18-1434

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,)

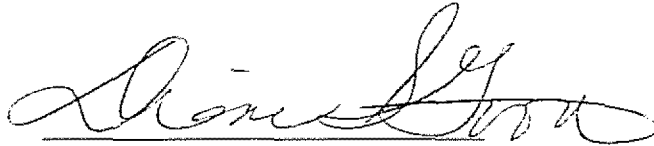
Plaintiffs,)

vs.)

The Bishop of Charleston, a Corporation)
Sole, and The Bishop of the Diocese of)

Charleston, in his official capacity,)
)
Defendants.)
_____)

AND IT IS SO ORDERED!!!



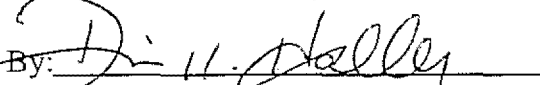
The Hon. Diane S. Goodstein
Jude of the First Judicial Circuit

This 9 day of Oct., 2006

Edgipole, South Carolina

WE SO MOVE:

RICHTER & HALLER, LLC

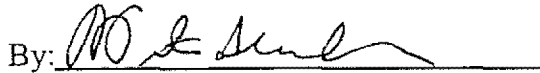
By: 

Lawrence E. Richter, Jr.
David K. Haller
Post Office Drawer 1089
Mt. Pleasant, SC 26465
(843) 849-6000

ATTORNEYS FOR PLAINTIFFS

WE CONSENT:

SHAHID LAW OFFICE, LLC

By: 

A. Peter Shahid, Jr., Esq.
Post Office Box 591
Charleston, SC 29402
(843) 853-4500

ATTORNEYS FOR DEFENDANTS

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

John Doe #66A

Plaintiff,

vs.

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

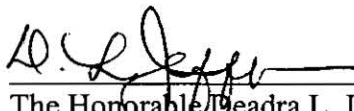
Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE No. 05-CP-10-3293

CONSENT ORDER OF DISMISSAL
WITHOUT PREJUDICE

FILED
2006 OCT 23 PM 4:22
JULIE J. ARMSTRONG
CLERK OF COURT

PURSUANT TO SCRPC Rule 41(a) the above referenced matters are dismissed WITHOUT
PREJUDICE, with the consent of all counsel of record.

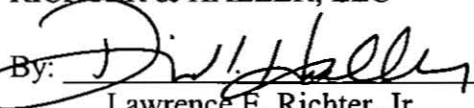
06/10/2009

The Honorable Deadra L. Jefferson
Ninth Circuit Court Judge

This 19th day of October, 2006

Char., South Carolina

WE CONSENT:

RICHTER & HALLER, LLC

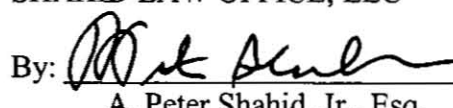
By: 

Lawrence E. Richter, Jr.
David K. Haller
Post Office Drawer 1089
Mt. Pleasant, SC 26465
(843) 849-6000

ATTORNEYS FOR PLAINTIFF

WE CONSENT:

SHAHID LAW OFFICE, LLC

By: 

A. Peter Shahid, Jr., Esq.
Post Office Box 591
Charleston, SC 29402
(843) 853-4500

ATTORNEYS FOR DEFENDANTS

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

John Doe #66)

Plaintiff,)

vs.)

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

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CA No. 05-CP-10-2053

**CONSENT ORDER OF DISMISSAL
WITHOUT PREJUDICE**

BY

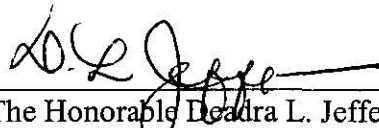
JULIE J. ARMSTRONG
CLERK OF COURT

2006 OCT 23 PM 4:20

FILED

PURSUANT TO SCRPC Rule 41(a) the above referenced matters are dismissed WITHOUT

PREJUDICE, with the consent of all counsel of record.

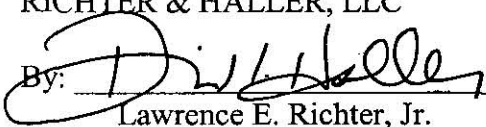

The Honorable Deandra L. Jefferson
Ninth Circuit Court Judge

This 19th day of October, 2006

Charleston, South Carolina

WE CONSENT:

RICHTER & HALLER, LLC

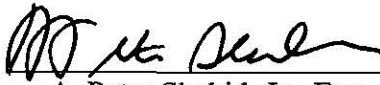
By: 

Lawrence E. Richter, Jr.
David K. Haller
Post Office Drawer 1089
Mt. Pleasant, SC 26465
(843) 849-6000

ATTORNEYS FOR PLAINTIFF

WE CONSENT:

SHAHID LAW OFFICE, LLC

By: 

A. Peter Shahid, Jr., Esq.
Post Office Box 591
Charleston, SC 29402
(843) 853-4500

ATTORNEYS FOR DEFENDANTS

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

John Doe #53, individually and as a
representative of a class of other persons
similarly situated as victims of priest
sex abuse in South Carolina,

Plaintiff,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE No. 05-CP-10-4913

FILED
2006 OCT 23 PM 4:24
JULIE J. ARYSTRONG
CLERK OF COURT
BY

CONSENT ORDER OF DISMISSAL
WITHOUT PREJUDICE

1696101079

PURSUANT TO SCRCR Rule 41(a) the above referenced matters are dismissed WITHOUT
PREJUDICE, with the consent of all counsel of record.



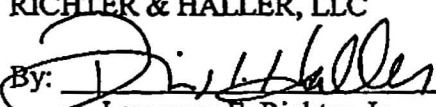
The Honorable Deadra L. Jefferson
Ninth Circuit Court Judge

This 19th day of October, 2006

, South Carolina

WE CONSENT:

RICHTER & HALLER, LLC

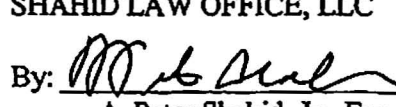
By: 

Lawrence E. Richter, Jr.
David K. Haller
Post Office Drawer 1089
Mt. Pleasant, SC 29465
(843) 849-6000

ATTORNEYS FOR PLAINTIFF

WE CONSENT:

SHAHID LAW OFFICE, LLC

By: 

A. Peter Shahid, Jr., Esq.
Post Office Box 591
Charleston, SC 29402
(843) 853-4500

ATTORNEYS FOR DEFENDANTS

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

FOR THE FIRST JUDICIAL CIRCUIT

CASE No. 06-CP-18-1310

CASE No. 06-CP-18-1311

CASE No. 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,)

vs.)

The Bishop of Charleston, a Corporation)

Sole, and The Bishop of the Diocese of)

Charleston, in his official capacity,)

Defendants.)

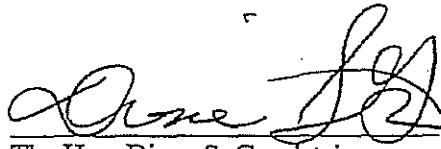
ORDER RELATING TO WAIVER
DISCLOSURES BY COURT

FILED RECORDED
2007 JUL 13 AM 11:38
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

At my direction, counsel for the plaintiffs informed the Diocese that it represented a co-party in a restored action in which the second party is a company in which undersigned's husband has a controlling interest. Further, one of plaintiffs' counsel serves on the Charleston County Aviation Authority and the undersigned's husband is the attorney for the Authority. Additionally, plaintiffs' counsel and the undersigned's families have a long social history which is known to defense counsel. I have given the Diocese an opportunity to discuss these matters before proceeding. These matters were made known to the Diocese by writings dated October 6, 2006 and June 4, 2007 from plaintiffs' counsel to defense counsel.

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After full disclosure to defense counsel of the foregoing facts of any potential conflict which may exist, the Diocese has elected to waive all conflicts and proceed with me as the designated trial judge.

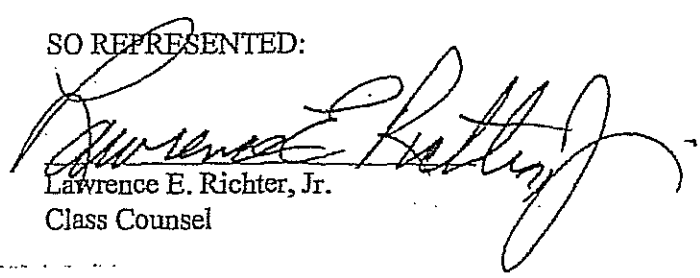

The Hon. Diane S. Goodstein
Presiding Judge

This 13 day of July, 2007
At Myrtle Beach, South Carolina

I CONCUR:


A. Peter Shahid, Jr., Esquire, General Counsel
The Bishop of Charleston, a Corporation
Sole, and The Bishop of the Diocese of
Charleston, in his official capacity

SO REPRESENTED:


Lawrence E. Richter, Jr.
Class Counsel

**STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER**

**JUDGMENT IN A CIVIL CASE
2006CP1801310, 1311 and 1636**

JOHN DOE, ET AL

BISHOP OF CHARLESTON ET AL

PLAINTIFF(S)

DEFENDANT(S)

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.
- () ACTION DISMISSED (CHECK REASON): () RULE 12b, SCRPC; () RULE 41a SCRPC (VOL NONSUIT); () RULE 43k, 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

IT IS ORDERED AND ADJUDGED: (☒) See Attached order; () Statement of Judgment by the court.

Order Certifying Classes

DATED AT ST. GEORGE, S.C. THIS 23ND DAY OF JANAUARY, 2007.

Cheryl Graham
CHERYL GRAHAM
CLERK OF COURT

THIS JUDGMENT WAS ENTERED ON THE 23rd DAY OF Jan, 2007
AND A COPY WAS MAILED FIRST CLASS THIS 23rd DAY OF Jan,
2007 TO ATTORNEY OF RECORD OR TO PARTIES WHEN APPEARING PRO SE
AS FOLLOWS:
David Haller A. Peter Shahid

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE No. 06-CP-18-1310
		CASE No. 06-CP-18-1311
		CASE No. 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 Corporation)
 Sole, and The Bishop of the Diocese of)
 Charleston, in his official capacity,)

Defendants.)

ORDER CERTIFYING CLASSES
 AND GIVING PRELIMINARY
 APPROVAL TO SETTLEMENT

2001 JAN 23 AM 9:39
 CERTIFIED COPY
 Clerk of Court
 DORCHESTER COUNTY

THIS MATTER is before the court on motion by the plaintiffs for certification of two classes and for approval of a settlement reached between the class representatives and the defendants. After a review of the full record before the court and the law applicable to the issues hereto, the motion to certify the requested classes is GRANTED and the proposed settlement agreement is preliminarily approved, subject to the objection period and Fairness Hearing as set out in this order.

FINDINGS OF FACT

Plaintiffs John Doe #53, John Doe 66, John Doe 66A, and John Doe 67¹ are individuals who, as minors, were sexually abused by priests assigned to the Diocese of Charleston. The Bishop of Charleston, a Corporation Sole, and The Bishop of

¹ Hereinafter all of the plaintiffs will be referred to as "Representatives."

Charleston, in his official capacity (hereinafter "the Diocese"), are the designated governing entities for the Roman Catholic Church in South Carolina. The Corporation Sole was chartered by the General Assembly in the 1880s and its reach is statewide. John Doe #53 claims to have been abused by Father Lawrence Sheedy while John Doe was a minor living at the Charleston orphanage operated by the Diocese. John Does 66, 66A, and 67 were students at Nativity School who were abused by Father James Nyhan while Nyhan was assigned there. Jane Doe 1 is the wife of John Doe #53 and Rachel Roe is his mother. Jane Doe 2 is the wife of John Doe 66A. Each of the proposed class representatives were abused in their minority and brought this action beyond the one year statute of limitations for those reaching majority.

Over the past several decades a number of priests or other agents of the Diocese have been accused, investigated, criminally charged, and/or criminally convicted of sexual activities on minors. Based on information provided by the Diocese of Charleston to the Representatives, between 1950 and 2006, the total numbers of Diocese personnel who are alleged to have committed one or more acts of sexual misconduct on a minor are 28. Of these, 26 were clerical and the remainder non-clerical. The total number of claimed victims during this time period is 50. Some of these victims have brought claims against the Diocese. In almost all of them, the Diocese has asserted the statute of limitations, charitable immunity, and lack of notice/negligence, among other things, in defense of the claims. Additionally, a common issue in cases involving sexual abuse claims is the calculation of damages for mostly psychological damages. Each of the representatives have had the defenses and issues raised here asserted in their own claims. This action is almost identical to actions brought in other states in which the plaintiffs

have alleged sexual abuse upon them by priests and the failure of the Catholic Church in that area to adequately act in response.

Counsel for the representatives has extensive experience in complex plaintiffs' litigation, including potential class actions and cases in which sexual abuse of the plaintiff is the basis for the underlying claim.²

ISSUES

1. Should the plaintiffs' request for certification of classes be granted pursuant to SCRCR Rule 23?
2. Is the Settlement Agreement reached between the parties in the best interests of the class such that it should be preliminarily approved?

LAW/ANALYSIS

A. Certification of the Classes

SCRCR Rule 23 provides that a case may be certified as a class action where the proposed class satisfies the following criteria:

1. the class is so numerous that joinder of all members is impracticable;
2. There are questions of law or fact common to the class;
3. The claims or defenses of the representative parties are typical of the claims or defenses of the class;
4. The representative parties will fairly and adequately protect the interests of the class; and
5. In cases in which the relief primarily sought is not injunctive or declaratory with respect to the class as a whole, the amount in controversy exceeds one hundred dollars for each member of the class.

Plaintiffs have requested that the following classes be certified:

² The Diocese, while denying the seminal allegations of the complaint, took no legal or factual position on the motion for class certification.

- A. All individuals born on or before August 30, 1980 who, as minors, were sexually abused³ at any time by agents or employees of the Diocese of Charleston who have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter "the Primary Class")
- B. The spouses and parents, of all individuals qualified pursuant to the Primary Class and who suffered a loss of the abused individual's consortium, and who as spouses or parents have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter the "Consortium Class")

I find that certification of these class is appropriate.

1. Numerosity/ Impracticability of Joinder.

The first element, commonly referred to as 'numerosity,' requires that the court balance the number of potential members of the class and the ability to join each of the individuals in one suit. There is no definitive standard as to what number is sufficient to be numerous. *Haywood v. Barnes*, 109 F.R.D. 568 (E.D.N.C. 1986). Courts have certified classes where the number has been as small as 14 members. *Manning v. Princeton Consumer Discount Co.*, 390 F.Supp. 320 (ED Pa 1975)(cited by *Middleton v. Sunstar Acceptance Corp.*, 98-CP-07-1131 (SC Court of Common Pleas, Jan. 13, 2000). Further, the exact number does not have to be known. Wright, Miller, & Kane Federal Practice and Procedure (2d) § 1762. The record before the court must reasonably infer numerosity. *Id.* Determining whether numerosity exists requires a liberal interpretation of the rule. *Id.* The key is not simply the number of potential class members, but also the practicability of joining all in one action.

³"Sexual abuse," for these purposes, is any lewd or lascivious act committed on, about, or with a minor by an agent or employee of the Diocese in which the actor knew or should have known that the act may have the effect of arousing, appealing to, or gratifying the lusts, passions or sexual desires of the agent or employee of the Diocese or of the minor.

The record before me shows four representatives of the Primary Class and three of the Consortium Class. There have been no less than 28 priests or agents of the Diocese who have been accused, investigated, charged, and/or convicted of sexual abuse crimes on minors. However, the total number is likely to be higher because of the nature of the allegations and many of these priests have had multiple victims. As the representatives have shown, it is difficult for claimants to face up to sexual abuse. This is more true where the abuse has been accomplished by a person such as a priest, who is held by high esteem by the victim.

Further, the Diocese operates statewide and, hence, the breadth of individual claims is particularly great. The size of the Diocese's reach also weighs on the ability of individuals to be joined in the case. In addition, this court may easily take judicial notice that Catholic Dioceses around the country have been taking on the issue of priest sexual abuse in the litigation forum over the last several years. The problem of sexual abuse by priests has been in the forefront of national news which is indicative of the potential number of claimants here.

As to the Consortium Class, because members of the class are the spouses and parents of those who have actually suffered abuse, the number of members for that class is likely to be larger than in the Primary Class. It is not difficult for this court, then, to reasonably infer that the number of potential class members is such that the joinder of all is impractical. Hence, this first prong is met.

2. Commonality/Typicality

The second and third prongs of Rule 23 are generally considered to be identical and are most often analyzed together. Commonality is the requirement that common question of

law or fact predominate over other questions in the case. “In fact, a single common issue will suffice if it is important enough.” *McGann v. Mungo*, 287 S.C. 561, 340 S.E.2d 154 (Ct.App. 1986). Typicality requires that the claims or defenses of the class be identical. SCRCF Rule 23(a)(3). I find that the claims of the class are common and typical to each of the members.

The key issues of the case, as set out in the complaints, include the responsibility of the Diocese to monitor its agents, its knowledge of their conduct, the acts taken by the Diocese in the face of the knowledge, the type of damage (namely psychological), the applicability of the statute of limitations and defenses thereto, and the applicability of the affirmative defense of charitable immunity. Each of these issues must be addressed in the case of each individual class member in order for a resolution of the matter. Accordingly, the claims of each class member are common and typical to one another.

3. Adequacy of Representation

The fourth prong of Rule 23 is the adequacy of representation. There are two parts to this prong: (1) the plaintiffs’ attorney must be qualified, experienced, and generally able to conduct the proposed litigation; (2) the plaintiffs must not have interests antagonistic to those of the class. The plaintiffs here meet these criteria.

First, the record reflects that class counsel is “qualified, experienced, and generally able to conduct the proposed litigation.” It is presumed that plaintiffs’ counsel is qualified unless the defense shows inadequacy of representation. *McGlothin v. Connors*, 142 F.R.D. 626 (W.V.A. 1992). The record before me shows that plaintiffs’ counsel has a history of being involved in numerous complex pieces of litigation and class actions and with great success. The reputation of class counsel is known to the court and, given

their past history and their work in this matter heretofore, I have no question in finding them qualified.

Second, the class representatives' interests are not antagonistic to those of the rest of the class. The representatives have resolved their claims and agreed to be bound by the resolution in the face of whether this court approved class certification or not and the Diocese agreed to pay them regardless of whether the class was approved or not. They have nothing more to gain from the case. Accordingly, the representatives are not in an antagonistic position to the rest of the class.

4. \$100 requirement.

Last, SCRCP Rule 23(a)(5) requires that the amount in controversy exceed \$100 for each member of the class. In order for the amount in controversy prong to be met, the plaintiffs must show that the amount to be gained in the suit exceeds \$100 per class member. *Gardner v. Newson Chevrolet-Buick, Inc.*, SC 328, 404 S.E.2d 200 (1991). The claim for the class here is the medical bills, pain, suffering, psychological injury, and loss of consortium as a result of the Diocese's acts or omissions. These damages clearly seek a gain in excess of \$100 per class member. I find that the amount in controversy element is satisfied.

For the reasons set for above, the elements of SCRCP Rule 23 are met for the classes sought to be certified and, accordingly, I grant the motion to certify the classes herein.

B. Preliminary Approval of the Settlement

The parties have presented a Settlement Agreement for preliminary approval by the court pursuant to SCRCP Rule 23. At this point, the court conducts a two-step process:

1) a review of the settlement to determine whether it is within the realm of approval; and
2) instructions on providing notice to the class for purposes of objection with Notice of a Fairness Hearing for purposes of final approval of the settlement. *Clark v. Experian Information Solutions*, WL 2566433 (D.S.C. 2004).

I have given a full review of the Settlement Agreement with counsel for both parties and I believe that the settlement is fair, reasonable, and adequate in providing necessary funding for the class and a confidential means of asserting and prosecuting a claim which encourages individuals to make the same, among other things.

I order a Fairness Hearing be held March 9, 2007 at 10:00 am at the Dorchester County Courthouse in St. George, South Carolina. The parties are required to follow the following procedure to effectuate final approval of the settlement.

A. **Notice.** Class counsel shall arrange for notice of the settlement to be published in a form comparable to that set forth on Exhibit A hereto in the following major publications: *The Charleston Post & Courier*, *The Myrtle Beach Sun*; *The State*; *The Augusta Chronicle*; *The Rock Hill Herald*; *Beaufort Gazette*; *Greenville News* *Spartanburg Herald*; *Orangeburg Times-Democrat*; *Florence Morning News* and the *Aiken Standard*. Publication of the notice shall be at least once a week for six weeks during the notice period. In addition to the notice, class counsel shall mail by certified mail, return receipt requested the notice to any individual who may fit within the confines of either class. The defendants shall be required to provide to the plaintiffs the names, addresses and telephone numbers of all such persons known to them. The defendant shall publish the notice in its Catholic Miscellany publication for three (3) consecutive publications.

B. Objection. Any potential Class member may appear and raise any objection he or she may have to the proposed settlement at this hearing, provided he or she has filed written objection in the Dorchester County Clerk of Court's Office and served the same on Class Counsel prior to February 22, 2007. The written objection should adequately state the basis for the objection such that Class Counsel may make a proper response.

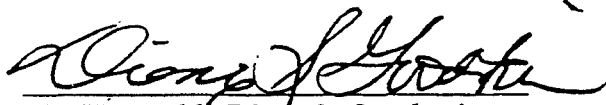
C. Prayer for Attorneys Fees. The Court will also consider at this hearing an award of attorneys' fees to Class counsel. Class counsel shall file in the Dorchester County Clerk of Court's Office no later than February 14, 2007 documentation supporting their request for attorneys' fees and such other documentation as they deem appropriate in support of the reasonableness of the proposed settlement.

Therefore, it is ordered that the plaintiffs' motion for class certification is GRANTED; and

IT IS FURTHER ORDERED that the Settlement Agreement reached between the parties is preliminarily approved by this court; and

IT IS FURTHER ORDERED that a Fairness Hearing for final approval of the hearing be held before me on March 9, 2007 at 10:00 am at the Dorchester County Courthouse in St. George, South Carolina subject to the notice and other terms and conditions contained herein.

AND IT IS SO ORDERED!!!


The Honorable Diane S. Goodstein
Presiding Judge

This 19 day of January, 2007
At Summerville South Carolina

Legal Notice

Notice of Proposed Settlement of Class Action

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

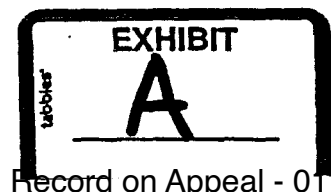
YOU ARE HEREBY NOTIFIED OF A PROPOSED SETTLEMENT OF THIS CLASS ACTION, OF HEARINGS TO BE HELD BY THE COURT TO DETERMINE WHETHER IT SHOULD BE APPROVED AND TO DETERMINE THE REASONABLENESS OF CLASS COUNSEL'S FEES.

Plaintiffs 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 brought these claims on behalf of themselves and others who with claims of sexual abuse in keeping with the class definitions, by agents or employees of the Diocese of Charleston. The Bishop of Charleston, a Corporation Sole and The Bishop of the Diocese of Charleston, in his official capacity have denied any liability or wrongdoing in response to the claims that were made against them and have asserted various defenses in response to the claims.

The court of common pleas for Dorchester County has certified the classes on whose behalf the claims have been asserted. Those classes are:

1. All individuals 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. (Hereinafter the "Primary Class")
2. The spouses and parents, of all individuals qualified pursuant to the Primary Class and who suffered a loss of the abused individual's consortium, and who as spouses or parents have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter the "Consortium Class")

The Class Representatives have reached a settlement on behalf of the classes, and, after a review of the terms of a Settlement Agreement entered into by the Class Representatives and the defendants, the court has preliminarily approved the terms of the settlement as being in the best interest of the classes. The court's preliminary approval is subject to final approval or disapproval after a Fairness Hearing to be held as described below. Copies of the Settlement Agreement may be obtained by a Class member or their counsel at this time by making written request of Class Counsel sent to the address for Class Counsel set forth at the end of this Notice.



The Settlement Agreement resolving this matter will not be effective unless and until the court makes a final determination as to its fairness and that the settlement is a fair, reasonable, and adequate compromise of the aggregate claims of the plaintiff classes as a whole.

In order to assist the Court in making this decision, the Court will hold a Fairness Hearing on March 9, 2007, commencing at 10:00 a.m. at the Dorchester County Courthouse in St. George, South Carolina. The court will also consider at this hearing an award of attorneys fees to Class counsel. Class counsel shall file in the Dorchester County Clerk of Court's Office no later than February 14, 2007 documentation supporting their request for attorneys fees and such other documentation as they deem appropriate in support of the reasonableness of the proposed settlement. Any Class member may appear and raise any objection he or she may have to the proposed settlement at this hearing, provided he or she has filed written objection in the Dorchester County Clerk of Court's Office and served the same no later than February 22, 2007. The written objection should adequately state the basis for the objection such that Class Counsel may make a proper response.

The proposed settlement includes a claims process to be utilized for qualifying Class members to prove the validity of any claim and have their damages measured for payment from the Settlement Fund. The Class Representatives will also request the approval of the claims process provided for in the Settlement Agreement and for an order providing for a date on which the claims process begins and ends.

CLASS COUNSEL:

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Post Office Drawer 1089

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STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

CASE No. 06-CP-18-1310

CASE No. 06-CP-18-1311

CASE No. 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,)

vs.)

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

Defendants.)

ORDER APPROVING SETTLEMENT

THIS MATTER was before the Court for a Fairness Hearing on a proposed class settlement, for an award of attorneys fees and litigation costs, and for approval of certain forms and documents relative to notice to the class and claims process. The Court had preliminarily approved the settlement by order dated January 12, 2007. For the reasons set forth herein, I find the Settlement and Arbitration Agreement to be fair and reasonable as to the Primary Class as a whole, and I approve the same. This Order further addresses the claims procedure, attorney fees and litigation costs.

FACTUAL BACKGROUND/PROCEDURAL HISTORY

1. Notice to Class Members

The Fairness Hearing was noticed by publication in 11 newspapers of general circulation in all parts of the state; potential class members known to the parties were given actual notice by

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2007 JUL 30 PM 11:32
Charles H. Hadden
CLERK OF COURT
DORCHESTER COUNTY

mail. In addition, the Court takes notice that there was substantial media coverage of the proposed settlement in advance of the Fairness Hearing.

Three objections were filed as of the time of the hearing. The Class Representatives and the Defendants submitted an agreed upon addendum to the settlement which contained an opt-out procedure and restated the parties' intentions as to the meaning of certain terms contained in the agreement. The Court held a full hearing on all of the objections and on the petition for attorney fees.

During the hearing, the Court, *sua sponte*, directed David Pascoe, Solicitor for the First Judicial Circuit, to conduct an investigation into a document entitled, "INSTRUCTION" which plaintiffs' claim was the basis for how sexual abuse allegations were to be handled by the Diocese. In the course of that investigation, Solicitor Pascoe directed the Diocese to review all of its files to determine the names of any individual who alleged that he or she had been sexually abused as a minor to ensure that the names of those individuals had been turned over to law enforcement as required by statute and to ensure that the individuals received actual notice of these proceedings.

In order to protect the confidentiality of individuals who claim abuse and who had informed the Diocese of their claim, the Diocese undertook the responsibility of providing actual notice of the class action and settlement terms to all individuals who might fit within the primary class of the pendency of this action. The Diocese represented that there were 20 such individuals, 16 of whom it located. As to the remaining four, I directed the Diocese to provide those names to class counsel who then assisted in attempting to locate these last four individuals. Plaintiffs provided the Court the affidavit of Steven A. Smith who stated that he identified two individuals who might be those being sought, but that, in his opinion, all reasonable efforts had

been used to locate the individuals and that they could not be found with the limited information in possession of the Diocese.¹

Those individuals who received notice were asked to contact the Court in short order. No objections were received.

2. Investigation by Solicitor David Pascoe

As mentioned above, the Court directed David Pascoe, First Circuit Solicitor, to investigate into certain matters, in particular, a document entitled "INSTRUCTION," concerning the manner in which sexual abuse allegations were to be handled. On July 13, 2007, at hearing was held at the Dorchester County Courthouse, St. George, South Carolina, where Solicitor Pascoe reported that his investigation included the Diocese review of its files and conversations with the General Counsel. During the July 13th hearing, Solicitor Pascoe stated that he made contact with the South Carolina Attorney General and the United States Attorney for the District of South Carolina concerning the INSTRUCTION. The report from the United States Attorney's Office was that a similar investigation had been conducted by the United States Attorney in Massachusetts and that no criminal charges were ever brought as a result of it.

At the July 13th hearing, Solicitor Pascoe reported that his investigation continues; however, he reported no reason that the civil action should not proceed.

ORDER

1. Notice to All Members of the Class

The "INSTRUCTION" raised concerns with the Court that some individuals did not or would not receive proper notice of the class settlement in order to object to or participate in the settlement proposed for the class. The parties and the Court considered several options on how

¹One of the remaining two was reported to the Diocese by a victim who has indicated that he has no specific knowledge that the individual was actually abused.

best to address this concern and to protect the interests of both the absent class members and the Diocese's right to have the conclusive effect of a class action.

As stated above, the Diocese undertook on its own to notify the potential members of the class known to it. Normally, this burden would fall on the plaintiffs. *Eisen v. Carlisle & Jacqueline*, 417 U.S. 156 (1974). Nevertheless, because of the nature of the allegations, the Diocese believed that it would be more appropriate for it to undertake this responsibility in order to ensure the confidentiality of those who have come forward to it. See Rule 23, SCRCP (giving the Court the authority to establish how notice may be sent).

The Diocese has represented to the Court that 20 individuals who may be class members were identified by it in a search of its files. Sixteen of these were located, and as to the other four, I find, based on Mr. Smith's affidavit, that reasonable efforts were used to locate those individuals and that their present whereabouts are unknown. *Eisen v. Carlisle & Jacqueline*, 417 U.S. 156 (1974). The Diocese has further stated that it understands that any person who should have had notice, but did not receive notice for whatever reason, would not be bound by the *res judicata* effect of the settlement. Further, the Diocese has stipulated before me in open Court and on the record that any person who comes forward at a later date and can show that he or she should have received notice but did not could participate in an arbitration process with terms identical to the Settlement and Arbitration Agreement before the Court for approval today.

Class Counsel has stated to the Court that it believes the representations and stipulation of the Diocese for potential absent class members is in the best interest of the absent class members and has asked the Court to approve the settlement with the Diocese's representation and stipulation as a condition of the approval.

Based upon the representations of the Diocese, its stipulation as stated herein, and Class Counsel's conditional consent, I believe that the concerns which the "INSTRUCTION" raised have been satisfied as to the civil action. As to any criminal conduct which may exist, I trust that the appropriate prosecutors take the proper course of action.

2. Objections to the Settlement

At the time of the hearing, three objections were filed. Subsequently, two of the objectors have withdrawn their objections. Matthew Creech, on behalf of attorney Johnny Parker, withdrew an objection on behalf of his client on the record at the March 9, 2007 Fairness Hearing on this matter at the Dorchester County Courthouse, St. George, South Carolina, and Walter Bilbro withdrew an objection on behalf of his client via document filed with the Dorchester County Clerk of Court on June 6, 2007. Therefore, the Court is left to rule only on the objections filed by John Does A through N. For the reasons set forth below, the objections are overruled.

A. Standing of John Does A through N

As an initial matter, plaintiffs challenge the ability of John Does A through N to make any claim as to the fairness or reasonableness of class structure or settlement because their objection asserts that they "conditionally opt-out" of the settlement. Plaintiffs argue that since these individuals are not parties to the litigation, they do not have standing to object to the definition of the class. The Fourth Circuit has addressed this issue in *Gould v. Alleco, Inc., et al.*, 883 F.2d 281 (4th Cir. 1989) *cert. denied* 493 U.S. 1058. In essence, the Court held that an individual who believes that his or her rights will be impacted by any stage of an action, prior to settlement, must seek a timely intervention into the action under Rule 24.

This identical reasoning has been adopted by the South Carolina Supreme Court. In *Ex Parte Condon*, the Supreme Court of South Carolina was confronted by the state Attorney General's attempt to challenge an award of attorneys fees arising from a class action lawsuit. 354 S.C. 634, 583 S.E.2d 430 (2003). Our Supreme Court adopted the analysis that the manner in which individuals who wish to assert their rights in a case is to move to intervene pursuant to SCRCP Rule 24 and, if they failed to take that action, they have no standing. *Id.* at 640, 433.

The Court finds this reasoning to John Doe A through N's "conditional opt-out" persuasive. The objectors cannot have it both way. Since it appears they intend to opt-out, I hold they do not having standing to raise these objections. Nevertheless, even if they did, I find their objections are without merit, and I will address those in course below.

B. Objections to class definitions

John Does A through N claim insufficiencies in the class definitions. The objection states that those individuals who do not fit into the definitions seek amendment of the definitions to fit them. As the above cases state, it is axiomatic that only those who are parties to the litigation may participate in it. The creation of a class makes those class members parties to the litigation. Those who do not fall within the definitions are not parties to the case. *Gould, supra*. Accordingly, unless those individuals have filed a timely motion to intervene to participate in the class drafting, they maintain their rights to proceed against the same defendants for the creations of a different class to include themselves and others similarly situated if they can meet Rule 23 requirements. Hence, none of their legal rights have been impaired and they are free to proceed on their own. *Id.* Those who do fit in the class and do not care for the definition of the class as defined may opt-out of the class and proceed on their own.

Nevertheless, the definitions as approved by the Court meet both the spirit of the issues joined in the litigation and the settled tort law of South Carolina.

The first objection is based on a reading by the objectors of the Consortium Class definition to exclude those parents or spouses whose child or spouse's individual claim had been adjudicated, settled, or otherwise resolved. For many reasons, this would have been a legitimate exclusion, not the least of which would have been the propriety of dealing with all claims at the same time.² However, when the class definition is read in the light in which the settling parties and the Court intended when the settlement was approved preliminarily, the objection is satisfied. The parties have submitted an addendum to the Court which stipulates that the definition is intended in the broader reading. This was the original intent of the settling parties, and any other reading must be attributed to draftsmanship.

The next ground for objection is that the classes exclude those whose claims have been adjudicated, settled, or otherwise resolved. The objectors would have the class definition rewritten so that those whose claims were unsuccessfully prosecuted under failed legal theories can be revived. However, to do so would have the traditional basis of tort rules, not to mention due process, turned upside down. *See generally In Re: "Agent Orange" Product Liability Litigation*, 611 F.Supp. 1396 (1985)(holding that traditional tort principles should be used in class action settlements involving traditional tort claims). Clearly the law allows a party only 'one bite of the apple' in litigation. "A final judgment on the merits in a prior action will preclude the parties and their privies under the doctrine of *res judicata* in a second action based on the same claim as to issues actually litigated and as to issues which might have been litigated in the first action."

²Recall that all claims under both classes are those which facially by definition have passed the applicable statute of limitations. Issues of proof and damages may arise in the delay between resolution of the two claims, notwithstanding their independent character.

Price v. Georgetown, 297 S.C. 185, 375 S.E.2d 355 (Ct. App. 1988). See also *Nunnery v. Brantley Construction Co., Inc.*, 289 S.C. 205, 345 S.E.2d 740 (Ct. App. 1986)(dismissal with prejudice has *res judicata* effect). South Carolina has also taken the same approach with cases which have been settled by the parties where there is the exchange of compensation for a release, absent some mistake not previously contemplated by the parties. *Smothers v. Richland Mem. Hosp.*, 326 S.C. 566, 493 S.E.2d 107 (Ct. App. 1997).³ Hence, any prior claims that have been adjudicated or settled are barred by law.⁴ Allowing those individuals to have another bite would be manifestly unfair to those class members who have not had their claims adjudicated and to the Defendants who have been discharged in one form or another from liability to that individual.

The objection next states that certain of the John Does are, "apparently excluded from the settlement because John Doe D previously wrote to the Diocese about the minor's molestation and the Diocese refused to accept responsibility." I see no such exclusion in the class definitions or settlement and this objection is overruled as being without merit.

Last, the suggested amendment requests that the Consortium Class definition have the phrase "and who suffered a loss of the abused individual's consortium" removed from it. This phrase essentially requires some damage proximately caused. This qualification simply complies with recognized tort law and should easily be met by most members of the class. Any parent or spouse who makes any statement or showing of any loss is eligible as a consortium class member and for recovery. For example, a spouse who must pick up a child from school so her husband,

³Any claim such as mistake of fact is too individualized to be dealt with in this class action, though may be the basis for some other suit.

⁴John Doe L brought an action through objector's counsel which was dismissed by consent order which stated, "John Doe v. The Diocese of Charleston and the Bishop of the Diocese of Charleston in his official capacity, No. 04-CP-10-3653, is properly dismissed with prejudice as a result of the Supreme Court decision in *Doe v. Crooks*." Order of the Hon. J. C. Nicholson dated April 19, 2006. Apparently, this objection is intended to reverse counsel's consent to the dismissal of this claim with prejudice.

the regular driver, can attend a psychiatric session has suffered some loss of consortium. A parent whose son had to go to a special summer camp because of bad behavior has lost the child's consortium. The objection is overruled.

C. Objection as to Matrix

Next, John Does A through N object to the claim distribution matrix on the basis that the type of abuse is "arbitrary" since the Courts have held that sexual abuse is "inherently injurious." In support of their contention, the objectors rely heavily on *Manufacturer and Merchants Mutual Ins. Co., Harvey*, 330 S.C. 152, 493 S.E.2d 22 (Ct. App. 1998). *Harvey* is an insurance declaratory judgment action based on an egregious set of facts involving grandparents abusing their grandchildren. Plaintiffs assert that the case does not stand for the propositions relied on by them and, instead, shows why the matrix developed by the settling parties is a fair and reasonable course. I agree with the plaintiffs

The *Harvey* Court was called upon to determine whether the act of sexual abuse on a child could be negligent for purpose of requiring the Harveys' homeowners carrier to defend and indemnify them. In holding the duties did not exist within the fact pattern *sub judice*, the Court found that sexual abuse requires intent. In so holding, the Court of Appeals stated, "We conclude that the effect of sexual abuse is so integral to the act that the intent to do the act is interchangeable with the intent to cause the resulting injury." *Harvey* at 161, 227. It went on to say that as of that opinion, 41 other states had reached the conclusion that "the intent to perform the act of molestation is sufficient to infer the intent to harm the child." *Id.* at FT 1.

The *Harvey* ruling is instructive on why the matrix based on the degree and type of abuse is sensible, fair and legally effective manner for the handling of individual claims. The *Harvey*

Court's analysis that "the effect of the sexual abuse is so integral to the act ... [in] caus[ing] the resulting injury," is an easy basis for upholding the degree of abuse matrix. *Harvey* recognizes that as the act worsens in degree, so does the harm. Correspondingly here, the use of the type of injury matrix found in the settlement will adequately place claimants into the proper place for a fair determination of the value of the claim.

Basing the claim value on the individual psychological damage alone would be difficult, if not impossible, to do. Psychological damages almost always have a degree of variance and uncertainty, not all of which can be tied directly to the acts of the agent or employee of the Diocese. South Carolina law recognizes the difficulty in proving emotional distress by requiring that it be accompanied by physical manifestations before it can be compensated, unless the conduct was intentional. *Ford v. Hudson*, 276 S.C. 157, 276 S.E.2d 761 (1981)(recognizing the tort of intentional infliction of emotional distress as the only cause where compensation for emotional distress requires a showing of physical manifestations).⁵ Accordingly, the use of psychological damages alone as an assessment is a far less equitable means of compensating the claims of all of the victims for the severity of the individual injuries each has suffered. I am comfortable that the matrix presented by the settling parties is a fair and reasonable method of adjudicating claims. I overrule this objection.

D. Compensation of Consortium Claims

Last, the John Doe A through N objectors state that the amount accorded for consortium damages is "out of all proportion" with the manner in which they claim juries handle such

⁵While it is clear that the individual priests or agents inflicted intentional harm, it does not necessarily follow that the Diocese, as their employer, would have the same type of liability in Court under South Carolina law. It is proper for the Court to consider the plaintiffs' ability to prove elements of a case in approving a settlement. See *In Re: Agent Orange Products Liability Litigation*, 818 F.2d 145, 174 (2nd Cir. 1987)

claims. In support of this contention, the objectors rely on the jury verdict in *Glover v. Port-Gaud School*, a Charleston County case in which a large jury verdict was rendered. Plaintiffs assert that the amount provided in the settlement for consortium claims is proportionate when considering the state of the law of consortium and the overall value of the claims. I agree.

Notwithstanding the *Glover* jury verdict, which never made it through the appellate process, there has been no change in the law as it was at that time: "As the South Carolina Supreme Court has made clear, a spouse is the only party who may bring a loss of consortium claim under S.C. Code § 15-75-20." *Kirkland v. Sam's East, Inc.*, 411 F.Supp. 2d 639 (2005). See also *Hughey v. Ausborn*, 249 S.C. 470, 154 S.E.2d 839 (1967); *Taylor v. Medenica*, 324 S.C. 200, 479 S.E.2d 35 (1996). 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.

Furthermore, the spousal claims, while directly recognized at law, are claims which have challenging damages issues. By definition, here the husbands or wives of the consortium claimants were sexually abused as children, hence, before they married the claimant. As a result, the claimant married his or her spouse in the condition in which they assert as a loss of creating consortium. And, of course, most if not all of these claims are well beyond the statute of limitations, which would serve as a complete bar to these claims. Last, any claimant who believes their individual claims will successfully exceed the damages amount provided for in the class claims structure has the right to opt-out and proceed on their own. I overrule this objection.

3. Approval of Settlement

Based on the arguments of all counsel at the Fairness Hearing and my own review of the terms and conditions of the settlement agreement, I believe that the settlement is fair, reasonable,

and adequate in providing necessary funding for the class and a confidential means of asserting and prosecuting a claim, all of which should enable and encourage individuals to come forward and make the same. Accordingly, I enter judgment approving the settlement.

I direct that all provisions of the Settlement Agreement take effect upon the execution of this order. The claims period should run for a period of 120 days (or the end of the first business day thereafter) beginning on the 10th day after the execution of this order and the date of the close of the claims filing period must be published. Within ten (10) days of this Order, Class Counsel is to begin publication of notice that the claims period is open and that individuals have a right to opt-out of the settlement if they so choose. Class Counsel proposes a notice of the same in a form comparable to that attached hereto as Exhibit A, and I approve this notice. Class Counsel shall arrange for notice of the settlement to be published in a form comparable to that set forth on Exhibit A hereto in the following major publications: *The Charleston Post & Courier*, *The Myrtle Beach Sun*; *The State*; *The Augusta Chronicle*; *The Rock Hill Herald*; *Beaufort Gazette*; *Greenville News Spartanburg Herald*; *Orangeburg Times-Democrat*; *Florence Morning News* and the *Aiken Standard*. Publication of the notice shall be at least once a week for three (3) consecutive weeks during the notice period.

Class counsel and counsel for the Diocese are to provide the claims packet to any individual who has requested the same.

4. Forms for notice to the primary class and for use during the primary class claims process

The parties have proposed certain forms to be used in claims processing. The forms are attached hereto as Exhibits B through H. Class counsel proposes that these forms be provided to all individuals who are known to them to be interested in the class and to post these forms, for

availability, on the internet. The Court has reviewed the forms and believes them to be appropriate for use in the case and I approve the same.

5. Attorneys fees

In the Settlement and Arbitration Agreement, the parties agreed that the Court should, exercising its discretion, set attorney fees for class counsel in a range of no less than \$950,000.00 and no more than \$2.5 million. Defense counsel argued for the lower end of the fee range and asked the Court to take into consideration the charitable nature of the Diocese and that it settled the case rather than requiring a trial. Class Counsel requested the Court award them a fee of \$2.5 million. In support of their petition for an award of attorneys' fees, class counsel submitted a substantial record which included an affidavit from each attorney involved in the case, a statement of hours from each law firm the total of which exceeded 3,720 hours⁶, and an affidavit from Professor John Freeman regarding the reasonableness of the fee request and the beneficial public impact of the settlement. Class Counsel has worked on the case for 4 years; it has proceeded in Court for 2 years, with settlement negotiations lasting more than 15 months. The Court took its own notice of the arms-length advocacy of counsel for their respective clients in the case. The case was brought to a mediated resolution and it heard from the mediator, Marvin Infinger, regarding the negotiations between counsel.

"In determining a reasonable attorneys' fee, the Court should consider the following six factors: 1) the nature, extent, and difficulty of the case; 2) the time necessarily devoted to the case; 3) the professional standing of counsel; 4) the contingency of representation; 5) the

⁶ Although additional information was not submitted for work performed by Class Counsel after the March 9th Fairness Hearing, the Court notes that two status conferences were held in person, three were held by telephone, and one additional hearing was held which would provide additional hours.

beneficial results obtained; and 6) the customary legal fees for similar services.” *Taylor v. Medenica*, 331 S.C. 575, 503 S.E.2d 458 (1998).

The Court’s review of the record before it, argument of counsel, and my own observations of the case compel me to award class counsel an attorneys’ fee in the amount of \$2.5 million dollars. In rendering this decision, I find that the matter before me is monumental in both its scope and result. Class Counsel have successfully obtained the creation of two classes of individuals, one consisting of individuals who have been sexually abused by Diocese employees and another consisting of parents and spouses of those individuals. But for the settlement, the claims of the individuals in the classes 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; and, they accomplished these tasks against a respected and powerful adversary, the Catholic Diocese of Charleston.

The matter has taken four years to prosecute, and, at this point, the conclusion of the settlement has already consumed a year and a half. Counsel has provided the Court conservative proof of more than 3,700 hours of time spent prior to the Fairness Hearing, with additional time expended, and to be expended, on the case since that time and in carrying out the terms of the settlement. All of the counsel in this case are known to the Court to have had exemplary legal and professional success and this fact has not been contested.

Given the significant legal hurdles, such as the statute of limitations and charitable immunity, which were being asserted by the defendants, that fee arrangement is not out of proportion. Class Counsel’s prayer for a fee award of \$2.5 million is 20.8% of the gross settlement. This figure is on the lower range of acceptable fees found by the Supreme Court. *See Ex parte Condon, Littlejohn v. State*, 354 S.C. 634, 644, 583 S.E.2d 430, 435 (2003)(finding

that a contingency of between 20 and 30 percent of recovery was reasonable in a class action matter).

For the reasons above, I award Class Counsel \$2.5 million as attorneys' fees in this matter which shall be paid as set forth in the Settlement and Arbitration Agreement within ten days of the entry of this Order.

6. Costs

Prior to the March 9, 2007, hearing class counsel presented bills for costs in the amount of \$85,259.50 and requested reimbursement of these expenditures per the Settlement Agreement. In addition, they have requested reimbursement of an additional \$15,731.86 incurred since the March 9, 2007 hearing. These expenditures have not been challenged and my review determines them to be routine for this type of litigation and I approve the same for reimbursement.

Class Counsel has been directed to publish notice of the claims period and opt-out right. Since these expenses have been ordered by the Court, the bills for publication of the notices may be presented by Class Counsel directly to the escrow agent and paid by him per the Settlement Agreement.

7. Funding of Settlement Proceeds

Pursuant to paragraph 3(a) of the Settlement Agreement, the Diocese shall fund the initial \$4,540,000.00 upon the execution of this order.⁷

THEREFORE, IT IS ORDERED that the Settlement and Arbitration Agreement dated January 12, 2007 be approved as a final settlement between the parties and that the terms and conditions of the Settlement Agreement become an order of this Court, and that the claims

⁷ The Diocese previously paid \$460,000.00 to the class representatives for the settlement of their claims.

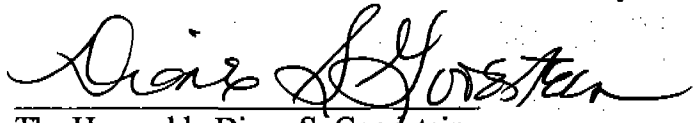
process for the members of the classes begin within 10 days of the date of this order with notice to the class as set out above; and

IT IS FURTHER ORDERED that the forms proposed by the parties and attached hereto as Exhibits A through H be approved for use in the claims process; and

IT IS FURTHER ORDERED that class counsel be awarded the sum of \$2.5 million as attorneys' fees in this matter and that the escrow agent be authorized to pay the same pursuant to the terms of the Settlement Agreement; and

IT IS FURTHER ORDERED that the escrow agent be authorized to pay Class Counsel the sum of \$100,991.36 in litigation costs and to further make direct distributions for publication of notices required under this order as directed by the Settlement Agreement.

AND IT IS SO ORDERED!!!


The Honorable Diane S. Goodstein
Presiding Judge

This 30 day of July, 2007

At Orangeburg, South Carolina

Order on Matters Heard March 9
Exhibit A

**IMPORTANT LEGAL NOTICE
YOUR LEGAL RIGHTS MAY BE AFFECTED BY THE SETTLEMENT
DESCRIBED IN THIS NOTICE**

John Doe #53, et al. v. Diocese of Charleston, et al. Class Action Settlement

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 agents or employees of the Diocese of Charleston; 4) or the parent or spouse of any such minor, 5) who have not previously had any similar claim adjudicated, resolved, or released.

YOU ARE HEREBY NOTIFIED OF THE (A) APPROVAL OF A CLASS ACTION SETTLEMENT; (B) THE MANNER IN WHICH YOU MAY MAKE A CLAIM TO SETTLEMENT FUNDS; AND (C) THE MANNER IN WHICH YOU CAN EXCLUDE YOURSELF FROM THE CLASS.

SUMMARY OF YOUR RIGHTS AND CHOICES

**You May
STAY IN THE CLASS
and possibly receive
money from the
Settlement**

Stay in the Class.

To possibly receive money under the Settlement, you must complete and return the appropriate Claim Form by the deadline noted.

Deadline

**Postmarked or received by
[Date to be Inserted]**

EXCLUDE YOURSELF

Get out of the class.

You do not have to remain a member of the class or participate in the Settlement. To be excluded from the Settlement, you must complete and return the Opt-out Form by the deadline noted. By Opting-out of the Settlement, you will not receive any benefits from the Settlement. 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.

**Postmarked or received by
[Date to be Inserted]**

Individuals who are members of the class who file a *bona fide* claim will have the amount of money they may receive determined by an arbitrator. The arbitrator has complete discretion within the parameters set by the Settlement Agreement to determine the amount of money you receive. In making his decision, he will evaluate the type of abuse sustained, its duration, and the extent of the injuries from the abuse, and the like. Claims will be generally classified into one of 4 groups based on the severity of the injury sustained. Members of the Consortium Class with *bona fide* claims will receive \$20,000.00. Please carefully review the Settlement and Arbitration Agreement and Addendum for all specifics on the claims process and your rights in it.

**IF YOU DO NOT FILE A CLAIM TIMELY OR YOU DO NOT OPT-OUT OF THE CLASS,
YOUR RIGHTS AGAINST THE DIOCESE WILL BE FOREVER BARRED AS TO MATTERS
COVERED BY THE CLASS ACTION.**

FOR FURTHER INFORMATION CONTACT CLASS COUNSEL:

**Richter & Haller, LLC,
622 Johnnie Dodds Blvd., Post Office Box 1089, Mt. Pleasant, SC 29465
843-849-6000 diocesessettlement@richterfirm.com
www.richterfirm.com**

**ALL FORMS MUST BE EITHER POSTMARKED BY THE U.S. POSTAL SERVICE OR RECEIVE
BY CLASS COUNSEL ON OR BEFORE [Date to be Inserted].**

Order on Matters Heard March 9
Exhibit B

John Doe #53 v. Diocese of Charleston Class Action Settlement
Rights, Claims Process, and Obligations Summary
Page 1

**READ THIS DOCUMENT CAREFULLY AS
YOUR LEGAL RIGHTS MAY BE AFFECTED BY THE SETTLEMENT
DESCRIBED IN THIS DOCUMENT.**

WHO IS ELIGIBLE TO PARTICIPATE IN THIS SETTLEMENT

You may participate in this settlement if:

1. You were born on or before August 30, 1980;
2. who, as a minor;
3. were sexually abused;
4. by an agent or employee (including priests) of the Diocese of Charleston (the official governing body of all Catholic Churches in South Carolina); and
5. you have not previously had a similar claim fully heard by a court or settled.

You may also participate in this settlement if you are:

1. The spouse OR parent of
2. individuals born on or before August 30, 1998;
3. were sexually abused as a minor;
4. by an agent or employee (including priests) of the Diocese of Charleston (the official governing body of all Catholic Churches in South Carolina);
5. and you have suffered the loss of the individual's services, society and companionship; and
6. have not previously had a similar claim fully heard by a court or settled.

"Sexual abuse" is any lewd or lascivious act committed on, about, or with a minor by an agent or employee of the Diocese in which the actor knew or should have known that the act may have the effect of arousing, appealing to, or gratifying the lusts, passions or sexual desires of the agent or employee of the Diocese or of the minor.

At the end of this case, all legal rights of the individuals who fit into one of the above classes and who do not "opt-out" of the classes and settlement will be impacted by this settlement. In deciding how to proceed, you may contact Class Counsel or an attorney of your own choosing.

IF YOU ARE A MEMBER OF THE CLASS AND YOU DO NOT FILE A CLAIM WITHIN THE TIME PROVIDED OR YOU DO NOT OPT-OUT OF THE CLASS, YOUR RIGHTS AGAINST THE DIOCESE WILL BE FOREVER BARRED FOR MATTERS COVERED BY THIS CLASS ACTION.

John Doe #53 v. Diocese of Charleston Class Action Settlement
Rights, Claims Process, and Obligations Summary
Page 2

SUMMARY OF YOUR RIGHTS AND CHOICES

You May

Deadline

STAY IN THE CLASS

and possibly receive

money from the

Settlement

Stay in the Class.

To possibly receive money under
the Settlement, you must complete
and return the Claim Form by the
deadline noted.

Postmarked or received

by [Date to be inserted]

EXCLUDE YOURSELF

Get out of the class.

Postmarked or received

You do not have to remain a member
of the class or participate in the Settlement. To be excluded from the Settlement, you must complete and return
the Opt-out Form by the deadline noted.
By Opting-out of the Settlement, you will
not receive any benefits from the Settlement. If you fail to file the Opt-out Form
by the deadline, you will be considered
a member of the class.

[Date to be inserted]

HOW THE CLAIMS PROCESS WORKS

What follows is a basic summary of the claims process. To receive a full copy of the Settlement and Arbitration Agreement and it Addendum, contact Class Counsel, Richter & Haller, LLC, at 843-849-6000 or email disocesettlement@richterfirm.com.

John Doe #53 v. Diocese of Charleston Class Action Settlement
Rights, Claims Process, and Obligations Summary
Page 3

The classes are designed to include all individuals whose claims would normally be barred as a matter of law as a result of the statute of limitations. Whether the statute of limitations has lapsed on your claim is an individual determination which you should investigate with an attorney. However, even if for some reason your statute has not expired, you may still participate in the process if you meet all other requirements.

Those individuals who wish to participate in the claims process must submit a claims form to the office of Class Counsel. **The Claims Form must be postmarked no later than [Date to be inserted]** or received in the offices of Richter & Haller, LLC by that date.

Those individuals who DO NOT WISH to participate in the claims process must submit an opt-out form to the office of Class Counsel. **The Opt-Out Form must be postmarked no later than [Date to be inserted]** or received in the offices of Richter & Haller, LLC by that date.

All of the claims proceedings are confidential. Your claim will be given a fictitious name once it is received. No one who files a claim will have their name publicly disclosed. You will not have to appear in court.

All claims of members of one of the classes which are *bona fide* will receive some settlement funds. A *bona fide* claim is one in which there is some likelihood that the event(s) did occur with the Diocesan agent or employee (including priest) at the location and time period when the claimant alleges. If there is a dispute over whether a claim is *bona fide*, you will have a chance to prove your claim.

Once a claim is found to be *bona fide* it will be submitted to an arbitrator for a binding and final determination of damages. You do not have to pay for the arbitration. You will be able to present whatever evidence you wish in support of your injuries. You will not be questioned by a lawyer or other representative of the Diocese at the hearing on damages.

The arbitrator has sole and final determination on the amount of money you will receive. **By participating in this settlement process you agree to abide by whatever decision the arbitrator makes and waive any rights of appeal you may have.** The arbitrator has full discretion to determine the amount of money you receive. In making his decision, he will evaluate the type of abuse you sustained, the amount of time it went on, and the extent of the injuries you have suffered. Claims will be generally classified into the following groups for a determination of the amount of money you will receive:

1. Limited inappropriate touching on the victim: an amount between \$10,000.00 and \$18,500.00.
2. Improper touching by the perpetrator upon the victim or by the victim upon the perpetrator, such as fondling of genitalia, limited masturbation, and other types of sexual contacts an amount between \$20,000.00 and \$55,000.00.

John Doe #53 v. Diocese of Charleston Class Action Settlement
Rights, Claims Process, and Obligations Summary
Page 4

3. Aggravated touching of the genital area by the perpetrator on the victim or by the victim upon the perpetrator. These types of abuse include, but are not limited to, oral sex, (either on the victim or by the victim on the perpetrator) or other aggravated circumstances: an amount between \$60,000.00 and \$125,000.00.
4. Egregious acts, such as sodomy, any act accomplished by force or coercion, or repeated acts involving any type of sexual activities over extended period of time causing serious damage: an amount between \$150,000.00 and \$200,000.00.
5. Members of the consortium class will receive \$20,000.00 for consortium damages.

In addition, you have the right to have a **free psychological examination** and two other free psychological sessions with a psychologist in Charleston. You may use this information in support of your claim. The report will not be provided to the Diocese and will be confidential.

Once the claim is *bona fide*, the Diocese is unable to provide any defenses to your claims, including the statute of limitations, immunity, or that it did not know of the events. However, once you have completed the claims process, all rights you may have against the Diocese arising from sexual abuse on you by an agent or employee of the Diocese will be gone.

**IF YOU DO NOT FILE A CLAIM TIMELY AND DO NOT OPT-OUT, YOUR RIGHTS
AGAINST THE DIOCESE WILL BE FOREVER BARRED FOR MATTERS
ARISING FROM THE CLASS.**

FOR FURTHER INFORMATION CONTACT CLASS COUNSEL:

Richter & Haller, LLC,

622 Johnnie Dodds Blvd., Post Office Box 1089

Mt. Pleasant, SC 29465

Telephone to 843-849-6000. Email to diocesessettlement@richterfirm.com

Claims and Opt-out forms may also be obtained from
www.richterfirm.com

Order on Matters Heard March 9
Exhibit C

John Doe #53, et al. v. The Bishop of Charleston

CLAIM FORM FOR PRIMARY CLASS MEMBERS

This form is to be used by, "all individuals 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."

Pursuant to the Court Order approving this Claims Procedure, all information provided in the process is confidential, including your name and identity.

First, Middle and Last Name of Claimant: _____

Date of Birth: _____ Social Security Number: _____

Mailing Address: _____

Home Telephone Number: _____ Work Telephone Number: _____

Cellphone Number: _____ Email Address: _____

For claims made on behalf of someone else

Name of Representative Making the Claim: _____

Relationship of Representative to Claimant: _____

Nature of the Representative Capacity: _____

Full name of parents: _____

Are either or both of your parents living or deceased? If so, state which one: _____

Name of spouse (if any): _____

Name of the abuser (if you claim multiple abuses, use a separate claims form): _____

Location(s) at which the abuse occurred: _____

Dates/ Time period during which the abuse occurred: _____

What was your relationship to the abuser, [i.e. priest/altar boy, coach/ basketball player]: _____

John Doe #53, et al. v. The Bishop of Charleston
CLAIM FORM FOR PRIMARY CLASS MEMBERS

Briefly state the details of the incident(s) of abuse complained of. You will have an opportunity to expand upon this at a later date. Use other sheets if necessary. If you have provided this to Class Counsel previously it is not necessary for you to send it again.

Briefly state any claimed injury or damages. You may attach any information relevant to damages you claim to this form. Use other sheets if necessary. If you have provided this to Class Counsel previously it is not necessary for you to send it again.

You are able to have a *free* session of psychological assessment and two other counseling *free* sessions with a psychologist. The assessment may be used in support of your claim, but will not be provided to the Diocese of Charleston or any other person who is not connected with the claims review process.

_____ I elect to have psychological counseling and review as provided for in the Settlement Agreement.

I affirm that the information contained in this Claims Form is true and correct to the best of my knowledge.

Claimant

Date

MAIL THIS FORM TO:
Richter & Haller, LLC, Class Counsel, 622 Johnnie Dodds Blvd.,
Post Office Box 1089, Mt. Pleasant, SC 29465

THIS FORM MUST BE EITHER RECEIVED BY CLASS COUNSEL OR HAVE A UNITED STATES POSTAL SERVICE POSTMARK OF NO LATER THAN [Date to be inserted] IN ORDER FOR IT TO BE BINDING. IF NOT, YOU WILL BE INCLUDED IN THE CLASS

Order on Matters Heard March 9
Exhibit D

John Doe #53, et al. v. The Bishop of Charleston

CLAIM FORM FOR CONSORTIUM CLASS MEMBERS

This form is to be used by, "The spouses and parents of all individuals 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 suffered a loss of the abused individual's consortium, and who as spouses or parents have not previously had any similar claim adjudicated, resolved, or released."

Pursuant to the Court Order approving this Claims Procedure, all information provided in the process is confidential, including your name and identity.

First, Middle and Last Name of Claimant: _____

Date of Birth: _____ Social Security Number: _____

Mailing Address: _____

Home Telephone Number: _____ Work Telephone Number: _____

Cellphone Number: _____ Email Address: _____

For each individual for whom you claim some relationship has been damaged, please provide the information below:

<u>Name</u>	<u>Address</u>	<u>Date of Birth</u>	<u>Relationship to You</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

John Doe #53, et al. v. The Bishop of Charleston
CLAIM FORM FOR CONSORTIUM CLASS MEMBERS

For each individual above, please state, 1) the location(s) at which the abuse occurred; 2) dates/ time period during which the abuse occurred; and 3) the relationship of the individual to the abuser; [i.e. priest/altar boy; coach/ basketball player].

Please state the date or time period on which you learned of the alleged abuse described above.

Briefly state ways in which you believe you have lost the use of each of the above individual's services, society, and companionship.

You are able to have a **free** session of psychological assessment and two other counseling **free** sessions with a psychologist. The assessment may be used in support of your claim, but will not be provided to the Diocese of Charleston or any other person who is not connected with the claims review process.

_____ I elect to have psychological counseling and review as provided for in the Settlement Agreement.

I affirm that the information contained in this Claims Form is true and correct to the best of my knowledge.

Claimant

Date

MAIL THIS FORM TO:
Richter & Haller, LLC, Class Counsel, 622 Johnnie Dodds Blvd.,
Post Office Box 1089, Mt. Pleasant, SC 29465

THIS FORM MUST BE EITHER RECEIVED BY CLASS COUNSEL OR HAVE A UNITED STATES POSTAL SERVICE POSTMARK OF NO LATER THAN [Date to be inserted]. IN ORDER FOR IT TO BE BINDING. IF NOT, YOU WILL BE INCLUDED IN THE CLASS.

Order on Matters Heard March 9
Exhibit E

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE No. 06-CP-18-1310
CASE No. 06-CP-18-1311
CASE No. 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,)

vs.)

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

Defendants.)

**DECLARATION OF OPT-OUT FROM
CLASS SETTLEMENT**

I do not wish to participate in, and hereby opt-out of, the class action settlement in the above case, and I reserve any and all rights which I may have against the defendants to this action. I understand that by submitting this form, I will be unable to receive any benefits from the settlement agreement after the claims period has expired and that if I wish to proceed at all, I will have to proceed in court with all issues subject to litigation.

Full Printed Name: _____ Signature: _____

Address: _____

City, State, Zip Code: _____

Date of Birth: _____

MAIL THIS FORM TO:

**Richter & Haller, LLC, Class Counsel, 622 Johnnie Dodds Blvd.,
Post Office Box 1089, Mt. Pleasant, SC 29465**

THIS FORM MUST BE EITHER RECEIVED BY CLASS COUNSEL OR HAVE A UNITED STATES POSTAL SERVICE POSTMARK OF NO LATER THAN [Date to be inserted] IN ORDER FOR IT TO BE BINDING. OTHERWISE, YOU WILL BE INCLUDED IN THE CLASS AND YOUR RIGHT MAY BE FOREVER BARRED.

Order on Matters Heard March 9
Exhibit F

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE No. 06-CP-18-1310
CASE No. 06-CP-18-1311
CASE No. 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,)

vs.)

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

Defendants.)

VOLUNTARY WAIVER OF APPEAL

I, _____, a claimant in the above matter, understand and agree that by participating in the class settlement process for this case approved by the court, I am expressly waiving any and all rights of appeal of any and all decisions of the arbitrator appointed in this matter, including decisions made on whether I am a member of one of the classes, whether my claim is *bona fide*, and as to any injuries I sustained and damages I am to receive.

Before making this decision, I have asked all questions I have regarding the settlement, the claims process, and my legal rights. I have had the opportunity to discuss this matter with an attorney of my own choosing.

Claimant

Date

Witness

Date

Order on Matters Heard March 9
Exhibit G

CLAIMANT'S GENERAL RELEASE

_____ ("the Claimant") for and in consideration of the promises and undertakings contained in the Settlement and Arbitration Agreement, the sufficiency of which is hereby acknowledged, hereby remises, releases and forever discharges The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity, ("the Diocese"); any present or former bishops, archbishops or cardinals of the Diocese, in both their individual and official capacity; any entities affiliated with the Diocese; and present or former priests, deacons, other clergy, brothers, nuns, agents, servants, officers, trustees, directors, supervisors, attorneys, employees, volunteers, insurers, predecessors, successors, assigns, subsidiaries and affiliates of the Diocese, including without limitation any such person accused of committing or negligently causing or permitting sexual abuse with respect to the Claimant or members of the Claimant's family (all of the foregoing hereinafter collectively referred to as the "Released Parties") of and from any and all debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, judgments, executions, orders, and any and all claims, demands and liabilities whatsoever of every name and nature, whether in LAW, in EQUITY, or otherwise which the Claimant ever had, now has, or which Claimant or Claimant's successors hereinafter can, shall, or may have by reason of any matter, cause or thing whatsoever from the beginning of the world to the date of this Release, and whether such claims are now known or unknown, including without limiting the generality of the foregoing, any and all claims made or that might have been made in any pending claim or suit. With respect to any claims arising from or related to an act or acts of abuse which have formed the basis of a claim or suit against the Diocese or persons or entities employed by or affiliated with the Diocese, the Released Parties covered by this Release shall also include any other

IN WITNESS WHEREOF, the Claimant has set his/her hand and seal to this Release as
of the day of , 200

Claimant's Signature

Witness

Order on Matters Heard March 9
Exhibit H

IMPORTANT LEGAL NOTICE
YOUR LEGAL RIGHTS MAY BE AFFECTED BY THE SETTLEMENT
DESCRIBED IN THIS NOTICE OF CLASS ACTION SETTLEMENT

John Doe #53, et al v. Diocese of Charleston, et al.

This action applies to 1) any person born before August 30, 1980; 2) who as a minor was sexually abused; 3) by an agent or employee of the Diocese of Charleston; 4) and whose individual claim has not been previously settled or otherwise resolved.

YOU ARE HEREBY NOTIFIED OF THE (A) APPROVAL OF A CLASS ACTION SETTLEMENT; (B) THE MANNER IN WHICH YOU MAY MAKE A CLAIM TO SETTLEMENT FUNDS; AND (C) THE MANNER IN WHICH YOU CAN EXCLUDE YOURSELF FROM THE CLASS.

SUMMARY OF YOUR RIGHTS AND CHOICES

You May
STAY IN THE CLASS
and possibly receive
money from the
Settlement

Stay in the Class.
To possibly receive money under the Settlement, you must complete and return the appropriate Claim Form by the deadline noted.

Deadline
Postmarked or received by
[Date to be inserted]

EXCLUDE YOURSELF

Get out of the class.
You do not have to remain a member of the class or participate in the Settlement. To be excluded from the Settlement, you must complete and return the Opt-out Form by the deadline noted. By Opting-out of the Settlement, you will not receive any benefits from the Settlement. 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.

Postmarked or received by
[Date to be inserted]

Individuals who are members of the class who file a *bona fide* claim will have the amount of money they will receive determined by an arbitrator. The arbitrator has full discretion to determine the amount of money you receive. In making his decision, he will evaluate the type of abuse sustained, its duration, and the extent of the injuries from the abuse. Claims will be generally classified into one of four groups based on the severity of the injury sustained. Please carefully review the Settlement and Arbitration Agreement and Addendum for all specifics on the claims process and your rights in it.

For a more detailed summary of your Rights, the Claims Process and your Obligations if you wish to participate click here:

Orange Form: Summary of Rights, Claims Process, and Obligations

ANY PERSON FITTING INTO EITHER CLASS DEFINITION WHO FAILS TO EITHER FILE A CLAIM FORM OR OPT-OUT BY THE COURT IMPOSED DEADLINE MAY HAVE THEIR RIGHTS AGAINST THE DIOCESE OF CHARLESTON FULLY BARRED BY LAW.

CLAIMS FORMS AND IMPORTANT DOCUMENTS

You may download all forms and documents from this website. Please read this portion carefully to ensure that your claim is properly filed. Please call class counsel if you have any question whatsoever:

Members of the Primary Class:

You may be a member of the Primary Class if you were born before August 30, 1980 and, as a minor, were actually sexually abused. If you believe you fit within this category and wish to participate in the settlement, you must complete and return by **[Date to be Inserted]**:

Blue Form: Claim Form for Primary Class Members

AND

Green Form: Voluntary Waiver of Appeal

AND

White Form: Claimant's Release

Members of the Consortium Class:

You may be a member of the Consortium Class if you are/were the spouse and/or parent of an individual(s) who as minors were actually sexually abused. If you believe you fit within this category and wish to participate in the settlement, you must complete and return by **[Date to be Inserted]**:

Yellow Form: Claim Form for Consortium Class Members

AND

Green Form: Voluntary Waiver of Appeal

AND

White Form: Claimant's Release

The Claimant's Release Form will be held by Class Counsel until you have received a check from the settlement fund. At that time, it will be provided to the Diocese of Charleston. If for some reason you do not receive a check from the settlement fund, it will be returned to you.

If you want to exclude yourself:

If do not wish to participate in the class action and settlement process and wish to proceed on your own, then you must complete and return or have postmarked by **[Date to be inserted]**:

Pink Form: Opt-out Form

PLEASE NOTE:

1. No one but the arbitrator selected under the Settlement and Arbitration Agreement can say with finality whether you are a member of either class;
2. Nothing on any form or on this website should be considered legal advice. If you have any questions about your rights or responsibilities, you should discuss the matter with counsel of your own choosing.

FOR FURTHER INFORMATION CONTACT CLASS COUNSEL:

Richter & Haller, LLC, 622 Johnnie Dodds Blvd., Post Office Box 1089, Mt. Pleasant, SC 29465
843-849-6000 (Telephone) * 843-881-1400 (Fax) * Diocesettlement@richterfirm.com

www.richterfirm.com

ALL FORMS MUST BE EITHER POSTMARKED BY THE U.S. POSTAL SERVICE OR RECEIVED
BY CLASS COUNSEL ON OR BEFORE **[Date to be inserted]**.

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

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,)

v.)

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

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

CASE No. 06-CP-18-1310

CASE No. 06-CP-18-1311

CASE No. 06-CP-18-1636

ORDER OF THE COURT

2007 AUG 31 PM 5:00
CLERK OF COURT
J. J. [illegible]

The Court having been advised, as evidenced by the writing attached hereto as Exhibit A, that all pending motions, objections, rules to show cause, and any such related matters amongst the parties in this class action proceeding have been resolved with prejudice, and that all appeal rights of all "objectors" are waived *AND to this extent acknowledged and approved* said agreement is hereby approved and made the Order of this Court.

AND IT IS SO ORDERED!

Further, it is ordered that, as to any settlement funds in this matter, any restriction or impediment to the disbursement of any such funds heretofore imposed by this Court are lifted, removed, and extinguished. This class settlement shall immediately proceed as provided for in the Settlement and Arbitration Agreement entered into on January 15, 2007 and that certain Order of this Court in this matter dated July 30, 2007.

AND IT IS SO ORDERED!

QSP 1043
- 1 -

Furthermore, in the Court's Order of July 30, 2007 approving the Class settlement, the Court made reference to the existence of individuals who, according to the Diocese, (1) were potential class members; (2) came forward to the Diocese at some time in the past with their allegations of child sexual abuse; (3) never resolved their potential claims; and (4) were entitled to receive *actual notice* of the proposed class settlement pursuant to the agreement of the parties and earlier instructions from this Court (hereinafter referred to as "Actual Notice Class Members"). The Defendants have asked the Court to clarify how the settlement process will treat the Actual Notice Class Members. Accordingly, this Order clarifies and, where in conflict, supersedes the Court's Order of July 30, 2007.

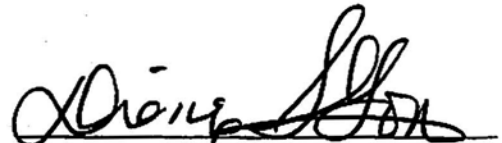
Actual Notice Class Members shall have 120 days from receipt of actual notice of the class settlement to present their claims to an Arbitrator in the same manner as provided for in the Settlement and Arbitration Agreement. Actual Notice Class Members who present their claims more than 120 days after they receive actual notice of the settlement shall be barred from participation in the settlement process and shall be treated like any other class member who has failed to timely present a claim to the class settlement fund. Both the Arbitrator's fees and the claimant's recovery (if any) shall be paid by the Diocese, and not by the class settlement fund, because the settlement fund may already have been subject to a final accounting by the time such claims are processed.

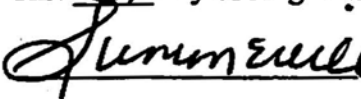
AND IT IS SO ORDERED!

Furthermore, the Court has appointed Desa Ballard, Esq. as a non-testifying consultant in evaluating and addressing the issues before the Court in this matter, as all counsel was made aware of in a August 29, 2007 Order. Payment for Ms. Ballard's services shall be made from the

08-2-2013

Class settlement fund within ten (10) days after the settlement funds are released from the Court's supervision.


Diane S. Goodstein
Presiding Judge

This 31 day of August 2007
 South Carolina

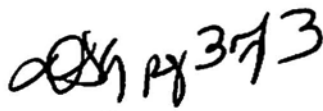
 8/31/07

EXHIBIT A

A. PETER SHAHID, JR.
SHAHID LAW OFFICE, LLC

15 STATE STREET
P.O. BOX 591
CHARLESTON, SOUTH CAROLINA 29402

OFFICE (843) 853-4500
FAX (843) 722-1119
TOLL FREE 1-888-792-2456

August 30, 2007

VIA FACSIMILE TO: (843) 881-1400 / (843) 723-2852
AND REGULAR UNITED STATES MAIL

Lawrence E. Richter, Jr., Attorney at Law
Richter Law Firm, LLC
622 Johnnie Dodds Boulevard
P.O. Box 1089
Mount Pleasant, SC 29465

Gregg Meyers
Attorney at Law
P.O. Box 1297
39 Broad Street, Suite 300
Charleston, SC 29401

Re: John Doe #53, John Doe #66, John Doe 66A, John Doe #67, Jane Doe #1, Jane Doe #2, and Rachel Roe, individually and as representative of a class of people similarly situated v. The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity
Case No. 2006-CP-18-1310
Case No. 2006-CP-18-1311
Case No. 2006-CP-18-1636

Dear Larry and Gregg:

This is to confirm that the Diocese will offer \$1.375 million to settle claims of the eleven individuals represented by Gregg Meyers. Those individuals, who have been identified in previous correspondence, are John Doe C, John Doe D, Jane Doe G, John Doe H, Jane Doe I, John Doe J, John Doe K and the mother of John Doe J, John Doe L, John Doe M, Jane Doe M. The payments are for personal injuries as defined in the IRS Code and are independent of the Class claims process. These claimants will opt-out of the class claims process and will execute releases. These claimants retain the right to meet with the presiding Bishop or the Apostolic Administrator, as they so desire.

This offer is made on the condition that all of the objections, including any all appeal

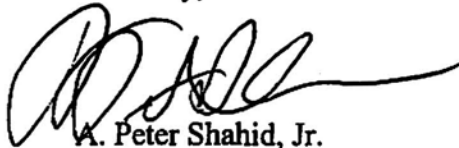
rights to the pending class action settlement by any of Mr. Meyer's clients be withdrawn, and waived with prejudice.. Mr. Meyers has certified he is unaware of any other potential or actual objectors, and does not represent any other person who has an objection to the January 12, 2007 Settlement Agreement and July 30, 2007 Order. Any other claimant represented by Mr. Meyers and not referenced above, will present their claim through the class claim process.

This offer is also contingent on the receipt by the Diocese of \$100,000 from Mr. Richter and/or his clients.

All parties and objectors agree to withdraw all pending motions filed, with prejudice, including Class Counsel/Plaintiffs Motion for Sanctions, and will dismiss the Rule to Show Cause; the Objectors Motion to Alter or Amend; the Defendants' Motion to Alter or Amend, Motion to Stay Execution, Motion to Deposit Funds with the Court, and Motion to Dismiss/Vacate the Rule to Show Cause. This offer if and when accepted as acknowledged by Counsel's signatures below, is intended to pave the way for final approval of the class action settlement and to eliminate any and all objections or appeals.

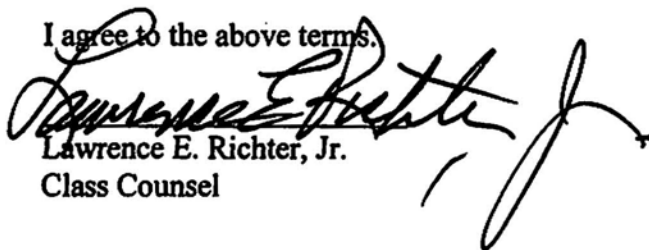
The \$1.375 million will be paid from the surplus funds, if any, after the claims process has been completed. In the event there are insufficient or no funds remaining from the \$12 million pool of funds, the Diocese is still obligated to pay the \$1.375 million as stated above. Payment is expected sometime after January 1, 2008.

Sincerely,



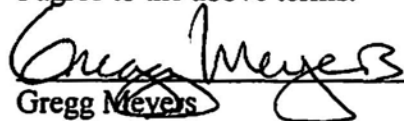
A. Peter Shahid, Jr.

I agree to the above terms.



Lawrence E. Richter, Jr.
Class Counsel

I agree to the above terms.



Gregg Meyers

The Supreme Court of South Carolina

John Doe, individually and on
behalf of all persons who are
similarly situated, Plaintiff,

v.

Lawrence E. Richter, Jr., David
K. Haller, Richter & Haller,
LLC, Peter Shahid, Jr., Shahid
Law Office, LLC, Robert
Baker, The Bishop of
Charleston, a Corporation Sole,
and The Bishop of the Diocese
of Charleston, Defendants.

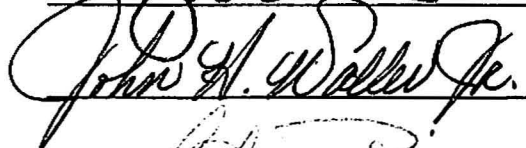
ORDER

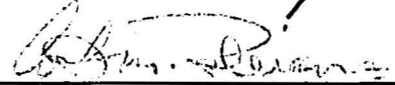
Plaintiff has filed a complaint and a petition asking this Court to accept the complaint in our original jurisdiction. Defendants have filed returns to the petition. The petition is denied.

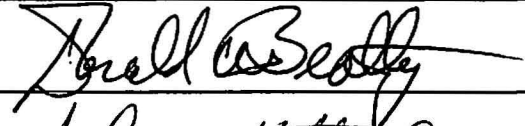
However, we are concerned by the delay that filings such as the one at hand have caused in finally resolving the underlying matters pending in Dorchester County. Accordingly, we hereby direct that the underlying matters be concluded within six months of the date of this order. No extension shall be granted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

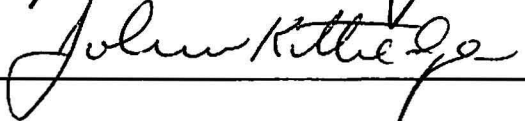
IT IS SO ORDERED.


C. J.


J.


J.


J.


J.

Columbia, South Carolina

March 19, 2009

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

John Doe #53, et al., individually and as
representatives of classes of people
similarly situated,

Plaintiffs,

vs.

The Bishop of Charleston, et al.,

Defendants.

IN THE COURT OF COMMON PLEAS

FIRST JUDICIAL CIRCUIT

CASES NO. 06-CP-18-1310

06-CP-18-1311

06-CP-18-1636

Order

CERTIFIED COPY
2009 MAR 23 PM 3:39
Clerk of Court
DORCHESTER COUNTY

This order resolves certain motions pending before the Court and heard January 29, 2009. It is also the purpose of this order to memorialize the reasoning articulated on the record and expound where appropriate on those motions heard and decided on January 29, 2009.

Motions were filed by the Diocese of Charleston, by and through its attorney, A. Peter Shahid, Jr. Motions were also filed by Johns Does B, C, D, H, J, K, L, and M; and Janes Doe G, I, and M, and the mother of John Doe J through their attorney Gregg Meyers. Those designated as John & Jane Doe, with the exception of John Doe "B", were the individuals on whose behalf settlement was entered into with the Diocese outside of the class action and its resolution. There was a motion filed by David Flowers on behalf of the South Carolina Victim Assistance Network to appear as amicus curiae.

Having heard the argument of counsel, the Court memorializes and determines as follows:

2009/03/23

Motion to Recuse

Mr. Meyers filed a motion to recuse on September 24, 2008 alleging the following grounds:

- The Court has initiated an investigation of counsel for the plaintiff, which investigation may or may not be concluded;
- The Court has treated counsel's clients differently from other clients of other counsel when those clients were similarly situated; and
- Counsel 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.

In order to "compel recusal, the alleged bias of the judge must be personal, as distinguished from judicial, in nature." United States v. Carmichael, 726 F.2d 158 (4th Cir. 1984). "A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned." Canon 3(C)(1) of the Code of Judicial Conduct, Rule 501, SCACR. "It is not enough for a party to allege bias; a party seeking disqualification of a judge must show some evidence of bias or prejudice." Christensen v. Mikell, 324 S.C. 70, 74, 476 S.E.2d 692, 694 (1996) (citing Lyvers v. Lyvers, 280 S.C. 361, 312 S.E.2d 590 (Ct.App. 1984)) (quotations omitted).

In Simpson v. Simpson, 377 S.C. 519, 660 S.E.2d 274 (Ct.App. 2008), the Court of Appeals discusses the duty to sit and decide matters assigned to the judge. The Court of Appeals cite numerous cases from both state and federal courts stating that a judge's duty to sit where not

ES pg 2 of 19

disqualified is equally as strong as the duty not to sit where disqualified. Simpson v. Simpson, 377 S.C. 519, 526, 660 S.E.2d 274, 278 (Ct.App. 2008 (citing Barritt v. State, No. CACR06-1261, 2007 WL 2713593, at *6 (Ark. Ct.App. Sept. 19, 2007) ("When recusal is in issue, this court has held that a judge has a duty to sit on a case unless there is a valid reason to disqualify....") (internal citations omitted); In re Turney, 311 Md. 246, 533 A.2d 916, 920 (1987) ("Moreover, a judge's duty to sit where not disqualified is equally as strong as the duty not to sit where disqualified."); Adair v. State, 474 Mich. 1027, 709 N.W.2d 567, 579 (2006) ("[W]here the standards governing disqualification have not been met, disqualification is not optional; rather, it is prohibited.")(internal quotations and citations omitted); Millen v. Eighth Judicial Dist. ex rel. County of Clark, 148 P.3d 694, 700 (Nev.2006) ("Thus, a judge has a general duty to sit, unless a judicial canon, statute, or rule requires the judge's disqualification."); Tennant v. Marion Health Care Found., Inc., 194 W.Va. 97, 459 S.E.2d 374, 385 (1995) ("Also important, however, is the rule that a judge has an equally strong duty to sit where there is no valid reason for recusal.").

The Court addressed these issues with counsel during the hearing. With regard to Mr. Meyers first ground the need for the Court's inquiry was to address concerns raised by class counsel whether those designated as John & Jane Doe were in fact individuals represented by Mr. Meyers. The Court communicated its request for information from Mr. Meyers and informed counsel of its intention to engage an expert to assist in the review. The Court gave counsel 10 days to object.¹ There was no objection raised and the Court concluded its review once Mr. Meyers provided basic information to the Court and the Court with the assistance of the Court appointed expert was satisfied that Mr. Meyers did indeed represent at least one client as

1. Order Appointing Court's Consultant, August 29, 2007.

OSG pg. 3 of 19

claimed.²

Mr. Meyers further alleges that the Court has treated his clients differently from other clients of other counsel when those clients were similarly situated. First, Mr. Meyers's clients were in a procedurally different position as they were the only objectors as the time of the Court's Order of July 30, 2007. The two other objectors had withdrawn their objections.

Second, Mr. Meyers's clients stated an intention to "opt-out" of the class, therefore placing themselves in a different position than class members.

Third, Mr. Meyers claims that his client John Doe B was treated differently than Class Representatives because he was excluded by definition from the class. Counsel stated that John Doe B previously litigated his claim to conclusion in Charleston County against the Defendants and after refusing a \$75,000 settlement offer his case was dismissed with prejudice as a matter of law by the Court. The Diocese yet made an offer and paid John Doe B \$50,000 even after the case was dismissed. John Doe B then signed a Full and Final Release which released the Diocese from all further liability stemming from his claim.

Mr. Meyers's claims John Doe B was in the same position as class representatives, as persons whose claims were resolved prior to class certification, but his client was and is excluded by the class definition but class representatives were not. This position is without merit since John Doe B's case was settled even prior to the initiation of this class action lawsuit. John Doe B's case was dismissed with prejudice and after accepting a settlement, then signed a full and final release stemming from his claim against the Diocese. Class representatives received their awards before other claimants in consideration of the work, effort, time, stress, psychological pain, damages, liability proof, embarrassment, family turmoil and other issues involved in

2. Mr. Meyers and Mr. Flowers have raised all these issues in an alternative forum which complaint was dismissed.

CSG 4/28/19

serving as class representative throughout litigation. The difference between the two positions is fairly remarkable. The class representatives were compensated once for their claim and John Doe B is seeking to be compensated twice for his claim. John Doe B seeks to be compensated a second time despite his having released the Diocese from his claims.

Finally, 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(c) 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.

Mr. Meyers failed to establish actual bias or prejudice against his clients by the Court. For the foregoing stated reasons, the Court respectfully denied Mr. Meyers motion to recuse.

08/18/07

Motion to Dismiss

Mr. Meyers filed a Motion to Dismiss on September 24, 2008. After ruling on the Motion to Recuse at the hearing, the Court addressed the motion to dismiss. Mr. Meyers's motion to dismiss alleged that none of the parties he represents in the Civil Action No. 2008-CP-10-1274 are members in the class action styled Civil Action No. 2006-CP-18-1310, et. al. and that (1) pursuant to SCRCP 12(b)(2), the Court lacks subject matter jurisdiction over these non-parties; (2) pursuant to SCRCP 12(b)(3), venue is improper in Dorchester County for any proceeding related to the non-parties; (3) pursuant to SCRCP 12(b)(4), there is insufficient process to assert jurisdiction over any non-party; (4) pursuant to SCRCP 12(b)(5), there is insufficient service for the court to assert any jurisdiction over any plaintiff in Civil Action No. 2008-CP-10-1274. For the following reasons the Court denied the motion to dismiss. At the time Mr. Meyers filed his objections to the class settlement on behalf of Johns Doe B, C, D, H, J, K, L, M & Jane Does G, I, and M, he voluntarily submitted them to the jurisdiction of the Court. Subsequent to making a voluntary appearance for the purpose of objecting to the settlement and filing a Rule 59(c) motion on behalf of these individuals (except John Doe B) these individuals settled their objections to the class and resolved their Rule 59(c) motions. The settlement agreement was placed on the record in accordance with SCRCP 43(k). The August 30, 2007 settlement agreement that Mr. Meyers signed, on behalf of his client(s), was submitted to and incorporated by Order of this Court dated August 31, 2007. At no time did Mr. Meyers object to or appeal from this signed order of the Court approving the settlement. Clearly at the time he settled the objections and Rule 59(c) motion and the agreement was submitted to the Court for approval and incorporation Mr. Meyers as agent for his client(s) submitted them voluntarily to

the jurisdiction of the Court and to the venue of Dorchester County. The South Carolina Supreme Court has stated that "although a court commonly obtains personal jurisdiction by the service of the summons and complaint, it may also obtain personal jurisdiction if the defendant makes a voluntary appearance." Stearns Bank National Association v Glenwood Falls, L.L.P., 373 S.C. 331, 337, 644 S.E.2d 793, 796 (2007). Based on the reasoning in Sterns, the Court has jurisdiction over Mr. Meyers's client(s).

Mr. Meyers further alleges in his motion to dismiss that pursuant to SCRCP 12(b)(6), there are no summons or complaints in this action which even purport to state a claim against any non-party. This ground is addressed in the Courts prior discussion regarding personal jurisdiction and in its discussion of enforcement of the settlement with Mr. Meyers's client(s) *infra*. Pursuant to SCRCP 12(b)(8), Mr. Meyers argues, there is a prior action involving these plaintiffs and the Diocese of Charleston, specifically action 2008-CP-10-1274 in Charleston County, alleging the Diocese breached a settlement agreement with these parties; and (7) pursuant to Simpson v Simpson, 660 S.E.2d, 274 (S.C. Ct. App. 2008), he argues that no proceeding in this action, including this motion to dismiss, can properly be ruled upon by Judge Goodstein.

The last ground has been addressed and dismissed in the motion to recuse. The Court will now address the remaining grounds.

Mr. Meyers states that pursuant to SCRCP 12(b)(8) the action, numbered 2008-CP-10-1274, which was filed in Charleston County alleging the Defendants breached the settlement agreement is a prior pending action. SCRCP 12(b)(8) prevents a party from filing another action between the same parties for the same claim when one action has already commenced.

EX PJ 7-19

Regarding the ground, there was no prior action in Charleston County. The suit in Dorchester County and the settlement with Mr. Meyers's clients (the subject of the Charleston action) was filed prior to the action in Charleston.

Based on the foregoing, Mr. Meyers's motion to dismiss is denied.

Motion to Enforce Settlement Agreement

Motion for Leave to Deposit Funds with the Court

Motion for Pre or Post-Judgment Interest

Motion for Sanctions

Motion to Enforce

The Defendants filed their Motion to Enforce Settlement Agreement and a Motion for Leave to Deposit Funds with the Court with the Dorchester Clerk of Court on July 25, 2008. Mr. Meyers orally moved on behalf of his client(s) to enforce the settlement and for interest at the January 29, 2009 hearing following denial of his motion to recuse and motion to dismiss. The Court heard both Mr. Meyers's and the Defendants' motions to enforce settlement.

The settlement agreement between Mr. Meyers's clients and the Defendants was adopted by this Court as part of the Court's Order on August 31, 2007. As part of the Court approved settlement, payment of one million and three hundred seventy five thousand dollars was to be paid to Mr. Meyers and was to occur after the payment of claims to the class members which was anticipated to be "sometime after January 1, 2008". The money was to be paid out of the remaining pool of \$12 million from the class settlement and if that was not sufficient, the Diocese was obligated to supplement the remaining \$1.375 million as agreed upon. On December 6, 2007, class counsel received and forwarded class claims to Defendants counsel.

2009 Pg 8 of 19

All class claims were presented to the arbitrator, Marvin Infinger, who entered the final class claims award on February 29, 2008. On March 3, 2008, the Defendants' wrote Mr. Meyers stating they would be able to pay the \$1.375 million after Mr. Infinger and Ellie Thomas, the accountant, had agreed upon the final disbursement of the settlement fund and the Defendants' had received a final accounting report and collected the surplus money from the original pool.

The Court was informed that on March 6, 2008, Mr. Meyers's on behalf of his client(s) filed a lawsuit in Charleston County to enforce the settlement agreement that arose out of the instant suit. The records reflect Mr. Meyers obtained an emergency temporary relief hearing in Charleston on March 7, 2008 before Judge Young, who denied his motion. The Defendants filed a Motion to Change Venue in the Charleston case from Charleston County to Dorchester County on April 1, 2008. Judge Few heard the motion to change venue on June 24, 2008 and denied the Defendants' motion but issued a stay of the case until related motions were filed and resolved in the Dorchester County (this instant) suit.

The Defendants' motion to enforce seeks the following relief: to allow the Defendant to deposit the \$1.375 million with the Dorchester Clerk of Court; to order Mr. Meyers's clients to execute full and final releases suitable to the Defendants and deliver them to the Defendants' attorney; to order Mr. Meyers's clients to dismiss the pending Charleston County case; and upon full and complete execution of the above order payment of funds to Mr. Meyers' and for sanctions against Mr. Meyers for willfully and purposefully usurping the proper jurisdiction of this court by seeking enforcement of the August 30, 2007 Agreement and August 31, 2007 Court Order in another court. The sanctions requested include a request for an award of Defendants' costs and attorney's fees incurred in defending this matter in Dorchester County and Charleston

copy 9/7/19

County; and if the objectors refuse to comply, that the Court issue a Rule to Show Cause and then vacate the August 31, 2007 Order.

SCRCP 43(k) states “[n]o agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record. Settlement agreements shall be handled in accordance with Rule 41.1, SCRCP.” Rule 43(k). SCRCP is intended to prevent disputes as to the existence and terms of agreements regarding pending litigation. Ashcroft v. Palmetto Const. Group, 318 S.C. 492, 458 S.E.2d 533 (S.C. 1995). An agreement may be enforced when the existence and the terms of the agreement have been reduced to the form of a consent order or written stipulation signed by counsel and entered on the record, or made in open court and noted upon the record.

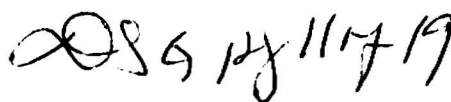
The proper procedure for enforcing a settlement agreement is to petition the approving trial court to interpret or enforce the agreement. See Kumas v. Third Generation, Inc., 324 S.C. 284, 289-90, 485 S.E.2d 626, 629 (Ct.App. 1995). “A trial court has inherent jurisdiction to enforce settlement agreements entered before it.” Id. “There can be no doubt but that the trial court retains inherent jurisdiction and power to enforce agreements entered into in settlement of litigation before that court.” Rock Smith Chevrolet, Inc. v Smith, 209 S.C. 91, 93, 419 S.E.2d 841, 842 (Ct.App. 1992). Further, in the Order Designating Case Complex, dated October 10, 2006, the Court retained exclusive jurisdiction to hear the case from beginning to end.

Dorchester County is a proper venue for the Diocese’s motion to enforce settlement under SCRCP 43(k). The trial court has the inherent jurisdiction to enforce settlements entered into before that Court. Rock Smith Chevrolet, Inc., 209 S.C. at 93, 419 S.E.2d at 842.

 10/17/19

Mr. Meyers argued that Defendants unilaterally arranged to turn the objectors agreement into an order and that the objectors had no part in filing the August 30, 2007 agreement with the Court, nor in requesting the Court enter an order incorporating it, and that was done solely by the Diocese and Class Counsel. This argument is without merit. Mr. Meyers's had filed a Rule 59(e) motion with the Court following the order approving class settlement. The settlement agreement reached between the Defendants and Mr. Meyers *inter alia* resolved the Rule 59(e). Under Rule 43(k) this agreement was one which affected pending litigation. It was appropriate for counsel to submit the agreement for the Court's approval and incorporation. The Court notes that the August 30, 2007 Order was unchallenged and unappealed from. In fact, Mr. Meyers now seeks to enforce the order, not abrogate its effectiveness. The Court granted the motions to enforce settlement at the conclusion of the hearing on January 29, 2009 since all elements of Rule 43(k) were satisfied. The mechanism for payment was set forth in the Courts order dated February 3, 2009.

During the January 29, 2009 hearing and following the Court's verbal ruling, parties argued their positions to the Court regarding escrowing payments and provision of releases. Pursuant to Court directive, Counsel met and agreed to the language of the releases to be provided to the defendants by Mr. Meyers's clients. The FDIC information regarding the insuring and safety of the money deposited with banks in the area was requested by the Court. Once a suitable bank was located, a proposed order was prepared by Mr. Meyers and Mr. Shahid to provide the necessary steps of transferring the money, the bank to escrow the money, the party to control that money, the acquiring of releases from Mr. Meyers clients, and the process to exchange the releases for the settlement funds. These actions occurred in relative quick fashion

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as the order signed by this Court was dated February 3, 2009. The Defendant Diocese deposited the funds on February 4, 2009. The releases were provided to the Dorchester County Clerk of Court on February 9, 2009 and they were sent to the Defendants with copies to Class Counsel. The 1.375 million dollars were transferred to Mr. Meyers on February 12, 2009 by the Dorchester County Clerk of Court.

The specific mechanism for enforcing the settlement is documented in this Court's February 3, 2009 Order.

Pre-Judgment Interest

Mr. Meyers requested pre and post judgment interest. "If pre-judgment interest is pled for in the complaint, it is allowed on obligations to pay money from the time the payment is demandable, either by agreement of the parties or by operation of law, if the sum is certain or capable for being reduced to certainty." Dixie Bell, Inc. v Redd, 376 S.C. 361, 368, 656 S.E.2d 765, 769 (Ct.App. 2007) (quoting Future Group, II v. Nationsback, 324 S.C. 89, 101, 478 S.E.2d 45, 50 (1996)). Mr. Meyers and his clients have not entered any pleading requesting this Court to award pre-judgment interest other than the oral motion. Further, all conditions precedent by Mr. Meyers's clients were not complete at the time pre-judgment interest was demanded during the January 29, 2009 hearing as Mr. Meyers had not provided releases to the Diocese acceptable to it and signed by his client(s). Until that time, the funds from the Diocese were not demandable and that condition precedent was unsatisfied.

Despite some overtures from each side to the other, the conditions precedent (e.g. the objectors providing suitable releases) was satisfied as a result of this Court's order of February 3, 2009. Because all conditions were satisfied at or very near to the time the money was paid.

prejudgment interest is inappropriate and the request is denied.

Post-Judgment Interest

Mr. Meyers moved for post-judgment interest at the January 29, 2009 hearing. Mr. Meyers's argued that post-judgment interest is mandated by statute rather than being discretionary relief. "South Carolina Code Ann. 34-31-20(B) (Supp.2003) states that ... judgments of courts enrolled or entered shall draw interest. [A] claimant is entitled to interest from the date of the rendition of the verdict, or post-judgment interest, as a matter of course." Hunting v. Elders, 359 S.C. 217, 229, 597 S.E.2d 803, 809 (Ct.App. 2004) (citing Calhoun v. Calhoun, 339 S.C. 96, 102, 529 S.E.2d 14, 18 (2000)).

All conditions precedent by the Diocese and class counsel were satisfied by April 28, 2008 when Mr. Richter, class counsel, returned \$100,000 to Mr. Shahid after the claims process was completed. At that time, per the Court Order dated August 31, 2007, Mr. Meyers would provide the Defendants' with releases in exchange for \$1.375 million paid out of the excess settlement funds and any additional monies required to satisfy that amount. On March 5, 2008, Mr. Meyers filed a new action in Charleston County involving these matters. Apparently there was much procedural activity associated with the Charleston case.

The Defendants' filed a Motion to Enforce Settlement and Motion for Leave to Deposit Funds into the Court on July 25, 2008. Mr. Meyers's Motion to Recuse and Motion to Dismiss were filed September 24, 2008 in Dorchester County.

It was not until Mr. Meyers's Motion to Recuse and Motion to Dismiss were denied on January 29, 2009, some nine months after the performance date by the Diocese and class counsel, did Mr. Meyers move to enforce the settlement under SCRCP 43(k). It is important to

remember although the Diocese and class counsel had performed by April 28, 2008. Mr. Meyers failed to provide acceptable releases until they were sent to the Court on February 9, 2009.

"Post-judgment interest is in the nature of a penalty." Babb v. Rothrock, 310 S.C. 350, 354, 426 S.E.2d 789, 792 (1993) (citing Sears v. Fowler, 293 S.C. 43, 358 S.E.2d 574 (1987)). In order to receive benefit of a penalty, the non-violating party must comply correctly with the appropriate motions or steps. A party seeking post-judgment interest must have followed the prescribed steps to be awarded this penalty. A party who by their own hand creates a situation where they fail to make the correct motions cannot in the alternative request a penalty against the opposing party which their own actions helped to accrue.

Mr. Meyers failed to utilize the most efficient avenue for enforcing the settlement that was incorporated into this Courts Order dated August 31, 2007. The Defendants sought the most appropriate route for relief in this matter.

This Court finds that the Defendants were in no way at fault and did not fail to comply with the settlement agreement. The Defendants actions were not the cause of the delay. For the foregoing reasons, Mr. Meyers's motion for post-judgment interest is denied.

Motion for Sanctions

The Defendants request sanctions for the Motion to Enforce Settlement Agreement for the cost of defending this action and responding to the frivolous pleadings filed by Mr. Meyers. Specifically, the Defendants request attorney's fees and costs associated with filing memorandum, filing and arguing the Motion to Enforce Settlement Agreement and Deposit Funds with the Court, and defending the action filed in Charleston County that was improperly filed to enforce this Courts order of August 31, 2007.

This Court will not consider sanctions connected to the Charleston County case. A request for sanctions as they relate to the Charleston litigation must be brought in that case.

Under Rule 11(a), SCRPC, a party's attorney may be sanctioned for filing a frivolous pleading, motion, or other paper, or for making frivolous arguments. Ex Parte George W. Gregory, 378 S.C. 430, 663 S.E.2d 46 (2008); Runyon v Wright, 322 S.C. 15, 471 S.E.2d 160 (1996). The attorney's signature on the motion constitutes a certificate by him that he has read the motion and to the best of his knowledge, information, and belief there is good ground to support it. SCRPC 11(a).

The South Carolina Frivolous Civil Proceedings Sanctions Act provides for liability for attorney fees and costs of frivolous suits. South Carolina Code Ann. § 15-36-10(A)(4) provides the specific situations where sanctions may be appropriate. The first basis is for filing a frivolous motion if "a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;" "a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or injure the other party;" or "a reasonable attorney presented with the same circumstances would believe the... motion ... is frivolous. ..." S.C. Code Ann. § 15-36-10(A)(4)(a)(ii)-(iv) (2008). The second basis is for "making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts." S.C. Code Ann. § 15-36-10(A)(4)(b) (2008). Finally, "making frivolous arguments that a reasonable attorney would believe were not warranted under the existing law or if there is no good faith argument that exists for the extension, modification,

or reversal of existing law.” S.C. Code Ann. § 15-36-10(A)(4)(c) (2008).

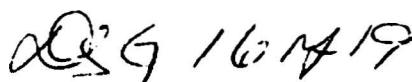
Regarding the matter of sanctions, given the attendant issues with the motions to enforce it is apparent that a hearing was necessary to bring the matter to conclusion. The granting of sanctions is a matter left to judicial discretion. Any delay in the resolution of these matters was a product of multiple impediments, some of which were as innocent as the vicissitudes of busy lawyers’ schedules. Therefore, with all these matters in mind, the Court denies not only pre and post judgment interest but the imposition of sanctions in this case.

Motion to Appear as Amicus Curiae

Mr. David Flowers, on behalf of the South Carolina Victim Assistance Network (SCVAN), petitioned the Court on June 23, 2008 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 suit.

South Carolina Appellate Rule 213, Amicus Curiae Brief, governs the admissibility of amicus curiae. The rule states that briefs may be conditionally filed with a motion for leave to file which identifies the interest of the applicant and shall state the reasons why an amicus curiae brief is desirable. The Court then has the discretion to admit the brief and use it for guidance in the litigation.

There is only one reported case in South Carolina that addresses the admissibility of amicus curiae briefs in trial courts in this state. In Cook v S.C. Dept. of Hwy. and Public Transp., 309 S.C. 179, 420 S.E.2d 847 (1992), the trial court permitted the use of an amicus curiae brief by the South Carolina Budget and Control Board in a wrongful termination suit, but the Court pointed out that there was no evidence that “the trial judge even considered the amicus

 16/17/19

arguments in reconsidering his order.” Cook v S.C. Dept. of Hwy. and Public Transp., 309 S.C. 179, 184, 420 S.E.2d 847, 850 (1992). Cook stated that with regards to amicus curiae briefs that the “admission or exclusion of evidence at trial is addressed to the sound discretion of the trial judge.” Cook v S.C. Dept. of Hwy. and Public Transp., 309 S.C. 179, 184, 420 S.E.2d 847, 849-50 (1992) (citing Grand Strand Const. Co. v. Graves, 269 S.C. 594, 239 S.E.2d 81 (1977)).

The other South Carolina case is a 1974 Federal class action case that addressed an amicus curiae brief that was determined to be a motion to intervene by the United States as a party plaintiff. In Alexander v Hall, 64 F.R.D. 152 (D.S.C. 1974), while discussing amicus curiae participation in trial courts, “[a]n amicus curiae is not a party to the litigation...and therefore does not necessarily represent the views or interests of either party.” Alexander v Hall, 64 F.R.D. 152, 155 (D.S.C. 1974). “Since an amicus does not represent the parties but participates only for the benefit of the court, it is solely within the discretion of the court to determine the fact, extent, and manner of participation by the amicus.” Id. The amicus brief by the United States in Hall was ultimately determined to be a motion to intervene as party plaintiff in the action instead of only an amicus curiae brief for the case.

“An amicus curiae is not a party to the action and cannot assume the functions of a party. When amicus status is granted, the named parties should always remain in control, with the amicus merely responding to the issues presented by the parties. Although an amicus may provide supplementary assistance to existing counsel, an amicus curiae cannot assume management of the action as counsel, being without any control over it whatsoever. An amicus cannot initiate, create, extend, or enlarge issues, including constitutional issues. Courts will not consider issues raised by amici curiae which are not raised by the parties. Relief beyond that

OSG Pg 17 of 19

which is sought by the parties cannot be requested by amicus curiae. Instead, an amicus curiae must take the case as he or she finds it, with the issues made by the parties. Motion practice by amici curiae is not permitted.” Thomas, Susan L., Powers and Functions of Amicus, CJS AMICUS § 14 (footnotes omitted); see Van Arsdale, Barbara J., Rights and Powers of Amicus Curiae, AMJUR AMICUS § 6.

The Court notes the affirmative relief requested by the SCVAN amicus curiae brief. The brief submitted includes petitions to recuse the presiding judge, to appoint substitute class counsel, to require attorneys to self report themselves, and to dissolve the settlement reached with the class. It is abundantly clear from the Appellate Court Rules, state and federal case law, that the petition before this court does not resemble a typical amicus request. Rather, the motion appears to be an attempt to intervene as one considers its form and the affirmative relief it seeks. The pleading at issue attempts to do much more than advise the court on certain issues raised by the parties themselves.

Therefore, with regard to the petition to appear as amicus curiae submitted by SCVAN, the Court respectfully denies the motion for the above stated reasons.

THEREFORE, IT IS ORDERED that Mr. Meyers Motion to Recuse and Motion to Dismiss were and continue to be denied.

IT IS FURTHER ORDERED, that the Defendants’ Motion to Enforce Settlement Agreement and Motion Leave to Deposit Funds with the Court and Mr. Meyers Motions to Enforce Settlement Agreement are granted.

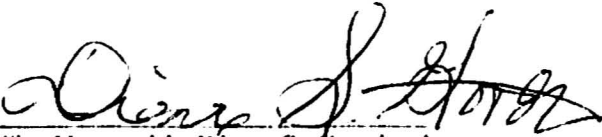
AND IT IS FURTHER ORDERED Mr. Meyers’s motion for pre and post judgment interest is denied.

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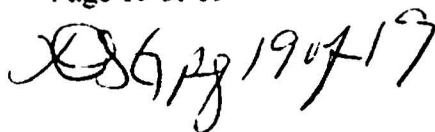
AND IT IS FURTHER ORDERED the Defendants' Motion for Sanctions is denied.

AND IT IS FURTHER ORDERED the Petition to Appear as Amicus Curiae by
SCVAN is denied.

AND IT IS SO ORDERED!


The Honorable Diane S. Goodstein
Circuit Court Judge

Date: March 23, 2009



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

FORM 4
CERTIFIED COPY
2013 JAN 24 AM 8:34
JUDGMENT IN A CIVIL CASE
CASE NUMBER 2006CP1801310

Jane #1 Doe	Jane #2 Doe	<i>Christy R. [Signature]</i> CLERK OF COURT DORCHESTER COUNTY	Bishop of charleston	Bishop of the diocese of charl
Rachel Roe				
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.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ 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:

Further [Signature]
I hereby recuse myself from hearing any matters on the above captioned case.

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk:

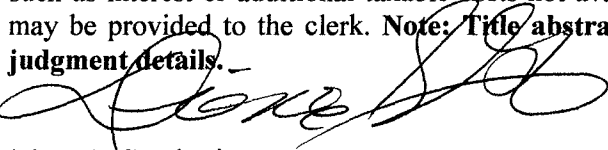
INFORMATION FOR THE JUDGMENT INDEX

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.**


Diane S. Goodstein
Circuit Court Judge

2112
Judge Code

1/18/2013
Date

For Clerk of Court Office Use Only

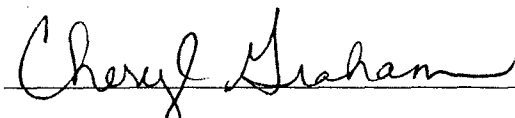
This judgment was entered on ²⁴1-22-2013, and a copy mailed first class or placed in the appropriate attorney's box on ²⁶1-22-2013, to attorneys of record or to parties (when appearing pro se) as follows:

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

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)


Cheryl Graham - Clerk of Court

Court Reporter

The Supreme Court of South Carolina

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.

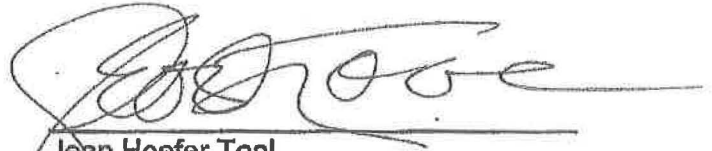
Dorchester County
2006-CP-18-01310
2006-CP-18-01311
2006-CP-18-01636

ORDER

I find that since issuing her Order Approving Settlement, the Honorable Diane Schafer Goodstein has recused herself from hearing any further matters regarding this case. Now, therefore,

IT IS ORDERED that the Honorable J. Ernest Kinard, Jr., retired Circuit Court Judge of the Fifth Judicial Circuit, be vested with exclusive jurisdiction to hear and dispose of any remaining matters in this case. Judge Kinard shall decide all matters pertaining to any pending issues, and pursuant to this assignment shall retain jurisdiction over this case regardless of where he may be assigned to hold court and may schedule such hearings as may be necessary at any time without regard as to whether there is a term of court scheduled.

Pursuant to this assignment, he is to have and exercise all powers and duties appertaining to a Circuit Judge of the First Judicial Circuit while handling this matter.



Jean Hofer Toal
Chief Justice

April 30, 2013
Columbia, 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

ORDER ON MOTION TO
ENFORCE SETTLEMENT

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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

The Supreme Court of South Carolina

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.

Dorchester County
2006-CP-18-01310
2006-CP-18-01311
2006-CP-18-01636

ORDER

IT IS ORDERED that the Honorable J. C. Nicholson, Jr., retired Circuit Court Judge of the Tenth Judicial Circuit, be vested with exclusive jurisdiction to hear and dispose of the above case. Judge Nicholson shall decide all matters pertaining to this case, and pursuant to this assignment shall retain jurisdiction over this case regardless of where he may be assigned to hold court and may schedule such hearings as may be necessary at any time without regard as to whether there is a term of court scheduled. Pursuant to this assignment, he is to have and exercise all powers and duties appertaining to a Circuit Judge of the First Judicial Circuit while presiding over this matter.

The previous order dated April 30, 2013 assigning this case to the late Honorable Ernest J. Kinard, Jr. is hereby rescinded.



Jean Hofer Toal
Chief Justice

June 12, 2015
Columbia, South Carolina

The Supreme Court of South Carolina

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.

Dorchester County
2006-CP-18-01310
2006-CP-18-01311
2006-CP-18-01636

ORDER

IT IS ORDERED that the Honorable Heath P. Taylor be vested with exclusive jurisdiction to hear and dispose of the above case. Judge Taylor shall decide all matters pertaining to this case, and pursuant to this assignment shall retain jurisdiction over this case regardless of where he may be assigned to hold court and may schedule such hearings as may be necessary at any time without regard as to whether there is a term of court scheduled.

The previous order dated June 12, 2015, assigning this case to the Honorable J.C. Nicholson, Jr., is hereby rescinded.



Donald W. Beatty
Chief Justice of South Carolina

Columbia, South Carolina
November 10, 2022

Record on Appeal - 0191

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
 FOR THE FIRST JUDICIAL CIRCUIT

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,)

Case Nos.: 2006-CP-18-1310
 2006-CP-18-1311
 2006-CP-18-1636

Plaintiffs,)

vs.)

ORDER

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

PROCEDURAL HISTORY

This matter has a long history and arises from a class action settlement approved pursuant to Rule 23, SCRCP in the Dorchester County Court of Common Pleas in 2007. On August 15, 2006, the first two of the three above-captioned class actions were commenced on behalf of victims who were allegedly sexually abused by members of the Catholic church in their capacity as agents of The Bishop of Charleston, a Corporation Sole (“the Diocese”). (Complaints filed in C/A Nos. 2006-CP-18-1310 and 2006-CP-18-1311.) 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.

On January 17, 2007, the plaintiffs moved for certification of the classes and for preliminary approval of the class settlement. The class action court granted that motion by order entered January 19, 2007. The class was represented by Lawrence E. Richter, Esquire and David

K. Haller, Esquire. 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. The Honorable Diane Schafer Goodstein presided over the fairness hearing. Judge Goodstein heard arguments on class certification, approval of the proposed settlement, class counsel's fee petition, and objections. On July 30, 2007, the class action court entered an order approving the class action settlement and awarding class counsel the maximum fee of \$2,500,000.00 and overruling the objections made on behalf of John Does A through N. That order approved the January 12, 2007 settlement agreement as an order of the court.

On August 1, 2007, the objectors filed an Objection to Proposed Order advancing fifteen different objections to the class action settlement. The objectors subsequently filed a motion to alter or amend the Order Approving Settlement and a supporting memorandum based on his objections to the settlement terms on August 7, 2007. The objectors claims were subsequently settled and the terms of that settlement were incorporated into an order the class action court entered August 31, 2007.

Following the final settlement approval and disposition of the objectors' Rule 59, SCRCp, 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. 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 claims of the class members. The litigation involving the class action claims was concluded. Filings continued under the class action caption and the court held a hearing on January 29, 2009 on the pending motions which included the objectors' motion

for recusal, the Diocese's motions to enforce settlement and for leave to deposit funds into court, the objectors' motion to dismiss the motions filed by the Diocese and a petition to appear as *amicus curiae*. By orders filed February 3, 2009 and March 23, 2009, the court denied the objectors' motions and the petition to appear as *amicus curiae*. For reasons unknown to this court, an order ending the litigation was never filed. The objectors appealed the March 23, 2009 order. The Supreme Court of South Carolina dismissed the appeal. By order filed January 24, 2013, Judge Goodstein recused herself from hearing any further matters related to this litigation.

On May 11, 2016, Allen Sires filed a motion *pro se* requesting a post-award fairness hearing. The motion was not scheduled for a hearing. On August 29, 2022, Julie and Richard McDonald filed a motion to intervene and sought to join Mr. Sires' motion for a post-award fairness hearing. By order of the South Carolina Supreme Court dated November 10, 2022, the undersigned was vested with exclusive jurisdiction to hear and dispose of this case.

On January 27, 2023, the parties appeared before the court to address the pending motions. Mr. Sires appeared *pro se*. Gregg Myers, Esquire appeared on behalf of Julie and Richard McDonald. Class counsel, David K. Haller, Esquire, appeared along with his personal attorneys, John C. Cuttino, Esquire and Benjamin C. Bruner, Esquire. The Defendants were represented by Richard S. Dukes, Jr. Esquire.

DISCUSSION

The motions filed by Mr. Sires and the McDonalds¹ urge this court to conduct a post-award fairness hearing. Mr. Sires and the McDonalds both participated in the claims process and received their settlement proceeds. Although various grievances were aired during the hearing, the principal

¹ The McDonalds also filed a simultaneous Motion to Intervene. Because the McDonalds were accepted as members of the class that is the subject of this litigation, the court finds and concludes that intervention pursuant to Rule 24, SCRCP is not necessary for the McDonalds to file their motion.

reason cited by Mr. Sires and the McDonalds for a post-award fairness hearing centers around fees charged by class counsel to individual class members upon resolution of the individual claims through the court approved claims process.²

It appears a thorough and complete fairness hearing was held by Judge Goodstein which addressed certain objections. An order was issued on July 30, 2007 formally approving the settlement. Judge Goodstein's order also made the parties' Settlement and Arbitration Agreement filed January 17, 2007 an order of the court. A series of motions followed Judge Goodstein's July 30, 2007 order which she addressed in a subsequent order filed March 23, 2009. An appeal of the March 23, 2009 order was dismissed by the South Carolina Supreme Court.

Neither Mr. Sires nor the McDonalds cite any authority for this court to hold a post-award fairness hearing. It is true that "[c]ourts have the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible." *Ex Parte Dibble*, 279 S.C. 592, 595, 310 S.E.2d 440, 442 (1983). However, it is not the province of this court to create a right or remedy where one does not exist. Further, "[t]he doctrine of the law of the case applies to an order or ruling which finally determines a substantial right." *S.C. Public Interest Foundation v. Wilson*, 437 S.C. 334, 340, 878 S.E.2d 891, 894 (2022). The Settlement and Arbitration Agreement filed January 17, 2007 and Judge Goodstein's order filed July 30, 2007 were an unquestionable final determination of substantial rights of the class members. Finally, "[t]here is a long-standing rule in this State that one judge of the same court cannot overrule another." *Charleston County Dep't of Social Servs. v. Father*, 317 S.C. 283, 288, 454 S.E.2d 307,

² Class counsel and the Defendant's assert that Mr. Sires and the McDonalds lack standing to be heard on their motion for a post-award fairness hearing. Because of the court's ruling with regard to the post-award fairness hearing, the court declines to rule on the issue of standing but notes the argument and its preservation for appellate purposes. See, *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000).

310 (1995). The relief sought by Mr. Sires and the McDonalds would require this court to re-examine the fairness of the settlement procedure and effectively overrule Judge Goodstein's order which finally determined the fairness of the settlement. This court is not inclined to do so. Because the July 30, 2007 Order Approving Settlement was a final determination of substantial rights of the class members, it is the law of the case. This court has no authority to set Judge Goodstein's order aside or conduct further proceeding with regard to the fairness of the settlement or claims process.

CONCLUSION

Based upon the foregoing, this court finds and concludes that the motions for a post-award fairness hearing should be and are hereby denied. Because the claims process for class members has concluded and there appearing to be no further matters for this court to address, the above captioned matter is hereby dismissed with prejudice.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the motions of Mr. Sires and the McDonalds are denied and this matter is hereby dismissed with prejudice.

IT IS SO ORDERED!



Dorchester Common Pleas

Case Caption: Jane #1 Doe , plaintiff, et al VS Bishop of charleston , defendant, et al

Case Number: 2006CP1801310

Type: Order/Other

IT IS SO ORDERED.

Heath P. Taylor

Electronically signed on 2023-03-24 11:30:53 page 6 of 6

393 S.C. 147
Supreme Court of South Carolina.

Ex parte Johns DOE C, D, H, J, K, L, M, and B;
Janes Doe G, I, and M; and the mother of John
Doe J, Appellants,

In re 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, Respondents,
v.

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

No.

26984

Heard Feb. 3, 2011.

Decided June 13, 2011.

Synopsis

Background: While several motions for interest were pending, class members who had opted out of settlement agreement with religious organization arising out of childhood sexual abuse by agents of organization entered into separate settlement agreement with organization. The Circuit Court, Dorchester County, [Diane Schafer Goodstein](#), J., denied motions. Class members appealed.

Holding: The Supreme Court held that releases in settlement agreement waived any claim for interest.

Appeal dismissed.

West Headnotes (1)

- [1] [Release](#)
[Release of damages for injury to the person](#)

Releases of liability contained in settlement agreement between victims of childhood sexual abuse and religious organization released all of

members' claims against organization, including claims for interest; members waived any right to interest when they signed releases discharging the organization from liability for all "actions, causes of action, claims, demands and compensation, up to and including the date of the release," and the releases did not reserve any rights as to any pending motions, rather, by their plain language, the releases resolved all of the members' claims.

1 Cases that cite this headnote

Attorneys and Law Firms

****892** [Gregg Meyers](#), of Charleston, for Appellants.

[David K. Haller](#) and Lawrence E. Richter, Jr., of Mt. Pleasant, for Respondents John Doe # 53, et al.

[A. Peter Shahid, Jr.](#), of Charleston, for Respondents the Bishop of Charleston, a Corporation Sole, et al.

Opinion

PER CURIAM.

148** This appeal follows a long and complex series of motions related to a class action settlement that was administered in Dorchester County. The underlying class action dealt with allegations that certain minors *893** were victims of sexual abuse at the hands of agents of the Diocese of Charleston.¹ Appellants objected to and opted out of the class action, then reached an independent settlement with the Diocese. Pursuant to that settlement, Appellants executed releases that explicitly discharged *all* claims against the Diocese. We dismiss this appeal as moot.

¹ For simplicity, we refer to both "the Bishop of Charleston, a Corporation Sole," and the Bishop of the Diocese of Charleston, in his official capacity, as "the Diocese."

I.

The plaintiffs in the underlying class action consisted of two classes: one for victims of childhood sexual abuse by agents of the Diocese and one for the spouses and parents of victims. As chief administrative judge for Dorchester County, Judge Goodstein designated the case “complex,” and she assigned *149 herself exclusive jurisdiction over it. Judge Goodstein subsequently approved a settlement in the class action over Appellants’ objections. Appellants moved to alter or amend the order approving the settlement.

While Appellants’ motion to alter or amend was pending, they reached a separate settlement agreement (“the opt-out agreement”) with the Diocese and class counsel. This agreement provided that the Diocese would pay Appellants \$1.375 million to settle their claims, in exchange for Appellants’ agreement to opt out of the class action, execute releases, and withdraw all pending motions and objections with prejudice. Judge Goodstein entered an order dated August 31, 2007, approving the agreement and adopting it as the order of the court to the extent that it resolved the pending motions and objections.

On March 6, 2008, Appellants filed a complaint in Charleston County alleging payment was due under the opt-out agreement. Because the opt-out agreement arose from the Dorchester County class action, the Diocese moved to enforce the opt-out agreement in Dorchester County and to deposit the \$1.375 million with the Dorchester County clerk of court. Appellants moved to dismiss the Diocese’s Dorchester County motions and moved for Judge Goodstein to recuse herself.

Judge Goodstein held a hearing on these motions on January 29, 2009. After Judge Goodstein orally denied Appellants’ motions to dismiss and to recuse, Appellants moved to compel the Diocese to pay the \$1.375 million plus pre or postjudgment interest.

Following the January 29 hearing, and while Appellants’ motions for interest remained under advisement, Appellants signed releases bearing the title “FULL AND COMPLETE RELEASE,” which provided in relevant part:

For and in consideration of my having received payment ... I hereby release, acquit, and forever discharge: The Diocese of Charleston ... from any and all actions, causes of action, claims, demands, damages, costs, loss of services, expenses and compensation, up to and including the date of this release, on account of, or in any way growing out of:

1. The obligations under the letter agreement dated August 30, 2007, incorporated into and adopted as an order *150 of the Dorchester County Court of Common Pleas dated August 31, 2007 ...;

....

3. Any and all claims and/or allegations contained in or relating to the civil action styled *Johns Doe C et al. v. The Diocese of Charleston, et al.* ... now pending in the Court of Common Pleas for the Ninth Judicial Circuit (the “Charleston case”), or which could have been alleged in the Charleston case;

4. Further, in consideration of said payment, I do hereby authorize and direct my attorney to dismiss with prejudice the Charleston case, now pending in the Circuit Court for Charleston County.

....

It is further understood and agreed that there is no promise or agreement on the part of the persons, firms and corporations who are hereby released to do or omit to do any act or thing not herein mentioned, that this Release contains the entire agreement between the parties hereto, and that **894 the terms of this Release are contractual and not a mere recital.

The releases were provided to the Dorchester County clerk of court in exchange for payment of the \$1.375 million on deposit with the clerk. As a result, Appellants’ counsel received the funds due under the opt-out agreement. Thereafter, by order dated March 23, 2009, Judge Goodstein ended the matter and denied Appellants’ motions for pre and postjudgment interest.

Appellants now appeal the denial of their motions and raise challenges to the class action settlement from which they opted out. We certified the appeal pursuant to [Rule 204, SCACR](#).

II.

Appellants opted out of the class action settlement, released all claims against the Diocese, and received payment in exchange for their releases. Thus, as a practical matter, the only relief Appellants could receive from a judgment in their favor is an award of prejudgment interest.² However, Appellants *151 waived any right to interest when they signed releases discharging the

Diocese from liability for all “actions, causes of action, claims, demands ... and compensation, **up to and including the date of th[e] release.**” The releases did not reserve any rights as to any pending motions. Rather, by their plain language, the releases resolved **all** of Appellants’ claims. See *Southern Glass & Plastics Co. v. Duke*, 367 S.C. 421, 428, 626 S.E.2d 19, 22 (Ct.App.2005) (“A release is a contract, and the scope of a release is gathered by its terms.” (citing *Gardner v. City of Columbia Police Dep’t*, 216 S.C. 219, 223, 57 S.E.2d 308, 309–10 (1950))). Therefore, this appeal is moot. *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006) (“A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court.”).

² If Appellants were entitled to interest, it would be prejudgment interest, not postjudgment interest, because the funds due under the opt-out agreement were not payable immediately upon entry of the August 31, 2007, order. The opt-out agreement provided: “The \$1.375 million will be paid from the surplus funds, if any, after the [class action] claims process has been completed.... Payment is expected sometime after January 1, 2008.”

Moreover, while Appellants now present us with complaints about the administration of the class action, Appellants opted out of the class and thus could not be harmed by any of the irregularities they allege. In fact, Appellants assert their opt-out agreement afforded them more favorable relief than the class action settlement would have. Thus, Appellants can claim no harm from the manner in which the class action settlement was handled. See *Bivens v. Knight*, 254 S.C. 10, 13, 173 S.E.2d 150, 152 (1970) (“A party ... cannot appeal from a decision which does not affect his interest, however erroneous and prejudicial it may be to the rights and interests of some other person.”).

At oral argument, perhaps in recognition of the fact that Appellants have waived all claims by their releases,

Appellants’ counsel insisted that this appeal was not moot because John Doe B did not sign the release quoted above. This assertion is without merit. John Doe B’s claim is not before this Court. John Doe B did not fall within the definition of the class, nor was he a party to the opt-out agreement the *152 Diocese sought to enforce. Rather, it appears that the Appellants may have agreed among themselves to distribute a portion of their settlement to John Doe B. No exceptions to the order on appeal were made on John Doe B’s behalf, and Appellants’ counsel conceded at oral argument that John Doe B’s separate claim against the Diocese has been resolved by agreement and John Doe B has signed a release. In sum, the attempt by Appellants to resurrect this appeal through John Doe B is without merit.

III.

We dismiss this appeal as moot. Appellants executed full and complete releases without any reservation of rights, and they received the funds due to them under the opt-out agreement in return. Moreover, Appellants have no stake in the issues they **895 raise regarding the class action settlement because they opted out of the class. Thus, a decision in Appellants’ favor would have no practical effect.

APPEAL DISMISSED.

TOAL, C.J., PLEICONES, BEATTY, KITTREDGE and HEARN, JJ., concur.

All Citations

393 S.C. 147, 711 S.E.2d 892

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE No.: 10-CP-10-5520

JOHN DOE 2 AND JOHN DOE 4,

Plaintiff,

vs.

THE BISHOP OF CHARLESTON, a
Corporation Sole; ROBERT GUGLIEMONE,
THE BISHOP OF CHARLESTON, in his
Official Capacity, REV. MONSIGNOR
MARTIN LAUGHLIN, former
Administrator of the Diocese of Charleston,
in his Official Capacity; ROBERT J. BAKER,
former Bishop of Charleston, in his Official
Capacity; LAWRENCE E. RICHTER, JR.,
DAVID K. HALLER, and RICHTER AND
HALLER, LLC.,

Defendants.

FILED
2011 JUN 27 PM 12:30
JULIE J. ARISTRONG
CLERK OF COURT

**ORDER DENYING IN PART AND GRANTING IN PART
DEFENDANTS' MOTION TO DISMISS**

Plaintiffs' Attorney: Gregg Meyers
Defendants' Attorney: A. Peter Shahid, Jr., for Diocese of Charleston
Susan Taylor Wall, for David Haller
James L. Bruner, for Lawrence E. Richter, Jr. and
Richter and Haller, LLC
Date of Hearing: March 31, 2011

INTRODUCTION

This lawsuit was filed on July 9, 2010, and alleges a number of alternative wrong-doings by the various Defendants. Each of the Defendants responded by filing motions to dismiss which this Court heard on March 31, 2011. For the following reasons, this Court finds the motions must be denied in part and granted in part.

Res Judicata and the Class Action Settlement

The Plaintiffs' first cause of action alleges the Diocese knew or should have known that one of its priests was a pedophile who molested the Plaintiffs, and as a result, the Diocese was negligent and grossly negligent in supervising this priest. They also allege the Diocese was negligent and grossly negligent in failing to warn the Plaintiffs or their parents about this pedophile priest. They further allege the Diocese Defendants maintained a decades-long policy and practice of engaging in fraudulent concealment when their agents and employees were known to sexually abuse children.

The Diocese asks the Court to dismiss the negligence and gross negligence cause of action because it is barred by the doctrine of *res judicata*, collateral estoppel and the statute of limitations.

The *res judicata* argument arises out of a class action lawsuit filed in Dorchester County that was approved by Circuit Court Judge Diane Goodstein. The Defendants argue that the negligence and gross negligence claims of the Plaintiffs were encompassed in that class action lawsuit and are therefore barred as a matter of law. The factual background is extensively laid out in detail in the Complaint.

However, by way of background for this preliminary issue, it should be pointed out that the Plaintiffs alternatively allege the Diocese Defendants and the Attorney Defendants, after reaching a settlement, colluded to dismiss a class action lawsuit that had been filed in Charleston County, and re-filed the same class action lawsuit in Dorchester County in order to seek a more favorable settlement approval by a circuit court judge who was a long-time friend of Defendant Richter. Procedurally, the Plaintiffs want to be able to bring their negligence and gross negligence claims against the Diocese Defendants; however, if they are barred because of the *res*

judicata effect of the Dorchester County Class Action settlement (or any of the defenses the Diocese Defendants waived by agreeing to the Dorchester County Class Action settlement), then they seek to sue the Diocese Defendants and the Attorney Defendants for civil conspiracy, and the Attorney Defendants for various causes of actions they allege flow from the actions of the Attorney Defendants in their role as class action counsel.

Since all of the Defendants have raised the defense of *res judicata* as a bar to the various causes of actions brought in the current lawsuit, this Court must address this issue first.

This Court must give collateral recognition of the Dorchester County Class Action settlement if it can be shown that the Plaintiffs were afforded due process in that action; i.e., they were given reasonable notice of the class action settlement and class counsel adequately represented them. The South Carolina Supreme Court has held that it is appropriate for a court to conduct a limited collateral review of another court's class action settlement for the sole purpose of determining if procedural due process requirements were met as it pertains to the party seeking review. This limited review looks at two factors: (1) whether there were safeguards in place to guarantee sufficient notice and adequate representation; and (2) whether such safeguards were, in fact, applied. Hospitality Management Associates, Inc. v. Shell Oil Company, 356 S.C. 644, 591 S.E.2d 611 (2004).

Fundamentally, due process requires that absent class members be given notice. Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 812, 105 S.Ct. 2965 (1985). The standard for notice is that it must be "the best practicable, 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" Shutts, 472 U.S. at 812, 105 S.Ct. 2965 (quoting Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314-15, 70 S.Ct. 652 (1950)).

I have conducted a limited collateral review of the procedures used by the circuit court in the Dorchester County Class action and find the procedures were not designed to ensure notice to any potential class members living outside of the state of South Carolina who were not otherwise given actual notice of the class action and settlement.¹ The Plaintiffs allege that they live outside the state of South Carolina and they did not receive actual notice of the settlement under the guidelines set forth in the settlement order. The newspaper notices of the class action were only published in South Carolina newspapers (with the exception of the Augusta daily newspaper which is immediately adjacent to South Carolina and is distributed in an area of South Carolina not otherwise serviced by a daily newspaper). The Defendants had originally proposed national publication of the settlement in the *USA Today* newspaper to Judge Goodstein; however, they specifically withdrew their request to have this notice published outside of South Carolina in a publication of national distribution. This is clearly evidence that the class action was not designed to be a national settlement, but rather was a settlement intended to bind only South Carolina residents who did not otherwise receive actual notice. I find, therefore, that the constructive notice of the Dorchester County Class Action settlement attempted by the in-state newspaper publications was not reasonably calculated, under all the circumstances, to apprise these out-of-state Plaintiffs of the pendency of the action and afford them an opportunity to present their objections.

The Plaintiffs also argues that the following language from Judge Goodstein's order of July 30, 2007 should estop the Diocese Defendants from raising the *res judicata*; to wit:

The Diocese has further stated that it understands that any person who should have had notice, but did not receive notice for whatever reason, would not be bound by the *res judicata* effect of the settlement. Further, the Diocese has stipulated before me in open Court and on the record that any person who comes forward as a later date and can show

¹ Nothing herein should be considered as adjudicating the issue of whether in-state class members received adequate notice.

that he or she should have received notice but did not could participate in an arbitration process with terms identical to the Settlement and Arbitration Agreement before the Court for approval today.

At first glance, this language certainly seems to support the Plaintiffs' position.

However, at a hearing on August 9, 2007, Judge Goodstein was asked to clarify her intent of this language, and as a result she issued an Order on August 31, 2007 in which she stated that language was only intended to apply to potential class members who had *actually* contacted the Diocese at some point in the past with allegations of child sexual abuse and were therefore entitled to receive *actual notice* of the proposed class settlement. Therefore, I find the language in the July 27th Order would not have the estoppel effect advanced by the Plaintiffs.

Nevertheless, this does not affect this Court's finding that the class notice was not intended to reach non-South Carolina residents who had not otherwise received actual notice of the settlement.

Due process rights preclude any claimant who did not receive notice of the class action from being bound by any judgment rendered in it. See Hoiengs v. County of Adams, 245 Neb. 877, 516 N.W.2d 223 (1994). Therefore, the Court finds the Plaintiffs are not bound by the judgment of the Dorchester County Class Action and are free to pursue their claims of negligence and gross negligence, subject to the findings below.

Statute of Limitations and Negligence/Gross Negligence Causes of Action

Having found the Plaintiffs are not bound by the Dorchester County Class Action, the Diocese Defendants move to dismiss the negligence and gross negligence causes of action on the grounds the claims fall outside the applicable statute of limitations.

The Plaintiffs claims arise out of allegations of childhood sexual abuse that allegedly occurred between 1965 and 1971. Therefore, these claims are subject to the limitations period

found in S.C. Code § 15-3-535 for actions arising prior to 2001, and S.C. Code § 15-3-555 for actions arising after 2001.

The facts plead in the Complaint allege Plaintiffs John Doe 2 and Jane Doe 4 would have been born at the latest in 1965. Consequently, the Plaintiffs would have turned 18 in 1983. Under § 15-3-535, the Plaintiffs would have had three years from the date of discovery of the tort to bring his or her claim. These Plaintiffs do not claim they were unaware of the alleged tort at the time it happened, between 1965 and 1971, or at any time after 1971. Giving each Plaintiff the benefit of the age of majority, three years after turning 18 in 1983, the statute would have been tolled until 1986, and three years after turning 21 would be 1989. None of these claims were brought by 1989.

According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered. Dean v. Ruscon Corp., 321 S.C. 360, 468 S.E.2d 645 (1996); Bayle v. S.C. Dept of Transp., 344 S.C. 115, 542 S.E.2d 736 (Ct. App.2001), cert. denied. In Dean, the Supreme Court stated:

According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered. The statute runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct. We have interpreted the "exercise of reasonable diligence" to mean that the injured party must act with some promptness where the facts and circumstances of an injury place a reasonable person of common knowledge and experience on notice that a claim against another party might exist. Moreover, the fact that the injured party may not comprehend the full extent of the damage is immaterial. *Id.* at 363, 364, 468 S.E.2d at 647 (emphasis in original) (citations omitted); Young v. South Carolina Dept. of Corrections, 333 S.C. 714, 511 S.E.2d 413 (Ct. App.1999) (stating the statute of limitations runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct).

Applying the tolling effect provided by § 15-3-555, each Plaintiff would be able to bring his or her claim within six years of turning 21 years old. Construing the facts alleged in the

Complaint in the light most favorable to the Plaintiffs, each Plaintiff would have turned 21 no later than 1986. Therefore, at the very latest their claims were barred by the limitations period in 1992. The Plaintiffs fail to allege they were unaware of the sexual abuse allegedly committed against them, or unable to discover the causal relationship between any injuries and the alleged sexual abuse.

The Plaintiffs argue the Diocese Defendants should be bound by their waiver of statute of limitations defenses in the Dorchester County Class Action. That waiver was only for class members and this Court has found the Plaintiffs are not bound by that class action. Therefore, the Plaintiffs cannot avail themselves of a waiver which only applies to a class action they wish to avoid.

The Plaintiffs further argue fraudulent concealment should bar the Diocese Defendants from raising the statute of limitations defense. The claims in the Plaintiffs' fraudulent concealment cause of action and defense are rooted in a document dated from 1962 entitled "The Instruction." The Plaintiffs claim the Vatican instructed a certain degree of secrecy to all local dioceses (including the current Diocese Defendant) in this document, the execution of which led to the concealment that is the core of the Plaintiffs' Complaint. The underlying crux of the Plaintiffs' Complaint for fraudulent concealment, which allegedly gives them a right to a remedy, is that the Diocese Defendants concealed certain information at the direction of this 1962 document.

In order to succeed on a claim of fraudulent concealment, a plaintiff must plead facts indicating an "inducement for delay" in filing the lawsuit. Hedgepath v. American Telephone & Telegraph Co., 559 S.E.2d. 327, 338 (Ct. App. 2001). In order to successfully avoid the application of the statute of limitations on this theory that the Diocese Defendants are or had engaged in acts constituting "fraudulent concealment," the Plaintiffs must allege and establish the

following:

[A] defendant is estopped from benefitting from the statute of limitations as a defense because the defendant has acted in such a manner as to induce the plaintiff to delay in timely filing a cause of action. The conduct may be either an express representation that the claim will be settled without litigation or actions suggesting that a lawsuit is unnecessary. To establish equitable estoppel, the party claiming estoppel must prove that he or she (1) lacked knowledge and means of obtaining knowledge of the truth of the facts in question; and (2) relied upon the conduct of the party to be estopped the party claiming estoppel must also establish that the party to be estopped (1) acted in a way amounting to a false representation or concealment of material facts; (2) intended such conduct to be acted upon by the other party; and (3) possessed knowledge, either actual or constructive, of the true facts. Kelly v. Logan, Jolley, & Smith, L.L.P., 383 S.C. 626, 638, 682 S.E.2d 1,4 (Ct. App., 2009) (internal citations omitted).

The claim of fraudulent concealment fails to bar the application of the statute of limitations in this case because the Plaintiffs do not allege how the Diocese Defendants actions with regards to “The Instruction” caused the Plaintiffs to be unaware of the personal injuries they allege they suffered or of the name the alleged perpetrator. They do not allege any defect in memory or any other reason why they are unaware of their own personal injury. They do not allege that the Diocese Defendants ever made a misrepresentation or took any action that caused them to delay the filing of their lawsuit. Absent such allegations, the Plaintiffs cannot maintain a claim of fraudulent concealment in tolling the statute of limitations.²

Therefore, the Court finds the Plaintiffs’ negligence and gross negligence claims are barred by the applicable statute of limitations and the Diocese Defendants motion to dismiss those causes of action must be granted.

UNFAIR TRADE PRACTICES ACT CLAIM

The Plaintiffs bring claims for damages alleging the Diocese violated the South Carolina Unfair and Deceptive Trade Practices Act, but fail to allege facts necessary to sustain an action under the UTPA. South Carolina's UTPA prohibits “[u]nfair methods of competition and unfair

² For the same reasons, the cause of action for fraudulent concealment must fail and is hereby dismissed.

or deceptive acts or practices in the conduct of any trade or commerce....” S.C. Code Ann. §39-5-20 (1985). Trade or commerce is defined as “the advertising, offering for sale, sale or distribution of any services and any property ... and any other ... thing of value....” S.C. Code Ann. § 39-5-10(b) (1985). See also Foggie v. CSX Transp., Inc., 313 S.C. 98, 24, 431 S.E.2d 587, 591 (1993).

In the current case, the acts alleged by the Plaintiffs for recovery are acts of sexual abuse. The Plaintiffs allege the Defendants are subject to a claim under the UTPA because, among other reasons, they “operate schools, for which tuition is charged,” and “they provide services to the public and advertise services to the public.” Our Supreme Court requires that the specific acts alleged are those of trade or commerce, not the general or unrelated conduct of a defendant that might or might not qualify as trade or commerce. The acts that form the basis of the Plaintiffs’ Complaints are allegations of sexual abuse, *not* acts of trade or commerce.

CIVIL CONSPIRACY AND ALL DEFENDANTS

The Plaintiffs allege a multi-faceted civil conspiracy cause of action that the Defendants all conspired to commit fraud upon the court by settling the case filed in Charleston County and re-filing it in Dorchester County in anticipation of getting favorable rulings on class certification, settlement terms, and approval of attorneys’ fees. I have reviewed the voluminous allegations set forth in support of this cause of action and find it meets the requirements of pleading a valid cause of action for civil conspiracy, in particular the requirement of alleging special damages insofar as the allegations complain the Defendants proposed class membership to include the Plaintiffs, then specifically requested the Court drop nationwide publication notice. The net result was that the Plaintiffs did not have the opportunity to participate in the class settlement nor exercise their right to opt-out, and as a result they are now unable to participate in the class action settlement, while at the same time are precluded from pursuing their negligence and gross negligence claims against the Diocese Defendants because of the running of the applicable



statute of limitations, which was waived by the Diocese in the Dorchester County Class Action with regards to participating class members. These claims are not precluded because of collateral estoppel or *res judicata*. Therefore the Defendants' motion to dismiss this cause of action must be denied.

PROFESSIONAL NEGLIGENCE AND BREACH OF FIDUCIARY DUTY

The Plaintiffs allege professional negligence and breach of fiduciary duty causes of action against the Attorney Defendants based upon the aforementioned facts set forth with great particularity in their Complaint. I have reviewed the voluminous allegations set forth in support of these causes of action and find they meet the requirements of pleading a valid cause of action for both. The particular duties owed and alleged to have been breach are supported by an affidavit of an expert as required by law. These claims are not precluded because of collateral estoppel or *res judicata*. Therefore, the Attorney Defendants' motion to dismiss these causes of action must be denied.

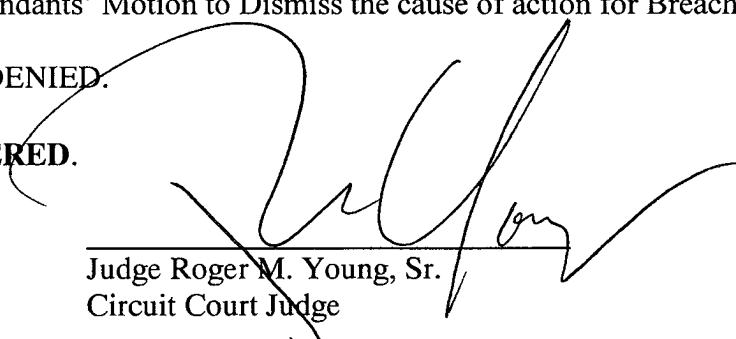
THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED:

1. That the all of the Defendants' Motions to Dismiss on the grounds of *res judicata* are
DENIED; and,
2. That the Diocese Defendants' Motion to Dismiss the claims of negligence and gross
negligence because the actions are barred by the applicable statute of limitations is
GRANTED; and
3. That the Diocese Defendants' Motion to Dismiss the claims of negligence and gross
negligence because the actions are barred by the applicable statute of limitations is
GRANTED; and

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4. That the Diocese Defendants' Motion to Dismiss the cause of action for fraudulent concealment because the actions are barred by the applicable statute of limitations is GRANTED; and
5. That the Diocese Defendants' Motion to Dismiss the cause of action for Unfair Trade Practices Act is GRANTED; and
6. That all of the Defendants' Motions to Dismiss the cause of action for Civil Conspiracy is DENIED; and
7. That the Attorney Defendants' Motion to Dismiss the cause of action for Professional Negligence is DENIED; and
8. That the Attorney Defendants' Motion to Dismiss the cause of action for Breach of Fiduciary Duty is DENIED.

AND IT IS SO ORDERED.



Judge Roger M. Young, Sr.
Circuit Court Judge

Charleston, South Carolina
June 17, 2011

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JOHN DOE 2 AND JANE DOE 4,

PLAINTIFFS,

V.

THE BISHOP OF CHARLESTON, A
CORPORATION SOLE; ROBERT
GUGLIEMONE, THE BISHOP OF
CHARLESTON, IN HIS OFFICIAL
CAPACITY; REV. MONSIGNOR MARTIN
LAUGHLIN, FORMER ADMINISTRATOR OF
THE DIOCESE OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; ROBERT J. BAKER,
FORMER BISHOP OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; LAWRENCE E.
RICHTER, JR.; DAVID K. HALLER; AND
RICHTER & HALLER, LLC,

DEFENDANTS.

JOHN DOE 10,

PLAINTIFF,

THE BISHOP OF CHARLESTON, A
CORPORATION SOLE; ROBERT
GUGLIEMONE, THE BISHOP OF
CHARLESTON, IN HIS OFFICIAL
CAPACITY; REV. MONSIGNOR MARTIN
LAUGHLIN, FORMER ADMINISTRATOR OF
THE DIOCESE OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; ROBERT J. BAKER,
FORMER BISHOP OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; LAWRENCE E.
RICHTER, JR.; DAVID K. HALLER; AND
RICHTER & HALLER, LLC,

DEFENDANTS.

JANE DOE 11,

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2010-CP-10-5520

**ORDER ON LIMITED
COLLATERAL REVIEW**

FILED
2016 OCT 26 AM 9:58
JULIE J. HARRIS
CLERK OF COURT

CASE NO.: 2010-CP-10-7233

PLAINTIFF,

V.

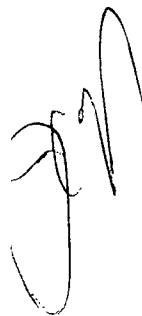
THE BISHOP OF CHARLESTON, A
CORPORATION SOLE; ROBERT
GUGLIEMONE, THE BISHOP OF
CHARLESTON, IN HIS OFFICIAL CAPACITY;
REV. MONSIGNOR MARTIN LAUGHLIN,
FORMER ADMINISTRATOR OF THE
DIOCESE OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; ROBERT J. BAKER,
FORMER BISHOP OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; LAWRENCE E.
RICHTER, JR.; DAVID K. HALLER; AND
RICHTER & HALLER, LLC,

DEFENDANTS.

JOHN DOE 193,

PLAINTIFF,

V.



THE BISHOP OF CHARLESTON, A
CORPORATION SOLE; ROBERT
GUGLIEMONE, THE BISHOP OF
CHARLESTON, IN HIS OFFICIAL CAPACITY;
REV. MONSIGNOR MARTIN LAUGHLIN,
FORMER ADMINISTRATOR OF THE
DIOCESE OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; ROBERT J. BAKER,
FORMER BISHOP OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; LAWRENCE E.
RICHTER, JR.; DAVID K. HALLER; AND
RICHTER & HALLER, LLC,

DEFENDANTS.

CASE NO.: 2012-CP-10-5559

CASE NO.: 2013-CP-10-3733

FATHER DOE 194,

PLAINTIFF,

V.

THE BISHOP OF CHARLESTON, A
CORPORATION SOLE; ROBERT
GUGLIEMONE, THE BISHOP OF
CHARLESTON, IN HIS OFFICIAL CAPACITY;
REV. MONSIGNOR MARTIN LAUGHLIN,
FORMER ADMINISTRATOR OF THE
DIOCESE OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; ROBERT J. BAKER,
FORMER BISHOP OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; LAWRENCE E.
RICHTER, JR.; DAVID K. HALLER; AND
RICHTER & HALLER, LLC,

DEFENDANTS.

JOHN DOE 194,

PLAINTIFF,

V.

THE BISHOP OF CHARLESTON, A
CORPORATION SOLE; ROBERT
GUGLIEMONE, THE BISHOP OF
CHARLESTON, IN HIS OFFICIAL CAPACITY;
REV. MONSIGNOR MARTIN LAUGHLIN,
FORMER ADMINISTRATOR OF THE
DIOCESE OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; ROBERT J. BAKER,
FORMER BISHOP OF CHARLESTON, IN HIS
OFFICIAL CAPACITY; LAWRENCE E.
RICHTER, JR.; DAVID K. HALLER; AND
RICHTER & HALLER, LLC,

DEFENDANTS.

CASE NO.: 2013-CP-10-4175

CASE NO.: 2013-CP-10-4176

THIS MATTER CAME BEFORE THE COURT on the motion of Defendants Lawrence E. Richter, Jr., David K. Haller, and Richter & Haller, LLC (collectively, the “Lawyer Defendants”) to alter and amend the Court’s order of December 7, 2015, denying the Lawyer Defendants’ motion for summary judgment. Specifically, the Lawyer Defendants moved that the

Court conduct a limited collateral review of the underlying class action and determine whether that action is binding on the plaintiffs in these matters. The Court agrees that a limited collateral review is proper and therefore grants the motion to alter and amend to the extent that it requests such a review.

In the Complaints, Plaintiffs specifically allege that their causes of action against the Lawyer Defendants are only pertinent if they, as alleged absent class members in a prior class action, are precluded from pursuing claims against the Diocese Defendants. (See, e.g. -5520 Compl. ¶¶ 177, 196.) Thus, the Complaints, by their own terms, present a threshold question: Are Plaintiffs precluded from pursuing claims against the Diocese Defendants?

Our Supreme Court set forth the framework for deciding such a question in *Hospitality Management Associates v. Shell Oil Co.*, 356 S.C. 644, 591 S.E.2d 611 (2004). There, the Court held that the trial court should conduct a “limited collateral review” of the prior class action to determine whether it binds the absent class members now trying to bring suit. *Id.* at 660, 591 S.E.2d at 619-20. That review consists of reviewing the record in the prior class action to determine: “(1) whether there were safeguards in place to guarantee sufficient notice and adequate representation; and (2) whether such safeguards were, in fact, applied.” *Id.* at 660, 591 S.E.2d at 619-20.

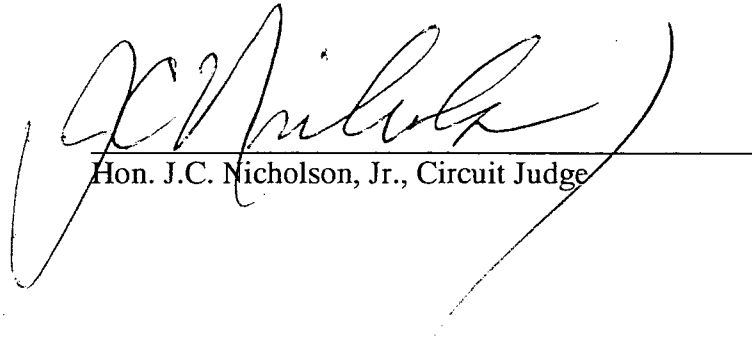
The Court has reviewed the record in the underlying class action and concludes that the class action court did not incorporate safeguards to provide sufficient notice because notice by publication was not provided by the Court substantially outside of the geographic territory of South Carolina.¹ The Court nonetheless recognizes that actual notice was provided to many class members and that notice of the class action was published by numerous media outlets

¹ The Court recognizes that some areas bordering South Carolina—such as Augusta, Georgia—did receive notice by publication. Nothing in this order is intended to suggest that the notice provided in such areas was in any way inadequate.

outside of South Carolina and that some class members received sufficient notice by those means. Therefore, the Court now concludes that the notice plan directed by the class action Court did not satisfy due process as to putative class members who (1) did not receive actual notice and (2) lived ²⁰¹⁶ ~~substantially~~ outside of the areas in which notice was published.

At this time, the Court has not reviewed—or been asked to review—whether any specific plaintiff in any of the pending cases received sufficient notice of the class action. Counsel may make such arguments as they deem appropriate in light of the conclusions of law set forth herein.

AND IT IS SO ORDERED.


Hon. J.C. Nicholson, Jr., Circuit Judge

October 25, 2016

Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

John Doe 2 and Jane Doe 4,

CASE NO.: 2010-CP-10-5520

Plaintiffs,

v.

The Bishop of Charleston, et. al.

Defendants.

ORDER ON
LAWYER DEFENDANTS'
MOTIONS FOR
SUMMARY JUDGMENT

John Doe 10,

CASE NO.: 2010-CP-10-7233

Plaintiff,

v.

The Bishop of Charleston, et. al.

Defendants.

Jane Doe 11,

CASE NO.: 2012-CP-10-5559

Plaintiff,

v.

The Bishop of Charleston, et. al.

Defendants.

John Doe 193,

CASE NO.: 2013-CP-10-3733

Plaintiff,

v.

The Bishop of Charleston, et. al.

Defendants.

JULIE J. ANDERSON
CLERK OF COURT

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FILED

Father Doe 194,) CASE NO.: 2013-CP-10-4175
)
Plaintiff,)
)
v.)
)
The Bishop of Charleston, et. al.)
)
Defendants.)

John Doe 194,) CASE NO.: 2013-CP-10-4176
)
Plaintiff,)
)
v.)
)
The Bishop of Charleston, et. al.)
)
Defendants.)

John Doe 245 and Father Doe 245,) CASE NO.: 2015-CP-10-5486
)
Plaintiff,)
)
v.)
)
The Bishop of Charleston, et. al.)
)
Defendants.)

John Doe 297,) CASE NO.: 2016-CP-10-1632
)
Plaintiff,)
)
v.)
)
The Bishop of Charleston, et. al.)
)
Defendants.)

THESE MATTERS CAME BEFORE THE COURT on motions of the Defendants
Lawrence E. Richter, Jr., David A. Haller and Richter and Haller, LLC ("the Lawyer Defendants")
for summary judgment pursuant to Rule 56, SCRPC. The Lawyer Defendants filed an omnibus

motion for summary judgment in each case on the same grounds. The Lawyer Defendants also filed separate motions for summary judgment on additional grounds against Jane Doe 4 (Case No. 2010-CP-10-5520) and John Doe 193 (Case No. 2013-CP-10-3733). This Order will address the omnibus motion in each case as well as the motions for summary judgment against Jane Doe 4 and John Doe 193.¹

BACKGROUND

The above-captioned matters consist of eight (8) separate cases filed between 2010 and 2016 on behalf of ten (10) different plaintiffs. Each case arises out of alleged sexual abuse by priests of the Diocese Defendants. Seven (7) of the plaintiffs are alleged victims of sexual abuse and three (3) are spouses or parents of alleged abuse victims. Nine (9) of the plaintiffs are non-residents of South Carolina and one (1) is a South Carolina resident who alleges he repressed memory of the abuse.

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The Lawyer Defendants represented alleged victims of sexual abuse in class action lawsuits against the Diocese Defendants that were settled in 2007 (Case Nos. 2006-CP-18-13109, 1311 and 1636; "the Underlying Case").² Seven of the Plaintiffs claim that they were members of the Primary Class³ and that the Lawyer Defendants committed legal malpractice while representing

¹ The Lawyer Defendants also filed an omnibus motion for summary judgment as to the civil conspiracy claims in each case. They are now moot because the Plaintiffs abandoned their claims for civil conspiracy at the hearing held on July 20, 2017.

² While the record reflects the negotiation of a Settlement and Arbitration Agreement between the Lawyer Defendants and the Diocese Defendants in 2006, the settlement was not formalized and approved by the court until 2007.

³ The Primary Class of abuse victims was defined as "All individuals born on or before August 30, 1980, who, as minors, were sexually abused at any time by the agents or employees of the Dioceses

them. Three of the Plaintiffs claim that they were members of the "Consortium Class" of spousal and parental victims who allege that the Lawyer Defendants committed legal malpractice while representing them as well.⁴ All of the claims against the Lawyer Defendants arise out of their activities in the Underlying Case.

The crux of all but one of the Plaintiffs' claims is that the Lawyer Defendants defined the Primary and Consortium Classes without geographical limitation but geographically limited the notice that would be given of the settlement by publication to class members in South Carolina.⁵ The non-resident Plaintiffs allege that, as a result, they were bound by the class action settlement but were never given notice of that settlement.

gun
If they were bound by the settlement in the Underlying Case, then the doctrine of *res judicata* would deprive them of the opportunity to sue the Diocese Defendants without giving them notice of the settlement that satisfied their due process rights. The allegations in the Complaint filed by John Doe 2 and Jane Doe 4 are typical of each plaintiffs' complaint:

23. If the Diocese agrees, or the court finds, that the plaintiffs are not precluded by the class action from bringing claims against the Diocese, either because the state court's ruling left room for persons not receiving notice or because the deliberate restrictions on notice clearly failed to comply with plaintiffs' due process rights, then the causes of action against the Richter defendants who, for a fee, abandoned their clients, and those who conspired against them through the class action, are irrelevant because plaintiffs can make their claims against the Diocese. If the court finds that the plaintiffs are precluded for any reasons, including the *res judicata* effect of the class action, charitable immunity, or by the statute of

of Charleston who have not previously had any similar claim adjudicated, resolved, or released" (hereinafter "the Primary Class").

⁴ The Consortium Class was defined as "The spouses and parents, of all individuals qualified pursuant the Primary Class and who suffered a loss of the abused individual's consortium, and who as spouses or parents have not previously had any similar claim adjudicated, resolved, or released" (hereinafter "the Consortium Class").

⁵ The notice plan approved by the class action court was for publication in ten South Carolina daily newspapers and *The Augusta Chronicle*, and *The Catholic Miscellany*.

limitations, then the causes of action alleged against the Diocese defendants for sexual abuse are irrelevant, and those claims are properly made against those who conspired against them as well as against the Richter defendants who failed to properly represent them. (Emphasis added).

See John Doe 2 and Jane Doe 4 v. The Diocese of Charleston, et. al., Case No. 2010-CP-10-5520, Complaint, ¶ 23 (emphasis added).

The claims alleged by John Doe 193 are slightly different.⁶ John Doe 193 alleges that he repressed the memory of his sexual abuse until 2010. As a result, even though he lived in South Carolina, he claims he did not receive notice of the class action settlement until 2010 (when he recovered his memory) and alleges the Lawyer Defendants failed to make a provision for repressed memory victims like him in the settlement.⁷

The Plaintiffs allege causes of action for professional negligence, breach of fiduciary duty, and unfair trade practices against the Lawyer Defendants.

I. Summary Judgment Standard

Summary judgment is appropriate where there are no genuine issues of material fact and it is clear the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCF. In determining whether any triable issues of fact exist, the evidence and all inferences that reasonably can be drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions*, 388 S.C. 394, 697 S.E. 2d 551 (2010); *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 355, 650 S.E. 2d 68, 70 (2007).

⁶ Case No. 2013-CP-10-3733.

⁷ John Doe 193's claim for professional negligence was dismissed by Order of the Honorable Kristi Lea Harrington dated January 16, 2014. His claim for civil conspiracy was abandoned by Plaintiff's counsel at the hearing on July 2017. Thus, only the claim for breach of fiduciary duty remains for John Doe 193.

Under Rule 56(c), SCRCF, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact, *Baughman v. AT&T*, 306 S.C. 101, 410 S.E. 2d 537 (1991). With respect to an issue upon which the nonmoving party has the burden of proof, this initial responsibility may be discharged by pointing out to the trial court that there is an absence of evidence to support the nonmoving party's case. *Id.* (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)). Once the moving party carries its initial burden, the "opposing party must, under Rule 56(e), do more than simply show that there is some metaphysical doubt as to the material facts' but 'must come forward with specific facts showing that there is a *genuine issue for trial*.'" *Id.* (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538 (1986)) (emphasis in original). The party opposing summary judgment cannot simply rest on mere allegations or denials contained in the pleadings. *Id.*; *George v. Empire Fire & Marine Ins. Co.*, 344 S.C. 582, 545 S.E. 2d 500 (2001).

II. The Lawyer Defendants' Motions

The Lawyer Defendants contend that they are entitled to summary judgment because:

- A. the Court has determined that the Plaintiffs can sue the Diocese Defendants making their respective claims against the Lawyer Defendants "irrelevant";
- B. the Plaintiffs have no damages proximately caused by the Lawyer Defendants;
- C. no attorney-client relationship existed between the Lawyer Defendants and the Plaintiffs, who were unnamed class members; and
- D. the Lawyer Defendants did not breach a fiduciary duty to the Plaintiffs.

A. Plaintiffs' Claims Against the Lawyer Defendants are Irrelevant

As noted above, the Plaintiffs' Complaints explicitly allege that if they are not precluded by the class action settlement from bringing claims against the Diocese Defendants, then the causes

of action against the Lawyer Defendants are "irrelevant". The keystone of their argument revolves around the concept of notice. The Plaintiffs allege that since they were included in the definition of the Primary Class, they should have been given notice of the settlement in accordance with their due process rights. Thus, if the Court were to find that they are precluded from maintaining their claims against the Diocese Defendants as a result of the class settlement, only then can Plaintiffs assert their claims against the Lawyer Defendants for not giving them notice of the settlement. In other words, when viewed in the light most favorable to the Plaintiffs, the complaints make a finding of preclusion by the Court a predicate upon which the Plaintiffs' claims against the Lawyer Defendants rise or fall.

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In this Court's Amended Order on Limited Collateral Review dated May 3, 2017, I found that the Plaintiffs' Complaints, by their own terms, presented a threshold question: Are the Plaintiffs precluded from pursuing claims against the Diocese Defendants? I then answered the question in the negative, finding that the Plaintiffs were not precluded from bringing their claims against the Diocese Defendants because the notice plan approved in the Underlying Case "did not incorporate safeguards to provide sufficient notice because notice by publication was not provided by the court substantially outside of the geographic territory of South Carolina."

I concluded that "the notice plan directed by the class action court did not satisfy due process as to putative class members who (1) did not receive actual notice and (2) lived outside of the areas in which notice was published".⁸ I further found that it would be inconsistent with due process to bind John Doe 193 to the class action settlement if he could prove a repressed memory

⁸ This finding was consistent with the finding by Judge Roger Young in his Order dated June 17, 2011 in Case No. 2010-CP-10-5520 denying in part and granting in part the Diocese Defendants Motion to Dismiss.

by the preponderance of the evidence. In light of that ruling, even when this Court views the allegations in the complaints in the light most favorable to Plaintiffs, the only reasonable conclusion is the Plaintiffs have no claims against the Lawyer Defendants because the class settlement did not preclude their claims against the Diocese Defendants.

B. Plaintiffs Have No Damages Proximately Caused by the Lawyer Defendants

After the Amended Order on Limited Collateral Review was entered, this Court scheduled several of the cases against the Diocese Defendants for trial in May 2017. Soon thereafter, five (5) Plaintiffs and the Diocese Defendants voluntarily settled four (4) of the cases.⁹ Since all Plaintiffs were allowed to present their claims against the Diocese Defendants and five (5) Plaintiffs in four (4) of the cases voluntarily settled their claims with the Diocese Defendants, the allegations against the Lawyer Defendants are not pertinent and are, in the Plaintiffs' own words, "irrelevant". Those Plaintiffs who have settled with the Diocese Defendants have had "their day in court" and their opportunity to hold the Diocese Defendants financially responsible for their abuse. In so doing, those Plaintiffs stood exactly where they would have stood had the underlying class actions never existed.

The Plaintiffs who did not settle with Diocese Defendants¹⁰ were subject to a motion for summary judgment filed by the Diocese Defendants and scheduled to be heard by the Court on

⁹ The Diocese settled with the Plaintiffs in 2010-CP-10-7233 (filed by John Doe 10), 2013-CP-10-4175 (filed by Father Doe 194), 2013-CP-10-4176 (filed by John Doe 194) and 2015-CP-10-5486 (filed by John Doe 245 and Father Doe 245).

¹⁰ The non-settling Plaintiffs were John Doe 2 and Jane Doe 4, Case No. 2010-CP-10-5520; Jane Doe 11, Case No. 2012-CP-10-5559; John Doe 193, Case No. 2013-CP-10-3733; and John Doe 297, Case No. 2016-CP-10-1632.

June 28, 2017. In that motion, the Diocese Defendants contended that the remaining Plaintiffs' claims were absolutely barred by the defense of charitable immunity. At the outset of the hearing on those motions, Plaintiffs' counsel voluntarily surrendered his clients' claims to the Diocese Defendants' charitable immunity defense and agreed that the Court should grant summary judgment to the Diocese Defendants on all claims in those four cases *except* civil conspiracy (which, as noted above, was later abandoned) and aiding and abetting breach of fiduciary duty.¹¹

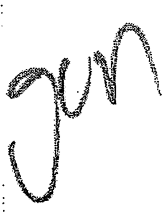
Thus, the Plaintiffs have either voluntarily settled with the Diocese Defendants or voluntarily conceded to the defense of charitable immunity. In either event, the Plaintiffs have been allowed to maintain their claims against the Diocese Defendants, have had their day in court and have no damages to assert against the Lawyer Defendants. Nothing the Lawyer Defendants did or failed to do in the Underlying Case caused harmed to the Plaintiffs. Plaintiffs have the same rights, and are subject to the same defenses, that existed prior to the class action settlement.

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Damages are an essential element any plaintiff must prove to prevail on a legal malpractice claim. None of the Plaintiffs' have testified to any damages they believe they have suffered due to the alleged legal malpractice, nor have they offered any competent evidence proving damages as to the Lawyer Defendants. Absent damages, Plaintiffs have no claim for legal malpractice. *RFT Mgmt. Co. v. Tinsley & Adams, L.L.P.*, 399 S.C. 322, 732 S.E. 2d 166 (2012) ("plaintiff in a legal malpractice action must establish four elements: (1) the existence of an attorney-client relationship, (2) a breach of duty by the attorney, (3) damage to the client, and (4) proximate causation of the client's damages by the breach.")

¹¹ As previously noted, Plaintiffs' counsel abandoned his clients' claims for civil conspiracy at the hearing on July 20, 2017.

Plaintiffs' counsel argues that the four (4) cases that were settled fall under S.C. Code Ann. §15-38-50 (1976, as amended) and thus do not affect the liability of the Lawyer Defendants. That statute provides:

When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

- 
- (1) it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and
 - (2) it discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

The Court has carefully considered this argument and concludes §15-38-50 does not apply here. The release given to the Diocese Defendants in those settlements was not given to a joint tortfeasor, notwithstanding what the settlement agreements may say. The Plaintiffs' claims are based upon one loss – the abuse at the hands of the Diocese defendants. They assert claims against the Diocese Defendants and, in the alternative, against the Lawyer Defendants. Nonetheless, they may obtain but one recovery. Civil conspiracy was the only cause of action in the complaints as to which joint and several liability could apply. As previously noted, Plaintiffs' counsel voluntarily conceded at the hearing on July 20, 2017 that summary judgment in favor of all defendants on the cause of action for civil conspiracy was appropriate. That concession resulted from a) the Plaintiffs' having pled civil conspiracy as presuming that "the class action order is interpreted to bind the Plaintiff to its *res judicata* effect...", and b) the Court having determined in its Amended Order on Limited Collateral Review that the Plaintiffs who did not receive actual notice and lived outside of the published notice area were not bound by the *res judicata* effect of the class action settlement.

Consequently, since there is but one recovery for a single wrong, the Plaintiffs who settled with the Diocese Defendants have made their recovery and have no further damages.

C. There was No Attorney-Client Relationship

1. The Majority Rule.

The Lawyer Defendants also contend Plaintiffs' claims are barred because there was no attorney-client relationship with the Plaintiffs. A plaintiff in a legal malpractice action must establish four elements: (1) the existence of an attorney-client relationship, (2) a breach of duty by the attorney, (3) damage to the client, and (4) proximate causation of the client's damages by the breach. *RFT Mgmt. Co., supra*.

gm
In response, the Plaintiffs, relying on *Premium Investment Corp. v. Green*, 283 S.C. 464, 324 S.E. 2d 72 (Ct. App. 1984), contend that an attorney-client relationship arose between the Lawyer Defendants and the Plaintiffs at the time the lawyers filed the class action complaints in the Underlying Case.

The majority rule in the United States appears to be that class counsel does not represent unnamed, absent class members unless and until the class is certified. *Bobryk v. Durand Glass Mfg. Co.*, No. 12-cv-5360 (NLH/JS), 2013 U.S. Dist. LEXIS 145758, at *29-31 (D.N.J. Oct. 9, 2013) (noting "the majority of case law that holds that the attorney-client relationship with putative class members 'does not begin until the class has been certified and the time for opting out by a potential member of the class has expired'"); *Palumbo v. Tele-Communications, Inc.*, 157 F.R.D. 129, 133 (D.D.C. 1994) (stating class certification confers status of litigant on absent class members and creates attorney-client relationship with class counsel); *Garret v. Metro Life Ins. Co.*, No. 95-CIV-2406, 1996 WL 325725, at *6 (S.D.N.Y. June 12, 1996) ("before class certification, the putative class members are not 'represented' by the class counsel."); *Formento v. Joyce*, 168

Ill. App. 3d 429, 522 N.E.2d 312 (Ill. App. Ct. 1988) (finding that defendant attorneys owed no duty to plaintiffs, the unnamed members of an uncertified class action); *Restatement (Third) of the Law Governing Lawyers* § 99 cmt. 1 ("prior to certification, only those class members with whom the lawyer maintains a personal client-lawyer relationship are clients"); *Resnick v. Am. Dental Ass'n*, 95 F.R.D. 372, 376 (N.D. Ill. 1982) ("Without question the unnamed class members, once the class has been certified, are 'represented by' the class counsel."); *Gillespie v. Scherr*, 987 S.W. 2d 129, 1998 Tex. App. LEXIS 8089 (Tex. App. 1998) ("[W]e have found no case finding an implied attorney-client relationship to exist before class certification between an attorney who files the class action and any unnamed class members").

gun
The majority rule is persuasive to this Court for several reasons. The identity of the absent plaintiffs and the exact nature of their interests in the action is not known until class certification. 3 H. Newberg, *Class Actions* § 5050 (1977); *United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 415, 100 S.Ct. 1202, 1218, 63 L Ed.2d 479, 502, 1980 U.S. LEXIS 12, *49, 29 Fed. R. Serv. 2d (Callaghan) 20 (U.S. Mar. 19, 1980). Similarly, in federal court, class counsel is appointed by the class action court when the class is certified. Fed. R. Civ. P. 23(c)(1)(B) ("An order that certifies a class action must define the class and the class claims, issues, or defenses, and must appoint class counsel under Rule 23(g)"). Furthermore, under Rule 23(a), SCRCF, the heading specifies that there is no class action until the Court finds certain "Prerequisites".¹² Only after class certification can the absent class members be bound to the outcome of the case.

In the Underlying Case, the Primary and Consortium Classes were not certified until January 19, 2007 when Judge Goodstein entered the Order Certifying Classes and Giving

¹² When the Underlying Case was filed and adjudicated, South Carolina had enacted Rule 23, SCRCF, drawn principally from Federal Rule 23.

gun

Applying the majority rule to the facts of the Underlying Case, there was no attorney-client relationship between the Lawyer Defendants and the Plaintiffs at the time the alleged duties were allegedly breached. Absent an attorney-client relationship, the Plaintiffs' claims for professional negligence must fail.

Plaintiffs posit that *Premium Investment Corp. v. Green, supra*, supports their contention.

that the attorney-client relationship and its attendant duties arose by operation of law when the Lawyer Defendants filed the class action complaints in the Underlying Cases. This is not correct because *Premium Investment Corp.* was a constructive class certification case that predated Rule 23, SCRCP. Moreover, the Underlying Case before me is an actual certification case under Rule 23.

gun
In the underlying matter discussed in *Premium Investment Corp.*, a lawyer filed a complaint on behalf of a homeowner "individually and as a representative of a class of property owners" against the developer of a subdivision. After a hearing, the trial court entered an order finding that the homeowner brought two class actions: (i) as a member of a class owning property adjoining the lake, and (ii) as a member of a class owning property in the subdivision. The court found in favor of the plaintiffs and enjoined the developer. The developer appealed, and the case settled while on appeal.

Years later, Premium Investment Corp., a property owner in the subdivision, sued the homeowner and the lawyer to recover the proceeds of the two settlements. The Court of Appeals affirmed the trial court's order granting relief to Premium Investment. In considering whether the underlying case was a class action the Court of Appeals agreed that "court certification of the class is an important step in a class action," observing:

It represents a judicial finding that injured parties other than the named plaintiff exist. It also provides a definition by which they can be identified. Certification identifies and sharpens the interests of unnamed class members in the outcome; only thereafter will they be bound by the outcome. After certification, class members can be certain that the action will not be settled or dismissed without appropriate notice. *United States Parole Commission v. Geraghty*, 445 U.S. 388, 415 n. 8, 100 S. Ct. 1202, 1218 n. 8, 63 L. Ed. (2d) 479 (1980) (Powell, J., dissenting).

Id. at 470.

The Court of Appeals struggled to determine what constituted class certification where there was no formal class certification and concluded that in the case at hand, where there was no formal certification order, the trial court had "constructively certified" the class when it identified "those persons with an interest in and entitled to benefit" from the action. It found that certification had occurred simultaneous with the judgment on the merits.

Premium Investment Corp. stands for the proposition that where there is a class that has not been formally certified (as under Rule 23, SCRCP), a lawyer's and a class representative's duties to absent class members arise with the constructive certification of the class. *Premium Investment Corp.* is in line with the majority rule that an attorney-client relationship does not arise between absent class members and class counsel until class certification. Since its adoption in 1985, Rule 23(a) has required specific prerequisites to certification and pursuit of a class action, while *Premium Investment Corp.*, which predates Rule 23, allows for constructive certification. It is undisputed in the case before me that Rule 23, SCRCP, was referenced and observed by Judge Goodstein in her orders in the Underlying Case and that constructive certification is not at issue before me.

3. The Plaintiffs' Testimony.

As noted above, none of the Plaintiffs have offered any sworn statement or other evidence from which any reasonable fact-finder could conclude they had an attorney-client relationship with the Lawyer Defendants. To the contrary, when examined, none of the Plaintiffs knew who the Lawyer Defendants were or why they had sued them. Instead, as noted above, the Plaintiffs claim, in essence, that the Lawyer Defendants breached duties owed prior to class certification. For the reasons discussed above, the Court finds the Lawyer Defendants owed no duties to the absent class members prior to class certification.

Having found the duties allegedly breached did not exist, I find the Plaintiffs cannot prevail on their claims against the Lawyer Defendants.

D. No Breach of Fiduciary Duty.

The Lawyer Defendants assert the Plaintiffs' claims are also barred because they owed no fiduciary duties to the Plaintiffs before class certification. Plaintiffs, in response, argue a fiduciary duty was owed upon filing the class complaints. That fiduciary duty arose by operation of law, Plaintiffs contend, upon filing the pleading, pursuant to *Premium Investment Corp.*

As discussed above, the Court disagrees with Plaintiffs' argument that *Premium Investment Corp.* stands for the proposition that the filing of a class action complaint gives rise to fiduciary duties to unnamed and unidentified class members. Furthermore, the Court notes that while the Plaintiffs argue a fiduciary duty existed upon filing, they have yet to articulate what that duty was, nor have they explained the scope of it. Rather, they rely on the following excerpt from *Premium Investment Corp.*:

It is now generally conceded that 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. *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 69 S. Ct. 1221, 93 L. Ed. 1528 (1949); *La Sala v. American Savings & Loan Association*, 5 Cal. (3d) 864, 97 Cal. Rptr. 849, 852, 489, P. (2d) 1113 (1971).

Id. at 470.

The Lawyer Defendants contend such statements refer to obligations that arise after class certification, whether certification pursuant to Rule 23, as here, or by constructive certification, as in *Premium Investment Corp.* The line of cases holding that an implied fiduciary duty arises when a lawyer files a complaint alleging a class action was discussed in *Gillespie v. Scherr*, 987 S.W.2d 129, 1998 Tex. App. LEXIS 8089 (Tex. App. 1998), where the court observed:

Appellants have cited and we have found no case finding an implied attorney-client relationship to exist before class certification between an attorney who files the class action and any unnamed class members. Appellants urge us to follow federal decisions which, in the context of class certification, recognize the *general* existence of a fiduciary duty to unnamed class members once a class action suit is filed. See, e.g., *In re General Motors Corp. Pick-up Truck Fuel Tank*, 55 F.3d 768, 801 (3rd Cir. 1995) (stating that class attorneys owe the entire class a fiduciary duty once the class complaint is filed), *cert. denied*, 516 U.S. 824, 116 S. Ct. 88, 133 L. Ed. 2d 45 (1995). However, appellants have cited and we have found no decision which has defined the scope of such a duty or addressed it with regard to an actual claim for recovery against an attorney for its breach. **Although not cited by either side, the only case we have found in which the issue was addressed held that lawyers for named plaintiffs in an uncertified class action owe no duty to unnamed class members.** See *Formento v. Joyce*, 168 Ill. App. 3d 429, 522 N.E. 2d 312, 317, 118 Ill. Dec. 857 (Ill. App. Ct. 1988).

Id. (emphasis added).

Similarly, here the Plaintiffs have not defined the scope of the fiduciary duty they claim was violated by the Lawyer Defendants. One District Court examining the question found:

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Under this analysis, we may venture a few statements about the scope of the fiduciary duty owed by class counsel to putative class members prior to class certification. In short, the scope of those duties is limited to protecting the substantive legal rights of putative class members that form the basis of the class action suit from prejudice in an action against the class defendant resulting from the actions of class counsel,

Schick v. Berg, 2004 U.S. Dist. LEXIS 6842, 2004 WL 856298; *aff'd* 2005 U.S. App. LEXIS 24671 (2d Cir. N.Y. 2005). Even if there were a basis to assume a general fiduciary duty, as asserted by the Plaintiffs, the question then is who are the intended beneficiaries of that fiduciary duty. Here, Plaintiffs claim to be the intended beneficiaries based on the definitions and notice plan of the Primary and Consortium classes. Yet, those class definitions (and the classes themselves) did not exist until the Court certified the class under Rule 23 in its January 19, 2007 Order. If the intended beneficiaries are to be identified based upon the filing of a class complaint, the better approach is to look to the allegations in the class complaints, for it is those individuals

included in the class definitions in the complaints whom the Lawyer Defendants arguably sought to represent and to whom this alleged, general fiduciary duty would run.

The class action complaints in the Underlying Case defined the class of victims of sexual abuse sought to be certified as follows:

41. Plaintiff is entitled to the certification of a class of plaintiffs against the defendant representing all individuals, save for those barred by law from asserting an action against the defendants, in South Carolina who were sexually abused and/or otherwise molested by agents or employees of the catholic church under the supervision and/or control of the defendants.

John Doe #53, et. al. v. The Bishop of Charleston, et. al., Case No. 2006-CP-18-1636, Complaint

¶ 41. Therefore, the complaints relevant to the Primary Class clearly limited the putative classes to individuals within the geographical boundaries of South Carolina. *See also Id.* ¶ 36 ("Plaintiff is informed and believes that the number of other individuals in South Carolina have been the victims of childhood priest sexual abuse may exceed the hundreds and that the joinder of all such individuals in the instant suit is impracticable [sic].").

gm
With respect to the Consortium Class, the complaint in the Underlying Case alleged:

The spouses, parents, and/or legal guardians of all individuals who were sexually abused and/or otherwise molested by agents or employees of the Catholic Church under the supervision and/or control of the defendants in South Carolina between January 1, 1950 and December 31, 2000 and who suffered a loss of the abused individual's consortium.

Jane Doe 1, et. al. v. The Bishop of Charleston, et. al., Case No. 2006-CP-18-1310, Complaint

¶ 25. Later, that complaint alleged:

Plaintiffs are informed and believes that the number of other individuals in South Carolina who fall within the definition of the class defined above may exceed the hundreds and that the joinder of all such individuals in the instant suit is impracticable [sic].

Id. ¶ 27. Therefore, the same geographical limitation applied to the Consortium Class.

gjm

This examination of the underlying complaints shows the Lawyer Defendants sought to represent a class of South Carolina residents who were sexually abused by priests of the Diocese Defendants and who were not barred by law from asserting a claim against those defendants. In addition, the Lawyer Defendants sought to represent South Carolina residents who were spouses, parents, and/or legal guardians of all individuals sexually abused by priests of the Diocese Defendants and who suffered a loss of the abused individual's consortium. In these cases before me, all of the Plaintiffs, save for John Doe 193, allege themselves to be non-residents of South Carolina. Therefore, even under the Plaintiffs' argument that there is a general fiduciary duty imposed upon lawyers who file a complaint alleging class action claims, I find that the Lawyer Defendants in the cases before me owed no duty to the Plaintiffs because the Plaintiffs all fall outside the class definitions alleged in the underlying class action complaints. The Court further notes that because the definition of the putative class of abuse victims specifically excluded victims whose claims were barred by law, none of the Plaintiffs whose claims are admittedly barred by the Diocese Defendants' defense of charitable immunity can prove any fiduciary duty owed by the Lawyer Defendants.

III. The Claims of Jane Doe 4:

The Lawyer Defendants filed a separate motion for summary judgment as to the claims of Jane Doe 4. The claims Jane Doe 4 alleges against the Lawyer Defendants are professional negligence and breach of fiduciary duty. Since the breach that Jane Doe 4 alleges took place before certification, when there was no attorney-client relationship, her claim for professional negligence must be dismissed. Additionally, since Jane Doe 4 was a non-resident, she was not the intended beneficiary of any general fiduciary duty owed by the Lawyer Defendants upon filing the class action complaints and her claim for breach of fiduciary duty must be dismissed as well. Finally,

and in light of the rulings set forth above, the Court need not address the issue of whether Jane Doe-4 lived in an area in which notice was published.

IV. The Claims of John Doe 193.

John Doe 193's sole surviving claims are those for breach of fiduciary duty and unfair trade practices. Since John Doe 193 is a.) a South Carolina resident, and b.) an abuse victim whose claim against the Diocese Defendants is barred by law, he was not an intended beneficiary of any general fiduciary duty that Plaintiff alleges was owed by the Lawyer Defendants when they filed the complaints. Thus, the Lawyer Defendants breached no fiduciary duty to John Doe 193 and his claim for breach of fiduciary duty must be dismissed.

V. The UTPA Claims.

Five (5) Plaintiffs have alleged claims for violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, *et. seq.* ("UTPA").¹³ In their complaints, the Plaintiffs allege their claims under the UTPA presume the Plaintiffs are precluded, for one reason or another, from maintaining claims against the Diocese Defendants. Since the Court has already determined that the Plaintiffs are not precluded from asserting their claims against the Diocese Defendants as a result of the Lawyer Defendants, those claims also fail.

Additionally, the Court views these UTPA claims as thinly veiled, duplicative claims for legal malpractice. It is well-established that where a plaintiff asserts claims against an attorney for professional negligence and breach of fiduciary duty, both of which arise from the same materials facts, the claims are duplicative and merge into a single cause of action for legal malpractice. *RFT Mgmt. Co., L.L.C. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 337, 732 S.E.2d 166, 173-74 (2012);

¹³ Those cases in which unfair trade practices claims were alleged are 2013-CP-10-3733, 2013-CP-10-4176, 2015-CP-10-5486 and 2016-CP-10-1632.

Doe v. Howe, 367 S.C. 432, 448 n.27, 626 S.E.2d 25, 33 (Ct. App. 2005). In this case, Plaintiffs' UTPA claims are based upon the same material facts and same loss. Therefore, I find the UTPA claims merge into Plaintiffs' other claims. Because the Lawyer Defendants are entitled to summary judgment on their professional negligence and breach of fiduciary duty claims, as discussed above, the UTPA claims must also be dismissed. I further note the record before the Court contains no evidence from which any fact-finder could reasonably determine the Lawyer Defendants committed any unfair or deceptive act. The Court is compelled, therefore, to grant summary judgment on Plaintiffs' UTPA claims.

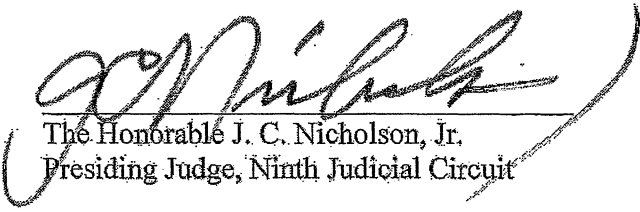
CONCLUSION

Having considered the motions made and filed by the Lawyer Defendants, the supporting and opposing memoranda submitted by the parties, the admissible evidence in the record, the arguments of counsel, and applicable law, I find and conclude that there are no genuine issues of material facts in these cases preventing summary judgment as to the Lawyer Defendants and, therefore, that the Lawyer Defendants are entitled to summary judgment as a matter of law on all claims.

NOW, THEREFORE, IT IS ORDERED that all claims alleged against the Lawyer Defendants in the above-captioned matters should be, and hereby are, dismissed with prejudice.

AND IT IS SO ORDERED.

Dated: 8/8/17
Charleston, SC


The Honorable J. C. Nicholson, Jr.
Presiding Judge, Ninth Judicial Circuit

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

John Doe 2 and Jane Doe 4, John Doe 10, Jane Doe 11,
John Doe 193, Father Doe 194, John Doe 194, John Doe
245 and Father Doe 245, and John Doe 297, Appellants,

v.

The Bishop of Charleston, A Corporation Sole; Robert
Gugliemone, The Bishop of Charleston, in his official
Capacity; Rev. Monsignor Martin Laughlin, former
Administrator of the Diocese of Charleston, in his official
Capacity; Robert J. Baker, former Bishop of Charleston,
in his official capacity; Lawrence E. Richter, Jr.; David
K. Haller; and Richter and Haller, LLC, Respondents.

Appellate Case No. 2017-001996

Appeal From Charleston County
J. C. Nicholson, Jr., Circuit Court Judge

Unpublished Opinion No. 2021-UP-060
Heard September 15, 2020 – Filed March 3, 2021

AFFIRMED

Gregg E. Meyers, of Mt. Pleasant, for Appellants.

Richard S. Dukes, Jr., of Turner Padgett Graham &
Laney, PA, of Charleston, for Respondents The Bishop

of Charleston, a Corporation Sole, Robert Gugliemone, The Bishop of Charleston, in his official capacity, Rev. Monsignor Martin Laughlin, former Administrator of the Diocese of Charleston, in his official Capacity, and Robert J. Baker, former Bishop of Charleston, in his official capacity.

Benjamin C. Bruner and Chelsea Jaqueline Clark, both of Bruner Powell Wall & Mullins, LLC, of Columbia, for Respondents Lawrence E. Richter, Jr., and Richter and Haller, LLC.

Susan Taylor Wall and Henry Wilkins Frampton, IV, both of Gordon & Rees LLP, of Charleston, for Respondent David K. Haller.

PER CURIAM: In this civil matter, Appellants (Victims) argue the circuit court erred in granting summary judgment to Respondents the Bishop of Charleston, a corporation sole, Robert Gugliemone, the Bishop of Charleston, in his official capacity, Reverend Monsignor Martin Laughlin, former administrator of the Diocese of Charleston, in his official capacity, and Robert J. Baker, former Bishop of Charleston, in his official capacity (collectively, the Diocese) and to Respondents Lawrence E. Richter, Jr., David K. Haller, and Richter and Haller, LLC (collectively, Counsel). We affirm.

1. We find the circuit court did not err in granting summary judgment to Counsel on Victims' claims for professional negligence and breach of fiduciary duty. *See Loflin v. BMP Dev., LP*, 427 S.C. 580, 588, 832 S.E.2d 294, 298 (Ct. App. 2019) (providing that this court reviews a grant of summary judgment under the same standard applied by the circuit court under Rule 56(c), SCRCP), *aff'd as modified on other grounds* 432 S.C. 246, 246, 851 S.E.2d 713, 714 (2020); Rule 56(c) (stating that summary judgment is proper if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law"). Victims' complaints clearly express in multiple places that their claims against Counsel are alternative claims in the event they are precluded from bringing claims against the Diocese. As established by the circuit court's collateral review order, Victims are not precluded by the settlement from bringing claims against the Diocese. Therefore, Victims are bound by their

pleadings, and their claims against Counsel must fail as a matter of law. *See Postal v. Mann*, 308 S.C. 385, 387, 418 S.E.2d 322, 323 (Ct. App. 1992) ("It is well settled that parties are judicially bound by their pleadings unless withdrawn, altered or stricken by amendment or otherwise. The allegations, statements, or admissions contained in a pleading are *conclusive as against the pleader and a party cannot subsequently take a position contradictory of, or inconsistent with, his pleadings . . .*" (emphasis added)); *Gary v. Lowcountry Med. Transp., Inc.*, 424 S.C. 18, 23, 817 S.E.2d 291, 294 (Ct. App. 2018) ("[T]he doctrine of binding a party to its pleadings exists to protect the integrity of the court process."); *see also Prince v. Liberty Life Ins. Co.*, 390 S.C. 166, 169, 700 S.E.2d 280, 281 (Ct. App. 2010) ("The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder."). Moreover, we find summary judgment was proper because Victims failed to establish damages proximately caused by Counsel's alleged breach of fiduciary duty and legal malpractice. *See Gauld v. O'Shaughnessy Realty Co.*, 380 S.C. 548, 559, 671 S.E.2d 79, 85 (Ct. App. 2008) ("The plain language of Rule 56(c), SCRCP, mandates the entry of summary judgment, after adequate time for discovery against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which that party will bear the burden of proof at trial." (quoting *Boone v. Sunbelt Newspapers, Inc.*, 347 S.C. 571, 579, 556 S.E.2d 732, 736 (Ct. App. 2001))); *see also RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 335–36, 732 S.E.2d 166, 173 (2012) ("To establish a claim for breach of fiduciary duty, the plaintiff must prove (1) the existence of a fiduciary duty, (2) a breach of that duty owed to the plaintiff by the defendant, and (3) damages proximately resulting from the wrongful conduct of the defendant."); *id.* at 331, 732 S.E.2d at 170 ("A plaintiff in a legal malpractice action must establish four elements: (1) the existence of an attorney-client relationship, (2) a breach of duty by the attorney, (3) damage to the client, and (4) proximate causation of the client's damages by the breach.").

2. Victims' claim for aiding and abetting a breach of fiduciary duty is predicated on their claim against Counsel. Because we find the circuit court did not err in granting summary judgment to Counsel on Victims' breach of fiduciary duty claim, we decline to address whether the circuit court erred in granting summary judgment to the Diocese. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal).

AFFIRMED.

HUFF, WILLIAMS, and GEATHERS, JJ., concur.

The Supreme Court of South Carolina

John Doe 2 and Jane Doe 4, John Doe 10, Jane Doe 11,
John Doe 193, Father Doe 194, John Doe 194, John Doe
245 and Father Doe 245, and John Doe 297, Petitioners,

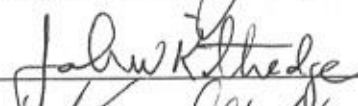
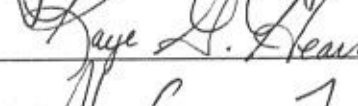
v.

The Bishop of Charleston, A Corporation Sole; Robert
Gugliemone, The Bishop of Charleston, in his official
Capacity; Rev. Monsignor Martin Laughlin, former
Administrator of the Diocese of Charleston, in his official
Capacity; Robert J. Baker, former Bishop of Charleston,
in his official capacity; Lawrence E. Richter, Jr.; David
K. Haller; and Richter and Haller, LLC, Respondents.

Appellate Case No. 2021-000668

ORDER

On March 3, 2021, the court of appeals affirmed the order of the circuit court granting summary judgment to Respondents in this matter. Petitioners' petition for rehearing was denied on May 13, 2021. When no petition for a writ of certiorari was received by the court of appeals, it sent the remittitur on June 24, 2021. Petitioner has now filed a motion to recall the remittitur with this Court. We deny the motion without prejudice to Petitioner's right to move the court of appeals to recall the remittitur.

	_____	C.J.
	_____	J.
	_____	J.
	_____	J.
	_____	J.

Columbia, South Carolina
August 6, 2021

cc:

Richard S. Dukes, Jr., Esquire
Gregg E. Meyers, Esquire
Susan Taylor Wall, Esquire
Henry Wilkins Frampton, IV, Esquire
Benjamin C. Bruner, Esquire
Chelsea Jaqueline Clark, Esquire
The Honorable Jenny Abbott Kitchings

The South Carolina Court of Appeals

John Doe 2 and Jane Doe 4, John Doe 10, Jane Doe 11,
John Doe 193, Father Doe 194, John Doe 194, John Doe
245 and Father Doe 245, and John Doe 297, Appellants,

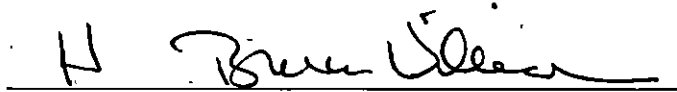
v.

The Bishop of Charleston, A Corporation Sole; Robert
Gugliemone, The Bishop of Charleston, in his official
Capacity; Rev. Monsignor Martin Laughlin, former
Administrator of the Diocese of Charleston, in his official
Capacity; Robert J. Baker, former Bishop of Charleston,
in his official capacity; Lawrence E. Richter, Jr.; David
K. Haller; and Richter and Haller, LLC, Respondents.

Appellate Case No. 2017-001996

ORDER

This Court issued an opinion in this case on March 3, 2021. Appellants thereafter filed a petition for rehearing, which this court denied on May 13, 2021. The remittitur was sent on June 24, 2021. Appellants have now filed a motion to recall the remittitur. After careful consideration, the motion is denied. *See Wise v. S.C. Dep't of Corr.*, 372 S.C. 173, 174, 642 S.E.2d 551, 551 (2007) ("When the remittitur has been properly sent, the appellate court no longer has jurisdiction over the matter and no motion can be heard thereafter. The only exception to this rule is when the remittitur is sent down by mistake, error or inadvertence of the Court." (internal citations omitted)).


FOR THE COURT

FILED
Oct 25 2021

Record on Appeal - 0244

Columbia, South Carolina

cc:

Gregg E. Meyers, Esquire

Richard S. Dukes, Jr., Esquire

Benjamin C. Bruner, Esquire

Susan Taylor Wall, Esquire

Henry Wilkins Frampton, IV, Esquire

Chelsea Jaqueline Clark, Esquire

Julie J. Armstrong

The Supreme Court of South Carolina

John Doe 2 and Jane Doe 4, John Doe 10, Jane Doe 11,
John Doe 193, Father Doe 194, John Doe 194, John Doe
245 and Father Doe 245, and John Doe 297, Petitioners,

v.

The Bishop of Charleston, A Corporation Sole; Robert
Gugliemone, The Bishop of Charleston, in his official
Capacity; Rev. Monsignor Martin Laughlin, former
Administrator of the Diocese of Charleston, in his official
Capacity; Robert J. Baker, former Bishop of Charleston,
in his official capacity; Lawrence E. Richter, Jr.; David
K. Haller; and Richter and Haller, LLC, Respondents.

Appellate Case No. 2021-001525

ORDER

The South Carolina Court of Appeals sent the remittitur in this case on June 24, 2021, after Petitioner failed to serve and file a timely petition for a writ of certiorari with this Court. The sending of the remittitur ended appellate jurisdiction in this matter. *Stogsdill v. S.C. Dep't of Health & Human Servs.*, 415 S.C. 568, 784 S.E.2d 669 (2016); *Wise v. S.C. Dept. of Corr.*, 372 S.C. 173, 642 S.E.2d 551 (2007). Accordingly, this Court will take no action on the petition for a writ of certiorari filed on December 29, 2021, and the petition is stricken and dismissed.



FOR THE COURT C.J.

Columbia, South Carolina
January 11, 2022

cc:

Richard S. Dukes, Jr., Esquire

Gregg E. Meyers, Esquire

Susan Taylor Wall, Esquire

Henry Wilkins Frampton, IV, Esquire

Benjamin C. Bruner, Esquire

Chelsea Jaqueline Clark, Esquire

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2018-CP-10- 5802

Robert Chimento,

Plaintiff,

v.

Lawrence E. Richter, Jr.,
David K. Haller,
Richter and Haller, LLC,
The Bishop of Charleston a corporation
Sole, and Robert E. Guglielmone, Bishop
Of Charleston,

Defendants.

Professional Negligence
Breach of Assumed or Imposed Fiduciary Duty
Aiding and Abetting Breach of Fiduciary Duty

Jury Trial Requested

Complaint

For his complaint, the Plaintiff alleges:

Parties and Jurisdiction

1. Robert Chimento is an adult citizen and resident of a state other than South Carolina, who was sexually abused as a child by Eugene L. Condon, a priest of the Diocese of Charleston, between 1973 and 1975, when Condon was assigned at Stella Maris, the Catholic Church on Sullivan's Island, S.C., located in Charleston County.

2. Lawrence E. Richter, Jr. and David K. Haller are each a citizen and resident of South Carolina who did business in Charleston County as practicing attorneys for the events set forth in this complaint.

3. At all times related to the events set forth in this complaint, the entity known as Richter & Haller, LLC, had its principal place of business in Charleston county.

4. In this complaint, defendants Richter, Haller, and Richter & Haller, LLC are referred to collectively as the “Richter defendants” unless otherwise particularly specified.

5. The Bishop of Charleston, a Corporation Sole, is the formal title of the various entities comprising the Catholic Church throughout South Carolina known generally as the Diocese of Charleston. It is referred to in this complaint as the Diocese or the Diocese of Charleston.

6. The Diocese does business in Charleston County, owns property in Charleston County, and has its headquarters in Charleston County. Decisions made to assign Eugene Condon to Stella Maris, and decisions about how he should be supervised, were decisions made in Charleston County. The acts associated with the abuse of the plaintiff and the negligent supervision of Eugene Condon took place in Charleston County. Charleston County is where decisions were made about the offending priests’ assignments, the degree of supervision the offending priests required, and the positions to take to coordinate with class counsel in the 2007 proceedings to approve a class action for abuse survivors.

7. The Bishop of Charleston is the formal head of the Diocese of Charleston, presently the Most Rev. Robert E. Gugliemone, a citizen and resident of Charleston County. He is sued individually in his official capacity as successor to prior Bishops and administrators, and as a party necessary for complete relief in that he holds all executive, legislative, and judicial power within the Diocese, and all persons working for the Diocese, anywhere in South Carolina, are subordinate to him. In this complaint, the Diocese and the Bishop are collectively referred to as the “Diocese defendants,” unless they are otherwise specifically referred to.

8. The Court has jurisdiction over the parties to this action.

9. The Court has jurisdiction over the subject matter of this action.

10. Venue of this action is proper in Charleston County.

Nature of Wrongdoing

11. The Plaintiff fits within a class definition used in a class settlement for which the defendants sought approval in 2007, in that the plaintiff was born on or before August 30, 1980, and as a minor was sexually abused by an agent or employee of the Diocese of Charleston. The Plaintiff has not previously made a claim that was adjudicated, resolved, or released.

12. The Richter defendants were class counsel in that class action proceeding.

13. The Plaintiff was situated similarly to other individuals ostensibly within the class definitions chosen by the Richter defendants when the Richter defendants (a) pled a class action in 2005, (b) settled that class action in 2006, and (c) sought, and obtained, class certification in 2007 by a South Carolina court as part of that class action. The classes defined in that action included a class of individuals who were sexually abused by persons employed by the Bishop of Charleston.

14. This action has been brought within three years of the plaintiff's learning that the Richter Defendants had represented that they had obtained relief for the Plaintiff in a class action case, without actually securing for him in any written order the relief they claimed to have obtained, and within three years of learning that the Diocese defendants aided and abetted the breach of fiduciary duty towards the plaintiff.

15. In pleading that class action, as a matter of law the Richter defendants assumed fiduciary duties to the Plaintiff, of which the Richter defendants were apparently unaware as they have denied such duties were assumed. Presently an order from a trial court maintains that no fiduciary duty was imposed by law on the Richter defendants as to the plaintiff or any other absent class member, so to that extent this complaint overtly depends on the outcome of an

appeal presently pending in the South Carolina Court of Appeals. However, this complaint also alleges that the Richter defendants voluntarily assumed a fiduciary duty as to the plaintiff, which was breached. The Diocese defendants are alleged to have aided and abetted that breach of fiduciary duty to the plaintiff by the Richter defendants.

16. The Richter defendants acknowledged that they had voluntarily assumed fiduciary duties towards absent members of the class, such as the plaintiff, in the March 9, 2007 initial fairness hearing. In the transcript of that hearing at page 53, Defendant Richter stated:

we represent the interests of persons who might be here today, may not be here today, may not have made a claim yet, a class, punitive [sic, probably intended to be putative] class or actual class, punitive [sic] initially, now an actual class.

17. The Richter defendants overtly acknowledged the fiduciary obligations they had assumed to the absent members (such as the Plaintiff) of the class the Richter defendants chose to define, a duty also alleged to have been imposed by law on the Richter Defendants when they (a) pleaded a class defined so as to include the Plaintiff, and then (b) when the Richter defendants chose to reach a class settlement with a class defined so as to include the Plaintiff.

18. As stated in *Premium Investment Corp. v. Green*, 324 S.E.2d 72, 76 (S.C. App. 1984) (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.

19. Under *Premium Investment*, by operation of law any benefits from the class action are held by class counsel, the Richter defendants, in trust for the class, including its absent members. Those benefits held in trust should be used to benefit the Plaintiff. At present, the Court of Appeals has before it the trial court order concluding that the duties imposed by law by the *Premium Investment* decision does not apply to the class action at issue.

20. Whether or not those fiduciary duties were imposed by law, the Richter defendants voluntarily assumed those fiduciary duties.

21. The Richter defendants chose to define the class so as to include the Plaintiff in that the class definition, which definition included no geographic limit, an issue also on appeal.

22. During the class action at issue, the Richter defendants claimed no prior class counsel experience, and that inexperience is apparent from the record of the class action.

23. As a matter of law under *Tilley v. Pacesetter Corp.*, 585 S.E.2d 292, 302 (S.C. 2003), the class definitions chosen by the Richter defendants which included the Plaintiff was “a strategy choice” they elected, the implications of which presented duties they voluntarily assumed, and by which they are bound.

24. The Richter defendants failed to disclose to the class their own lifelong ties to the Bishop.

25. To gain court approval of the class settlement, the defendants made overtly false representations of fact to the court. Among those false representations was that there was an “understanding” among all defendants in this action “as to what would happen” to any person within the class definition who “shows up” (as put by the Diocese defendants) outside of the class notice procedure. That “understanding” communicated to the Court was never placed in any written order and, in fact, there is no such “understanding” that the Diocese defendants agree to, nor is there any way to enforce the “understanding” other than through this action. It

was falsely represented to the court overseeing the class settlement that if “someone pops back up who should have gotten notice who didn’t get notice,” the Diocese represented, with the Richter defendants:

I think we [the Diocese and class counsel] have an understanding as to what would happen to those particular folks, which would really be our problem, and I think that what we’ve discussed allows us to proceed with the agreement we’ve signed on January 12th [2007]. And then if that person shows up then we [the Diocese] would have to deal with that.

26. That representation to the Court appears on page 3 of a transcript dated July 13, 2007. The representation, if true, is contained in no written orders of the court, so is unenforceable. In that regard, the Richter defendants were acting in the interests of the Diocese defendants rather than acting in the interests of absent class members such as the plaintiff.

27. In that same transcript, the Diocese defendants represented to the Court, falsely, that there were only five sexual abuse victims they had not located. That representation was false, and was known to have been false when made. It was acquiesced in by the Richter defendants.

28. In fact, the Richter defendants were aware, and had alleged, the number of sexual abuse victims far exceeded the victims already known to it from the files of the Diocese, as many victims had not previously identified themselves. The Richter defendants were also aware that some abuse victims repressed memories of their childhood sexual abuse and in 2006 could reasonably be expected not to recall childhood abuse. In short, the class was known to be under-inclusive, and the defendants deliberately misrepresented to the trial court that absent class members later disclosed would receive relief, when in fact those absent members would get no relief.

29. The defendants represented to the court, on page 14 of that same transcript, that for absent class members who did not get notice, and later identified himself or herself, the

defendants had assumed duties toward such persons. The court was told by the Diocese defendants, “we’ve got to find anybody else who has kind of, lack of a better word, comes out of the woodwork.”

30. The Diocese represented, with the Richter defendants present and making no objection:

I think we [the Diocese and class counsel] have an understanding as to what would happen to those particular folks, which would really be our problem, and I think that what we’ve discussed allows us to proceed with the agreement we’ve signed on January 12th [2007]. And then if that person shows up then we [the Diocese] would have to deal with that.

31. That representation to the Court appears on page 3 of a transcript dated July 13, 2007.

32. The Richter defendants, on pages 16 - 17 of that same transcript, summarized to the court, that “what the Diocese has come to is that if anybody is missed . . . the diocese waives all the same defenses that they have given up in this class settlement, consents to the same method of compensation, consents to the same early disposition of that claim by a same arbitration method, the whole nine yards.” Those terms were supposedly submitted by letter by the Diocese, but were secured by no written order, so the relief claimed by class counsel is unenforceable for the plaintiff.

33. When the court confirmed the representation by repeating back to counsel, on page 25 of that same transcript, “what they [the Diocese] 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,” the defendants permitted the misrepresentation to stand yet submitted no written order to secure that relief for persons such as the plaintiff.

34. The defendants intended on July 13, 2007, to create the false impression with the court that if a victim within the class definition came forward after the class claims period was

concluded, that the Diocese would extend relief to that victim. In making the false representation that they made no effort to embody in any court order, the Richter defendants were operating in the interest of themselves and in the interest of the Diocese defendants, rather than in the interest of the absent members of the class to whom they owed, or had assumed, a fiduciary duty. The Richter defendants intended that the court would rely on the statement, and the court did rely on the statement. However, the court did not embody the understanding in any written order, and none of the defendants requested that the court do so.

35. As to the plaintiff, these actions constituted breach of fiduciary duty, imposed by law on, or assumed by, the Richter defendants, as well as aiding and abetting breach of that fiduciary duty by the Diocese defendants.

36. Page 4 of the July 30, 2007 order certifying the class states, “Class Counsel has stated to the Court that it believes the representations and stipulation of the Diocese for potential absent class members is in the best interest of the absent class members.” In 2007 the defendants were aware that the written orders failed to secure the full relief for absent class members that had been made in those “representations and stipulations of the Diocese.”

37. The result of the Richter defendants’ failure was to exclude the plaintiff from any recovery for his sexual abuse. Rather than protect the absent class members to whom they had assumed, and the law imposed, fiduciary duties, the Richter defendants protected the interest of the Diocese defendants and their own interest in their fee. As explicitly stated in the class settlement agreement, the fee for class counsel was the highest priority of the class action settlement. That fee was fixed, and compelled a *pro rata* reduction of recovery to class members if “too many” in the class made claims. Failing to secure relief for absent class members who got no notice served the purpose of avoiding court scrutiny of that fee provision.

38. The Diocese defendants took various actions in concert so as to aid and abet the breach of fiduciary duty to absent members of the class.

39. Among those actions were:

- a. Maneuvering by duplicative court filings and other illicit means to shop for a particular state judge to oversee the class settlement,
- b. Agreeing to use improperly the complex case designation process,
- c. Class counsel failing to disclose to the class his life-long ties to the Diocese defendants,
- d. making no disclosure to the class or absent members of the class the superior settlement terms agreed to by the Diocese defendants with the individuals who were the class representatives, or the superior settlement terms reached with the individuals who opted out of the class settlement,
- e. Class counsel negotiating simultaneously a fixed fee for himself and a variable recovery for the class,
- f. Ignoring a March 19, 2009 order of the S.C. Supreme Court to conclude the class action by September 19, 2009,
- g. Joining in misrepresenting the relief for absent class members,
- h. Class counsel submitted blatantly fraudulent time records, without objection or observation from the Diocese defendants, in support of their fee petition, apparently confident the judge for whom they had “shopped” would approve them,
- i. Class counsel collecting more fee from class members than any order approved, and failed to disclose the fee he intended to take.

- j. Failing to disclose that class representatives were not required to use the arbitration structure that other class members were required to use,
- k. Using an arbitration structure to limit claims of the class within the unethical fixed fee for class counsel.

40. The defendants caused the plaintiff special harm in the form of precluding him from making any claim against the Diocese. The professional representation of the plaintiff by the Richter defendants in the class action was inadequate, and failed to meet the standard of care applicable to a South Carolina attorney handling a class action.

41. But for the Richter defendants having breached the fiduciary duties owed to the plaintiff, a breach aided and abetted by the Diocese defendants, the plaintiff would have been able to obtain relief for his childhood sexual abuse by Eugene Condon.

42. The Diocese defendants aided and abetted the Richter defendants' breaches of fiduciary duty in part by

- a. agreeing to take no position on whether the class should be certified,
- b. agreeing not to mention that any of the time records submitted by the Richter defendants were false,
- c. stating only the weakest and most vague arguments that the fee awarded should be the low end of the agreed fee range,
- d. making no objection to an unethical fixed fee for class counsel while class counsel simultaneously obtained only variable compensation for class members, the compensation for class members being subordinated to that fee,
- e. agreeing to make no objection to the fee being awarded before any member of the class member was even identified, or had even submitted a claim, let alone

was compensated,

f. making no objection when the Richter defendants took more fee than was authorized by court order, and

g. agreeing to seek no post-award fairness hearing under SCRCP 23.

43. A post-award fairness hearing has never been held in the class action. The unauthorized fee taken by the Richter Defendants has never been examined by a court. The class action has never been concluded.

44. Until December 7, 2015, the plaintiff had no information about the class action or that the defendants had cooperated to make false promises to the class action court that were not secured in orders or that the plaintiff's interest had been compromised by the defendants' conduct. That information was fraudulently concealed from the plaintiff by the defendants.

**For a First Cause of Action:
Professional Negligence by the Richter Defendants
Breach of Fiduciary Duty, Imposed or Assumed**

45. Allegations above, other than the allegations of intentional conduct by the Richter defendants, are incorporated into this cause of action as if fully stated.

46. Pursuant to S.C. Code § 15-36-100(b), Attachment A to this complaint, and incorporated herein pursuant to SCRCP 10(c), is a 2018 affidavit of Michael Virzi specifying various negligent acts or omissions of the Richter defendants, and the factual basis of the negligent acts or omissions of the Richter defendants.

47. When the class settlement agreement was formally typed and formally approved by the Richter defendants, the Vatican, and the Diocese defendants, the illicit agreement by Defendants on judge shopping had been accomplished, and the class settlement agreement

(although reached in the mediation of cases filed in Charleston county) was now claimed by all defendants to be a proposed settlement of cases in both Charleston and Dorchester County.

48. On October 6, 2006, the Richter defendants filed proposed formal class definitions that included the plaintiff in the class definition.

49. If it was not imposed by law, the Richter defendants assumed a fiduciary duty to the plaintiff in the conduct of the class action.

50. On the record to the court the Richter defendants maintained, and the Diocese defendants agreed, that relief would be provided for absent members of the class who got no notice of the class settlement and who later came forward. The Richter defendants were professionally negligent in failing to secure that relief in a written order, and the Diocese defendants aided and abetted that breach of fiduciary duty.

51. On January 19, 2007, a proposed class definition that included the plaintiff was approved without objection from the Diocese defendants.

52. The Richter defendants engaged in negligent acts and omissions in breaching assumed or imposed fiduciary duties owed to the plaintiff, as set forth in the 2018 affidavit of Michael Virzi.

53. No provision of any type, at any point, was made in the written orders governing the class action to secure relief for absent class members who received no notice, as was represented to the class action court had been secured.

54. The Richter defendants abandoned their clients' interests and acted in a professionally negligent manner by failing to protect the plaintiff's interest in the written orders. Doing so breached fiduciary duties to the plaintiff, which was aided and abetted by the Diocese defendants.

55. The plaintiff was abandoned by the Richter defendants so that “too many” class claimants would not come forward in the class action, or after the class action, and jeopardize either (a) the fixed fee the Richter defendants had negotiated for themselves at the expense of the class members, that fee to be paid before notice to the class, before the class was known, and before the class claims process had even begun, or (b) the fee the Richter defendants failed to disclose to the court, and failed to obtain a written order to authorize, that they intended to charge individual class members.

56. Having “too many” claimants also was believed to not be in the interest of the Diocese defendants, and the Richter defendants actually acted to protect the interests of the Diocese defendants more than the interests of absent class members such as the plaintiff.

57. The acts and omissions of the Richter defendants caused damage to the plaintiff’s rights, as aided and abetted by the Diocese defendants.

58. Plaintiff are entitled to actual and punitive damages against the Richter defendants as a result of the professionally negligent representation they received from the Richter defendants.

**For a Second Cause of Action:
Aiding and Abetting Breach of Fiduciary Duty
Against the Diocese defendants**

59. Allegations above are incorporated into this cause of action as if fully stated.

60. The Diocese defendants aided and abetted the breach of fiduciary duty by the Richter defendants towards the plaintiff, as set forth above.

61. Those fiduciary duties were either imposed by law, or were voluntarily assumed by, the Richter defendants, with knowledge of and cooperation by the Diocese defendants.

62. The Diocese defendants joined with the Richter defendants in making representations on the record to the class action judge, supposedly protecting the interest of absent class members

and affording the plaintiff relief. The Defendants then failed to secure those representations in any written order, as intended by the defendants, making the representations to the class action court unenforceable, as if those representations had never been made.

63. The Diocese defendants knowingly participated in the breach of the fiduciary duty owed to the Plaintiff by the Richter defendants, and have argued that no such obligations were enforceable.

64. The Plaintiff have been damaged by the aiding and abetting by the Diocese defendants and is entitled to actual and punitive damages as a result.

Demand for Jury Trial

65. Plaintiff demand a trial by jury.

Relief Sought

Wherefore, the plaintiff seeks relief in the form of:

66. Actual damages to be awarded to the plaintiff by the finder of fact against the various defendants,

67. Costs and disbursements of this action, and

68. Punitive damages as authorized by law, and for

69. Such other and further relief as the Court deems just and proper.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gregg Meyers", with a stylized flourish at the end.

Gregg Meyers, SC Bar No. 9908
217 Lucas Street Box 10
Mt. Pleasant SC 29464
843-324-1589
attygm@gmail.com
Attorney for the Plaintiff

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2018-CP-10-_____

Robert Chimento,	)
	)
Plaintiff,	)

v.	)
----	---

Lawrence E. Richter, Jr.,	)
David K. Haller,	)
Richter and Haller, LLC,	)
The Bishop of Charleston a corporation	)
Sole, and Robert E. Guglielmone, Bishop	)
Of Charleston,	)
	)
Defendants.	)

AFFIDAVIT OF MICHAEL J. VIRZI

NOW COMES Michael J. Virzi, and states, under oath, the following:

1. I am offering this affidavit, pursuant to S.C. Code Ann. § 15-36-100(b), as an expert witness on behalf of Plaintiff to support his Complaint against Defendants Lawrence E. Richter, Jr., David K. Haller, and Richter and Haller, LLC, (hereinafter "Richter Defendants") for professional negligence.

2. My qualifications to give expert testimony include the following:

- A. I am a lawyer licensed to practice law in South Carolina, and my practice focuses exclusively on matters of legal malpractice, ethics, and lawyer discipline;
- B. I am a former Assistant Disciplinary Counsel to the South Carolina Supreme Court, I serve on the South Carolina Bar's Ethics Advisory and Professional Responsibility Committees, and I served a three-year term as Chair of the former and currently serve as Chair of the latter;
- C. I have authored five published articles, numerous Ethics Advisory Opinions, and a book chapter on matters involving lawyer ethics and malpractice, I teach Professional Responsibility at the University of South Carolina School of Law, I am a frequent CLE speaker and law school guest lecturer and have given more than 100 presentations on the topics of lawyer

MEV

malpractice, ethics, and lawyer discipline, and I am one of six instructors for the South Carolina Bar and Supreme Court's ongoing Legal Ethics and Practice Program;

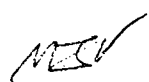
- D. I am the Ethics Chair for the South Carolina Association for Justice and a member of the South Carolina Association of Ethics Counsel, the Association of Professional Responsibility Lawyers, and the ABA Center for Professional Responsibility; and
- E. I have provided expert testimony on matters involving the standard of care for lawyers on more than 75 occasions either in court, in deposition, or by affidavit, I have been qualified in federal and state courts in South Carolina as an expert in matters of lawyer ethics and malpractice, and I am familiar with the standard of care applicable to lawyers in the circumstances involved in this case.

3. My opinion is based on review of the following documents:

- A. Complaint in the above-captioned case; and
- B. Affidavit of Michael J. Virzi, which I provided in John Doe 297 v. Bishop of Charleston et al., dated March 29, 2016 (attached hereto), and documents identified therein.

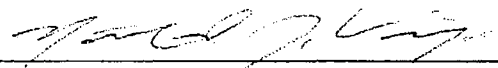
4. I appears that Plaintiff is a member of the class of plaintiffs identified in a class action brought by Richter Defendants in 2006 and that the duties Richter Defendants assumed and owed to Plaintiff, along with the breaches thereof, are the same as those identified (as to John Doe 297) in paragraphs 7 through 13 of the attached affidavit, which I incorporate herein by reference.

5. It is my professional opinion that Richter Defendants' conduct as alleged in the Complaint in this case fell below the degree of skill, knowledge and judgment usually possessed and exercised by members of the legal profession in South Carolina, and that they breached duties of competence, diligence, communication, and loyalty to Plaintiff, some of which has been admitted by Defendant Haller in court in 2013 as identified at paragraph 9 of the attached and incorporated Affidavit.



6. The opinions in this affidavit are given to a reasonable degree of certainty and are specifically based on the evidence listed above and in the attached and incorporated Affidavit. I reserve the right to alter, amend, modify, reduce, or expand these opinions if and when additional information is presented.

Further affiant sayeth naught.


Michael J. Virzi, Esq.

State of South Carolina
County of Richland

Sworn and subscribed before me
This 5th day of December, 2018


Notary Public

My Commission Expires : 10/18/20

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2018-CP-10-5802

ROBERT CHIMENTO,
Plaintiff,

v.

LAWRENCE E. RICHTER, JR.,
DAVID K. HALLER,
RICHTER AND HALLER, LLC,
THE BISHOP OF CHARLESTON, A
CORPORATION SOLE; and
ROBERT E. GUGLIEMONE, BISHOP OF
CHARLESTON,
Defendants.

**DEFENDANT DAVID K. HALLER'S
MOTION TO DISMISS COMPLAINT**

FILED
2019 MAY -1 PM 12:48
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

TO: GREGG MEYERS, ESQ., ATTORNEY FOR PLAINTIFF, ROBERT CHIMENTO:

Defendant, David K. Haller (hereinafter "Defendant" or "Haller") by and through his undersigned counsel, submits this Motion to Dismiss Complaint for failure to state a claim under R. 12(b)(6), SCRCF. In support of this Motion, Haller provides the following:

Plaintiff's Complaint alleges one cause of action against Haller for Professional Negligence: Breach of Fiduciary Duty. This lawsuit arises from a court approved class action settlement concerning abuse of children by priests employed by the Roman Catholic Church, Diocese of Charleston. After the class action was concluded in or about 2007, the attorney for this Plaintiff filed numerous lawsuits for other purported victims and family members. Those lawsuits were assigned to the Honorable J. C. Nicholson, Jr. and consolidated. In August, 2017, Judge Nicholson dismissed with prejudice all claims, specifically including the claim for breach

of fiduciary duty, as to Haller by way of order granting summary judgment. (Order on Lawyer Defendants' Motions for Summary Judgment, attached as **Exhibit 1**.) Thereafter, Plaintiffs' counsel appealed the Order and the appeal is pending in the South Carolina Court of Appeals. (Notice of Appeal, attached as **Exhibit 2**.)

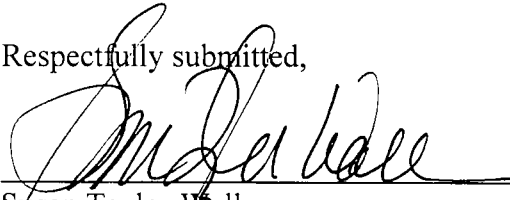
The same cause of action for breach of fiduciary duty, based upon the same allegations, brought by similarly situated abuse victims, was dismissed with prejudice in the Order granting summary judgment. In his Complaint, Plaintiff admits that the present claim cannot be maintained: "Presently an order from a trial court maintains that no fiduciary duty was imposed by law on the Richter defendants as to the plaintiff or any other absent class member, so to that extent this complaint overtly depends on the outcome of an appeal presently pending in the South Carolina Court of Appeals" (Complaint, Paragraph 15). The Order of Judge Nicholson has not been overturned and thus stands as the law of the case. This lawsuit must, therefore, be dismissed.

In addition, this Complaint does not satisfy the requirements of S.C. Code Ann. 15-36-100 because the purported expert affidavit attached to the Complaint is fatally defective. The affidavit does not specify negligent acts or omissions and the factual bases for each but rather makes one conclusory statement of an alleged breach of duty, without the specifics required under the statute, as well as referring to an attachment that is not attached. For this additional reason, the Complaint must be dismissed.

CONCLUSION

This Motion to Dismiss Complaint is based upon the pleadings, the Order Granting Summary Judgment to which this Court may take judicial notice, the law, and such other and further material as the Court may deem appropriate.

Respectfully submitted,



Susan Taylor Wall

Email: swall@grsm.com

Henry W. Frampton, IV

Email: hframpton@grsm.com

Gordon & Rees LLP

40 Calhoun Street, Suite 350

Charleston, SC 29401

Phone: 843-714-2506

*ATTORNEYS FOR DEFENDANT
DAVID K. HALLER*

Dated: May 1, 2019

Charleston, South Carolina

EXHIBIT 1
**(Order on Lawyer Defendants’
Motions for Summary Judgment)**

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-10-5520; 2010-CP-10-7233; 2012-CP-10-5559; ~~2013-CP-10-3733~~; 2013-CP-10-4175; 2013-CP-10-4176; 2015-CP-10-5486; 2016-CP-10-1632

John Doe, et al.
PLAINTIFF(S)

The Bishop of Charleston, a Corporation Sole, et al.
DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant
	or ☐ 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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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

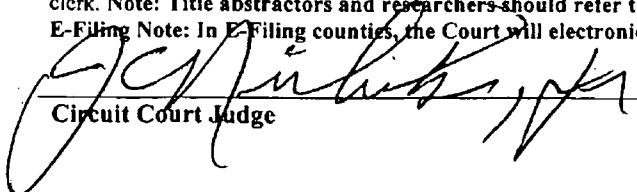
This order ☒ ends ☐ does not end the case.

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.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


Circuit Court Judge

2117
Judge Code

8/8/17
Date

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

John Doe 2 and Jane Doe 4,

CASE NO.: 2010-CP-10-5520

Plaintiffs,

v.

The Bishop of Charleston, et. al.

Defendants.

ORDER ON
LAWYER DEFENDANTS'
MOTIONS FOR
SUMMARY JUDGMENT

John Doe 10,

CASE NO.: 2010-CP-10-7233

Plaintiff,

v.

The Bishop of Charleston, et. al.

Defendants.

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JULIE J. ARMSTRONG
CLERK OF COURT

Jane Doe 11,

CASE NO.: 2012-CP-10-5559

Plaintiff,

v.

The Bishop of Charleston, et. al.

Defendants.

John Doe 193,

CASE NO.: 2013-CP-10-3733

Plaintiff,

v.

The Bishop of Charleston, et. al.

Defendants.

Father Doe 194,) CASE NO.: 2013-CP-10-4175
)
 Plaintiff,)
)
 v.)
)
 The Bishop of Charleston, et. al.)
)
 Defendants.)

John Doe 194,) CASE NO.: 2013-CP-10-4176
)
 Plaintiff,)
)
 v.)
)
 The Bishop of Charleston, et. al.)
)
 Defendants.)

John Doe 245 and Father Doe 245,) CASE NO.: 2015-CP-10-5486
)
 Plaintiff,)
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 v.)
)
 The Bishop of Charleston, et. al.)
)
 Defendants.)

John Doe 297,) CASE NO.: 2016-CP-10-1632
)
 Plaintiff,)
)
 v.)
)
 The Bishop of Charleston, et. al.)
)
 Defendants.)

THESE MATTERS CAME BEFORE THE COURT on motions of the Defendants Lawrence E. Richter, Jr., David A. Haller and Richter and Haller, LLC ("the Lawyer Defendants") for summary judgment pursuant to Rule 56, SCRCP. The Lawyer Defendants filed an omnibus

motion for summary judgment in each case on the same grounds. The Lawyer Defendants also filed separate motions for summary judgment on additional grounds against Jane Doe 4 (Case No. 2010-CP-10-5520) and John Doe 193 (Case No. 2013-CP-10-3733). This Order will address the omnibus motion in each case as well as the motions for summary judgment against Jane Doe 4 and John Doe 193.¹

BACKGROUND

The above-captioned matters consist of eight (8) separate cases filed between 2010 and 2016 on behalf of ten (10) different plaintiffs. Each case arises out of alleged sexual abuse by priests of the Diocese Defendants. Seven (7) of the plaintiffs are alleged victims of sexual abuse and three (3) are spouses or parents of alleged abuse victims. Nine (9) of the plaintiffs are non-residents of South Carolina and one (1) is a South Carolina resident who alleges he repressed memory of the abuse.

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The Lawyer Defendants represented alleged victims of sexual abuse in class action lawsuits against the Diocese Defendants that were settled in 2007 (Case Nos. 2006-CP-18-13109, 1311 and 1636; “the Underlying Case”).² Seven of the Plaintiffs claim that they were members of the Primary Class³ and that the Lawyer Defendants committed legal malpractice while representing

¹ The Lawyer Defendants also filed an omnibus motion for summary judgment as to the civil conspiracy claims in each case. They are now moot because the Plaintiffs abandoned their claims for civil conspiracy at the hearing held on July 20, 2017.

² While the record reflects the negotiation of a Settlement and Arbitration Agreement between the Lawyer Defendants and the Diocese Defendants in 2006, the settlement was not formalized and approved by the court until 2007.

³ The Primary Class of abuse victims was defined as “All individuals born on or before August 30, 1980, who, as minors, were sexually abused at any time by the agents or employees of the Dioceses

them. Three of the Plaintiffs claim that they were members of the "Consortium Class" of spousal and parental victims who allege that the Lawyer Defendants committed legal malpractice while representing them as well.⁴ All of the claims against the Lawyer Defendants arise out of their activities in the Underlying Case.

The crux of all but one of the Plaintiffs' claims is that the Lawyer Defendants defined the Primary and Consortium Classes without geographical limitation but geographically limited the notice that would be given of the settlement by publication to class members in South Carolina.⁵ The non-resident Plaintiffs allege that, as a result, they were bound by the class action settlement but were never given notice of that settlement.

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If they were bound by the settlement in the Underlying Case, then the doctrine of *res judicata* would deprive them of the opportunity to sue the Diocese Defendants without giving them notice of the settlement that satisfied their due process rights. The allegations in the Complaint filed by John Doe 2 and Jane Doe 4 are typical of each plaintiffs' complaint:

23. If the Diocese agrees, or the court finds, that the plaintiffs are not precluded by the class action from bringing claims against the Diocese, either because the state court's ruling left room for persons not receiving notice or because the deliberate restrictions on notice clearly failed to comply with plaintiffs' due process rights, then the causes of action against the Richter defendants who, for a fee, abandoned their clients, and those who conspired against them through the class action, are irrelevant because plaintiffs can make their claims against the Diocese. If the court finds that the plaintiffs are precluded for any reasons, including the *res judicata* effect of the class action, charitable immunity, or by the statute of

of Charleston who have not previously had any similar claim adjudicated, resolved, or released" (hereinafter "the Primary Class").

⁴ The Consortium Class was defined as "The spouses and parents, of all individuals qualified pursuant the Primary Class and who suffered a loss of the abused individual's consortium, and who as spouses or parents have not previously had any similar claim adjudicated, resolved, or released" (hereinafter "the Consortium Class").

⁵ The notice plan approved by the class action court was for publication in ten South Carolina daily newspapers and *The Augusta Chronicle*, and *The Catholic Miscellany*.

limitations, then the causes of action alleged against the Diocese defendants for sexual abuse are irrelevant, and those claims are properly made against those who conspired against them as well as against the Richter defendants who failed to properly represent them. (Emphasis added).

See John Doe 2 and Jane Doe 4 v. The Diocese of Charleston, et. al., Case No. 2010-CP-10-5520, Complaint, ¶ 23 (emphasis added).

The claims alleged by John Doe 193 are slightly different.⁶ John Doe 193 alleges that he repressed the memory of his sexual abuse until 2010. As a result, even though he lived in South Carolina, he claims he did not receive notice of the class action settlement until 2010 (when he recovered his memory) and alleges the Lawyer Defendants failed to make a provision for repressed memory victims like him in the settlement.⁷

The Plaintiffs allege causes of action for professional negligence, breach of fiduciary duty, and unfair trade practices against the Lawyer Defendants.

I. Summary Judgment Standard

Summary judgment is appropriate where there are no genuine issues of material fact and it is clear the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRPC. In determining whether any triable issues of fact exist, the evidence and all inferences that reasonably can be drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions*, 388 S.C. 394, 697 S.E. 2d 551 (2010); *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 355, 650 S.E. 2d 68, 70 (2007).

⁶ Case No. 2013-CP-10-3733.

⁷ John Doe 193's claim for professional negligence was dismissed by Order of the Honorable Kristi Lea Harrington dated January 16, 2014. His claim for civil conspiracy was abandoned by Plaintiff's counsel at the hearing on July 2017. Thus, only the claim for breach of fiduciary duty remains for John Doe 193.

Under Rule 56(c), SCRCP, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. *Baughman v. AT&T*, 306 S.C. 101, 410 S.E. 2d 537 (1991). With respect to an issue upon which the nonmoving party has the burden of proof, this initial responsibility may be discharged by pointing out to the trial court that there is an absence of evidence to support the nonmoving party's case. *Id.* (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)). Once the moving party carries its initial burden, the "opposing party must, under Rule 56(e), do more than simply show that there is some metaphysical doubt as to the material facts' but 'must come forward with specific facts showing that there is a ***genuine issue for trial.***'" *Id.* (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538 (1986)) (emphasis in original). The party opposing summary judgment cannot simply rest on mere allegations or denials contained in the pleadings. *Id.*; *George v. Empire Fire & Marine Ins. Co.*, 344 S.C. 582, 545 S.E. 2d 500 (2001).

II. The Lawyer Defendants' Motions

The Lawyer Defendants contend that they are entitled to summary judgment because:

- A. the Court has determined that the Plaintiffs can sue the Diocese Defendants making their respective claims against the Lawyer Defendants "irrelevant";
- B. the Plaintiffs have no damages proximately caused by the Lawyer Defendants;
- C. no attorney-client relationship existed between the Lawyer Defendants and the Plaintiffs, who were unnamed class members; and
- D. the Lawyer Defendants did not breach a fiduciary duty to the Plaintiffs.

A. Plaintiffs' Claims Against the Lawyer Defendants are Irrelevant

As noted above, the Plaintiffs' Complaints explicitly allege that if they are not precluded by the class action settlement from bringing claims against the Diocese Defendants, then the causes

of action against the Lawyer Defendants are “irrelevant”. The keystone of their argument revolves around the concept of notice. The Plaintiffs allege that since they were included in the definition of the Primary Class, they should have been given notice of the settlement in accordance with their due process rights. Thus, if the Court were to find that they are precluded from maintaining their claims against the Diocese Defendants as a result of the class settlement, only then can Plaintiffs assert their claims against the Lawyer Defendants for not giving them notice of the settlement. In other words, when viewed in the light most favorable to the Plaintiffs, the complaints make a finding of preclusion by the Court a predicate upon which the Plaintiffs’ claims against the Lawyer Defendants rise or fall.

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In this Court’s Amended Order on Limited Collateral Review dated May 3, 2017, I found that the Plaintiffs’ Complaints, by their own terms, presented a threshold question: Are the Plaintiffs precluded from pursuing claims against the Diocese Defendants? I then answered the question in the negative, finding that the Plaintiffs were not precluded from bringing their claims against the Diocese Defendants because the notice plan approved in the Underlying Case “did not incorporate safeguards to provide sufficient notice because notice by publication was not provided by the court substantially outside of the geographic territory of South Carolina.”

I concluded that “the notice plan directed by the class action court did not satisfy due process as to putative class members who (1) did not receive actual notice and (2) lived outside of the areas in which notice was published”.⁸ I further found that it would be inconsistent with due process to bind John Doe 193 to the class action settlement if he could prove a repressed memory

⁸ This finding was consistent with the finding by Judge Roger Young in his Order dated June 17, 2011 in Case No. 2010-CP-10-5520 denying in part and granting in part the Diocese Defendants Motion to Dismiss.

by the preponderance of the evidence. In light of that ruling, even when this Court views the allegations in the complaints in the light most favorable to Plaintiffs, the only reasonable conclusion is the Plaintiffs have no claims against the Lawyer Defendants because the class settlement did not preclude their claims against the Diocese Defendants.

B. Plaintiffs Have No Damages Proximately Caused by the Lawyer Defendants

After the Amended Order on Limited Collateral Review was entered, this Court scheduled several of the cases against the Diocese Defendants for trial in May 2017. Soon thereafter, five (5) Plaintiffs and the Diocese Defendants voluntarily settled four (4) of the cases.⁹ Since all Plaintiffs were allowed to present their claims against the Diocese Defendants and five (5) Plaintiffs in four (4) of the cases voluntarily settled their claims with the Diocese Defendants, the allegations against the Lawyer Defendants are not pertinent and are, in the Plaintiffs' own words, "irrelevant". Those Plaintiffs who have settled with the Diocese Defendants have had "their day in court" and their opportunity to hold the Diocese Defendants financially responsible for their abuse. In so doing, those Plaintiffs stood exactly where they would have stood had the underlying class actions never existed.

The Plaintiffs who did not settle with Diocese Defendants¹⁰ were subject to a motion for summary judgment filed by the Diocese Defendants and scheduled to be heard by the Court on

⁹ The Diocese settled with the Plaintiffs in 2010-CP-10-7233 (filed by John Doe 10), 2013-CP-10-4175 (filed by Father Doe 194), 2013-CP-10-4176 (filed by John Doe 194) and 2015-CP-10-5486 (filed by John Doe 245 and Father Doe 245).

¹⁰ The non-settling Plaintiffs were John Doe 2 and Jane Doe 4, Case No. 2010-CP-10-5520; Jane Doe 11, Case No. 2012-CP-10-5559; John Doe 193, Case No. 2013-CP-10-3733; and John Doe 297, Case No. 2016-CP-10-1632.

June 28, 2017. In that motion, the Diocese Defendants contended that the remaining Plaintiffs' claims were absolutely barred by the defense of charitable immunity. At the outset of the hearing on those motions, Plaintiffs' counsel voluntarily surrendered his clients' claims to the Diocese Defendants' charitable immunity defense and agreed that the Court should grant summary judgment to the Diocese Defendants on all claims in those four cases *except* civil conspiracy (which, as noted above, was later abandoned) and aiding and abetting breach of fiduciary duty.¹¹

Thus, the Plaintiffs have either voluntarily settled with the Diocese Defendants or voluntarily conceded to the defense of charitable immunity. In either event, the Plaintiffs have been allowed to maintain their claims against the Diocese Defendants, have had their day in court and have no damages to assert against the Lawyer Defendants. Nothing the Lawyer Defendants did or failed to do in the Underlying Case caused harmed to the Plaintiffs. Plaintiffs have the same rights, and are subject to the same defenses, that existed prior to the class action settlement.

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Damages are an essential element any plaintiff must prove to prevail on a legal malpractice claim. None of the Plaintiffs' have testified to any damages they believe they have suffered due to the alleged legal malpractice, nor have they offered any competent evidence proving damages as to the Lawyer Defendants. Absent damages, Plaintiffs have no claim for legal malpractice. *RFT Mgmt. Co. v. Tinsley & Adams, L.L.P.*, 399 S.C. 322, 732 S.E. 2d 166 (2012) ("plaintiff in a legal malpractice action must establish four elements: (1) the existence of an attorney-client relationship, (2) a breach of duty by the attorney, (3) damage to the client, and (4) proximate causation of the client's damages by the breach.")

¹¹ As previously noted, Plaintiffs' counsel abandoned his clients' claims for civil conspiracy at the hearing on July 20, 2017.

Plaintiffs' counsel argues that the four (4) cases that were settled fall under S.C. Code Ann. §15-38-50 (1976, as amended) and thus do not affect the liability of the Lawyer Defendants. That statute provides:

When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

(1) it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and

(2) it discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

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The Court has carefully considered this argument and concludes §15-38-50 does not apply here. The release given to the Diocese Defendants in those settlements was not given to a joint tortfeasor, notwithstanding what the settlement agreements may say. The Plaintiffs' claims are based upon one loss – the abuse at the hands of the Diocese defendants. They assert claims against the Diocese Defendants and, in the alternative, against the Lawyer Defendants. Nonetheless, they may obtain but one recovery. Civil conspiracy was the only cause of action in the complaints as to which joint and several liability could apply. As previously noted, Plaintiffs' counsel voluntarily conceded at the hearing on July 20, 2017 that summary judgment in favor of all defendants on the cause of action for civil conspiracy was appropriate. That concession resulted from a) the Plaintiffs' having pled civil conspiracy as presuming that "the class action order is interpreted to bind the Plaintiff to its *res judicata* effect...", and b) the Court having determined in its Amended Order on Limited Collateral Review that the Plaintiffs who did not receive actual notice and lived outside of the published notice area were not bound by the *res judicata* effect of the class action settlement.

Consequently, since there is but one recovery for a single wrong, the Plaintiffs who settled with the Diocese Defendants have made their recovery and have no further damages.

C. There was No Attorney-Client Relationship

1. The Majority Rule.

The Lawyer Defendants also contend Plaintiffs' claims are barred because there was no attorney-client relationship with the Plaintiffs. A plaintiff in a legal malpractice action must establish four elements: (1) the existence of an attorney-client relationship, (2) a breach of duty by the attorney, (3) damage to the client, and (4) proximate causation of the client's damages by the breach. *RFT Mgmt. Co., supra*.

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In response, the Plaintiffs, relying on *Premium Investment Corp. v. Green*, 283 S.C. 464, 324 S.E. 2d 72 (Ct. App. 1984), contend that an attorney-client relationship arose between the Lawyer Defendants and the Plaintiffs at the time the lawyers filed the class action complaints in the Underlying Case.

The majority rule in the United States appears to be that class counsel does not represent unnamed, absent class members unless and until the class is certified. *Bobryk v. Durand Glass Mfg. Co.*, No. 12-cv-5360 (NLH/JS), 2013 U.S. Dist. LEXIS 145758, at *29-31 (D.N.J. Oct. 9, 2013) (noting "the majority of case law that holds that the attorney-client relationship with putative class members 'does not begin until the class has been certified and the time for opting out by a potential member of the class has expired'."); *Palumbo v. Tele-Communications, Inc.*, 157 F.R.D. 129, 133 (D.D.C. 1994) (stating class certification confers status of litigant on absent class members and creates attorney-client relationship with class counsel); *Garret v. Metro Life Ins. Co.*, No. 95-CIV-2406, 1996 WL 325725, at *6 (S.D.N.Y. June 12, 1996) ("before class certification, the putative class members are not 'represented' by the class counsel."); *Formento v. Joyce*, 168

Ill. App. 3d 429, 522 N.E.2d 312 (Ill. App. Ct. 1988) (finding that defendant attorneys owed no duty to plaintiffs, the unnamed members of an uncertified class action); *Restatement (Third) of the Law Governing Lawyers* § 99 cmt. 1 (“prior to certification, only those class members with whom the lawyer maintains a personal client-lawyer relationship are clients”); *Resnick v. Am. Dental Ass’n*, 95 F.R.D. 372, 376 (N.D. Ill. 1982) (“Without question the unnamed class members, once the class has been certified, are ‘represented by’ the class counsel.”); *Gillespie v. Scherr*, 987 S.W. 2d 129, 1998 Tex. App. LEXIS 8089 (Tex. App. 1998) (“[W]e have found no case finding an implied attorney-client relationship to exist before class certification between an attorney who files the class action and any unnamed class members”).

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The majority rule is persuasive to this Court for several reasons. The identity of the absent plaintiffs and the exact nature of their interests in the action is not known until class certification. 3 H. Newberg, *Class Actions* § 5050 (1977); *United States Parole Comm’n v. Geraghty*, 445 U.S. 388, 415, 100 S.Ct. 1202, 1218, 63 L Ed.2d 479, 502, 1980 U.S. LEXIS 12, *49, 29 Fed. R. Serv. 2d (Callaghan) 20 (U.S. Mar. 19, 1980). Similarly, in federal court, class counsel is appointed by the class action court when the class is certified. Fed. R. Civ. P. 23(c)(1)(B) (“An order that certifies a class action must define the class and the class claims, issues, or defenses, and must appoint class counsel under Rule 23(g)”). Furthermore, under Rule 23(a), SCRCF, the heading specifies that there is no class action until the Court finds certain “Prerequisites”.¹² Only after class certification can the absent class members be bound to the outcome of the case.

In the Underlying Case, the Primary and Consortium Classes were not certified until January 19, 2007 when Judge Goodstein entered the Order Certifying Classes and Giving

¹² When the Underlying Case was filed and adjudicated, South Carolina had enacted Rule 23, SCRCF, drawn principally from Federal Rule 23.

Preliminary Approval to Settlement. In their complaints, the Plaintiffs allege that the Lawyer Defendants abandoned them and breached duties to them as clients by failing to give notice of the settlement to absent putative class members who reside outside of South Carolina. While the initial Motion to Certify Classes and for Preliminary Approval of Class Settlement filed by the Lawyer Defendants in October 2006 indicated that notice would be published in *USA Today*, that motion was amended. Later, on January 16, 2007, an amended Motion to Certify Classes and for Preliminary Approval of Class Settlement was filed by the Lawyer Defendants. In the second motion, notice was limited to ten daily newspapers in South Carolina, *The Augusta Chronicle*, and *The Catholic Miscellany*. The Order Certifying Classes and Giving Preliminary Approval to Settlement was dated January 17, 2007.

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The gravamen of the Plaintiffs' complaints is that notice of the settlement in the Underlying Case was not given to them. It appears from the record that a decision was made between October 2006 and January 2007 to change the scope of the notice and that decision was made before Judge Goodstein signed the Order Certifying Classes and Giving Preliminary Approval to Settlement. Therefore, the very act about which the Plaintiffs complain took place before the classes in the Underlying Case were certified -- at a point in time when an attorney-client relationship did not exist between the Plaintiffs and the Lawyer Defendants.

Applying the majority rule to the facts of the Underlying Case, there was no attorney-client relationship between the Lawyer Defendants and the Plaintiffs at the time the alleged duties were allegedly breached. Absent an attorney-client relationship, the Plaintiffs' claims for professional negligence must fail.

2. *Premium Investment Corp. v. Green*

Plaintiffs posit that *Premium Investment Corp. v. Green*, *supra*, supports their contention

that the attorney-client relationship and its attendant duties arose by operation of law when the Lawyer Defendants filed the class action complaints in the Underlying Cases. This is not correct because *Premium Investment Corp.* was a constructive class certification case that predated Rule 23, SCRCP. Moreover, the Underlying Case before me is an actual certification case under Rule 23.

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In the underlying matter discussed in *Premium Investment Corp.*, a lawyer filed a complaint on behalf of a homeowner “individually and as a representative of a class of property owners” against the developer of a subdivision. After a hearing, the trial court entered an order finding that the homeowner brought two class actions: (i) as a member of a class owning property adjoining the lake, and (ii) as a member of a class owning property in the subdivision. The court found in favor of the plaintiffs and enjoined the developer. The developer appealed, and the case settled while on appeal.

Years later, Premium Investment Corp., a property owner in the subdivision, sued the homeowner and the lawyer to recover the proceeds of the two settlements. The Court of Appeals affirmed the trial court’s order granting relief to Premium Investment. In considering whether the underlying case was a class action the Court of Appeals agreed that “court certification of the class is an important step in a class action,” observing:

It represents a judicial finding that injured parties other than the named plaintiff exist. It also provides a definition by which they can be identified. Certification identifies and sharpens the interests of unnamed class members in the outcome; only thereafter will they be bound by the outcome. After certification, class members can be certain that the action will not be settled or dismissed without appropriate notice. *United States Parole Commission v. Geraghty*, 445 U.S. 388, 415 n. 8, 100 S. Ct. 1202, 1218 n. 8, 63 L. Ed. (2d) 479 (1980) (Powell, J., dissenting).

Id. at 470.

The Court of Appeals struggled to determine what constituted class certification where there was no formal class certification and concluded that in the case at hand, where there was no formal certification order, the trial court had “constructively certified” the class when it identified “those persons with an interest in and entitled to benefit” from the action. It found that certification had occurred simultaneous with the judgment on the merits.

Premium Investment Corp. stands for the proposition that where there is a class that has not been formally certified (as under Rule 23, SCRCPP), a lawyer’s and a class representative’s duties to absent class members arise with the constructive certification of the class. *Premium Investment Corp.* is in line with the majority rule that an attorney-client relationship does not arise between absent class members and class counsel until class certification. Since its adoption in 1985, Rule 23(a) has required specific prerequisites to certification and pursuit of a class action, while *Premium Investment Corp.*, which predates Rule 23, allows for constructive certification. It is undisputed in the case before me that Rule 23, SCRCPP, was referenced and observed by Judge Goodstein in her orders in the Underlying Case and that constructive certification is not at issue before me.

3. The Plaintiffs’ Testimony.

As noted above, none of the Plaintiffs have offered any sworn statement or other evidence from which any reasonable fact-finder could conclude they had an attorney-client relationship with the Lawyer Defendants. To the contrary, when examined, none of the Plaintiffs knew who the Lawyer Defendants were or why they had sued them. Instead, as noted above, the Plaintiffs claim, in essence, that the Lawyer Defendants breached duties owed prior to class certification. For the reasons discussed above, the Court finds the Lawyer Defendants owed no duties to the absent class members prior to class certification.

Having found the duties allegedly breached did not exist, I find the Plaintiffs cannot prevail on their claims against the Lawyer Defendants.

D. No Breach of Fiduciary Duty.

The Lawyer Defendants assert the Plaintiffs' claims are also barred because they owed no fiduciary duties to the Plaintiffs before class certification. Plaintiffs, in response, argue a fiduciary duty was owed upon filing the class complaints. That fiduciary duty arose by operation of law, Plaintiffs contend, upon filing the pleading, pursuant to *Premium Investment Corp.*

As discussed above, the Court disagrees with Plaintiffs' argument that *Premium Investment Corp.* stands for the proposition that the filing of a class action complaint gives rise to fiduciary duties to unnamed and unidentified class members. Furthermore, the Court notes that while the Plaintiffs argue a fiduciary duty existed upon filing, they have yet to articulate what that duty was, nor have they explained the scope of it. Rather, they rely on the following excerpt from *Premium Investment Corp.*:

It is now generally conceded that 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. *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 69 S. Ct. 1221, 93 L. Ed. 1528 (1949); *La Sala v. American Savings & Loan Association*, 5 Cal. (3d) 864, 97 Cal. Rptr. 849, 852, 489, P. (2d) 1113 (1971).

Id. at 470.

The Lawyer Defendants contend such statements refer to obligations that arise after class certification, whether certification pursuant to Rule 23, as here, or by constructive certification, as in *Premium Investment Corp.* The line of cases holding that an implied fiduciary duty arises when a lawyer files a complaint alleging a class action was discussed in *Gillespie v. Scherr*, 987 S.W.2d 129, 1998 Tex. App. LEXIS 8089 (Tex. App. 1998), where the court observed:

Appellants have cited and we have found no case finding an implied attorney-client relationship to exist before class certification between an attorney who files the class action and any unnamed class members. Appellants urge us to follow federal decisions which, in the context of class certification, recognize the *general* existence of a fiduciary duty to unnamed class members once a class action suit is filed. *See, e.g., In re General Motors Corp. Pick-up Truck Fuel Tank*, 55 F. 3d 768, 801 (3rd Cir. 1995) (stating that class attorneys owe the entire class a fiduciary duty once the class complaint is filed), *cert. denied*, 516 U.S. 824, 116 S. Ct. 88, 133 L. Ed. 2d 45 (1995). However, appellants have cited and we have found no decision which has defined the scope of such a duty or addressed it with regard to an actual claim for recovery against an attorney for its breach. **Although not cited by either side, the only case we have found in which the issue was addressed held that lawyers for named plaintiffs in an uncertified class action owe no duty to unnamed class members.** *See Formento v. Joyce*, 168 Ill. App. 3d 429, 522 N.E. 2d 312, 317, 118 Ill. Dec. 857 (Ill. App. Ct. 1988).

Id. (emphasis added).

Similarly, here the Plaintiffs have not defined the scope of the fiduciary duty they claim was violated by the Lawyer Defendants. One District Court examining the question found:

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Under this analysis, we may venture a few statements about the scope of the fiduciary duty owed by class counsel to putative class members prior to class certification. In short, the scope of those duties is limited to protecting the substantive legal rights of putative class members that form the basis of the class action suit from prejudice in an action against the class defendant resulting from the actions of class counsel.

Schick v. Berg, 2004 U.S. Dist. LEXIS 6842, 2004 WL 856298; *aff'd* 2005 U.S. App. LEXIS 24671 (2d Cir. N.Y. 2005). Even if there were a basis to assume a general fiduciary duty, as asserted by the Plaintiffs, the question then is who are the intended beneficiaries of that fiduciary duty. Here, Plaintiffs claim to be the intended beneficiaries based on the definitions and notice plan of the Primary and Consortium classes. Yet, those class definitions (and the classes themselves) did not exist until the Court certified the class under Rule 23 in its January 19, 2007 Order. If the intended beneficiaries are to be identified based upon the filing of a class complaint, the better approach is to look to the allegations in the class complaints, for it is those individuals

included in the class definitions in the complaints whom the Lawyer Defendants arguably sought to represent and to whom this alleged, general fiduciary duty would run.

The class action complaints in the Underlying Case defined the class of victims of sexual abuse sought to be certified as follows:

41. Plaintiff is entitled to the certification of a class of plaintiffs against the defendant representing all individuals, save for those barred by law from asserting an action against the defendants, in South Carolina who were sexually abused and/or otherwise molested by agents or employees of the catholic church under the supervision and/or control of the defendants.

John Doe #53, et. al. v. The Bishop of Charleston, et. al., Case No. 2006-CP-18-1636, Complaint

¶ 41. Therefore, the complaints relevant to the Primary Class clearly limited the putative classes to individuals within the geographical boundaries of South Carolina. *See also Id.* ¶ 36 (“Plaintiff is informed and believes that the number of other individuals in South Carolina have been the victims of childhood priest sexual abuse may exceed the hundreds and that the joinder of all such individuals in the instant suit is impracticable [sic].”).

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With respect to the Consortium Class, the complaint in the Underlying Case alleged:

The spouses, parents, and/or legal guardians of all individuals who were sexually abused and/or otherwise molested by agents or employees of the Catholic Church under the supervision and/or control of the defendants in South Carolina between January 1, 1950 and December 31, 2000 and who suffered a loss of the abused individual's consortium.

Jane Doe 1, et. al. v. The Bishop of Charleston, et. al., Case No. 2006-CP-18-1310, Complaint

¶ 25. Later, that complaint alleged:

Plaintiffs are informed and believes that the number of other individuals in South Carolina who fall within the definition of the class defined above may exceed the hundreds and that the joinder of all such individuals in the instant suit is impracticable [sic].

Id. ¶ 27. Therefore, the same geographical limitation applied to the Consortium Class.

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This examination of the underlying complaints shows the Lawyer Defendants sought to represent a class of South Carolina residents who were sexually abused by priests of the Diocese Defendants and who were not barred by law from asserting a claim against those defendants. In addition, the Lawyer Defendants sought to represent South Carolina residents who were spouses, parents, and/or legal guardians of all individuals sexually abused by priests of the Diocese Defendants and who suffered a loss of the abused individual's consortium. In these cases before me, all of the Plaintiffs, save for John Doe 193, allege themselves to be non-residents of South Carolina. Therefore, even under the Plaintiffs' argument that there is a general fiduciary duty imposed upon lawyers who file a complaint alleging class action claims, I find that the Lawyer Defendants in the cases before me owed no duty to the Plaintiffs because the Plaintiffs all fall outside the class definitions alleged in the underlying class action complaints. The Court further notes that because the definition of the putative class of abuse victims specifically excluded victims whose claims were barred by law, none of the Plaintiffs whose claims are admittedly barred by the Diocese Defendants' defense of charitable immunity can prove any fiduciary duty owed by the Lawyer Defendants.

III. The Claims of Jane Doe 4:

The Lawyer Defendants filed a separate motion for summary judgment as to the claims of Jane Doe 4. The claims Jane Doe 4 alleges against the Lawyer Defendants are professional negligence and breach of fiduciary duty. Since the breach that Jane Doe 4 alleges took place before certification, when there was no attorney-client relationship, her claim for professional negligence must be dismissed. Additionally, since Jane Doe 4 was a non-resident, she was not the intended beneficiary of any general fiduciary duty owed by the Lawyer Defendants upon filing the class action complaints and her claim for breach of fiduciary duty must be dismissed as well. Finally,

and in light of the rulings set forth above, the Court need not address the issue of whether Jane Doe 4 lived in an area in which notice was published.

IV. The Claims of John Doe 193.

John Doe 193's sole surviving claims are those for breach of fiduciary duty and unfair trade practices. Since John Doe 193 is a.) a South Carolina resident, and b.) an abuse victim whose claim against the Diocese Defendants is barred by law, he was not an intended beneficiary of any general fiduciary duty that Plaintiff alleges was owed by the Lawyer Defendants when they filed the complaints. Thus, the Lawyer Defendants breached no fiduciary duty to John Doe 193 and his claim for breach of fiduciary duty must be dismissed.



V. The UTPA Claims.

Five (5) Plaintiffs have alleged claims for violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, *et. seq.* ("UTPA").¹³ In their complaints, the Plaintiffs allege their claims under the UTPA presume the Plaintiffs are precluded, for one reason or another, from maintaining claims against the Diocese Defendants. Since the Court has already determined that the Plaintiffs are not precluded from asserting their claims against the Diocese Defendants as a result of the Lawyer Defendants, those claims also fail.

Additionally, the Court views these UTPA claims as thinly veiled, duplicative claims for legal malpractice. It is well-established that where a plaintiff asserts claims against an attorney for professional negligence and breach of fiduciary duty, both of which arise from the same materials facts, the claims are duplicative and merge into a single cause of action for legal malpractice. *RFT Mgmt. Co., L.L.C. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 337, 732 S.E.2d 166, 173-74 (2012);

¹³ Those cases in which unfair trade practices claims were alleged are 2013-CP-10-3733, 2013-CP-10-4176, 2015-CP-10-5486 and 2016-CP-10-1632.

Doe v. Howe, 367 S.C. 432, 448 n.27, 626 S.E.2d 25, 33 (Ct. App. 2005). In this case, Plaintiffs' UTPA claims are based upon the same material facts and same loss. Therefore, I find the UTPA claims merge into Plaintiffs' other claims. Because the Lawyer Defendants are entitled to summary judgment on their professional negligence and breach of fiduciary duty claims, as discussed above, the UTPA claims must also be dismissed. I further note the record before the Court contains no evidence from which any fact-finder could reasonably determine the Lawyer Defendants committed any unfair or deceptive act. The Court is compelled, therefore, to grant summary judgment on Plaintiffs' UTPA claims.

CONCLUSION

Having considered the motions made and filed by the Lawyer Defendants, the supporting and opposing memoranda submitted by the parties, the admissible evidence in the record, the arguments of counsel, and applicable law, I find and conclude that there are no genuine issues of material facts in these cases preventing summary judgment as to the Lawyer Defendants and, therefore, that the Lawyer Defendants are entitled to summary judgment as a matter of law on all claims.

NOW, THEREFORE, IT IS ORDERED that all claims alleged against the Lawyer Defendants in the above-captioned matters should be, and hereby are, dismissed with prejudice.

AND IT IS SO ORDERED.

Dated: 8/8/17
Charleston, SC

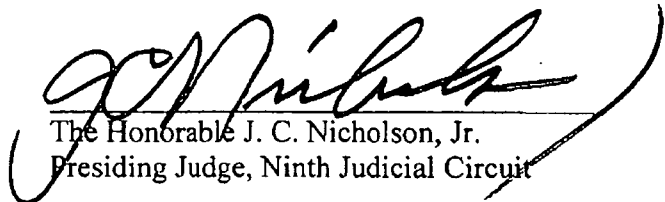

The Honorable J. C. Nicholson, Jr.
Presiding Judge, Ninth Judicial Circuit

EXHIBIT 2

(Notice of Appeal)

84668

The State of South Carolina
In The Court of Appeals

Appeal from Charleston County
Hon. J.C. Nicholson, Jr., Circuit Court Judge

Consolidated Cases Nos.

2010-CP-10-5520,
2010-CP-10-7233,
2012 CP-10-5559,
2013-CP-10-3733,
2013-CP-10-4175,
2103-CP-10-4176,
2015-CP-10-5486,
2016-CP-10-1632,

RECEIVED
SEP 27 2017
SC Court of Appeals

SF
John Doe 2 and Jane Doe 4,
John Doe 10,
Jane Doe 11,
John Doe 193,
Father Doe 194,
John Doe 194,
John Doe 245 and Father Doe 245, and
John Doe 297, Appellants

v.

The Bishop of Charleston, a Corporation Sole,
Robert Gugliemone, The Bishop Of Charleston, in his official capacity;
Rev. Monsignor Martin Laughlin, former Administrator of the Diocese of
Charleston, in his official capacity;
Robert J. Baker, former Bishop of Charleston, in his official capacity;
Lawrence E. Richter, Jr.,
David K. Haller, and
Richter and Haller, LLC, Respondents

Notice of Appeal

Plaintiffs in these consolidated cases: John Doe 2 and Jane Doe 4; John Doe 10; Jane Doe
11; John Doe 193; Father Doe 194; John Doe 194; John Doe 245 and Father Doe 245; and

John Doe 297, hereby appeal (a) two orders of the Honorable J.C. Nicholson, Jr., one filed August 10, 2017, the other filed August 11, 2017, and received by counsel on August 11, 2017, which together granted summary judgment to the various Defendants, and (b) a form 4 order filed August 30, 2017, and received by counsel September 22, 2017, denying the Plaintiffs' Motion to Alter or Amend pursuant to SCRCP 59(e). The Rule 59 motion had been filed August 22, 2017.

Attached to this notice is a copy of each of the various orders and motion referred to above, arranged in chronological order.

Respectfully submitted,



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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

ROBERT CHIMENTO,

C/A No.: 2018-CP-10-5802

Plaintiff,

v.

LAWRENCE E. RICHTER, JR., DAVID K.
HALLER, RICHTER AND HALLER, LLC,
THE BISHOP OF CHARLESTON, A
CORPORATION SOLE; and ROBERT E.
GUGLIEMONE, BISHOP OF CHARLESTON,

Defendants.)

**DEFENDANTS LAWRENCE E.
RICHTER, JR. AND RICHTER &
HALLER LLC'S MOTION TO
DISMISS COMPLAINT**

FILED
2019 MAY -3 AM 11:43
JULIE J. ARMSTRONG
CLERK OF COURT

TO: GREGG MEYERS, ESQ., ATTORNEY FOR THE PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that Defendants Lawrence E. Richter, Jr. and Richter & Haller, LLC (collectively, "Richter"), by and through their undersigned counsel, will move before the Presiding Judge of the Ninth Judicial Circuit Court of Common Pleas at the Charleston County Judicial Center, 100 Broad Street, Charleston, South Carolina on the tenth (10th) day following service hereof, or as soon thereafter as counsel can be heard, for an Order dismissing the Complaint in this matter for failure to state facts sufficient to constitute a cause of action against Richter pursuant to Rule 12(b)(6), SCRCF and S.C. Code Ann. § 15-36-100 for the following reasons:

1. Plaintiff asserts a single cause of action against Richter for Professional Negligence: Breach of Fiduciary Duty arising from Richter's role as class counsel in class action cases against the Diocese of Charleston that were based upon claims of sexual abuse by priests of the Diocese. Those cases were settled in 2007.

2. Plaintiff alleges a priest of the Diocese of Charleston sexually abused him between 1973 and 1975.

3. In this action, Plaintiff does not assert claims against the Diocese based upon the sexual abuse. Rather, Plaintiff seeks to hold the attorneys who handled the underlying class action case liable for those damages. In his complaint, Plaintiff alleges Richter assumed a fiduciary duty to out-of-state, absent class members.

4. Plaintiff acknowledges in his complaint that his theory of liability has already been rejected in prior lawsuits alleging the same wrongs by Richter, “Presently an order from a trial court maintains that no fiduciary duty was imposed by law on the Richter defendants as to the plaintiff or any other absent class member, so to that extent this complaint overtly depends on the outcome of an appeal presently pending in the South Carolina Court of Appeals.” (Compl. ¶15.)

5. In this case, Plaintiff offers no new factual allegations or legal arguments that the Circuit Court did not previously consider—and reject—in those prior cases against Richter and his co-counsel. (*See* Order Granting Summary Judgement, **Exhibit A**.)

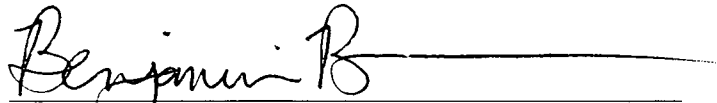
6. Plaintiff has failed therefore to state facts sufficient to constitute a cause of action against Richter, and the Complaint should be dismissed accordingly pursuant to Rule 12(b)(6), SCRCF.

7. Furthermore, Plaintiff has failed to satisfy the requirement of S.C. Code Ann. § 15-36-100 to “file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit.”

8. The affidavit of Michael Virzi attached to the complaint only contains only a conclusory statement that the defendant attorneys’ conduct fell below the standard of care without specifying any factual basis for the conclusion as required by the statute.

WHEREFORE, Richter moves this Court for an Order dismissing the complaint with prejudice. This motion may be further supported by the record in this case, by such other cases as have been decided, by affidavit, and by memorandum.

BRUNER POWELL WALL & MULLINS, LLC

A handwritten signature in black ink, appearing to read "Benjamin B", followed by a horizontal line.

Warren C. Powell, Jr., S.C. Bar No. 4525

Benjamin C. Bruner, S.C. Bar No. 77544

Chelsea J. Clark, S.C. Bar No. 102211

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*Attorneys for the Defendants Lawrence E. Richter,
Jr. and Richter & Haller, LLC*

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

John Doe 2 and Jane Doe 4,

Plaintiffs,

v.

The Bishop of Charleston, et. al.

Defendants.

CASE NO.: 2010-CP-10-5520

ORDER ON
LAWYER DEFENDANTS'
MOTIONS FOR
SUMMARY JUDGMENT

John Doe 10,

Plaintiff,

v.

The Bishop of Charleston, et. al.

Defendants.

CASE NO.: 2010-CP-10-7233

JULIE J. JONES, CLERK OF COURT

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FILED

Jane Doe 11,

Plaintiff,

v.

The Bishop of Charleston, et. al.

Defendants.

CASE NO.: 2012-CP-10-5559

John Doe 193,

Plaintiff,

v.

The Bishop of Charleston, et. al.

Defendants.

CASE NO.: 2013-CP-10-3733

EXHIBIT A

Father Doe 194,) CASE NO.: 2013-CP-10-4175
)
Plaintiff,)
)
v.)
)
The Bishop of Charleston, et. al.)
)
Defendants.)

John Doe 194,) CASE NO.: 2013-CP-10-4176
)
Plaintiff,)
)
v.)
)
The Bishop of Charleston, et. al.)
)
Defendants.)

John Doe 245 and Father Doe 245,) CASE NO.: 2015-CP-10-5486
)
Plaintiff,)
)
v.)
)
The Bishop of Charleston, et. al.)
)
Defendants.)

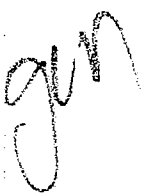
John Doe 297,) CASE NO.: 2016-CP-10-1632
)
Plaintiff,)
)
v.)
)
The Bishop of Charleston, et. al.)
)
Defendants.)

THESE MATTERS CAME BEFORE THE COURT on motions of the Defendants
Lawrence E. Richter, Jr., David A. Haller and Richter and Haller, LLC ("the Lawyer Defendants")
for summary judgment pursuant to Rule 56, SCRPC. The Lawyer Defendants filed an omnibus

motion for summary judgment in each case on the same grounds. The Lawyer Defendants also filed separate motions for summary judgment on additional grounds against Jane Doe 4 (Case No. 2010-CP-10-5520) and John Doe 193 (Case No. 2013-CP-10-3733). This Order will address the omnibus motion in each case as well as the motions for summary judgment against Jane Doe 4 and John Doe 193.¹

BACKGROUND

The above-captioned matters consist of eight (8) separate cases filed between 2010 and 2016 on behalf of ten (10) different plaintiffs. Each case arises out of alleged sexual abuse by priests of the Diocese Defendants. Seven (7) of the plaintiffs are alleged victims of sexual abuse and three (3) are spouses or parents of alleged abuse victims. Nine (9) of the plaintiffs are non-residents of South Carolina and one (1) is a South Carolina resident who alleges he repressed memory of the abuse.

The Lawyer Defendants represented alleged victims of sexual abuse in class action lawsuits against the Diocese Defendants that were settled in 2007 (Case Nos. 2006-CP-18-13109, 1311 and 1636; "the Underlying Case").² Seven of the Plaintiffs claim that they were members of the Primary Class³ and that the Lawyer Defendants committed legal malpractice while representing

¹ The Lawyer Defendants also filed an omnibus motion for summary judgment as to the civil conspiracy claims in each case. They are now moot because the Plaintiffs abandoned their claims for civil conspiracy at the hearing held on July 20, 2017.

² While the record reflects the negotiation of a Settlement and Arbitration Agreement between the Lawyer Defendants and the Diocese Defendants in 2006, the settlement was not formalized and approved by the court until 2007.

³ The Primary Class of abuse victims was defined as "All individuals born on or before August 30, 1980, who, as minors, were sexually abused at any time by the agents or employees of the Dioceses

them. Three of the Plaintiffs claim that they were members of the "Consortium Class" of spousal and parental victims who allege that the Lawyer Defendants committed legal malpractice while representing them as well.⁴ All of the claims against the Lawyer Defendants arise out of their activities in the Underlying Case.

The crux of all but one of the Plaintiffs' claims is that the Lawyer Defendants defined the Primary and Consortium Classes without geographical limitation but geographically limited the notice that would be given of the settlement by publication to class members in South Carolina.⁵ The non-resident Plaintiffs allege that, as a result, they were bound by the class action settlement but were never given notice of that settlement.

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If they were bound by the settlement in the Underlying Case, then the doctrine of *res judicata* would deprive them of the opportunity to sue the Diocese Defendants without giving them notice of the settlement that satisfied their due process rights. The allegations in the Complaint filed by John Doe 2 and Jane Doe 4 are typical of each plaintiffs' complaint:

23. If the Diocese agrees, or the court finds, that the plaintiffs are not precluded by the class action from bringing claims against the Diocese, either because the state court's ruling left room for persons not receiving notice or because the deliberate restrictions on notice clearly failed to comply with plaintiffs' due process rights, then the causes of action against the Richter defendants who, for a fee, abandoned their clients, and those who conspired against them through the class action, are irrelevant because plaintiffs can make their claims against the Diocese. If the court finds that the plaintiffs are precluded for any reasons, including the *res judicata* effect of the class action, charitable immunity, or by the statute of

of Charleston who have not previously had any similar claim adjudicated, resolved, or released" (hereinafter "the Primary Class").

⁴ The Consortium Class was defined as "The spouses and parents, of all individuals qualified pursuant the Primary Class and who suffered a loss of the abused individual's consortium, and who as spouses or parents have not previously had any similar claim adjudicated, resolved, or released" (hereinafter "the Consortium Class").

⁵ The notice plan approved by the class action court was for publication in ten South Carolina daily newspapers and *The Augusta Chronicle*, and *The Catholic Miscellany*.

limitations, then the causes of action alleged against the Diocese defendants for sexual abuse are irrelevant, and those claims are properly made against those who conspired against them as well as against the Richter defendants who failed to properly represent them. (Emphasis added).

See John Doe 2 and Jane Doe 4 v. The Diocese of Charleston, et. al., Case No. 2010-CP-10-5520, Complaint, ¶ 23 (emphasis added).

The claims alleged by John Doe 193 are slightly different.⁶ John Doe 193 alleges that he repressed the memory of his sexual abuse until 2010. As a result, even though he lived in South Carolina, he claims he did not receive notice of the class action settlement until 2010 (when he recovered his memory) and alleges the Lawyer Defendants failed to make a provision for repressed memory victims like him in the settlement.⁷

The Plaintiffs allege causes of action for professional negligence, breach of fiduciary duty, and unfair trade practices against the Lawyer Defendants.

I. Summary Judgment Standard

Summary judgment is appropriate where there are no genuine issues of material fact and it is clear the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, the evidence and all inferences that reasonably can be drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions*, 388 S.C. 394, 697 S.E. 2d 551 (2010); *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 355, 650 S.E. 2d 68, 70 (2007).

⁶ Case No. 2013-CP-10-3733.

⁷ John Doe 193's claim for professional negligence was dismissed by Order of the Honorable Kristi Lea Harrington dated January 16, 2014. His claim for civil conspiracy was abandoned by Plaintiff's counsel at the hearing on July 2017. Thus, only the claim for breach of fiduciary duty remains for John Doe 193.

Under Rule 56(c), SCRCP, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. *Baughman v. AT&T*, 306 S.C. 101, 410 S.E. 2d 537 (1991). With respect to an issue upon which the nonmoving party has the burden of proof, this initial responsibility may be discharged by pointing out to the trial court that there is an absence of evidence to support the nonmoving party's case. *Id.* (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)). Once the moving party carries its initial burden, the "opposing party must, under Rule 56(e), do more than simply show that there is some metaphysical doubt as to the material facts" but "must come forward with specific facts showing that there is a ***genuine issue for trial***." *Id.* (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538 (1986)) (emphasis in original). The party opposing summary judgment cannot simply rest on mere allegations or denials contained in the pleadings. *Id.*; *George v. Empire Fire & Marine Ins. Co.*, 344 S.C. 582, 545 S.E. 2d 500 (2001).

II. The Lawyer Defendants' Motions

The Lawyer Defendants contend that they are entitled to summary judgment because:

- A. the Court has determined that the Plaintiffs can sue the Diocese Defendants making their respective claims against the Lawyer Defendants "irrelevant";
- B. the Plaintiffs have no damages proximately caused by the Lawyer Defendants;
- C. no attorney-client relationship existed between the Lawyer Defendants and the Plaintiffs, who were unnamed class members; and
- D. the Lawyer Defendants did not breach a fiduciary duty to the Plaintiffs.

A. Plaintiffs' Claims Against the Lawyer Defendants are Irrelevant

As noted above, the Plaintiffs' Complaints explicitly allege that if they are not precluded by the class action settlement from bringing claims against the Diocese Defendants, then the causes

of action against the Lawyer Defendants are "irrelevant". The keystone of their argument revolves around the concept of notice. The Plaintiffs allege that since they were included in the definition of the Primary Class, they should have been given notice of the settlement in accordance with their due process rights. Thus, if the Court were to find that they are precluded from maintaining their claims against the Diocese Defendants as a result of the class settlement, only then can Plaintiffs assert their claims against the Lawyer Defendants for not giving them notice of the settlement. In other words, when viewed in the light most favorable to the Plaintiffs, the complaints make a finding of preclusion by the Court a predicate upon which the Plaintiffs' claims against the Lawyer Defendants rise or fall.

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In this Court's Amended Order on Limited Collateral Review dated May 3, 2017, I found that the Plaintiffs' Complaints, by their own terms, presented a threshold question: Are the Plaintiffs precluded from pursuing claims against the Diocese Defendants? I then answered the question in the negative, finding that the Plaintiffs were not precluded from bringing their claims against the Diocese Defendants because the notice plan approved in the Underlying Case "did not incorporate safeguards to provide sufficient notice because notice by publication was not provided by the court substantially outside of the geographic territory of South Carolina."

I concluded that "the notice plan directed by the class action court did not satisfy due process as to putative class members who (1) did not receive actual notice and (2) lived outside of the areas in which notice was published".⁸ I further found that it would be inconsistent with due process to bind John Doe 193 to the class action settlement if he could prove a repressed memory

⁸ This finding was consistent with the finding by Judge Roger Young in his Order dated June 17, 2011 in Case No. 2010-CP-10-5520 denying in part and granting in part the Diocese Defendants Motion to Dismiss.

by the preponderance of the evidence. In light of that ruling, even when this Court views the allegations in the complaints in the light most favorable to Plaintiffs, the only reasonable conclusion is the Plaintiffs have no claims against the Lawyer Defendants because the class settlement did not preclude their claims against the Diocese Defendants.

B. Plaintiffs Have No Damages Proximately Caused by the Lawyer Defendants

After the Amended Order on Limited Collateral Review was entered, this Court scheduled several of the cases against the Diocese Defendants for trial in May 2017. Soon thereafter, five (5) Plaintiffs and the Diocese Defendants voluntarily settled four (4) of the cases.⁹ Since all Plaintiffs were allowed to present their claims against the Diocese Defendants and five (5) Plaintiffs in four (4) of the cases voluntarily settled their claims with the Diocese Defendants, the allegations against the Lawyer Defendants are not pertinent and are, in the Plaintiffs' own words, "irrelevant". Those Plaintiffs who have settled with the Diocese Defendants have had "their day in court" and their opportunity to hold the Diocese Defendants financially responsible for their abuse. In so doing, those Plaintiffs stood exactly where they would have stood had the underlying class actions never existed.

The Plaintiffs who did not settle with Diocese Defendants¹⁰ were subject to a motion for summary judgment filed by the Diocese Defendants and scheduled to be heard by the Court on

⁹ The Diocese settled with the Plaintiffs in 2010-CP-10-7233 (filed by John Doe 10), 2013-CP-10-4175 (filed by Father Doe 194), 2013-CP-10-4176 (filed by John Doe 194) and 2015-CP-10-5486 (filed by John Doe 245 and Father Doe 245).

¹⁰ The non-settling Plaintiffs were John Doe 2 and Jane Doe 4, Case No. 2010-CP-10-5520; Jane Doe 11, Case No. 2012-CP-10-5559; John Doe 193, Case No. 2013-CP-10-3733; and John Doe 297, Case No. 2016-CP-10-1632.

June 28, 2017. In that motion, the Diocese Defendants contended that the remaining Plaintiffs' claims were absolutely barred by the defense of charitable immunity. At the outset of the hearing on those motions, Plaintiffs' counsel voluntarily surrendered his clients' claims to the Diocese Defendants' charitable immunity defense and agreed that the Court should grant summary judgment to the Diocese Defendants on all claims in those four cases *except* civil conspiracy (which, as noted above, was later abandoned) and aiding and abetting breach of fiduciary duty.¹¹

Thus, the Plaintiffs have either voluntarily settled with the Diocese Defendants or voluntarily conceded to the defense of charitable immunity. In either event, the Plaintiffs have been allowed to maintain their claims against the Diocese Defendants, have had their day in court and have no damages to assert against the Lawyer Defendants. Nothing the Lawyer Defendants did or failed to do in the Underlying Case caused harmed to the Plaintiffs. Plaintiffs have the same rights, and are subject to the same defenses, that existed prior to the class action settlement.

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Damages are an essential element any plaintiff must prove to prevail on a legal malpractice claim. None of the Plaintiffs' have testified to any damages they believe they have suffered due to the alleged legal malpractice, nor have they offered any competent evidence proving damages as to the Lawyer Defendants. Absent damages, Plaintiffs have no claim for legal malpractice. *RFT Mgmt. Co. v. Tinsley & Adams, L.L.P.*, 399 S.C. 322, 732 S.E. 2d 166 (2012) ("plaintiff in a legal malpractice action must establish four elements: (1) the existence of an attorney-client relationship, (2) a breach of duty by the attorney, (3) damage to the client, and (4) proximate causation of the client's damages by the breach.")

¹¹ As previously noted, Plaintiffs' counsel abandoned his clients' claims for civil conspiracy at the hearing on July 20, 2017.

Plaintiffs' counsel argues that the four (4) cases that were settled fall under S.C. Code Ann. §15-38-50 (1976, as amended) and thus do not affect the liability of the Lawyer Defendants. That statute provides:

When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

(1) it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and

(2) it discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

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The Court has carefully considered this argument and concludes §15-38-50 does not apply here. The release given to the Diocese Defendants in those settlements was not given to a joint tortfeasor, notwithstanding what the settlement agreements may say. The Plaintiffs' claims are based upon one loss – the abuse at the hands of the Diocese defendants. They assert claims against the Diocese Defendants and, in the alternative, against the Lawyer Defendants. Nonetheless, they may obtain but one recovery. Civil conspiracy was the only cause of action in the complaints as to which joint and several liability could apply. As previously noted, Plaintiffs' counsel voluntarily conceded at the hearing on July 20, 2017 that summary judgment in favor of all defendants on the cause of action for civil conspiracy was appropriate. That concession resulted from a) the Plaintiffs' having pled civil conspiracy as presuming that "the class action order is interpreted to bind the Plaintiff to its *res judicata* effect...", and b) the Court having determined in its Amended Order on Limited Collateral Review that the Plaintiffs who did not receive actual notice and lived outside of the published notice area were not bound by the *res judicata* effect of the class action settlement.

Consequently, since there is but one recovery for a single wrong, the Plaintiffs who settled with the Diocese Defendants have made their recovery and have no further damages.

C. There was No Attorney-Client Relationship

1. The Majority Rule.

The Lawyer Defendants also contend Plaintiffs' claims are barred because there was no attorney-client relationship with the Plaintiffs. A plaintiff in a legal malpractice action must establish four elements: (1) the existence of an attorney-client relationship, (2) a breach of duty by the attorney, (3) damage to the client, and (4) proximate causation of the client's damages by the breach. *RFT Mgmt. Co., supra*.

gm
In response, the Plaintiffs, relying on *Premium Investment Corp. v. Green*, 283 S.C. 464, 324 S.E. 2d 72 (Ct. App. 1984), contend that an attorney-client relationship arose between the Lawyer Defendants and the Plaintiffs at the time the lawyers filed the class action complaints in the Underlying Case.

The majority rule in the United States appears to be that class counsel does not represent unnamed, absent class members unless and until the class is certified. *Bobryk v. Durand Glass Mfg. Co.*, No. 12-cv-5360 (NLH/JS), 2013 U.S. Dist. LEXIS 145758, at *29-31 (D.N.J. Oct. 9, 2013) (noting "the majority of case law that holds that the attorney-client relationship with putative class members 'does not begin until the class has been certified and the time for opting out by a potential member of the class has expired'"); *Palumbo v. Tele-Communications, Inc.*, 157 F.R.D. 129, 133 (D.D.C. 1994) (stating class certification confers status of litigant on absent class members and creates attorney-client relationship with class counsel); *Garret v. Metro Life Ins. Co.*, No. 95-CIV-2406, 1996 WL 325725, at *6 (S.D.N.Y. June 12, 1996) ("before class certification, the putative class members are not 'represented' by the class counsel."); *Formento v. Joyce*, 168

Ill. App. 3d 429, 522 N.E.2d 312 (Ill. App. Ct. 1988) (finding that defendant attorneys owed no duty to plaintiffs, the unnamed members of an uncertified class action); *Restatement (Third) of the Law Governing Lawyers* § 99 cmt. 1 ("prior to certification, only those class members with whom the lawyer maintains a personal client-lawyer relationship are clients"); *Resnick v. Am. Dental Ass'n*, 95 F.R.D. 372, 376 (N.D. Ill. 1982) ("Without question the unnamed class members, once the class has been certified, are 'represented by' the class counsel."); *Gillespie v. Scherr*, 987 S.W. 2d 129, 1998 Tex. App. LEXIS 8089 (Tex. App. 1998) ("[W]e have found no case finding an implied attorney-client relationship to exist before class certification between an attorney who files the class action and any unnamed class members").

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The majority rule is persuasive to this Court for several reasons. The identity of the absent plaintiffs and the exact nature of their interests in the action is not known until class certification. 3 H. Newberg, *Class Actions* § 5050 (1977); *United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 415, 100 S.Ct. 1202, 1218, 63 L Ed.2d 479, 502, 1980 U.S. LEXIS 12, *49, 29 Fed. R. Serv. 2d (Callaghan) 20 (U.S. Mar. 19, 1980). Similarly, in federal court, class counsel is appointed by the class action court when the class is certified. Fed. R. Civ. P. 23(c)(1)(B) ("An order that certifies a class action must define the class and the class claims, issues, or defenses, and must appoint class counsel under Rule 23(g)"). Furthermore, under Rule 23(a), SCRCF, the heading specifies that there is no class action until the Court finds certain "Prerequisites".¹² Only after class certification can the absent class members be bound to the outcome of the case.

In the Underlying Case, the Primary and Consortium Classes were not certified until January 19, 2007 when Judge Goodstein entered the Order Certifying Classes and Giving

¹² When the Underlying Case was filed and adjudicated, South Carolina had enacted Rule 23, SCRCF, drawn principally from Federal Rule 23.

Preliminary Approval to Settlement. In their complaints, the Plaintiffs allege that the Lawyer Defendants abandoned them and breached duties to them as clients by failing to give notice of the settlement to absent putative class members who reside outside of South Carolina. While the initial Motion to Certify Classes and for Preliminary Approval of Class Settlement filed by the Lawyer Defendants in October 2006 indicated that notice would be published in *USA Today*, that motion was amended. Later, on January 16, 2007, an amended Motion to Certify Classes and for Preliminary Approval of Class Settlement was filed by the Lawyer Defendants. In the second motion, notice was limited to ten daily newspapers in South Carolina, *The Augusta Chronicle*, and *The Catholic Miscellany*. The Order Certifying Classes and Giving Preliminary Approval to Settlement was dated January 17, 2007.

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The gravamen of the Plaintiffs' complaints is that notice of the settlement in the Underlying Case was not given to them. It appears from the record that a decision was made between October 2006 and January 2007 to change the scope of the notice and that decision was made before Judge Goodstein signed the Order Certifying Classes and Giving Preliminary Approval to Settlement. Therefore, the very act about which the Plaintiffs complain took place before the classes in the Underlying Case were certified -- at a point in time when an attorney-client relationship did not exist between the Plaintiffs and the Lawyer Defendants.

Applying the majority rule to the facts of the Underlying Case, there was no attorney-client relationship between the Lawyer Defendants and the Plaintiffs at the time the alleged duties were allegedly breached. Absent an attorney-client relationship, the Plaintiffs' claims for professional negligence must fail.

2. *Premium Investment Corp. v. Green*

Plaintiffs posit that *Premium Investment Corp. v. Green, supra*, supports their contention.

that the attorney-client relationship and its attendant duties arose by operation of law when the Lawyer Defendants filed the class action complaints in the Underlying Cases. This is not correct because *Premium Investment Corp.* was a constructive class certification case that predated Rule 23, SCRCP. Moreover, the Underlying Case before me is an actual certification case under Rule 23.

gm
In the underlying matter discussed in *Premium Investment Corp.*, a lawyer filed a complaint on behalf of a homeowner "individually and as a representative of a class of property owners" against the developer of a subdivision. After a hearing, the trial court entered an order finding that the homeowner brought two class actions: (i) as a member of a class owning property adjoining the lake, and (ii) as a member of a class owning property in the subdivision. The court found in favor of the plaintiffs and enjoined the developer. The developer appealed, and the case settled while on appeal.

Years later, Premium Investment Corp., a property owner in the subdivision, sued the homeowner and the lawyer to recover the proceeds of the two settlements. The Court of Appeals affirmed the trial court's order granting relief to Premium Investment. In considering whether the underlying case was a class action the Court of Appeals agreed that "court certification of the class is an important step in a class action," observing:

It represents a judicial finding that injured parties other than the named plaintiff exist. It also provides a definition by which they can be identified. Certification identifies and sharpens the interests of unnamed class members in the outcome; only thereafter will they be bound by the outcome. After certification, class members can be certain that the action will not be settled or dismissed without appropriate notice. *United States Parole Commission v. Geraghty*, 445 U.S. 388, 415 n. 8, 100 S. Ct. 1202, 1218 n. 8, 63 L. Ed. (2d) 479 (1980) (Powell, J., dissenting).

Id. at 470.

The Court of Appeals struggled to determine what constituted class certification where there was no formal class certification and concluded that in the case at hand, where there was no formal certification order, the trial court had "constructively certified" the class when it identified "those persons with an interest in and entitled to benefit" from the action. It found that certification had occurred simultaneous with the judgment on the merits.

Premium Investment Corp. stands for the proposition that where there is a class that has not been formally certified (as under Rule 23, SCRPC), a lawyer's and a class representative's duties to absent class members arise with the constructive certification of the class. *Premium Investment Corp.* is in line with the majority rule that an attorney-client relationship does not arise between absent class members and class counsel until class certification. Since its adoption in 1985, Rule 23(a) has required specific prerequisites to certification and pursuit of a class action, while *Premium Investment Corp.*, which predates Rule 23, allows for constructive certification. It is undisputed in the case before me that Rule 23, SCRPC, was referenced and observed by Judge Goodstein in her orders in the Underlying Case and that constructive certification is not at issue before me.

3. The Plaintiffs' Testimony.

As noted above, none of the Plaintiffs have offered any sworn statement or other evidence from which any reasonable fact-finder could conclude they had an attorney-client relationship with the Lawyer Defendants. To the contrary, when examined, none of the Plaintiffs knew who the Lawyer Defendants were or why they had sued them. Instead, as noted above, the Plaintiffs claim, in essence, that the Lawyer Defendants breached duties owed prior to class certification. For the reasons discussed above, the Court finds the Lawyer Defendants owed no duties to the absent class members prior to class certification.

Having found the duties allegedly breached did not exist, I find the Plaintiffs cannot prevail on their claims against the Lawyer Defendants.

D. No Breach of Fiduciary Duty.

The Lawyer Defendants assert the Plaintiffs' claims are also barred because they owed no fiduciary duties to the Plaintiffs before class certification. Plaintiffs, in response, argue a fiduciary duty was owed upon filing the class complaints. That fiduciary duty arose by operation of law, Plaintiffs contend, upon filing the pleading, pursuant to *Premium Investment Corp.*

As discussed above, the Court disagrees with Plaintiffs' argument that *Premium Investment Corp.* stands for the proposition that the filing of a class action complaint gives rise to fiduciary duties to unnamed and unidentified class members. Furthermore, the Court notes that while the Plaintiffs argue a fiduciary duty existed upon filing, they have yet to articulate what that duty was, nor have they explained the scope of it. Rather, they rely on the following excerpt from *Premium Investment Corp.*:

It is now generally conceded that 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. *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 69 S. Ct. 1221, 93 L. Ed. 1528 (1949); *La Sala v. American Savings & Loan Association*, 5 Cal. (3d) 864, 97 Cal. Rptr. 849, 852, 489, P. (2d) 1113 (1971).

Id. at 470.

The Lawyer Defendants contend such statements refer to obligations that arise after class certification, whether certification pursuant to Rule 23, as here, or by constructive certification, as in *Premium Investment Corp.* The line of cases holding that an implied fiduciary duty arises when a lawyer files a complaint alleging a class action was discussed in *Gillespie v. Scherr*, 987 S.W.2d 129, 1998 Tex. App. LEXIS 8089 (Tex. App. 1998), where the court observed:

Appellants have cited and we have found no case finding an implied attorney-client relationship to exist before class certification between an attorney who files the class action and any unnamed class members. Appellants urge us to follow federal decisions which, in the context of class certification, recognize the *general* existence of a fiduciary duty to unnamed class members once a class action suit is filed. See, e.g., *In re General Motors Corp. Pick-up Truck Fuel Tank*, 55 F. 3d 768, 801 (3rd Cir. 1995) (stating that class attorneys owe the entire class a fiduciary duty once the class complaint is filed), *cert. denied*, 516 U.S. 824, 116 S. Ct. 88, 133 L. Ed. 2d 45 (1995). However, appellants have cited and we have found no decision which has defined the scope of such a duty or addressed it with regard to an actual claim for recovery against an attorney for its breach. **Although not cited by either side, the only case we have found in which the issue was addressed held that lawyers for named plaintiffs in an uncertified class action owe no duty to unnamed class members.** See *Formento v. Joyce*, 168 Ill. App. 3d 429, 522 N.E. 2d 312, 317, 118 Ill. Dec. 857 (Ill. App. Ct. 1988).

Id. (emphasis added).

Similarly, here the Plaintiffs have not defined the scope of the fiduciary duty they claim was violated by the Lawyer Defendants. One District Court examining the question found:

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Under this analysis, we may venture a few statements about the scope of the fiduciary duty owed by class counsel to putative class members prior to class certification. In short, the scope of those duties is limited to protecting the substantive legal rights of putative class members that form the basis of the class action suit from prejudice in an action against the class defendant resulting from the actions of class counsel.

Schick v. Berg, 2004 U.S. Dist. LEXIS 6842, 2004 WL 856298; *aff'd* 2005 U.S. App. LEXIS 24671 (2d Cir. N.Y. 2005). Even if there were a basis to assume a general fiduciary duty, as asserted by the Plaintiffs, the question then is who are the intended beneficiaries of that fiduciary duty. Here, Plaintiffs claim to be the intended beneficiaries based on the definitions and notice plan of the Primary and Consortium classes. Yet, those class definitions (and the classes themselves) did not exist until the Court certified the class under Rule 23 in its January 19, 2007 Order. If the intended beneficiaries are to be identified based upon the filing of a class complaint, the better approach is to look to the allegations in the class complaints, for it is those individuals

included in the class definitions in the complaints whom the Lawyer Defendants arguably sought to represent and to whom this alleged, general fiduciary duty would run.

The class action complaints in the Underlying Case defined the class of victims of sexual abuse sought to be certified as follows:

41. Plaintiff is entitled to the certification of a class of plaintiffs against the defendant representing all individuals, save for those barred by law from asserting an action against the defendants, in South Carolina who were sexually abused and/or otherwise molested by agents or employees of the catholic church under the supervision and/or control of the defendants.

John Doe #53, et. al. v. The Bishop of Charleston, et. al., Case No. 2006-CP-18-1636, Complaint ¶ 41. Therefore, the complaints relevant to the Primary Class clearly limited the putative classes to individuals within the geographical boundaries of South Carolina. *See also Id.* ¶ 36 ("Plaintiff is informed and believes that the number of other individuals in South Carolina have been the victims of childhood priest sexual abuse may exceed the hundreds and that the joinder of all such individuals in the instant suit is impracticable [sic].").

gm
With respect to the Consortium Class, the complaint in the Underlying Case alleged:

The spouses, parents, and/or legal guardians of all individuals who were sexually abused and/or otherwise molested by agents or employees of the Catholic Church under the supervision and/or control of the defendants in South Carolina between January 1, 1950 and December 31, 2000 and who suffered a loss of the abused individual's consortium.

Jane Doe 1, et. al. v. The Bishop of Charleston, et. al., Case No. 2006-CP-18-1310, Complaint

¶ 25. Later, that complaint alleged:

Plaintiffs are informed and believes that the number of other individuals in South Carolina who fall within the definition of the class defined above may exceed the hundreds and that the joinder of all such individuals in the instant suit is impracticable [sic].

Id. ¶ 27. Therefore, the same geographical limitation applied to the Consortium Class.

gum

This examination of the underlying complaints shows the Lawyer Defendants sought to represent a class of South Carolina residents who were sexually abused by priests of the Diocese Defendants and who were not barred by law from asserting a claim against those defendants. In addition, the Lawyer Defendants sought to represent South Carolina residents who were spouses, parents, and/or legal guardians of all individuals sexually abused by priests of the Diocese Defendants and who suffered a loss of the abused individual's consortium. In these cases before me, all of the Plaintiffs, save for John Doe 193, allege themselves to be non-residents of South Carolina. Therefore, even under the Plaintiffs' argument that there is a general fiduciary duty imposed upon lawyers who file a complaint alleging class action claims, I find that the Lawyer Defendants in the cases before me owed no duty to the Plaintiffs because the Plaintiffs all fall outside the class definitions alleged in the underlying class action complaints. The Court further notes that because the definition of the putative class of abuse victims specifically excluded victims whose claims were barred by law, none of the Plaintiffs whose claims are admittedly barred by the Diocese Defendants' defense of charitable immunity can prove any fiduciary duty owed by the Lawyer Defendants.

III. The Claims of Jane Doe 4.

The Lawyer Defendants filed a separate motion for summary judgment as to the claims of Jane Doe 4. The claims Jane Doe 4 alleges against the Lawyer Defendants are professional negligence and breach of fiduciary duty. Since the breach that Jane Doe 4 alleges took place before certification, when there was no attorney-client relationship, her claim for professional negligence must be dismissed. Additionally, since Jane Doe 4 was a non-resident, she was not the intended beneficiary of any general fiduciary duty owed by the Lawyer Defendants upon filing the class action complaints and her claim for breach of fiduciary duty must be dismissed as well. Finally,

and in light of the rulings set forth above, the Court need not address the issue of whether Jane Doe 4 lived in an area in which notice was published.

IV. The Claims of John Doe 193.

John Doe 193's sole surviving claims are those for breach of fiduciary duty and unfair trade practices. Since John Doe 193 is a.) a South Carolina resident, and b.) an abuse victim whose claim against the Diocese Defendants is barred by law, he was not an intended beneficiary of any general fiduciary duty that Plaintiff alleges was owed by the Lawyer Defendants when they filed the complaints. Thus, the Lawyer Defendants breached no fiduciary duty to John Doe 193 and his claim for breach of fiduciary duty must be dismissed.

V. The UTPA Claims.

Five (5) Plaintiffs have alleged claims for violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, *et. seq.* ("UTPA").¹³ In their complaints, the Plaintiffs allege their claims under the UTPA presume the Plaintiffs are precluded, for one reason or another, from maintaining claims against the Diocese Defendants. Since the Court has already determined that the Plaintiffs are not precluded from asserting their claims against the Diocese Defendants as a result of the Lawyer Defendants, those claims also fail.

Additionally, the Court views these UTPA claims as thinly veiled, duplicative claims for legal malpractice. It is well-established that where a plaintiff asserts claims against an attorney for professional negligence and breach of fiduciary duty, both of which arise from the same materials facts, the claims are duplicative and merge into a single cause of action for legal malpractice. *RFT Mgmt. Co., L.L.C. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 337, 732 S.E.2d 166, 173-74 (2012);

¹³ Those cases in which unfair trade practices claims were alleged are 2013-CP-10-3733, 2013-CP-10-4176, 2015-CP-10-5486 and 2016-CP-10-1632.

Doe v. Howe, 367 S.C. 432, 448 n.27, 626 S.E.2d 25, 33 (Ct. App. 2005). In this case, Plaintiffs' UTPA claims are based upon the same material facts and same loss. Therefore, I find the UTPA claims merge into Plaintiffs' other claims. Because the Lawyer Defendants are entitled to summary judgment on their professional negligence and breach of fiduciary duty claims, as discussed above, the UTPA claims must also be dismissed. I further note the record before the Court contains no evidence from which any fact-finder could reasonably determine the Lawyer Defendants committed any unfair or deceptive act. The Court is compelled, therefore, to grant summary judgment on Plaintiffs' UTPA claims.

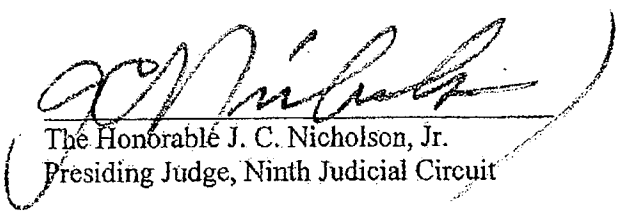
CONCLUSION

Having considered the motions made and filed by the Lawyer Defendants, the supporting and opposing memoranda submitted by the parties, the admissible evidence in the record, the arguments of counsel, and applicable law, I find and conclude that there are no genuine issues of material facts in these cases preventing summary judgment as to the Lawyer Defendants and, therefore, that the Lawyer Defendants are entitled to summary judgment as a matter of law on all claims.

NOW, THEREFORE, IT IS ORDERED that all claims alleged against the Lawyer Defendants in the above-captioned matters should be, and hereby are, dismissed with prejudice.

AND IT IS SO ORDERED.

Dated: 8/8/17
Charleston, SC


The Honorable J. C. Nicholson, Jr.
Presiding Judge, Ninth Judicial Circuit

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

ROBERT CHIMENTO,

C/A No.: 2018-CP-10-5802

Plaintiff,

v.

**DEFENDANTS LAWRENCE E.
RICHTER, JR. AND RICHTER &
HALLER LLC'S MOTION
FOR PROTECTIVE ORDER**

LAWRENCE E. RICHTER, JR., DAVID K.
HALLER, RICHTER AND HALLER, LLC,
THE BISHOP OF CHARLESTON, A
CORPORATION SOLE; and ROBERT E.
GUGLIEMONE, BISHOP OF CHARLESTON,

Defendants.)

TO: GREGG MEYERS, ESQ., ATTORNEY FOR THE PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that Defendants Lawrence E. Richter, Jr. and Richter & Haller, LLC (collectively, "Richter"), by and through their undersigned counsel, will move before the Presiding Judge of the Ninth Judicial Circuit Court of Common Pleas at the Charleston County Judicial Center, 100 Broad Street, Charleston, South Carolina on the tenth (10th) day following service hereof, or as soon thereafter as counsel can be heard, for an Order pursuant to Rule 26(c), SCRCP, staying all discovery in the above-captioned matter until the Court has heard and ruled upon the Richter's Motion to Dismiss, which was served and submitted for filing on May 1, 2019. Plaintiff has noticed Richter's deposition for May 16, 2019. Subjecting Richter to discovery while this motion is pending would cause them undue burden and expense and result in the waste of judicial resources.

This Motion will also be based upon the grounds appearing in any pleadings, documents in the Court's file and memorandum of law hereafter filed and served. The undersigned certifies

FILED
2019 MAY -6 PM 4:28
JULIE J. ARMSTRONG
CLERK OF COURT

that he communicated with Plaintiff's Counsel in a good faith effort to resolve the subject-matter of this motion prior to filing it.

BRUNER POWELL WALL & MULLINS, LLC

A handwritten signature in black ink, appearing to read "Benjamin B", followed by a long horizontal line extending to the right.

Warren C. Rowell, Jr., S.C. Bar No. 4525

Benjamin C. Bruner, S.C. Bar No. 77544

Chelsea J. Clark, S.C. Bar No. 102211

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*Attorneys for the Defendants Lawrence E. Richter,
Jr. and Richter & Haller, LLC*

May 3, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2018-CP-10-5802
Robert Chimento,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Lawrence E. Richter, Jr.,	)	
David K. Haller,	)	
Richter and Haller, LLC,	)	
The Bishop of Charleston a corporation	)	
Sole, and Robert E. Guglielmone, Bishop	)	
Of Charleston,	)	
	)	
Defendants.	)	
	)	

**Plaintiff's Memorandum Opposing Defendants'
Motions to Dismiss and Protective Order**

The plaintiff opposes the defendants' motions to dismiss under SCRCP 12(b)(6), the lawyer defendants' motion for protective order, and the alternative motion for summary judgment by the Diocese defendants.

The facts and breach of duty alleged. Unlike other cases brought against these defendants, some of which are on appeal, the complaint in this case alleges breaches of professional duties *assumed* towards the plaintiff by the lawyer defendants, Richter and Haller, as aided and abetted by the Diocese defendants. Paragraph of the complaint refers to a March 9, 2007 hearing in the class action, where class counsel stated:

we represent the interests of persons who might be here today, may not be here today, may not have made a claim yet, a class, punitive [sic, probably intended to be putative] class or actual class, punitive [sic] initially, now an actual class.

The approved classes included persons who were molested as children by an agent or employee of the Diocese, as the plaintiff alleges happened to him in ¶ 1 of the Complaint. The plaintiff was within one of the classes defined in the class action.

Richter, Haller, and their firm were class counsel for a 2007 class action settlement. Complaint ¶ 12. The plaintiff was an absent member of that class, as he resided out of state, Complaint ¶ 1, where there was no advertising made of the class action. As noted above in Complaint ¶ 16, the lawyer defendants voluntarily assumed fiduciary duties to the plaintiff and other absent members of the class. See generally, Complaint ¶¶ 15 to 19.

The Diocese¹ defendants are alleged to have aided and abetted the lawyer defendants' breach of fiduciary duty. At its heart, the Diocese is alleged to have joined with the lawyer defendants in falsely representing to the trial court an "understanding" among the defendants that any class members who did not get notice and did not submit a claim in the claims period would be given the same relief as did class members who got notice and made claims. Complaint ¶ 30 quotes from the transcript of proceedings the misrepresentation made to the trial court by the defendants).² But, as the complaint alleges, no written order encompassed such relief for the

¹ Contrary to the motion submitted by Bishop Guglielmone, he is a party solely because as the present head of the Diocese he is necessary for complete relief, Complaint ¶ 7; SCRC 19(a). He is the person answerable to the court to effectuate any order. His status in that regard requires no construction of religious precepts or Canon Law, despite the claims of the Diocese in its motion. "Rule 19(a)(1) now requires that a party be joined if 'in his absence complete relief cannot be accorded among the parties.'" *First Citizens Bank Trust v. Strable*, 292 S.C. 146, 148 (S.C. Ct. App. 1987). Nor does the federal ruling claimed by the Diocese extend to the Bishop when joined as a party for purposes of effectuating complete relief.

² A host of other aiding and abetting misconduct is also alleged. E.g., Complaint ¶¶ 25, 29, 30, 38, 39, 42, 50, 52 and 53 of the Complaint, including: judge shopping; concealing from the class the life-long ties class counsel had with the Diocese; concealing from the class the better settlement obtained by persons who opted out of the class action; agreeing to class counsel's unethical fixed fee while simultaneously negotiating a variable recovery for the class; making no request for a

plaintiff or any other absent class member, as the defendants were aware. Complaint ¶¶ 14, 25, 26, 32 to 36. The parties submitted no order to the trial court to secure the relief for the plaintiff about which they purported to have reached such an “understanding” as was placed on the record of the class action.

On a motion to dismiss, the court reviews only the allegations of the complaint and must accept these allegations, and the inferences from those allegations, as true, construing them in the light most favorable to the plaintiff. E.g., *Bergstrom v. Palmetto Health Alliance*, 358 S.C. 388, 395, 596 S.E.2d 42, 45 (S.C. 2004).

Under the applicable standard, the court must accept as true:

- (1) The lawyer defendants voluntarily assumed professional fiduciary obligations to the plaintiff,
- (2) All defendants misrepresented to the trial court that absent members of the class, such as the plaintiff, would be given relief if they got no notice of the class and only later identified themselves,
- (3) The lawyer defendants failed to secure in any written order in the class action that scope of relief for the absent class members,
- (4) The Diocese aided and abetted that breach of fiduciary duty towards the plaintiff by class counsel, in joining the misrepresentation, by, among other things, failing to submit a proposed order to secure the relief, failing to object to the proposed orders submitted (which failed to secure the relief claimed in

post-award fairness hearing; and making no objection when class counsel took more fee than any court order permitted.

the “understanding”), and by taking no appeal from the orders which failed to include the “understanding.”

Law applicable to the actions alleged. A class counsel who fails to secure for absent class members the relief he purports to have obtained has liability to the absent members of the class for inadequate representation by class counsel. As set forth in *Doe v. Bishop*, the most recent appeal taken from the collusive class action that underlies this case:

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.

Doe v. Bishop, 754 S.E.2d 494, 501 (S.C. 2014) (emphasis added).

The plaintiff’s complaint is also supported as to the professional negligence claim by an expert affidavit of Michel Virzi, who, in turn, incorporates into his affidavit for Mr. Chimento an earlier affidavit he prepared about the same breach of fiduciary duty in *Doe 297 v. The Bishop of Charleston*, 2016-CP-10-1632. For convenience, each affidavit is provided with this memorandum.³

How this case differs from those on appeal. The cases on appeal relate to the fiduciary duties *imposed by law* on any lawyer who pleads a class action. Judge Nicholson’s order departed from two 1984 appellate decisions to conclude that no fiduciary duty was *imposed* on class counsel by pleading and certifying a class action, among the reasons why we expect those cases to be remanded.

³ Counsel for the lawyer defendants claim that Mr. Virzi’s previously filed and previously provided affidavit for Doe 297 was not attached to the affidavit prepared by Mr. Virzi in this case for Mr. Chimento. Assuming the observation is true, Mr. Virzi’s affidavit for Mr. Chimento plainly refers to the affidavit previously filed for Doe 297, so incorporated it pursuant to SCRCP 10(c). In any event, each affidavit is provided again as attachments A and B to this memorandum.

By contrast, this case alleges a breach of *assumed* professional duty, not a breach of professional duty imposed by law. The appeal from Judge Nicholson's order does not address breach of assumed professional duty. By action, a person can assume a duty not otherwise imposed, thereby voluntarily taking on the obligation to act with due care. E.g., *Sherer v. James*, 351 S.E.2d 148, 150 (S.C. 1986); *Roundtree Villas Assn. v. 4701 Kings Corp.*, 321 S.E.2d 46, 50-51 (S.C. 1984); *Miller v. City of Camden*, 451 S.E. 2d 401, 404 (S.C. App. 1994). Assumed duty applies to attorneys. *In the matter of Padgett*, 349 S.E.2d 338 (S.C. 1986). ("Once respondent [attorney] voluntarily assumed the obligation of handling these funds, he incurred the duty to properly account for them. ")

The lawyer defendants voluntarily assumed fiduciary duties towards absent class members, as they stated on the record in the class action. A voluntarily assumed duty can be breached. The breach was of a fiduciary duty and the Diocese aided and abetted that breach in joining the misrepresentation made which no written order included, and in consenting to a reduced notice program for the class (reduced, without objection, from nationwide notice to only statewide notice) that had no chance of providing notice to the plaintiff.

The motions to dismiss under SCRCP 12(b)(6) should be denied.

The motions by the Diocese. In addition to its motion to dismiss pursuant to SCRCP 12(b)(6), the Diocese contends that no defendant can aid and abet a breach of fiduciary duty by class counsel in concluding a class action settlement. But of course, as set forth above, the Diocese participated in misrepresenting to the trial judge the "understanding" that class members who failed to get notice would be treated the same as class members who did get notice and made no objection to the reduced notice program. The Diocese voluntarily assumed the same

obligation as did class counsel, even though that obligation was not imposed on the Diocese by operation of law. Those factual issues preclude a motion to dismiss.

The Diocese also argues, motion at p. 2, that the class action court “considered and overruled” certain objections to the class action, but (a) no orders from the class action address breach of assumed duty, and (b) no objections from those then represented by plaintiff’s present counsel, whose clients opted out of the class action (having gotten settlement terms superior to those of the class), were ruled on by the trial court. As the trial court’s order of July 31, 2007 states, those objections by clients who settled their claims were *waived*. Attachment C. Those objections were not ruled upon, as they should have been by the trial court.

The motion to dismiss by the Diocese should be denied.

The Diocese motion as to the Bishop. As noted above, the Diocese defendants also contend that the present Bishop, Bishop Guglielmone, should be dismissed because the class action took place in 2007 and Bishop Guglielmone did not assume his office until 2009. Alternatively, the Diocese defendants move for summary judgment contending in a conclusory way, with no evidentiary support, that there are no genuine issues of material fact for trial that somehow the court would have to intrude on the First Amendment to find the current Bishop liable as a successor in interest to the Bishop then presiding in 2007. Motion at p. 3.

The motion should be denied. As noted above, in this case the Bishop is joined in his official capacity as a party necessary for complete relief under SCRCP 19(a) because he is the present Bishop. Complaint ¶ 7. He is not joined as a party with individual liability because all persons who work for the Diocese are subordinate to him. To enforce any order the Bishop is answerable to the court.

The complaint quotes the transcript of the class action, which is on file with this court, and the affidavits by Michael Virzi that set out the breach of fiduciary duty by the lawyer defendants, which was aided and abetted by the Diocese defendants when they opposed any relief for this plaintiff despite the “understanding” presented on the record to the class action court.

The motion for protective order. The motion for protective order sought a stay of discovery until the motions to dismiss were resolved. Accordingly, that motion is moot, and discovery should proceed.⁴ In the event any party contends it is not moot, the motion should be denied.

Conclusion

The motions to dismiss and for summary judgment should be denied. The motion for protective order is moot, but should be denied if any party contends otherwise.

Respectfully submitted,

s/ Gregg Meyers

Gregg Meyers, SC Bar No. 9908
217 Lucas Street Unit F1
Mt. Pleasant SC 29464
843-324-1589
attygm@gmail.com

Attorney for the Plaintiff

⁴ The court should enter a scheduling order which should establish deadlines in this case. Counsel for the plaintiff will bring to the hearing a scheduling order to propose January 15, 2020 as the deadline to amend the pleadings and to join parties; expert disclosure by the plaintiff by February 15, 2020 and the defendants by March 15, 2020, Discovery completed by May 1, 2020, with discovery requests served in time to be responded to by that deadline; dispositive motions by June 1, 2020; mediation by July 1, 2020; pre-trial briefs exchanged by July 15, 2020; a pre-trial hearing by July 30, 2020; and trial not before September 1, 2020.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2018-CP-10-_____

Robert Chimento,	)
	)

Plaintiff,	)
	)

v.	)
	)

Lawrence E. Richter, Jr.,	)
---------------------------	---

David K. Haller,	)
------------------	---

Richter and Haller, LLC,	)
--------------------------	---

The Bishop of Charleston a corporation	)
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Sole, and Robert E. Guglielmone, Bishop	)
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Of Charleston,	)
	)

Defendants.	)
	)

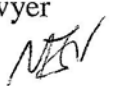
AFFIDAVIT OF MICHAEL J. VIRZI

NOW COMES Michael J. Virzi, and states, under oath, the following:

1. I am offering this affidavit, pursuant to S.C. Code Ann. § 15-36-100(b), as an expert witness on behalf of Plaintiff to support his Complaint against Defendants Lawrence E. Richter, Jr., David K. Haller, and Richter and Haller, LLC, (hereinafter "Richter Defendants") for professional negligence.

2. My qualifications to give expert testimony include the following:

- A. I am a lawyer licensed to practice law in South Carolina, and my practice focuses exclusively on matters of legal malpractice, ethics, and lawyer discipline;
- B. I am a former Assistant Disciplinary Counsel to the South Carolina Supreme Court, I serve on the South Carolina Bar's Ethics Advisory and Professional Responsibility Committees, and I served a three-year term as Chair of the former and currently serve as Chair of the latter;
- C. I have authored five published articles, numerous Ethics Advisory Opinions, and a book chapter on matters involving lawyer ethics and malpractice, I teach Professional Responsibility at the University of South Carolina School of Law, I am a frequent CLE speaker and law school guest lecturer and have given more than 100 presentations on the topics of lawyer



malpractice, ethics, and lawyer discipline, and I am one of six instructors for the South Carolina Bar and Supreme Court's ongoing Legal Ethics and Practice Program;

- D. I am the Ethics Chair for the South Carolina Association for Justice and a member of the South Carolina Association of Ethics Counsel, the Association of Professional Responsibility Lawyers, and the ABA Center for Professional Responsibility; and
- E. I have provided expert testimony on matters involving the standard of care for lawyers on more than 75 occasions either in court, in deposition, or by affidavit, I have been qualified in federal and state courts in South Carolina as an expert in matters of lawyer ethics and malpractice, and I am familiar with the standard of care applicable to lawyers in the circumstances involved in this case.

3. My opinion is based on review of the following documents:

- A. Complaint in the above-captioned case; and
- B. Affidavit of Michael J. Virzi, which I provided in John Doe 297 v. Bishop of Charleston et al., dated March 29, 2016 (attached hereto), and documents identified therein.

4. It appears that Plaintiff is a member of the class of plaintiffs identified in a class action brought by Richter Defendants in 2006 and that the duties Richter Defendants assumed and owed to Plaintiff, along with the breaches thereof, are the same as those identified (as to John Doe 297) in paragraphs 7 through 13 of the attached affidavit, which I incorporate herein by reference.

5. It is my professional opinion that Richter Defendants' conduct as alleged in the Complaint in this case fell below the degree of skill, knowledge and judgment usually possessed and exercised by members of the legal profession in South Carolina, and that they breached duties of competence, diligence, communication, and loyalty to Plaintiff, some of which has been admitted by Defendant Haller in court in 2013 as identified at paragraph 9 of the attached and incorporated Affidavit.



6. The opinions in this affidavit are given to a reasonable degree of certainty and are specifically based on the evidence listed above and in the attached and incorporated Affidavit. I reserve the right to alter, amend, modify, reduce, or expand these opinions if and when additional information is presented.

Further affiant sayeth naught.


Michael J. Virzi, Esq.

State of South Carolina
County of Richland

Sworn and subscribed before me
This 5th day of December, 2018


Notary Public

My Commission Expires : 10/18/26

Attachment B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2016-CP-10- <u>1632</u>
John Doe 297,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
The Bishop of Charleston, a	)	
Corporation Sole; Robert	)	
Gugliemone, The Bishop Of	)	
Charleston, in his official capacity;	)	
Rev. Monsignor Martin Laughlin,	)	AFFIDAVIT OF MICHAEL J. VIRZI
former Administrator of the	)	
Diocese of Charleston, in his	)	
official capacity; Robert J. Baker,	)	
former Bishop of Charleston, in his	)	
official capacity;	)	
Lawrence E. Richter, Jr.,	)	
David K. Haller, and	)	
Richter and Haller, LLC.	)	
	)	
Defendants.	)	

NOW COMES Michael J. Virzi, and states, under oath, the following:

1. I am offering this affidavit, pursuant to S.C. Code Ann. § 15-36-100(b), as an expert witness on behalf of Plaintiff to support his Complaint against Defendants Lawrence E. Richter, Jr., David K. Haller, and Richter and Haller, LLC, (hereinafter "Richter Defenants") for professional negligence.
2. My qualifications to give expert testimony include the following:
 - A. I am a lawyer licensed to practice law in South Carolina, and my practice focuses exclusively on matters of legal malpractice, ethics, and lawyer discipline;

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Attachment B

- B. I am a former Assistant Disciplinary Counsel to the South Carolina Supreme Court, I serve on the South Carolina Bar's Ethics Advisory and Professional Responsibility Committees, and I served a three-year term as Chair of the Ethics Advisory Committee;
 - C. I have authored three published articles, numerous Ethics Advisory Opinions, and a book chapter on matters involving lawyer ethics and malpractice, I have taught courses at the University of South Carolina School of Law in Professional Responsibility and Fundamentals of Law Practice and Professionalism, I am a frequent CLE speaker and law school guest lecturer on the topics of lawyer malpractice, ethics, and lawyer discipline, and I am one of six instructors for the South Carolina Bar and Supreme Court's ongoing Legal Ethics and Practice Program;
 - D. I am a member of the South Carolina Association of Ethics Counsel, the Association of Professional Responsibility Lawyers, the National Institute for Teachers of Ethics and Professionalism, and the ABA Center for Professional Responsibility; and
 - E. I have provided expert testimony on matters involving lawyer ethics and malpractice on more than 50 occasions either in court, in deposition, or by affidavit, I have been qualified in federal and state courts in South Carolina as an expert in matters of lawyer ethics, and I am familiar with the standard of care applicable to lawyers in the circumstances involved in this case.
3. My opinion is based on review of the following documents:
- A. Complaint in the above-captioned case;
 - B. Complaint, dated May 10, 2005, and filed May 12, 2005, in John Doe #66 v. The Bishop of Charleston et al., Case No. 05-CP-10-2053;
 - C. Complaint, dated August 10, 2005, and filed August 12, 2005, in John Doe #66A v. The Bishop of Charleston et al., Case No. 05-CP-10-3293;
 - D. Complaint, dated December 1, 2005, and filed December 2, 2005, in John Doe #53 et al. v. The Bishop of Charleston et al., Case No. 05-CP-10-4913;
 - E. Amended Complaint, dated October 6, 2006, and filed October 6, 2006, in John Doe #67 et al. v. The Bishop of Charleston, Case No. 06-CP-18-1311;

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- F. Motion to Certify Classes and for Preliminary Approval of Class Settlement, dated October 6, 2006, and filed October 6, 2006, in John Doe #53 et al. v. The Bishop of Charleston et al., Case No. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-____ (blank line in original);
- G. Consent Order of Dismissal Without Prejudice, dated October 19, 2006, and filed October 23, 2006, in John Doe #66 v. The Bishop of Charleston et al., Case No. 05-CP-10-2053;
- H. Consent Order of Dismissal Without Prejudice, dated October 19, 2006, and filed October 23, 2006, in John Doe #66A v. The Bishop of Charleston et al., Case No. 05-CP-10-3293;
- I. Consent Order of Dismissal Without Prejudice, dated October 19, 2006, and filed October 23, 2006, in John Doe #53 et al. v. The Bishop of Charleston et al., Case No. 05-CP-10-4913;
- J. Motion to Certify Classes and for Preliminary Approval of Class Settlement, dated January 15, 2007, and filed January 17, 2007, in John Doe #53 et al. v. The Bishop of Charleston et al., Case Nos. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636;
- K. Settlement and Arbitration Agreement, dated January 12, 2007, and filed January 17, 2007 in John Doe #53 et al. v. The Bishop of Charleston et al., Case Nos. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636;
- L. Plaintiff's Petition for An Award of Attorneys Fees and Litigation Costs, dated February 14, 2007, and filed February 14, 2007, in John Doe #53 et al. v. The Bishop of Charleston et al., Case Nos. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636, and exhibits attached thereto including:
 - i. Affidavit of Lawrence E. Richter, Jr. in Support of Plaintiffs' Petition for Attorneys Fees and Costs, with attached timesheets and expense summaries;
 - ii. Affidavit of David K. Haller in Support of Plaintiffs' Claim for Attorneys Fees and Costs;
 - iii. Affidavit of Angela Pittard, with attached timesheets;
 - iv. Affidavit of John P. Freeman in Support of Class Action Settlement Approval and Class Counsel's Fee Petition, with attached resume and Comparative Table of Selected Settlements; and

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Attachment B

v. Affidavit of Lionel S. Lofton in Support of Plaintiff's Petition for Attorneys Fees and Costs, with attached timesheets.

- M. July 12, 2007, letter from Lawrence E. Richter, Jr., to The Honorable Diane S. Goodstein regarding "John Doe #53...";
- N. Transcript of Record before The Honorable Diane S. Goodstein, dated August 9, 2007, in John Doe 53 et al. v. The Bishop of Charleston et al., Case Nos. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636;
- O. Transcript of July 13, 2007, hearing before Judge Goodstein;
- P. Order Approving Settlement, dated July 30, 2007, and filed July 30, 2007, in John Doe #53 et al. v. The Bishop of Charleston et al., Case Nos. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636;
- Q. Notice of Motion and Motion to Enforce Settlement, dated April 16, 2012, in John Doe #53 et al. v. The Bishop of Charleston et al., Case Nos. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636;
- R. Transcript of Record before The Honorable Edgar W. Dickson, dated April 12, 2013, in John Doe 53 et al. v. The Bishop of Charleston et al., Case Nos. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636;

4. These factual and legal materials are of the type reasonably relied upon by experts in the field of legal malpractice in forming their opinions.

5. Based on my experience, education, training, and knowledge of the standard of care for lawyers, and on my review of the above-listed documents, it is my opinion that the Richter Defendants engaged in negligent acts and omissions in their representation of Plaintiff and that the Richter Defendants' conduct fell below the standard of care.

6. In particular, it appears from the above-referenced documents that the Richter Defendants represented a class of persons of which Plaintiff was a member in class action litigation beginning in 2006. Two of the class actions were brought on behalf of, among others, all individuals

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Attachment B

of a certain age “who, as minors, were sexually abused at any time by agents or employees of the Diocese of Charleston,” a group that apparently includes Plaintiff. Whether an unnamed class member becomes a client upon the filing of a class action or upon certification of the class is a much-debated issue; however, class certification is generally regarded as creating an attorney-client relationship if one did not already exist. Furthermore, prior to class certification, class counsel owes fiduciary duties to unnamed class members upon the filing of a class action, regardless of whether breach of those duties is regarded as malpractice or professional negligence. The Richter Defendants owed to Plaintiff the same duties surrounding the allegations in this case that they owed to the named plaintiffs in the class actions. Those duties included competent, diligent, and loyal pursuit of Plaintiff’s interests in the litigation against the Diocese and related defendants, and reasonable communication starting with notice by publication.

7. It appears the Richter Defendants sold out the rights and interests of Plaintiff in some ways in favor of the named class representatives, in some ways in favor of an excessive fee for themselves, and in some ways in favor of the opposing parties in the class in which they represented Plaintiff. In particular, it appears from the above-referenced documents that the Richter Defendants undertook to represent a class of persons that included Plaintiff without informing the class of Defendant Richter’s extensive personal relationship with the primary adverse party, the Diocese of Charleston, and Defendant Richter’s continuing work on behalf of the Diocese during the litigation in which the Richter Defendants’ clients, including Plaintiff, were adverse to the Diocese. It is apparent from Richter’s own affidavit (identified in paragraph 3.L.i above) that he has a lifelong, extensive personal relationship with the Diocese and many of its then-current and former constituents, in addition to being a constituent himself and continuing to perform official functions

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during the pendency of the cases in which he represented the class that included Plaintiff. This presented a conflict of interests, requiring the Richter Defendants to disclose the nature and extent of the relationship to the clients, along with the risks of the representation and the reasonably available alternatives. The Richter Defendants apparently did not do so.

8. It further appears that the Richter Defendants initially filed a Motion to Certify Classes on October 6, 2006, that included nationwide notice but later filed a renewed Motion to Certify Classes on January 17, 2007, that removed the nationwide portion of the notice and reduced notice to only South Carolina and neighboring cities despite that the same motion defined a nationwide class. The only change in the notice paragraph between the October motion and the January motion, beyond renumbering the exhibits, was the deletion of the words "USA Today," which was the only nationwide publication in the October notice list. Thus the Richter Defendants appear to have taken affirmative steps to exclude from class notice nearly the entire country outside of South Carolina, including North Carolina where Plaintiff lived, despite identifying and ultimately obtaining certification of a nationwide class.

9. Statements by Defendant Richter at the July 13, 2007, hearing indicated that any class member that did not receive notice (a group that included Plaintiff) would be entitled to bring claims after the claims period and that the Diocese would waive all defenses to such later claims. Other discussions at that hearing involved the same waiver and late-claim entitlement issues specifically with respect to several individual class members who had contacted the Diocese previously regarding allegations of abuse. The July 30, 2007, order preserves the late-claim rights of (i.e., requires the Diocese to waive defenses as to) only those individuals that had previously contacted the Diocese, not of other class members who are entitled to notice but did not receive it, such as Plaintiff. In a

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June 15, 2011, order Judge Harrington ruled that the July 13, 2007, hearing colloquy and the July 30, 2007, order referred only to the individuals who had previously come forward with abuse claims but not received actual notice, and not to the broader group of class members, like Plaintiff, who lived outside the area of notice by publication. Regardless of whether Defendants intended at the July 13 hearing to address this broader group or only the individuals who had come forward already, Defendants failed to protect the interests of the broader group, of which Plaintiff is a member, either by not addressing their rights at the hearing or by addressing them at the hearing but making no effort to secure their rights in a final order. Thus, as Defendant Haller admitted in the April 12, 2013 hearing, the Richter Defendants failed to protect their clients' interest in the litigation, specifically their due process rights.

10. It appears that the Richter Defendants engaged in additional acts and omissions that were both disadvantageous to Plaintiff and advantageous to the Richter Defendants themselves, including consenting to the dismissal of the Charleston County cases without client consent in furtherance of the Richter Defendants' efforts to obtain a favorable order regarding their fees, which fees themselves were unethical in several ways, including that they sought and received a fixed fee simultaneously with a common-fund recovery pool available to claimants, and that they were based on blatantly false attorney time records. The Richter Defendants' reduction of the notice (to the exclusion of nearly the entire country outside of South Carolina) favored the Richter Defendants' own financial interests to Plaintiff's detriment because the Richter Defendants had authorized the claims arbitrator to adjust awards so that the total claims would not exceed the remainder of the pool after payment of the Richter Defendants' \$2.5 million fee, and less notice to class members would mean fewer claimants to potentially interfere with the Richter Defendants' fee. The Richter

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Defendants thus not only favored their own interests above Plaintiff's but also provided the Diocese with an argument in its defense against subsequent claims by class members outside the notice zone, including Plaintiff, sacrificing their own client's rights in favor of the opposing party. The Richter Defendants also agreed to reduce their clients' recovery but not their own fees, if the claims exceeded the pool, and agreed to possibly reducing the claimants' pool by \$100,000, which would be contributed toward a settlement between the Diocese and several opted-out class members, all to Plaintiff's detriment and to the financial benefit of the Richter Defendants themselves.

11. It further appears that the Richter Defendants engaged in a broad scheme to generally obtain results favorable to the Diocese. The scheme appears to have included:

- A. forum shopping, requiring the Richter Defendants to consent to the dismissal of the Charleston County cases, which they did without the knowledge or consent of their clients and to Plaintiff's detriment;
- B. misrepresenting to the Dorchester County court that the action had not been settled when it had, in order to obtain a favorable forum and complex case designation; and
- C. failing to seek a post-claims fairness hearing or to provide any procedure in the settlement agreement for post-claim review, and further sacrificing clients' opportunity for post-claim review by providing in the settlement agreement that the arbitrator shall have sole discretion in awards, not subject to objection, review, appeal, or suit and that, by participating in the claims process, claimants expressly waive the right to appeal.

12. It further appears that the Richter Defendants engaged in acts and omissions that would be potentially advantageous to the class representative clients and disadvantageous to the non-

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class-representative clients such as Plaintiff, including agreeing to subject some clients to a damages matrix and claim scrutiny to which class representatives were not subjected, settling the claims of the class representatives prior to class certification and court approval of the class settlement, and expressly agreeing to settlement terms for the class representatives regardless of court approval of the class settlement.

13. It further appears that the amount of the Richter Defendants' fee was improper and unreasonable in amount, timing, and source. The payment structure favored the Richter Defendants' own interest above those of Plaintiff, their client. The Richter Defendants' fee petition, affidavits and billing records overstated work performed and misrepresented the nature of the case. The Richter Defendants described the case as hotly contested and aggressive, and the defense formidable and substantial, depicting a time-intensive case requiring the highest skills of the most competent counsel; yet the documents indicate contrary circumstances: little discovery (some paper requests from class counsel but no evidence of responses received nor of requests received from opposing counsel), no depositions, few motions, and after mediation no client disputes, few hearings, and no animosity or contention except on the issue of the Richter Defendants' collection of their fee. The Richter Defendants' billing records show 3385.5 total hours spent by lawyers and staff of Defendant Richter and Haller, LLC; however many of the time entries are clearly false in that they are nonsensical or impossible, including:

- A. each and every entry on all 68 pages of billing records is a round, even-hour increment or an entry of ".5" hours;

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- B. countless round-number or .5-hour time entries at “12:00:00 AM”—including multiple tasks by the same person at the same time—while other entries indicate exact times;
- C. a 10-hour time entry for “Oversight and Review” by “LER” on the 30th day of each month for 3 and a half years, including the same 10-hour time entry for “Oversight and Review” by “LER” just nine days after the first activity in the case in July 2003;
- D. a 2-hour time entry for “Bookkeeping” on the 30th day of each month;
- E. a 3-hour time entry for “Photocopying / Monthly” at irregular intervals but always exactly 3 hours, including one such entry when no other work had been performed in the previous month;
- F. three 5-hour time entries (one each for “DKH,” “LER,” and “Clerk”) for “Legal Research” on the 30th day of each month, including January 30, 2007, within 2 days of the end of the case (and after which no further time is recorded except 7 hours of faxing by “Staff” and 14 hours of emailing by “DKH” & “LER” over the next 2 days);
- G. time entries on days that do not exist: February 30, 2004, and February 30, 2005;
- H. a 16-month period, from September 2003 through December 2004, when only 5.5 hours of specific work is entered, yet 426 hours is entered in the same repeated, identical, rote entries of “Oversight and Review,” “Bookkeeping,” “Legal Research,” and “Photocopying / Monthly” described hereinabove;
- I. 3 .5-hour time entries for drafting 3 Certificates of Service at the same time on the same day (this set of entries occurs multiple times);

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- J. 12 *consecutive* 1-hour time entries by “LER” for work on 12 different documents, all at specific times beginning at “07:38:38 AM” on “10/26/06” but extending consecutively over a period of approximately 1 hour and 49 minutes ending at “09:27:30 AM,” with many 1-hour entries within less than a minute of each other;
- K. numerous sets of entries similar to the 12 described in the immediately preceding subparagraph (J), such as 3 consecutive 1-hour time entries by “LER” for work on 2 documents, all at specific times beginning at “03:54:19 PM” but extending consecutively over a period of 1 minute and 13 seconds;
- L. entries of exactly 20 hours for drafting each discovery document;
- M. multiple instances of more than one 20-hour time entry for the same person (“DKH”) on the same day;
- N. 27.5 hours (in 55 increments of .5 each, all at “12:00:00 AM”) in one day by “DKH” for emailing to “David K. Haller”;
- O. 60 hours (10 by “LER” and 50 by “DKH”) for amending complaints that ultimately contained very little amendment, including one which apparently changed only the county in the caption and the date at the end;
- P. multiple instances of one person (“DKH” in some instances, “LER” in others) of billing more than 24 hours in a day;
- Q. 568.5 hours of entries appended to the end of the (otherwise chronological) timesheets, for dates ranging from 2004 through 2007, 500 hours of which is in whole multiples of 10 and expressed in date ranges rather than in dates and times,

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including 3 130-hour single entries by “DKH” for one- and two-week time periods in June and October 2006; and

- R. one of the above-referenced 130-hour single entries by “DKH” for the eight-day time period of October 4-11, 2006, during which period “DKH” had already billed 51.5 hours one day and 20 the next, totaling 201.5 hours in 8 days (including weekends) for an *average* of more than 25 hours per day.

The Richter Defendants stated to the court that the above entries were “by far conservative” estimates of time actually spent on the specific services indicated, and the above list is not exhaustive of the nonsensical and impossible entries. Thus the Richter Defendants appear to have made false statements to a tribunal in support of a fixed fee that was unreasonable and put the Richter Defendants in a position potentially adverse to Plaintiff without taking appropriate steps to deal with the conflict of interests created thereby.

14. As a result, it is my opinion that the Richter Defendants’ conduct fell below the degree of skill, knowledge and judgment usually possessed and exercised by members of the legal profession in South Carolina, and that they breached duties of competence, diligence, communication, and loyalty to Plaintiff.

15. The opinions in this affidavit are given to a reasonable degree of certainty and are specifically based on the evidence listed above. I reserve the right to alter, amend, modify, reduce, or expand these opinions if and when additional information is presented.

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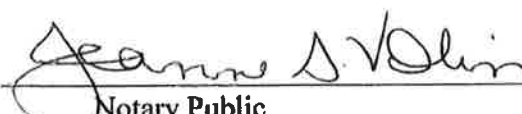
Further affiant sayeth naught.


Michael J. Virzi, Esq.

State of South Carolina
County of Richland

Sworn and subscribed before me

This 29th day of March, 2016


Notary Public

My Commission Expires : My Commission Expires May 15, 2018

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

COUNTY OF DORCHESTER)

CASE No. 06-CP-18-1310

CASE No. 06-CP-18-1311

CASE No. 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,)

ORDER OF THE COURT

v.)

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

Defendants.)

The Court having been advised, as evidenced by the writing attached hereto as Exhibit A, that all pending motions, objections, rules to show cause, and any such related matters amongst the parties in this class action proceeding have been resolved with prejudice, and that all appeal rights of all "objectors" are waived *AND to this extent acknowledged and approved*, said agreement is hereby approved and made the Order of this Court.

AND IT IS SO ORDERED!

Further, it is ordered that, as to any settlement funds in this matter, any restriction or impediment to the disbursement of any such funds heretofore imposed by this Court are lifted, removed, and extinguished. This class settlement shall immediately proceed as provided for in the Settlement and Arbitration Agreement entered into on January 15, 2007 and that certain Order of this Court in this matter dated July 30, 2007.

AND IT IS SO ORDERED!

QSP 10/3
 - 1 -

Furthermore, in the Court's Order of July 30, 2007 approving the Class settlement, the Court made reference to the existence of individuals who, according to the Diocese, (1) were potential class members; (2) came forward to the Diocese at some time in the past with their allegations of child sexual abuse; (3) never resolved their potential claims; and (4) were entitled to receive *actual notice* of the proposed class settlement pursuant to the agreement of the parties and earlier instructions from this Court (hereinafter referred to as "Actual Notice Class Members"). The Defendants have asked the Court to clarify how the settlement process will treat the Actual Notice Class Members. Accordingly, this Order clarifies and, where in conflict, supersedes the Court's Order of July 30, 2007.

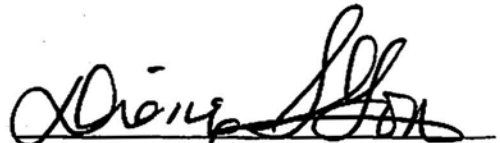
Actual Notice Class Members shall have 120 days from receipt of actual notice of the class settlement to present their claims to an Arbitrator in the same manner as provided for in the Settlement and Arbitration Agreement. Actual Notice Class Members who present their claims more than 120 days after they receive actual notice of the settlement shall be barred from participation in the settlement process and shall be treated like any other class member who has failed to timely present a claim to the class settlement fund. Both the Arbitrator's fees and the claimant's recovery (if any) shall be paid by the Diocese, and not by the class settlement fund, because the settlement fund may already have been subject to a final accounting by the time such claims are processed.

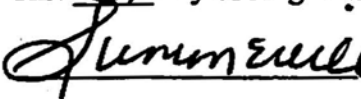
AND IT IS SO ORDERED!

Furthermore, the Court has appointed Desa Ballard, Esq. as a non-testifying consultant in evaluating and addressing the issues before the Court in this matter, as all counsel was made aware of in a August 29, 2007 Order. Payment for Ms. Ballard's services shall be made from the

001-2-2013

Class settlement fund within ten (10) days after the settlement funds are released from the Court's supervision.


Diane S. Goodstein
Presiding Judge

This 31 day of August 2007
 South Carolina

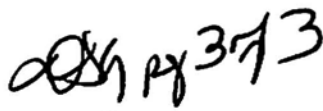


EXHIBIT A

**A. PETER SHAHID, JR.
SHAHID LAW OFFICE, LLC**

15 STATE STREET
P.O. BOX 591
CHARLESTON, SOUTH CAROLINA 29402

OFFICE (843) 853-4500
FAX (843) 722-1119
TOLL FREE 1-888-792-2456

August 30, 2007

VIA FACSIMILE TO: (843) 881-1400 / (843) 723-2852
AND REGULAR UNITED STATES MAIL

Lawrence E. Richter, Jr., Attorney at Law
Richter Law Firm, LLC
622 Johnnie Dodds Boulevard
P.O. Box 1089
Mount Pleasant, SC 29465

Gregg Meyers
Attorney at Law
P.O. Box 1297
39 Broad Street, Suite 300
Charleston, SC 29401

Re: John Doe #53, John Doe #66, John Doe 66A, John Doe #67, Jane Doe #1, Jane Doe #2, and Rachel Roe, individually and as representative of a class of people similarly situated v. The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity
Case No. 2006-CP-18-1310
Case No. 2006-CP-18-1311
Case No. 2006-CP-18-1636

Dear Larry and Gregg:

This is to confirm that the Diocese will offer \$1.375 million to settle claims of the eleven individuals represented by Gregg Meyers. Those individuals, who have been identified in previous correspondence, are John Doe C, John Doe D, Jane Doe G, John Doe H, Jane Doe I, John Doe J, John Doe K and the mother of John Doe J, John Doe L, John Doe M, Jane Doe M. The payments are for personal injuries as defined in the IRS Code and are independent of the Class claims process. These claimants will opt-out of the class claims process and will execute releases. These claimants retain the right to meet with the presiding Bishop or the Apostolic Administrator, as they so desire.

This offer is made on the condition that all of the objections, including any all appeal

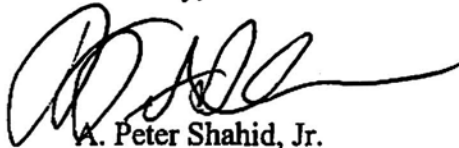
rights to the pending class action settlement by any of Mr. Meyer's clients be withdrawn, and waived with prejudice.. Mr. Meyers has certified he is unaware of any other potential or actual objectors, and does not represent any other person who has an objection to the January 12, 2007 Settlement Agreement and July 30, 2007 Order. Any other claimant represented by Mr. Meyers and not referenced above, will present their claim through the class claim process.

This offer is also contingent on the receipt by the Diocese of \$100,000 from Mr. Richter and/or his clients.

All parties and objectors agree to withdraw all pending motions filed, with prejudice, including Class Counsel/Plaintiffs Motion for Sanctions, and will dismiss the Rule to Show Cause; the Objectors Motion to Alter or Amend; the Defendants' Motion to Alter or Amend, Motion to Stay Execution, Motion to Deposit Funds with the Court, and Motion to Dismiss/Vacate the Rule to Show Cause. This offer if and when accepted as acknowledged by Counsel's signatures below, is intended to pave the way for final approval of the class action settlement and to eliminate any and all objections or appeals.

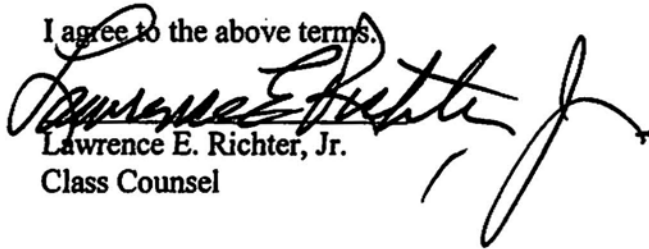
The \$1.375 million will be paid from the surplus funds, if any, after the claims process has been completed. In the event there are insufficient or no funds remaining from the \$12 million pool of funds, the Diocese is still obligated to pay the \$1.375 million as stated above. Payment is expected sometime after January 1, 2008.

Sincerely,



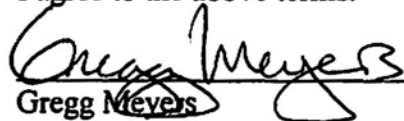
A. Peter Shahid, Jr.

I agree to the above terms.



Lawrence E. Richter, Jr.
Class Counsel

I agree to the above terms.



Gregg Meyers

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2018-CP-10-5802
Robert Chimento,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Lawrence E. Richter, Jr.,	)	
David K. Haller,	)	
Richter and Haller, LLC,	)	
The Bishop of Charleston a corporation	)	
Sole, and Robert E. Guglielmone, Bishop	)	
Of Charleston,	)	
	)	
Defendants.	)	
	)	

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2019-CP-10-5892
Jane Doe 304,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Lawrence E. Richter, Jr.,	)	
David K. Haller,	)	
Richter and Haller, LLC,	)	
The Bishop of Charleston a corporation	)	
Sole, and Robert E. Guglielmone, Bishop	)	
Of Charleston,	)	
	)	
Defendants.	)	
	)	

**Plaintiff's Consolidated Memorandum
Opposing Defendants' Motions**

The South Carolina Supreme Court's order of June 15, 2021 allocated these cases so as to have Judge Cole decide the professional negligence and breach of fiduciary duty claims against defendants Richter, Haller and their firm. Out of an abundance of caution, this memorandum and its attachments also responds to the motions by the Diocese, even though we believe they are not presently at issue.¹

Each of the above-captioned plaintiffs opposes the defendants' motions to dismiss under SCRPC 12(b)(6), the lawyer defendants' motion for protective order, and the alternative motion for summary judgment by the Diocese defendants.

As set out below in more detail, the professional negligence and breach of fiduciary claims arise out of the conduct of a class action lawsuit. Plaintiffs are each a resident of a state other than South Carolina who are within one of the settlement classes as it was defined and approved. The lawyer defendants and their firm were class counsel.

At three points in the class proceedings the lawyer defendants and the Diocese together colluded to damage the plaintiffs and breached the fiduciary duty owed by the lawyer defendants, each time serving their own financial interests above their duties to the absent members of the class.

First, between October 2006 and January 2007, when by class counsel's own account class counsel accommodated a request of the Diocese to remove nationwide notice to the class settlement, agreeing to restrict notice to only publications in and immediately around South

¹ Counsel have conferred about the Diocese motion to dismiss and for summary judgment as to now former Bishop Guglielmone individually and that motion has been resolved. Bishop Guglielmone has retired, and counsel have agreed to proceed against the Corporation Sole, permitting Bishop Guglielmone in his official capacity to be voluntarily dismissed without prejudice.

Carolina. Doing so deprived these plaintiffs of any opportunity to receive notice, and each plaintiff was unaware of class counsel's breach of duty until recently.²

Second, in July 2007, during the time the court was reviewing the class settlement for preliminary approval, when the parties misrepresented to the trial court how absent members of the class who got no notice (such as Mr. Chimento and Jane Doe 304) would be treated if "anybody else" later came "out of the woodwork," as counsel for the Diocese expressed it. The misrepresentation was that persons such as Mr. Chimento and Jane Doe 304 would be accorded the same relief, including "the same defenses that [the Diocese] have given up in this class settlement." (each quote from Att. R). Although supposedly an agreement between class counsel and the Diocese, no written order of the class action ever secured those benefits.

Third, when the parties to the class settlement (as well as the circuit court) ignored a direct order of the South Carolina Supreme Court³ to conclude the class action in 2009. It appears the order was ignored so as to evade appellate review, as no post-award fairness hearing has ever been held and no final order has ever been entered in the class action. How the class settlement was implemented, and how class counsel charged (and apparently overcharged) class members has never been reviewed. Like the Supreme Court's 2009 order, a motion for a post-award fairness hearing filed by one of the class representatives in 2016 has simply been ignored.

These three core acts, each of which required collaboration between class counsel and the Diocese, do not by any means describe the entirety of the collusive misconduct in the class

² See, **Error! Main Document Only.** *True v. Monteith*, 327 S.C. 116, 489 S.E.2d 615 (S.C. 1997) (suit permitted for attorney's breach of duty 17 years earlier).

³ The Supreme Court's order from March 2009 is at Att. T. Its directive was entirely ignored.

action. They are the three specific acts which contributed to depriving these plaintiffs of the benefit of the defenses waived in the class action.

Below we address the legal issues as they arise within the chronology of the collusive class action.

The 2005 collusive class action and its 2006 class settlement.

“In the summer of 2005,” (Att. A at p. 3 ¶ 9), class counsel filed two individual cases in Charleston County against the Diocese of Charleston on behalf of sexual abuse victims designated as John Doe 66 and John Doe 66A. (Att. A p. 10 reflects the case captions). Those cases were Nos. 2005-CP-10-2053 and 2005-CP-10-3293 and the public records show the complaints were filed, respectively, on June 2 and August 12, 2005.

After those filings, class counsel communicated to counsel for the Diocese (Mr. Shahid) “his intent to create a complete resolution of these particular claims and other potential sexual abuse claims through the creation of a class action agreement, approved by a South Carolina circuit court.” (Att. A, affidavit of Mr. Shahid at p. 3 ¶ 10). For his part, Mr. Shahid wanted the class to include “future claimants,” including those who allege a repressed memory of their childhood abuse. (Att. A at p. 3 ¶ 11). No class action case had yet been filed.

Class counsel had life-long ties to the Diocese.⁴ (E.g., Att. I, transcript of March 9, 2007 at pp. 102 – 104). On the strength of those life-long ties, and before any class action case had been filed, a meeting was arranged with the Bishop to discuss a class action settlement.

⁴ Class counsel’s life-long ties to the Diocese were never disclosed to the class, a failure to disclose a conflict of interest which Mr. Virzi notes fell below the standard of care. (Att. Q at pp. 5-6).

“In October 2005” a meeting took place with class counsel, the Bishop and other Diocese officials. (Att. A at p. 4 ¶ 13 and pp. 7-9, October 17, 2005 letter from class counsel written after that meeting), at which was discussed “the merits of a global resolution of all current and future claims by victims of childhood sexual abuse by Diocesan personnel in the creation of a class action settlement agreement.” As reflected in Mr. Shahid’s affidavit (Att. A p. 4 ¶ 14) and the correspondence, the parties discussed “a class resolution to the pending and potential claims against the Diocese,” and the “concept of obtaining universal peace.” Att. A p. 4 ¶ 14, quoting the October 2005 letter from class counsel. As explained by Mr. Shahid, “A critical component of those negotiations was to ensure that all claims of sexual abuse of minors, including those which could be initiated in the future were resolved.” (Att. A pp. 4-5 ¶ 15). As put by class counsel, the idea of a class settlement was “obtaining universal peace as it relates to these painful claims.” (Att. A at p. 7 ¶ 1).

After that meeting, in December, 2005 class counsel filed in Charleston County a class action complaint on behalf of one sexual abuse plaintiff (designated as John Doe 53), case 2005-CP-10-4913 (Att. A at p. 10 reflects the case caption and the public records show the case was filed December 2, 2005). The complaint does not purport to propose a class definition, but broadly alludes to two general aspects for persons in a class. The first is at Att. U ¶ 34,⁵ which refers to “victims of priest sexual abuse in South Carolina,” and the second (Att. U. ¶ 41) is “all individuals . . . who were sexually abused and/or otherwise molested by agents or employees of

⁵ “34. Plaintiff brings this action on behalf of himself and as a representative of a class of other persons similarly situated as victims of priest sexual abuse in South Carolina pursuant to Rule 23 of the South Carolina Rules of Civil Procedure.”

the Catholic Church,” excluding “those barred by law from asserting an action against the defendants.”⁶ Eventually two classes would be defined, as discussed below.

After that class action filing in December 2005 the parties scheduled and attended a mediation held in June 2006. Between the December 2005 class filing and the June 2006 mediation there was not a single motion heard or decided, and no depositions were taken. Nor had any motion for class certification been filed, let alone decided. SCRCP 23(d) requires a class certification motion to be brought “as soon as practicable” after a class action is filed.

The June 2006 mediation took place over two days, and was “aimed at resolving *all* claims of sexual abuse of minors” (Att. A p. 4 ¶ 15, emphasis in original). The parties agreed to a class settlement agreement as reflected in a handwritten agreement. (Att. A pp. 10 – 13).⁷

The June 2006 mediated class settlement attempted to define two proposed classes: one class defined as “actual victims of Diocese abuse” and another class defined as “spousal &/or parent claims deriving from victims abused.” (Att. A p. 5 ¶ 15, affidavit of Mr. Shahid, and Att. A p. 11, the handwritten mediated class settlement.)

Even after agreeing to two settlement classes, no motion to certify classes was filed. Nor was a motion for court approval of the class settlement filed. Such motions were required by SCRCP 23(c) which provides:

A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

⁶ “41. Plaintiff is entitled to the certification of a class of plaintiffs against representing all individuals, save for those barred by law from asserting an action against the defendants, in South Carolina who were sexually abused and/or otherwise molested by agents or employees of the Catholic Church under the supervision and/or control of the defendants.

⁷ A year later, a more detailed typed version of the agreement was produced, (Att. A pp. 14 – 34), discussed below where it appears in the chronology.

Instead of submitting the class settlement for court review in Charleston County, the parties agreed on a plan to judge-shop for a particular circuit judge to review the class settlement and class counsel's fee request. This plan required extensive cooperation between class counsel and the Diocese and, of course, from the judge who necessarily had to agree to be shopped-for.

The public record reflects a five-step process of maneuvers to accomplish getting judicial review of the class settlement away from judicial oversight in Charleston County so that the oversight could take place before the desired judge, then presiding in Dorchester County.

Step 1 was to file new class complaints. In August 2006 class counsel filed in Dorchester County two new class action cases against the same Diocese defendants, for clients whose claims were within the classes of the existing class settlement agreement but whose cases had not been previously filed. (Atts. B1 and B2, August 15, 2006 class action complaints in civil action numbers 2006-CP-18-1310 and -1311). These filings required cooperation from the Diocese, not only by its accepting service of those complaints (e.g., Att. C, acceptance of service filed 9-6-06 in -1310), but by making no motion to dismiss pursuant to SCRCP 12(b)(8) (due to the prior pending class action in Charleston County) or under SCRCP 12(b)(3) (for improper venue, given the class case filed and already settled in Charleston).

Step 2 was for class counsel to redundantly re-file in Dorchester County for John Doe 53 the identical class complaint that was already filed in 2005 in Charleston, which was still pending in Charleston County, and which had been the vehicle for the 2006 mediated class settlement. (Att. D, Dorchester County class complaint for John Doe 53, which is identical in substance to Att. U, the Charleston County Complaint at 2005-CP-10-4913.) Meaning, that John Doe 53 had identical class action complaints pending in each county. In this memorandum, the redundant class complaint at Att. D is referred to as the "cloned" class complaint.

Step 3 was to make in Dorchester County the first motion for court approval of the class and class settlement. Ten months after the first class action filing, and four months after the class settlement was reached (and the same day the cloned class complaint was filed in Dorchester County for John Doe 53), class counsel moved in Dorchester County for class certification and class settlement approval. (Att. E, Motion filed October 6, 2006). Pertinent to the motions addressed in this memorandum, that step 3 motion began a consistent definition of two classes consistent with the parties' discussions at the outset—to include all future sexual abuse victims. The classes are defined without geographic limit, meaning the classes are not limited to abuse victims who reside in South Carolina, even though they were abused in South Carolina. From that 2006 motion for class and settlement approval the classes were consistently defined as:

All individuals 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. (hereafter, the "Primary Class."

And:

The spouse and parents, of all individuals pursuant to the Primary Class and who suffered a loss of the abused individual's consortium, and who as spouses or parents have not previously had any similar claim adjudicated, resolved, or released,

(Att. E, October 2006 Motion for class and settlement approval at p. 2). Compare, Att. K at p. 2, revised motion for class approval, where the class definitions are unchanged, and Att. O, p. 20 where the class definitions are unchanged in the July 30, 2007 order concluding the preliminary approval process.

Step 4 was to get the cases assigned to the shopped-for judge. In Dorchester County the three newly filed class action cases, even though already settled, were designated complex, again

with consent by the Diocese. (Att. F, Order of October 10, 2006 filed October 17, 2006, granting consent motion). At that time the Supreme Court's complex case order required counsel to represent the the case(s) could not be settled. (Att. G, Supreme Court Order of July 26, 2006 for complex designation at p. 2 ¶ 2). These Dorchester County class cases were, of course, already included within the class settlement reached in June 2006. The shopped-for judge ordered the cases assigned to herself (Att. F, Order of October 17, 2006).

The fifth and final step in the judge-shopping process was to dismiss without prejudice the cases filed in 2005 in Charleston County. Class counsel wrote to the administrative judge in Charleston County and obtained consent dismissals without prejudice for each of three pending 2005 cases against the Diocese that had been mediated to the class settlement in June 2006. One of those cases was, of course, the John Doe 53 class action that had been cloned for redundant filing in Dorchester County. (Att. H, class counsel letter of October 17, 2006 and corresponding Consent Orders of October 23, 2006 dismissing each pending Charleston case without prejudice.)

With that final step, by October 23, 2006 the parties to the class settlement had moved the class and settlement approval process away from the judges they did not want in Charleston County to the judge they desired, in Dorchester County.⁸

Consistent with the intention to resolve all claims, the October 2006 motion for class approval proposed a nationwide notice program for the class settlement, seeking court approval to advertise the class settlement "at least once a week for six weeks" in the national newspaper

⁸ The shopped-for judge had long personal and professional ties to class counsel, none of which was disclosed to the class. (Att. J, July 13, 2007 order).

USA Today as well as in newspapers in and around South Carolina (Att. E p. 3 ¶ 3a) for the same six-week period. No internet website was proposed for notice.

One provision in the 2006 mediation agreement was that the (then) four class representative claims would be resolved for \$460,000 whether or not class approval was obtained. (Att. A at p. 12 ¶¶ 5-6). On November 26, 2006, the Diocese sent to class counsel two checks. (The checks are at Att. P.) One was payable to Richter & Haller LLC Client Trust Account for \$345,000. The other was payable to Richter & Haller, LLC for \$145,000.⁹ The first check funded distribution to the four individual clients whose cases were to be resolved whether the class action settlement as approved or not. (See Att. A p. 12). The second check represented a contingent fee payment for those cases.

Neither the Diocese nor class counsel disclosed those payments when class counsel later submitted patently fraudulent billing records as part of the class fee request, even though most of the time records submitted in the class action was time for which class counsel had already been paid by that contingent fee. Those checks were not included in any accounting of class funds disbursed.

No ruling was made on the 2006 motion for class and settlement approval, and it was later revised. On January 17, 2017 class counsel filed that revised motion for class and settlement approval, and for the first time attached a typed and signed version of the handwritten mediated class settlement reached in mediation seven months before. (Compare, Att. A pp. 10 – 13, the handwritten version, with Att. K pp. 6-28, the typed version filed January 17, 2017).

The revised motion is significant for two reasons. First, the revised motion altered the notice program from the proposed “at least once a week for six weeks” in *USA Today* and

⁹ The checks total \$490,000, a mistaken overpayment the Diocese later realized.

newspapers in and around S.C., to notice “at least once a week for six weeks” in only newspapers in and around S.C., eliminating the nationwide notice earlier proposed through *USA Today*. (Compare Att. E, October 2006 motion at p. 3 ¶ 3a — notice in *USA Today* — with Att. K, January 2007 motion for class and settlement approval at p. 3 ¶ 3a — notice without *USA Today*).

This was discussed nowhere in the transcripts of the class action. The change of notice meant every out of state victim (such as Mr. Chimento and Jane Doe 304) would get no chance of notice of the class action. The change was obviously was not the “best notice practicable” that Due Process requires for a class action. *Hospitality Management Associates, Inc. v. Shell Oil Co.*, 591 S.E.2d 611, 616 (S.C. 2004) (“the notice must be the best practicable....”)

During a 2014 hearing, class counsel’s lawyer represented to the court that the change to the notice program had come about from discussions between class counsel and the Diocese after the 2006 mediated agreement had been reached but before the 2007 revised motion for class settlement approval. Counsel for the lawyer defendants represented to the court:

[O]ur testimony will be that we proposed that [nationwide notice] to the Bishop and that the Bishop said, no, that’s too expensive. So from our point of view, the Bishop bought the desired degree of res judicata he was willing to pay for.

(Att. L, transcript of hearing at p. 42). In other words, class counsel has represented to the court, apparently oblivious to their fiduciary obligations to absent class members, that they disadvantaged absent members of the settlement classes from getting notice because their “adversary” asked them to do so. The change to the notice program is among the reasons Michael Virzi identifies where class counsel’s performance fell below the standard of care. The affidavit of Mr. Virzi that is attached to the complaint refers to and incorporates an affidavit he had done in another case, and Att. Q is that affidavit Mr. Virzi referred to.

A jury could find that the parties collaborating to change the notice program so as to eliminate all chance of notice getting to out of state victims such as Mr. Chimento and Jane Doe 304 is conduct that fell below the standard of care for class counsel, as Mr. Virzi maintains, as well as conduct by the Diocese to knowingly participate in aiding and abetting that breach of fiduciary duty by class counsel. The request by the Diocese, and class counsel's agreement to the request, reflects cooperation by the parties to reduce the notice program for all class members who reside out of state, such as Mr. Chimento and Jane Doe 304.

While that lack of notice arguably deprived Mr. Chimento and Jane Doe 304 of Due Process, which would exempt them from the *res judicata* effect of the class action (as Judge Young found as to other out of state claimants in a 2011 order for other out of state class members), it also deprived Mr. Chimento and Jane Doe 304 of the benefit of the defenses the Diocese waived in the class action. Those waivers are not available to them outside of the class settlement.

That is among the reasons why lack of notice to the absent class members matters. As her complaint reflects, without the protection of the defenses waived in the class action, Jane Doe 304 can bring no claim against the Diocese. Mr. Chimento may or may not have a valid means of overcoming the charitable immunity or limitations defenses. Accepted as true, class counsel breached their fiduciary duties to each of Mr. Chimento and Jane Doe 304 and the motion to dismiss should be denied. At minimum, factual issues are in dispute and summary judgment cannot be granted.

Also significant in the January 17 revised motion for class settlement approval (Att. K) are two new provisions that appeared for the first time in the typed version of the 2006 mediated

class settlement. “New” as compared to the terms of the handwritten 2006 mediation agreement (Att. A pp. 10-13). Obviously, those provisions appeared in 2007 by agreement.

First, on p. 13 of Att. K, a new provision prioritizes the attorneys fee over claimant awards. The fee was to be paid in ten days, before any claimant awards had occurred. Indeed, before even notice to the class had begun, let alone the claims process. After the arbitration process awarded funds to claimants, if the total funds remaining was insufficient to pay those claimant awards, the fee remained intact and each claimant was to receive a *pro rata* reduction in his or her award. The fee to class counsel was fixed, the claimant awards were variable.¹⁰

Second, on page 14 of Att. K is a new provision that after the class settlement is paid out any remaining funds “will be returned to the defendants,” a provision not in the 2006 handwritten mediation agreement (Att. A pp. 10-13). This is a “residual fund” provision. SCRC P 23(e).

From these new terms a jury could readily find that in the discussions between the 2006 mediation agreement and the 2007 revised motion, each of the Diocese and class counsel adjusted the class notice program to promote their own financial interest by agreeing to reduce the notice program so as to give no nationwide notice of the class settlement and confining the notice program to only the area in and immediately around South Carolina. Doing so enabled class counsel to avoid the *pro rata* reduction provision to class members, and the Diocese increased the chances that settlement funds would be returned to it. Excluding notice to out of state claimants explains why class counsel would abandon absent class members such as Mr.

¹⁰ Usually, an attorney’s fee is considered at the end of class settlement implementation, as only then can the court properly assess if class counsel has “fairly and adequately protect[ed] the interest of the persons on whose behalf the action [was] brought.” SCRC P 23(d). Such as by overcharging class members by means no order authorized.

Chimento and Jane Doe 304 by agreeing, at his “adversary” Bishop’s request, to the abandon the nationwide notice class counsel originally proposed.

The complaints against class counsel allege that class counsel has a fiduciary obligation to absent class members such as Mr. Chimento and Jane Doe 304 both (a) by operation of law from having pleaded a class action and (b) from having assumed the duty for the absent members within the class definition. Class counsel acknowledged that duty in March 2007, which each complaint refers to, where class counsel described on the record at page 53 the duty class counsel had assumed (Att. M, excerpted p. 53 of the transcript):

we represent the interests of persons who might be here today, may not be here today, may not have made a claim yet, a class, punitive [sic, probably intended to be putative] class or actual class, punitive [sic] initially, now an actual class.

Throughout the class action approval process the settlement classes were defined the same way and included Mr. Chimento and Jane Doe 304. Out of state residents who were abused as children in South Carolina by agents or employees of the Diocese were not excluded from the class definition because they had moved out of state. That was the case:

- In June 2006 as the classes were first described in the handwritten mediation memorandum (Att. A, p. 11);
- In October 2006 as the class was proposed to the court for approval with nationwide notice (Att. E, p. 2);
- In January 2007, as the motion for class approval was revised to eliminate nationwide notice to the class definition otherwise unchanged, without geographic limitation (Att. K, pp. 2, 7 and 27);

- On January 19, 2007, when the court gave preliminary approval to the settlement “subject to the objection period and Fairness Hearing as set out in this order.” (Att. N, p.).
- In the order of July 30, 2017 (E.g., Att. O p. 12, approving the notice and Att. O pp. 18 and 20).

At no point was any class definition changed so as to exclude Mr. Chimento or Jane Doe 304.

At a hearing held on July 13, 2007, the defendants exacerbated the problem of not giving notice nationwide, as was originally proposed to the court. The transcript of this proceeding is irregular, with multiple page numberings on each page, so the pertinent text has been highlighted from the entire transcript at Att. R.

The hearing was discussing specific persons who Diocese records showed had in the past complained to the Diocese about sexual abuse. A subclass was discussed, but it was decided a subclass was not necessary. At p. 12 (using Bates numbers for Attachment R) Mr. Shahid, counsel for the Diocese, represented that the Diocese had located all but four persons from this particular group, and then he made this observation about a supposed broader agreement between the Diocese and class counsel that encompassed every unknown victim:

Judge, I view that responsibility as ongoing as so that we got the find the other four [of the persons who had previously complained], ***and we’ve got to find anybody else*** who has kind of, lack of a better word, comes out of the woodwork.

Emphasis added. At p. 14 (again, using the numbers at the bottom of each page) of that hearing, the court was told by class counsel that the relief obtained for the class fully protected absent class members who did not get notice before the end of the claims period:

What the diocese has come to is ***if anybody has been missed*** or if there is anybody who responds as a result of these who have been identified to, ***the diocese waives all the same defenses that they have given up in this class settlement, consents to***

the same method of compensation, consents to the same early disposition of that claim by a same arbitration method, the whole nine yards.

Emphasis added. A few minutes later the court reiterated these terms to Mr. Shahid, counsel for the Diocese, at page 22:

The court: 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.

Mr. Shahid: Well, good.

Those assurances were entirely consistent with Mr. Shahid's affidavit (Att. A pp. 3-6), which related the intention by the Diocese at the outset of class action discussions to use the class action to eliminate all future claims against the Diocese.

However, no written order embodies this broad supposed agreement. Class counsel obtained no written order to secure those benefits that class counsel claimed to have obtained for absent class members.

In *Doe v. Bishop*, 407 S.C. 128, ___, 754 S.E.2d 494, 499 (S.C. 2014), the Supreme Court determined that the existing written orders in the class action did not extend those benefits to absent class members. So lack of notice to absent class members deprived each of Mr. Chimento and Jane Doe 304 of the defenses waived by the Diocese (notably, charitable immunity and the statute of limitations). A jury could find that class counsel failed to secure in any written order the relief he claimed to have secured for absent class members. Had class counsel secured the relief they claimed to have secured, each of Mr. Chimento and Jane Doe 304 would have a means of relief. Mr. Virzi opines that this failure of class counsel fell below the standard of care. (Att. Q pp. 6-7). But it also implicates the Diocese in that they joined in misrepresenting to the court what the Diocese was willing to do, which would naturally work to decrease any concern the court may have had about omitting nationwide notice to absent class members.

Which perhaps also explains why, and a jury could find, that on July 30, 2007, when the court ruled on objections made to the settlement (Att. O), the court approved notice of the class settlement but *sua sponte* decided that notice should run for only half the time requested — three weeks publication versus six weeks requested — in newspapers limited to those in and around South Carolina. And also explains, and a jury could find, why the court made no analysis or review of the change in notice from nationwide to just in and around South Carolina. (Att. O at p. 12 on the changes to the notice program) and entered judgment approving the settlement (Att. O). The court had been told in the July 13, 2007 hearing that absent class members would be protected, and ran no risk of exclusion if those absent class members received no notice before the claims period ended.

On August 31, 2007 the court concluded its preliminary approval process and ordered the class settlement to “immediately proceed.” (Att. A, p. 35). No notice was given to absent members out of state and the publication notice period was reduced from six weeks to three. Those reductions in the notice program make sense only if the representations to the court were true that people who “come forward in the future” (Att. R p. 22, comment of the court) were given the relief promised. Without a written order to embody that protection, the court and class counsel failed their respective fiduciary obligation to protect the Due Process rights of absent class members such as Mr. Chimento and Jane Doe 304, and class counsel’s performance fell below the applicable standard of care.

Judge Nicholson’s 2017 order. The lawyer defendants propose the court follow Judge Nicholson’s 2017 order, which concluded as to other out of state abuse victims that class counsel owed no duty to them. In doing so, Judge Nicholson worked not with the definitions of the class as proposed to the court or as approved by the court, or as published to the class in and around

South Carolina. Instead of any of those identical class definitions, Judge Nicholson restricted his view to only one paragraph in some of the class complaints from Dorchester County, construing them to “clearly limit” the putative classes to only South Carolina residents. Nicholson 2017 order at p. 18. Meaning, presumably, abuse victims who were S.C. residents only at the moment the complaint was filed, even if a victim had later received notice of the class action and submitted a claim. The court found that persons abused as children in South Carolina by agents or employees of the Diocese but who had moved out of South Carolina, because they had moved out of state, “fall outside the class definition.” Nicholson 2017 Order at 19.

Judge Nicholson relied on, for example, the ambiguous phrasing of Doe 53 complaint ¶ 41, ignoring other paragraphs:

Plaintiff is entitled to the certification of a class of plaintiffs against the defendant representing all individuals, save those barred by law from asserting an action against the defendants, in South Carolina who were sexually abused and/or otherwise molested by agents or employees of the Catholic Church under the supervision and/or control of the defendants.

Although this does not even purport to be a class definition, and is not consistent with the allegations of other portions of the complaint, Judge Nicholson interpreted “South Carolina” in that sentence as creating a geographic limit on the duty class counsel owed, as opposed to interpreting the phrase to refer to “those barred by law from asserting an action against the defendants.” Compare, for example, the use of “South Carolina” in paragraph 34 of the cloned John Doe 53 class complaint, as noted above, which referred to “a class of other persons similarly situated as victims of priest sexual abuse in South Carolina,” where South Carolina defines where the victim was abused and describes the area encompassed by the Diocese — the entire state.

By contrast, the classes as defined in the class settlement, in the motion for certification, in the orders, and in the approved notices published to the class were construed by Judge Nicholson as having no effect, a ruling which ignored *Tilley v. Pacesetter Corporation*, 585 S.E.2d 292, 302 (S.C. 2003) (class definition is “a strategy choice” that parties “have to live with” under SCRCP 23(d)(1)).

Judge Nicholson also had to ignore the holding of a case directly on point: *Premium Investment Corp. v. Green*, 324 S.E.2d 72, 76 (S.C. App. 1984) (plaintiff and attorney who allege a class action “assume a fiduciary obligation to absent members of the class....”).¹¹ To say nothing of Judge Nicholson ignoring the requirement in SCRCP 23(d)(1) that class certification is to be determined “As soon as practicable, after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained.” Instead, Judge Nicholson implicitly approved class counsel and the Diocese waiting ten months after the December 2005 class action filing for John Doe 53 in Charleston to move for class certification, and implicitly approved the judge-shopping which preceded moving the case away from the judges not desired to the judicial district where presided the judge they did desire.

More fundamentally, the complaints for Mr. Chimento and Jane Doe 304 allege a breach of *assumed* duty in addition to those imposed by law. A person can assume a duty not otherwise imposed, thereby voluntarily taking on the obligation to act with due care. E.g., *Sherer v. James*, 351 S.E.2d 148, 150 (S.C. 1986); *Roundtree Villas Assn. v. 4701 Kings Corp.*, 321 S.E.2d 46, 50-51 (S.C. 1984); *Miller v. City of Camden*, 451 S.E. 2d 401, 404 (S.C. App. 1994).

¹¹ Without any analysis, the case was determined not to apply because it was decided in 1984, a year before SCRCP 23 was adopted. Nothing in SCRCP 23 changes that holding of *Premium Investment*. The notes to SCRCP 23 state overtly that the rule “contains essentially the same requirements as Code § 15-5-50, which applied when *Premium Investment* was decided.”

Assumed duty applies to attorneys. *In the matter of Padgett*, 349 S.E.2d 338 (S.C. 1986). (“Once respondent [attorney] voluntarily assumed the obligation of handling these funds, he incurred the duty to properly account for them.”) The complaints quote class counsel’s acknowledgment that they represent absent class members, and Mr. Virzi finds the conduct of class counsel fell below the standard of care (Att. Q).

As noted above, class counsel represented on the record in 2014 that the nationwide notice in *USA Today* was abandoned “because the Bishop said, no, that’s too expensive.” Class counsel’s explanation was that the notice program to the absent members of the class he had defined was reduced so as to accommodate an objection from his supposed “adversary.” Also as noted above, the objection happened to have aligned with the financial interest of both class counsel and the Diocese to not have “too many” class claimants.

At no point was either the reduced notice program, or any rationale for the reduced notice program, explained in 2007 to the judge overseeing the class action. To the contrary, as noted above during the July 13, 2007 hearing the judge was told by class counsel that he had obtained by agreement relief that fully protected absent class members who got no notice, and failing to secure that relief in a written order fell below the standard of care for class counsel. That the Diocese cooperated in reducing the class notice program satisfies the elements of aiding and abetting breach of fiduciary duty. The Diocese “knowingly participated in the breach,” and participated in providing false information to the court about their commitment to absent members of the settlement classes.

“The elements for a cause of action of aiding and abetting a breach of fiduciary duty are: (1) a breach of a fiduciary duty owed to the plaintiff; (2) the defendant's knowing participation in the breach; and (3) damages.” *Vortex Sports & Entm't, Inc. v. Ware*, 378 S.C. 197, 204, 662 S.E.2d

444, 448 (2008). “The gravamen of the claim is the defendant's knowing participation in the fiduciary's breach.” *Future Group, II v. Nationsbank*, 324 S.C. 89, 99, 478 S.E.2d 45, 50 (1996).

Other courts have recognized a cause of action for aiding and abetting a breach of fiduciary duty where a plaintiff proves (1) a breach of a fiduciary duty owed to the plaintiff (2) the defendant's knowing participation in the breach and (3) damages. See *Holmes v. Young*, 885 P.2d 305 (Colo. 1988). The gravamen of the claim is the defendant's knowing participation in the fiduciary's breach. *Id.* at 309; see also *Samuel M. Feinberg Testamentary Trust v. Carter*, 652 F. Supp. 1066 (S.D.N.Y. 1988); *Spinner v. Nutt*, 417 Mass. 549, 631 N.E.2d 542 (1994); *Blow v. Shaughnessy*, 88 N.C. App. 484, 364 S.E.2d 444 (1988); Restatement of Torts 2d, § 876(b).

Future Group, II v. NationsBank, 324 S.C. 89, 99 (S.C. 1996).

The class action settlement was approved, and notice was ordered in 2007 only in newspapers in and around South Carolina. Att. O, Order of July 30, 2007 and attachments. A claims period was established. Class counsel’s fee was approved to be \$2.5 million, and was ordered to be paid (a) before any class member was identified or any claims made, (b) despite time records showing substantial duplication, exaggeration, questionable cost claims, and literally impossible hourly claims — days of more than 50, 70, 80 and 90 hours. E.g., affidavits of Michael Virzi with the complaints and at Att. Q; and (c) without either class counsel or the Diocese disclosing that class counsel had already been paid a contingent fee which included almost all of the time submitted. (Att. P).

But in addition, class counsel apparently charged and collected even more fee from class members, which no order permitted. The overcharge is conservatively estimated to exceed \$900,000. As noted in footnote 12, to date class counsel has not been deposed about the conduct of the class action, the judge-shopping, or the extra fee charged without authorization, because of the motion for protective order and the stay order. Or about class members not having been informed that objectors to the class action settlement negotiated better terms than those available

to class members. Or that class counsel paid \$100,000 to fund those better terms for objectors. (Att. S). all of this despite *Doe v. Bishop* holding in 2014 that the claims of out of state class members may be pursued.¹² See generally, affidavit of Michael Virzi at Attachment Q.

Of course the courts want to protect lawyers and judges, even if they engage in judge-shopping. But at some point the interests of those affected by lawyer misconduct, as *Doe v. Bishop* held, should be taken into account.

Class action approval. In addition to its motion to dismiss pursuant to SCRCP 12(b)(6), the Diocese contends that no defendant can aid and abet a breach of fiduciary duty by class counsel in concluding a class action settlement because court oversight and approval insulates any misconduct. But of course, as set forth above, the Diocese participated in misrepresenting to the shopped-for judge the “understanding” that class members who failed to get notice would be treated the same as class members who did get notice and made no objection to the reduced notice program. The Diocese was aware of class counsel’s obligation to absent class members, and induced class counsel to breach those duties, then misrepresented to the court the impact of those breaches. It is arguable that the Diocese also voluntarily assumed the same obligation to absent class members as did class counsel, even though that obligation was not otherwise imposed on the Diocese by operation of law, as with class counsel.

In other words, being part of collusion to deceive the trial court is not a basis for then relying on trial court approval after that deception. Those factual issues preclude a motion to dismiss as well as the motion for summary judgment.

¹² Before the court is the motion for a protective order that should be denied so as to permit discovery to be done and for the first time for the lawyer defendants to be deposed. Had discovery been permitted, a Rule 56(f) affidavit would be submitted to account for the lack of discovery as these cases have been stayed.

The Diocese also argues, motion at p. 2, that the class action court “considered and overruled” certain objections to the class action, but (a) no orders from the class action address breach of assumed duty, (b) no objections from those then represented by plaintiffs’ present counsel, meaning the 2007 clients who opted out of the class action having gotten settlement terms superior to those of the class, were ruled on by the trial court,¹³ and (c) no out of state persons such as Mr. Chimento and Jane Doe 304 were yet known, and appeared to have been included in the “agreement” never placed in a written order to grant them the same relief as class members. The objections related by the Diocese were not ruled upon, even if they should have been by the trial court.

Conclusion

The motions to dismiss by the lawyer defendants should be denied. The motion for protective order should be denied, the stay on discovery lifted, and full discovery for the first time permitted, including depositions of class counsel.

We believe the motions by the Diocese are not yet ripe, given the order of the Supreme Court. If those motions are considered, should be denied for the Diocese having participated in misrepresentations to the court and in aiding and abetting class counsel’s breach of fiduciary duty.

Respectfully submitted,

s/ Gregg Meyers

Gregg Meyers, SC Bar No. 9908
217 Lucas Street Unit F1
Mt. Pleasant SC 29464
843-324-1589
attygm@gmail.com

¹³ As the trial court’s order of July 31, 2007 states, the objections by clients who settled their claims were *waived*. (Att. A, p. 35).

Attorney for the Plaintiffs

Service

This pleading has been filed with the South Carolina e-file system, and service on other counsel has been made pursuant to that system. Additionally, counsel will be copied on the documents provided to the court.

Respectfully submitted,

s/ Gregg Meyers

Gregg Meyers, SC Bar No. 9908
217 Lucas Street Unit F1
Mt. Pleasant SC 29464
843-324-1589
attygm@gmail.com
Attorney for the Plaintiffs

**STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON**

)
)

**AFFIDAVIT OF
A. PETER SHAHID, JR.**

PERSONALLY appeared before me, A. Peter Shahid, Jr., Attorney for the above-named Defendant, who, after being duly sworn, deposes and states as follows:

1. I was admitted to the South Carolina Bar in November 1981, and have served as a licensed attorney for thirty-seven (37) years. During my career I have served as an Assistant Public Defender for Charleston County from 1981 through 1984. I was engaged in private practice in Charleston County from 1984 through 1988. In August 1988, I was appointed as an Assistant United States Attorney for the District of South Carolina, Charleston Division. I served in this capacity until 1997. In 1997 I returned to the private practice of law with an emphasis in general litigation.

2. I am admitted in the United States District Court, District of South Carolina, the United States Court of Appeals, Fourth Circuit and the United States Supreme Court. I represent clients in the South Carolina Supreme Court, the Court of Common Pleas, Court of General Sessions, Family Court, Probate Court, Small Claims Court, and Magistrate and Municipal Courts. I also represent or have represented clients in the United States District Court, District of South Carolina, and the Fourth Circuit Court of Appeals.

3. In my practice I have engaged in complex and multi-party litigation in criminal, civil, family and probate court matters. I represented the Catholic Diocese of Charleston as its General Counsel. I have represented the Diocese in several civil actions and in a 2007 court approved a Class Action Settlement Agreement. I represent the GAL of the son of the late James Brown in the Probate Court in Aiken County. As an Assistant United States Attorney I was

involved in the successful prosecution of multi-defendant drug conspiracy cases, multi-defendant fraud investigations and other complicated fraud and accounting related white collar prosecutions, violent crimes and various other matters.

4. I was appointed an Associate Municipal Judge for the Town of Mt. Pleasant, South Carolina, and served in that capacity between 1997 through 2006.

5. I am a member of the Charleston County Bar. I serve on the Charleston County Bar Executive Committee, and served as its Immediate President. I have also served as a member of the Charleston County Bar Public Defender Board. Among other legal and social memberships, I am a member of the American Bar Association, a Fellow of the American Bar Foundation a member of the National Diocesan Attorneys Association. I have been recognized by the National Trial Lawyers Association as a Top 100 Trial Lawyer for 2014, 2015 and 2016. In March 2016 I was presented by Lawyers Weekly the Leadership in Law Award.

6. I have served as a speaker at legal seminars and continuing legal education seminars for topics including class action litigation, property related matters and legal ethics.

7. I have represented the above named Defendants as its General Counsel from 1997 through 2017. In this capacity I served as the chief legal counsel for the Defendant and interacted with the Bishop of Charleston who was the chief operating officer of the Corporation Sole, beginning with the late Bishop David Thompson, including Bishop Robert Baker, Msgr. Martin Laughlin, Vicar General as Administrator and Bishop Robert Guglielmone.

8. As the General Counsel for the Diocese of Charleston I appeared on behalf of the Diocese in responding to claims by those who alleged they were victims of childhood sexual abuse by Diocesan personnel. The Diocesan personnel could include ordained priests who were

either assigned from other Catholic dioceses or religious orders, or Diocesan priests, deacons or lay employees of the Diocese or its affiliate parishes.

9. In the summer of 2005, the law firm of Richter and Haller, LLC filed a series of lawsuits against the Diocese. The plaintiffs in these civil complaints generally alleged that they were abused as minors by Diocesan personnel.

10. Sometime after the filing of these various complaints, Mr. Lawrence E. Richter, Jr., the principal attorney for the law firm of Richter and Haller, LLC, communicated with me his intent to create a complete resolution of these particular claims and other potential sexual abuse claims through the creation of a class action agreement, approved by a South Carolina circuit court.

11. In the course of these discussions I raised the issue of whether such a class action would include future claimants who allege they suffered from a repressed memory of their childhood abuse.

12. The legal defenses available to the Diocese in responding to the allegations raised by victims would include that the claims were barred by the Doctrine of Charitable Immunity and/or the application of the statute of limitations. Recent opinions issued by the South Carolina Supreme Court, in particularly *Moriarty vs. Garden Sanctuary of Church of God*, 341 S.C. 320 (2000) provided claimants the legal opportunity to protect their claim from being barred by the statute of limitations if they could establish that their memories were suppressed by the abuse they suffered. Furthermore, the South Carolina General Assembly enacted Section 15-3-535, South Carolina Code of Laws, (1976, as amended), which extended the filing of a sexual

assault claim until three years after the claimant "...knew or by the exercise of reasonable diligence should have known that he had a cause of action."

13. Mr. Richter pursued with me his desire to arrange a meeting with Bishop Robert Baker, the then Bishop of Charleston to discuss the resolution of his clients's civil complaints through a class action settlement agreement. In October 2005 I arranged a meeting with Bishop Baker and several of his advisors, including me. Mr. Richter appeared, with other members of his legal team, at the Diocesan Chancellery, then located at 119 Broad Street, in downtown Charleston. During this meeting Mr. Richter openly discussed with Bishop Baker the merits of a global resolution of all current and future claims by victims of childhood sexual abuse by Diocesan personnel in the creation of a class action settlement agreement.

14. I received from Mr. Richter a letter dated October 17, 2005, a copy of which is attached hereto and incorporated herein, as Exhibit "A", which summarizes his account of the meeting with Bishop Baker described in the preceding paragraph. Mr. Richter specifically included the issue of repressed memory as an issue I raised, in the first full paragraph of page two of Exhibit A. In addition he references the "...concept of a class resolution to the pending and potential claims against the Diocese" in the first paragraph of page one. Further into this paragraph he refers to the "concept of obtaining universal peace".

15. In June, 2006, the Diocese and the plaintiffs named in the civil complaints previously filed in 2005 and represented by Mr. Richter and others engaged in a two day mediation session with Marvin Infinger aimed at resolving *all* claims of sexual abuse of minors by Diocesan personnel. A critical component of those negotiations was to ensure that all claims of sexual abuse of minors, including those

which could be initiated in the future were resolved. An agreement was reached during this mediation session which included the creation of a class action resolution. The mediation agreement was reduced to a handwritten seven paragraph document which included the general terms of a class action resolution. Specifically a class was defined as “actual victims of Diocese abuse” and “spousal &/or parent claims deriving from victims abused”. A redacted copy of the “General Terms of Settlement” is attached hereto and incorporated herein, as Exhibit “B”.

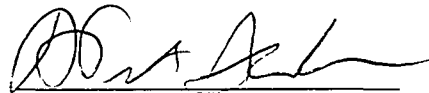
16. On January 12, 2007 the Diocese executed a Settlement and Arbitration Agreement, (hereinafter referred to as the “Agreement”) a copy of which is attached hereto and incorporated herein, as Exhibit “C”. This Agreement was executed by Bishop Robert Baker and Mr. Richter as Class Counsel and was subsequently approved by the Circuit Court in Dorchester County. The Agreement provided for the definition of two separate classes of claimants, those alleging childhood sexual abuse by Diocesan personnel -“Primary Class” and the spouses and/parents of the Primary Class members-“Consortium Class”. The primary putative class members were defined as “All individuals 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 claim adjudicated, resolved, or released.” This definition did not exclude any claimant who suffered any mental disability, any lack of capacity, or repressed memory. Those matters were specifically negotiated and Mr. Richter, as class counsel, did not require any exceptions or reserves for victims who might come forward after the close of the class action.

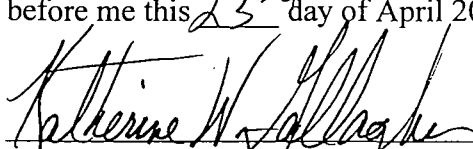
17. Following the Court approval of the Agreement, the Court entered into a separate supplemental order filed on August 31, 2007 which clarified the previous order approving the Agreement. This Order, a copy of which is attached hereto and incorporated herein as Exhibit “D”

defined a third class of members to participate in this class action settlement, identified as "Actual Notice Class Members". The description of this class did not provide for any exception of repressed memory putative class members.

18. While I served as General Counsel for the Diocese it was the Diocese's position, both in the class action litigation and to subsequent litigation by alleged victims of childhood sexual abuse against the Diocese, that all victims of sexual abuse by Diocesan personnel were included in the class definition, without exception for any individual circumstance. The Diocese's position has been that those people who suffered from repressed memory syndrome (as diagnosed by a licensed health care provider and manifesting objectively verifiable evidence of the condition) were absolutely intended to be included in the Class Action Settlement Agreement as it is written.

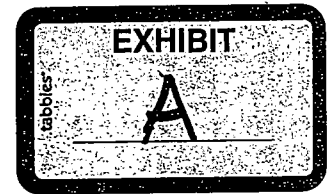
FURTHER, AFFIANT SAYETH NOT!


A. Peter Shahid, Jr.

SWORN to and SUBSCRIBED to
before me this 23rd day of April 2019

Notary Public for State of South Carolina
My commission expires: 7/2/22

RICHTER & HALLER, LLC

Attorneys & Counselors at Law
622 Johnnie Dodds Boulevard
P. O. Drawer 1089
Mount Pleasant, South Carolina 29465



Lawrence E. Richter, Jr., P.C.
David K. Haller, P.C.

Telephone: (843) 849-6000
Telefax: (843) 881-1400

October 17, 2005

A. Peter Shahid, Jr.
Shahid Law Office, LLC
P.O. Box 591
Charleston, SC 29402
By Facsimile: 853-6124

In Re: John Doe v. Diocese of Charleston, et. al. cases

Dear Peter:

Following up on our discussion of Friday a week ago with you, Bishop Baker and others, I want to share some thoughts with you concerning the concept of a class resolution to the pending and potential claims against the Diocese. A lot of work will be involved in putting together the appropriate structure, documents, etc., and I do not want to do that unless you have reason to believe that we are all pulling in the same direction in this effort. Bishop Baker seemed less than certain of the wisdom of an overall resolution, and I am not sure that he has much of a feeling for the concept of obtaining universal peace as it relates to these painful claims. Hopefully, you and others have had subsequent discussions with him and have made some progress in that regard. While it is apparent that the Bishop has genuine concern for the good of the Diocese, I am not certain that he fully appreciates the extent of the damage that has been done or that will result from public trial of the issues in these cases. I also do not believe that he has a full appreciation for the bare knuckled nature of the litigation process, nor for certain sentiments harbored in our state.

All of that having been said, I would like to offer some thoughts about various component parts that would provide us a format for resolution of claims against the Diocese. I think you are aware that we have been doing research in multiple jurisdictions and in that process we have tracked what we believe to be all of the settlements by various dioceses in the United States. Likewise, we have reviewed the jury verdicts, which must lead to the inescapable conclusion for the Diocese of Charleston that an overall resolution would be of great benefit.

In addition, our search around the country has given us access to numerous documents which would be very useful as a resource in framing a class resolution here. Not all issues are identical because of the differences in state law from jurisdiction to jurisdiction. In South Carolina, for

example, we have to deal now with the issue of confidentiality in settlements of pending litigation; of course, we are not precluded contractually from maintaining confidentiality, but that, clearly, cannot be done through the courts. I do think, however, that in South Carolina the class settlement amount may be known without compensation by an arbitrator to individual claimants being revealed.

We have also done some research into the repressed memory issue that you raised. We have found only two reported opinions in the entire history of South Carolina jurisprudence, and these are in the same case. I enclose these opinions for your convenience. Given the dearth of case law and the high standard established, I think this is much less of a potential problem than it seemed at first blush.

Assuming that we get to the point of a class being created without that occurring over the opposition of the Diocese, I think we should look at the following areas. I have thoughts about all of these, and I have documents that relate to most of them. I am not taking time to reproduce lengthy writings herein. This is simply a conceptual suggested list of areas that will need attention. Please consider the following:

1. We will need to draft a memorandum of understanding
2. A class should be created and defined
3. An arbitrator should be agreed upon and put in place
4. A range of compensation for each claimant should be set
5. All claims should be included, including consortium claims
6. The form and nature of the damages proceeding must be dealt with
7. Continued therapy and healing programs must be available for victims/survivors
8. An appropriate memorial retreat/healing facility or facilities should be established. These would be owned and maintained by the Diocese
9. Victim/survivor representation on boards and victim/survivor use as a resource by the Diocese
10. Confidential treatment/counseling on a permanent basis implemented by the Diocese
11. No admission of liability by the Diocese

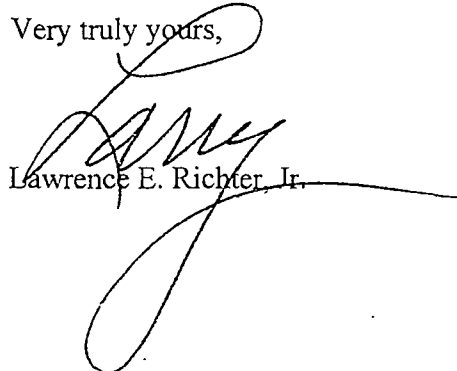
12. If a mandatory class can be created, some refund mechanism to the Diocese for opt out claimants

The foregoing is not an exhaustive list but is simply offered to you as an indication that we have given substantial thought to this matter and preformed research related to the same. I have, as I indicated above, some specific ideas and proposals that are not appropriate for this writing. Here I simply wanted to give you topic areas for consideration so that we may continue and expand our dialogue if the Diocese is interested in making this kind of an overall resolution. If not, please so advise us so that we may continue with our filings and make whatever determination we wish as to the propriety of seeking class certification in appropriate litigation.

Thank you again for your expressed desire for fair resolution. Please again convey to the representatives of the Diocese my appreciation. This is a difficult and painful business, and, hopefully, one that can be resolved to the satisfaction of all concerned.

Please give this matter your expedited attention, and let us have your prompt response.

Very truly yours,



Lawrence E. Richter, Jr.

LER/she
Enclosures

cc: Lionel Lofton, Esq.
Jack Sinclaire, Esq.
Glen Churchill, Esq.

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

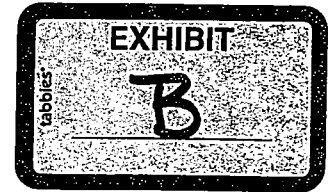
John Doe #53

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*

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)

Its: _____

Dated: _____

By: _____
 (Print Name)

Its: _____

Dated: _____

EXHIBIT " 4 "

EXH. #1

General Terms of Settlement:

1. PARTIES Agree to Create Settlement Class, subject to Court approval of:
 - Ⓐ ACTUAL VICTIMS OF DOMESTIC ABUSE
 - Ⓑ SPOUSAL &/or Parent claims deriving from victims abused
2. Class Settlement Fund will be for \$12,000,000 FUNDED AS FOLLOWS:
 - Ⓐ \$5,000,000 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 claims process in settlement class action shall be developed & include a payment matrix based on nature & severity of claims.

(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. [REDACTED] * shall be paid _____

[REDACTED] * shall be paid _____

[REDACTED] * shall be paid _____

[REDACTED] * shall be paid _____

* COLLECTIVELY paid \$460,000 to be divided among the 4 gentlemen above after accepted as 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 amounts set out in "5." above with appropriate general releases &/or dismissals with prejudice executed in favor of defendant.

~~to be paid to the individuals~~

(3)

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

James Desly, Attorney

ON BEHALF OF DEFENDANTS

Attorney in and with authority of the
Successor of Charleston

June 14, 2006

THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO SECTION 15-48-10, CODE OF LAWS OF SOUTH CAROLINA (1976).

STATE OF SOUTH CAROLINA)

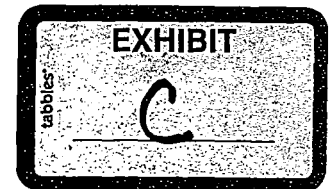
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

CASE No. 06-CP-18-1310

CASE No. 06-CP-18-1311

CASE No. 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 classes 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.)

**SETTLEMENT AND ARBITRATION
AGREEMENT**

This Settlement and Arbitration Agreement (hereinafter "the Agreement") is made this 12th day of January, 2007, by and between the John Doe #53, John Doe 66, John Doe 66A, John Doe 67, individually and as representatives of a class of other persons similarly situated as victims of sex abuse allegedly committed by agents or employees of the defendants in this action, and/or Jane Doe 1, Jane Doe 2, and Rachel Roe, individually and as representatives of parents or spouses who have suffered a loss of consortium as a result of sexual abuse upon John Doe #53, John Doe 66, John Doe 66A, and John 67 or members of their class, and The Bishop of Charleston, A Corporation Sole, and The Bishop of the Diocese of Charleston in his official capacity (hereinafter "the Diocese"). This Agreement may be signed in counterparts. This Agreement represents the formal "Settlement and

RJB

1

A large, stylized handwritten signature, possibly "RR", in black ink.

Arbitration Agreement" formalizing the agreement reached between the Representatives¹ and the Diocese and supersedes all other agreements and/or writings previously executed by the parties. This Agreement is intended to effectuate the complete and total settlement of civil actions captioned above as well as 2005-CP-10-2053, 2005-CP-10-3293, and 2005-CP-10-4913, and all other claims which were alleged or may have been alleged by the Representatives and the individuals who they represent in their capacity as class representatives. It is further understood that this Agreement must be submitted to a court of competent jurisdiction for approval and that certain provisions survive this agreement even if other provisions are not approved.

WHEREFORE, for and in consideration of the promises set forth herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **FORMATION OF CLASSES.** Plaintiffs shall move in a timely manner for the creation of plaintiff classes against the defendants as follows:

- A. All individuals born on or before August 30, 1980 who, as minors, were sexually abused² at any time by agents or employees of the Diocese of Charleston who have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter "the Primary Class")
- B. The spouses and parents of all individuals qualified pursuant to the Primary Class and who suffered a loss of the abused individual's consortium, and who as spouses or parents have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter the "Consortium Class")

¹ The class representatives will be referred to throughout this Agreement as "the Representatives."

² "Sexual abuse," as used throughout this agreement and in the class definitions, is any lewd or lascivious act committed on, about, or with a minor by an agent or employee of the Diocese in which the actor knew or should have known that the act may have the effect of arousing, appealing to, or gratifying the lusts, passions or sexual desires of the agent or employee of the Diocese or of the minor.

RJB

² RER

The Diocese agrees to take no position as to the creation of the plaintiff classes and to cooperate with the provision of information reasonably necessary for the approval of such class or classes. The individuals who fall in either class defined above shall be entitled to make a claim against the settlement fund, pursuant to the terms and conditions set forth in this agreement and the order approving class certification. The individuals in either class shall hereinafter be referred to as "Claimants."

2. **APPROVAL OF AGREEMENT BY COURT.** In addition to the plaintiffs requesting that the classes stated above be certified, the plaintiffs shall also submit this Settlement and Arbitration Agreement for approval by the court pursuant to SCRCP Rule 23. Should the court deny approval of the certification of the classes substantially defined in paragraph 1 above, the court will be separately asked to approve the conditions of paragraph 4, below. Plaintiffs reserve their right of appeal of any denial of class certification. Approval of the settlement shall be on such terms and conditions as the court may fix. All participation is subject to any term and condition of the approval of the classes set out in the court's order. Provided, however, that this is voluntary settlement agreement and that either the Diocese or the Representatives may interpose an objection to any of the court's rulings on the settlement agreement or claims process and may withdraw from this settlement if its terms are materially altered by the court.

3. **SETTLEMENT FUND AND DISTRIBUTION METHOD.** The parties agree to jointly ask the court to approve the terms of the Settlement Agreement, as mediated June 13 and 14, 2006, as follows:

- a. The Diocese shall fund the settlement with two irrevocable letters of credit or other guaranteed pool of funds in the amounts of \$5 million and \$7 million, respectively. Upon disbursement from the initial letter of credit or from an aggregate amount equaling or

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exceeding \$4 million, then in that event, the Diocese shall take such action necessary to have the secondary \$7 million dollars immediately available for disbursement. Both letters of credit (or other pools of funds) shall be guaranteed by the issuing bank to be available as of the date of the approval of this Agreement. In the event the Diocese is unable to obtain letters of credit, it will nevertheless be obligated to pay all sums awarded by the court or the Arbitrator and to deposit funds for this purpose as set forth above. This Agreement supersedes any prior agreement of the parties.

- b. With regard to the claim of any Claimant, the Diocese will pay the Claimant to settle such claim an amount of money to be determined through the arbitration process set forth herein. The arbitration shall be conducted by Marvin Infinger, Esq. (hereinafter "the Arbitrator"). If for any reason Mr. Infinger is unable to continue to serve as arbitrator, the parties shall agree to a successor arbitrator. If the parties are unable to agree to a successor arbitrator one shall be appointed by the court.
- c. Awards shall be based on the criteria set forth herein and the Arbitrator will make awards as follows:

<u>Type of Alleged Abuse</u>	<u>Minimum Payment / Maximum Payment</u>	
Limited inappropriate touching on the victim	\$10,000.00	\$18,500.00
Improper touching by the perpetrator upon the victim or by the victim upon the perpetrator, such as fondling of genitalia, limited masturbation, and other types of sexual contacts.	\$20,000.00	\$55,000.00
Aggravated touching of the genital area by the perpetrator on the victim or by the victim upon the perpetrator. These types of abuse include, but are not limited to, oral sex, (either on the victim or by the victim on the perpetrator) or other aggravated circumstances.	\$60,000.00	\$125,000.00
Egregious acts, such as sodomy, any act		

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accomplished by force or coercion, or repeated acts involving any type of sexual activities over extended period of time causing serious damage.

\$150,000.00

\$200,000.00

Loss of consortium (Parent or Spouse)

\$20,000.00

The criteria for the Arbitrator to determine the amount of the award for a sexual abuse claim shall include, among other things, the type of abuse, its duration and the extent of injuries suffered by the Claimant. In cases in which the claim is for loss of consortium, the award shall be \$20,000.00 for each parent of the Claimant, and \$20,000.00 for the spouse of the Claimant. The Arbitrator shall not consider any liability issues, including, but not limited to, defenses such as lack of negligence or notice, statute of limitations, and charitable immunity. The award issued by the Arbitrator shall be left to the sole discretion of the Arbitrator and shall not be subject to objection, review, appeal or suit brought by any Claimant or the Diocese.

- d. For every claim presented, the arbitrator shall make an express written determination as to (1) whether the Claimant is, in fact, a member of one of the plaintiff classes, (2) whether the claim is *bona fide*, and (3) the amount of the award, if any. In the event that the Arbitrator determines that a Claimant is not a member of one of the plaintiff classes and/or that the claim is not *bona fide*, the claim shall be denied and the Claimant shall receive no award. By participating in the claims process, the Claimants and the Diocese expressly waive any and all rights of appeal of any and all decisions of the Arbitrator, including decisions made on whether the individual is a member of the class, whether the claim is *bona fide*, and the amount of any damages which were suffered.
- e. Any individual, including his/her parents and spouse, whose claim has been otherwise adjudicated, settled or resolved, is barred from filing a claim or collecting from any funds of this class.

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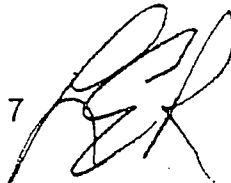
- f. The identity of all Claimants shall be kept strictly confidential except that the Diocese's counsel and those associated with the Diocese necessary for the performance of the terms of this agreement, the Arbitrator, Class Counsel and their staffs may have such access necessary to effectuate this Agreement and the court's orders on the same. Counsel before the court should take appropriate steps to ensure that access is provided to staff on an "as needed" basis. Any individual who has access to the actual name of any Claimant shall sign a court approved confidentiality and restraining agreement prohibiting the disclosure of the name of any Claimant. The name of the Claimant, his or her social security number, and the amount of his or her award will be provided to the escrow agent for purposes of distributing the award at the conclusion of the claims process.
- g. Subject to approval of the court, any person wishing to make a claim must do so within 120 days of the initial notice of final approval of the settlement in a form approved by the court. The form may be obtained from Class Counsel by contacting it as provided in the court approved notice and should include at least the following information:
1. The name, date of birth, social security number, preferred address, telephone number, and email address of contact for the Claimant and, if the claim is made in a representative capacity, the name of the representative and the ward and the nature of the relationship;
 2. Name of the abuser, location at which the abuse occurred, the time period during which the abuse occurred, and relation of the victim to the abuser; [i.e. priest/altar boy; coach/ basketball player]
 3. A brief statement sufficient to advise the parties of the nature of the claim and the acts complained of;

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4. A brief summary of any claimed injury or damages;
 5. Name of parents, whether they are living or deceased;
 6. Name of spouse (if any);
 7. The form must be signed and dated; and
 8. Any other information or documents Claimant deems necessary for a determination of his or her claim. Documentary evidence may be supplemented as provided for herein.
- h. Class Counsel shall assign an anonymous name and/or numbering system to each claim made. Thereafter, the claim must be referred to by its claim number. The name of the claimant and the claim number will be provided to the Diocese lawyers and to the Arbitrator pursuant to the confidentiality provisions established herein.
- i. Class Counsel will transmit the Claim Form only to counsel for the Diocese for its review pursuant to paragraphs 3(l), (m) and (n). At the conclusion of the claim review by the Diocese, Class Counsel shall transmit the Diocese's response to the Claimant. The Claimant will have fifteen (15) days to make any response or take any action Claimant deems necessary and provide the same to Class Counsel who will transmit it to the Diocese. If the Claimant has elected to obtain psychological testing and use it in support of his or her claim, Claimant should provide it to Class Counsel promptly upon receipt. Thereafter, Class Counsel will submit the entire claim package to the Arbitrator and request a hearing.
- j. The Arbitrator shall schedule the Claimant's Arbitration within 90 days of submission of the claim to him. The arbitration shall be conducted pursuant to the South Carolina Uniform Arbitration Act, S.C. Code Ann. § 15-48-10, et seq., unless the Act conflicts with this Agreement or the court's order(s) in this matter, in which case the Agreement and order(s)

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shall control. In any event, as to all issues, the orders of the court shall control.

- k. While the class has Class Counsel, the parties acknowledge that the Claimant may have an attorney of his or her own choice for any part of the claims process. If an attorney is selected by the Claimant, all information concerning the claim or claims process shall be sent to the attorney for the Claimant.
- l. Upon receipt of any Claim Form from any Claimant, Class Counsel shall forward the claim form to Counsel for the Diocese. Counsel for the Diocese shall have thirty (30) days from receipt of the claim to review the claim to verify the accuracy of the information presented and to determine the Diocese's position on whether the Claimant is a member of one of the plaintiff classes and whether the claim is *bona fide*. If the Diocese acknowledges that the Claimant is a member of a plaintiff class and that the claim is *bona fide*, the proceedings before the Arbitrator shall be to determine the damages suffered by the Claimant within the parameters of paragraph 3(d).
- m. If the Diocese objects to the claim, the Diocese shall submit an original and a copy of a written objection to Class Counsel stating why the Claimant is not properly a member of one of the plaintiff classes and/or why the claim is not *bona fide*, and attaching (to the original and the copy) any documents or other supporting evidence which the Diocese wishes to tender (such as a death certificate showing that the alleged perpetrator could not have committed the acts complained of at the time and place alleged). Class Counsel shall transmit a copy of the Diocese's objection and exhibits to the Claimant or the Claimant's attorney.
- n. If the Diocese makes a timely objection to the claim, the Arbitrator shall rule on the Diocese's objection after a hearing at which Counsel for the Diocese and Claimant (and/or Claimant's counsel if the Claimant elects to be represented) and/or Class Counsel shall be

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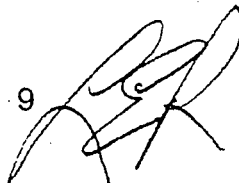


permitted to make argument. The Arbitrator may, in his sole discretion, schedule such hearing on the same day as, and immediately prior to, the Arbitration of the Claimant's claim for damages, or at some other time in advance of such Arbitration. The Arbitrator shall be the sole determiner of the Claimant's membership in one of the plaintiff classes and of the *bona fides* of the claim, and his decision shall be final and not subject to appeal. If at any time prior to the Arbitration of the claim for damages the Arbitrator determines that the Claimant is not a member of one of the plaintiff classes and/or that the claim is not *bona fides*, the Arbitrator shall notify the parties of such determination and shall not proceed with the Arbitration on the claim for damages. By participating in the claims process, the Claimants and the Diocese expressly waive any and all rights of appeal of any and all decisions of the Arbitrator, including decisions made on whether the individual is a member of the class, whether the claim is *bona fides*, and any damages which were suffered.

- o. Upon submission of the claim, Class Counsel will notify the Claimant that he or she has the opportunity to have a psychological assessment and counseling by Dr. L. Randolph Waid. The Claimant may make this election at the time of his or her claim being filed. The Diocese agrees to pay Dr. Waid, on behalf of the Claimant, for no more than three (3) sessions. Any assessment of any Claimant by Dr. Waid will be provided to the Claimant who may submit it to the Arbitrator as part of the Claimant's damages proof; however, this assessment shall be kept confidential and will not be shared with the Diocese. The payments of counseling fees to Dr. Waid shall be over and above any award made by the Arbitrator and shall not be charged to the Claimant, but shall be paid from the fund.
- p. At the Claimant's hearing, a presentation shall be made by or on behalf of the Claimant concerning his or her damages suffered as a result of the alleged abuse. Each arbitration

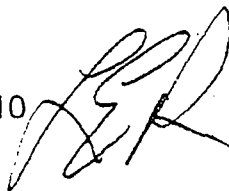
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hearing shall be no longer than two (2) hours. At Claimant's arbitration hearing, the Claimant must appear unless he or she is a minor, incompetent, serving in the military (or merchant marine), deceased or otherwise unavailable for medical, psychological, or other substantial reasons. The Claimant and/or his or her attorney may present other evidence relating to the abuse and injury, including without limitation, affidavits under oath or under the pains and penalties of perjury, from persons with relevant information, medical records, and/or forensic evaluation. Claimant may submit any information, records or testimony bearing upon damages for consideration by the Arbitrator, including videotape and audiotape testimony. Counsel for the Claimant may make comment upon the damages sustained by the Claimant. Before the close of the Claimant's arbitration hearing, Counsel for the Claimant may notify the Arbitrator that the Claimant intends to supplement the information, records or testimony submitted at Claimant's arbitration hearing with written records or information which is to be received by the Arbitrator no later than 21 days after the close of the arbitration hearing. The Arbitrator shall consider no information, records or testimony unless submitted by the Claimant or Claimant's Counsel with the exception of the Diocese's written statement as described in paragraph (q), below. In the event that the Claimant does not appear in person, the Claimant must appear by telephone or video conference. The Claimant may submit a forensic evaluation or a statement from a health care professional, but shall not be required to do so. The Claimant may have any person or persons of his or her choosing speak at the hearing.

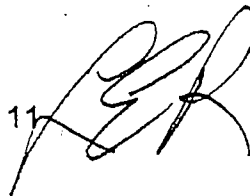
- q. Counsel for the Diocese shall not be present at said arbitration hearing regarding damages; however, the Diocese shall be entitled to provide a written submission concerning the Claimant's damages. No person other than the arbitrator shall be present at the hearing

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without the consent of the Claimant. If the Claimant requests, a representative of the Diocese, who is not an attorney, may be present at Claimant's arbitration hearing for purposes of pastoral support. The Claimant shall be entitled to have present at said hearing any of his/her family, friends, health providers, or other individuals requested by the Claimant.

- r. After the Arbitrator has rendered his decision, but not before, the Claimant may be invited to meet one on one with the Bishop of Charleston or his designee for religious, spiritual, and pastoral support. No Claimant is obligated to meet with the Bishop or his designee.
- s. Any materials of whatever nature submitted by Claimant or on his behalf to the Arbitrator, in connection with the arbitration process which is in any way related to the arbitration awards issued by the Arbitrator shall be returned to the Claimant or his or her counsel by the Arbitrator with the award. The Arbitrator shall not reveal the evidence or written arguments presented during the course of the arbitration hearing to anyone other than those present in the Arbitration or Class Counsel.
- t. The Arbitrator shall issue a written award in conformance with the requirements of paragraph 3(d) no later than twenty (20) days after the close of the Arbitration hearing to and deliver same to Class Counsel, counsel for the Diocese, and Claimant and/or Claimant's counsel. Anyone connected with the claims process in any fashion is bound to maintain the confidentiality of each individual Claimant.
- u. All costs associated with the management of the class shall be paid from the settlement fund. The fees and costs described herein include those incurred by the Arbitrator, Class Counsel, the escrow agent, Dr. Waid and any other fees and costs approved by the court.

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v. The court approving this Agreement has the authority to enforce any Arbitration award. The Diocese consents to judgment being entered against it in any federal and/or state Court having jurisdiction. The parties release the Arbitrator from any liability arising from any act or omission in connection with the arbitration hearing conducted herein. By participating in the claims process, each Claimant and the Diocese expressly waive any and all rights of appeal of any and all decisions of the Arbitrator, including decisions made on whether the individual is a member of the class, whether the claim is *bona fides*, and any damages which were suffered.

4. **SETTLEMENT OF REPRESENTATIVE'S AND POINT CLAIMANT'S CLAIMS.** In consideration of the work, effort, time, stress, psychological pain, damages, liability proof, embarrassment, family turmoil and other issues relevant, the class representatives and/or point plaintiffs shall receive settlement funds as follows:

John Doe #53	\$160,000.00
John Doe 66	\$100,000.00
John Doe 66 A	\$100,000.00
John Doe 67	\$100,000.00
Jane Doe A	\$30,000.00
Jane Doe B	\$30,000.00
Rachel Roe	\$30,000.00

It is understood and agreed that the claims of these claimants are released and these settlement funds will be paid by the Diocese regardless of whether the class certification and settlement are approved by the court.

5. **ATTORNEYS FEES.** In consideration of the substantial efforts of plaintiffs' counsel (past

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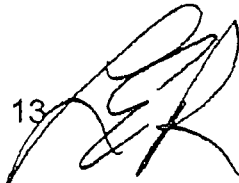
and future), their substantial accomplishments in effectuating the settlement, and the work past and future and their role as class counsel, the parties agree to submit to the court the determination of the amount of attorneys fees which shall be paid to the plaintiffs' class counsel by the Diocese. However, it is specifically agreed that in no event shall such counsel receive fees of neither less than \$950,000.00 nor more than \$2.5 million to be paid to such counsel by the Diocese from the fund referred to in paragraph 3, above, all as determined by the court. Such payment shall be made to Richter & Haller, LLC on behalf of itself no later than ten (10) days after award by the court. The award of attorneys fees as set forth above in this paragraph specifically contingent upon the Court approval of this class certification and settlement agreement.

6. PAYMENT OF CLAIMS.

- A. W. Ellison Thomas, CPA shall serve as an independent escrow agent for the payment of all sums due from the settlement fund. The escrow agent shall be provided unrestricted access to the settlement funds obtained in compliance with this agreement and will make all payments directly against the fund as set out in this agreement, order of the court, or any award made by the Arbitrator to the individual or entity to be paid. The escrow agent will be compensated at an hourly rate approved by the court and will be from the settlement fund. The escrow agent shall provide an accounting of his disbursements at the conclusion of the claims process to Class Counsel, the Diocese, and the court.
- B. No later than thirty (30) days after the final Arbitration award is issued, the escrow agent and the Arbitrator will confer and agree that the total amount of all awards after the payment of all costs and fees, does not exceed the amounts provided for in paragraph 3(a). In the event that the total due exceeds the amounts provided for in paragraph 3(a), then each award shall be reduced on a *pro rata* of the net settlement fund. This revised award list shall be provided

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to Class Counsel and the Diocese, if necessary.

- C. Once the Arbitrator and escrow agent determine the final amount of each award, the escrow agent shall disburse the award from the settlement funds within fifteen (15) days of the final determination of the awards. The awards are to be paid to the Claimant directly or through his or her counsel. After all necessary disbursements any remaining letters of credit and/or funds will be returned to the defendants and/or letters of credit will be cancelled.
- D. Any party may bring perceived errors in an award based on an interpretation of this Agreement to the attention of the Arbitrator with notice to the other party. However, the Arbitrator's decision on any such question is final. By participating in the claims process, the Claimants and the Diocese expressly waive any and all rights of appeal of any and all decisions of the Arbitrator, including decisions made on whether the individual is a member of the class, whether the claim is *bona fides*, and any damages which were suffered.

7. **PASTORAL OUTREACH AND PROTECTION OF CHILDREN BY THE DIOCESE.**

The parties understand and acknowledge that the Diocese has done or will do the following:

- a. Comprehensive Policies. For the protection of children and the care of sexual abuse survivors, the Diocese has adopted a set of comprehensive policies called "The Policy of the Diocese of Charleston Concerning Allegations of Sexual Misconduct Or Abuse Of A Minor By Church Personnel" (the "Policies"). The Policies set forth the Diocese's unmitigated condemnation of child sexual abuse and its commitment to work to prevent sexual abuse, deal responsibly with accusations, and reach out with pastoral care for victims. The Policies are reviewed and updated every two years.
- b. Reports Of All Accusations To Solicitor. Pursuant to the Policies, the Diocese reports all accusations of child sexual abuse it receives to the Solicitor of the county in which the

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accusation arises or, where applicable, to law enforcement authorities in other states, and cooperates fully with all criminal investigations and prosecutions.

- c. Victim Assistance Minister. Pursuant to the Policies, the Diocese has established, among other things, a Victim Assistance Minister ("VAM"), who is available to all victims of child sexual abuse allegedly committed by an agent or employee of the Diocese. The VAM can be reached at 1-800-921-8122. The VAM coordinates the Diocese's pastoral response to those who come forward, and works with victims to facilitate the healing process. Where appropriate, the VAM also assists victims in obtaining and paying for psychotherapy, on a confidential basis.
- d. Sexual Abuse Advisory Board. Pursuant to the Policies, the Diocese has established, among other things, a Sexual Abuse Advisory Board (the "Board"). Although the Bishop of the Diocese has the ultimate decision-making responsibility in cases presented to the Diocese, the Board has the responsibility to advise the Bishop in particular cases. The Board also assists the Bishop in the review of the Policies that occurs every two years, and makes recommendations to the Bishop concerning any proposed revisions to the Policies. The Board consists of at least five (5) members, of whom four (4) are independent lay people who are not priests or employees of the Diocese.
- e. Presentation By Class Representatives or Members To The Sexual Abuse Advisory Board. The Diocese welcomes the suggestions of the Class Representatives (or members) regarding the provisions and implementation of the Policies. The Diocese therefore agrees to permit the Class Representatives to make a presentation to the Board in advance and/or as part of the next two regularly scheduled two year policy reviews so that the views of the Representatives can be heard and considered as the Diocese undertakes such review.

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8. **RELEASE.** When the Claimant submits his claim form, he or she shall execute the Release attached as Exhibit 1 and deliver that Release to Class Counsel. Class Counsel shall hold the Release in escrow until the award is delivered and payment is made, as provided herein. If payment is not made by Diocese pursuant to the Agreement, these copies are null and void and will be destroyed. The Diocese will provide a release to each Claimant as set out on Exhibit 2 through Class Counsel upon receipt of the Claim Form for the review under paragraphs 3(l), (m), and (n).
9. **DISMISSAL OF ACTIONS.** The actions pending against the Diocese shall be dismissed with prejudice pursuant to the terms and conditions set by the court in its order on class certification.
10. **MISCELLANEOUS PROVISIONS.** This Agreement, with attached Exhibits, constitutes the entire agreement between the Representatives, the Claimant, and the Diocese. To address omissions, inadvertent mistakes, or matters which arise after the execution of this Agreement, each Claimant agrees that this Agreement may be modified, amended or supplemented to effectuate the intent of the parties under such terms and conditions set by the court approving this Agreement. It is acknowledged that each party has participated in the drafting of this Agreement, and that any claimed ambiguity should not be construed for or against any Party. This Agreement shall be construed under and in accordance with the laws of the State of South Carolina. Any dispute concerning this Agreement which arises after this Agreement is approved by the court shall be resolved by the Arbitrator. The decision of the Arbitrator regarding any such dispute is final and binding. The terms and conditions of this Agreement shall be binding and inure to the benefit of each of the Parties, their counsel and respective successors, heirs and assigns. It is further understood and agreed by Claimant that this Agreement is not to be construed as an admission of liability upon the part of any of the released parties, but rather as a good faith settlement of disputed claims. The Claimant states and warrants that he or she is the sole owner of the claims involved, and that such

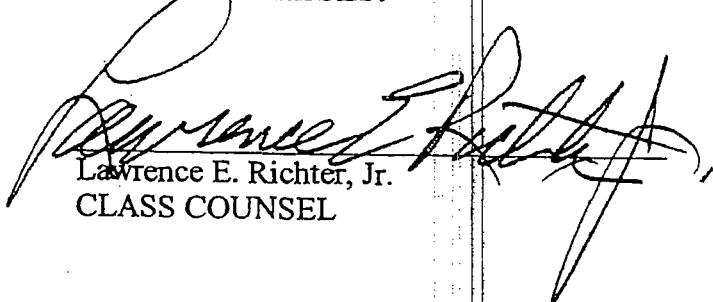
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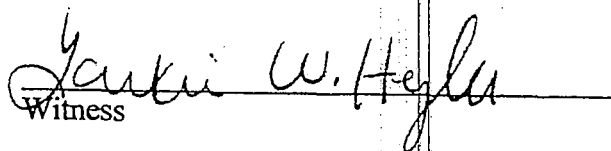


claims have not been assigned, encumbered, or transferred. Where applicable herein, the masculine gender shall include the feminine gender and the feminine gender shall include the masculine gender.

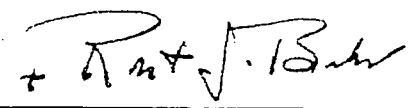
Executed this 12th day of January, 2007.

FOR THE CLASSES:


Lawrence E. Richter, Jr.
CLASS COUNSEL


Witness

FOR THE DEFENDANTS:


The Most Rev. Robert J. Baker
THE BISHOP OF CHARLESTON, IN HIS
OFFICIAL CAPACITY AND FOR THE
BISHOP OF CHARLESTON, A
CORPORATION SOLE

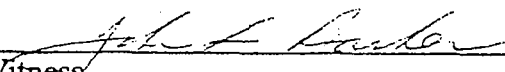

Witness

EXHIBIT 1

CLAIMANT'S GENERAL RELEASE

____ ("the Claimant") for and in consideration of the promises and undertakings contained in the Settlement and Arbitration Agreement, the sufficiency of which is hereby acknowledged, hereby remises, releases and forever discharges The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity, ("the Diocese"); any present or former bishops, archbishops or cardinals of the Diocese, in both their individual and official capacity; any entities affiliated with the Diocese; and present or former priests, deacons, other clergy, brothers, nuns, agents, servants, officers, trustees, directors, supervisors, attorneys, employees, volunteers, insurers, predecessors, successors, assigns, subsidiaries and affiliates of the Diocese, including without limitation any such person accused of committing or negligently causing or permitting sexual abuse with respect to the Claimant or members of the Claimant's family (all of the foregoing hereinafter collectively referred to as the "Released Parties") of and from any and all debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, judgments, executions, orders, and any and all claims, demands and liabilities whatsoever of every name and nature, whether in LAW, in EQUITY, or otherwise which the Claimant ever had, now has, or which Claimant or Claimant's successors hereinafter can, shall, or may have by reason of any matter, cause or thing whatsoever from the beginning of the world to the date of this Release, and whether such claims are now known or unknown, including without limiting the generality of the foregoing, any and all claims made or that might have been made in any pending claim or suit. With respect to any claims arising from or related to an act or acts of abuse which have formed the basis of a claim or suit against the Diocese

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or persons or entities employed by or affiliated with the Diocese, the Released Parties covered by this Release shall also include any other persons or entities whether or not they are employed by or affiliated with the Diocese. This release does not apply to persons or entities who are not persons or entities employed by or affiliated with the Diocese with respect to any claims arising from or related to an act or acts of abuse that have not formed, or could not form, the basis of a claim or suit against the Diocese or persons or entities employed by or affiliated with the Diocese.

IN WITNESS WHEREOF, the Claimant has set his/her hand and seal to this Release as of the ____ day of _____, 200 ____.

Print Claimant's Name

Claimant's Signature

Witness

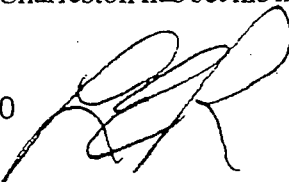
Witness

EXHIBIT 2

DIOCESE LIMITED RELEASE

The Roman Catholic Bishop of Charleston and the Bishop of Charleston in his official capacity, a Corporation Sole ("Diocese"), for and in consideration of the promises and undertakings contained in the Settlement and Arbitration Agreement, the sufficiency of which is hereby acknowledged, hereby forever remises, releases and forever discharges _____ ("the Claimant") and Claimant's heirs, attorneys (including their law firms, agents, servants, or employees), executors, predecessors, parents, successors, agents, servants, employees, and assigns of and from any and all debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, judgments, executions, orders, and any and all claims, demands and liabilities which were or could have properly been raised in any form or fashion arising from the incidents alleged by Claimant in his claim submitted pursuant to the Order Approving Class Certification and Settlement Agreement (date to be inserted) in cases numbers 06-CP-18-1310 and 06-CP-18-1311, Claimant's participation in the class process set out in said Order, including any assertions of the Bishop arising from the validity or fraudulent nature of any claim, and/or any defense or claim which was or may have been raised by the Bishop in defense to the Claim or any suit which was or could have been filed against the Bishop but for the Claimant's participation in the claims process set out in the Order referenced herein, whether such claims are now known or unknown. It is the intention of the parties that the Diocese is fully and finally releasing the Claimant from any liability asserted by it against him or her arising from the Claimants assertion of sexual abuse.

IN WITNESS WHEREOF, the Bishop of Charleston has set his hand and seal to this Release

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as of the date written below.

The Bishop of Charleston, a Corporation Sole

By: _____

Its: _____

Date: _____ Witnessed by: _____

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STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

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,)

v.)

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

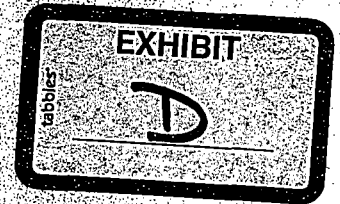
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

CASE No. 06-CP-18-1310

CASE No. 06-CP-18-1311

CASE No. 06-CP-18-1636



ORDER OF THE COURT

CERTIFIED COPY
2007 AUG 31 PM 5:03
CLERK OF COURT
DORCHESTER COUNTY

The Court having been advised, as evidenced by the writing attached hereto as Exhibit A, that all pending motions, objections, rules to show cause, and any such related matters amongst the parties in this class action proceeding have been resolved with prejudice, and that all appeal rights of all "objectors" are waived, *AND to this extent acknowledged and approved* said agreement is hereby approved and made the Order of this Court.

AND IT IS SO ORDERED!

Further, it is ordered that, as to any settlement funds in this matter, any restriction or impediment to the disbursement of any such funds heretofore imposed by this Court are lifted, removed, and extinguished. This class settlement shall immediately proceed as provided for in the Settlement and Arbitration Agreement entered into on January 15, 2007 and that certain Order of this Court in this matter dated July 30, 2007.

AND IT IS SO ORDERED!

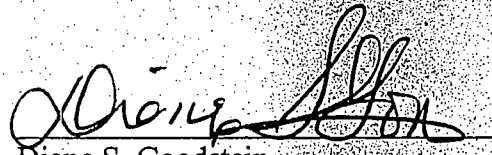
Furthermore, in the Court's Order of July 30, 2007 approving the Class settlement, the Court made reference to the existence of individuals who, according to the Diocese, (1) were potential class members; (2) came forward to the Diocese at some time in the past with their allegations of child sexual abuse; (3) never resolved their potential claims; and (4) were entitled to receive *actual notice* of the proposed class settlement pursuant to the agreement of the parties and earlier instructions from this Court (hereinafter referred to as "Actual Notice Class Members"). The Defendants have asked the Court to clarify how the settlement process will treat the Actual Notice Class Members. Accordingly, this Order clarifies and, where in conflict, supersedes the Court's Order of July 30, 2007.

Actual Notice Class Members shall have 120 days from receipt of actual notice of the class settlement to present their claims to an Arbitrator in the same manner as provided for in the Settlement and Arbitration Agreement. Actual Notice Class Members who present their claims more than 120 days after they receive actual notice of the settlement shall be barred from participation in the settlement process and shall be treated like any other class member who has failed to timely present a claim to the class settlement fund. Both the Arbitrator's fees and the claimant's recovery (if any) shall be paid by the Diocese, and not by the class settlement fund, because the settlement fund may already have been subject to a final accounting by the time such claims are processed.

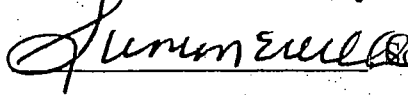
AND IT IS SO ORDERED!

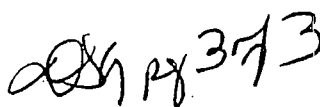
Furthermore, the Court has appointed Desa Ballard, Esq. as a non-testifying consultant in evaluating and addressing the issues before the Court in this matter, as all counsel was made aware of in a August 29, 2007 Order. Payment for Ms. Ballard's services shall be made from the

Class settlement fund within ten (10) days after the settlement funds are released from the Court's supervision.


Diane S. Goodstein
Presiding Judge

This 31 day of August 2007

 South Carolina

 373

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE No. 06-CP-18- 1311

John Doe #67, individually and a
representative of a class of people similarly
situated,

Plaintiff,

vs.

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

Defendants.

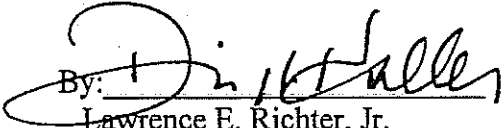
SUMMONS

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2006 AUG 15 AM 11:44
DAVEY L. GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

TO: THE DEFENDANTS ABOVE NAMED

YOU ARE HEREBY SUMMONED and required to answer the complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the complaint upon the subscribers at their offices at 622 Johnnie Dodds Boulevard, P.O. Drawer 1089, Mt. Pleasant, South Carolina, 29465, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint within the time aforesaid, the Plaintiff in this action will apply to the court for the relief demanded in the complaint and judgment by default will be rendered against you.

RICHTER & HALLER, LLC

By: 

Lawrence E. Richter, Jr.

David K. Haller

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Glenn P. Churchill
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ATTORNEYS FOR PLAINTIFF

14th day of August, 2006

Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE NO. 06-CP-18-_____

John Doe #67, individually and a)
representative of a class of people similarly)
situated,)

Plaintiff,)

vs.)

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

Defendants.)

COMPLAINT
Jury Trial Requested

Outrage, Negligence/Gross Negligence
Breach of Fiduciary Duty, Intentional
Infliction of Emotional Distress, Fraudulent
Concealment, Civil Conspiracy, Negligent
Retention or Supervision

FILED-RECORDED
2006 AUG 1
11:44
DORCHESTER COUNTY
CLERK OF COURT
J. BRAMHAM

TO: THE DEFENDANTS ABOVE NAMED

Plaintiff, complaining of the Defendants, alleges and says:

PARTIES AND JURISDICTION

1. John Doe #67 is a pseudonym for a former Charleston County resident who, while living in the Charleston area, attended schools operated by the Diocese of Charleston and attended and participated in mass, confession, religious training, and various religious and nonreligious functions sponsored and operated by the Diocese of Charleston. He is identified in this complaint by a pseudonym because this is a case about childhood sexual abuse upon the plaintiff, and his identity has been withheld due to the sensitivity and private nature of these allegations. His identity has been disclosed to the defendants.
2. Defendant The Bishop of Charleston, a Corporation Sole (hereinafter referred to as "Diocese"), and/or its predecessors, is and was at all times material hereto a corporation

organized under the laws of the State of South Carolina, which owns property and does business in Dorchester County, South Carolina. Diocese is and was the corporate entity through which the religious and other affairs of the Roman Catholic Church in South Carolina are and were conducted. The Diocese and its agents and employees were and continue to be responsible for the selection and assignment of clergy, supervision of clergy activities, the exercise of authority over various members of its denomination, and the maintenance of the well being of its members.

3. The Bishop of the Diocese of Charleston (hereinafter referred to as "Bishop") is sued in his official capacity. The Bishop is ultimately responsible for the priests in his Diocese. Bishop is the successor in interest to his predecessors in his official position.

FACTUAL SUMMARY

4. Defendant Diocese operates churches and parochial schools in Charleston County and throughout South Carolina offering primary, elementary, and secondary educations. It holds certain assets including schools, rectories, churches, and other properties real and personal in Charleston County and throughout South Carolina and possibly elsewhere. One such property is Nativity Catholic Church and School (hereinafter "Nativity") located in Charleston County.
5. Diocese, as part of its general mission, encouraged its parishioners, such as the plaintiff, to enter, use, and attend its many activities on its premises, including school, worship, social, and religious based functions. As such, the Diocese undertook a duty to ensure its premises were safe from all dangers which were reasonably foreseeable. In particular, the defendants

owed minors, including the minor plaintiff, a greater degree of care because of their lack of capacity to appreciate risks and avoid danger. Diocese and Bishop represented to its parishioners, including the plaintiff and/or his parents, that its facilities were places of safety and that it could and would protect its parishioners, including the plaintiff, from harm.

6. The Diocese operates the various components stated in paragraph 5 above, and other assets through a businesslike operation. Often, it charges for its services and sometimes charges its non-practitioners a higher amount for its services in order to garner a profit. In fact, in order manage its business operations, the Diocese employs an individual to serve as its "Chief Financial Officer." The Diocese has a history of using gambling function as a means of raising revenue for its operations.
7. At all times material to the incidents alleged in this complaint, Father James Nyhan was a clergyman assigned to Nativity. Nyhan was assigned to Nativity by the Diocese and Bishop and, at all times, was under the direct supervision, employ and control of the Diocese and its then Bishop.
8. Nyhan was employed by Diocese and Bishop as a priest, youth leader, confessor, counselor, and in a position of authority over plaintiff at Nativity Catholic Church and School. In this role, Nyhan came to have access to and to know the most personal and confidential information of his parishioners including the plaintiff. Diocese and Bishop encouraged their parishioners to share and trust Nyhan as a priest, youth leader, confessor, counselor, and in a position of authority over plaintiff. Among other things, Diocese and Bishop encouraged plaintiff and other parishioners to share with and trust Nyhan and other of its employees with deeply personal information and with their personal safety and salvation. As part of his

employment, Nyhan reached out to parishioners of the Diocese and assisted the defendants in cultivating relationships of trust and confidence.

9. Plaintiff, a devout member of the Roman Catholic Church, attended and actively participated in activities designed for young boys at Nativity. Among other things, plaintiff was an altar boy and participated in the youth programs with which Nyhan worked.
10. Plaintiff came to know the priest Nyhan through these various church and school related programs and activities. Based on this relationship, as cultivated by Nyhan and encouraged by the Diocese and the Bishop, plaintiff admired, trusted, revered and respected Nyhan as a holy man, authority figure, confessor, clergyman, counselor and spiritual advisor. In school and church, he was taught and instructed to do so. As a result, plaintiff entrusted in Nyhan his personal safety and shared with Nyhan his most confidential information.
11. Because of plaintiff's position as a minor, together with Nyhan's position in the Roman Catholic Church as a priest, youth leader, holy man, confessor, counselor, and authority figure, Nyhan was able to have control and influence over plaintiff. By his words and actions, Nyhan represented to plaintiff that their relationship was one in which Nyhan was to provide counseling, comfort and advice to plaintiff, and to look out for plaintiff's well being and best interests. These representations were untrue and intended to deceive plaintiff. Nyhan used these representations and his various positions to gain plaintiff's trust and confidence and to obtain control over him.
12. Between 1978 and 1980, plaintiff, then a minor child, was sexually assaulted by Father Nyhan.
13. These incidents occurred while Nyhan was an employee and youth leader of Nativity

Catholic Church and School. These assaults upon plaintiff occurred on the premises of Nativity Catholic Church, a property owned and controlled by the defendants, as well as other locations. For example, Nyhan preyed on young boys, including the plaintiff, in the Church Rectory of Nativity Catholic Church or took them elsewhere, such as to local beaches, for the purposes of molestation

14. Based on the relationship of trust and confidence cultivated by Nyhan and encouraged by Diocese and Bishop, plaintiff justifiably believed and relied on Nyhan and gave Nyhan his trust and confidence. By his words and actions, Nyhan assured plaintiff that this conduct was legal and proper. Nyhan and defendants actively concealed the wrongfulness of his exploitation and misconduct involving children, plaintiff included. As a result, and because plaintiff was a minor, plaintiff was unable to understand the wrongfulness and illegality of Nyhan's sexual abuse of him and the related injury. Nyhan also threatened plaintiff with recrimination if plaintiff revealed Nyhan's actions.
15. Plaintiff is informed and believes that the defendants knew, or should have known that Nyhan had deviant sexual propensities. Furthermore, the defendants knew or should have known that Nyhan was molesting minor boys on Nativity Catholic Church's premises and at other locations as well. Nevertheless, the defendants failed to warn the plaintiff and other minor children similarly situated of the danger posed by Nyhan, failed to protect the plaintiff on its premises, and failed in the exercise of the many other duties it undertook. Moreover, it hid the conduct of Nyhan and others. In fact, concealment of the conduct of the priests and other Diocese employees was the official policy of the Diocese and the Catholic Church.
16. Plaintiff has only learned within the past two years of the defendants' knowledge of Nyhan's

history, proclivities, and actions, and has similarly only then learned of defendants' concealment and effort to maintain secrecy concerning same. Other litigation, news reports, and other occurrences have led to plaintiff now becoming so aware, and plaintiff could not have so known or learned previously.

17. At least since approximately 1960 through the present, defendant Diocese and the Holy See of the Catholic Church had knowledge that Roman Catholic clergy were sexually abusing children.
18. In 1962, the Holy See, which dictates policy and procedure for the Diocese and the Bishop, issued an INSTRUCTION entitled "On the Manner of Proceeding in Cases of Solicitation." (Attached as Exhibit A).
19. The INSTRUCTION identifies as the worst crime as any obscene, external act, gravely sinful, perpetrated in any way by a priest with youths of either sex or sex with brute animals (bestiality). (Ex. A, ¶ 73.) The Vatican INSTRUCTION encourages bishops and church leaders to avoid "scandal." (Ex. A, ¶¶ 35, 36, 64.) Yet, the INSTRUCTION required the victim to keep his or her victimization secret.
20. This INSTRUCTION was intended to reach all patriarchs, archbishops, superiors and diocesan ordinaries (bishops). At the top of this INSTRUCTION, it states that the document is "to be diligently stored in the secret archives of the Curia as strictly confidential. Nor is it to be published nor added to with any commentaries."
21. The INSTRUCTION contains explicit instructions as to how bishops and church leaders are to proceed in cases where a priest entices a penitent to engage in sexual conduct. The INSTRUCTION specifically mentions that these cases encompass situations where children

are sexually abused. (Ex. A, ¶¶ 62, 73) It mentions that church officials could transfer offending priests to different assignments. (Ex. A, ¶ 4.)

22. Pursuant to the dictates of the INSTRUCTION, all points in the process of handling sex abuse cases dealing with a penitent, the matters are to be kept secret and concealed. In particular, if church leaders find, in their own investigation, that the allegations lack foundation, they are mandated to destroy all of the documents. If, however, the allegations are found to have foundation the bishop and church leaders were required to keep the pertinent documents in secret archives. (Ex. A, ¶ 42.)
23. Under standard Catholic doctrine, "good" Catholics are required to follow the mandates of the Holy See such as dictates of the INSTRUCTION or face a potential after life of damnation. Diocese, Bishop and their agents and employees such as Nyhan using the relationships of priest, youth leader, confessor, counselor, and in a position of authority over plaintiff which they cultivated, reinforced this belief.
24. As a result, plaintiff, a good Catholic, was taught that he must obey the rules, teachings, doctrines, and instructions of the Roman Catholic church and was, therefore, instructed and led to believe, by the Diocese, Bishop and their agents and employees such as Nyhan that he must conceal that Nyhan had committed upon him a horrible sin or risk an afterlife of damnation.
25. As a result of the actions and/or inactions of the defendants, Nyhan was allowed, and did, prey upon plaintiff by engaging in its own defined "worst sin." Plaintiff has suffered from Nyhan's conduct and the conduct of the defendants, by, among other things, years of psychological damage with physical manifestations.

26. **CLASS ALLEGATIONS**

27. Plaintiff brings this action on behalf of himself and as a representative of a class of other persons similarly situated as victims of priest sex abuse in South Carolina pursuant to Rule 23 of the South Carolina Rules of Civil Procedure.
28. The defendants have jurisdiction over the operations of the Roman Catholic Church within the territorial boundaries of the State of South Carolina.
29. Plaintiff is informed and believes that the number of other individuals in South Carolina have been the victims of childhood priest sexual abuse may exceed the hundreds and that the joinder of all such individuals in the instant suit is impracticable.
30. There are questions of law and fact which are common to the class, including, but no limited to, whether the Diocese and/or Bishop knew or should have known of the pervasive childhood sexual abuse throughout the state and whether the INSTRUCTION or other techniques were used to dissuade victims of the defendants' conduct from seeking civil damages against it as a form of fraudulent concealment.
31. The claims of the class are typical of John Doe #53 and plaintiff is informed and believes that the defenses of the defendant will be identical as to each of the victims of the abuse. In fact, in all of the other individual cases brought against these defendants for similar acts alleged by this plaintiff, the defendants have asserted identical defenses. These actions are within the jurisdiction of this court and it may easily take judicial notice of the same.
32. Plaintiff, the representative party will fairly and adequately protect the interests of the class.
33. The amount in controversy for each of the members of the class exceeds \$100.00.
34. Plaintiff is entitled to the certification of a class of plaintiffs against the defendant

representing all individuals, save for those barred by law from asserting an action against the defendants, in South Carolina who were sexually abused and/or otherwise molested by agents or employees of the Catholic Church under the supervision and/or control of the defendants.

35. Throughout this complaint, references to plaintiff are intended to reference the plaintiff and the members of the class who he represents as factual circumstances similar to those suffered by the class members and of the legal or equitable claims against the defendants which each member of the class is entitled to assert.

FOR A FIRST CAUSE OF ACTION

OUTRAGE

36. The allegations of paragraphs 1 through 35 above are incorporated into this cause of action as if fully stated herein.
37. The defendants intentionally inflicted severe emotional distress on plaintiff or were certain or substantially certain that such distress would result from their conduct. Defendants' conduct as alleged above was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community. The actions of defendants caused plaintiff emotional distress and the emotional distress suffered was severe such that no reasonable man could be expected to endure it and it had physical manifestations of pain, loss of sleep, nervousness, stress, and other manifestations.
38. As a direct and proximate result of the outrageous conduct of the defendants, plaintiff has

been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants or others.

FOR A SECOND CAUSE OF ACTION:

NEGLIGENCE/GROSS NEGLIGENCE/RECKLESSNESS

39. The allegations of paragraphs 1 through 35 above are incorporated into this cause of action as if fully stated herein.
40. As alleged above, plaintiff was sexually assaulted on multiple occasions between 1978 and 1980 by Father James Nyhan who was a priest, youth leader, confessors, counselor, and in a position of authority over plaintiff. Nyhan's duties to the plaintiff arose from his employment with Diocese and Bishop.
41. As a result of the relationship between plaintiff and Nyhan, plaintiff and the defendants, and/or Nyhan and the defendants, defendants owed duties of due care toward the plaintiff. defendants breached those duties and were negligent, grossly negligent, careless, reckless, wilful, or wanton in relation to the plaintiff, in that they failed to:
 - a. Monitor Nyhan's behavior while on premises of the defendants including, but not limited to, Nativity Catholic Church, and/or while engaged in activities with school, church, youth;
 - b. Properly investigate Nyhan's background through a proper background check, to determine his proclivities toward deviant sexual conduct perpetrated upon individuals such as the plaintiff;

- c. Address Nyhan's past conduct either at the time he first became involved with the defendants or subsequently thereafter;
- d. Ignoring Nyhan's known predilections toward sexually assaulting young boys when it was known or the defendants should have known of those predilections;
- e. Allowing Nyhan to work with young boys, including the plaintiff, alone and unsupervised;
- f. Maintain and keep their property and premises where Nyhan worked in a reasonably safe condition;
- g. Shield the plaintiff from dangerous conditions, situations and individuals including child predators such as Nyhan;
- h. Warn the plaintiff and/or his family of Nyhan's deviant sexual proclivities;
- i. Fulfill their duties *in loco parentis* to the plaintiff;
- j. Educate the plaintiff and/or his family about the dangers of sexual abuse of minors in youth programs such as those conducted by the defendants through Nyhan;
- k. Warn them of a priest known to have a sexual interest in children and known to act inappropriately on that interest;
- l. Supervise Nyhan in a manner so as to eliminate his chances to sexually abuse children;
- m. Take steps to report to civil and criminal authorities a priest who sexually abused children so those who consider employing him for jobs having contact with children can make an informed decision about whether or not to do so, or the conditions on which to employ him, and so that parents and children can protect against his

predatory actions;

n. Notify parents of those children who have been exposed to Nyhan;

o. Exercise due care for the safety and well-being of plaintiff.

42. As a direct and proximate result of the negligent, grossly negligent, reckless, careless, wilful, and wanton behavior of the defendants and/or their employees/agents, plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants or others.

FOR A THIRD CAUSE OF ACTION:

BREACH OF FIDUCIARY DUTY

43. The allegations of paragraphs 1 through 35 above are incorporated into this cause of action as if fully stated herein.
44. By and through the relationships described herein, defendants entered into a fiduciary relationship with the plaintiff. Additionally, by accepting physical custody of the minor plaintiff, as student at Nativity School and a parishioner of Nativity Church, defendants assumed the duty to act in *loco parentis* with respect to the plaintiff. The defendants undertook a duty to provide a safe environment for plaintiff, as well as for all children at Nativity Catholic Church and School. A relationship of trust and confidence, and therefore a fiduciary relationship, was formed.
45. By entering into a fiduciary relationship with plaintiff, defendants were obligated to act only in the best interests of plaintiff. This duty extended to defendants' agents and employees,

Nyhan included.

46. Plaintiff reposed trust and confidence in Nyhan, his priest, teacher, confessor, and counselor, and in the defendants. As a result of Nyhan's predatory acts described above and the Diocese and Bishop's failure to act on Nyhan's conduct, the defendants breached the duties owed to the plaintiff.
47. As a proximate result of the negligent actions, inactions and breaches of fiduciary duties by the defendants and through agents, plaintiff was harmed and is entitled to actual, compensatory damages in an amount to be determined by the jury, and punitive damages in an amount sufficient to deter similar conduct by these defendants and others.

FOR A FOURTH CAUSE OF ACTION:

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

48. The allegations of paragraphs 1 through 35 above are incorporated into this cause of action as if fully stated herein.
49. The emotional distress and its attendant physical manifestations including nervousness, poor sleep, headaches, nausea, among others, suffered by plaintiff as a result of the defendants' actions and inactions was so severe that no reasonable person could be expected to endure it. Those effects have continued to cause problems for plaintiff and harm him severely, emotionally and physically.
50. As a direct and proximate result of the outrageous conduct of the defendants, plaintiff has been injured and suffered damages. Plaintiff is entitled to judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient

amount to deter such similar conduct by these defendants or others.

FOR A FIFTH CAUSE OF ACTION:

FRAUDULENT CONCEALMENT

51. The allegations of paragraphs 1 through 35 above are incorporated into this cause of action as if fully stated herein.
52. Defendants had knowledge of Nyhan's sexually deviant propensities with minors prior to the sexual molestation of plaintiff. Plaintiff could not have known, nor did he reasonably have the opportunity to know, that the defendant had specific knowledge about Nyhan's deviant and sexual propensities prior to the abuse perpetrated on him. Further, plaintiff could not have discovered the truth through reasonable inquiry or inspections. By acts and conduct described herein, defendants concealed material facts from plaintiff, inducing plaintiff and his family into a false belief that Nyhan was safe around children, a false belief that no other children were sexually abused by Nyhan, and that the defendants did not possess knowledge that Nyhan engaged in predatory sexual practices and abused other children, among other things.
53. The defendants' failure to report, along with their active concealment of Nyhan's above mentioned propensities, as mandated by the INSTRUCTION attached at Exhibit A, constitutes fraudulent concealment of the information about Nyhan from his potential prey. This fraudulent concealment lasted until the present.
54. As a direct and proximate result of the outrageous conduct of the defendants, plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants

for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants and others.

FOR A SIXTH CAUSE OF ACTION:

CIVIL CONSPIRACY

55. The allegations of paragraphs 1 through 35 above are incorporated into this cause of action as if fully stated herein.
56. Prior to the abuse of the plaintiff, plaintiff is informed and believes two or more agents of the defendants were aware of Nyhan's sexually deviant propensities with minors. The failure of these agents of the defendants to report Nyhan to the proper authorities, the active concealment of their knowledge about Nyhan's deviant activities, and their agreement to do nothing to stop, or at least report, his activities constitutes a conspiracy of silence. The purpose behind this conspiracy was to protect Nyhan at the plaintiff's expense, proximately resulting in injury to the plaintiff. The conspiracy of silence constitutes a failure to protect minors who were the potential prey of Nyhan and his sexually deviant propensities, this plaintiff included.
57. As a direct and proximate result of the conspiratorial conduct of the defendants, plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants or others.

FOR A SEVENTH CAUSE OF ACTION:

NEGLIGENT RETENTION OR SUPERVISION

58. The allegations of paragraphs 1 through 35 above are incorporated into this cause of action as if fully stated herein.
59. Nyhan was hired by agents for the defendants, or the defendants themselves, prior to the abuse upon the plaintiff.
60. The agents for the defendants knew or should have known about Nyhan's sexually deviant propensities. Despite such knowledge, the agents for defendants failed to take steps to protect the minors at Nativity Church and School, including the minor plaintiff.
61. Despite having knowledge of Nyhan's sexually deviant propensities with minors, the defendants directly or through agents continued to retain him as a priest, youth leader, confessor, counselor, and teacher without warning the parents of children, or the children at Nativity Church and School, who were his potential prey. Several of these children, plaintiff included, became Nyhan's actual prey.
62. Despite having knowledge of Nyhan's sexually deviant propensities with minor students, the agents of the defendants did not properly supervise him. Consequently, he was able to continue to perpetrate his sexually deviant attacks on minors.
63. Plaintiff was a minor child attending Nativity Catholic Church and School, where Nyhan was assigned. Therefore if not for Nyhan's continued employment by defendants, plaintiff would not have been injured.
64. Plaintiff was one of those minor students who was injured because the agents of the defendants failed to supervise Nyhan even though they knew or should have known of his sexually deviant propensities with minors.

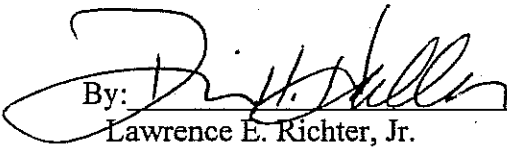
65. As a direct and proximate result of the defendants' negligent conduct, plaintiff sustained and continues to sustain injuries and damages described herein and therefore is entitled to receive actual, compensatory damages in an amount to be determined by a jury, and punitive damages in a sufficient amount to deter similar conduct by these defendants or others.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury.

WHEREFORE, plaintiff requests actual, compensatory and punitive damages against the defendants in amounts to be determined by the finder of fact for the various causes of action set forth above, that the costs of this action be taxed against the defendants, and such other and further relief as the Court shall deem just and proper.

Respectfully submitted,

By: 

Lawrence E. Richter, Jr.

David K. Haller

RICHTER & HALLER, LLC

622 Johnnie Dodds Blvd.

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ATTORNEYS FOR PLAINTIFF

14th day of August, 2006
Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE No. 06-CP-18-1310

Jane 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.)

COMPLAINT
Action for Loss of Consortium

FILED - RECORDED
2006 AUG 15 AM 11:43
GENE L. GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

TO THE DEFENDANTS ABOVE NAMED:

Plaintiffs, individually and as representatives of a class of people similarly situated, allege and complain of the defendants as follows:

1. Jane Doe 1 is a resident and citizen of Richland County, South Carolina. She is the wife of John Doe #53, an individual who, in his youth, was assaulted and abused by a priest under the control of the defendants. Hereinafter, the abused individual shall be referred to as John Doe #53. The identity of Jane Doe 2 has been provided to the defendants.
2. Defendant Jane Doe 2 is a resident and citizen of Greenville County, South Carolina. She is the wife of John Doe #66 an individual who, in his youth, was assaulted and abused by a priest under the control of the defendants. Hereinafter, the abused individual shall be referred to as John Doe #66. The identity of Jane Doe 1 has been provided to the defendants.
3. Defendant Rachel Roe is a resident and citizen of Dorchester County, South Carolina. She

is the mother of John Doe #53. The identity of Jane Doe 3 has been provided to the defendants.

4. Defendant The Bishop of Charleston, a Corporation Sole (hereinafter referred to as "Diocese"), and/or its predecessors at all times material are and were hereto a corporation organized under the laws of the State of South Carolina, which owns property and does business in Dorchester County, South Carolina. Diocese is and was the corporate entity through which the affairs of the Roman Catholic Church in South Carolina are and were conducted. The Diocese and its agents and employees were and continue to be responsible for the selection and assignment, supervision, and the exercise of authority over its various agents and the members of its denomination, and the maintenance of the well being of its members.
5. Defendant Diocese holds certain assets including schools, rectories, churches, and other properties real and personal throughout South Carolina, including Dorchester County, and possibly elsewhere. The Diocese operates the various components and other assets through a businesslike operation. Often, it charges for its services and sometimes charges its non-practitioners a higher amount for its services in order to garner a profit. In fact, in order manage its business operations, the Diocese employs an individual to serve as its "Chief Financial Officer." The Diocese has a history of using gambling functions as a means of raising revenue for its operations.
6. The Bishop of the Diocese of Charleston (hereinafter referred to as "Bishop") is sued in his official capacity. The Bishop is ultimately responsible for the priests in his Diocese. Bishop is the successor in interest to his predecessors in his official position.

7. The defendant owns property and does business in Dorchester County. Venue is properly laid in this county and this court has jurisdiction over the parties hereto and the subject matter hereof.

ABUSE OF JOHN DOE #53

8. Under the authority of the Diocese, Monsignor Thomas Duffy and other agents of Diocese took John Doe #53 from his childhood home in Charleston and placed him under the care of the Atlanta Diocese in Georgia, where he was housed at a facility operated by it. Upon being returned to Charleston by Charleston Diocese agents, he was placed in the Catholic orphanage in Charleston. He resided at the orphanage for two years and attended school at Blessed Sacrament in Charleston.
9. At all times material to the incidents alleged in this complaint, Father Lawrence Sheedy was an authority figure, moral leader, confessor, and counselor employed and/or controlled by the defendants and, at all times, was under the direct supervision, employ and control of the Diocese and its then Bishop. Because of John Doe #53's position as a minor under the care of the Diocese, together with Sheedy's position in the Roman Catholic Church as an authority figure, moral leader, confessor, and counselor, Sheedy was able to have control and influence over John Doe #53. By his words and actions, Sheedy represented to John Doe #53 that their relationship was one in which Sheedy was to provide counseling, comfort and advice to John Doe #53, and to look out for John Doe #53's well being and best interests. These representations were untrue and intended to deceive John Doe #53. Sheedy used these representations and his various positions to gain John Doe #53's trust and confidence and to obtain control over him.

10. Between 1966 and 1967, John Doe #53, then a minor child, was sexually assaulted repeatedly by Father Sheedy.
11. On several occasions during the time when the abuse occurred, Father Sheedy provided alcohol to John Doe #53, then a minor, before sexually abusing him on Diocese property and while exercising the authorities provided to him by the defendants.
12. These incidents occurred while Sheedy was an employee and youth leader of the defendants. These assaults upon John Doe #53 occurred on the premises owned and controlled by the defendants.
13. Based on the relationship of trust and confidence cultivated by Sheedy and encouraged by Diocese and Bishop, John Doe #53 justifiably believed and relied on Sheedy and gave Sheedy his trust and confidence. By his words and actions, Sheedy assured John Doe #53 that the abusive conduct was legal and proper. Sheedy and defendants actively concealed the wrongfulness of Sheedy's exploitation and misconduct involving children, John Doe #53 included.
14. Sheedy also threatened John Doe #53 with recrimination if John Doe #53 revealed Sheedy's actions, often telling John Doe #53 that the instances of sexual abuse on the Diocese property were "our little secret" that should never be revealed to anyone, including his mother, plaintiff Rachel Roe.
15. John Doe #53 is informed and believes that Sheedy was known to the defendants to be unstable, unreliable, a hedonist and an abuser of alcohol. His assignment within the Diocese was as a result of his improper actions— but neither John Doe #53 nor Rachel Roe were warned.

16. As a result of the abuse of John Doe #53, has suffered deep psychological damage with accompanied physical manifestations, alcohol and drug abuse, and strain in his relationships, among other things, and they have impact his ability to function normally in life. In fact, as late as two years ago, John Doe #53 was being told by his priests that it was he who had sinned and that it was he who required absolution for the events with Sheedy. These acts by the defendants only exacerbated the injuries suffered by John Doe #53.
17. Because of the abuse of her son by the defendants' agent/employee, the priest Sheedy, Rachel Roe has been injured by, among other things, incurring expenses in the care of the child, John Doe #53 and the loss of his companionship, aid, and society.
18. Jane Doe 1 is the spouse of John Doe #53. She has assisted him in his care as he has struggled to cope with the abuse and the lifelong damage he has suffered. She has been with him during the times, recent and otherwise, when the defendants and its agents have tried to place the blame on the John Doe #53 for the events which occurred. As a result of the defendants conduct, Jane Doe 1 has suffered from the loss of the right to the companionship, aid, society and services of John Doe #53.

ABUSE OF JOHN DOE #66

19. John Doe #66 came to know Priest James Nyhan through various church and school related programs and activities while he attended Nativity Catholic School. Based on this relationship, as cultivated by Nyhan and encouraged by the Diocese and the Bishop, John Doe #66 admired, trusted, revered and respected Nyhan as a holy man, authority figure, confessor, clergyman, counselor and spiritual advisor. In school and church, he was taught

situated defined as follows:

The spouses, parents, and/or legal guardians of all individuals who were sexually abused and/or otherwise molested by agents or employees of the Catholic Church under the supervision and/or control of the defendants in South Carolina between January 1, 1950 and December 31, 2000 and who suffered a loss of the abused individual's consortium.

26. The defendants have jurisdiction over the operations of the Roman Catholic Church within the territorial boundaries of the State of South Carolina.
27. Plaintiffs are informed and believes that the number of other individuals in South Carolina who fall within the definition of the class defined above may exceed the hundreds and that the joinder of all such individuals in the instant suit is impracticable.
28. There are questions of law and fact which are common to the class.
29. The claims of the class are typical of the plaintiffs and plaintiffs are informed and believes that the defenses of the defendant will be identical as to each of the class members.
30. Plaintiffs will fairly and adequately protect the interests of the class.
31. The amount in controversy for each of the members of the class exceeds \$100.00.
32. Plaintiffs are entitled to the certification of a class of plaintiffs against the defendants are defined above.
33. Throughout this complaint, references to plaintiffs are intended to reference the plaintiffs and the members of the class who they represent as factual circumstances similar to those suffered by the class members and of the legal or equitable claims against the defendants

which each member of the class is entitled to assert.

FOR A FIRST CAUSE OF ACTION

LOSS OF CONSORTIUM

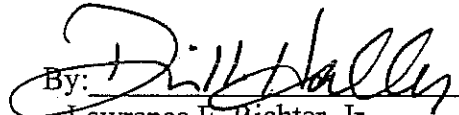
34. Plaintiffs reallege paragraphs 1 through 33 above as if restated hereinafter verbatim.
35. The defendants have intentionally or tortiously violated the right to the companionship, aid, society and services of Jane Doe 1 and Rachel Roe to John Doe #53 and they have been injured as a direct and proximate result of the defendants' interference with said right. Plaintiff Rachel Roe has incurred expenses on behalf of John Doe #53 as a result of the defendants' conduct.
36. The defendants have intentionally or tortiously violated the right to the companionship, aid, society and services of Jane Doe 2 to John Doe #66 and she has been injured as a direct and proximate result of the defendants' interference with said right.
37. As a direct and proximate result of the acts of the defendants, the plaintiffs and the members of their class have been injured and suffered damages. Plaintiffs are entitled to a judgment against the defendants for both actual damages, in an amount to be determined by the trier of fact, and punitive damages to impress upon the defendants the seriousness of its conduct and to deter such similar conduct by other tortfeasors in the future.

JURY TRIAL DEMANDED

38. Plaintiffs demand a jury trial.

WHEREFORE plaintiffs pray for the certification of a class of individuals as defined herein,
for judgment in their favor for both actual and punitive damages, and for other relief as the court may
deem just, prudent, and proper.

Respectfully submitted,

By: 

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ATTORNEYS FOR PLAINTIFFS

14th day of August, 2006
Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE No. 06-CP-18-1319

Jane Doe 1 and Jane Doe 2 and Rachel
Roe individually and as representatives of
a class of people similarly situated,

Plaintiff,

vs.

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

Defendants.

ACCEPTANCE OF SERVICE

FILED - RECORDED
2006 SEP - 6 AM 10:10
CLERK OF COURT
DORCHESTER COUNTY

ACCEPTANCE OF SERVICE

Due and proper service of the SUMMONS and COMPLAINT pertaining to the above-styled action is hereby acknowledged on behalf of The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston in his official capacity, and two copies of same are retained this 25th day of August, 2006. The undersigned represents that he is authorized to accept service for the defendants above named.

By: 

Albert P. Shahid, Jr., Esquire
ATTORNEY FOR THE DIOCESE OF CHARLESTON
AND THE BISHOP OF THE DIOCESE OF CHARLESTON,
IN HIS OFFICIAL CAPACITY

Charleston, South Carolina

CERTIFICATE OF SERVICE

I DO HEREBY certify that I have served the foregoing ACCEPTANCE OF SERVICE by placing a true and correct copy of the same in an envelope, and delivering via first class mail, postage prepaid to counsel at the address(es) indicated as follows:

**A. Peter Shahid, Jr.
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FILED-RECORDED
2006 SEP - 6 AM 10:10
DIRECTOR GENERAL
CLERK OF COURT
DORCHESTER COUNTY


Sara H. Edwards

5th day of September, 2006

Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CA No. 06-CP-18-1636

John Doe #53, individually and as a
representative of a class of other persons
similarly situated as victims of priest
sex abuse in South Carolina,

Plaintiff,

vs.

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

Defendants.

**COMPLAINT
Jury Trial Demanded**

Outrage, Negligence/Gross Negligence,
Breach of Fiduciary Duty, Fraudulent
Concealment, Civil Conspiracy

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2006 OCT - 6 AM 11:59
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

TO: THE DEFENDANTS ABOVE NAMED

Plaintiff, complaining of the Defendants, alleges and says:

PARTIES AND JURISDICTION

1. John Doe #53 is a former Charleston County resident who, while living in the Charleston area, lived in an orphanage operated by the Diocese of Charleston and attended and participated in mass, confession, religious training, and various functions sponsored and operated by the Diocese of Charleston.
2. Defendant The Bishop of Charleston, a Corporation Sole (hereinafter referred to as "Diocese"), and/or its predecessors at all times material are and were hereto a corporation organized under the laws of the State of South Carolina, having its principal place of business at 117 Broad Street, Charleston, South Carolina. Diocese is and was the corporate entity through which the affairs of the Roman Catholic Church in South Carolina are and were conducted. The Diocese and its agents and employees were and continue to be

responsible for the selection and assignment, supervision, and the exercise of authority over its various agents and the members of its denomination, and the maintenance of the well being of its members.

3. The Bishop of the Diocese of Charleston (hereinafter referred to as "Bishop") is sued in his official capacity. The Bishop is ultimately responsible for the priests in his Diocese. Bishop is the successor in interest to his predecessors in his official position.
4. This court has jurisdiction over the parties hereto and the subject matter hereof.

FACTUAL SUMMARY

5. Defendant Diocese operates churches, orphanages, and parochial schools in Charleston County and throughout South Carolina offering primary, elementary, and secondary educations. It holds certain assets including schools, rectories, churches, and other properties real and personal in Charleston County and throughout South Carolina and possibly elsewhere.
- 6.
7. Under the authority of the Diocese, Monsignor Thomas Duffy and other agents of Diocese took plaintiff from his childhood home in Charleston and placed him under the care of the Atlanta Diocese in Georgia, where he was housed at a facility operated by it.
8. While in Georgia, having been placed there by the defendants and/or its agents, Plaintiff was sexually assaulted by at least three Catholic Church agents.
9. Upon being returned to Charleston by Charleston Diocese agents, Plaintiff was placed in the Catholic orphanage in Charleston. He resided at the orphanage for two years and attended school at Blessed Sacrament in Charleston.

10. Diocese encouraged people, including the Plaintiff, to enter, use, and attend its many activities on its premises. As such, the Diocese undertook a duty to ensure its premises were safe from all dangers which were reasonably foreseeable. In particular, the defendants owed minors, including the minor plaintiff, a greater degree of care because of their lack of capacity to appreciate risks and avoid danger. Diocese and Bishop represented to its invitees or their legal guardians, including the Plaintiff and/or his parents, that its facilities were places of safety and that it could and would protect its invitees, including the Plaintiff, from harm.
11. At all times material to the incidents alleged in this complaint, Father Lawrence Sheedy was an authority figure, moral leader, confessor, and counselor employed and/or controlled by the defendants and, at all times, was under the direct supervision, employ and control of the Diocese and its then Bishop.
12. In his roles within the Diocese, Sheedy came to have access to and to know the most personal and confidential information of the Plaintiff. Diocese and Bishop encouraged the plaintiff and others to share and trust Sheedy as an authority figure, moral leader, confessor, and counselor. Among other things, Diocese and Bishop encouraged Plaintiff and others to share with and trust Sheedy and other of its employees with deeply personal information and with their personal safety and salvation. As part of his employment, Sheedy reached out to plaintiff and others within the jurisdiction of the Diocese and assisted the defendants in cultivating relationships of trust and confidence.
13. Plaintiff, a devout member of the Roman Catholic Church from childhood to the present, attended and actively participated in activities designed for young boys at Diocese-sponsored events.

14. The Diocese operates the various components stated in paragraph 5 above, and other assets through a businesslike operation. Often, it charges for its services and sometimes charges its non-practitioners a higher amount for its services in order to garner a profit. In fact, in order manage its business operations, the Diocese employs an individual to serve as its "Chief Financial Officer." The Diocese has a history of using gambling function as a means of raising revenue for its operations.
15. Plaintiff came to know the priest Sheedy through these various Diocese-sponsored programs and activities. Among other things, Plaintiff was an altar boy with Sheedy and participated in the youth programs with which Sheedy worked. Based on this relationship, as cultivated by Sheedy and enforced by the Diocese and the Bishop, Plaintiff admired, trusted, followed, revered and respected Sheedy as an authority figure, moral leader, confessor, and counselor. The defendants taught and instructed the plaintiff to do so. As a result, Plaintiff entrusted in Sheedy his personal safety and shared with Sheedy his most confidential information.
16. Because of plaintiff's position as a minor under the care of the Diocese, together with Sheedy's position in the Roman Catholic Church as an authority figure, moral leader, confessor, and counselor, Sheedy was able to have control and influence over Plaintiff. By his words and actions, Sheedy represented to Plaintiff that their relationship was one in which Sheedy was to provide counseling, comfort and advice to Plaintiff, and to look out for Plaintiff's well being and best interests. These representations were untrue and intended to deceive Plaintiff. Sheedy used these representations and his various positions to gain Plaintiff's trust and confidence and to obtain control over him.
17. Between 1966 and 1967, Plaintiff, then a minor child, was sexually assaulted repeatedly by Father Sheedy.

18. On several occasions during the time when the abuse occurred, Father Sheedy provided alcohol to Plaintiff, then a minor, before sexually abusing him on Diocese property and while exercising the authorities provided to him by the defendants.
19. These incidents occurred while Sheedy was an employee and youth leader of the defendants. These assaults upon Plaintiff occurred on the premises owned and controlled by the defendants.
20. Based on the relationship of trust and confidence cultivated by Sheedy and encouraged by Diocese and Bishop, Plaintiff justifiably believed and relied on Sheedy and gave Sheedy his trust and confidence. By his words and actions, Sheedy assured Plaintiff that the abusive conduct was legal and proper. Sheedy and defendants actively concealed the wrongfulness of Sheedy's exploitation and misconduct involving children, Plaintiff included.
21. Sheedy also threatened Plaintiff with recrimination if Plaintiff revealed Sheedy's actions, often telling Plaintiff that the instances of sexual abuse on the Diocese property were "our little secret" that should never be revealed to anyone.
22. Plaintiff is informed and believes that Sheedy was known to the defendants to be unstable, unreliable, a hedonist and an abuser of alcohol. His assignment within the Diocese was as a result of his improper actions— but neither plaintiff nor his legal guardians were warned.
23. Plaintiff is informed and believes that the defendants knew, or should have known that Sheedy had deviant sexual propensities. Furthermore, the defendants knew or should have known that Sheedy was molesting minor boys on Diocese property. Nevertheless, the defendants took no action to protect the plaintiff and others from this conduct. Moreover, it hid the conduct of Sheedy and others. In fact, concealment of the conduct of the priests and other Diocese employees was the official policy of the defendants.

24. After Plaintiff informed agents of the defendants that he had been sexually abused by Father Sheedy, church agents in their fiduciary capacity described herein directed Plaintiff to conceal Sheedy's abuse, informing Plaintiff that church officials would remedy the situation created by Sheedy's abuse. Plaintiff was told by Sheedy and other agents of the defendants that the sexual abuse was a form of "love" and that any thought the conduct was abuse was misplaced. The acts of the defendants and its agents to fraudulently conceal the tortuous and illegal acts of it and its employees has continued until the present.
25. At least since approximately 1960 through the present, defendant Diocese and the Holy See of the Catholic Church had knowledge that Roman Catholic clergy were sexually abusing children.
26. In 1962, the Holy See, which dictates policy and procedure for the Diocese and the Bishop, issued an INSTRUCTION entitled "On the Manner of Proceeding in Cases of Solicitation." (Attached as Exhibit A).
27. The INSTRUCTION identifies as the worst crime as any obscene, external act, gravely sinful, perpetrated in any way by a priest with youths of either sex or sex with brute animals (bestiality). (Ex. A, ¶ 73.) The Vatican INSTRUCTION encourages bishops and church leaders to avoid "scandal." (Ex. A, ¶¶ 35, 36, 64.) Yet, the INSTRUCTION required the victim to keep his or her victimization secret.
28. This INSTRUCTION was intended to reach all patriarchs, archbishops, superiors and diocesan ordinaries (bishops). At the top of this INSTRUCTION, it states that the document is "to be diligently stored in the secret archives of the Curia as strictly confidential. Nor is it to be published nor added to with any commentaries."
29. The INSTRUCTION contains explicit instructions as to how bishops and church leaders are

to proceed in cases where a priest entices a penitent to engage in sexual conduct. The INSTRUCTION specifically mentions that these cases encompass situations where children are sexually abused. (Ex. A, ¶¶ 62, 73) It mentions that church officials could transfer offending priests to different assignments. (Ex. A, ¶ 4.)

30. Pursuant to the dictates of the INSTRUCTION, all points in the process of handling sex abuse cases dealing with a penitent, the matters are to be kept secret and concealed. In particular, if church leaders find, in their own investigation, that the allegations lack foundation, they are mandated to destroy all of the documents. If, however, the allegations are found to have foundation the bishop and church leaders were required to keep the pertinent documents in secret archives. (Ex. A, ¶ 42.)
31. Under standard Catholic doctrine, "good" Catholics are required to follow the mandates of the Holy See such as dictates of the INSTRUCTION or face a potential afterlife of damnation. Diocese, Bishop and their agents and employees such as Sheedy and the agents who dissuaded plaintiff from taking action reinforced this belief.
32. As a result, Plaintiff, a good Catholic, was taught that he must obey the rules, teachings, doctrines, and instructions of the Roman Catholic Church and was, therefore, instructed and led to believe, by the Diocese, Bishop and their agents and employees such as Sheedy that he must conceal that Sheedy had committed upon him a horrible sin or risk an afterlife of damnation.
33. As a result of the actions and/or inactions of the defendants, Catholic agents were allowed, and did, prey upon Plaintiff by engaging in its own defined "worst sin." Plaintiff has suffered from Sheedy's conduct and the conduct of the defendants, by, among other things, years of severe psychological damage with physical manifestations.

CLASS ALLEGATIONS

34. Plaintiff brings this action on behalf of himself and as a representative of a class of other persons similarly situated as victims of priest sex abuse in South Carolina pursuant to Rule 23 of the South Carolina Rules of Civil Procedure.
35. The defendants have jurisdiction over the operations of the Roman Catholic Church within the territorial boundaries of the State of South Carolina.
36. Plaintiff is informed and believes that the number of other individuals in South Carolina have been the victims of childhood priest sexual abuse may exceed the hundreds and that the joinder of all such individuals in the instant suit is impracticable.
37. There are questions of law and fact which are common to the class, including, but no limited to, whether the Diocese and/or Bishop knew or should have known of the pervasive childhood sexual abuse throughout the state and whether the INSTRUCTION or other techniques were used to dissuade victims of the defendants' conduct from seeking civil damages against it as a form of fraudulent concealment.
38. The claims of the class are typical of John Doe #53 and plaintiff is informed and believes that the defenses of the defendant will be identical as to each of the victims of the abuse. In fact, in all of the other individual cases brought against these defendants for similar acts alleged by this plaintiff, the defendants have asserted identical defenses. These actions are within the jurisdiction of this court and it may easily take judicial notice of the same.
39. Plaintiff, the representative party will fairly and adequately protect the interests of the class.
40. The amount in controversy for each of the members of the class exceeds \$100.00.
41. Plaintiff is entitled to the certification of a class of plaintiffs against the defendant

representing all individuals, save for those barred by law from asserting an action against the defendants, in South Carolina who were sexually abused and/or otherwise molested by agents or employees of the Catholic Church under the supervision and/or control of the defendants.

42. Throughout this complaint, references to plaintiff are intended to reference the plaintiff and the members of the class who he represents as factual circumstances similar to those suffered by the class members and of the legal or equitable claims against the defendants which each member of the class is entitled to assert.

FOR A FIRST CAUSE OF ACTION

OUTRAGE

43. The allegations of paragraphs 1 through 41 above are incorporated into this cause of action as if fully stated herein.
44. The defendants intentionally inflicted severe emotional distress on Plaintiff or were certain or substantially certain that such distress would result from their conduct. Defendants' conduct as alleged above was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community. The actions of defendants caused Plaintiff emotional distress and the emotional distress suffered was severe such that no reasonable man could be expected to endure it and it had physical manifestations of pain, loss of sleep, nervousness, stress, and other manifestations.
45. As a direct and proximate result of the outrageous conduct of the defendants, Plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants

for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants or others.

FOR A SECOND CAUSE OF ACTION

NEGLIGENCE/GROSS NEGLIGENCE/RECKLESSNESS

46. The allegations of paragraphs 1 through 41 above are incorporated into this cause of action as if fully stated herein.
47. As alleged above, Plaintiff was sexually assaulted on multiple occasions by Father Laurence Sheedy who was an authority figure, moral leader, confessor, and counselor of the Plaintiff. Sheedy's duties to the Plaintiff arose from his employment with Diocese and Bishop.
48. Defendants owed duties of due care toward the Plaintiff. Defendants breached those duties and were negligent, grossly negligent, careless, reckless, wilful, or wanton in relation to the Plaintiff, in that they failed to:
 - a. Monitor Sheedy's behavior while on premises of the defendants and/or while engaged in activities with school, church, youth;
 - b. Properly investigate Sheedy's background through a proper background check, to determine his proclivities toward deviant sexual conduct perpetrated upon individuals such as the Plaintiff;
 - c. Address Sheedy's past conduct either at the time he first became involved with the defendants or subsequently thereafter;
 - d. Ignoring Sheedy's known predilections toward sexually assaulting young boys when it was known or the defendants should have known of those predilections;
 - e. Allowing Sheedy to work with young boys, including the Plaintiff, alone and

- unsupervised;
- f. Maintain and keep their property and premises where Sheedy worked in a reasonably safe condition;
 - g. Shield the Plaintiff from dangerous conditions, situations and individuals including child predators such as Sheedy ;
 - h. Warn the Plaintiff and/or his family of Sheedy's deviant sexual proclivities;
 - i. Placing the plaintiff in an unsafe environment in Georgia without fully investigating those facilities and/or knowing that the environment posed a risk to the plaintiff's well-being;
 - j. Fulfill their duties *in loco parentis* to the Plaintiff;
 - k. Educate the Plaintiff and/or his family about the dangers of sexual abuse of minors in youth programs such as those conducted by the defendants through Sheedy;
 - l. Warn them of a priest known to have a sexual interest in children and known to act inappropriately on that interest;
 - m. Supervise Sheedy in a manner so as to eliminate his chances to sexually abuse children;
 - n. Retaining Father Sheedy when it they defendants knew or should have known that he posed a risk to invitees of the defendant, especially the plaintiff, plaintiff class, and other invitees;
 - o. Take steps to report to civil and criminal authorities a priest who sexually abused children so those who consider employing him for jobs having contact with children can make an informed decision about whether or not to do so, or the conditions on which to employ him, and so that parents and children can protect against his

predatory actions;

- p. Notify parents of those children who have been exposed to Sheedy;
- q. Exercise due care for the safety and well-being of Plaintiff.

49. As a direct and proximate result of the negligent, grossly negligent, reckless, careless, wilful, and wanton behavior of the defendants and/or their employees/agents, Plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants or others.

FOR A THIRD CAUSE OF ACTION

BREACH OF FIDUCIARY DUTY

- 50. The allegations of paragraphs 1 through 41 above are incorporated into this cause of action as if fully stated herein.
- 51. By and through the relationships described herein, defendants entered into a fiduciary relationship with the Plaintiff. Additionally, by accepting physical custody of the minor Plaintiff, defendants assumed the duty to act in *loco parentis* with respect to the Plaintiff and were obligated to ensure that the plaintiff was safely cared for while he was in their custody, whether that be in Georgia, South Carolina, or elsewhere. By and through the conduct of the defendants, a relationship of trust and confidence, and therefore a fiduciary relationship, was formed.
- 52. As a result the acts and/or omissions of the defendants described herein, the defendants breached the duties owed to the Plaintiff.
- 53. As a proximate result of the breaches of fiduciary duties by the defendants, Plaintiff was

injured and suffered damages. Plaintiff is entitled to actual, compensatory damages in an amount to be determined by the jury, and punitive damages in an amount sufficient to deter similar conduct by these defendants and others.

FOR A FOURTH CAUSE OF ACTION

FRAUDULENT CONCEALMENT

54. The allegations of paragraphs 1 through 41 above are incorporated into this cause of action as if fully stated herein.
55. Defendants actively worked to fraudulently conceal their conduct. Among other things, Defendants undertook deliberate acts to conceal from the plaintiff that he had a cause of action thereby inducing him to postpone suit and/or dissuade the plaintiff from bringing suit by acts indicating affirmatively that the defendants would resolve the matter and/or that the plaintiff would suffer great and irreparable harm to himself by instituting suit, including, but not limited to, damnation. This fraudulent concealment lasted until the present.
56. As a direct and proximate result of the outrageous conduct of the defendants, Plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants and others.

FOR A SIXTH CAUSE OF ACTION

CIVIL CONSPIRACY

57. The allegations of paragraphs 1 through 41 above are incorporated into this cause of action as if fully stated herein.

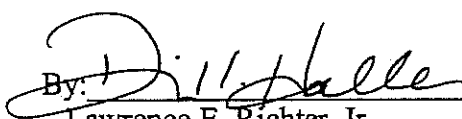
58. Defendants joined with others for the purpose of injuring the plaintiff, including, but not limited to, agents of the Diocese of Atlanta. The civil conspiracy of which these defendants were a party injured the plaintiff.
59. As a direct and proximate result of the conspiratorial conduct of the defendants, Plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants or others.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury.

WHEREFORE, Plaintiff requests actual, compensatory and punitive damages against the defendants in amounts to be determined by the finder of fact for the various causes of action set forth above, that the costs of this action be taxed against the defendants, and such other and further relief as the Court shall deem just and proper.

Respectfully submitted,

By: 
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ATTORNEYS FOR PLAINTIFF

6th day of October, 2006

Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE No. 06-CP-18-1310
CASE No. 06-CP-18-1311
CASE No. 06-CP-18-_____

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.)

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

Defendants.)

**MOTION TO CERTIFY CLASSES
AND FOR PRELIMINARY APPROVAL
OF CLASS SETTLEMENT**

FILED - RECORDED
2006 OCT - 6 PM 2:03
CHERYL G. HAM
CLERK OF COURT
DORCHESTER COUNTY

TO: A. PETER SHAHID, ESQUIRE AND JIM GEOLY, ESQUIRE, ATTORNEYS FOR
THE DEFENDANT

YOU WILL PLEASE TAKE NOTICE that the plaintiffs will move at the Dorchester County Courthouse on the tenth (10) day after service hereof, or at such other time and place as the court deems proper, for an order certifying plaintiffs classes of individuals with potential claims against the defendants, giving initial approval of a settlement between the classes and the defendants, and directing the procedure for notice, objection, and final approval of the settlement reached herein.

A more specific statement of the relief requested is stated below.

1. Class Certification

On June 30, 2006,¹ plaintiffs John Doe 67, Jane Doe 1 and Jane Doe 2 and Rachel Roe individually and as representatives of a class of people similarly situated, filed actionS against the defendants seeking damages arising from sexual abuse suffered at the hands of a priest under the control of the defendants while on the defendants' property. Plaintiffs John Doe #53, John Doe 66 and John Doe 66A were subsequently added to the case, also as class representatives.

This motion seeks to certify two classes of individuals. John Doe #53, John Doe, 66, John Doe 66A, and John Doe 67 request the court certify a class as follows:

All individuals 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. (Hereinafter the "Primary Class")

Jane Doe 1, Jane Doe 2, and Rachel Roe request the court certify a class of individuals as follows:

The spouses and parents, of all individuals qualified pursuant to the Primary Class and who suffered a loss of the abused individual's consortium, and who as spouses or parents have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter the "Consortium Class")

Plaintiffs will provide the court such legal argument to support this motion as necessary.

2. Approval of Settlements reached on behalf of the classes

The Class Representatives with class counsel and representatives of the defendants and their counsel held a mediation June 13 and 14, 2006 with Marvin Infinger, Esquire. The principals of the Settlement have executed a Settlement and Arbitration Agreement which will be presented to the court prior to the hearing on this matter. In sum, the defendants agree to make available a fund in set out in the Settlement and Arbitration Agreement by which individuals who are members of the

¹Other actions involving the same acts have been of record since at least May of 2005.

the Settlement and Arbitration Agreement and final approval of the settlement after notice to the class as set forth below.

3. Notice to Class Members

Plaintiffs pray for an order pursuant to SCRCRCP Rule 23 requiring notice of the class settlement, approval process, and claims process as follows:

- a. **Notice.** Class counsel shall arrange for notice of the settlement to be published in a form comparable to that set forth on Exhibit A hereto in the following major publications: *USA Today*, *The Charleston Post & Courier*, *The Myrtle Beach Sun*; *The State*; *The Augusta Chronicle*; *The Rock Hill Herald*; *Beaufort Gazette*; *Greenville News Spartanburg Herald*; *Orangeburg Times-Democrat*; and the *Aiken Standard*. Publication of the notice shall be at least once a week for six weeks during the notice period. In addition to the notice, class counsel shall mail by certified mail, return receipt requested the notice to any individual who may fit within the confines of either class. The defendants shall be required to provide to the plaintiffs the names, addresses and telephone numbers of all such persons known to them. The defendant shall publish the notice in its Catholic Miscellany publication for three (3) consecutive publications.
- b. **Time.** All publications shall be completed no later than 30 days following the entry of an order providing conditional approval of this settlement. Any objection to the approval of this settlement must be sent to class counsel and to the clerk of court for Dorchester County for filing with the required filing fee no later than fifteen (15) days prior to the Fairness Hearing on this matter.
- c. **Fairness Hearing.** A Fairness Hearing on final approval of this settlement will be

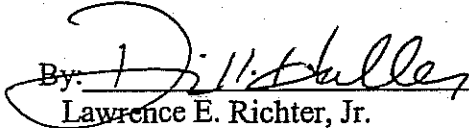
of an order providing conditional approval of this settlement. Any objection to the approval of this settlement must be sent to class counsel and to the clerk of court for Dorchester County for filing with the required filing fee no later than fifteen (15) days prior to the Fairness Hearing on this matter.

- c. **Fairness Hearing.** A Fairness Hearing on final approval of this settlement will be heard by this court at a time and place convenient to it as soon after the conclusion of the notice time as possible.
- d. **Notice of Settlement Approval and Duration of Claims Process.** The claims process will begin ten days after the date on which the settlement is approved as fair and all rights of appeal have expired. The claims period shall end 120 days after the date on which the claims period ends. Notice of the date on which the claims period begins and ends and how an individual can make a claim and learn the details of the same shall be made in the same manner as set out paragraph (b) above.

Plaintiffs will supplement this motion with such memorandum and record prior to the hearing on this motion as may be necessary.

WHEREFORE plaintiffs pray for the relief requested herein and such other relief as the court deems just, prudent, and proper.

Respectfully submitted,

By: 

Lawrence E. Richter, Jr.

David K. Haller

RICHTER & HALLER, LLC

622 Johnnie Dodds Blvd.

Post Office Drawer 1089

Mt. Pleasant, SC 29465
(843) 849-6000

LOFTON & LOFTON, PC
Lionel S. Lofton
Post Office Box 449
Charleston, SC 29402
(843) 722-6319

John Sinclair, III
Glenn P. Churchill
Post Office Box 370
Charleston, SC 29402-0370
(843) 853-9300
ATTORNEYS FOR PLAINTIFF

6th day of October, 2006
Mt. Pleasant, South Carolina

OK 5016
25.00/
cla

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE No. 06-CP-18-1310
CASE No. 06-CP-18-1311
CASE No. 06-CP-18-1434

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.

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

Defendants.

ORDER DESIGNATING CASE
COMPLEX

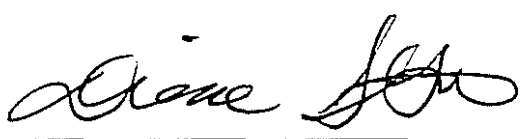
FILED - RECORDED
2006 OCT 17 PM 3:55
CLERK OF COURT
DORCHESTER COUNTY

THIS MATTER was before me, as Chief Administrative Judge for the First Judicial Circuit, for a status conference by telephone on September 29, 2006. This is a action seeking class certification of two classes of individuals. After hearing from counsel for all parties to the matter, and pursuant to the Order of Chief Justice Jean H. Toal dated July 26, 2006, I find that the ends of just in the disposition of the case are best served by designating this case complex.

Further, as Chief Administrative Judge, I find the interests of justice are served by assigning the case to me for exclusive jurisdiction to hear the case from beginning to end.

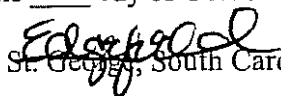
To the extent necessary, this matter shall not be called for trial before August 15, 2007.

AND IT IS SO ORDERED!



The Hon. Diane S. Goodstein
Chief Administrative Judge of the First Judicial Circuit

This 10 day of October, 2006

At St. George, South Carolina


25.00/
Cla

representative of a class of other persons)
similarly situated as victims of priest)
sex abuse in South Carolina,)

Plaintiff,)

vs.)

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

Defendants.)

FILED-RECORDED
2006 OCT 17 PM 3:55
CLERK OF COURT
DORCHESTER COUNTY

PURSUANT TO SCRCP Rule 42(a), and with the consent of the parties, it is

ORDERED that the above captioned matters are consolidated for trials; and

IT IS FURTHER ORDERED that the following captioned shall be used hereafter for these
matters:

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE No. 06-CP-18-1310
CASE No. 06-CP-18-1311
CASE No. 06-CP-18-14 3 4

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,)

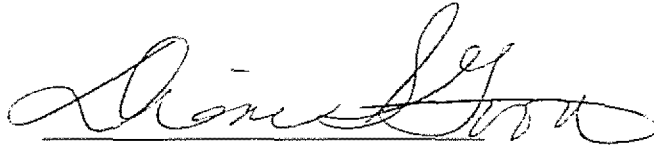
Plaintiffs,)

vs.)

The Bishop of Charleston, a Corporation)
Sole, and The Bishop of the Diocese of)

Charleston, in his official capacity,)
)
Defendants.)
_____)

AND IT IS SO ORDERED!!!



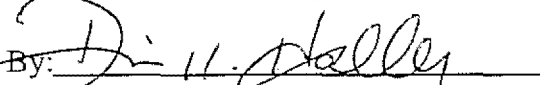
The Hon. Diane S. Goodstein
Jude of the First Judicial Circuit

This 9 day of Oct., 2006

Edgipolee, South Carolina

WE SO MOVE:

RICHTER & HALLER, LLC

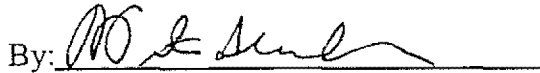
By: 

Lawrence E. Richter, Jr.
David K. Haller
Post Office Drawer 1089
Mt. Pleasant, SC 26465
(843) 849-6000

ATTORNEYS FOR PLAINTIFFS

WE CONSENT:

SHAHID LAW OFFICE, LLC

By: 

A. Peter Shahid, Jr., Esq.
Post Office Box 591
Charleston, SC 29402
(843) 853-4500

ATTORNEYS FOR DEFENDANTS

ORDER/COMPLEX CASE

MOTION GRANTED. IT IS ORDERED that this case be designated as complex and that the trial of the case take place on or after _____.

IT IS FUTHER ORDERED that this case be assigned to the Honorable _____ to hear and handle all pre-trial motions and other matters pertaining to this case.

____ day of _____, 20____. _____
Chief Judge for Administrative Purposes

ALTERNATIVE ORDER/CONTINUANCE

MOTION GRANTED FOR CONTINUANCE. IT IS ORDERED that the trial of this case not take place before _____ and that no further continuance be granted after this date except under exceptional circumstances.

____ day of _____, 20____. _____
Chief Judge for Administrative Purposes

ALTERNATIVE ORDER/MOTION DENIED

MOTION DENIED. IT IS ORDERED that this case be placed on the active trial roster without special handling.

____ day of _____, 20____. _____
Chief Judge for Administrative Purposes

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF _____	)	IN THE COURT OF COMMON PLEAS
	)	
_____ ,	)	Case Number _____
Plaintiff(s),	)	
	)	
v.	)	MOTION
	)	(To establish complex case designation
_____ ,	)	and time for trial)
Defendant(s).	)	

1. We, the undersigned counsel for all parties who have appeared in this action, hereby move for an order designating this case as complex and asking that the trial of the case take place on or after _____. We understand that if this motion is granted, continuances will not be granted after the date established herein except under exceptional circumstances.
2. We certify that we have made a good faith effort to settle this case and thus far have been unable to do so. We realize that if this case should be settled after being called for trial, we will be performing a disservice to other counsel who have cases following this case on the active trial roster, and we will endeavor to settle this case, if at all, before this date.
3. We submit the following information for use of the court in support of this motion:
 - (a) Nature of the case _____
 - (b) The number of witnesses for plaintiff _____
 - (c) The number of witnesses for defendant _____
 - (d) Anticipated time needed to try case _____
 - (e) Motions pending _____
 - (f) Additional motions anticipated before trial _____
 - (g) Discovery pending _____

- (h) Additional discovery contemplated _____

- (i) Other information which might prove helpful to the court _____

(Signatures of counsel for all parties)

_____ day of _____, 20____.

Attorney(s) for Plaintiff(s)
Telephone _____

_____ day of _____, 20____.

Attorney(s) for Defendant(s)
Telephone _____

RICHTER & HALLER, LLC

Attorneys & Counselors at Law
622 Johnnie Dodds Boulevard
P. O. Drawer 1089
Mount Pleasant, South Carolina 29465

Lawrence E. Richter, Jr., P.C.
David K. Haller, P.C.

Telephone: (843) 849-6000
Telefax: (843) 881-1400

October 17, 2006

The Honorable Deadra L. Jefferson
Ninth Judicial Circuit
100 Broad Street, Suite 336
Charleston, SC 29401

In Re: John Doe # 66 vs. The Bishop of Charleston, a Corporation Sole, and The Bishop
of the Diocese of Charleston, in his official capacity
Case No.: 05-CP-10-2053

John Doe #66A vs. The Bishop of Charleston, a Corporation Sole, and The
Bishop of the Diocese of Charleston, in his official capacity
Case No.: 05-CP-10-3293

John Doe #53, individually and as a representative of a class of other persons
similarly situated as victims of priest sex abuse in South Carolina v. The Bishop
of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston,
in his official capacity
Case No.: 05-CP-10-4913

Dear Judge Jefferson:

Please find enclosed proposed consent orders to dismiss the above referenced matters. If
the proposed orders meet with your approval, please execute them and return them in the
enclosed envelope or forward them to the Clerk of Court for filing.

By copy of this letter I am advising present counsel of this contact with the court.

Thanking you for your time and courtesies in this matter, I am

Very truly yours,


David K. Haller

DKH/she
Enclosures

cc: A. Peter Shahid, Esq.
James C. Geoly, Esq.
Lionel Lofton, Esq. ---
Jack Sinclair, Esq.
Glenn Churchill, Esq.

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

John Doe #66)

Plaintiff,)

vs.)

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

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CA No. 05-CP-10-2053

**CONSENT ORDER OF DISMISSAL
WITHOUT PREJUDICE**

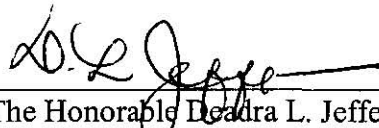
BY

JULIE J. ARMSTRONG
CLERK OF COURT

2006 OCT 23 PM 4:20

FILED

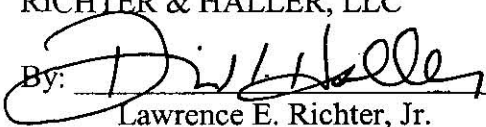
PURSUANT TO SCRPC Rule 41(a) the above referenced matters are dismissed WITHOUT
PREJUDICE, with the consent of all counsel of record.


The Honorable Deandra L. Jefferson
Ninth Circuit Court Judge

This 19th day of October, 2006
Charleston, South Carolina

WE CONSENT:

RICHTER & HALLER, LLC

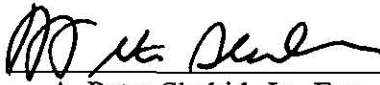
By: 

Lawrence E. Richter, Jr.
David K. Haller
Post Office Drawer 1089
Mt. Pleasant, SC 26465
(843) 849-6000

ATTORNEYS FOR PLAINTIFF

WE CONSENT:

SHAHID LAW OFFICE, LLC

By: 

A. Peter Shahid, Jr., Esq.
Post Office Box 591
Charleston, SC 29402
(843) 853-4500

ATTORNEYS FOR DEFENDANTS

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

John Doe #66A

Plaintiff,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE No. 05-CP-10-3293

CONSENT ORDER OF DISMISSAL
WITHOUT PREJUDICE

FILED
2006 OCT 23 PM 4:22
JULIE J. ARMSTRONG
CLERK OF COURT

PURSUANT TO SCRPC Rule 41(a) the above referenced matters are dismissed WITHOUT
PREJUDICE, with the consent of all counsel of record.

D. L. Jefferson
The Honorable Deadra L. Jefferson
Ninth Circuit Court Judge

This 19th day of October, 2006

Char., South Carolina

WE CONSENT:

RICHTER & HALLER, LLC

By: *Lawrence E. Richter, Jr.*

Lawrence E. Richter, Jr.
David K. Haller
Post Office Drawer 1089
Mt. Pleasant, SC 26465
(843) 849-6000

ATTORNEYS FOR PLAINTIFF

WE CONSENT:

SHAHID LAW OFFICE, LLC

By: *A. Peter Shahid, Jr., Esq.*

A. Peter Shahid, Jr., Esq.
Post Office Box 591
Charleston, SC 29402
(843) 853-4500

ATTORNEYS FOR DEFENDANTS

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

John Doe #53, individually and as a
representative of a class of other persons
similarly situated as victims of priest
sex abuse in South Carolina,

Plaintiff,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE No. 05-CP-10-4913

FILED
2006 OCT 23 PM 4:24
JULIE J. ARMSTRONG
CLERK OF COURT

CONSENT ORDER OF DISMISSAL
WITHOUT PREJUDICE

PURSUANT TO SCRCF Rule 41(a) the above referenced matters are dismissed WITHOUT
PREJUDICE, with the consent of all counsel of record.

D. L. Jefferson

The Honorable Deadra L. Jefferson
Ninth Circuit Court Judge

This 19th day of October, 2006

Charleston, South Carolina

WE CONSENT:

RICHTER & HALLER, LLC

By: *David K. Haller*

Lawrence E. Richter, Jr.
David K. Haller
Post Office Drawer 1089
Mt. Pleasant, SC 29465
(843) 849-6000

ATTORNEYS FOR PLAINTIFF

WE CONSENT:

SHAHID LAW OFFICE, LLC

By: *A. Peter Shahid, Jr.*

A. Peter Shahid, Jr., Esq.
Post Office Box 591
Charleston, SC 29402
(843) 853-4500

ATTORNEYS FOR DEFENDANTS

COPY

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

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

March 9, 2007

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

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

March 9, 2007

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

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

March 9, 2007

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

FOR THE FIRST JUDICIAL CIRCUIT

CASE No. 06-CP-18-1310

CASE No. 06-CP-18-1311

CASE No. 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,)

vs.)

The Bishop of Charleston, a Corporation)

Sole, and The Bishop of the Diocese of)

Charleston, in his official capacity,)

Defendants.)

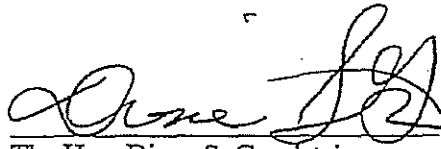
ORDER RELATING TO WAIVER
DISCLOSURES BY COURT

FILED RECORDED
2007 JUL 13 AM 1:38
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

At my direction, counsel for the plaintiffs informed the Diocese that it represented a co-party in a restored action in which the second party is a company in which undersigned's husband has a controlling interest. Further, one of plaintiffs' counsel serves on the Charleston County Aviation Authority and the undersigned's husband is the attorney for the Authority. Additionally, plaintiffs' counsel and the undersigned's families have a long social history which is known to defense counsel. I have given the Diocese an opportunity to discuss these matters before proceeding. These matters were made known to the Diocese by writings dated October 6, 2006 and June 4, 2007 from plaintiffs' counsel to defense counsel.

Remainder of Page Intentionally Left Blank

After full disclosure to defense counsel of the foregoing facts of any potential conflict which may exist, the Diocese has elected to waive all conflicts and proceed with me as the designated trial judge.

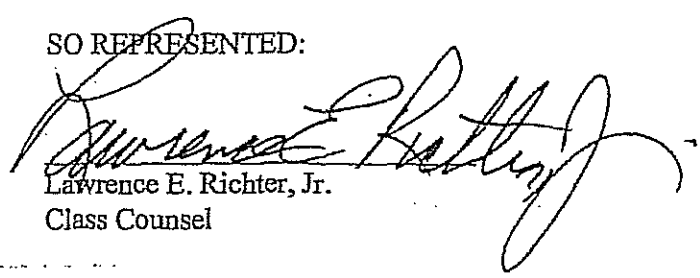

The Hon. Diane S. Goodstein
Presiding Judge

This 13 day of July, 2007
At Myrtle Beach, South Carolina

I CONCUR:


A. Peter Shahid, Jr., Esquire, General Counsel
The Bishop of Charleston, a Corporation
Sole, and The Bishop of the Diocese of
Charleston, in his official capacity

SO REPRESENTED:


Lawrence E. Richter, Jr.
Class Counsel

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE No. 06-CP-18-1310
CASE No. 06-CP-18-1311
CASE No. 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,)

vs.)

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

Defendants.)

FILED - RECORDED
2007 JAN 17 PM 3:25
SHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

**MOTION TO CERTIFY CLASSES
AND FOR PRELIMINARY APPROVAL
OF CLASS SETTLEMENT**

TO: A. PETER SHAHID, ESQUIRE AND JIM GEOLY, ESQUIRE, ATTORNEYS FOR
THE DEFENDANT

YOU WILL PLEASE TAKE NOTICE that the plaintiffs will move at the Dorchester County Courthouse on the tenth (10) day after service hereof, or at such other time and place as the court deems proper, for an order certifying plaintiffs classes of individuals with potential claims against the defendants, giving initial approval of a settlement between the classes and the defendants, and directing the procedure for notice, objection, and final approval of the settlement reached herein.

A more specific statement of the relief requested is stated below.

1. Class Certification

On June 30, 2006,¹ plaintiffs John Doe 67, Jane Doe 1 and Jane Doe 2 and Rachel Roe individually and as representatives of a class of people similarly situated, filed actions against the defendants seeking damages arising from sexual abuse of John Doe 67 suffered at the hands of a priest under the control of the defendants while on the defendants' property. Plaintiffs John Doe #53, John Doe 66 and John Doe 66A were subsequently added to the case, also as class representatives. The John Doe plaintiffs are actual victims of sexual abuse. The Jane Doe and Rachel Roe plaintiffs are spouses and a mother of the plaintiffs.

This motion seeks to certify two classes of individuals. John Doe #53, John Doe, 66, John Doe 66A, and John Doe 67 request the court certify a class as follows:

All individuals 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. (Hereinafter the "Primary Class")

Jane Doe 1, Jane Doe 2, and Rachel Roe request the court certify a class of individuals as follows:

The spouses and parents, of all individuals qualified pursuant to the Primary Class and who suffered a loss of the abused individual's consortium, and who as spouses or parents have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter the "Consortium Class")

Plaintiffs will provide the court such legal argument to support this motion as necessary.

2. Approval of Settlements reached on behalf of the classes

The Class Representatives with class counsel and representatives of the defendants and their

¹Other actions involving the same acts have been of record since at least May of 2005.

counsel held a mediation June 13 and 14, 2006 with Marvin Infinger, Esquire. The principals of the Settlement have executed a Settlement and Arbitration Agreement is attached hereto as Exhibit A. In sum, the defendants have agreed to make available a fund as set out in the Settlement and Arbitration Agreement by which individuals who are members of the classes may make a claim. Mr. Infinger, as Arbitrator, will determine the amount of any award due *bona fide* claims of members of the plaintiffs' classes. The full claims process and payment schedule for claims is set forth in the Settlement and Arbitration Agreement.

Plaintiffs' pray for an order pursuant to SCRCP Rule 23 providing conditional approval of the Settlement and Arbitration Agreement and final approval of the settlement after notice to the class as set forth below.

3. Notice to Class Members

Plaintiffs pray for an order pursuant to SCRCP Rule 23 requiring notice of the class settlement, approval process, and claims process as follows:

- a. Notice.** Class counsel shall arrange for notice of the settlement to be published in a form comparable to that set forth on Exhibit B hereto in the following major publications: *The Charleston Post & Courier*, *The Myrtle Beach Sun*, *The State*, *The Augusta Chronicle*, *The Rock Hill Herald*, *Beaufort Gazette*, *Greenville News*, *Spartanburg Herald*, *Orangeburg Times-Democrat*, and the *Aiken Standard*. Publication of the notice shall be at least once a week for six weeks during the notice period. In addition to the notice, class counsel shall mail by certified mail, return receipt requested the notice to any individual who may fit within the confines of either class. The defendants shall be required to provide to the plaintiffs the names,

addresses and telephone numbers of all such persons known to them. The defendant shall publish the notice in its Catholic Miscellany publication for three (3) consecutive publications.

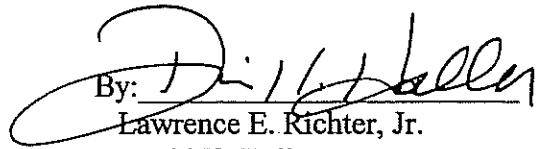
- b. **Time.** All publications shall be completed no later than 30 days following the entry of an order providing conditional approval of this settlement. Any objection to the approval of this settlement must be sent to class counsel and to the clerk of court for Dorchester County for filing with the required filing fee no later than fifteen (15) days prior to the Fairness Hearing on this matter.
- c. **Fairness Hearing.** A Fairness Hearing on final approval of this settlement will be heard by this court at a time and place convenient to it as soon after the conclusion of the notice time as possible.
- d. **Notice of Settlement Approval and Duration of Claims Process.** The claims process will begin ten days after the date on which the settlement is approved as fair. The claims period shall end 120 days thereafter. Notice of the date on which the claims period begins and ends and how an individual can make a claim and learn the details of the same shall be made in the same manner as set out paragraph (b) above.

Plaintiffs will supplement this motion with such memorandum and record prior to the hearing on this motion as may be necessary.

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WHEREFORE plaintiffs pray for the relief requested herein and such other relief as the court
deems just, prudent, and proper.

Respectfully submitted,

By: 
Lawrence E. Richter, Jr.
David K. Haller
RICHTER & HALLER, LLC
622 Johnnie Dodds Blvd.
Post Office Drawer 1089
Mt. Pleasant, SC 29465
(843) 849-6000
ATTORNEYS FOR PLAINTIFF

15th day of January 2007
Mt. Pleasant, South Carolina

THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO SECTION 15-48-10, CODE OF LAWS OF SOUTH CAROLINA (1976).

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE No. 06-CP-18-1310
CASE No. 06-CP-18-1311
CASE No. 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 classes 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.)

**SETTLEMENT AND ARBITRATION
AGREEMENT**

FILED - RECORDED
2007 JAN 17 PM 3:25
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

This Settlement and Arbitration Agreement (hereinafter "the Agreement") is made this 12th day of January, 2007, by and between the John Doe #53, John Doe 66, John Doe 66A, John Doe 67, individually and as representatives of a class of other persons similarly situated as victims of sex abuse allegedly committed by agents or employees of the defendants in this action, and/or Jane Doe 1, Jane Doe 2, and Rachel Roe, individually and as representatives of parents or spouses who have suffered a loss of consortium as a result of sexual abuse upon John Doe #53, John Doe 66, John Doe 66A, and John 67 or members of their class, and The Bishop of Charleston, A Corporation Sole, and The Bishop of the Diocese of Charleston in his official capacity (hereinafter "the Diocese"). This Agreement may be signed in counterparts. This Agreement represents the formal "Settlement and

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[Handwritten signature]



Arbitration Agreement" formalizing the agreement reached between the Representatives¹ and the Diocese and supersedes all other agreements and/or writings previously executed by the parties. This Agreement is intended to effectuate the complete and total settlement of civil actions captioned above as well as 2005-CP-10-2053, 2005-CP-10-3293, and 2005-CP-10-4913, and all other claims which were alleged or may have been alleged by the Representatives and the individuals who they represent in their capacity as class representatives. It is further understood that this Agreement must be submitted to a court of competent jurisdiction for approval and that certain provisions survive this agreement even if other provisions are not approved.

WHEREFORE, for and in consideration of the promises set forth herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **FORMATION OF CLASSES.** Plaintiffs shall move in a timely manner for the creation of plaintiff classes against the defendants as follows:

- A. All individuals born on or before August 30, 1980 who, as minors, were sexually abused² at any time by agents or employees of the Diocese of Charleston who have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter "the Primary Class")
- B. The spouses and parents of all individuals qualified pursuant to the Primary Class and who suffered a loss of the abused individual's consortium, and who as spouses or parents have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter the "Consortium Class")

¹ The class representatives will be referred to throughout this Agreement as "the Representatives."

² "Sexual abuse," as used throughout this agreement and in the class definitions, is any lewd or lascivious act committed on, about, or with a minor by an agent or employee of the Diocese in which the actor knew or should have known that the act may have the effect of arousing, appealing to, or gratifying the lusts, passions or sexual desires of the agent or employee of the Diocese or of the minor.

The Diocese agrees to take no position as to the creation of the plaintiff classes and to cooperate with the provision of information reasonably necessary for the approval of such class or classes. The individuals who fall in either class defined above shall be entitled to make a claim against the settlement fund, pursuant to the terms and conditions set forth in this agreement and the order approving class certification. The individuals in either class shall hereinafter be referred to as "Claimants."

2. **APPROVAL OF AGREEMENT BY COURT.** In addition to the plaintiffs requesting that the classes stated above be certified, the plaintiffs shall also submit this Settlement and Arbitration Agreement for approval by the court pursuant to SCRCF Rule 23. Should the court deny approval of the certification of the classes substantially defined in paragraph 1 above, the court will be separately asked to approve the conditions of paragraph 4, below. Plaintiffs reserve their right of appeal of any denial of class certification. Approval of the settlement shall be on such terms and conditions as the court may fix. All participation is subject to any term and condition of the approval of the classes set out in the court's order. Provided, however, that this is voluntary settlement agreement and that either the Diocese or the Representatives may interpose an objection to any of the court's rulings on the settlement agreement or claims process and may withdraw from this settlement if its terms are materially altered by the court.

3. **SETTLEMENT FUND AND DISTRIBUTION METHOD.** The parties agree to jointly ask the court to approve the terms of the Settlement Agreement, as mediated June 13 and 14, 2006, as follows:

- a. The Diocese shall fund the settlement with two irrevocable letters of credit or other guaranteed pool of funds in the amounts of \$5 million and \$7 million, respectively. Upon disbursement from the initial letter of credit or from an aggregate amount equaling or

exceeding \$4 million, then in that event, the Diocese shall take such action necessary to have the secondary \$7 million dollars immediately available for disbursement. Both letters of credit (or other pools of funds) shall be guaranteed by the issuing bank to be available as of the date of the approval of this Agreement. In the event the Diocese is unable to obtain letters of credit, it will nevertheless be obligated to pay all sums awarded by the court or the Arbitrator and to deposit funds for this purpose as set forth above. This Agreement supersedes any prior agreement of the parties.

- b. With regard to the claim of any Claimant, the Diocese will pay the Claimant to settle such claim an amount of money to be determined through the arbitration process set forth herein. The arbitration shall be conducted by Marvin Infinger, Esq. (hereinafter "the Arbitrator"). If for any reason Mr. Infinger is unable to continue to serve as arbitrator, the parties shall agree to a successor arbitrator. If the parties are unable to agree to a successor arbitrator one shall be appointed by the court.
- c. Awards shall be based on the criteria set forth herein and the Arbitrator will make awards as follows:

<u>Type of Alleged Abuse</u>	<u>Minimum Payment / Maximum Payment</u>	
Limited inappropriate touching on the victim	\$10,000.00	\$18,500.00
Improper touching by the perpetrator upon the victim or by the victim upon the perpetrator, such as fondling of genitalia, limited masturbation, and other types of sexual contacts.	\$20,000.00	\$55,000.00
Aggravated touching of the genital area by the perpetrator on the victim or by the victim upon the perpetrator. These types of abuse include, but are not limited to, oral sex, (either on the victim or by the victim on the perpetrator) or other aggravated circumstances.	\$60,000.00	\$125,000.00
Egregious acts, such as sodomy, any act		

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accomplished by force or coercion, or repeated acts involving any type of sexual activities over extended period of time causing serious damage.

\$150,000.00

\$200,000.00

Loss of consortium (Parent or Spouse)

\$20,000.00

The criteria for the Arbitrator to determine the amount of the award for a sexual abuse claim shall include, among other things, the type of abuse, its duration and the extent of injuries suffered by the Claimant. In cases in which the claim is for loss of consortium, the award shall be \$20,000.00 for each parent of the Claimant, and \$20,000.00 for the spouse of the Claimant. The Arbitrator shall not consider any liability issues, including, but not limited to, defenses such as lack of negligence or notice, statute of limitations, and charitable immunity. The award issued by the Arbitrator shall be left to the sole discretion of the Arbitrator and shall not be subject to objection, review, appeal or suit brought by any Claimant or the Diocese.

- d. For every claim presented, the arbitrator shall make an express written determination as to (1) whether the Claimant is, in fact, a member of one of the plaintiff classes, (2) whether the claim is *bona fide*, and (3) the amount of the award, if any. In the event that the Arbitrator determines that a Claimant is not a member of one of the plaintiff classes and/or that the claim is not *bona fide*, the claim shall be denied and the Claimant shall receive no award. By participating in the claims process, the Claimants and the Diocese expressly waive any and all rights of appeal of any and all decisions of the Arbitrator, including decisions made on whether the individual is a member of the class, whether the claim is *bona fide*, and the amount of any damages which were suffered.
- e. Any individual, including his/her parents and spouse, whose claim has been otherwise adjudicated, settled or resolved, is barred from filing a claim or collecting from any funds of this class.

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- f. The identity of all Claimants shall be kept strictly confidential except that the Diocese's counsel and those associated with the Diocese necessary for the performance of the terms of this agreement, the Arbitrator, Class Counsel and their staffs may have such access necessary to effectuate this Agreement and the court's orders on the same. Counsel before the court should take appropriate steps to ensure that access is provided to staff on an "as needed" basis. Any individual who has access to the actual name of any Claimant shall sign a court approved confidentiality and restraining agreement prohibiting the disclosure of the name of any Claimant. The name of the Claimant, his or her social security number, and the amount of his or her award will be provided to the escrow agent for purposes of distributing the award at the conclusion of the claims process.
- g. Subject to approval of the court, any person wishing to make a claim must do so within 120 days of the initial notice of final approval of the settlement in a form approved by the court. The form may be obtained from Class Counsel by contacting it as provided in the court approved notice and should include at least the following information:
1. The name, date of birth, social security number, preferred address, telephone number, and email address of contact for the Claimant and, if the claim is made in a representative capacity, the name of the representative and the ward and the nature of the relationship;
 2. Name of the abuser, location at which the abuse occurred, the time period during which the abuse occurred, and relation of the victim to the abuser; [i.e. priest/altar boy; coach/ basketball player]
 3. A brief statement sufficient to advise the parties of the nature of the claim and the acts complained of;

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4. A brief summary of any claimed injury or damages;
 5. Name of parents, whether they are living or deceased;
 6. Name of spouse (if any);
 7. The form must be signed and dated; and
 8. Any other information or documents Claimant deems necessary for a determination of his or her claim. Documentary evidence may be supplemented as provided for herein.
- h. Class Counsel shall assign an anonymous name and/or numbering system to each claim made. Thereafter, the claim must be referred to by its claim number. The name of the claimant and the claim number will be provided to the Diocese lawyers and to the Arbitrator pursuant to the confidentiality provisions established herein.
- i. Class Counsel will transmit the Claim Form only to counsel for the Diocese for its review pursuant to paragraphs 3(l), (m) and (n). At the conclusion of the claim review by the Diocese, Class Counsel shall transmit the Diocese's response to the Claimant. The Claimant will have fifteen (15) days to make any response or take any action Claimant deems necessary and provide the same to Class Counsel who will transmit it to the Diocese. If the Claimant has elected to obtain psychological testing and use it in support of his or her claim, Claimant should provide it to Class Counsel promptly upon receipt. Thereafter, Class Counsel will submit the entire claim package to the Arbitrator and request a hearing.
- j. The Arbitrator shall schedule the Claimant's Arbitration within 90 days of submission of the claim to him. The arbitration shall be conducted pursuant to the South Carolina Uniform Arbitration Act, S.C. Code Ann. § 15-48-10, et seq., unless the Act conflicts with this Agreement or the court's order(s) in this matter, in which case the Agreement and order(s)

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shall control. In any event, as to all issues, the orders of the court shall control.

- k. While the class has Class Counsel, the parties acknowledge that the Claimant may have an attorney of his or her own choice for any part of the claims process. If an attorney is selected by the Claimant, all information concerning the claim or claims process shall be sent to the attorney for the Claimant.
- l. Upon receipt of any Claim Form from any Claimant, Class Counsel shall forward the claim form to Counsel for the Diocese. Counsel for the Diocese shall have thirty (30) days from receipt of the claim to review the claim to verify the accuracy of the information presented and to determine the Diocese's position on whether the Claimant is a member of one of the plaintiff classes and whether the claim is *bona fide*. If the Diocese acknowledges that the Claimant is a member of a plaintiff class and that the claim is *bona fide*, the proceedings before the Arbitrator shall be to determine the damages suffered by the Claimant within the parameters of paragraph 3(d).
- m. If the Diocese objects to the claim, the Diocese shall submit an original and a copy of a written objection to Class Counsel stating why the Claimant is not properly a member of one of the plaintiff classes and/or why the claim is not *bona fide*, and attaching (to the original and the copy) any documents or other supporting evidence which the Diocese wishes to tender (such as a death certificate showing that the alleged perpetrator could not have committed the acts complained of at the time and place alleged). Class Counsel shall transmit a copy of the Diocese's objection and exhibits to the Claimant or the Claimant's attorney.
- n. If the Diocese makes a timely objection to the claim, the Arbitrator shall rule on the Diocese's objection after a hearing at which Counsel for the Diocese and Claimant (and/or Claimant's counsel if the Claimant elects to be represented) and/or Class Counsel shall be

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permitted to make argument. The Arbitrator may, in his sole discretion, schedule such hearing on the same day as, and immediately prior to, the Arbitration of the Claimant's claim for damages, or at some other time in advance of such Arbitration. The Arbitrator shall be the sole determiner of the Claimant's membership in one of the plaintiff classes and of the *bona fides* of the claim, and his decision shall be final and not subject to appeal. If at any time prior to the Arbitration of the claim for damages the Arbitrator determines that the Claimant is not a member of one of the plaintiff classes and/or that the claim is not *bona fides*, the Arbitrator shall notify the parties of such determination and shall not proceed with the Arbitration on the claim for damages. By participating in the claims process, the Claimants and the Diocese expressly waive any and all rights of appeal of any and all decisions of the Arbitrator, including decisions made on whether the individual is a member of the class, whether the claim is *bona fides*, and any damages which were suffered.

- o. Upon submission of the claim, Class Counsel will notify the Claimant that he or she has the opportunity to have a psychological assessment and counseling by Dr. L. Randolph Waid. The Claimant may make this election at the time of his or her claim being filed. The Diocese agrees to pay Dr. Waid, on behalf of the Claimant, for no more than three (3) sessions. Any assessment of any Claimant by Dr. Waid will be provided to the Claimant who may submit it to the Arbitrator as part of the Claimant's damages proof; however, this assessment shall be kept confidential and will not be shared with the Diocese. The payments of counseling fees to Dr. Waid shall be over and above any award made by the Arbitrator and shall not be charged to the Claimant, but shall be paid from the fund.
- p. At the Claimant's hearing, a presentation shall be made by or on behalf of the Claimant concerning his or her damages suffered as a result of the alleged abuse. Each arbitration

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hearing shall be no longer than two (2) hours. At Claimant's arbitration hearing, the Claimant must appear unless he or she is a minor, incompetent, serving in the military (or merchant marine), deceased or otherwise unavailable for medical, psychological, or other substantial reasons. The Claimant and/or his or her attorney may present other evidence relating to the abuse and injury, including without limitation, affidavits under oath or under the pains and penalties of perjury, from persons with relevant information, medical records, and/or forensic evaluation. Claimant may submit any information, records or testimony bearing upon damages for consideration by the Arbitrator, including videotape and audiotape testimony. Counsel for the Claimant may make comment upon the damages sustained by the Claimant. Before the close of the Claimant's arbitration hearing, Counsel for the Claimant may notify the Arbitrator that the Claimant intends to supplement the information, records or testimony submitted at Claimant's arbitration hearing with written records or information which is to be received by the Arbitrator no later than 21 days after the close of the arbitration hearing. The Arbitrator shall consider no information, records or testimony unless submitted by the Claimant or Claimant's Counsel with the exception of the Diocese's written statement as described in paragraph (q), below. In the event that the Claimant does not appear in person, the Claimant must appear by telephone or video conference. The Claimant may submit a forensic evaluation or a statement from a health care professional, but shall not be required to do so. The Claimant may have any person or persons of his or her choosing speak at the hearing.

- q. Counsel for the Diocese shall not be present at said arbitration hearing regarding damages; however, the Diocese shall be entitled to provide a written submission concerning the Claimant's damages. No person other than the arbitrator shall be present at the hearing.

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without the consent of the Claimant. If the Claimant requests, a representative of the Diocese, who is not an attorney, may be present at Claimant's arbitration hearing for purposes of pastoral support. The Claimant shall be entitled to have present at said hearing any of his/her family, friends, health providers, or other individuals requested by the Claimant.

- r. After the Arbitrator has rendered his decision, but not before, the Claimant may be invited to meet one on one with the Bishop of Charleston or his designee for religious, spiritual, and pastoral support. No Claimant is obligated to meet with the Bishop or his designee.
- s. Any materials of whatever nature submitted by Claimant or on his behalf to the Arbitrator, in connection with the arbitration process which is in any way related to the arbitration awards issued by the Arbitrator shall be returned to the Claimant or his or her counsel by the Arbitrator with the award. The Arbitrator shall not reveal the evidence or written arguments presented during the course of the arbitration hearing to anyone other than those present in the Arbitration or Class Counsel.
- t. The Arbitrator shall issue a written award in conformance with the requirements of paragraph 3(d) no later than twenty (20) days after the close of the Arbitration hearing to and deliver same to Class Counsel, counsel for the Diocese, and Claimant and/or Claimant's counsel. Anyone connected with the claims process in any fashion is bound to maintain the confidentiality of each individual Claimant.
- u. All costs associated with the management of the class shall be paid from the settlement fund. The fees and costs described herein include those incurred by the Arbitrator, Class Counsel, the escrow agent, Dr. Waid and any other fees and costs approved by the court.

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v. The court approving this Agreement has the authority to enforce any Arbitration award. The Diocese consents to judgment being entered against it in any federal and/or state Court having jurisdiction. The parties release the Arbitrator from any liability arising from any act or omission in connection with the arbitration hearing conducted herein. By participating in the claims process, each Claimant and the Diocese expressly waive any and all rights of appeal of any and all decisions of the Arbitrator, including decisions made on whether the individual is a member of the class, whether the claim is *bona fides*, and any damages which were suffered.

4. **SETTLEMENT OF REPRESENTATIVE'S AND POINT CLAIMANT'S CLAIMS.** In consideration of the work, effort, time, stress, psychological pain, damages, liability proof, embarrassment, family turmoil and other issues relevant, the class representatives and/or point plaintiffs shall receive settlement funds as follows:

John Doe #53	\$160,000.00
John Doe 66	\$100,000.00
John Doe 66 A	\$100,000.00
John Doe 67	\$100,000.00
Jane Doe A	\$30,000.00
Jane Doe B	\$30,000.00
Rachel Roe	\$30,000.00

It is understood and agreed that the claims of these claimants are released and these settlement funds will be paid by the Diocese regardless of whether the class certification and settlement are approved by the court.

5. **ATTORNEYS FEES.** In consideration of the substantial efforts of plaintiffs' counsel (past

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and future), their substantial accomplishments in effectuating the settlement, and the work past and future and their role as class counsel, the parties agree to submit to the court the determination of the amount of attorneys fees which shall be paid to the plaintiffs' class counsel by the Diocese. However, it is specifically agreed that in no event shall such counsel receive fees of neither less than \$950,000.00 nor more than \$2.5 million to be paid to such counsel by the Diocese from the fund referred to in paragraph 3, above, all as determined by the court. Such payment shall be made to Richter & Haller, LLC on behalf of itself no later than ten (10) days after award by the court. The award of attorneys fees as set forth above in this paragraph specifically contingent upon the Court approval of this class certification and settlement agreement.

6. PAYMENT OF CLAIMS.

- A. W. Ellison Thomas, CPA shall serve as an independent escrow agent for the payment of all sums due from the settlement fund. The escrow agent shall be provided unrestricted access to the settlement funds obtained in compliance with this agreement and will make all payments directly against the fund as set out in this agreement, order of the court, or any award made by the Arbitrator to the individual or entity to be paid. The escrow agent will be compensated at an hourly rate approved by the court and will be from the settlement fund. The escrow agent shall provide an accounting of his disbursements at the conclusion of the claims process to Class Counsel, the Diocese, and the court.
- B. No later than thirty (30) days after the final Arbitration award is issued, the escrow agent and the Arbitrator will confer and agree that the total amount of all awards after the payment of all costs and fees, does not exceed the amounts provided for in paragraph 3(a). In the event that the total due exceeds the amounts provided for in paragraph 3(a), then each award shall be reduced on a *pro rata* of the net settlement fund. This revised award list shall be provided

to Class Counsel and the Diocese, if necessary.

- C. Once the Arbitrator and escrow agent determine the final amount of each award, the escrow agent shall disburse the award from the settlement funds within fifteen (15) days of the final determination of the awards. The awards are to be paid to the Claimant directly or through his or her counsel. After all necessary disbursements any remaining letters of credit and/or funds will be returned to the defendants and/or letters of credit will be cancelled.
- D. Any party may bring perceived errors in an award based on an interpretation of this Agreement to the attention of the Arbitrator with notice to the other party. However, the Arbitrator's decision on any such question is final. By participating in the claims process, the Claimants and the Diocese expressly waive any and all rights of appeal of any and all decisions of the Arbitrator, including decisions made on whether the individual is a member of the class, whether the claim is *bona fides*, and any damages which were suffered.

7. **PASTORAL OUTREACH AND PROTECTION OF CHILDREN BY THE DIOCESE.**

The parties understand and acknowledge that the Diocese has done or will do the following:

- a. Comprehensive Policies. For the protection of children and the care of sexual abuse survivors, the Diocese has adopted a set of comprehensive policies called "The Policy of the Diocese of Charleston Concerning Allegations of Sexual Misconduct Or Abuse Of A Minor By Church Personnel" (the "Policies"). The Policies set forth the Diocese's unmitigated condemnation of child sexual abuse and its commitment to work to prevent sexual abuse, deal responsibly with accusations, and reach out with pastoral care for victims. The Policies are reviewed and updated every two years.
- b. Reports Of All Accusations To Solicitor. Pursuant to the Policies, the Diocese reports all accusations of child sexual abuse it receives to the Solicitor of the county in which the

accusation arises or, where applicable, to law enforcement authorities in other states, and cooperates fully with all criminal investigations and prosecutions.

- c. Victim Assistance Minister. Pursuant to the Policies, the Diocese has established, among other things, a Victim Assistance Minister ("VAM"), who is available to all victims of child sexual abuse allegedly committed by an agent or employee of the Diocese. The VAM can be reached at 1-800-921-8122. The VAM coordinates the Diocese's pastoral response to those who come forward, and works with victims to facilitate the healing process. Where appropriate, the VAM also assists victims in obtaining and paying for psychotherapy, on a confidential basis.
- d. Sexual Abuse Advisory Board. Pursuant to the Policies, the Diocese has established, among other things, a Sexual Abuse Advisory Board (the "Board"). Although the Bishop of the Diocese has the ultimate decision-making responsibility in cases presented to the Diocese, the Board has the responsibility to advise the Bishop in particular cases. The Board also assists the Bishop in the review of the Policies that occurs every two years, and makes recommendations to the Bishop concerning any proposed revisions to the Policies. The Board consists of at least five (5) members, of whom four (4) are independent lay people who are not priests or employees of the Diocese.
- e. Presentation By Class Representatives or Members To The Sexual Abuse Advisory Board. The Diocese welcomes the suggestions of the Class Representatives (or members) regarding the provisions and implementation of the Policies. The Diocese therefore agrees to permit the Class Representatives to make a presentation to the Board in advance and/or as part of the next two regularly scheduled two year policy reviews so that the views of the Representatives can be heard and considered as the Diocese undertakes such review.

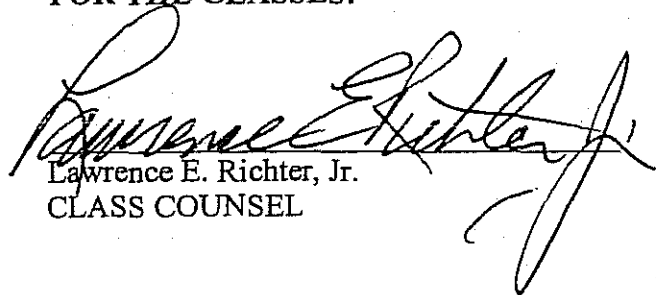
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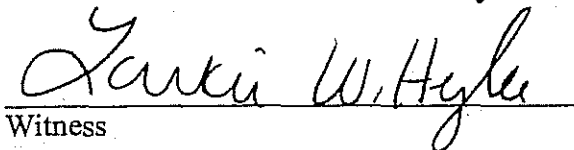
8. **RELEASE.** When the Claimant submits his claim form, he or she shall execute the Release attached as Exhibit 1 and deliver that Release to Class Counsel. Class Counsel shall hold the Release in escrow until the award is delivered and payment is made, as provided herein. If payment is not made by Diocese pursuant to the Agreement, these copies are null and void and will be destroyed. The Diocese will provide a release to each Claimant as set out on Exhibit 2 through Class Counsel upon receipt of the Claim Form for the review under paragraphs 3(l), (m), and (n).
9. **DISMISSAL OF ACTIONS.** The actions pending against the Diocese shall be dismissed with prejudice pursuant to the terms and conditions set by the court in its order on class certification.
10. **MISCELLANEOUS PROVISIONS.** This Agreement, with attached Exhibits, constitutes the entire agreement between the Representatives, the Claimant, and the Diocese. To address omissions, inadvertent mistakes, or matters which arise after the execution of this Agreement, each Claimant agrees that this Agreement may be modified, amended or supplemented to effectuate the intent of the parties under such terms and conditions set by the court approving this Agreement. It is acknowledged that each party has participated in the drafting of this Agreement, and that any claimed ambiguity should not be construed for or against any Party. This Agreement shall be construed under and in accordance with the laws of the State of South Carolina. Any dispute concerning this Agreement which arises after this Agreement is approved by the court shall be resolved by the Arbitrator. The decision of the Arbitrator regarding any such dispute is final and binding. The terms and conditions of this Agreement shall be binding and inure to the benefit of each of the Parties, their counsel and respective successors, heirs and assigns. It is further understood and agreed by Claimant that this Agreement is not to be construed as an admission of liability upon the part of any of the released parties, but rather as a good faith settlement of disputed claims. The Claimant states and warrants that he or she is the sole owner of the claims involved, and that such

claims have not been assigned, encumbered, or transferred. Where applicable herein, the masculine gender shall include the feminine gender and the feminine gender shall include the masculine gender.

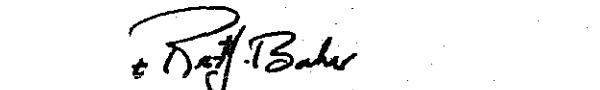
Executed this 12th day of January, 2007.

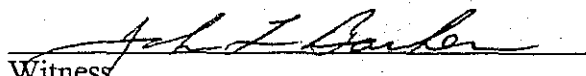
FOR THE CLASSES:


Lawrence E. Richter, Jr.
CLASS COUNSEL


Witness

FOR THE DEFENDANTS:


The Most Rev. Robert J. Baker
THE BISHOP OF CHARLESTON, IN HIS
OFFICIAL CAPACITY AND FOR THE
BISHOP OF CHARLESTON, A
CORPORATION SOLE


Witness