

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 Two of Eight**

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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

+ RJB
PER

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

+ RJB
PER

EXHIBIT 2

DIOCESE LIMITED RELEASE

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CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

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

+ RJB


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

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CLERK OF COURT
DORCHESTER COUNTY

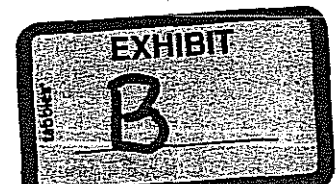
YOU ARE HEREBY NOTIFIED OF A PROPOSED SETTLEMENT OF THIS CLASS ACTION, OF HEARINGS TO BE HELD BY THE COURT TO DETERMINE WHETHER IT SHOULD BE APPROVED AND TO DETERMINE THE REASONABLENESS OF CLASS COUNSEL'S FEES.

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 such date determined by the court, 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 November 11, 2006 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 on Class Counsel fifteen (15) days prior to the Fairness Hearing. 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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David K. Haller

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1 THE COURT: -- change my mind. I may change my
2 mind. I'm subject to --

3 MR. BRUNER: But I call --

4 THE COURT: -- changing my mind.

5 MR. BRUNER: -- I call your attention to what
6 Judge Young did, and I think that will satisfy you to
7 what I'm trying to tell you in response to what these
8 guys have said trying to throw us under the bus, is we
9 propose to have --

10 THE COURT: Well, you might be under the bus.
11 Who knows?

12 MR. BRUNER: We might be, but I'm trying like
13 hell to get out from under it.

14 THE COURT: You're trying --

15 MR. BRUNER: We proposed to advertise nationwide
16 in USA today.

17 THE COURT: You might be under the bus and you
18 want out get out of it; right?

19 MR. BRUNER: Yes, sir.

20 THE COURT: Okay.

21 MR. BRUNER: We proposed that -- our testimony
22 will be that we proposed that to the Bishop and that
23 the Bishop said, no, that's too expensive. So from
24 our point of view, the Bishop bought the degree of res
25 judicata he was willing to pay for. But he points

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:

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Robin L. Keil, RMR.
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First Judicial Circuit

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Walter Bilbro, Esquire
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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 greater than that, Your Honor.

2 THE COURT: All right.

3 MR. RICHTER: We represent the interests
4 of persons who may be here today, may not be
5 here today, may not have made a claim yet, a
6 class, punitive class or actual class,
7 punitive initially, now an actual class. My
8 concern is I have to defend positions for the
9 persons I represent.

10 THE COURT: Yes.

11 MR. RICHTER: If a lawyer comes in here,
12 files a pleading that says I'm filing this
13 pleading on behalf of these people, that must
14 mean I represent these people. He hasn't
15 said that. And my concern is, and I'm not
16 accusing Mr. Meyers of this in any way, but I
17 know something about mass litigation,
18 parachute lawyers and lawyers who challenge
19 classes. And I'm not suggesting Mr. Meyers
20 is in that category, I'm simply saying I've
21 been through it before and I know what
22 motivates a lot of people and it's money.

23 So to be candid with you, I can't
24 stand here and let him represent to you that
25 he's making all these arguments seeking to

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 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

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 SCRCP 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

SCRCP 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 general 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. SCRCP 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, SCRCF 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 SCRCF 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 SCRCF 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

THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO SECTION 15-48-10, CODE OF LAWS OF SOUTH CAROLINA (1976).

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 classes of people	)	
similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	SETTLEMENT AND ARBITRATION
	)	AGREEMENT
The Bishop of Charleston, a Corporation	)	
Sole, and The Bishop of the Diocese of	)	
Charleston, in his official capacity,	)	
	)	
Defendants.	)	

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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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 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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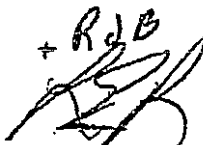

permitted to make argument. The Arbitrator may, in his sole discretion, schedule such hearing on the same day as, and immediately prior to, the Arbitration of the Claimant's claim for damages, or at some other time in advance of such Arbitration. The Arbitrator shall be the sole determiner of the Claimant's 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

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.

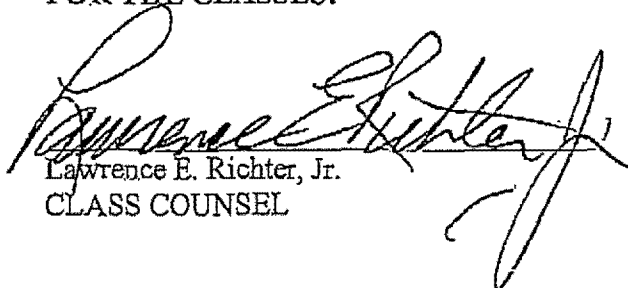
10. MISCELLANEOUS PROVISIONS. This Agreement, with attached Exhibits, constitutes the entire agreement between the Representatives, the Claimant, and the Diocese. To address omissions, inadvertent mistakes, or matters which arise after the execution of this Agreement, each Claimant agrees that this Agreement 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

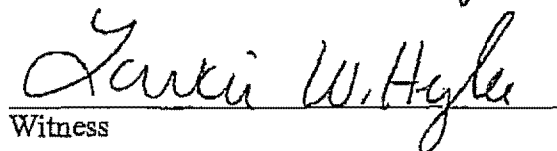
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claims have not been assigned, encumbered, or transferred. Where applicable herein, the masculine gender shall include the feminine gender and the feminine gender shall include the masculine gender.

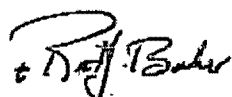
Executed this 12 day of January, 2007.

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

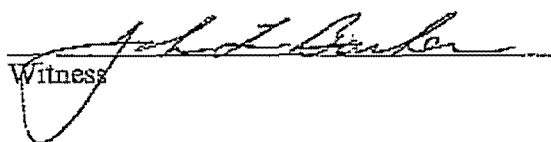

Witness

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

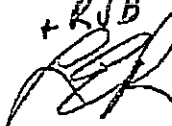
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EXHIBIT 2

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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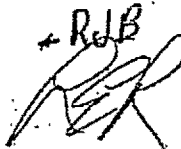
as of the date written below.

The Bishop of Charleston, a Corporation Sole

By: _____

Its: _____

Date: _____ Witnessed by: _____

* RJB


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

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.

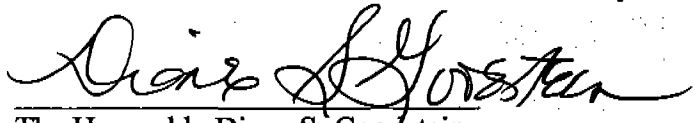
process for the members of the classes begin within 10 days of the date of this order with notice to the class as set out above; and

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]**.

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

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

42983

67-448/539 SC 2961

PAY TO THE ORDER OF Richley & Haller, LLC - Client Trust Accounts \$ 345,000.00

DATE 11-20-06

Bank of America

FOR John Z. Bunker
Mrs. Martha Langella

⑈042983⑈ ⑆053904483⑆ 000729361010⑈

DOLLARS

Security features are visible. Details on back.

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

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

42982

67-448/539 SC 2961

PAY TO THE ORDER OF Richley & Haller, LLC \$ 145,000.00

DATE 11-20-06

Bank of America

FOR John Z. Bunker
Mrs. Martha Langella

⑈042982⑈ ⑆053904483⑆ 000729361010⑈

DOLLARS

Security features are visible. Details on back.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2016-CP-10-_____
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;

MJV

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;

MIV

Attachment B

- 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

MJV

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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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

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.

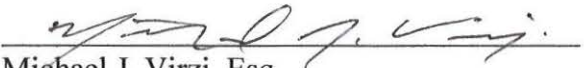
The Richter Defendants stated to the court that the above entries were “by far conservative” estimates of time actually spent on the specific services indicated, and the above list is not exhaustive of the nonsensical and impossible entries. Thus the Richter Defendants appear to have made false statements 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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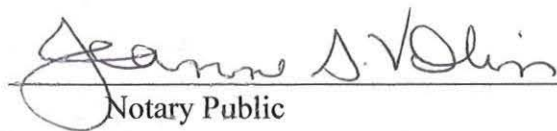
Further affiant sayeth naught.


Michael J. Virzi, Esq.

State of South Carolina
County of Richland

Sworn and subscribed before me

This 29th day of March, 20 16


Notary Public

My Commission Expires : My Commission Expires May 15, 2018

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THE COURT: Let the record reflect that the Chinese firewall has taken effect and I am sending my law clerk on his very last day on the very last hearing out of the courtroom.

MR. SHAHID: I don't know if you need to be on the record, Judge, but I guess we're just trying to push forward.

THE COURT: Good.

MR. SHAHID: And we sent letters, I sent you a letter late yesterday afternoon.

THE COURT: And I wasn't real sure what we were doing. It's like, hum.

MR. SHAHID: It was just to announce that we had reached an agreement.

THE COURT: I felt like the Sony dog. Okay. You want to stop? Do you want to stop? On our of off?

MR. SHAHID: We don't need to be on the record, do you think?

MR. RICHTER: I think, yeah, I do. Why not? I mean, if you don't mind, let's be on the record. Because I don't know what you -- I don't know what we're talking about. Go

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ahead, shoot. What?

MR. SHAHID: Judge, I sent by fax a

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4 letter to you yesterday.
5 THE COURT: Right, yeah.
6 MR. SHAHID: And I copied Mr. Richter,
7 Mr. Haller, the other class counsel attorneys
8 simply to announce the progress we have been
9 making regarding this case.
10 THE COURT: wonderful.
11 MR. SHAHID: One was resolving this
12 issue in a motion. In my conversation with
13 Mr. Pascoe in the courtroom today.
14 THE COURT: Yes.
15 MR. SHAHID: It was my understanding he
16 was either going to chat with you, provide
17 you with an interim report as to where he
18 stood. And Mr. Haller and I have been on the
19 phone I think about every day this week, one
20 of the things.
21 The main concern was the diocese's
22 position on this creation of a subclass and
23 we've had very frank discussions with class
24 counsel about that and we just don't think
25 in, all due respect to what --
 THE COURT: That it's necessary.

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1 MR. SHAHID: It's necessary. And we
2 quite frankly think the diocese, quite
3 frankly, thinks that it is going to create
4 more of a problem than what the Court is
5 trying to avoid happening.
6 THE COURT: Okay.
7 MR. SHAHID: And what we're trying to do
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8 is take care of those victims to make sure
9 that they are included in the class and they
10 get notice of the class and try to stop
11 whatever potential loophole they may be -- if
12 something strange happens, I guess in which
13 someone pops back up who should have gotten
14 notice who didn't get notice.

15 And I think that after talking with
16 Mr. Haller about that and class counsel about
17 that, I think we have an understanding as to
18 what would happen to those particular folks,
19 which would be really our problem, and I
20 think that what we've discussed allows us to
21 proceed with the agreement we've signed on
22 January 12th. And then if that person -- as
23 remote as it may be, but if that person shows
24 up then we would have to deal with it.

25 THE COURT: Let me ask you this

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1 question: It is my understanding that, and
2 I'm not going to be as crisp as I would want
3 to be because I really was not anticipating
4 this issue today.

5 MR. SHAHID: Right.

6 THE COURT: I was anticipating only the
7 motion to compel, but there was, as I
8 understand it, a list of some 40 names ab
9 initio that the diocese had and I am not
10 talking about the individuals that the
11 plaintiffs' counsel already knew about,

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12 pursuant to notice already knew about. I'm
13 talking about sum total of 40 individuals
14 that the diocese was aware of had made at
15 some point through going through old records
16 pursuant to -- really to working with
17 solicitor Pascoe's request, that there were
18 some 40 individuals who were identified as
19 being individuals that were potentially or
20 were sexually abused by priests, by
21 individuals from the diocese and that
22 pursuant to our status conferences I wanted
23 obviously the solicitor have all the
24 information that you have had and I think
25 you've shared that with the solicitor.

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1 And additionally, although he would
2 certainly speak for himself, but my
3 understanding was that you all had shared
4 that with him and that out of that 40 there
5 were 20 people that you all have really been
6 trying to locate and that out of that 20 you
7 got 15 and then there are five folks for
8 which I wanted you all to enter into a
9 protective order and those five names be
10 given to the plaintiff and allow the
11 plaintiff to try to find those five
12 individuals but not contact those people
13 until the diocese had an opportunity to
14 contact them since they had originally come
15 to the diocese.

16 with regards to the other 20 while
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17 there was some information about those folks
18 coming out of the file -- out of the old
19 files, archive, that there was a real problem
20 with determining really what the status of
21 those other 20 were, that it was less clear
22 about those 20 folks. Go ahead, yes, sir.
23 And that's my memory. Those are the people
24 that have -- let me just for the record, in
25 our discussions and the discussions with the

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1 solicitor's office, I -- my concern has been
2 that I know that there are some individuals
3 out there for which there's pretty specific
4 indications that they ought to be included in
5 this class, I've wanted them to be included
6 in this class and in the attempts to sort of
7 move -- move those folks that we knew about
8 and the ones that had already responded and
9 there was a real concern and I think
10 legitimately so for those folks that we knew
11 about that had come forward that really the
12 fairness hearing, they had participated in,
13 made contact with plaintiffs' class counsel,
14 that those folks kind of needed to move
15 forward, and yet I know of these 20 people
16 and that 15 we now know of and I think the
17 diocese is trying to make contact, there's
18 another five people that the plaintiffs are
19 specifically going to reach and I don't know
20 about the other 20. You can put on the

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22 record whatever you need to. My concern was,
23 I wanted to be able to go forward on those
24 people that have already gone forward that
25 everybody sort of knows about.
MR. SHAHID: Right.

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1 THE COURT: But I'm not of a mind to
2 force the solicitor, our solicitor has number
3 one gone outside his judicial circuit and I
4 think done a lion's job of really going into
5 Charleston, I think the diocese has done so
6 far a wonderful job of cooperating. He's had
7 to contact the attorney general, U. S.
8 attorney's office, he's dealt with this --
9 sort of this document that's been floating
10 around out there, he's made contacts with the
11 United States attorney's office, with -- he's
12 reached out to the United States attorney's
13 office in Massachusetts, he's talked to not
14 only plain old garden variety lay lawyers,
15 but those with more familiarity as I
16 understand it with the ((occracy okracy and
17 to try to ascertain what the words mean and
18 done research, worked with the attorney
19 general's office to do the same.

20 And my concern was, was that I did
21 not -- A, I didn't want the solicitor who is
22 obviously working incredibly diligently, I
23 didn't want him disturbed, I wanted him to
24 continue doing what he was doing but I didn't
25 want to hold these other folks up because

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1 they seemed to want to go forward.

2 I wanted to fashion a way because
3 it didn't seem fair to me that when we
4 identify actual people, individuals who ought
5 to be included in the class, it didn't quite
6 seem fair to me to just say, listen, either
7 come forward based on publication or you
8 don't because these people already have come
9 forward at some point in their lives. And it
10 just didn't seem fair to me to exclude those
11 folks that ought to have more individual
12 notice. That was the reason that I thought
13 maybe the solution was to come up with some
14 sort of, if you will, additional class or
15 subsection or that we could sort of hold
16 something for those folks and yet go forward
17 on the other ones. We certainly have done
18 that in other class actions that I've been
19 involved in, so I know that the procedure
20 exists so that was my concern in short.

21 So I want you to put on the record
22 for me, please, Mr. Shahid, about the 40 and
23 that breakdown.

24 MR. SHAHID: Well, it was actually
25 through the file review the Court alluded, to

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1 the diocese has gone through there were
2 actually 20 -- we had dwindled the number

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3 down to 20 folks who had -- we believe had
4 come forward.

5 THE COURT: Yes.

6 MR. SHAHID: Either directly or through
7 a third source.

8 THE COURT: Right.

9 MR. SHAHID: And that source could have
10 been through either a parent or a person
11 saying I believe John Doe or Jane Doe may
12 have been abused as well. We located
13 initially 15 we thought were good addresses,
14 solid addresses, of those 20 the Court
15 ordered us through a protective order to turn
16 over five names to class counsel for them to
17 use the sources they had. In the interim we
18 located another name, the number actually was
19 reduced from five to four.

20 THE COURT: Okay.

21 MR. SHAHID: So I received from
22 Mr. Haller actually e-mail yesterday as to
23 his efforts from his investigator regarding,
24 I think, two of the four, I do not recall.
25 And so we will follow up on that. So the 20

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1 is down to four names and some of those
2 names, as I recall, are the result of not
3 exactly a direct claim but through a second
4 or third source.

5 There was a list of folks that we
6 have that we were concerned that were not
7 reported to law enforcement authorities and

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8 so that is a -- whose claims may have been
9 adjudicated through some process outside of
10 what we have done in here. And so we were in
11 the process of identifying the counties that
12 would be the most appropriate county to make
13 that report to. So we have -- that was the
14 second leg of what we've done.

15 Those -- I think those folks, those
16 20-odd folks, those cases have already been
17 adjudicated. In other words, there may have
18 been settlement between them and the diocese
19 and that case has been resolved so they would
20 not be -- they would not qualify as a class
21 member.

22 THE COURT: Okay.

23 MR. SHAHID: And those folks would --
24 would not qualify to be part of this action.

25 THE COURT: Okay. Okay.

11

1 MR. SHAHID: So the essential concern is
2 what the Court had said earlier, is to make
3 sure that those people had somehow through
4 either directly or indirectly come to the
5 diocese's attention those people should have
6 gotten direct notice and we've done the best
7 we can in finding them and locating them and
8 will continue that process.

9 THE COURT: And those are the ones, too,
10 I want you to give the names to the
11 solicitor.

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12 MR. SHAHID: Yes, we can do that.

13 THE COURT: Great. I thought there were
14 40 individuals we began some discussions
15 about. I thought there were 40. No?

16 MR. SHAHID: The number was at one point
17 45, I think and we had split it, the 45 into
18 two categories, one was not being reported to
19 law enforcement authorities and another crowd
20 being the ones who had not had their case
21 adjudicated and may or may not have been
22 reported to the authorities. And there was
23 some overlay in that because some cases in
24 which the name was reported to law
25 enforcement authorities but had not been made

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1 directly aware of this action.

2 THE COURT: Right, okay. Oh, yeah,
3 yeah. And those were some folks I was
4 concerned about. The other subcategory, the
5 other group that I was concerned about was
6 that anyone that through Solicitor Pascoe's
7 efforts that we -- because he's -- I mean,
8 obviously he's not involved in the civil
9 matter, he has no dog in that fight so to
10 speak, that is not his focus.

11 MR. SHAHID: Right.

12 THE COURT: His focus simply comes from
13 the position of law enforcement to be sure
14 that there is not information of individuals
15 who were -- had crimes committed against them
16 over time for which law enforcement was never

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17 informed.

18 MR. SHAHID: Right.

19 THE COURT: And that was his interest.

20 Of course his investigation is not -- his
21 investigation is his investigation and I am
22 so grateful to the diocese for the
23 cooperation that they've given him, but his
24 investigation belongs to him in doing what he
25 needs to do. But in the event that he

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1 disclosed individuals who ought have more
2 individualized, you know, contact or notice,
3 those were the folks I was interested in
4 which is very unusual because it's people we
5 don't know about that could potentially
6 exist. But I don't want him put in a
7 position that for the civil matter he's got
8 to alter what we would normally do in his
9 investigation.

10 So that was the -- and I know that
11 this is a strange group, my concern is, is
12 that I have some concern that those
13 individuals who might be disclosed in that
14 process and ought be afforded an opportunity
15 to participate in the class not be excluded
16 and that was my interest.

17 MR. SHAHID: Right.

18 THE COURT: Yeah.

19 MR. SHAHID: And hopefully I think that
20 we have --

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21 THE COURT: Done that.
22 MR. SHAHID: -- done that to the best of
23 our ability.
24 THE COURT: Yeah, great.
25 MR. SHAHID: I will say that we --

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1 Judge, I view that responsibility as ongoing
2 and so that we got to find the other four and
3 we've got to find anybody else who has kind
4 of, lack of a better word, comes out of the
5 woodwork.

6 THE COURT: Absolutely. And I know the
7 record ought to reflect that I have on a
8 weekly basis been apprised of the efforts and
9 I think that they have been reasonable and
10 more than reasonable, those efforts based on
11 what I know.

12 MR. SHAHID: Thank you.

13 THE COURT: Yes.

14 MR. RICHTER: Your Honor, I think that
15 you -- if we make doubly clear what
16 Mr. Shahid went through, I think you'll feel
17 very comfortable about where we are which I
18 think is -- the end is where we are or
19 virtually at the end.

20 THE COURT: Yes, for the civil matter.

21 MR. RICHTER: Yes, ma'am. Let me
22 preface my remarks, however, by saying that,
23 and I certainly don't do this in any
24 patronizing way to anybody, I genuinely mean
25 this, and I know my co-counsel joins me in

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15

1 this statement. I want to thank you for your
2 concern that you have just been referring to,
3 it's a legitimate concern, it's a legitimate
4 legal concern, but it's a very legitimate
5 humane concern as well. I have shared, as I
6 think has been displayed to Your Honor, a
7 similar set of concerns. I thank you for
8 that and I think that cat is skinned in a
9 good fashion now.

10 I would also like to thank the
11 solicitor for two things: For performing the
12 function that was imposed upon him by this
13 Court, but I had a chance to meet with him in
14 this process and speak with him more than one
15 time about these matters and I want to thank
16 him in this record for caring again in a
17 legal way, but he too caring in a very
18 personal and humane way about this concerning
19 the best interests of persons who may have
20 not had their best interests heretofore
21 properly looked after and I genuinely salute
22 him for that.

23 This circuit is fortunate, indeed,
24 not only to have -- I know Mr. Pascoe's legal
25 talents because I've known him for years in

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1 this environment, but beyond that this
2 circuit is very fortunate to have a decent

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3 man hold the position that he holds.
4 Now, that having been said, I think
5 that what Mr. Shahid has said to you, and I
6 know that we have written you, both
7 Mr. Shahid and us we have indicated as class
8 counsel in our letter that the subclass idea
9 was a thing that was acceptable to us. We
10 are satisfied and we really have worked very
11 hard.
12 THE COURT: I know you have.
13 MR. RICHTER: Very much together on this
14 thing.
15 THE COURT: I know you have.
16 MR. RICHTER: We really think that it's
17 not necessary because of what the diocese has
18 come to. And what the diocese has come to is
19 that if anybody has been missed or if there
20 is anybody who responds as a result of these
21 who have been identified to, the diocese
22 waives all the same defenses that they have
23 given up in this class settlement, consents
24 to the same method of compensation, consents
25 to the same early disposition of that claim

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1 by a same arbitration method, the whole nine
2 yards.
3 THE COURT: Wow.
4 MR. RICHTER: And we have put those
5 terms in the letters that we have both
6 submitted to Your Honor -- both sides
7 submitted to Your Honor yesterday and, of
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8 course, they'll be submitted to you in a
9 formal way assuming that Your Honor is now
10 comfortable with that. But we are completely
11 now comfortable with that. So that's said.

12 Next, as to -- we were initially
13 given five names as I think Your Honor knows.
14 Secondly, as Mr. Shahid told you, that was
15 reduced --

16 THE COURT: Four.

17 MR. RICHTER: -- to four names. And I
18 have in my hand and he had to leave here
19 because of an involvement that he has with
20 the fire tragedy in Charleston, I have in my
21 hand an affidavit of Steven A. Smith who is
22 the person who we utilized to perform the
23 same functions that Mr. Brucetti has been
24 performing for the diocese and I realize we
25 discussed all this with you before, but I

18

1 just want to make a final record here.

2 THE COURT: Sure.

3 MR. RICHTER: So that nobody can have
4 any question about where we are and what
5 we've done. I have this affidavit I'd like
6 to hand up. And attached to it we have the
7 curriculum vitae or the résumé of Mr. Smith.
8 In summary it is as impressive a law
9 enforcement and expert résumé as any one I
10 have ever seen anywhere and I think opposing
11 counsel and Mr. Brucetti as well will second

12 July 13 2007.txt
my statement in that regard.

13 Stephen Smith is twice a retiree,
14 he's a full bird colonel retiree on the
15 military side and he's a 30-year SLED, South
16 Carolina Law Enforcement Division retiree on
17 the law enforcement side having done, I
18 think, 25 years of narcotics including
19 undercover work for many years and five
20 years -- his last five years as the deputy
21 director of SLED, I'm not sure which exactly
22 five years, I can't say that, but he finished
23 his career as a deputy director of SLED and
24 is now retired. He has taught all over the
25 country and the world, including teaching in

19

1 Russia. He is, as I say, a true expert.

2 He has followed on Mr. Brucetti's
3 efforts as to these four persons, four names
4 that we have been supplied and I'm -- if you
5 would allow I'd like to hand up his affidavit
6 and CV and I'll work from a copy of this
7 thing. May I hand this up to you, please?

8 THE COURT: Okay.

9 MR. RICHTER: The affidavit simply
10 states what I have just said, who he is and
11 how he got to this. The crux of the
12 affidavit is in paragraphs four, five and
13 six. Six -- in four he simply says he used
14 recognized methods. We're a little hammered
15 in the sense that we don't have name, rank,
16 serial number, middle name, father and

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17 mother's maiden names or whatever to make the
18 finding process that much easier, but as you
19 can see on number one in paragraph five he
20 goes through the four victims.

21 The first was identified as a
22 person living in Georgetown. We were
23 supplied a name, he has not included the
24 names here, and given a relative age. He
25 searched on both sides of those ages, that

20

1 age by two years. We know -- we have
2 confidence, all of us have confidence about
3 the time frame because we know the alleged
4 perpetrator and the assignment as to where
5 the alleged perpetrator would have been, so
6 that we have some comfort about the time
7 frame we're looking in and the locale we're
8 looking in so we then focus on the individual
9 alleged victim.

10 As you can see his search revealed
11 231 potential entries, some were in South
12 Carolina, none of which had the first name
13 which matched or were sufficiently close to
14 the victim, so he then moves to a nationwide
15 analysis where he came up with 117
16 individuals. Again, none appeared to have
17 any connection, one of those 117 had any
18 Georgetown correction -- connection.
19 However, he did identify one who
20 interestingly enough is now a Catholic priest

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21 in Arkansas, so that we have reported all of
22 that back to the diocese for them now to take
23 the next most appropriate action. Similar
24 accounts for all of these.

25 Number two again in the Georgetown

21

1 area we identified, had someone identified by
2 close proximity in age and he found a person
3 in close proximity and age and with a Social
4 Security number which was a South Carolina
5 security -- Social Security and which person
6 had a Georgetown address. We think that's on
7 the money then. That person found has been
8 given, again, the next step under the plan
9 that Your Honor laid out at our last time
10 before you, that goes back to the diocese.

11 C, there were 269 entries
12 nationwide with the first and last name of
13 that individual and 631 entries with the last
14 name of that individual. However, none gave
15 him sufficient confidence to raise his
16 comfort level at all. He's informed that --
17 Mr. Smith represents to you in this affidavit
18 that he has been informed the victim C may
19 not, in fact, be an actual victim. This
20 person did not come forward to the diocese
21 and declare himself a victim, rather another
22 person according to the diocese files had
23 this person's name mentioned in that alleged
24 victim's files. As I understand it -- did
25 Mr. Shahid or Mr. Smith make contact with

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22

1 that person? As I understand it Mr. Shahid
2 has actually made contact with that person
3 who has indicated --

4 THE COURT: He has a great expression on
5 his face like I did, I did, I did?

6 MR. SHAHID: Tell me which one you're
7 talking about. Actually what I did is I made
8 contact with the source of the person.

9 MR. RICHTER: Yeah, okay.

10 MR. SHAHID: It was a very interesting
11 conversation.

12 MR. RICHTER: He was able to make a much
13 more direct -- a much more closer contact
14 than Mr. Smith could do because of the way
15 we're working this thing.

16 THE COURT: Got it.

17 MR. SHAHID: I shared this with David.
18 He, quite frankly, said he didn't believe
19 that person was a victim but we're still
20 going to follow through.

21 THE COURT: Okay. Great.

22 MR. RICHTER: So we expect that there is
23 nothing to that. But even as to that person,
24 the diocese has given up all of what we
25 recited a while ago it had given up.

23

1 THE COURT: Great.

2 MR. RICHTER: And then there is a person

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3 who has a common name here in South Carolina
4 at least, he had 79 entries Mr. Smith found
5 for that name in South Carolina, a
6 significant number of which were in and
7 around the lowcountry. However, we were
8 not -- we don't know where that person may
9 live, so that is the worst of the findings so
10 far.

11 We think this translates that two
12 are out, maybe three are out and one may
13 still be there, but in short order we're
14 going to know that.

15 The last thing I think that we need
16 to tell you, and I say this for everybody's
17 benefit but mostly for your own comfort level
18 as to how many times you need to see us again
19 or what else we need to deal with, if you
20 recall when we started this Mr. Parker's
21 firm, Mr. Bilbro's and Mr. Myers had filed
22 objections, you dealt with Mr. Parker here on
23 the spot and that was over and withdrawn.
24 Mr. Bilbro by writing withdrew his and
25 Mr. Haller tells me and/or Mr. Shahid, I

24

1 don't know which one told me, I didn't talk
2 to Mr. Myers personally, one or both of them
3 report to me that they have spoken with
4 Mr. Myers who has also withdrawn his, the
5 writing on that. However, Peter has -- Peter
6 Shahid has a meeting on Wednesday of this
7 week because we would like to have that

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8 withdrawal in a form that we could have in
9 our hands, in our files which would mean that
10 there are no objections.

11 Myers is important only to this
12 extent: If you remember -- I don't know how
13 to characterize it -- he raised an issue
14 about consortium and we huddled, and when I
15 say we, both sides huddled and really as we
16 didn't think there was any legal relief he
17 was entitled to, but as an accommodation to
18 Mr. Myers and to move the matter forward we
19 agreed to do a certain thing. He is now
20 going to withdraw that so that there are no
21 objection issues whatsoever anywhere in the
22 record so that Your Honor can know that you
23 are really at an end about all of that.

24 So our point is with the diocese
25 having dealt with this in the way it has and

25

1 so broadly and accepting, if there is further
2 exposure from any of these people who were
3 entitled to direct notice, but didn't get it,
4 we think that -- we actually think that if we
5 created a subclass and did it and some of
6 them still didn't show up we'd really do more
7 harm in the sense of really now cutting off
8 the rights of those persons. We have now got
9 the diocese saying --

10 THE COURT: Absolutely, I agree.

11 MR. RICHTER: -- my arm's wide open to

12 July 13 2007.txt
13 those people.

14 THE COURT: There is nothing more that
15 the diocese could possibly do that I am aware
16 of. I mean, at the point in time when the
17 diocese obligates itself to do as it has been
18 described, there is nothing more that they
19 can possibly do insofar as I can even
20 imagine, Mr. Shahid, truly. I mean, what
21 they say is if you come forward in the future
22 we will treat you just the same as we have
23 treated these individuals and the relief is
24 available for you. I know of nothing more
25 that could be done. So I certainly would
 approve that.

26

1 MR. SHAHID: Well, good.

2 THE COURT: Yeah.

3 MR. SHAHID: Just a little caveat.

4 THE COURT: Uh-huh.

5 MR. SHAHID: My meeting with Mr. Myers
6 hopefully, and I'm confident that it will,
7 but until the rubber hits the road kind of
8 test.

9 THE COURT: If it doesn't, I'm prepared
10 to rule.

11 MR. SHAHID: I'm confident that we've
12 chatted and we just got to iron out those
13 little problems to iron out, and so hopefully
14 by Wednesday or sometime next week we'll have
15 one minor or Mr. Myers saying that's done.

16 THE COURT: Okay.
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17 MR. RICHTER: I left one thing out, if
18 you don't mind, just let me add this to the
19 record because I think your Honor is entitled
20 to an explanation.

21 THE COURT: Yeah.

22 MR. RICHTER: On March 9th is when all
23 of this path started being gone down, the
24 path that we have now been dealing with with
25 our various recent appearances before you and

27

1 our largely -- or appearance today.

2 I want to make sure that the
3 record's clear, but Your Honor is clear and
4 the diocese as well as to how and why that
5 came up. It came about in an argument about
6 legal fees is actually about how the issue of
7 this instruction came up. Mr. Pascoe is
8 entitled to both explanation and credit and I
9 would -- in a minute I can do this if you'll
10 indulge me.

11 I don't think, didn't think then,
12 don't think now that the church had done
13 right about not reporting these persons who
14 had revealed themselves to the church as
15 having been abuse victims and didn't have any
16 right to do that and so that issue was
17 raised, and in part to stop that activity
18 Mr. Pascoe has dealt with that, the diocese
19 has dealt with that and hopefully for
20 everybody's benefit, not just everybody here,

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21 but for the public's benefit as well that
22 practice now has been recognized and modified
23 appropriately so that we don't find ourselves
24 back here before you ten years down the line.
25 And so again I want to thank Mr. Pascoe for

28

1 helping to accomplish that and the diocese
2 for helping to accomplish the same thing.
3 And I think with that we have covered the
4 water front, haven't we, Peter?
5 MR. SHAHID: I think so. Let me just
6 echo a little bit of what Mr. Richter's
7 saying, Judge. Mr. Pascoe and I have had
8 very -- I think very frank conversations
9 regarding the application of reporting
10 statutes and the law and things of that
11 nature and that our bishop has clearly stated
12 that he wants to be transparent on this issue
13 and that arguable there was no obligation to
14 legally maybe, and I say that arguably, to
15 have reported, but there is an obligation in
16 another sense to report and so -- and some of
17 the folks who came forward were adults when
18 their report was made and not just always a
19 justification, but an explanation I think,
20 and some people wanted anonymity and the
21 Church tried to honor the victims' request
22 for anonymity, but we're trying to make sure
23 and we will to the best of our ability so
24 that those individuals will be reported to
25 the appropriate law enforcement agency and
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29

1 let the solicitor or sheriff or whatever
2 agency needs to make that call, make that
3 call with hopefully that person's
4 participation and involvement in that.

5 so hopefully that is the absolute
6 last "t" that needs to be crossed and the
7 last "i" that needs to be dotted with all of
8 this and that's what we're trying to get to.
9 I think we just want complete healing, and if
10 this accommodates that healing, we hope that
11 it will, that it will take that. And so
12 we're here I think all on a common goal to
13 get that magic signature on a magic order.

14 THE COURT: Absolutely. A couple of
15 things I would say and I think what I want to
16 do is I want to direct to the civil and then
17 to the other part, solicitor Pascoe's
18 participation. First of all, the civil
19 matter. I will await to see what Mr. Myers'
20 position is, but again, I am prepared to rule
21 in the event that that doesn't happen and but
22 I would ask for a proposed order from
23 plaintiffs' counsel about that in the event
24 that that is needed. And I'm delighted that
25 he is satisfied, that's always a better place

30

1 for people to be in a place where they can
2 accept and can join in to and I'm excited

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3 about that, so that's the first thing. And I
4 look for an order in that regard.

5 Secondly with regards to the
6 attorneys' fees and, of course, I had the
7 opportunity to review Professor Freeman's
8 extensive affidavit about that and, of
9 course, I know him and know him well and have
10 had the opportunity to know him when I
11 practiced law as well as to know him since
12 I've been on the bench and found that along
13 with the other affidavits, but his probably
14 primarily to be most informative.

15 Aside from that, my own experience
16 in class actions has also been helpful, but
17 also, also reality is when you have an
18 opportunity to sit where I get to sit and
19 watch lawyers on both sides, but I'm going to
20 speak for the moment to the plaintiffs'
21 lawyers, it's like you just want to stand up
22 and cheer because it's what makes me really
23 love lawyers. And I mean that, because
24 lawyers, particularly these lawyers, just go
25 wading into places that lots of -- no one

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1 other than a lawyer would ever wade there,
2 but particularly these groups of lawyers have
3 gone there and have gone to a place that
4 supposedly there was no remedy and made a
5 remedy.

6 MR. RICHTER: Thank you.

7 THE COURT: Boy that is fantastic,
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8 that's the best lawyering in my book. So I
9 celebrate everything that you have done and
10 it's extraordinary and it's wonderful and
11 it's all about being a lawyer and why it
12 matters to the world and why it matters to
13 this country that you did and I'm just so
14 proud for you and of you.

15 MR. RICHTER: Thank you.

16 THE COURT: Let me also say that the
17 fees, there was a range of fees in this case
18 went up to 2 1/2 million dollars and that's
19 an appropriate fee. Under all the
20 circumstances that's an appropriate fee and
21 that is the fee that I will order be paid --

22 MR. RICHTER: Thank you.

23 THE COURT: -- happily. On the basis of
24 the time, the energy, the effort, the effort
25 going forward to deal with the kind of

32

1 heartbreak that wonderful lawyers deal with,
2 get their hands dirty in, care about and
3 that's the reason this fee not only has been
4 earned, but will continue to be earned, and
5 I'm happy to order that, think it's
6 appropriate absolutely. So I'll look for an
7 order in that regard as well.

8 I want to also say that I have
9 been -- as much as any piece of litigation I
10 have ever been involved in been touched by,
11 noticed that there has been an intention on

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12 these lawyers and I know that it comes from
13 probably perhaps a change in the -- perhaps a
14 change in the theory and, but you're right,
15 there's been a real need, Mr. Shahid, for
16 transparency and I've watched it. I've
17 watched it. You know, and Mr. Richter is
18 about as aggressive a lawyer as there is.
19 There are those that say he practices law
20 like the Texas chainsaw massacre, he takes no
21 prisoners, and even in the most gentle status
22 conferences he's been ready to, you know,
23 take you and Mr. ((Geoly out most every time.
24 And you all have been most patient. And
25 particularly I've watched Mr. ((Geoly also,

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1 just hear the angst and keep moving forward
2 even when you would be gritting your teeth.
3 And so the diocese has been very, very
4 committed to this process being a healing one
5 and I got it.

6 MR. SHAHID: Thank you.

7 THE COURT: Irrespective of where they
8 may have been in the past, ain't no question
9 in this process they have been very
10 interested in the healing part of the process
11 so I thank you for that.

12 MR. SHAHID: Thank you, Judge.

13 THE COURT: And applaud those efforts, I
14 truly do. And Mr. Brucetti, goodness knows
15 all the work you've been there as well,
16 so.... Now, that's the civil matter.

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17 with regards to the criminal
18 matter, you know, my solicitor, of course,
19 you know, I've sung his praises, but I expect
20 his solicitor, and interesting the diocese,
21 as I have been concerned, have been twofold,
22 he and I have had some discussions about it,
23 what you worried about he knows it's twofold,
24 I agreed with you, there certainly has been a
25 period of time that the duty to report didn't

34

1 exist, okay, statutorily.
2 But it transcends that, it
3 transcends that because the reality is, that
4 there are individuals against whom crimes
5 have been committed and the information lies
6 with the diocese and the solicitor is charged
7 with the responsibility to enforce the law.
8 So on a portion of it may be reporting, but
9 on a portion of it -- it's not about
10 reporting, but the information that crimes
11 have been committed lies with the diocese.
12 And I certainly have sensed the diocese has
13 been forthcoming with that information.

14 Having said that, my solicitor is
15 charged with the responsibility to transcend
16 that. You know, I think, I think and I don't
17 demean in any regard or I have no interest in
18 demeaning the Church and its position in our
19 society and the ancient nature of it.
20 However, there is a little bit of an element

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21 that I have to be mindful of that I have to
22 look to my solicitor to obtain whatever
23 information is appropriate to determine
24 whether or not the solicitor has the
25 information of all the victims. To some

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1 extent you can liken it to the person that's
2 trying to come clean on all the bad checks
3 that they have written, but it's incumbent
4 not on the victim -- not on the person who is
5 if you will re-pen tent at the time of the
6 checks it's incumbent upon the solicitor and
7 law enforcement to satisfy himself and
8 themselves that they have all of that
9 information as to those victims and potential
10 victims. And I am very satisfied that our
11 solicitor will do that.

12 I do not see -- finally, I do not
13 see the victim that the civil matter is ended
14 as any more than, Mr. Shahid, and the diocese
15 in a wonderful way allowing the civil matter
16 to go forward and for that I am grateful and
17 I applaud that because it allows those who
18 are hurting to avail themselves of this
19 wonderful settlement that the diocese and the
20 plaintiffs have come to and I applaud that.

21 That being said, that is a
22 completely different track, that is a
23 completely different circumstance than what
24 my solicitor is doing and they just happen to
25 be parallel perhaps. The fact that you all

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1 will go wherever you all will go is of no
2 moment to the solicitor in that sense because
3 his obligations are different and he will do
4 those things that I know he will do to
5 conclude his investigation.

6 Having said that, I am so grateful,
7 Mr. Shahid, to yours and the church's
8 continuing cooperation and I know that if
9 that should change, no question that I will
10 hear about it from the solicitor as will you.

11 So I think that, Mr. Solicitor,
12 Mr. Pascoe, anything you need to add? Just
13 continue to do your work.

14 MR. PASCOE: No, ma'am. Thank you, Your
15 Honor. I would agree 100 percent that I
16 think my matter has nothing whatsoever to do
17 with the civil action that's taking place.

18 THE COURT: Not at all.

19 MR. PASCOE: I will add this: I want to
20 thank both sides, all of the attorneys in
21 this case, they have been an absolute
22 pleasure and an honor to work with, the
23 lawyers of this caliber. Mr. Shahid and I
24 talk at least two or three times a week,
25 Mr. Lofton has been great to work with,

37

1 Mr. Richter. Very seldom do attorneys from
2 Charleston take the time to come meet with me

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3 in the big city of St. Matthews to answer my
4 questions and he did that on 12 hours'
5 notice. So it's been an honor and a pleasure
6 to work with these lawyers. Thank you, Your
7 Honor.

8 THE COURT: Thank you. So much.
9 Obviously if you are in the need of my
10 assistance at any point, you know, you're
11 there because of my request, my order, and so
12 I continue to be interested if you have
13 anything for me.

14 MR. PASCOE: Thank you.

15 THE COURT: All right. I will look -- I
16 am on vacation next week and I see -- unless
17 you all see of, I see of no reason for us to
18 continue meeting like this. I am prepared, I
19 am ready to sign orders. And again, in the
20 event that Mr. Myers withdraws, that's fine,
21 I look for an order to reflect that. In the
22 event he doesn't, I'm looking for a proposed
23 order. Otherwise I'm looking for an order of
24 attorneys' fees. I approve the settlement, I
25 shared that with you. You all were so

38

1 gracious and kind to inform me of it, I think
2 it's extraordinary and I will look for orders
3 when I return from vacation. I will be in
4 St. George the week of the 23rd, for your
5 information. I'm looking for orders from you
6 that week. The week after that, I think the
7 next week I'm actually in St. George, if not
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8 St. George, Orangeburg. I'm either in
9 St. George or Orangeburg for the three weeks
10 after this coming week for -- after my
11 vacation and would like your orders from you
12 just as soon as they're ready.

13 MR. RICHTER: We'll have it for you
14 thank. You very much.

15 THE COURT: Thank you. Thank you all so
16 much.

17 MR. SHAHID: Thanks, Judge.
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20
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24
25

A. PETER SHAHID, JR.
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August 30, 2007

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

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Attorney at Law
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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

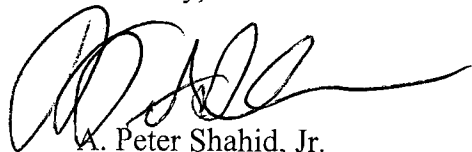
rights to the pending class action settlement by any of Mr. Meyer's clients be withdrawn, and waived with prejudice.. Mr. Meyers has certified he is unaware of any other potential or actual objectors, and does not represent any other person who has an objection to the January 12, 2007 Settlement Agreement 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.

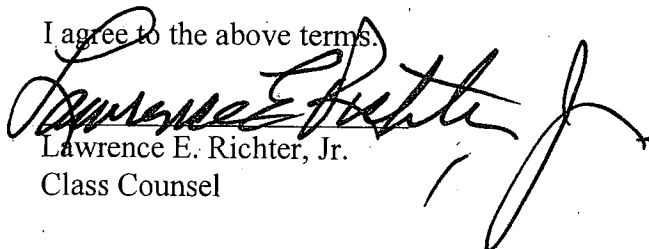
The \$1.375 million will be paid from the surplus funds, if any, after the claims process has been completed. In the event there are insufficient or no funds remaining from the \$12 million pool of funds, the Diocese is still obligated to pay the \$1.375 million as stated above. Payment is expected sometime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

Sincerely,



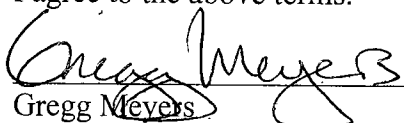
A. Peter Shahid, Jr.

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.

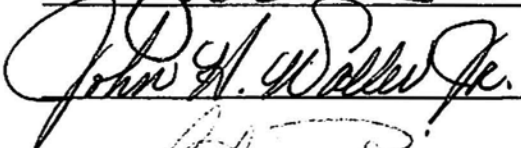
ORDER

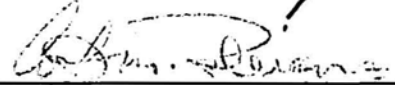
Plaintiff has filed a complaint and a petition asking this Court to accept the complaint in our original jurisdiction. Defendants have filed returns to the petition. The petition is denied.

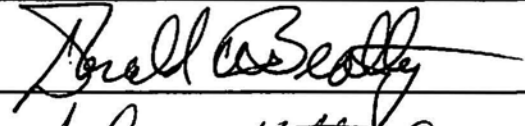
However, we are concerned by the delay that filings such as the one at hand have caused in finally resolving the underlying matters pending in Dorchester County. Accordingly, we hereby direct that the underlying matters be concluded within six months of the date of this order. No extension shall be granted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

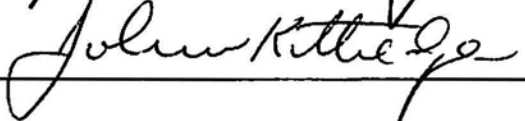
IT IS SO ORDERED.


C. J.


J.


J.


J.


J.

Columbia, South Carolina

March 19, 2009

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

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

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

2006 DEC -2 AM 9:35
JULIE ARMSTRONG
CLERK OF COURT

FILED

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 not 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

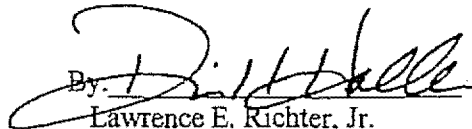
57. The allegations of paragraphs 1 through 41 above are incorporated into this cause of action as if fully stated herein.
58. Defendants joined with others for the purpose of injuring the plaintiff, including, but not limited to, agents of the Diocese of Atlanta. The civil conspiracy of which these 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 

Lawrence E. Richter, Jr.

David K. Haller

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ATTORNEYS FOR PLAINTIFF

15th day of December, 2005

Mt. Pleasant, South Carolina

FILED
2005 DEC -2 AM 9:35
JULE J. ARNSTRONG
CLERK OF COURT

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.	)	

**Plaintiffs' Notice of Supplemental Authority
Opposing Defendants' Motions**

Case 2019-CP-10-5892 had been stayed pending resolution of an appeal that has now been

resolved. Unfortunately, that appeal did not shed light on issues helpful to determining the issues in these cases.

The pending motions by class counsel (to dismiss and for a protective order) should be decided and the parties permitted to do discovery as to the defendants Richter, Haller, and Richter and Haller, LLC.¹

Since the plaintiffs' original opposition memoranda were submitted, an order directly pertinent to the causes of action has become the law of the case in the class action. As to the defendants Richter, Haller and Richter and Haller, LLC, that order determines the motion as to the allegations of professional negligence and breach of fiduciary duties. (It is similarly determinative as to the aiding and abetting claims as to the Diocese defendants, but the court would have to construe the "abeyance" order to permit considering the same issues as to the Diocese. We agree that a fair reading of that "abeyance" order stays the cases as to the Diocese defendants, but now requires action as to the other defendants).

The order from the class action which has now become the law of the case is a December 17, 2013 order by Judge Dickson. That order is Attachment B to this memorandum. The order resolved a 2012 motion filed by class counsel, who sought an order addressing "whether the class action court, in creating the class pursuant to SCRCF 23, intended that the class be comprised only of individuals residing in South Carolina during the claims period." Order at Att.

¹ By order of June 15, 2021 (Attachment A), the South Carolina Supreme Court has ordered "held in abeyance pending resolution of the professional negligence and breach of fiduciary duties claims" what it described as "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." Those professional negligence and breach of fiduciary duty claims as to defendants Richter, Haller and Richter and Haller, LLC, are to be decided "on an expedited basis." The motions for protective order should be denied so the plaintiffs can commence discovery.

B p. 3. This is exactly the issue as to whether or not these and other out of state plaintiffs are within the class, as that order determines the duties owed by class counsel to the plaintiffs.

Judge Dickson's order (Att. B at page 5) determined that "the class action court intended the class to include victims of Diocesan abuse, as defined above, regardless of state residence at the time of the claims period."

Why it took more than ten years for that order to become the law of the case relates to the collusive conduct in the class action. A 2009 order from the South Carolina Supreme Court (Attachment C to this filing), directed the parties in the class action to conclude the class action by September, 2009. The parties ignored that order, apparently by agreement, as they neither informed the circuit court of that order nor moved the Supreme Court to extend the September, 2009 deadline, as the Supreme Court order compelled. Attachment C at p. 1.

Only in 2023 was a final order entered in the class action, and then only because class members compelled it, and did so over the opposition of class counsel and the Diocese. Class members then noticed an appeal from that final order, an appeal that is presently pending.² However, there was no cross-appeal. Judge Dickson's 2013 order is not one of the orders on appeal, and that order is now the law of the case.³

² The appeal has been assigned number 2023-000720.

³ An unappealed order is the law of the case. E.g., *Mason v. Mason*, 412 S.C. 28, 48, 770 S.E.2d 405, 415 (Ct. App. 2015) ("[A]n unappealed ruling, right or wrong, is the law of the case." (quoting *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012); *Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 62, 492 S.E. 2d 62, 68 (1997) ("The law of the case applies both to those issues explicitly decided and to those issues which were necessarily decided in the former case."); *Hudson ex rel. Hudson v. Lancaster Convalescent Ctr.*, 407 S.C. 112, 199, 754 S.E.2d 486, 490 (2014) ("Under the law of the case doctrine, a party is precluded from re-litigating issues decided in a lower court order, when the party voluntarily abandons its appeal of that order."))

Judge Dickson's 2013 order resolves the issues before this court as to the duties class counsel assumed and had imposed by law. That order determined that the class action settlement included persons who resided out of state, as Judge Dickson concluded. As he noted, that order makes sense given that roughly a quarter of the class members participating in the class settlement were from out of state. Att. B at p. 4.

That plaintiffs Chimento and Jane Doe 304 were included within the definition of the classes bears directly on the professional and fiduciary duties assumed by class counsel or imposed on class counsel as a matter of law.⁴ The 2013 order of Judge Dickson and controlling appellate decisions (such as *Premium Parasail*) contradict the 2017 order entered by Judge Nicholson in related litigation, which class counsel has argued to this court should decide class counsel's duty to the plaintiffs.⁵ In fact, such duties to these plaintiffs were both assumed by class counsel and were imposed as a matter of law on class counsel when a class action was pleaded and when the class was approved. The motions to dismiss by class counsel should be denied.

We assume the motions as to the Diocese defendants are stayed. Should the court reach those motions they should also be denied as to the claims that the Diocese defendants aided and

⁴ *Premium Investment Corp. v Green*, 324 S.E.2d 72, 76 (S.C. App. 1984) ("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.")

⁵ As we have argued, Judge Nicholson's conclusion that class counsel owed no duty to out of state abuse victims rested on an extremely weak rationale, as he failed to consider either the class definitions as proposed by class counsel or that approved by the court, or the duties imposed as a matter of law on class counsel who alleges a class action. *Tilley v. Pacesetter Corporation*, 585 S.E.2d 292, 302 (S.C. 2003) (class definition adopted by the court controls). The unappealed order of Judge Dickson to the contrary determines the duty issues (assumed duty and imposed duty) against class counsel.

abetted those breaches of duty by class counsel. It is undisputed that class counsel and the Diocese cooperated to change the geographic scope of the notice program for the class action so as to exclude out of state victims from getting notice.⁶

As detailed in our original memorandum, and as the complaints allege (in ¶ 16 in the *Chimento* complaint, case 2018-CP-10-5802; and at ¶ 22 of the Doe 304 Second Amended Complaint, case 2019-CP-10-5892), defendants Richter, Haller and Richter and Haller, LLC acknowledged in the class proceedings (during a March 9, 2007 hearing), that they represented absent class members, 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.

Each plaintiff in these two actions alleges facts which place them within the class definition (¶ 1 of each complaint).⁷ In light of the holding in *Doe v. Bishop*, 754 S.E.2d 494, 501 (S.C. 2014),⁸ where class counsel's duty to absent class members was at issue, the motions by class counsel

⁶ Compare, 2006 motion to approve classes (which included nationwide notice via *USA Today*, Attachment D at p. 3 ¶ 3.a.) with 2007 motion to approve classes (Attachment E at p. 3 ¶ 3.a., nationwide notice deleted). The Diocese made no objection to the reduced geographic scope of notice, and the reduced scope of notice was approved without analysis by the court. (Attachment F at p. 12, Order of July 30, 2007). Class counsel has represented, on the record, that the change was made to accommodate a request of the Bishop (which the Diocese defendants dispute, but which as to these motions must be assumed to be true). It is undisputed the change was made without objection or request for reconsideration, as the documents reflect.

⁷ Should the Court reach the issue, the Diocese defendants are alleged in the second cause of action in each complaint to have aided and abetted class counsel's breach of both assumed and imposed duties.

⁸ "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."

should be denied and counsel permitted to perform full discovery as to class counsel. (And, if the court reaches the issue, also as to the aiding and abetting allegations as to the Diocese).

Alternatively, if the court holds in abeyance the claims against the Diocese, then full discovery should be permitted as to the breaches of duty by class counsel.

Conclusion

Should the court *not* hold in abeyance the allegations and motions by the Diocese, as a fair reading of the South Carolina Supreme Court's order would seem to require, those motions of the Diocese should be denied. The motions by defendants Richter, Haller and Richter and Haller, LLC should be denied, based on the law of the case from the class action as to the duties assumed and imposed by law towards out of state residents. Full discovery as to class counsel's breach of duties should now proceed.

Respectfully submitted,

s/ Gregg Meyers

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Attorney for the Plaintiffs

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.

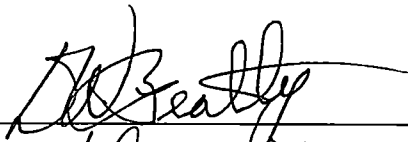
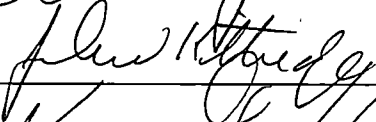
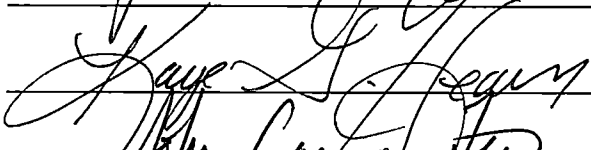
Appellate Case No. 2020-001415

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

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEASJUDGMENT IN A CIVIL CASE
CASE NUMBER 2006CP1801310

CERTIFIED COPY

Jane #1 Doe

Jane #2 Doe

2013 DEC 17 PM

Bishop of charleston

Bishop of the diocese of
charlRachel Roe
John #66 Doe
John #67 DoeJohn #53 Doe
John 66A DoeCLERK OF COURT
DORCHESTER COUNTY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Edgar Dickson

2153

12/16/2013

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

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

David K. Haller 115 River Landing Drive Suite 102
Charleston, SC 29492

John Sinclair III 115 River Landing Dr. Ste. 102
Charleston, SC 29492

Gregg E. Meyers 366 Jackson Street Suite 100 St Paul, MN
55101

ATTORNEY(S) FOR THE PLAINTIFF(S)

Lionel S. Lofton 225 Seven Farms Dr. Ste. 109 Charleston,
SC 29492

Albert P. Shahid Jr. 89 Broad St. Charleston, SC 29401

David K. Haller 115 River Landing Drive Suite 102
Charleston, SC 29492

George J. Kefalos 46A State St. Charleston, SC 29401

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Cheryl Graham - Clerk of Court

Court Reporter

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

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

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

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

Plaintiffs,)

v.)

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

Defendants.)

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

**ORDER ON MOTION TO
ENFORCE SETTLEMENT**

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

THIS MATTER came on for hearing on April 12, 2013 on Plaintiffs' Motion to Enforce Settlement. Specifically, this Court was asked to interpret the July 31, 2007, Order (hereinafter "Order") in these cases and determine whether the class action court, in creating the class pursuant to SCRCF 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.

SCRCF 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), SCRCF. 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), SCRCF. 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, individually and on
behalf of all persons who are
similarly situated, Plaintiff,

v.

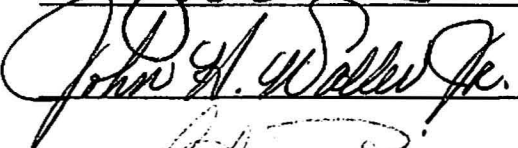
Lawrence E. Richter, Jr., David
K. Haller, Richter & Haller,
LLC, Peter Shahid, Jr., Shahid
Law Office, LLC, Robert
Baker, The Bishop of
Charleston, a Corporation Sole,
and The Bishop of the Diocese
of Charleston, Defendants.

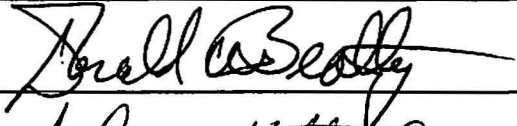
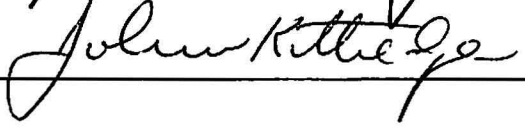
ORDER

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)

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 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 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

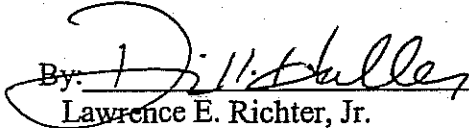
of an order providing conditional approval of this settlement. Any objection to the approval of this settlement must be sent to class counsel and to the clerk of court for Dorchester County for filing with the required filing fee no later than fifteen (15) days prior to the Fairness Hearing on this matter.

- 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

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.

Prayer and Signature Block Continue Next Page

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

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

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.

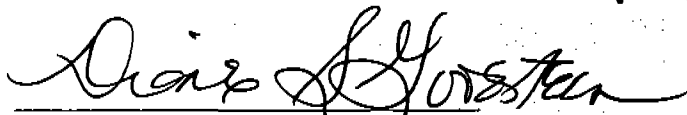
process for the members of the classes begin within 10 days of the date of this order with notice to the class as set out above; and

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

Stay in the Class.

Postmarked or received

and possibly receive

To possibly receive money under

by [Date to be inserted]

money from the

the Settlement, you must complete

Settlement

and return the Claim Form by the

deadline noted.

EXCLUDE YOURSELF

Get out of the class.

Postmarked or received

You do not have to remain a member

[Date to be inserted]

of the class or participate in the Settle-

ment. To be excluded from the Settle-

ment, 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 Settle-

ment. If you fail to file the Opt-out Form

by the deadline, you will be considered

a member of the class.

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.)

VOLUNTARY WAIVER OF APPEAL

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

Defendants.)

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

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

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]**.

ELECTRONICALLY FILED - 2024 Apr 30 3:14 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005802

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.	)	

Motion to Alter or Amend

As reflected by the attached notice from the clerk, on November 7, the clerk of court, pursuant to SCRCP 77(d), entered judgment in these actions. The court had issued a Form 4

ruling in each case, granting on the same one ground the motion to dismiss in each case. The Form 4 order indicated that by November 17 defense counsel was to propose a written order. By email, the defense requested, and the court approved, extending beyond those ten days the time for class counsel to submit a proposed written order.

As noted above, the Form 4 order addressed only one of the various issues addressed by the plaintiffs.

SCRCP 6(b) authorizes a circuit court to extend certain deadlines, but excludes from that authority any change to Rule 59 deadlines. SCRCP 59 requires a motion to alter or amend a judgment “shall be served not later than 10 days after receipt of written notice of the entry of the order.” The Supreme Court has held that the ten-day limit for serving a Rule 59(e) motion is an absolute deadline that binds the court as well as the parties; “the trial judge has only ten days from entry of judgment to alter or amend an earlier order on his own initiative.” *Leviner v. Sonoco Prods. Co.*, 339 S.C. 492, 530 S.E.2d 127 (2000). See also, *Russell v. Wachovia Bank, N.A.*, 370 S.C. 5, 20, 633 S.E.2d 722, 730 (2006), (“Generally, a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed.”)

Given the Supreme Court’s interpretations of SCRCP 6(d) and 59, it appears that after November 17, that being the tenth day after the clerk entered judgment, the court will have jurisdiction only as to filings made by November 17 and will not otherwise have authority to modify the Form 4 order in this and the companion cases.

A party “*must* file [a Rule 59(e)] motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review,” *Elam v. S.C. Dept. of Trans.*, 361 S.C. 9, 24, 602 S.E. 2d 772, 780 (2004) (emphasis in original).

In an abundance of caution, each of the plaintiffs in these two cases submit this motion pursuant to SCRCP 59(e) to address issues raised by not ruled on.

In this motion the lawyer defendants are referred to as class counsel, which refers to the underlying 2005 class action, 2006 class settlement, 2006 judge-shopping for class settlement oversight, and 2007 court approval of that settlement.

1. The court's Form 4 order granted the motion to dismiss for failure to state a claim by adopting the rationale from a 2017 order by Judge Nicholson in other actions. No other ground for the motion, and no other rationale, was addressed.

2. The court's Form 4 order inherently accepts the allegations of the complaint as true, including the allegations that both as a matter of law *and as explicitly voluntarily assumed*, class counsel had duties to the absent members of the class, such as Mr. Chimento and Jane Doe 304. The facts alleged, accepted as true, conflict with (a) Judge Nicholson's 2017 rationale based on one part of the 2006 class complaints (not the classes as proposed or approved), that as a matter of law the lawyers owed no duty to out of state class members, and (b) that the complaints in these actions allege duties voluntary assumed as well as those imposed by law, unlike the complaints ruled upon by Judge Nicholson, and (c) most significantly, the recent development that the law of the case in the class action now includes as a matter of law that the approved class settlement included persons who resided out of state.¹

3. As to each of the plaintiffs, the court has accepted the allegations that duties were owed or have been voluntarily assumed as to each of Mr. Chimento and Jane Doe 304 but the court has not ruled on the various breaches of duty set out in Mr. Virzi's affidavit (including his

¹ The defendants having colluded to evade appellate review of the class action delayed for more than a decade that law of the case effect.

incorporated affidavit from civil action 2016-CP-10-1632), in which the plaintiff was John Doe 297), including:

- a. Class counsel having failed to disclose to the class their conflicts of interest, of: (1) lifelong ties to the Diocese, and (2) their continued functioning on behalf of the Diocese, before, during, and after the class action litigation,
- b. Class counsel² having agreed to reduce the scope of the notice program from their original proposal for nationwide notice to only notice in and immediately around South Carolina, as well as their own contention that they did so at the request of their adversary,
- c. Class counsel failing to protect absent class members by securing in a written order the relief they claimed to have obtained when they represented to the class action court (in a July 13, 2007 hearing) that class members who did get notice would be entitled to the same relief as as class members, including the waiver of defenses class members received,
- d. Class counsel failing to obtain any post-award fairness hearing or other means for class members to seek post-claim review,
- e. Class counsel having resolved the claims for class representatives independent of, and before, the claims process that applied to class members, and
- f. Class counsel submitting plainly fraudulent time records in both hours of time declared (many days exceeding 24 hours).

² With the agreement of the Diocese, but we acknowledge those claims are “held in abeyance” at present, by order of the Supreme Court.

The court confined its ruling in each of these cases to the rationale of Judge Nicholson, so did not rule on the merits of the 12(b)(6) issues. To reach those merits issues, the court must now accept as a matter of law that the law of the case in the class action is that the two classes approved in the class action included out of state class members, which completely conflicts Judge Nicholson's rationale based on a 2006 class complaint. The court should determine if class counsel owed any duties to Mr. Chimento or Jane Doe 304 in light of the law of the case in the class action that each of them was within the class pertinent to each of them.

Accepting the remaining allegations of the complaint as true, the factual context for addressing the issues on the merits is:

- the class action was collusive, as shown by each of the ways detailed in each of the complaints in these actions;
- that the class settlement documents reflect that in the mediation to reach the 2006 class settlement class counsel negotiated, simultaneously, a fixed fee for himself and a variable recovery for the classes;
- the parties engaged in judge-shopping after the class settlement was reached;
- the class settlement terms reached in mediation were changed to make class counsel's fee the priority of the class action;
- a provision was added to refund to the Diocese of any funds which remained after claims were made (what SCRCP now calls "residual funds");
- so as to not have "too many" class claims (thereby better protecting class counsel's fee and the chance of residual funds) the scope of notice was reduced to notice only in and immediately around South Carolina;

- class counsel represented to the court, but did not secure by order, the relief that class members who did not get notice would get the same relief as class members, including the Diocese waiving its defenses, damaging John Doe 305;
- that the McDonalds (and other class members) were charged a contingency fee and costs which no order authorized, an overcharge of class members of some \$900,000 that was never disclosed to the class action court;
- that class counsel failed to make proper disclosures to class members, as identified above;
- that class counsel or his clients contributed \$100,000 to fund better terms for class members who opted-out of the class settlement;
- that class counsel submitted blatantly fraudulent time records to the class action court in support of the fee claim, which apparently were not reviewed by the class action court;
- that the colluding parties to the class action ignored the Supreme Court's 2009 order, neither closing the class action in six months nor returning to the Supreme Court for an extension of the Court's deadline, which it must be presumed was to avoid appellate review of the conduct of the class action;

The court should address how these facts bear on the professional negligence and breach of fiduciary duties alleged in the first cause of action for each of Mr. Chimento and Jane Doe 304;

Finally, the court should address the defense contention as to Mr. Chimento's complaint that Mr. Virzi's affidavit, which is attached to the complaint, is insufficient because Mr. Virzi incorporated the specifics he set out in the affidavit he gave in a related case, civil action 2016-CP-10-1632, for a plaintiff identified as John Doe 297. Which the court should deny.

Conclusion

There is great utility for bench and bar for these issues being clarified for future class actions in South Carolina as well as for the class members at issue in this action.

Respectfully submitted,

s/ Gregg Meyers

Gregg Meyers, SC Bar No. 9908
114 4th Ave NW
Byron MN 55920
843-324-1589
attygm@gmail.com

Attorney for the Plaintiffs

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.

ELECTRONICALLY FILED - 2025 Nov 17 10:05 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005802

Record on Appeal - 0720

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.

ELECTRONICALLY FILED - 2025 Nov 17 10:05 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005802

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.	)	

Motion to Alter or Amend

This motion relates to the court's orders of December 5, 2025 in each of these cases. It incorporates the Rule 59 motion made November 17, 2025 in response to the court's single sentence Form 4 order. Grounds for this motion are:

1. Each order omits any reference to the clerk of court entering judgment in each case on November 7, which appears to limit to November 17, under SCRCP 6(b) the court's otherwise discretion as to extending time.
2. Under SCRCP 6(d), the Court had no authority to extend beyond November 17 its retained jurisdiction, that being the tenth day after the clerk entered judgment based on the court's November 7 form 4 order. The orders of December 5 should address this retained jurisdictional defect, which we contend limits the Court's order on appeal to the form 4 order, given that the Supreme Court has held that "the trial judge has only ten days from entry of judgment to alter or amend an earlier order on his own initiative." *Leviner v. Sonoco Prods. Co.*, 339 S.C. 492, 530 S.E.2d 127 (2000). See also, *Russell v. Wachovia Bank, N.A.*, 370 S.C. 5, 20, 633 S.E.2d 722, 730 (2006), ("Generally, a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed.")

If so, then the court could not retain jurisdiction beyond November 17 to amend its order, and the court is limited to its one sentence form 4 order and the sole rationale of adopting Judge Nicholson's order.

Should the appellate court later conclude that the court could retain jurisdiction after November 17, below are additional grounds stated for the order filed December 5, 2025. The lawyer defendants are again referred to as class counsel, which refers to the underlying 2005 class action, 2006 class settlement, the 2006 judge-shopping done for class settlement oversight, and the 2007 court approval of that class settlement.

3. Each order of December 5 goes far beyond the ground which the court articulated in its form 4 order, which articulated the sole ground of adopting Judge Nicholson's 2017 order. Even without the problem of SCRCP 6(b) on the court's retained jurisdiction, the order exceeds the court's directive to prepare an order reflecting the form 4 order.

4. The court's orders reflect at p. 1-2 that each of the plaintiffs in these actions has alleged no claim for their sexual abuse, even though sexual abuse is alleged by each. Yet the order does not relate that inability to claim for the abuse itself as part of the damages of each plaintiff. Indeed, at page 9 of each order the defendants contend there are no damage facts alleged, which is patently incorrect.

Having been excluded from the class action by class counsel's deliberate change to the notice program of the class action, each plaintiff lost the advantage of the Diocese having waived defenses in that class action. As a result, each plaintiff must now confront those defenses: for example charitable immunity and statute of limitations. Each plaintiff can make a claim for the abuse itself only if there is an independent good faith basis to do so in light of those defenses. For each of Mr. Chimento and Jane Doe 304 there is not such a basis. In the class action each could have made a claim, because those defenses were waived.

The orders should acknowledge that disability as a damage consequence to each plaintiff as a result of the malpractice and breach of fiduciary duty by class counsel.

5. The orders err in finding significance in each plaintiff's complaint acknowledging that an appeal was then pending from Judge Nicholson's 2017 orders finding class counsel had assumed no duty to persons who resided out-of-state. Yet the orders fail to address the issues referred to in each of the complaints, and the limitation explicitly alleged in each complaint.

The appellate ruling which affirmed Judge Nicholson's order have no application, as (a) the appellate court failed to address on appeal the issue of duty imposed by law upon pleading a class action, and (b) the complaint explicitly alleges, and provided the transcripts of hearing, where class counsel assumed the duty to absent class members. Unlike the complaints at issue in the cases ruled on by Judge Nicholson, the complaints for Mr. Chimento (at p. 4 ¶ 15) and Jane Doe 304 (at pp. 6 – 7 ¶ 25), allege assumed duty not contained in the pleadings before Judge Nicholson. A party is bound by the "allegations, statements, or admissions contained in a pleading" in the sense that a party cannot subsequently take a contrary or inconsistent factual position. *Charleston County School Dist. v. Laidlaw Transit, Inc.*, 348 S.C. 420, 559 S.E.2d 362 (Ct. App. 2001). No appellate ruling agreed with Judge Nicholson's conclusion about duty imposed as a matter of law. No appellate ruling agreed with Judge Nicholson that *Premium Investment Corp. v. Green*, 324 S.E.2d 72, 76 (S.C. App. 1984), could be ignored. No appellate decision found that no fiduciary duties are imposed by law on class counsel when class counsel pleads a class action. The appellate court was silent on the issue, but did affirm Judge Nicholson. That does not create any binding legal conclusion.

Judge Nicholson's orders do not rule on assumed duty, only on duty imposed as a matter of law. Judge Nicholson ignored appellate authority to the contrary. No appellate ruling in any case has ruled on the issue, so no appellate ruling sheds light as a matter of law on the legal point at issue. The complaints (¶ 21 for Jane Doe 304's Second Amended Complaint and ¶ 15 for Mr. Chimento's complaint) allege the appeal may apply "to the extent" the appellate court rules on the duty imposed by law. But no appellate ruling was made on the issue, so neither plaintiff is bound by that appeal.

Without an appeals court ruling on the issue, nothing about Judge Nicholson's orders even apply because (a) the point is a questions of law, not one of fact, and the appeals court did not address the legal issue of duty imposed by law, and (b) the issue for these absent class members is the *assumed* fiduciary duty alleged as to class counsel, not the fiduciary duty imposed by law. The pleadings for Mr. Chimento and Jane Doe 304 do not have the allegations relied on by Judge Nisholson to find that class counsel had assumed no duty in pleading a class, and each complaint instead alleges in detail, and provided the transcript for, the expressions of assumed duty.

Nor does Judge Nicholson's rationale bind any other court.

6. Each of the complaints alleges with specificity and cites the transcripts where class counsel explicitly acknowledged the fiduciary duty they were assuming to absent members of the class. The court's order ignores those allegations, when they must be accepted as true.

7. At page 19 as to Mr. Chimento, and page 20 as to Jane Doe 304, the respective orders claim charitable immunity would not apply to intentional torts such as sexual abuse, apparently to infer that there was no proximate harm to these plaintiffs from class counsel deliberately excluding them from the class action after defining the classes so as to include them. There are two errors in each order in this regard.

First, the conduct of *the Diocese* in any sexual abuse case is the *negligent* acts as to their supervision of the employee committing the abuse. Not the intentional conduct of the employee doing the abuse, who of course is acting outside the course and scope of employment. As to Mr. Chimento and Jane Doe 304, the argument is a straw man. Second, the argument fails to address the statute of limitations defense, waived in the class action but a waiver not available to these plaintiffs by the deliberate act of class counsel.

8. Each order claims to address the law of the case issue, but completely misstates and misconstrues the argument. The point is that *in the underlying class action* the law of the case has only recently¹ become that the class action includes out-of-state class members, a proposition directly contrary to the order of Judge Nicholson and his analysis as to the duties imposed by law or assumed by class counsel. Not, as class counsel now claim, that the law of the case applies to them as party defendants in any case. The case in which it is the class of the case is the class action itself. That the class action included persons who resided out of state entirely refutes Judge Nicholson's conclusions about duty, and refutes completely class counsel's contention that they had assumed no duty to absent class members who resided out-of-state, and had no fiduciary duty to absent class members imposed on them.

9. The orders nowhere addresses the import of the collusive class settlement and collusive conduct after the class settlement. The details of the collusive conduct, the judge-shopping, how the settlement was changed to promote both class counsel's financial interest and that of the Diocese are ignored. Neither order reviews the duties of class counsel as to the absent members of the classes as proposed or as approved by the court.

10. Neither order rules on the various breaches of duty set out in Mr. Virzi's affidavit (including his incorporated affidavit from civil action 2016-CP-10-1632), in which the plaintiff was John Doe 297), including:

- a. Class counsel having failed to disclose to the class their conflicts of interest, of: (1) lifelong ties to the Diocese, and (2) their continued functioning on behalf of the Diocese, before, during, and after the class action litigation,

¹ Due to the misconduct by class counsel and alleged collusion with the Diocese to evade appellate review in the class action.

- b. Class counsel² having agreed to reduce the scope of the notice program from their original proposal for nationwide notice to only notice in and immediately around South Carolina, as well as their own contention that they did so at the request of their adversary,
- c. Class counsel failing to protect absent class members by securing in any written order the relief they claimed to have obtained when they represented to the class action court (in a July 13, 2007 hearing) that class members who did get notice would be entitled to the same relief as as class members, including the waiver of defenses class members received,
- d. Class counsel failing to obtain any post-award fairness hearing or other means for class members to seek post-claim review,
- e. Class counsel having resolved the claims for class representatives independent of, and before, the claims process that applied to class members, and
- f. Class counsel submitting plainly fraudulent time records in both hours of time declared (many days exceeding 24 hours).

Neither order rules on the merits of the 12(b)(6) issues, and does so accepting as a matter of law that the law of the case in the class action is that the two classes approved in the class action included out of state class members, and the misconduct by class counsel in the record.

The factual context for addressing the issues on the merits is:

- the class action was collusive, as shown by each of the ways detailed in each of the complaints in these actions;

² With the agreement of the Diocese, but we acknowledge those claims are “held in abeyance” at present, by order of the Supreme Court.

- the class settlement documents reflect that in the mediation to reach the 2006 class settlement class counsel negotiated, simultaneously, a fixed fee for themselves and a variable recovery for the classes;
- the parties engaged in judge-shopping after the class settlement was reached;
- the class settlement terms reached in mediation were changed to make class counsel's fee the priority of the class action;
- a provision was added to refund to the Diocese of any funds which remained after claims were made (what SCRCF 23(e) now calls "residual funds");
- so as to not have "too many" class claims (thereby better protecting class counsel's fee and the chance of residual funds) the scope of notice was reduced to notice only in and immediately around South Carolina;
- class counsel represented to the court, but did not secure by order, the relief that class members who did not get notice would get the same relief as class members, including the Diocese waiving its defenses, damaging Mr. Chimento and Jane Doe 304;
- that class counsel charged class members a contingency fee and costs which no order authorized, an overcharge of class members of some \$900,000 that was never disclosed to the class action court;
- that class counsel failed to make proper disclosures to class members, as identified above;
- that class counsel or his clients contributed \$100,000 to fund better terms for class members who opted-out of the class settlement;

- that class counsel submitted blatantly fraudulent time records to the class action court in support of the fee claim, which apparently were not reviewed by the class action court;
- that the colluding parties to the class action ignored the Supreme Court's 2009 order, neither closing the class action in six months nor returning to the Supreme Court for an extension of the Court's deadline, which it must be presumed was to avoid appellate review of the conduct of the class action.

The orders should rule on how these facts bear on the professional negligence and breach of fiduciary duties alleged in the first cause of action for each of Mr. Chimento and Jane Doe 304.

Finally, the order as to Mr. Chimento should address the defense contention as to Mr. Chimento's complaint that Mr. Virzi's affidavit, which is attached to the complaint, is insufficient because Mr. Virzi incorporated the specifics he set out in the affidavit he gave in a related case, civil action 2016-CP-10-1632, for a plaintiff identified as John Doe 297.

Conclusion

There is great utility for bench and bar for these issues being clarified for future class actions in South Carolina as well as for the class members at issue in this action.

Respectfully submitted,

s/ Gregg Meyers

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Jan 27 2026

SC Court of Appeals

The State of South Carolina
In The Court of Appeals

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

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

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, of whom Lawrence E. Richter, Jr.,
David K. Haller, and Richter and Haller, LLC, are
(2022-CP-10-04031)

Respondents

And

Jane Doe 304,

Appellant

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, of whom Lawrence E. Richter, Jr., David K. Haller, and
Richter and Haller, LLC, are
(2019-CP-10-05892)

Respondents

And

Robert Chimento,

Appellant

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, of whom Lawrence E. Richter, Jr., David K. Haller, and
Richter and Haller, LLC, are
(2018-CP-10-5802)

Respondents

Notice of Appeal

Plaintiffs John Doe 305, Julie McDonald, Richard McDonald, Jame Doe 304 and Robert
Chimento hereby appeal orders and judgments of the Honorable William C. McMaster, III filed

Record on Appeal - 0731

in these consolidated actions on November 6, 2025 (three orders and three judgments), December 5, 2025 (three orders and three judgments) and December 30, 2025 (3 orders and 3 judgments).

A copy of each order and judgment is attached.

Related to this appeal is the present pending appeal identified as Appellate Case 2023-000720, a class action involving civil actions 2006-CP-18-01310, 2006-CP-18-01311, and 2006-CP-18-01636, each from Dorchester County, and civil actions 2005-CP-10-02053, 2005-CP-10-03293, and 2005-CP-10-04913, each from Charleston County.

Another related appeal, although not a presently pending appeal, is the South Carolina Supreme Court decision in *Doe v. Bishop*, 407 S.C. 128, 754 S.E.2d 494 (2014).

Respectfully submitted,

s/ Gregg Meyers

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2019-CP-10-_____
Jane Doe 304,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Lawrence E. Richter, Jr.,	)	
David K. Haller,	)	Professional Negligence
Richter and Haller, LLC,	)	Breach of Assumed or Imposed Fiduciary Duty
The Bishop of Charleston a corporation	)	Aiding and Abetting Breach of Fiduciary Duty
Sole, and Robert E. Guglielmone, Bishop	)	
Of Charleston,	)	
	)	
Defendants.	)	Jury Trial Requested
	)	

Complaint

For his complaint, the Plaintiff alleges:

Parties and Jurisdiction

1. Jane Doe 304 is an adult citizen and resident of a state other than South Carolina. As a minor child, she was sexually abused multiple times over a three-year period, 1959 to 1962, by Frederick Hopwood, who is referred to in this complaint as Hopwood. Hopwood is now deceased. During the time of the abuse Hopwood was a priest of the Diocese of Charleston, having been ordained in 1951. During the period of the abuse, Hopwood was assigned by the Diocese of Charleston to positions in Charleston County. The decisions about where to assign Hopwood were made in Charleston County, in the office of the Bishop of Charleston.

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. They purported to represent the plaintiff as an absent member of a class of

persons in an action brought on behalf of sexual abuse victims.

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 Hopwood, decisions about how to handle the various complaints made about Hopwood, and decisions about how Hopwood should be supervised, or not supervised, were decisions made in Charleston County by the then Bishop of Charleston. Charleston County is also where decisions were made about coordinating with class counsel in the 2007 proceedings to approve a class action for abuse survivors.

7. That class action is alleged to have been collusive among the defendants, and the plaintiff’s exclusion from the class action was an act of legal malpractice by class counsel which constituted a breach of fiduciary duty, aided and abetted by the employees and agents of the Diocese of Charleston.

8. 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 the present successor to prior Bishops and administrators who made decisions about the class action, but the present Bishop is joined as a party

necessary for complete relief. Under the 2013 bylaws of the Diocese, the present Bishop holds “all ordinary, proper and immediate power” in the Diocese, subject only to the Pope. All persons working for the Diocese anywhere in South Carolina are subordinate to the Bishop. Within the Diocese, the Bishop is answerable to no one if he exercises his authority to countermand a court order. Hence the need to join the present Bishop as a party necessary for complete relief.

9. In this complaint, the Diocese and the Bishop are collectively referred to as the “Diocese defendants,” unless they are otherwise specifically referred to.

10. The Court has jurisdiction over the parties to this action.

11. The Court has jurisdiction over the subject matter of this action.

12. Venue of this action is proper in Charleston County.

Nature of Wrongdoing

13. The plaintiff was born in June 1951.

14. The plaintiff fits within the definition of one of the classes defined and approved in a class settlement for which the defendants sought and obtained 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 for which the plaintiff has not previously made a claim that was adjudicated, resolved, or released.

15. The Richter defendants were class counsel in that class action proceeding.

16. The plaintiff was situated similarly to other individuals ostensibly within one of the two class definitions chosen by the Richter defendants when the Richter defendants (a) pled a class action in 2005, (b) settled that class action in a 2006 mediation, and (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.

17. The plaintiff has no present legal means to bring suit against the Diocese for her childhood sexual abuse by Hopwood. In the class action the defenses that bar her presently making a claim were waived by the Diocese. As a member of one of the classes defined in the class action brought for the benefit of sexual abuse victims, she ought to have been given an opportunity to get notice for claiming in that action at least a modest recovery for her abuse. She was excluded from that opportunity when the Richter defendants breached their fiduciary duty to her by (a) revising the notice program of the class action to effectively exclude notice to any victim who resided out of state in 2007, a revision aided and abetted by the Diocese defendants, and (b) by the defendants all claiming on the record in the class action to have secured relief for absent class members who did not get notice, but then including in the written orders of the class action that relief for only a subset of absent class members who did not get notice, that subset not including the plaintiff.

18. In other words, class counsel failed to obtain for the plaintiff the relief he purported to have obtained to protect her interest.

19. This action has been brought within three years of the plaintiff's learning that there was a class action, in which the Richter Defendants represented both that they represented absent class members and had obtained relief for those absent members without then actually securing that relief in any written order. The action is also brought within three years of the plaintiff having learned that the Diocese defendants aided and abetted the breach of fiduciary duty towards the plaintiff.

20. 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 appellate courts. However, this complaint also alleges, and the record shows, that the Richter defendants voluntarily assumed a fiduciary duty as to the plaintiff, which was breached. As alleged in this complaint, the Diocese defendants aided and abetted that breach of fiduciary duty to the plaintiff by the Richter defendants.

21. 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 class action, at which they sought, and obtained, preliminary approval of the class action settlement for the two classes they chose to define. 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.

22. 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.

23. 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.

24. 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, on appeal in South Carolina is a trial court order which concluded that the duties imposed by law by the *Premium Investment* decision does not apply to the class action at issue.

25. Whether or not those fiduciary duties were imposed by law, the Richter defendants voluntarily assumed those fiduciary duties.

26. The Richter defendants chose to define the class so as to include the plaintiff in that the class definition included no geographic limit, an issue also on appeal.

27. During the class action the Richter defendants claimed no prior class counsel experience, and that inexperience is apparent from the record of the class action.

28. 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.

29. The Richter defendants also failed to disclose to the class their own lifelong ties to the Bishop.

30. 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 and time frame. 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, through this comment by counsel for the Diocese:

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. The representation, if true when made, is contained in no written orders of the court, so is unenforceable. If false when made, it constitutes a fraud on the court overseeing the class action settlement. In failing to secure in a written order the relief claimed to have been obtained, the Richter defendants acted against the interest of absent class members and in the interests of themselves and the Diocese defendants rather than acting in the interests of absent class members such as the plaintiff.

32. 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.

33. 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.

34. 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.”

35. The Richter defendants, on pages 16 - 17 of that same July 13, 2007 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 from the Diocese, but were secured by no written order, so the relief claimed by class counsel is unenforceable for the plaintiff.

36. 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.

37. 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.

38. The Richter defendants intended that the court would rely on the misrepresentation, and the court did rely on the misrepresentation. However, the court did not embody the understanding in any written order, and none of the defendants requested that the court do so.

39. As to the plaintiff, these actions constituted breach of fiduciary duty, imposed by law on, or assumed by, the Richter defendants, aided and abetted by the Diocese defendants.

40. 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 both that the notice program for the class had been revised to exclude essentially all victims who then resided out of state and that the written orders in the class action failed to secure the full relief for absent class members that had been included in those “representations and stipulations of the Diocese.”

41. The result of the Richter defendants’ failure was to exclude the plaintiff from any recovery against the Diocese for her 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.

42. 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 the terms of the settlement compelled a *pro rata* reduction of recovery to class members if “too many” in the class made claims.

43. Failing to secure relief for absent class members who got no notice served the purpose of avoiding court scrutiny which should have been given to that fee provision. Avoiding careful court scrutiny was the reason the Richter defendants, with cooperation of the Diocese defendants, “shopped” for the judge they desired to oversee the class settlement.

44. As noted above, 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.

45. 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 the complex case designation process for the class settlement when the complex case designation order at the time required the parties to represent that they had been “unable” to settle the case.
- c. Class counsel failing to disclose in any writings published to the class members his life-long ties to the Diocese defendants,
- d. Making no disclosure to the class, or to 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 an unethical fixed fee for themselves and a variable recovery for the class,
 - f. Agreeing to revise the proposed nationwide notice to exclude all absent class members who then resided out of state,
 - g. Joining in misrepresenting the relief obtained 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 those time records without any scrutiny,
 - i. Class counsel collecting more fee from class members than any order approved their collecting, an additional 20% charged to class members beyond the court approved fee, and class counsel failing to disclose to class members before charging that 20% additional fee that the court had provided for class counsel's fee,
 - j. Failing to disclose to the class that neither class representatives nor those who settled outside the class action were required to use the arbitration structure that other class members were required to use,
 - k. Using an arbitration structure to provide for the flexibility to reduce the claims of class members so as to accommodate as the first priority the unethical fixed fee for class counsel, and
 - l. Ignoring a March 19, 2009 order of the S.C. Supreme Court to conclude the class action by September 19, 2009.

46. The defendants caused the plaintiff special harm in the form of excluding her from the opportunity to make any claim against the Diocese for her sexual abuse. 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.

47. 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 had the opportunity to obtain relief for her childhood sexual abuse by Hopwood.

48. The Diocese defendants also 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 upon 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 arbitration was conducted so as to accommodate as the first priority of the settlement class counsel's fixed fee, by reducing the

recoveries of class members to accommodate that fixed fee,

g. making no objection when the Richter defendants took more fee than was authorized by court order, and

h. agreeing to seek no post-award fairness hearing under SCRCP 23.

49. 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.

50. Until November 11, 2016, 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**

51. Allegations above, other than the allegations of intentional conduct by the Richter defendants, are incorporated into this cause of action as if fully stated.

52. 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 Richter defendants, and the factual basis of the negligent acts or omissions of the Richter defendants which constitute the breach of fiduciary duty.

53. 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.

54. On October 6, 2006, the Richter defendants filed proposed formal class definitions that included the plaintiff in the class definition.

55. If it was not imposed by law, the Richter defendants assumed a fiduciary duty to the plaintiff in the conduct of the class action.

56. 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 breached a fiduciary duty to the plaintiff, and the Diocese defendants aided and abetted that breach of fiduciary duty.

57. On January 19, 2007, a proposed class definition that included the plaintiff was approved without objection from the Diocese defendants.

58. The Richter defendants engaged in negligent acts and omissions in breaching assumed or imposed fiduciary duties owed to the plaintiff.

59. 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.

60. 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.

61. 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 beyond the court approved fee.

62. 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.

63. The acts and omissions of the Richter defendants caused damage to the plaintiff’s rights, as aided and abetted by the Diocese defendants.

64. Plaintiff are entitled to actual and punitive damages against the Richter defendants as a result of the professionally negligent representation and breach of fiduciary duty she received from the Richter defendants.

**For a Second Cause of Action:
Aiding and Abetting Breach of Fiduciary Duty
Against the Diocese defendants**

65. Allegations above are incorporated into this cause of action as if fully stated.

66. The Diocese defendants aided and abetted the breach of fiduciary duty by the Richter defendants towards the plaintiff, as set forth above.

67. 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, as set forth above.

68. The Diocese defendants joined with the Richter defendants in both reducing the notice

program for the class action and then also making representations on the record to the class action judge, supposedly protecting the interest of absent class members and affording the plaintiff relief despite the lack of notice to her. 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.

69. The Diocese defendants knowingly participated in the breach of the fiduciary duty owed to the plaintiff by the Richter defendants, and the Diocese defendants have argued that no such obligations were enforceable.

70. The plaintiff has been damaged by that aiding and abetting by the Diocese defendants of the breach of fiduciary duty owed to her by the Richter defendants, and the plaintiff is entitled to actual and punitive damages as a result.

Demand for Jury Trial

71. Plaintiff demands a trial by jury.

Relief Sought

Wherefore, the plaintiff seeks relief in the form of:

72. Actual damages to be awarded to the plaintiff by the finder of fact against the various defendants,

73. Costs and disbursements of this action,

74. Punitive damages as authorized by law, and for

75. Such other and further relief as the Court deems just and proper.

Respectfully submitted,

s/ Gregg Meyers

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Attorney for the plaintiff

UNITED STATES DISTRICT COURT DISTRICT
OF SOUTH CAROLINA CHARLESTON
DIVISION

CIVIL ACTION NUMBER: 2:19-cv-3409-RMG

JANE DOE 304,

Plaintiff,

vs.

LAWRENCE E. RICHTER, JR., DAVID
K. HALLER, RICHTER & HALLER, LLC,
THE BISHOP OF CHARLESTON a
CORPORATION SOLE, and ROBERT E.
GUGLIELMONE, Bishop of Charleston
Defendants.

DEFENDANTS' NOTICE OF REMOVAL

TO: THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA, GREENVILLE DIVISION; THE COURT OF COMMON PLEAS FOR THE TWENTY-THIRD JUDICIAL CIRCUIT, GREENVILLE COUNTY, SOUTH CAROLINA; AND ALL PARTIES AND ATTORNEYS OF RECORD:

YOU WILL PLEASE TAKE NOTICE that Defendants, Bishop of Charleston, a Corporation Sole, and Robert E. Guglielmone, Bishop of Charleston hereby invoke the removal jurisdiction of the United States District Court for the District of South Carolina pursuant to 28 U.S.C. §§ 1331, 1332, 1441, and 1446 based upon the following:

1. Plaintiff commenced this action by filing the Summons and Complaint with the Court of Common Pleas for Charleston County, State of South Carolina, on November 10, 2019. (Attached as **Exhibit A** are all Charleston Court of Common Pleas filings).

2. No Defendant has been served with the Summons and Complaint. See *Declaration of Richard Dukes*, **Exhibit B**

3. This action is currently pending in the Court of Common Pleas for Charleston County, State of South Carolina, located within the above-named Division of this Court.

Because no defendant been served with the Complaint, the Notice of Removal is timely under 28 U.S.C. § 1446(b).

4. The Complaint is a civil action seeking recovery for damages based upon alleged legal malpractice and breach of fiduciary duty by Defendants Richter, Haller, and Richter & Haller and aiding and abetting breach of fiduciary duty by Defendants Bishop of Charleston, a Corporation Sole and the Bishop of Charleston. Under these claims for relief, Plaintiff seeks actual, consequential, and punitive damages. Based upon the allegations contained in the Complaint, the amount in controversy exceeds \$75,000. The Corporation Sole and the Bishop deny that Plaintiff is entitled to any of the relief sought and does not waive any defenses with respect to any of Plaintiff's claims. However the amount in controversy is guided by accepting Plaintiff's allegations as true. *Dart Cherokee Basin Operating Co., LLC v. Owens* 135 S.Ct. 553 (2014). A defendant's notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold. *Id.* at 554.

5. This Court has original jurisdiction based upon diversity of citizenship under 28 USC § 1332, and this action is removable pursuant to 28 U.S.C. § 1441(a). Venue properly lies in the District of South Carolina under 28 U.S.C. § 1391(a)(2) and 28 U.S.C. §95(a)(2). Plaintiff alleges she is a resident of state other than South Carolina. (Complaint, ¶ 1). Defendants are alleged to be citizens and residents of South Carolina (Complaint, ¶¶ 2-3, 5-6). Thus complete diversity exists between the parties.

6. To support removal based on diversity jurisdiction, and where it is not facially evident from the Complaint, the Defendants bear the burden of proof that the amount in controversy exceeds the jurisdictional amount. 28 USC § 1446(c)(2)(B). Defendants do not concede the validity of Plaintiff's claims nor attempts to predict what Plaintiff will recover; the amount in controversy is determined by the amount demanded, not what will ultimately be recovered. *St. Paul Mercury Indem. Co. v. Red Cab Co.* 303 U.S. 283, 289-290 (1938).

7. In *Mattison v. Wal-Mart Stores, Inc.* 2011 U.S. Dist. LEXIS 11634, *4-6 (D.S.C. Feb. 4, 2011), this Court recently reviewed the showing required by a party seeking to remove a case to federal court, where no specific amount in controversy is alleged in the Complaint. The removing party must demonstrate that there is more than \$75,000 in controversy "to a reasonable probability". *Id.* at *4. Here, the nature of the unspecified damages, together with the prayer for punitive damages "make it virtually impossible to say that the claim is for less than the jurisdictional amount" *Woodward v. Newcourt Comm. Fin. Corp.*, 60 F. Supp. 2d 530, 532 (D.S.C. 1999).

8. Under 28 USC § 1441(b)(2), "A civil action otherwise removable solely on the basis of jurisdiction under section 1332(a) of this title 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 the action is brought." 28 USC § 1441(b)(2)(emphasis added). However Section 1441(b)(2) does not apply because no defendant has been served with the Complaint in this action. *See Dukes declaration; Also Gibbons v. Bristol-Myers Squibb Co.*, 919 F.3d 699 (2d Cir. 2019); *Blankenship v. Napolitano*, 2019 U.S.Dist. Lexis 118731 (S.D. W.Va. July 17, 2019); *Teamsters Local 677 Health Servs. & Ins. Plan v. Friedmand*, 2019 U.S.Dist. Lexis 184186 (D.Md. October 23,

2019); and *Encompass Ins. Co. v. Stone Mansion Restaurant, Inc.*, 902 F.3d 147, 152-54 (3rd Cir. 2018)(holding removal not precluded where resident defendant had not been served); *LaRusso v. St. George's University School*, 747 F.3d 90, 97 (2d Cir. 2014)(nothing in Sections 1441 or 1446 require service upon a defendant before removal); *McCall v. Scott*, 239 F.3d 808, 813 n.2 (6th Cir. 2001)(“Where there is complete diversity of citizenship . . . inclusion of an unserved resident defendant in the action does not defeat removal”); *Zirkin v. Shandy Media, Inc.*, 2019 WL 626138, at *3 (C.D. Cal. Feb. 14, 2019); *Fisher v. Pelstring*, 2009 WL 10664813, at *204 (D.S.C. Sept. 29, 2009)(denying remand of a pre-service removal).

9. Because no defendant has been properly joined and served with the Complaint, the consent of other defendants is not required. 28 USC § 1446(b)(2)(A); *see also United Steel v. Shell Oil Co.*, 549 F.3d 1204, 1208 (9th Cir. 2008).

10. As required by 28 U.S.C. § 1446(d), written Notice of Removal is being given to all adverse parties and a copy of the Notice is being filed with the Clerk of the Common Pleas Court of Charleston County, South Carolina.

WHEREFORE, the Defendants, by counsel, give notice that the within civil action, previously pending in the Court of Common Pleas Court for Charleston County, South Carolina, has been removed to the United States District Court for District of South Carolina, Charleston Division.

TURNER, PADGET, GRAHAM & LANEY, P.A.

s/Richard S. Dukes, Jr.

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ATTORNEYS FOR DEFENDANTS
BISHOP OF CHARLESTON, A CORPORATION
SOLE, AND ROBERT E. GUGLIELMONE

In the United States District Court
District of South Carolina
Charleston Division

Jane Doe 304,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 2:19-cv-3409-RMG
	)	
Lawrence E. Richter, Jr.,	)	
David K. Haller,	)	Professional Negligence
Richter and Haller, LLC,	)	Breach of Assumed or Imposed Fiduciary Duty
The Bishop of Charleston a corporation	)	Aiding and Abetting Breach of Fiduciary Duty
Sole, and Robert E. Guglielmone, Bishop	)	
Of Charleston,	)	
	)	
Defendants.	)	Jury Trial Requested
	)	

Amended Complaint

For her amended complaint, the Plaintiff alleges:

Parties and Jurisdiction

1. Jane Doe 304 is an adult citizen and resident of a state other than South Carolina. As a minor child, she was sexually abused multiple times over a three-year period, 1959 to 1962, by Frederick Hopwood, who is referred to in this complaint as Hopwood. Hopwood is now deceased. During the time of the abuse Hopwood was a priest of the Diocese of Charleston, having been ordained in 1951. During the period of the abuse, Hopwood was assigned by the Diocese of Charleston to positions in Charleston County. The decisions about where to assign Hopwood were made in Charleston County, in the office of the Bishop of Charleston.

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. They purported to represent the plaintiff as an absent member of a class of

persons in an action brought on behalf of sexual abuse victims.

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 Hopwood, decisions about how to handle the various complaints made about Hopwood, and decisions about how Hopwood should be supervised, or not supervised, were decisions made in Charleston County by the person serving as the Bishop of Charleston at the time each such decision was made. Charleston County is also where decisions were made about coordinating with class counsel in the 2007 proceedings to approve a class action for abuse survivors.

7. That class action is alleged to have been collusive among the defendants. That the plaintiff was included in the class definition but was excluded from any opportunity to participate in the class action was a function of a series of acts of legal malpractice by class counsel which constituted a breach of fiduciary duty, aided and abetted by the employees and agents of the Diocese of Charleston.

8. Those fiduciary duties were either imposed by law on class counsel, a topic on which state court orders now conflict, or were assumed by class counsel, as acknowledged in correspondence and the transcript of proceedings in the class action.

9. 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 the present successor to prior Bishops and administrators who made decisions about the class action, but the present Bishop is joined as a party necessary for complete relief. Under the 2013 bylaws of the Diocese, the present Bishop holds “all ordinary, proper and immediate power” in the Diocese, subject only to the Pope. All persons working for the Diocese anywhere in South Carolina are subordinate to the Bishop. Within the Diocese, the Bishop is answerable to no one if he exercises his authority to countermand a court order. Hence the need to join the present Bishop as a party necessary for complete relief.

10. In this complaint, the Diocese and the Bishop are collectively referred to as the “Diocese defendants,” unless they are otherwise specifically referred to.

11. The Court has jurisdiction over the parties to this action in that the Diocese has removed the action to the federal court.

12. The Court has jurisdiction over the subject matter of this action.

13. Venue of this action is proper in the Charleston division given that conduct of the defendants took place in this division.

Nature of Wrongdoing

14. The plaintiff was born in June 1951.

15. The plaintiff fits within the definition of one of the classes defined and approved in a class settlement for which the defendants sought and obtained 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 for which the plaintiff has not previously made

a claim that was adjudicated, resolved, or released.

16. The Richter defendants were class counsel in that class action proceeding.

17. The plaintiff was situated similarly to other individuals ostensibly within one of the two class definitions chosen by the Richter defendants when the Richter 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.

18. The plaintiff has no present legal means to bring suit against the Diocese for her childhood sexual abuse by Hopwood. In the class action the defenses that bar her presently making a claim were waived by the Diocese. As a member of one of the classes defined in the class action brought for the benefit of sexual abuse victims, she ought to have been given an opportunity to get notice for claiming in that action at least a modest recovery for her abuse. She was excluded from that opportunity when the Richter defendants breached their fiduciary duty to her by

- a. revising the notice program of the class action to effectively exclude notice to any victim who resided out of state in 2007, a revision aided and abetted by the Diocese defendants, and
- b. by the defendants all claiming on the record in the class action to have secured

relief for absent class members who did not get notice, but then including in the written orders of the class action that relief for only a subset of absent class members who did not get notice, that subset not including the plaintiff.

19. In other words, class counsel failed to obtain for the plaintiff the relief he purported to have obtained to protect her interest.

20. This action has been brought within three years of the plaintiff's learning that there was a class action, in which the Richter Defendants represented both that they represented absent class members and had obtained relief for those absent members without then actually securing that relief in any written order. The action is also brought within three years of the plaintiff having learned that the Diocese defendants aided and abetted the breach of fiduciary duty towards the plaintiff.

21. 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, 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 Richter defendants voluntarily assumed a fiduciary duty as to the absent members of the class such as the plaintiff, which duty was breached. As alleged in this complaint, the Diocese defendants aided and abetted that breach of fiduciary duty to the plaintiff by the Richter defendants.

22. 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 class action, at which they sought, and obtained, preliminary approval of the class action settlement for the two classes they chose to define. 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.

23. 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. In correspondence with out of state class members, that fiduciary duty was also recognized by class counsel.

24. 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.

25. 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, on appeal in South

Carolina is a trial court order which concluded that the duties imposed by law by the *Premium Investment* decision does not apply to the class action at issue, a decision which conflicts without orders of various state trial courts.

26. Whether or not those fiduciary duties were imposed by law, the Richter defendants voluntarily assumed those fiduciary duties.

27. The Richter defendants chose to define the class so as to include the plaintiff in that the class definition included no geographic limit, an obligation acknowledged in class counsel's correspondence with out of state class members and in the actual distribution of class proceeds, about a quarter of which went to out of state residents, according to a trial court order affecting the class action.

28. During the class action the Richter defendants claimed no prior class counsel experience, and that inexperience is apparent from the record of the class action.

29. 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" counsel elected, the implications of which presented duties they voluntarily assumed, and by which they are bound.

30. The Richter defendants also failed to disclose to the class their own lifelong ties to the Bishop.

31. 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 and time frame. 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, through this comment by counsel for the Diocese:

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.

32. That representation to the Court appears on page 3 of a transcript dated July 13, 2007. The representation, if true when made, is contained in no written orders of the court, so is unenforceable as to, for example, the plaintiff. If false when made, it constitutes a fraud on the court overseeing the class action settlement, as would paying class funds to persons not eligible to be in the class (which was apparently done with a quarter of the class participants). In failing to secure in a written order the relief claimed to have been obtained, the Richter defendants acted against the interest of absent class members such as the plaintiff and in the interests of themselves and the Diocese defendants rather than acting in the interests of absent class members such as the plaintiff.

33. 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.

34. In fact, the Richter defendants were aware, and had alleged in their own class complaint, that 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 because no order secured such relief.

35. The defendants represented to the court, on page 14 of that same transcript, that for any absent class member 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.”

36. The Richter defendants, on pages 16 - 17 of that same July 13, 2007 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 from the Diocese, but were secured by no written order, so the relief claimed by class counsel is unenforceable for benefit of the plaintiff.

37. 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.

38. 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.

39. The Richter defendants intended that the court would rely on the misrepresentation, and the court did rely on the misrepresentation. However, the court did not embody the understanding in any written order, and none of the defendants requested that the court do so.

40. As to the plaintiff, these actions constituted breach of fiduciary duty, imposed by law on, or assumed by, the Richter defendants, aided and abetted by the Diocese defendants.

41. 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 both that the notice program for the class had been revised to exclude essentially all victims who then resided out of state and that the written orders in the class action failed to secure the full relief for absent class members that had been included in those “representations and stipulations of the Diocese.”

42. The result of the Richter defendants’ failure was to exclude the plaintiff from any recovery against the Diocese for her 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.

43. 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 the terms of the settlement compelled a *pro rata* reduction of recovery to class members if “too many” in the class made claims.

44. Failing to secure relief for absent class members who got no notice served the purpose of avoiding court scrutiny which should have been given to that fee provision. Avoiding careful court scrutiny was the reason the Richter defendants, with cooperation of the Diocese defendants, “shopped” for the judge they desired to oversee the class settlement.

45. As noted above, 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.

46. 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 the complex case designation process for the class settlement that had been agreed to at a time when the complex case designation order required the parties to represent that they had been “unable” to settle the case.
- c. Class counsel failing to disclose in any writings published to the class members his life-long ties to the Diocese defendants,
- d. Making no disclosure to the class, or to 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 an unethical fixed fee for themselves

and a variable recovery for the class,

- f. Agreeing to revise the proposed nationwide notice to exclude notice being given to all absent class members who then resided out of state,
- g. Joining in misrepresenting the relief obtained 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 those time records without any scrutiny,
- i. Class counsel collecting more fee from class members than any order approved their collecting, charging class members (without disclosing the fee already approved by the court) an additional 20% beyond the court approved fee,
- j. Class counsel or class members paying \$100,000 to the Diocese in order to get the class settlement approved,
- k. Failing to disclose to the class that neither class representatives nor those who settled outside the class action were required to use the arbitration structure that other class members were required to use,
- l. Failing to disclose to the class that neither class representatives nor those who settled outside the class action were required to surrender their appeal rights before knowing what their settlement payment would be,
- m. Using an arbitration structure to provide for the flexibility to reduce the claims of class members so as to accommodate as the first priority the unethical fixed fee for class counsel, and
- n. Ignoring a March 19, 2009 order of the S.C. Supreme Court to conclude the

class action by September 19, 2009.

47. The defendants caused the plaintiff special harm in the form of excluding her from the opportunity to make any claim against the Diocese for her sexual abuse. 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.

48. 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 had the opportunity to obtain relief for her childhood sexual abuse by Hopwood.

49. The Diocese defendants also 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 upon 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 had been compensated,
- f. making no objection when the arbitration was conducted so as to accommodate

as the first priority of the settlement class counsel's fixed fee, by reducing the recoveries of class members to accommodate that fixed fee,

- g. making no objection when the Richter defendants took more fee than was authorized by court order,
- h. agreeing to seek no post-award fairness hearing under SCRCP 23, and
- i. agreeing to seek no final order to conclude the class action.

50. 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.

51. Until November 11, 2016, 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**

52. Allegations above, other than the allegations of intentional conduct by the Richter defendants, are incorporated into this cause of action as if fully stated.

53. Pursuant to S.C. Code § 15-36-100, attached to this amended complaint is an affidavit setting forth at least one negligent acts or omissions of the Richter defendants, and the factual basis of the negligent acts or omissions of the Richter defendants which constitute the breach of fiduciary duty.

54. 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.

55. On October 6, 2006, the Richter defendants filed proposed formal class definitions that included the plaintiff in the class definition.

56. If it was not imposed by law, the Richter defendants assumed a fiduciary duty to the plaintiff in the conduct of the class action.

57. 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 breached a fiduciary duty to the plaintiff, and the Diocese defendants aided and abetted that breach of fiduciary duty.

58. On January 19, 2007, a proposed class definition that included the plaintiff was approved without objection from the Diocese defendants.

59. The Richter defendants engaged in negligent acts and omissions in breaching assumed or imposed fiduciary duties owed to the plaintiff.

60. 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.

61. 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.

62. 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 beyond the court approved fee.

63. Having “too many” claimants also was believed to not be in the interest of the Diocese defendants, and the Richter defendants acted to protect the interests of the Diocese defendants more than the interests of absent class members such as the plaintiff.

64. The acts and omissions of the Richter defendants caused damage to the plaintiff’s rights, as aided and abetted by the Diocese defendants.

65. Plaintiff are entitled to actual and punitive damages against the Richter defendants as a result of the professionally negligent representation and breach of fiduciary duty she received from the Richter defendants.

**For a Second Cause of Action:
Aiding and Abetting Breach of Fiduciary Duty
Against the Diocese defendants**

66. Allegations above are incorporated into this cause of action as if fully stated.

67. The Diocese defendants aided and abetted the breach of fiduciary duty by the Richter defendants towards the plaintiff, as set forth above.

68. 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, as set forth

above.

69. The Diocese defendants joined with the Richter defendants in both reducing the notice program for the class action and then also making representations on the record to the class action judge, supposedly protecting the interest of absent class members and affording the plaintiff relief despite the lack of notice to her. 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.

70. The Diocese defendants knowingly participated in the breach of the fiduciary duty owed to the plaintiff by the Richter defendants, and the Diocese defendants have argued that no such obligations were enforceable.

71. The plaintiff has been damaged by that aiding and abetting by the Diocese defendants of the breach of fiduciary duty owed to her by the Richter defendants, and the plaintiff is entitled to actual and punitive damages as a result.

Demand for Jury Trial

72. Plaintiff demands a trial by jury.

Relief Sought

Wherefore, the plaintiff seeks relief in the form of:

73. Actual damages to be awarded to the plaintiff by the finder of fact against the various defendants,

74. Costs and disbursements of this action,

75. Punitive damages as authorized by law, and for

76. Such other and further relief as the Court deems just and proper.

Respectfully submitted,

s/ Gregg Meyers

Gregg Meyers, Fed. I.D. 4183
217 Lucas Street Unit F1
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. 2019-CP-10-_____

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.	)

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 her 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 for the past seventeen years has focused 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, I served a three-year term as Chair of the former from 2007 to 2010, I am currently Chair of the latter, and I serve as Ethics Chair for the South Carolina Association for Justice;
- C. I have provided expert testimony on matters involving lawyer ethics and malpractice on more than 100 occasions either in court, in deposition, or by affidavit;



- D. I teach Professional Responsibility at the University of South Carolina School of Law and have taught 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; I am one of six instructors for the South Carolina Bar and Supreme Court's ongoing Legal Ethics and Practice Program; and I have authored five published articles, numerous adopted Ethics Advisory Opinions, and a book chapter on matters involving lawyer ethics and malpractice;
 - E. 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
 - F. I am familiar with the relevant rules, law, and standard of care applicable to lawyers in the circumstances involved in this matter.
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;
 - 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;
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- 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
 - 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;

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- 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 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

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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 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

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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 despite identifying and ultimately obtaining certification of a nationwide class, thereby excluding from notice those putative class members, like Plaintiff, who lived elsewhere.

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 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

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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 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-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

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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;
 - 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);
- 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;

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- 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, 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.

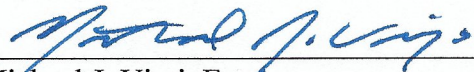
The Richter Defendants stated to the court that the above entries were “by far conservative” estimates of time actually spent on the specific services indicated, and the above list is not exhaustive of the nonsensical and impossible entries. Thus the Richter Defendants appear to have made false statements 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.

Further affiant sayeth naught.



Michael J. Virzi, Esq.

State of South Carolina
County of Richland

Sworn and subscribed before me
This 19th day of December, 20 19



Notary Public

My Commission Expires : 10/18/26

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,	)	Professional Negligence
Richter and Haller, LLC,	)	Breach of Assumed or Imposed Fiduciary Duty
The Bishop of Charleston a corporation	)	Aiding and Abetting Breach of Fiduciary Duty
Sole, and Robert E. Guglielmone, Bishop	)	
Of Charleston,	)	
	)	
Defendants.	)	Jury Trial Requested
	)	

Second Amended Complaint

For her second amended complaint, the Plaintiff alleges:

Parties and Jurisdiction

1. Jane Doe 304 is an adult citizen and resident of a state other than South Carolina. As a minor child, she was sexually abused multiple times over a three-year period, 1959 to 1962, by Frederick Hopwood, who is referred to in this complaint as Hopwood. Hopwood is now deceased. During the time of the abuse Hopwood was a priest of the Diocese of Charleston, having been ordained in 1951. During the period of the abuse, Hopwood was assigned by the Diocese of Charleston to positions in Charleston County. The decisions about where to assign Hopwood were made in Charleston County, in the office of the Bishop of Charleston.

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. They purported to represent the plaintiff as an absent member of a class of

persons in an action brought on behalf of sexual abuse victims.

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 Hopwood, decisions about how to handle the various complaints made about Hopwood, and decisions about how Hopwood should be supervised, or not supervised, were decisions made in Charleston County by the person serving as the Bishop of Charleston at the time each such decision was made. Charleston County is also where decisions were made about coordinating with class counsel in the 2007 proceedings to approve a class action for abuse survivors.

7. That class action is alleged to have been collusive among the defendants. That the plaintiff was included in the class definition but was excluded from any opportunity to participate in the class action was a function of a series of acts of legal malpractice by class counsel which constituted a breach of fiduciary duty, aided and abetted by the employees and agents of the Diocese of Charleston.

8. Those fiduciary duties were either imposed by law on class counsel, a topic on which state court orders now conflict, or were assumed by class counsel, as acknowledged in correspondence and the transcript of proceedings in the class action.

9. 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 the present successor to prior Bishops and administrators who made decisions about the class action, but the present Bishop is joined as a party necessary for complete relief. Under the 2013 bylaws of the Diocese, the present Bishop holds “all ordinary, proper and immediate power” in the Diocese, subject only to the Pope. All persons working for the Diocese anywhere in South Carolina are subordinate to the Bishop. Within the Diocese, the Bishop is answerable to no one if he exercises his authority to countermand a court order. Hence the need to join the present Bishop as a party necessary for complete relief.

10. In this complaint, the Diocese and the Bishop are collectively referred to as the “Diocese defendants,” unless they are otherwise specifically referred to.

11. The Court has jurisdiction over the parties to this action in that the Diocese has removed the action to the federal court.

12. The Court has jurisdiction over the subject matter of this action.

13. Venue of this action is proper in the Charleston division given that conduct of the defendants took place in this division.

Nature of Wrongdoing

14. The plaintiff was born in June 1951.

15. The plaintiff fits within the definition of one of the classes defined and approved in a class settlement for which the defendants sought and obtained 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 for which the plaintiff has not previously made

a claim that was adjudicated, resolved, or released.

16. The Richter defendants were class counsel in that class action proceeding.

17. The plaintiff was situated similarly to other individuals ostensibly within one of the two class definitions chosen by the Richter defendants when the Richter 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.

18. The plaintiff has no present legal means to bring suit against the Diocese for her childhood sexual abuse by Hopwood. In the class action the defenses that bar her presently making a claim were waived by the Diocese. As a member of one of the classes defined in the class action brought for the benefit of sexual abuse victims, she ought to have been given an opportunity to get notice for claiming in that action at least a modest recovery for her abuse. She was excluded from that opportunity when the Richter defendants breached their fiduciary duty to her by

- a. revising the notice program of the class action to effectively exclude notice to any victim who resided out of state in 2007, a revision aided and abetted by the Diocese defendants, and
- b. by the defendants all claiming on the record in the class action to have secured

relief for absent class members who did not get notice, but then including in the written orders of the class action that relief for only a subset of absent class members who did not get notice, that subset not including the plaintiff.

19. In other words, class counsel failed to obtain for the plaintiff the relief he purported to have obtained to protect her interest.

20. This action has been brought within three years of the plaintiff's learning that there was a class action, in which the Richter Defendants represented both that they represented absent class members and had obtained relief for those absent members without then actually securing that relief in any written order. The action is also brought within three years of the plaintiff having learned that the Diocese defendants aided and abetted the breach of fiduciary duty towards the plaintiff.

21. 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, 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 Richter defendants voluntarily assumed a fiduciary duty as to the absent members of the class such as the plaintiff, which duty was breached. As alleged in this complaint, the Diocese defendants aided and abetted that breach of fiduciary duty to the plaintiff by the Richter defendants.

22. 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 class action, at which they sought, and obtained, preliminary approval of the class action settlement for the two classes they chose to define. 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.

23. 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. In correspondence with out of state class members, that fiduciary duty was also recognized by class counsel.

24. 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.

25. 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, on appeal in South

Carolina is a trial court order which concluded that the duties imposed by law by the *Premium Investment* decision does not apply to the class action at issue, a decision which conflicts without orders of various state trial courts.

26. Whether or not those fiduciary duties were imposed by law, the Richter defendants voluntarily assumed those fiduciary duties.

27. The Richter defendants chose to define the class so as to include the plaintiff in that the class definition included no geographic limit, an obligation acknowledged in class counsel's correspondence with out of state class members and in the actual distribution of class proceeds, about a quarter of which went to out of state residents, according to a trial court order affecting the class action.

28. During the class action the Richter defendants claimed no prior class counsel experience, and that inexperience is apparent from the record of the class action.

29. 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" counsel elected, the implications of which presented duties they voluntarily assumed, and by which they are bound.

30. The Richter defendants also failed to disclose to the class their own lifelong ties to the Bishop.

31. 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 and time frame. 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, through this comment by counsel for the Diocese:

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.

32. That representation to the Court appears on page 3 of a transcript dated July 13, 2007. The representation, if true when made, is contained in no written orders of the court, so is unenforceable as to, for example, the plaintiff. If false when made, it constitutes a fraud on the court overseeing the class action settlement, as would paying class funds to persons not eligible to be in the class (which was apparently done with a quarter of the class participants). In failing to secure in a written order the relief claimed to have been obtained, the Richter defendants acted against the interest of absent class members such as the plaintiff and in the interests of themselves and the Diocese defendants rather than acting in the interests of absent class members such as the plaintiff.

33. 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.

34. In fact, the Richter defendants were aware, and had alleged in their own class complaint, that 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 because no order secured such relief.

35. The defendants represented to the court, on page 14 of that same transcript, that for any absent class member 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.”

36. The Richter defendants, on pages 16 - 17 of that same July 13, 2007 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 from the Diocese, but were secured by no written order, so the relief claimed by class counsel is unenforceable for benefit of the plaintiff.

37. 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.

38. 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.

39. The Richter defendants intended that the court would rely on the misrepresentation, and the court did rely on the misrepresentation. However, the court did not embody the understanding in any written order, and none of the defendants requested that the court do so.

40. As to the plaintiff, these actions constituted breach of fiduciary duty, imposed by law on, or assumed by, the Richter defendants, aided and abetted by the Diocese defendants.

41. 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 both that the notice program for the class had been revised to exclude essentially all victims who then resided out of state and that the written orders in the class action failed to secure the full relief for absent class members that had been included in those “representations and stipulations of the Diocese.”

42. The result of the Richter defendants’ failure was to exclude the plaintiff from any recovery against the Diocese for her 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.

43. 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 the terms of the settlement compelled a *pro rata* reduction of recovery to class members if “too many” in the class made claims.

44. Failing to secure relief for absent class members who got no notice served the purpose of avoiding court scrutiny which should have been given to that fee provision. Avoiding careful court scrutiny was the reason the Richter defendants, with cooperation of the Diocese defendants, “shopped” for the judge they desired to oversee the class settlement.

45. As noted above, 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.

46. 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 the complex case designation process for the class settlement that had been agreed to at a time when the complex case designation order required the parties to represent that they had been “unable” to settle the case.
- c. Class counsel failing to disclose in any writings published to the class members his life-long ties to the Diocese defendants,
- d. Making no disclosure to the class, or to 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 an unethical fixed fee for themselves

- and a variable recovery for the class,
- f. Agreeing to revise the proposed nationwide notice to exclude notice being given to all absent class members who then resided out of state,
 - g. Joining in misrepresenting the relief obtained 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 those time records without any scrutiny,
 - i. Class counsel collecting more fee from class members than any order approved their collecting, charging class members (without disclosing the fee already approved by the court) an additional 20% beyond the court approved fee,
 - j. Class counsel or class members paying \$100,000 to the Diocese in order to get the class settlement approved,
 - k. Failing to disclose to the class that neither class representatives nor those who settled outside the class action were required to use the arbitration structure that other class members were required to use,
 - l. Failing to disclose to the class that neither class representatives nor those who settled outside the class action were required to surrender their appeal rights before knowing what their settlement payment would be,
 - m. Using an arbitration structure to provide for the flexibility to reduce the claims of class members so as to accommodate as the first priority the unethical fixed fee for class counsel, and
 - n. Ignoring a March 19, 2009 order of the S.C. Supreme Court to conclude the

class action by September 19, 2009.

47. The defendants caused the plaintiff special harm in the form of excluding her from the opportunity to make any claim against the Diocese for her sexual abuse. 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.

48. 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 had the opportunity to obtain relief for her childhood sexual abuse by Hopwood.

49. The Diocese defendants also 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 upon 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 had been compensated,
- f. making no objection when the arbitration was conducted so as to accommodate

as the first priority of the settlement class counsel's fixed fee, by reducing the recoveries of class members to accommodate that fixed fee,

- g. making no objection when the Richter defendants took more fee than was authorized by court order,
- h. agreeing to seek no post-award fairness hearing under SCRCP 23, and
- i. agreeing to seek no final order to conclude the class action.

50. 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.

51. Until November 11, 2016, 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**

52. Allegations above, other than the allegations of intentional conduct by the Richter defendants, are incorporated into this cause of action as if fully stated.

53. Pursuant to S.C. Code § 15-36-100, attached to this amended complaint is an affidavit setting forth at least one negligent acts or omissions of the Richter defendants, and the factual basis of the negligent acts or omissions of the Richter defendants which constitute the breach of fiduciary duty.

54. 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.

55. On October 6, 2006, the Richter defendants filed proposed formal class definitions that included the plaintiff in the class definition.

56. If it was not imposed by law, the Richter defendants assumed a fiduciary duty to the plaintiff in the conduct of the class action.

57. 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 breached a fiduciary duty to the plaintiff, and the Diocese defendants aided and abetted that breach of fiduciary duty.

58. On January 19, 2007, a proposed class definition that included the plaintiff was approved without objection from the Diocese defendants.

59. The Richter defendants engaged in negligent acts and omissions in breaching assumed or imposed fiduciary duties owed to the plaintiff.

60. 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.

61. 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.

62. 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 beyond the court approved fee.

63. Having “too many” claimants also was believed to not be in the interest of the Diocese defendants, and the Richter defendants acted to protect the interests of the Diocese defendants more than the interests of absent class members such as the plaintiff.

64. The acts and omissions of the Richter defendants caused damage to the plaintiff’s rights, as aided and abetted by the Diocese defendants.

65. Plaintiff are entitled to actual and punitive damages against the Richter defendants as a result of the professionally negligent representation and breach of fiduciary duty she received from the Richter defendants.

**For a Second Cause of Action:
Aiding and Abetting Breach of Fiduciary Duty
Against the Diocese defendants**

66. Allegations above are incorporated into this cause of action as if fully stated.

67. The Diocese defendants aided and abetted the breach of fiduciary duty by the Richter defendants towards the plaintiff, as set forth above.

68. 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, as set forth

above.

69. The Diocese defendants joined with the Richter defendants in both reducing the notice program for the class action and then also making representations on the record to the class action judge, supposedly protecting the interest of absent class members and affording the plaintiff relief despite the lack of notice to her. 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.

70. The Diocese defendants knowingly participated in the breach of the fiduciary duty owed to the plaintiff by the Richter defendants, and the Diocese defendants have argued that no such obligations were enforceable.

71. The plaintiff has been damaged by that aiding and abetting by the Diocese defendants of the breach of fiduciary duty owed to her by the Richter defendants, and the plaintiff is entitled to actual and punitive damages as a result.

Demand for Jury Trial

72. Plaintiff demands a trial by jury.

Relief Sought

Wherefore, the plaintiff seeks relief in the form of:

73. Actual damages to be awarded to the plaintiff by the finder of fact against the various defendants,

74. Costs and disbursements of this action,

75. Punitive damages as authorized by law, and for

76. Such other and further relief as the Court deems just and proper.

Respectfully submitted,

s/ Gregg Meyers

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Attorney for the plaintiff

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2019-CP-10-_____

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.)
_____)

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 her 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 for the past seventeen years has focused 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, I served a three-year term as Chair of the former from 2007 to 2010, I am currently Chair of the latter, and I serve as Ethics Chair for the South Carolina Association for Justice;
- C. I have provided expert testimony on matters involving lawyer ethics and malpractice on more than 100 occasions either in court, in deposition, or by affidavit;

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- D. I teach Professional Responsibility at the University of South Carolina School of Law and have taught 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; I am one of six instructors for the South Carolina Bar and Supreme Court's ongoing Legal Ethics and Practice Program; and I have authored five published articles, numerous adopted Ethics Advisory Opinions, and a book chapter on matters involving lawyer ethics and malpractice;
 - E. 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
 - F. I am familiar with the relevant rules, law, and standard of care applicable to lawyers in the circumstances involved in this matter.
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;
 - 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;

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- 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
 - 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 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

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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 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

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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 despite identifying and ultimately obtaining certification of a nationwide class, thereby excluding from notice those putative class members, like Plaintiff, who lived elsewhere.

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 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

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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 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-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;
- 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);
- 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;

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- 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, 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.

Further affiant sayeth naught.


Michael J. Virzi, Esq.

State of South Carolina
County of Richland

Sworn and subscribed before me
This 19th day of December, 20 19


Notary Public

My Commission Expires : 10/18/26

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.

**DEFENDANT DAVID K. HALLER'S
MOTION TO DISMISS
SECOND AMENDED COMPLAINT**

TO: GREGG MEYERS, ESQ., ATTORNEY FOR PLAINTIFF, JANE DOE 304:

Defendant, David K. Haller (hereinafter "Defendant" or "Haller") by and through his undersigned counsel, submits this Motion to Dismiss Second Amended Complaint for failure to state a claim under R. 12(b)(6), SCRCF. In support of this Motion, Haller provides the following:

Plaintiff's Second Amended 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 Judgement, 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. The Order of Judge Nicholson has not been overturned. This lawsuit, therefore, should be dismissed.

In addition, the pleading does not satisfy the requirements of SC Code Ann. 15-36-100 because an expert affidavit was not attached to the Complaint or to the Second Amended Complaint as required. For this additional reason, the Second Amended Complaint should be dismissed.

CONCLUSION

This Motion to Dismiss Second Amended Complaint is based upon the pleadings, the Order Granting Summary Judgment to which this Court may take judicial notice, the law, any memorandum of law as may be filed, and such other and further material as the Court may deem appropriate.

Respectfully submitted,

s/ Susan Taylor Wall

Susan Taylor Wall

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Henry W. Frampton, IV

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Gordon & Rees LLP

40 Calhoun Street, Suite 350

Charleston, SC 29401

Phone: 843-714-2506

ATTORNEYS FOR DEFENDANT

DAVID K. HALLER

Dated: March 18, 2020

Charleston, South Carolina

EXHIBIT 1

**ORDER ON LAWYERS DEFENDANTS'
MOTIONS FOR SUMMARY JUDGMENT**

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.

JULIE J. MARRAS ROFF
CLERK OF COURT

2017 AUG 11 PM 2:39

FILED

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.

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SEP 27 2017

SC Court of Appeals

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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, 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.

gen 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, 13111 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.

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-GP-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").

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.

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.

gcn

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, SCRPC. 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, SCRCF), 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, SCRCF, 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:

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.

gm

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

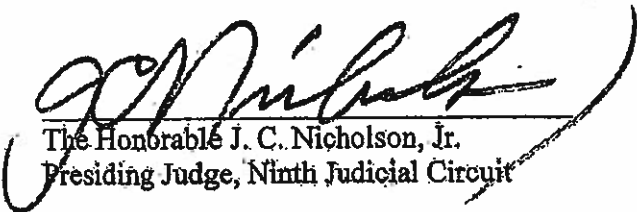

The Honorable J. C. Nicholson, Jr.
Presiding Judge, Ninth Judicial Circuit

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	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
Jane Doe 304,	)	Civil Action No.: 2019-CP-10-05892
	)	
Plaintiff,	)	
	)	NOTICE OF MOTION AND
v.	)	MOTION TO DISMISS OF
	)	DEFENDANTS LAWRENCE
Lawrence E. Richter, Jr., David K. Haller,	)	E. RICHTER, JR. AND
Richter and Haller, LLC, The Bishop of	)	RICHTER & HALLER, LLC
Charleston, a corporation sole, and Robert E.	)	
Guglielmone, Bishop of Charleston,	)	
	)	
Defendants.	)	
	)	

TO: GREGG MEYERS, ATTORNEY FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that Defendants Lawrence E. Richter, Jr. and Richter & Haller, LLC (collectively, "Richter Defendants"), by and through their undersigned counsel, will move in 10 days' time, or as soon as they may be heard, before the Presiding Judge for the Court of Common Pleas in Charleston County for on order dismissing the claims against the Richter Defendants in the Second Amended Complaint of Jane Doe 304 ("Plaintiff") for failure to state facts sufficient to constitute a cause of action, pursuant to Rule 12(b)(6), SCRCF, based upon the same grounds set forth in the Motion to Dismiss filed March 18, 2020, on behalf of Defendant David K. Haller, in which motion the Richter Defendants hereby join and which they incorporate herein by reference. In addition, the Richter Defendants would show the Plaintiff's claims barred by the applicable statute of limitations.

WHEREFORE, the Richter Defendants will move the Honorable Court for an order dismissing the causes of action against them with prejudice. This motion may be further

supported by the record of the case and by further legal argument, authority, affidavits, or memoranda.

Respectfully submitted,

BRUNER, POWELL, WALL & MULLINS, LLC

s/ Benjamin C. Bruner

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*Attorneys for Lawrence E. Richter, Jr. and Richter and
Haller, LLC*

April 6, 2020

Columbia, South Carolina

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.

JOINT MOTION TO STAY CASE

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.

Plaintiff Jane Doe 304 and Defendants Lawrence E. Richter, Jr.; Richter & Haller, LLC; and David K. Haller jointly move 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. Defendants the Bishop of Charleston, a corporation sole, and Robert Guglielmone, Bishop of Charleston do not oppose this motion.

WHEREFORE, the moving parties respectfully request that the Court STAY this action pending the final appellate disposition of Appellate Case No. 2017-001996.

Respectfully submitted,

s/ Gregg Meyers

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DAVID K. HALLER*

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*ATTORNEYS FOR DEFENDANTS
LAWRENCE E. RICHTER, JR.
and RICHTER AND HALLER, LLC*

Dated: June 3, 2020

Charleston, South Carolina

State of South Carolina

In The Original Jurisdiction Of The Supreme Court

Case No. 2020- [00-1415](#)

John Doe 305, Julie McDonald, and Richard McDonald,

Petitioners - Plaintiffs,

v.

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

Respondents - Defendants

Petition for Original Jurisdiction

Pursuant to SCACR 245(a), petitioners request the Court exercise its original jurisdiction (a) to resolve conflicting circuit court orders that affect the rights of the parties and the public on matters involving sexual abuse by priests and other employees of the Diocese of Charleston, (b) to address what has recently been disclosed as a substantial apparent fraud on the court in that ongoing class action, and (c) to address class counsel placing their own financial interest ahead of and at the expense of the interest of the classes they chose to represent.

The class action at issue was filed in 2005. Despite a 2009 order from this Court that it be concluded, which order was ignored, that class action has never been concluded. Without further action by this Court, the apparent fraud on the court will apparently never be examined, the

improprieties alleged in the case will never be examined, and that class action will apparently never be concluded.

Many of the underlying facts alleged in the attached complaint are in the public record and are indisputable, but this Petition requests that the court assert its original jurisdiction in the manner it did in, e.g., *Ex parte Smith*, 756 S.E.2d 386 (S.C. 2014), where a special referee was appointed to make recommendations to the Court; or in the manner used in *Johnson v. Catoe*, 345 S.C. 389, 393 (2001), where a special referee was appointed to “take evidence and issue a report....”

At present the never-concluded class action is assigned to no circuit court judge, the most recently assigned judge having retired in 2019. Once the court resolves the conflicting court orders and apparent fraud on the court underlying the declaratory relief aspects of the complaint, it may be that the case can be otherwise remanded or assigned to a circuit judge to address the additional issues in the other causes of action, particularly those appropriate for the requested jury trial, and to order new counsel for the identified classes who will protect the interests of the class rather than the interests of class counsel.

Why should the Court be concerned with a case filed in 2005? Because it is a class action with ongoing impact on sexual abuse victims and the public, because orders of the Supreme Court have been ignored by both the parties in the class action and a shopped-for circuit judge, and because fraudulent conduct is involved. Not only do circuit court orders as to the class action now conflict over fundamental questions that affect the plaintiffs in the attached complaint; the same questions affect a substantial number of members of the public.

The Court may desire, if the matters set out in this pleading are of any concern, to request that among other things a special referee gather information as to why the parties in the class

action (and the circuit court judge who had assigned the matter to herself) simply ignored the Supreme Court's March 2009 order that directed that the underlying class action be concluded by September 2009. And why those same individuals ignored the Court's directive to seek any extension from the Supreme Court ("No extension shall be granted absent prior permission by this Court," the order states.) And why those same individuals continue to ignore the Court's directive and to ignore a 2016 *pro se* filing of one of the class representatives requesting a post-award fairness hearing.

Without involvement by this court, the class action apparently never will be concluded, and sexual abuse victims will continue to be affected.

The class action is alleged to have been collusive, a contention increasingly supported by the evidence disclosed by the passage of time. Complications continue to expand from the manipulations and lack of independent judicial oversight plainly evident in the record of the underlying class action. Important aspects of the class action have received no meaningful judicial review, including actions which recently disclosed an apparent fraud upon the court by class counsel.

In 2014 the South Carolina Supreme Court decided *Doe v. Bishop*, one of the early cases which arose from the problems of the underlying class action. There are now a number of such cases pending. In that decision the Supreme Court held, in relation to the underlying class action:

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). The appellants in *Doe v. Bishop* were absent members of each of the two classes defined in the underlying class action. Claims that have arisen in the interim continue in a presently pending second appeal of *Doe v. Bishop*, appeal 2017-

001996, now making its second trip to the appellate courts. Even though the first of those *Doe v. Bishop* cases began more than ten years ago, not only has there been no trial of the issues decided in *Doe v. Bishop*, there has not yet been even full discovery permitted as to class counsel's manipulation of notice to the class and inadequate representation, the issues that were explicitly permitted by the Supreme Court in its 2014 decision. As a result, certain factual issues in the present Petition remain to be clarified.

Pertinent to this Petition, until the now conflicting court orders as to the class can be resolved, and until full discovery is permitted in *Doe v. Bishop* and in this action, there are at least two possible reasons why the Supreme Court's March 2009 order as to the class action may have been ignored by the defendants in this action and ignored by the circuit court judge who had assigned the class action to herself. A special referee might find others.

First, the Court's 2009 order may have been ignored to avoid there being any final order which could enable appellate review of what are, frankly, grotesque but undisputable collusive procedural and substantive manipulations in the class action record which bear on this Petition, including:

- (a) collusive conduct to judge- and venue-shop after the class settlement was reached;
- (b) class counsel on behalf of themselves or their clients paying their "adversary," \$100,000 — from class counsel's trust account — to help fund superior settlement terms (compared to the class recovery) for persons who objected to the class settlement. That \$100,000 payment was not included or reflected in any accounting of the class action; nor was it disclosed in any way to class members. Whether it was disclosed to the class representatives, if the class

representatives made the payment, remains unknown until discovery can be had;

(c) a contingent fee payment of \$145,000 was made to class counsel, and never disclosed to the court, for work done on individual class representatives' cases, compensating class counsel for the time on those cases which class counsel then submitted as support for a \$2.5 million fee request in the class action. The submission was fraudulent. The class action complaint was resolved seven months after it was filed, with no argued or decided motions, and not a single deposition having been taken.

(d) class members were never informed:

1. that the settlements terms for persons who objected to the class action, which class counsel's trust account payment to the Diocese helped fund, were better than the terms for any class member;
2. that class counsel had life-long ties with, and held positions within, his supposed "adversary" organization, the Diocese of Charleston;
3. that class counsel had negotiated simultaneously a fixed fee for himself and a variable recovery for the class, with the compensation for class members subordinate to class counsel's fixed fee. Under the terms of the class settlement, class members' recovery would be *pro rata* reduced, if necessary, to accommodate class counsels' fee, disclosing that the fee was the primary purpose for the class action, with compensation to class members the means to the top priority, class counsels' fee. Because those terms were not disclosed to the class, no

member of the class ever had any opportunity to object or challenge class counsel's fee or that fee having the highest priority in the class settlement.

- (e) class counsel submitted patently false and fraudulent billing records in support of his fee application, which elicited neither reaction nor comment from either his supposed adversary or from the shopped-for judge, either initially or even after the objectors and others later brought the fraudulent entries specifically to the attention of the shopped-for judge;
- (f) as noted above, class counsel was paid a contingent fee for almost all of the time submitted as justification for a fee award in the class action, a payment never disclosed to the court;
- (g) class counsel was awarded a \$2.5 million fixed fee for a class settlement reached seven months after the class action was filed, before a single motion had been argued or decided in the case, before a single deposition had been taken in the case, before any class member had been even identified, let alone made a claim or been compensated, so before the value of claims were assessed (individually or collectively). That fee was paid prior to any notice to the class and prior to the claims period, making it impossible to evaluate the results for the class in assessing the fee, and impossible for any class members to object; and
- (h) The claims of class representatives were resolved before the class was approved. None of the representatives had any stake in the class settlement.

Avoiding appellate review of just those example aspects (there are more) may be one reason why the parties ignored the South Carolina Supreme Court's 2009 directive in 2009, and why they continue to ignore it.

A second reason the Supreme Court's March 2009 order may have been ignored is because a substantial fraud was, or is, being, perpetrated on the court, in the form of:

- (a) class counsel making claims for, and distributing class funds to, persons
class counsel now claims were never in either of the two classes,
- (b) class counsel charging substantial fees (of over \$900,000) that were:
 - a. not authorized by any order,
 - b. charged without disclosing, to either class members or to those
persons class counsel knew were not (they now claim) in the class,
that class counsel had already been paid a \$2.5 million fee. A
substantial part of that unauthorized fee was charged to, and paid by,
persons class counsel now claims were not in either of the defined
classes, which if true would mean those "clients" were persons class
counsel did not represent, and which class counsel was not eligible to
represent, and
- (c) If, contrary to what class counsel now claims, the settlement classes included
persons who resided out of state, and those persons rightfully received class
funds, then the fraud being perpetrated by class counsel is current, with class
counsel maintaining in *Doe v. Bishop*, a position contrary to what they
maintained in the class action, and were paid for maintaining in the class
action. Class counsel now claims they owed no duty to absent members of

the class who resided out of state because those persons were not in the class, so class counsel necessarily could not, and did not, represent those absent members of the class. Class counsel have made this new claim to avoid liability to those absent members for (what they now admit was *deliberately*) depriving those persons of Due Process in the class action by giving them no notice of the class action.

As noted above, fifteen years after it was filed, and eleven years after the South Carolina Supreme Court ordered it to be concluded, the underlying class action has never been concluded. Nor does it appear that the class action is presently assigned to any circuit court judge. The last judge assigned retired in mid-2019 and the docket reflects no new order that assigned the case.

There has been no post-award fairness hearing to review the propriety of, among other things, (a) the class action compensation record, (b) payments to persons now contended by class counsel to have never been in either class, (c) fees charged by and paid to class counsel in light of actual payments made to class members, (d) class counsel charging the class for work done on other cases for which class counsel had already been paid a contingent fee, and (e) the extent of payments made to (and fees charged to) those persons whom class counsel now claims were not entitled to any payment because they were not members of either settlement class.

Given the conflicts class counsel now themselves advance, before any fairness hearing occurs the court should appoint new class counsel to represent the interests of the class, since present class counsel has active conflicts with the interests of the classes they defined and purported to represent.

If, as class counsel presently maintains, the settlement classes included only persons who resided in South Carolina, then the actual recovery by class members was necessarily much lower

than was represented, or accounted for, as class counsel now claims substantial funds were distributed to persons not within either settlement class. It is a fraud on the court in multiple ways. No accounting of the class action has accounted for the funds by state of residence; or the \$100,000 payment from class counsel's trust account (on behalf of class counsel or their clients), to their supposed adversary the Diocese, to help fund better settlement terms for each person who objected; and no accounting has accurately included the contingent fee payment that had been made to class counsel, before class approval, for work on individual cases for class representatives. Class counsel fraudulently claimed that work for the class representatives' cases was uncompensated work done on the class action. In each of those aspects the "adversary," the Diocese, was complicit, knowledgeable about, and actively engaged.

The class settlement agreement was supposedly intended for victims of sexual abuse by priests and other Diocesan employees. It was agreed to in June 2006. Two settlement classes were identified, only one of which had been alleged in any pleading. For four months after the class action settlement the parties did nothing to submit their agreement for court approval in Charleston County, where the class complaint has been filed and settled.

Instead, between June and October of 2006, the parties to that class settlement collaborated in shopping for a circuit court judge they desired to oversee the class settlement. A desired judge was identified. To fulfill the desire required a change of venue for the class action then pending in, and settled in, Charleston County. The parties apparently agreed that they did not desire class settlement oversight to be done by any circuit court judge then assigned in Charleston County, where the pending case had been filed and had been settled. They desired a particular circuit court judge from another county and another circuit.

It is not certain to what extent that shopped-for circuit court judge was aware of, or a participant in, class counsel's fraud on the court through the class settlement, or of the extensive manipulations undertaken after the class settlement was reached to change the venue of the class settlement for review by the shopped-for judge. The record reflects that all counsel met with the shopped-for circuit court judge and that the shopped-for judge was told the class case was settled. The record reflects that no motion was made to approve the class settlement in the Ninth Circuit, where the only filed class case was pending when the class settlement was reached. Instead, after the settlement two new class complaints were filed in the desired circuit, the First Circuit, and then *the identical original class action complaint from the Ninth Circuit was re-filed in the First Circuit* as a "new" case. Thus, a pending class action filed and settled in Charleston County became a Dorchester County case. More on "cloning" the existing class action is set forth in the attached complaint.

The shopped-for judge then consolidated the three cases and assigned them to herself, using the S.C. Supreme Court's complex case order. The parties in the class action and the shopped-for judge ignored that at that time (October 17, 2006), the Supreme Court's complex case order applied to only cases that could not be settled. The cases consolidated were all part of the class settlement.

When objectors later began to uncover and then lay out in the record various problems with the class settlement, in increasing detail as time went on and information became available, and the record before the shopped-for judge began to include affidavits alleging violations of procedural rules meant to protect class members, ethical improprieties, misrepresentations of fact to the court, and other misconduct, the shopped-for judge expended little or no effort to make inquiry into those various problems. Instead, the record reflects that at one point the shopped-for

judge attempted to evade receiving one of the objectors' pleadings that set forth issues with the class settlement and, at another point, the shopped-for judge retained an expert to investigate the objectors' counsel who had provided the information.¹

Without any final order in the class action that started in 2005 and was settled in 2006, no appellate review has occurred or can occur. To date, the 2014 decision in *Doe v. Bishop* is as close to a post-award fairness hearing as the class action has come, and from even that narrow and oblique appellate review the Court properly identified issues for further proceedings. A proper post-award fairness hearing is likely to identify many more issues for proper inquiry, as the complaint sets out.

The presumption that the shopped-for judge was not fully aware of the fraud, both the fraud on the court and the fraud on the class members, and the presumption that the shopped-for judge was not aware of the collusive nature of the class action, are each increasingly difficult to maintain as the evidence has developed over time.

If the Supreme Court finds these matters of no concern for how a class action can be collusive and how class procedures can be manipulated, it should deny this Petition. If, however, the Supreme Court shares any concern about these matters it may desire that after the Court resolves the conflicting circuit court orders it may choose to have a special referee gather information on whether the shopped-for trial court judge was a participant with class counsel and his collaborating adversary, or if the shopped-for judge was merely duped by the parties who colluded in the class action.

¹ Counsel who represented objectors at that time is the undersigned counsel who now represents the plaintiffs in this Petition and the accompanying Complaint. Nothing came of the court's investigation, as counsel had done nothing wrong in representing his clients and expressing objections to the proposed class settlement which the court's order for preliminary approval had invited.

In 2009 this Court declined to assert original jurisdiction over another Petition for Original Jurisdiction and proposed complaint that attempted to alert the Court to problems with the underlying class action. In declining that petition, the Court's order presumed (incorrectly, as time has shown), that it was "filings such as the one at hand" (referring to the Petition the Court declined to accept), that had delayed "finally resolving the underlying matters" (referring to the underlying class action). Order of March 19, 2009 in a matter styled *Doe v. Richter*. That order bears no case number.

Time has shown that the Court was entirely incorrect in presuming why "the underlying matters" were not finally resolved, as it was the parties to the underlying collusive class settlement and the shopped-for circuit judge who simply ignored the Court's 2009 directive. The parties have continued to this day to refuse to conclude the class action. Apparently all were in agreement that if no final order was ever entered that no appellate review could occur.²

Time has also disclosed even more problems associated with the underlying class action than those than were apparent in 2009, including circuit court orders which now conflict as to fundamental matters involving the class action. Those conflicting circuit court orders are among the reasons this petition is submitted to the Court's original jurisdiction, as one circuit court judge cannot overrule another. *Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 604, 340 S.E.2d 546, 547 (1986).

² The shopped-for judge recused herself in January 2013, without explanation. Another judge was assigned in 2013 but no motion to conclude the class action was filed. After health problems arose as to that second judge, a third judge was assigned in 2015. He retired in 2019. In June 2016, ten years after the class settlement was reached, the docket in case 2006-CP-18-1310 reflects that a motion for a post-award fairness hearing was filed *pro se* by one of the class representatives. No responsive pleadings have been made to that *pro se* motion and no hearing has ever been held on that motion. As with this Court's 2009 order, that 2016 motion has simply been ignored.

The Court should accept this Petition and grapple with the enduring issues of collusion, fraud, professional misconduct, and potential judicial misconduct raised by the attached complaint about the underlying class action; declare the rights of John Doe 305 and the McDonald plaintiffs; appoint a competent lawyer to replace class counsel due to their conflicts with the classes, and cause to be imposed, for the first time, independent judicial review upon the collusive class action.

The plaintiffs in the attached complaint set out in detail many of the various known problems associated with the collusive class action settlement, which problems remain unresolved and which continue to affect substantial numbers of persons, known and unknown among the general public. As noted above, those problems include:

- (a) circuit court orders which now conflict on significant matters related to the class definition, such as who is and is not in the settlement classes, which no circuit court can properly resolve since one circuit judge may not overrule another;
- (b) Substantial frauds upon the court in the underlying class action. One circuit judge found (with class counsel's urging) that roughly a quarter of those participating in the class settlement were residents of a state other than South Carolina. Another circuit judge found (with class counsel's urging) that residents of states other than South Carolina were not in either settlement class. Of course, if out of state residents were not within the settlement classes, then such persons were ineligible to receive any of the class funds distributed to them, were unable to make a *bona fide* claim to any class funds, could not have been represented by class counsel, and could not properly have been charged a fee by class counsel. That is one potential fraud.

- (c) As part of potential fraud one, class counsel submitted a substantial number of fraudulent claims on behalf of persons they now contend were not eligible for class funds, and
- (d) class counsel purported to represent persons they did not represent in that class counsel now contends a substantial number of class claimants were not in either settlement class, and
- (e) class counsel charged fees of persons they did not represent.
- (f) A second fraud is that class counsel charged what appears to be in excess of \$900,000 in fees not authorized by any order, over and above the \$2.5 million fee awarded by the court. The awarded fee was based on class counsel's misrepresentations of fact and fraudulent billing records, most of which time, even if it hadn't been fraudulently inflated, was based overwhelmingly on time for which class counsel had already been paid a contingency fee not disclosed to the shopped-for judge. A third fraud is that the payment of that contingent fee for work done for class representatives was not disclosed to the court, by either class counsel who received the payment or the Diocese which made the payment, yet the time was represented to have been uncompensated time for work on the class action. The class settlement was reached seven months after filing, with no motions decided and not a single deposition having been taken.
- (g) the parties and the shopped-for judge ignored both the Supreme Court's March 2009 directives to conclude the class action by September 2009 and to seek from the Court permission to extend that time beyond September 2009;
- (h) the parties continue to ignore the Court's directive to conclude the class action, which remains open;

- (i) no post-award fairness hearing has ever evaluated the actual distributions made to class members, or the actual fees charged by class counsel, or the fees charged in relation to the work performed on a settlement reached seven months after the class case began, or the misrepresentations of fact made by class counsel in pursuit of their fee, or the fantastical time records of class counsel, or none of the parties in the class disclosing that class counsel had been paid a contingency fee for individual cases which was later claimed to have been work done on the class action and which work constituted the vast majority of time in the billing records;
- (j) no post-award fairness hearing has ever evaluated the actual distributions made to the substantial number of persons that class counsel now claim they knew when class claims were submitted were neither their clients nor in either settlement class; all such claims, and the fees charged by class counsel on such claims each being a fraud upon the court and comprising substantial sums paid to recipients that class counsel had no authority to represent;
- (k) no evaluation has ever been made of class counsel retaining fees from their fraudulent conduct in the class action by class counsel's present fraud on the court contending, despite their conduct of the class action claims process, that no person who resides out of state is in either settlement class;
- (l) Extensive procedural irregularities and manipulations in the conduct of the class action case, including but not limited to:
 - 1. Class counsel having made no disclosure to the class about:
 - i. Class counsel's lifelong ties to the Diocese of Charleston and the positions of authority he held with the Diocese;

- ii. Class counsel having paid the Diocese of Charleston \$100,000 from class counsel's trust account as a contribution by himself or by his clients to fund superior settlement terms (compared to any class member) for those who objected to the class settlement;
- iii. That class representatives were compensated on terms different than were class members; were paid before class approval so had no stake in the class settlement; received known sums with no required arbitration process; were not required to surrender appeal rights to receive a settlement; and that a portion of their settlement compensation was paid to class counsel by a separate check as a contingency fee;
- iv. That class counsel charged additional fees (apparently in excess of \$900,000) not authorized by any order without disclosing to the persons charged that the court had already awarded class counsel, and they had already been paid, a \$2.5 million fee that included their work in the claims process;
- v. That class counsel's fee was for class litigation that began in December 2005 and ended in a mediated settlement in June 2006 without a single motion argued or decided or a single deposition having been taken;
- vi. That class counsel had been paid a contingency fee for individual cases which were cases later represented to be in the class action, work for which was included in the time records of the class action;

- vii. That class counsel submitted claims for, and charged a fee to, persons they now contend were not within any settlement class which if true were fraudulent claims.
- 2. Class counsel's fee in its entirety should be disclosed and reviewed in any proper post-award fairness hearing given that:
 - i. a substantial portion of the fee was for claims class counsel now contends were paid to persons not within either settlement class;
 - ii. class counsel submitted patently false and fraudulent time records;
 - iii. class counsel failed to distinguish between time spent on class matters and time spent on what he now contends were fraudulent claims on behalf of persons not within either settlement class;
 - iv. class counsel was paid (before class approval) a contingency fee to resolve individual cases later claimed to be included in the class action;
 - v. class counsel's fee was based on substantially fraudulent time records that included time for which class counsel had already been paid a contingency fee, and
 - vi. Class counsel now claims that a quarter of all claims submitted were claims made by persons not in either class;
- 3. Overt venue- and judge-shopping after the class settlement so as to avoid independent judicial oversight requirements of SCRCP 23 by moving the case, after the class settlement, to a different circuit to receive more pliable

oversight from a particular circuit judge with substantial personal ties to class counsel;

4. Class counsel negotiated a fixed fee for himself simultaneously with a variable recovery for the class, with the class members' recovery subordinated to class counsel's fixed fee;
5. Class counsel submitted roughly one-quarter of all claims on behalf of persons not claimed by class counsel to be in neither settlement class. If true, those claims, charges, and fees paid were fraudulent.

Because circuit court orders now conflict concerning essential matters in the class action, including the class definition, and because a fraud was perpetrated on the court by class counsel, and/or is now being perpetrated on the court by class counsel, it does not appear that this matter can be determined in a lower court in the first instance, one of the criteria in SCACR 245(a) for the Court to assert its original jurisdiction. One circuit court judge would have to overrule another, no matter how the presently conflicting orders are construed. In addition, the public interest is inherently involved in this matter because the underlying class action necessarily involves the public. Persons such as plaintiff John Doe 305, and what appear to be substantial numbers of other presently unknown absent class members, have rights affected by the fraudulent and collusive nature of the class action and its substantive and procedural irregularities, factors which invoke other criteria of SCACR 245(a) to support original jurisdiction. Persons such as the McDonald plaintiffs were invited to participate in the class settlement even though they reside out of state, and class counsel was aware they lived out of state.

If class counsel's present position is correct — that neither of the McDonalds was a member of the class — then a fraud was perpetrated on the court (or is being perpetrated now)

by class counsel and the McDonalds are unwitting participants in class counsel's fraud on the class action court. They should be held harmless for that fraud, the fees they paid should be disgorged, and they should be awarded damages. If the McDonalds were properly in the class, as we maintain, then the fee they and every other such person paid without proper disclosure and without proper court authorization should be disgorged by class counsel.

If the Supreme Court declines to accept this petition for original jurisdiction as it did the petition submitted in 2008, the various collusive and fraudulent actions committed in the conduct of the underlying class action are likely to continue to evade meaningful review. Ignoring orders of the Supreme Court will be added to the available manipulation tactics for any future class action. That and the other substantive and procedural manipulations will become routine methods for evading independent judicial review of class action settlements under SCRCP 23; and those manipulations of the judicial system will be rightfully seen by the bench, bar and the public as acceptable. For example, no disciplinary body has shown any concern about much of the conduct in this record, although no such body has considered all of it. If this Court does not act, this course of conduct will be how things will be done. The how-to article for the South Carolina bar magazine practically writes itself.

This petition assumes the Court takes seriously the professional obligations of bench and bar, both as to the standard of care for protecting the rights of absent class members and as to professional responsibility. E.g., *In re Sloan*, Op. No. 27936 (S.C. January 22, 2020) (three-year suspension for fraudulent billing), or *In re Moody*, Op. No. 27961 (S.C. April 8, 2020) (restitution ordered for clients overcharged).

Perhaps the rules vary depending on who the lawyers are, or who the clients are, or whether a circuit judge has participated in questionable conduct. Absent class members are ready

victims when parties collude in a class settlement and set about to pick their judge so as to avoid independent judicial oversight and appellate review.

Conclusion

To Plato's *Republic* is attributed the observation that the worst form of injustice is pretended justice. The legal principles that apply to lawyers and judges should not vary according to who is involved or based on who they know. The Court should exercise its discretion to accept this petition for review and its accompanying complaint; appoint a special referee; appoint new class counsel due to class counsel's conflicts with the classes; and after rulings to clarify the conflicting circuit court orders and the manipulations of the class action proceedings, assign the never-ending class action to a circuit judge for the first proper and independent judicial review the class settlement has ever received, after due notice to all objectors to the original class action settlement, and a final accounting can be done that includes the \$100,000 payment, a post-award fairness hearing can be conducted, and the never-ending class case can be concluded.

Yes, all of this is complex. But it is also important.

As to the declaratory relief sought in the complaint, the Court should itself determine, or task the special referee to make recommendations for the court to determine, the rights and obligations of the parties as to whether John Doe 305 and the McDonalds are (as was maintained by class counsel in 2007), or are not (as maintained by class counsel since 2017), within the definition of one of the settlement classes given their respective states of residence. That determination will establish the applicable legal standards for the claims brought by each. Once the conflicting circuit court orders are reconciled by this Court, this particular case can then be remanded for further proceedings for discovery and trial under a special referee or other circuit court judge.

As to the never-ending class action, as noted above the Court should appoint new counsel to represent the class, and task the special referee for recommendations for concluding it after an appropriate post-award fairness hearing that for the first time independently and fully examines the issues in the class action and the conduct of class counsel and their “adversary.”

Respectfully submitted,

s/ Gregg Meyers

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State of South Carolina

In The Original Jurisdiction Of The Supreme Court

Case No. 2020 -00-1415

John Doe 305, Julie McDonald, and Richard McDonald,

Petitioners - Plaintiffs,

v.

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

Respondents - Defendants

Complaint

Summary of the Action

1. This action for declaratory relief, legal malpractice, breach of fiduciary duty and indemnification involves a collusive class action in which class counsel placed their own interests ahead of that of the class. Those manipulations have affected and continue to affect the rights and interests of sexual abuse victims perpetrated by priests and other employees of the Diocese of Charleston, as well as family members of those victims. Class counsel engaged in professional malpractice by placing their own interests above those of the class members they purported to represent, and engaging in a substantial fraud upon the court.

Parties and Jurisdiction

2. John Doe 305, Julie McDonald, and Richard McDonald are each a citizen and resident of a state other than South Carolina.

3. The Bishop of Charleston, a Corporation Sole is the entity known colloquially as the Diocese of Charleston. The Corporation Sole is an entity organized under the law of South Carolina, created by statute in 1880. The Corporation Sole holds property and does business in South Carolina. Its boundaries include the entire state of South Carolina. Its principal place of business is in Charleston County. It is referred to in this complaint as “the Diocese.”

4. The Diocese does business throughout South Carolina, owns property throughout South Carolina, and operates throughout South Carolina. Decisions to assign Eugene Condon to Stella Maris, from which assignment he sexually abused John Doe 305, and decisions about how Eugene Condon should be supervised, were decisions of the Diocese made in Charleston County. The acts associated with the abuse of the plaintiff John Doe 305 and the negligent supervision of Eugene Condon took place in Charleston County. Decisions to participate with class counsel in a class settlement for abuse survivors were made in Charleston County but required approval of the Holy See, in Rome Italy.

5. Robert Gugliemone is the present Bishop of Charleston, and as such conducts business in Charleston County. He is sued in his official capacity as a party necessary for complete relief, given that as Bishop he holds all executive, judicial, and legislative authority within the Diocese of Charleston. Within the Diocese he has the power and authority to command any person within the Diocese of Charleston to ignore the order of any court directed at the Diocese of Charleston, as has occurred in counsel’s experience with a different bishop in a different diocese. Only by including Bishop Guglielmone individually as a defendant along with

the Corporation Sole can the Bishop's power and authority be regulated by the jurisdiction and contempt powers of the court.

6. During the course of the proceedings at issue, actions taken on behalf of the Diocese were authorized by predecessors to Bishop Guglielmone, including Rev. Monsignor Martin Laughlin and Bishop Robert J. Baker, who served as Bishop of Charleston from 1999 until August 2007. Bishop Guglielmone is the successor to those individuals.

7. Lawrence E. Richter, Jr., is an attorney who at all times pertinent to this complaint conducted business in Charleston County.

8. David K. Haller is an attorney who at all times pertinent to this complaint conducted business in Charleston County.

9. Richter and Haller, LLC is an entity organized and existing under the laws of South Carolina which at all times pertinent to this complaint conducted business in Charleston County.

10. At all times pertinent to this complaint, defendants Richter and Haller were agents for each other and for Richter and Haller, LLC.

11. In this complaint, defendants Richter, Haller, and Richter & Haller, LLC are referred to collectively as "class counsel" unless otherwise particularly specified.

12. This Court has the capacity to assert its original jurisdiction over the parties and the subject of this action and should exercise its discretion to do so. As set forth in the accompanying Petition for Original Jurisdiction, circuit court orders now conflict on fundamental matters affecting the class action.

Original Jurisdiction

13. This case concerns new issues from among the issues which continue to arise from a collusive class action brought by class counsel in December 2005 and settled in June 2006, seven months after filing.

14. Between filing of the class action and settlement of the class action not a single motion was heard or decided. Nor was a single deposition taken.

15. Although settled quickly, and without adversarial proceedings, that class action has never been concluded. A March 2009 directive from the South Carolina Supreme Court that the class action case be concluded in six months was simply ignored by the defendants in this action, apparently to avoid appellate scrutiny of the manipulations in the record of the class action.

16. Class counsel made no specific claim to having had any prior class action experience, and that inexperience showed in obvious ways during the course of the class action. But class counsel possessed a commodity valuable to the Diocese for a partner with which to collude in a class action: class counsels' willingness to place ahead of the interests of the class members they purported to, and did, represent both their own financial interests and the interests of the Diocese. Defendant Richter was, as he put it, a "life-long" active member of the Diocese" and has by his own account functioned "in many capacities" including positions categorized as "Extraordinary Minister" during the class action, and had "friendships with many priests and bishops of the diocese," none of which was disclosed in any notice sent to the class. But more fundamental and egregious problems than that exist.

17. Plaintiff lawyers other than class counsel were involved in certain of the cases included in the class action settlement. No claims in this action are made against the conduct of any of those lawyers, only against these class counsel defendants.

18. A petition accompanying this complaint sets forth reasons why the South Carolina Supreme Court should assert its original jurisdiction. The reasons stated in that petition are incorporated into this pleading. Those reasons include:

- a. circuit court orders now conflict about fundamental aspects of the class action, and “[o]ne Circuit Court Judge does not have the authority to set aside the order of another.” *Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 604, 340 S.E.2d 546, 547 (1986). Among other things, circuit court orders now conflict on the class definition, affecting the rights of these plaintiffs.
- b. The defendants simply ignored at the time, and continue to ignore, a March 2009 order from the South Carolina Supreme Court that the class action be concluded within six months. Apparently that order was ignored to avoid creating a final order that might enable appellate review.
- c. Although in 2014 the South Carolina Supreme Court decided *Doe v. Bishop*, 754 SE2d 494 (S.C. 2014), which held that absent members of the class should be permitted to show why class counsels’ representation was inadequate, full discovery as to class counsels’ conduct in the class action, including the class notice program and the statute of limitations, has still not been permitted. In the trial court a stay was imposed on that discovery so as to prevent inquiry into class counsels’ conduct.

d. As of 2017, a new concept was proposed and adopted by a circuit court for the class action, conflicting with existing orders and despite the holding in *Doe v. Bishop*: that each class was limited to only South Carolina residents. The concept was adopted to defend against any breach of fiduciary duty to absent members of the class for whom proposed notice had been abandoned by class counsel at the request of their “adversary,” as class counsel themselves have claimed. That 2017 order has been appealed, and that appeal remains pending as case 2017-001996. If that ruling is upheld, then class counsel and the Diocese perpetrated a significant fraud on the court in the class action settlement, submitting and paying class funds to persons known to be not in either class; charging a fee of persons not in any class and not class counsels’ clients. On the other hand, if that ruling is overturned, then a present fraud is being perpetrated on the court by class counsel seeking to evade responsibility by advancing a theory known to conflict with class counsels’ own conduct and with existing court orders as to the class.

19. This complaint seeks declaratory relief as to the rights of the parties, as well as indemnification, disgorgement, and damages.

Plaintiff John Doe 305

20. Plaintiff John Doe 305 was born prior to August 30, 1980, one of the criteria for inclusion in what was called the “primary class” in the class settlement.

21. As a minor child John Doe 305 was sexually abused by Eugene Condon, an agent or employee of the Diocese of Charleston, another criterion for inclusion in the “primary class.”

He has had no prior claim as to that abuse resolved, the third, and last, criterion for inclusion in the “primary class,” which had no geographic limit in its definition.

22. Unless the “primary class” is interpreted to be restricted to only residents of South Carolina, John Doe 305 is a member of the “primary class.” If the primary class is interpreted to be restricted to only residents of South Carolina, then a substantial fraud was perpetrated on the court that begins with (but does not end with) class funds distributed to persons not in the class.

23. Condon was a priest assigned by the Diocese of Charleston to a position of authority over children without adequate supervision, despite his known sexual interest in children and his history of abusing children. John Doe 305 was abused by Condon in 1974 and 1975, when Condon was assigned at Stella Maris, the Catholic Church on Sullivan’s Island, S.C., located in Charleston County, operated by the Diocese of Charleston. That assignment of Condon to Stella Maris is corroborated by the Catholic Directory published by the Diocese for each of 1974 and 1975.

24. Because he resides in a state other than South Carolina, where notice of the class action was not even attempted, until 2019 John Doe 305 was unaware that a class action settlement had been reached in 2006 and preliminarily approved by a South Carolina circuit court in 2007 to benefit a class of sexual abuse victims which included him. Neither approved class was defined with any geographic limit and on its face the definition included John Doe 305.

25. In 2006 the class counsel defendants agreed that the class included out of state absent members and, consistent with that agreement, proposed in a motion filed October 6, 2006 that nationwide notice would be given to absent class members through publication in *USA Today*.

26. In January 2007 another motion for class approval was submitted by class counsel. The class definitions were not changed, but the notice program for the class action was changed by agreement among the defendants. Nationwide notice for the class settlement was eliminated and changed to be notice only within and immediately around South Carolina.

27. No rationale for the 2007 change to the notice program was stated on the record at that time or inquired into by the court. Absent class members who resided out of state, including John Doe 305, were abandoned by class counsel through that change.

28. When the first out of state class members made claims against class counsel, class counsel and the Diocese both contended that the claims by those absent class members were barred by *res judicata*.

29. In 2011, a circuit judge concluded that the notice program for the class action was not sufficient to satisfy due process, and absent class members had not received due process and their claims were not barred by *res judicata*.

30. Not later than 2013 class counsel began acknowledging that the notice program of the class action did not provide Due Process for absent class members who resided out of state. In a hearing held April 12, 2013 at page 32 of the hearing transcript, class counsel agreed on the record that people outside the “publication area” of the ten South Carolina and one Georgia newspapers in which notice ran, “never had their due process rights to come in and be heard.”

31. In a 2014 hearing, class counsel represented to the court that the class notice program had been changed to delete nationwide notice to accommodate the Bishop of Charleston, who (class counsel claimed) objected to the cost of nationwide notice. That representation was made to the court as reflected at page 42 of that hearing transcript.

32. That 2014 explanation by class counsel reflected both one aspect of the parties' collusion in the class action as well as class counsels' breach of duty to absent members of the classes they chose to define. Class counsel claimed they acted against their absent class members' interests so as to accommodate the supposed interest of class counsels' "adversary," an "adversary" who was defendant class counsel Richter's religious leader and the Bishop to whom defendant Richter had personal fealty, facts never disclosed in any notice given to the class.

33. In addition to admitting a breach of duty to the absent members of the class who resided out of state, class counsels' explanation was, and is, nonsensical. Under subpart "u" of paragraph 3 in the class settlement agreement, which appears on page 11 of that agreement, "All costs associated with the management of the class shall be paid from the settlement fund." In other words, to give nationwide notice the Diocese would have expended no additional funds. According to class counsels' own explanation, their conduct fell below the standard of care in breaching an obligation to the absent members of the class (a) at the request of their "adversary," and (b) for a rationale class counsel failed to recognize was nonsensical under the terms of the agreement. Class counsel breached their obligation to their absent class members.

34. In January 2014 the South Carolina Supreme Court decided *Doe v. Bishop*, overturning an order dismissing claims by absent class members against class counsel.

35. After *Doe v. Bishop*, class counsel changed their explanation for deleting nationwide notice, claiming in 2018 it was done purposely, so as to *intentionally* deprive Due Process from those absent class members who resided out of state. At page 34 of a brief submitted to the Court of Appeals, class counsel contended that not having nationwide notice was a benefit as nationwide notice would have been "ill-fated" and "would inevitably have missed large numbers of victims while potentially barring them from bringing their own actions against the

Diocese.” Class counsel contends that “the best practicable” notice was not required, so was intentionally withheld.

36. If class counsel had any prior class experience, this admitted breach of duty would be astonishing. Given their inexperience, it merely reflects their professional negligence. It implicitly admits (a) that the class definition included out of state residents, (b) that the “best practicable notice” which Due Process requires of any class action was deliberately not chosen for the classes they had defined, and (c) that although the circuit court judge the defendants had shopped-for was presented by the parties with an agreement that provided less than “the best practicable” notice, that judge made no inquiry into the notice program or the rationale for the change in the notice program originally submitted.

37. Class counsel changed the notice as part of their general approach to the class action, which was to place their own interests ahead of those of the class they voluntarily assumed the duty to undertake to protect. The class settlement set as its first priority class counsels’ court-awarded fee. Having “too many” in the class posed a problem for class counsel. Reducing the scope of notice avoided having “too many” class members, as explained in more detail below.

38. To promote their own financial interests ahead of that of their clients, class counsel chose to compel those absent class members to undergo litigation to, on one hand, exempt themselves as best they could from any preclusive effect of the class action and, on the other, try to avoid the defenses which had been waived in the class action. Class counsel has admitted that absent class members such as John Doe 305 were deliberately deprived of benefits the class action might have provided, such as defenses the Diocese agreed to waive in the class action, which included charitable immunity and the statute of limitations. Outside of the class action, those

defenses have not been waived by the Diocese, and those defenses are often fatal to any individual class member's claim.

39. In 2017 a circuit court issued an order which concluded (at page 18 of that order) that the settlement classes extended to only residents of South Carolina. That order conflicted with past orders, including one from the same circuit judge, and is now on appeal.

40. The 2017 order, if upheld, raises entirely new problems with the class action, including a substantial fraud on the court by class counsel, apparently with the full participation of the Diocese, and potentially with the knowledge and awareness of the shopped-for judge. If that order is upheld then class counsel knowingly submitted fraudulent claims for persons not in either class, distributed class funds to persons not eligible to receive class funds, for persons which class counsel was not eligible to represent and whom class counsel did not represent. And to whom class counsel charged a fee they were neither authorized to charge nor eligible to charge.

41. Changing the 2007 notice program deliberately made notice less than "the best practicable" that Due Process required and eliminated any chance of John Doe 305 getting notice of the class action. Class counsels' conduct fell below the applicable standard of care. On its face the class was defined without geographic limit. If no duty to absent class members such as John Doe 305 was imposed by law on class counsel when the class action was alleged in the complaint, or when the class settlement was reached, then class counsel voluntarily assumed that duty to John Doe 305 in both (a) seeking approval of a class that on its face included John Doe 305 and (b) by representing on the record of the class action and in writings that class counsel represented all absent members of the settlement class that had no geographic limit.

42. In addition to changing the class notice program, the record reflects that these defendants misrepresented to the shopped-for judge that any absent class member who got no

notice and who later presented a claim would be provided the same relief as a class member. Had that assurance been truthful, it would reasonably have decreased the court's concerns about the dramatically reduced notice program. But no written order reflected that assurance of relief for absent class members who got no notice, an omission by class counsel which fell below the standard of care for protecting the interests of absent class members and which further demonstrated both the collusive nature of the class action settlement and how class counsel placed their own financial interests above those of the absent members of the class they voluntarily undertook to represent.

43. Deliberately depriving out of state absent class members such as John Doe 305 of any opportunity to participate in the class action is also conduct which falls below the standard of care.

44. The class action complaint was filed in 2005. There still has been no final order entered in that class action, an omission apparently designed to evade appellate review of the substantial irregularities and collusion in the class action, and an omission in direct contravention of the South Carolina Supreme Court's March 2009 order that the class action be concluded in six months unless that time was extended by the Supreme Court.

45. Alternatively, if the 2017 order is overturned, class counsel will merely have attempted a current fraud on the court, to retain all the financial benefits of the class action yet evade responsibility to absent class members who reside out of state and who received no notice, such as John Doe 305 by falsely claiming that John Doe 305 is not an absent member of that class.

46. The 2017 order as to class membership contradicts other circuit court orders as to the class action, including a 2013 order that found that roughly a quarter of the persons who had received class funds were out of state residents.

47. If the classes include no out of state residents, then class counsel, aided and abetted by the Diocese, perpetrated a substantial fraud on the court in the class settlement. Among other problems, class counsel made fraudulent claims for persons not members of either settlement class, distributed substantial class funds to persons ineligible to receive class funds; class counsel purported to represent persons not in either class; class counsel charged substantial fees of persons not their clients.

48. The Diocese defendants benefitted from participating in that fraud upon the court, and tried to use it to preclude claims by *res judicata* for any out of state class member who received no notice.

49. Circuit court orders now conflict on whether the class as defined does or does not include persons such as John Doe 305, a conflict which cannot be resolved by another circuit court. E.g., *Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 604, 340 S.E.2d 546, 547 (1986) ("One Circuit Court Judge does not have the authority to set aside the order of another.").

50. A 2013 order from Hon. Edgar W. Dickson acknowledged that a quarter of the class participants resided out of state and refused to limit either class to only SC residents. That order conflicts with a 2017 order of Hon. J.C. Nicholson, now retired, which determined that the class action did not include persons who resided out of South Carolina. Judge Nicholson's 2017 order also conflicted with orders approving the class settlement in 2007 and other orders, including one of Judge Nicholson's own orders about the lack of Due Process afforded absent class members who resided out of state.

51. This Court should assert its original jurisdiction to resolve the contradictory circuit court orders, interject the first genuine judicial oversight into the conduct of class counsel and how they placed their own interests ahead of and at the expense of the clients they purported to represent, and review the other misconduct of class counsel; declare the rights of John Doe 305 as to whether he is, or is not, an absent member of that 2007 class action as that class was defined and approved. John Doe 305 may have rights if indeed he was and is within one of the settlement classes.

52. Any fair reading of the class definition as approved in 2007 would include John Doe 305 within one of the approved classes, yet he received no notice because, as class counsel has explained, class counsel accommodated their “adversary’s” request to reduce the scope of notice. Also to accommodate their adversary, class counsel chose to deliberately deprive the absent class members of Due Process and to further deprive them of the benefits of the defenses that were waived in the class action. Depriving absent class members of the defenses the Diocese waived in the class action provided a direct benefit to the Diocese at the expense of absent members of the class such as John Doe 305.

53. The class action filed in 2005 has never been concluded. No post-award fairness hearing has been held.

54. One of the class representatives has publicly objected to class counsels’ representation and filed in 2016 a request for a post-award fairness hearing. Like the Supreme Court’s 2009 order, that request has been ignored. If that request was ruled on, of course, it might result in an order which could be reviewed on appeal and the parties to the class action do not desire any final ruling which could be reviewed on appeal.

55. A final fairness hearing should be conducted. Such a hearing should review the entire conduct of the case, the funds actually distributed, the collusive nature of the class action, and class counsels' conduct, including, but not limited to:

- a. class counsel paying their opponent from their firm's trust account \$100,000 to facilitate the class settlement by funding a settlement of terms superior to the class relief for those objectors who opted out of the class action;
- b. why that \$100,000 payment is not reflected in any accounting;
- c. class counsel having negotiated a fixed fee for themselves while simultaneously negotiating a variable recovery for the class, counsel's fee to take priority over the class recovery;
- d. class counsel moving for the fee to be approved and paid within ten days of preliminary class approval, before any class member had notice or the opportunity to file a claim, or before class members even knew about or could object to any aspect of the fee petition,
- e. whether class counsels' approved \$2.5 million fee was reasonable given the fraudulent factual misrepresentations made in the fee request, the blatantly fraudulent time records submitted (more on that below), class counsel having been already paid (and none of the parties disclosing to the court) a contingency fee for the individual cases of the class representatives that preceded the class approval, the time for which formed the overwhelming bulk of the time submitted as if it was work done for the class action; and the class settlement having been reached seven months after the class complaint was

filed and before a single motion in the class case or any of the associated cases was argued or decided, and before a single witness had been deposed;

- f. whether any independent judicial review occurred in the class action, given the defendants' collaborative judge-shopping, the manipulations of SCRCP 23 after the class settlement was reached so as to avoid review by judges then assigned to Charleston County; hand-picking instead a particular judge in Dorchester County with extensive personal ties to class counsel who the record shows manipulated the class settlement to assign it to herself after it had been settled through means of the complex case designation when that order applied to cases that could not be settled; the shopped-for judge accepting "new" class action complaints after the class settlement had been reached, including a word-for-word duplicate of the class action filing for John Doe 53 (so it was pending in two counties simultaneously); the shopped-for judge applying a pliable standard of review that penalized objectors for raising substantive and ethical concerns after orders invited them to do so; why the shopped-for judge and the parties ignored the order of the S.C. Supreme Court; and why the parties and the shopped-for judge undertook no post-award fairness hearing unless it was to avoid any order that could be reviewed on appeal;
- g. the patently false rationale stated by class counsel to support the collaborative judge- and venue-shopping engaged in by the parties (supposedly seeking a less crowded docket) after having chosen to file the class action in Charleston County;

- h. whether the blatantly fraudulent time records used by class counsel was proper support for the class action fee fraudulently claimed; a fraud far in excess of the false billing records on which this Court imposed a three year suspension of counsel in *In re Sloan*, Op. No. 27936 (S.C. January 22, 2020); unless, of course, a different standard applies to some lawyers as opposed to others;
- i. whether it was proper for class counsel to submit as work done on the class action time records for work done on individual cases, for which work class counsel had already been paid a contingency fee by the Diocese, but which payment no party disclosed;
- j. whether class counsel breached a duty to the class by (class counsel claimed) generating billing records not based on time but based on a computer program that did not record time but proposed a machine-generated “estimate” to bill for a given activity. For example, when class counsel duplicated the John Doe 53 class complaint for re-filing (as part of the judge-shopping scheme), class counsel made two changes to page 1 of that complaint for which a billing record for 30 hours was created. Yet the only work done was the word “Charleston” was changed to “Dorchester” and the Charleston County case number was deleted so as to provide a blank space to receive the Dorchester County case number, 2006-CP-18-1636. No other change was made for those 30 hours of worked claimed;
- k. whether the substantial fees charged to and collected by class counsel from class members were proper when they were not authorized by any order, were charged without proper disclosures to the individuals charged, and were

charged to individuals that class counsel now claims were not in either of the settlement classes, so were not represented by class counsel and any representation directly conflicted with class counsels' obligations to class members;

1. whether the class should have been informed that more favorable settlement terms were given to objectors who opted-out of the class action and were partially funded by class counsel (or their clients) by a \$100,000 payment from class counsels' trust account.

56. On March 19, 2009 the South Carolina Supreme Court ordered that the class action be concluded "within six months of the date of this order. No extension shall be granted absent prior permission by this Court."

57. No extension of that deadline was ever requested or granted. The defendants simply ignored the S.C. Supreme Court's order, as did the shopped-for judge who had assigned the class action to herself. This was presumably done to avoid any final order.

58. Among other things, a final order would permit appellate review of the grotesque collusive conduct of the class action, the issues affecting the fee and the conduct of class counsel. Without a final order, there has been and can be no appellate review. At no time has the class action received independent judicial oversight.

59. The defendants appear to have adopted a strategy of obtaining no final order so as to simply exhaust sexual abuse victims disadvantaged by their improper conduct, so persons such as John Doe 305 never get a fair hearing and compensation for his sexual abuse and his deliberate exclusion from the benefits of the class action, causing absent class members such as John Doe

305 to either give up all efforts to do so or the case takes so long to resolve the class action exceeds the lifespan of class members, all the while avoiding appellate review.

60. Despite the 2014 holding in *Doe v. Bishop*, which affirmed that class counsels' conduct could entitle absent class members to relief, delay, changed factual positions, and now conflicting rulings by the trial court has worked perfectly to insulate class counsel from deposition and liability. The lower courts have been highly protective of class counsel but not protective of the rights of absent members of the classes.

Plaintiffs Julie and Richard McDonald

61. Julie McDonald is a resident of Alabama. She has never resided in South Carolina.

62. Richard McDonald is a resident of Massachusetts. Since before 2005 he has resided outside of South Carolina.

63. Ms. McDonald is married to a man who was sexually abused as a child by an agent or employee of the Diocese of Charleston. As a result, she appeared eligible to be included in what was called the "consortium class" portion of the class settlement, even though class counsel now claims she was not a member of that class.

64. Mr. McDonald was a guardian of one or more persons sexually abused as a child by an agent or employee of the Diocese of Charleston. On the face of the class definition he appeared eligible to be included in what was called the "consortium class" portion of the class settlement. He is a relative of Julie McDonald.

65. In 2007 and 2008, Ms. McDonald and her husband were residents of Alabama.

66. In 2007 Julie McDonald was invited by class counsel to participate in the class action settlement despite each defendant knowing she was not a resident of South Carolina and class counsel now claiming that she was not member of the consortium class.

67. In 2008, as a known resident of Massachusetts, Mr. McDonald was invited by class counsel to participate in the class action settlement.

68. Each of Mr. and Ms. McDonald participated in that settlement, and in 2008 received a distribution from the class fund. Class counsel also charged each of them a fee not authorized by any order and without proper disclosures. Before each was charged that fee, neither of them was told that class counsel had already been awarded a \$2.5 million fee, or that class counsel had been paid a contingency fee for individual cases of the class representatives, the time for which was then submitted as if it was a proper part of the class action fee application; the contingency fee payment made by the Diocese for the time spent on individual cases was not disclosed, to the court or to either of the McDonalds. Nor were the McDonalds advised of class counsels' conflicts regarding lifelong relationship with the Diocese and class counsels' functioning, during the class action proceedings, as an official of the Diocese; nor was it disclosed to either of them that as an out of state resident neither was a member of the class whose funds were being distributed to them.

69. The 2007 class settlement agreement was restricted to only "individuals who fall in either class defined" in the class settlement agreement. Those definitions were, without regard to any geographic boundary, defined at page 2 of the class settlement agreement (footnote omitted) 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. (Hereinafter "the Primary Class")

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')

70. After having successfully contended in the circuit court that out of state residents were included within each settlement class, class counsel now contend that out of state residents such as the McDonalds are not members of either settlement class.

71. As noted above, according to one of the contradictory circuit court orders affecting the collusive class action, roughly a quarter of those participating in the class action were, like the McDonalds, residents of a state other than South Carolina. According to another of the contradictory circuit court orders, the class included only residents of South Carolina, so excluded each of the McDonalds. No circuit court order can resolve that conflict between the circuit court orders.

72. If the present position — that the class includes no out of state residents — is affirmed, then in 2007 and 2008 class counsel committed a substantial fraud on the court and defrauded many people by purporting to represent out of state residents such as the McDonalds (and others), charging a fee to each of them (and others), and distributing class funds away from the class to each of them (and others) when class counsel were not entitled to represent either of them, or charge either of them, or distribute class funds to either of them.

73. If overturned, and the McDonalds were each a member of the class, then class counsel presently seeks to perpetrate a fraud on the court to escape their own liability to absent members of the class and to retain benefits charged the McDonalds (and others) without an order authorizing them to do so.

74. The longer this unending collusive class action goes on without any court reaching the issues which arise from the collusion and class counsel placing their own interest ahead of that of the class, the more contradictory orders there are likely to be. Class counsel have offered contradictory and nonsensical reasons for their conduct to try to avoid responsibility for conduct

which fell below the standard of care as to the absent class members to whom they had a duty, either imposed as a matter of law, or assumed, or both.

**Notice to the McDonalds that
they were inadvertently part of a fraud on the court.**

75. In 2019 each of the McDonald plaintiffs learned for the first time that a circuit judge has ruled that the class action in which each of them participated in 2008 was supposedly limited to residents of South Carolina. Class counsel knew that each of the McDonalds resided in a state other than South Carolina, class counsel having corresponded with each of them in their respective home states of Massachusetts and Alabama. As noted above, the 2017 ruling conflicts with earlier circuit court rulings, including one from the same circuit judge, and with other circuit court orders, including one that acknowledged that roughly a quarter of all the class claimants resided out of state at the time they participated in the 2007 class settlement.

76. If the classes were limited to South Carolina residents at the time of their claim, then each out of state class claimant, such as each of the McDonalds, was an unwitting participant in class counsels' scheme, in which the Diocese defendants joined, to perpetrate a fraud on the court, the class, and on the McDonalds.

77. Out of state participants such as the McDonalds were told by class counsel, with the approval of the Diocese, that each of the McDonalds was eligible to make a claim in the class action. Each made such a claim. But the claims submitted for each of the McDonalds were falsely submitted, a falsity known only to the defendants, not to the McDonalds.

78. The settlement class which the McDonalds were told by class counsel they were within was, on its face, defined with no geographic limit. It was reasonable for the McDonalds, and any other out of state claimants, to rely upon the representation that each of them was eligible to make a claim and to receive class funds.

79. Providing class funds to persons known to not be eligible to claim class funds constituted (a) a breach by class counsel of a duty to the court and the class members to disburse funds to only persons within the class, as required by the class settlement and the order approving it; (b) a fraud upon the court and public; and (c) professional misconduct in purporting to represent persons, such as the McDonalds, that class counsel was not eligible to represent or eligible to charge for representing. It was conduct that in multiple ways fell below the standard of care applicable to class counsel.

80. The class participation by the McDonalds and the other out of state residents was both a fraud on the court and a breach of fiduciary duty by class counsel, acquiesced in and assisted by the Diocese defendants, and given the court's imprimatur by the shopped-for circuit judge.

81. The McDonalds unknowingly participated in that fraud only because class counsel perpetrated that fraud and counseled each of them (and many others) so as to induce each of them (and many others) to unwittingly participate in that fraud on the court.

82. Class counsel were motivated to commit that extensive fraud on the court so as to charge and collect a 20% fee from each out of state resident. That fee was not authorized by any court order. That fee was in addition to the \$2.5 million fee which had been authorized by the court. Class counsel had not disclosed to the court in seeking that \$2.5 million fee that class counsel had already received from the Diocese a contingent fee payment for class counsels' work on the class representatives' individual cases. Nor had class counsel disclosed that the class settlement was reached seven months after the class complaint was filed, without a single motion having been argued or decided, and without a single deposition having been taken. Class counsel

disclosed only fraudulent billing records and that class counsels' fee took a higher priority than recovery to the class, none of which was examined by any independent court oversight.

83. No order authorized an additional 20% fee for class counsel. The McDonalds were not told that class counsel had already been paid a fee of \$2.5 million, or that to support that \$2.5 million fee class counsel had claimed time on individual cases of the class representatives for which class counsel had already been paid a contingent fee.

84. The fee charged class members and non-class members without court authorization and without proper disclosure is, upon information and belief, in excess of \$900,000. Nor had class counsel disclosed either that a contingent fee of \$145,000 had been paid by the Diocese to class counsel on the individual cases brought for the class representatives or that class counsel had already been paid for the time and billing records submitted to support the fee award in the class action.

85. Accounting records of the class action reflect a \$2.5 million fee was paid to class counsel on September 4, 2007. No accounting record shows the separate contingent fee payment of \$145,000 made to class counsel by the Diocese on November 20, 2006. In the accounting, that payment is concealed as payments made by the Diocese to the individual clients.

86. Additional fees charged in 2008 to persons known by class counsel to not have been in either settlement class is not yet known, other than such claims constitute roughly a quarter of the 129 claims recorded having been made in the class action and that the additional fee charged was 20%. Those sums can be calculated through discovery once those claimants who resided out of state are identified.

**Fixed fee for class counsel, subordinate and
variable recovery for the class**

87. Class counsel negotiated for themselves a fixed fee, simultaneously negotiating for the classes they claimed to represent a variable recovery that would be reduced *pro rata* if claims against the class fund were insufficient to pay the fee and all claims. That conduct by class counsel explicitly placed their fee interest ahead of all class member interests. In addition, that fee was to be paid within ten days after preliminary class settlement approval, before any notice was given to class members about the class action, or about the fee petition. That timing deprived class members of due process in that it eliminated any opportunity for any class member to object.

88. Neither the court nor the Diocese “adversary” objected to class counsel making his fee the first priority of the class action, and no independent judicial review was or has been made of the factors pertinent to the fee actually paid in relation to the actual class recovery, to say nothing of the substantial fraud now disclosed to have been perpetuated on the court by payments to persons not in either class.

**Fraudulent claims by class counsel against the class fund
and fraudulent charges by class counsel to “clients”**

89. The class fund should be indemnified by class counsel for any payments made to the McDonalds and every other out of state resident now claimed not to have been in either class but who received a distribution from the class fund.

90. Any disgorgement should not be made by the “clients” class counsel were not authorized to represent, failed to properly represent, for whom they were not authorized to make any claim, and whom class counsel duped. In short, those persons were unwittingly deceived by fraudulent conduct of class counsel and were improperly charged.

91. The fee paid to class counsel by each of the McDonalds (and every other out of state resident not eligible for either settlement class) was an improper fee. Those fees should be disgorged by class counsel back to each out of state person who was duped and used by class counsel as part of their fraud on the court.

92. Alternatively, if the defendants now admit or the Supreme Court rules that the McDonalds, and every other out of state resident were in fact members of the class, and distribution to each of them from the class fund was proper, then class counsel should disgorge to each such client the 20% fee which no order authorized, and before which no disclosure was made of either the \$2.5 million fee they had already been paid, the contingent fee they had already been paid, or of the conflicts of interest class counsel had as to the Diocese.

93. It is now known that the \$2.5 million fee was paid to class counsel from the class fund on or about September 4, 2007. Notice in the class action began on or about September 10, 2007. No absent class member was given an opportunity to object to class counsels' fee.

94. The \$2.5 million fee itself, as well as the undisclosed additional fees charged, was unreasonable in that, for example:

- a. The total fee charged by class counsel is unknown.
- b. The entire fee charged has never received independent judicial review.
- c. The \$2.5 million fee was reviewed by only the shopped-for judge, not by any independent court.
- d. The total fee charged has never been compared to the actual recovery for the class.

- e. On November 20, 2006, the Diocese wrote a check for \$145,000 to class counsel as a contingency fee payment for individual cases. That payment was not disclosed in the 2007 fee application.
- f. The billing records for those individual cases were then falsely submitted as part of the fee application as uncompensated time expended on the class action. The 2006 contingency fee payment was not disclosed by either class counsel or the Diocese to the court or to absent class members.
- g. The billing records in the class action fee application were inflated by patently fraudulent means (including many, many days with time in excess of 24 hours).
- h. The billing record was generated, according to class counsel, not based on actual time spent but by a computer program that inserted a time based on the activity descriptor, examples of which are wildly disconnected from actual time spent. One example of this is the 30 hours claimed to duplicate the John Doe 53 class complaint so it could be re-filed in Dorchester County as part of the venue- and judge-shopping plan. That filing duplicated, word for word, the existing class action case pending in Charleston County. The entire “work” required to replicate that case filing was to make two changes on page one of that complaint. (a) The county designation was changed from “Charleston” to “Dorchester,” and (b) the Charleston case number was replaced by a blank space to accommodate a Dorchester County case number. Those changes did not require 30 hours as class counsel “conservatively” claimed. Class counsel cannot identify the name of this supposed billing program that performed this

billing record projection or produce any manuals supposedly associated with the software.

- i. In addition to having been paid (twice) for the time spent on the individual cases for the class representatives, the \$2.5 million fee specifically included, as the court ordered, “additional time expended, and to be expended . . . in carrying out the terms of the settlement,” Order of July 30, 2007 at 14. Yet class counsel charged additional fee for work already compensated by the fee awarded.
- j. In the seven months of “litigation” between the December 2005 filing of the class complaint and the 2006 mediated class settlement, not a single motion was argued or decided, and not a single witness was deposed.
- k. Time billed on “February 30th” of multiple years, either a reflection that the computer-generated time was entirely divorced from actual work done or a reflection that time was manually entered, contrary to class counsels’ claim, and
- l. Identical multiple time entries on, for example, the 30th of each month for “bookkeeping” (2 hours each month), “legal research” (three entries each month, each of 5 hours each month), and “oversight and review” (10 hours each month).

95. The arbitrations to value Primary Class member claims as required in the settlement agreement took place in February 2008. Primary class members had to relinquish all appeal rights to participate in arbitrations.

96. Consortium class members received a fixed amount minus the fee charged by class counsel. As set out above, that fee was improper. Many consortium class members, none of whom was sexually abused, received a compensation greater than at least one primary class member.

97. The McDonald plaintiffs each received their distributions in 2008, with no disclosures (as set out above) of the \$2.5 million fee already paid, of class counsels' conflicts of interest, or of the contingent fee already paid.

98. If the McDonalds were not properly in the consortium class because of their state of residence, then at minimum they (and each out of state resident who received a distribution) should be indemnified by each defendant who participated in the scheme to cause them to submit a fraudulent claim against the class funds.

99. By contrast, if the McDonalds were properly in the consortium class despite their state of residence, then at minimum they and each person charged that 20% fee by class counsel should be reimbursed for that fee charged, with interest.

100. As to any fraudulent claim made against the class fund by a person who resided out of state at the time of the claim, the defendants should share that responsibility to indemnify to the extent each defendant was aware, as class counsel was aware, and now contend, that out of state residents such as the McDonalds were not members of either settlement class.

The Supreme Court Should Assert Original Jurisdiction

101. The South Carolina Supreme Court has discretion to assert its original jurisdiction pursuant to Article V, § 5, of the South Carolina Constitution. This matter concerns the public interest. Also, circuit court orders now conflict over a fundamental aspect of the class action. No circuit court judge has the authority to reconcile the conflicting orders to resolve the issues of this action.

102. The 2007 class settlement was collusive. Among other acts of collusion were:
- a. The class settlement concept was proposed in an October 2005 meeting between class counsel Richter and his Bishop.
 - b. The class complaint was filed two months later, in Charleston County on December 2, 2005, alleging one class with John Doe 53 alleged as the class representative.
 - c. No motion was made at any time in the Charleston County case to certify the one class alleged.
 - d. Between that December 2005 filing and the June 2006 mediated class settlement, not a single motion was argued or decided. Each time motions were scheduled the parties requested a continuance.
 - e. According to class counsels' time records, not a single deposition was taken in the class case.
 - f. A class settlement was reached in June 2006. At that time, two individual cases and one class action case were the only pending cases, each in Charleston County.
 - g. After the June 2006 mediated class settlement was reached in the Charleston County class action, the Charleston County circuit court was not informed that a proposed class settlement had been reached, as SCRCP 23 requires.
 - h. After the class settlement was reached, no motion was made in Charleston County to certify the class or to approve the class settlement, as SCRCP 23 requires. Doing so might have caused independent judicial review, and the parties desired to avoid independent judicial review.

- i. After the June 2006 proposed class settlement was reached, the defendants in this action apparently decided they did not want any judge then assigned to Charleston County to review the propriety of the class action or to review the proposed class settlement.
- j. Instead, the defendants desired to choose the judge for those purposes. The judge the defendants desired was chosen for her long social and professional connection to class counsel. As she was not then assigned to Charleston but was assigned to another circuit, the parties agreed to judge-shop, which required them to change venue for review of the class action settlement.
- k. By August 12, 2006, the defendants had apparently discussed, and class counsel eventually submitted billing records that reflected they had prepared, a “consent order changing venue,” as the means to move the proposed class settlement away from Charleston County judges to the shopped-for judge in Dorchester County. That approach, which also did not comply with SCRCP 23, was abandoned. Instead, they accomplished their judge-shopping by other techniques, techniques which will be widely available to bench and bar if not addressed by this Court and rejected, including the following sequence of judge-shopping events:
 - 1. In June 2006, the class settlement was agreed to in mediation.
 - 2. In June and July 2006 no motion was filed to approve the proposed class settlement as required by SCRCP 23.
 - 3. On August 15, 2006, solely to judge-shop, class counsel filed two class complaints in Dorchester County, case numbers 06-CP-18-

1310 (on behalf of Jane Doe 1) and 06-CP-18-1311 (on behalf of for Jane Doe 67). The claims for each class representative, and each class, were included in the proposed class settlement.

4. Those class cases were filed in Dorchester County because the shopped-for judge was then assigned to the First Judicial Circuit.
5. On August 21, 2006, if not before, class counsel communicated with the shopped-for judge. The content of the communication is not yet known.
6. On August 29, 2006 the Diocese defendants accepted service of the already settled and newly filed case 06-CP-18-1310.
7. On September 11, 2006 and again on September 20, 2006, class counsel requested of the shopped-for judge a status conference in the already settled, newly filed Dorchester county class cases.
8. On September 26, 2006, a telephone conference was held with the shopped-for judge, class counsel, and counsel for the Diocese.
9. On September 29, 2006, another status conference was held by telephone with the shopped-for judge and the defendants.
10. On October 6, 2006 not later than 11:00 a.m. the parties to the class action met in St. George with the shopped-for judge.
11. On October 6, 2006 at 11:59 a.m., class counsel re-filed in Dorchester County (as case 06-CP-18-1636) the class action case on behalf of John Doe 53, repeating the class action complaint that was already filed in Charleston County, was still pending in

Charleston County, and which was already settled in Charleston County (as case 05-CP-10-4913) through the proposed class settlement.

12. ##The class complaint on behalf of John Doe 53 filed in Dorchester County is identical in substance to the class complaint filed on his behalf in Charleston County. They differ only in two respects on page 1: county name and case number.
13. As a result of its re-filing, the class complaint on behalf of John Doe 53 was then filed simultaneously in two different counties. As noted above, class counsels' billing records claimed it required 30 hours to make those two changes to page 1 of that complaint.
14. The purpose of that Dorchester County duplicative filing was to evade review of the class settlement by any judge then assigned to Charleston County and to arrange review by the shopped-for judge in Dorchester County.
15. On October 6, 2006 at 12:03 p.m. class counsel filed in Dorchester County a motion to "certify classes and for preliminary approval of class settlement." The motion was made in each of the three cases already settled before any of the cases was filed in Dorchester County. No comparable motion was filed in Charleston County, where the John Doe 53 class case had been filed, remained pending, and had been settled.

16. The Diocese defendants accepted service of the Dorchester County version of the John Doe 53 duplicate class complaint. No motion was made pursuant to SCRCP 12(b)(8) that there was a prior pending action. No effort was made to have the class settlement reviewed in Charleston County, where it was pending and had been settled.
17. On October 9, 2006 the shopped-for judge consolidated the Dorchester County class action cases and specified the collective caption to use for the class action cases. Part of that collective caption included the duplicated-in-Dorchester John Doe 53 complaint.
18. On October 10, 2006 the shopped-for judge invoked the July 26, 2006 order of the Supreme Court to designate the consolidated class actions as complex. At that time, among other things, complex case designation applied to cases that counsel represented they had been unable to settle. There was no provision for cases that had been settled.
19. The shopped-for judge then assigned to herself the complex case.
20. It is not known if the shopped-for judge was informed that the class cases had been settled four months before; that the parties had ignored SCRCP 23 in Charleston County; that the parties had decided to collaborate in judge-shopping; that the parties had chosen her as the judge to shop for; or that the parties had

duplicated an existing and settled class action solely to judge-shop for her. The Court should order any special referee to investigate if the circuit court judge participated in the judge-shopping.

21. Even after successfully shopping for the circuit judge they desired, three cases still remained pending in Charleston County: two individual cases and the duplicated-in-Dorchester John Doe 53 class action case. To eliminate the risk of independent judicial oversight of the class settlement happening in Charleston County, the parties cooperated to complete their judge-shopping by getting the pending Charleston cases dismissed in the Ninth Circuit.
22. On October 17, 2006 class counsel wrote to the administrative judge in Charleston County to request that administrative judge dismiss without prejudice the three cases then pending. Each of the cases was included in the class settlement. One of those cases was the duplicated-in-Dorchester class action case for John Doe 53.
23. Despite the requirement of SCRCP 23, class counsels' letter to the administrative judge for the Ninth Circuit did not inform the court that each case they sought to have dismissed without prejudice had been resolved in Charleston County by a proposed class settlement.
24. The Diocese was provided a copy of the letter by which the request was made, made no objection, and cooperated with this step of the judge-shopping plan.

103. On November 20, 2006, counsel for the Diocese sent to class counsel two checks from the Diocese of Charleston Finance Office. Check 42983 was payable to Richter & Haller LLC Client Trust Account in the amount of \$345,000. Check 42982 was payable to Richter & Haller, LLC for \$145,000. Check 42983 funded a distribution to the four individual clients whose cases were to be resolved whether or not the class action settlement was approved. Check 42982 represented a contingent fee payment to class counsel for those individual cases. A copy of the checks are Attachment A to this complaint. The fee covered the work for the individual cases and the John Doe 53 class complaint, but was not disclosed to the court by either the Diocese or class counsel. Both the payment and the concealment are other acts of collusion in the class action.

104. Class counsel then submitted billing records from those individual cases for the class representatives as part of his fee application in the class action, without objection from the Diocese and without either class counsel or the Diocese disclosing the contingent payment made for all of the time submitted falsely as class action work. Since the class case was settled seven months after it was filed, with no motion argued or decided and no witness deposed, to try to justify a \$2.5 million fee, class counsel relied heavily on the time claimed to have been spent on those three other individual cases, without disclosing the time had already been paid for through a contingency fee.

105. Correspondence reflects that should the class action fee be approved class counsel claimed he would provide the Diocese a “credit” for that contingent fee payment. After the class action fee was approved, neither the contingent fee payment nor the “credit” appears anywhere in the accounting of the class action disbursements. The accounting reflects payments which total \$460,000 to those four clients even though the two checks sent to class counsel total \$490,000.

106. The circumstances of the contingent fee not disclosed to the court was another aspect of collusion in the class action.

107. The billing records submitted by class counsel were plainly fraudulent. The Diocese neither disclosed that the billing records consisted primarily of time for individual cases for which a contingency fee had been paid, nor objected in any way to the records. The shopped-for judge gave no scrutiny to the records, even after their fraudulent nature were brought to her attention by various objectors.

108. In August 2007, objectors were preparing to appeal overruled objections to the class settlement, including the lack of nationwide notice.

109. To avoid appellate review of the class action, a settlement was reached with those objectors, the terms of which were superior to the recovery for class members.

110. To fund that settlement with objectors, “Mr. Richter and/or his clients” agreed in August 2007 to pay \$100,000 to the Diocese to facilitate the payment to objectors, as the letter at Attachment B reflects.

111. That \$100,000 payment by class counsel to the Diocese was made April 28, 2008 from class counsels’ trust account, as the check at Attachment C reflects. That payment was omitted from any record of the disbursements associated with the class settlement, although the shopped-for judge was informed about the \$100,000 contribution by class counsel. The letter agreeing to it, Attachment C to this complaint, was incorporated into her order filed August 31, 2007. No inquiry was made by the shopped-for judge of why class counsel “and/or his clients,” or which of those clients, was paying the Diocese defendants to facilitate the class settlement for those who had objected. No judicial review has been made about the payment having come from class counsels’ trust account. No judicial review has been made about the class not being told

that objectors got settlement terms better than class counsel had obtained for class members. No judicial review has been made about that information not being disclosed to the class, or even to any individual clients of class counsel.

112. No disclosure was made to the class about, among other things:

- a. that the class action settlement was collusive,
- b. that a \$100,000 payment was made from class counsel or his clients to facilitate the class action,
- c. the superior terms of settlement for those who opted out of the class (compared to the terms for the class), of which class counsel knew or should have known due to his involvement in negotiations,
- d. class counsels' life-long ties to the Diocese, including personal friendships with priests and bishops (any of whom might have been identified by a class member as a perpetrator of sexual abuse) and other officials, and his own official functioning for the Diocese prior to and during the class proceedings,
- e. class counsels' extensive ties to the shopped-for judge, disclosed to the Diocese but not to the class; the Diocese waived that conflict consistent with the collusive nature of the class action; class members were not informed;
- f. the court's award of a fee of \$2.5 million, to be paid within ten days and without notice to the class;
- g. class counsel being paid a contingent fee for the individual cases of class representatives, then submitting the billing records in those cases as part of the class fee request, without disclosing that the contingency fee had paid for that time;

- h. class counsel charging and taking additional fees which no order authorized, and/or
- i. class counsel charging a fee for persons known to class counsel (they now contend) to not have been in either class.

113. As noted above, no final order has ever been entered in the class action, despite the 2009 directive of the South Carolina Supreme Court, presumably because any final order could be appealed and the parties desired to avoid the possibility of appeal. The Court should order any special referee to investigate the reason the shopped-for circuit court judge issued no final order in the class action from 2008 to her *sua sponte* recusal in January 2013.

Fiduciary obligations of class counsel

114. The Plaintiff John Doe 305 fits within a class definition used in the class settlement for which the defendants sought and received court approval in 2007.

115. In the 2007 class settlement, class counsel actively represented the McDonald plaintiffs, and induced the McDonald plaintiffs to participate in a fraud upon the court by submitting claims which class counsel now contend the McDonald plaintiffs were not entitled to make as persons not within the definition of either settlement class.

116. Fiduciary obligations by class counsel to each of the plaintiffs were imposed on class counsel as a matter of law, or were assumed, when class counsel (a) pled a class action in December 2005, (b) settled that class action in June 2006 with classes defined so as to include the plaintiffs, (c) sought, and obtained, class certification of those classes in 2007 (in a different county and different judicial circuit by a shopped-for circuit judge), (d) stated on the record they represented absent members of those defined classes, and (e) as to the McDonalds, by actually representing them when class counsel submitted for each of them a claim against class

funds and purported to represent them even while class counsel knew they were each an out of state resident. The settlement classes as class counsel chose to define them were without geographic limit, but class counsel now contends that out of state residents were not in either class.

117. As to John Doe 305, this action has been brought within three years of John Doe 305 learning that class counsel had claimed they had obtained relief for even those absent class members who received no notice of the class action case, without actually securing in any written order that relief for John Doe 305, and within three years of learning that the Diocese defendants aided and abetted that breach of fiduciary duty towards him.

118. As to the McDonalds, this action has been brought within three years of the McDonalds learning that class counsel took the position, and a circuit court order found, that the class action in which they as out of state residents participated was for only South Carolina residents. Without knowing of that limitations, the McDonalds were induced by all defendants to participate in the fraud on the court perpetrated by the defendants.

119. Class counsel acknowledged that they had voluntarily assumed fiduciary duties towards absent members of the class such as the plaintiff Doe 305 in a March 9, 2007 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.

120. Class counsel overtly acknowledged the fiduciary obligations they had assumed to the absent members (such as the Plaintiff Doe 305) of the class they chose to define.

121. As stated in *Premium Investment Corp. v. Green*, 324 S.E.2d 72, 76 (S.C. App. 1984) (emphases added, internal citations omitted):

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

122. Under *Premium Investment*, by operation of law any benefits from the class action are held by class counsel in trust for the class, including its absent members. Those benefits held in trust should be used to benefit the Plaintiff Doe 305, and to reimburse the unwitting claimants, including the McDonalds, who were induced by class counsel to make fraudulent claims on the class fund, or (if their claims were proper) for class counsel to reimburse the McDonalds for the unauthorized fee they were each charged by and paid to class counsel.

123. At present, the South Carolina Court of Appeals has before it the trial court order which did not recognize any duties imposed by law by the *Premium Investment* decision.

124. As a matter of law under *Tilley v. Pacesetter Corp.*, 585 S.E.2d 292, 302 (S.C. 2003), the class definitions chosen by class counsel which included the plaintiffs was “a strategy choice” class counsel elected, the implications of which presented duties imposed by law and which class counsel voluntarily assumed, and by which class counsel are bound.

125. To gain court approval of the class settlement, the defendants made overtly false representations of fact to the shopped-for circuit judge. 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 claim procedure. That “understanding” communicated to the shopped-for judge was never placed in any written order. Nor is there any way to enforce the “understanding”

through separate legal action. It was falsely represented to the shopped-for judge that if “someone pops back up who should have gotten notice who didn’t get notice,” the Diocese represented, without objection by class counsel:

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.

126. 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 failing to secure such a written order, class counsel acted in the interests of the Diocese defendants and themselves, rather than acting in the interests of absent class members they represented such as John Doe 305.

127. In that same transcript, the Diocese defendants represented to the shopped-for judge, falsely, that there were supposedly 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 class counsel even though class counsel knew the representation was false.

128. Class counsel were aware, and had alleged, that 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. Class counsel was aware the Diocese had a history of concealing sexual abuse yet relied on the Diocese to search their own files for abuse victims. Class counsel were also aware that some abuse victims repressed memories of their childhood sexual abuse (or were incapacitated as a matter of law) and could reasonably be expected not to recall childhood abuse for various lengths of time.

129. In short, the “Primary class” was known by class counsel to be under-inclusive, and the defendants deliberately misrepresented to the shopped-for judge that absent class members later disclosed would receive relief, when in fact those absent members would get no relief. The defendants have opposed relief for absent class members who got no notice and at present continue to oppose relief for absent class members who got no notice.

130. Class counsel, 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 by John Doe 305.

131. When the shopped-for judge 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 John Doe 305.

132. The defendants intended on July 13, 2007, to create the false impression with the shopped-for judge that if a victim within the class definition came forward after the class claims period was concluded, that the Diocese would extend the same relief to that victim. In making the false representation that they made no effort to embody in any court order, class counsel 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 such as John Doe 305, to whom class

counsel owed, or had assumed, a fiduciary duty. Class counsel intended that the shopped-for judge would rely on the statement, and the shopped-for judge did rely on the statement. However, when the shopped-for judge did not embody the “understanding” in any written order, none of the defendants requested that the shopped-for judge do so.

133. As to John Doe 305, these actions and inactions by class counsel constituted breach of fiduciary duty, imposed by law on or assumed. As to the Diocese, the conduct constitutes aiding and abetting that breach of fiduciary duty by class counsel.

134. 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.”

135. The result of class counsels’ failure was to exclude John Doe 305 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, class counsel protected the interest of the Diocese defendants and class counsels’ own interest in their fee. For the Diocese the benefit of the class action was its potential preclusive effect. As explicitly stated in the class settlement agreement, and as noted above, class counsels’ fee was the highest priority of the class action settlement. The fee was fixed, and compelled a *pro rata* reduction of recovery to class members if “too many” abuse victims made claims. Failing to secure relief for absent class members who got no notice served the purpose of avoiding having to implement the fee provision that compelled a *pro rata* reduction.

136. According to class counsel, the compensation to abuse victims appears to be the lowest class recovery for victims of any case brought in the nation against the Catholic Church. Also, the arbitrations were also arranged so as to work within the known limit of funds after class counsel was paid, rather than fully compensate abuse victims. The settlement provided a lesser recovery for a victim of sexual abuse than for a parent or spouse who had never been sexually abused.

137. The Diocese defendants took various actions in concert so as to aid and abet class counsels' breach of fiduciary duty to absent members of the class. Among those actions were:

- a. Shopping for a judge and doing so by a duplicative court filing and other illicit means, as set forth above,
- b. Making no objection to the complex case designation, even though the July 26, 2006 order applied to cases that could not be settled and a class settlement had already been reached,
- c. Misrepresenting that absent class members who got no notice would receive the same compensation as class members,
- d. Taking no position on whether the class should be certified,
- e. Acquiescing in class counsel failing to disclose to the class his life-long ties to and positions with the Diocese,
- f. Making no disclosure to the class of the superior settlement terms (compared to those for the class) for the individuals who were the class representatives, and whose settlement terms would apply whether or not the class was approved,

- g. Making no disclosure to the court of the 2006 contingent fee payment to class counsel for individual cases, or that the billing records relied on for the class action fee application was almost entirely for time for which a contingency fee had already compensated class counsel,
- h. Making no objection that the class representatives referred to in the class settlement agreement had already been paid and whose claims were settled in 2006 whether or not the class was later certified; so the “class representatives” had no stake in the class settlement, and were not representative of the primary class,
- i. Making no motion to disclose to the class the superior settlement terms reached with the individuals who objected to the class settlement, or that those superior terms were funded in part by class counsel or class members,
- j. Making no objection to class counsel negotiating simultaneously a fixed fee for himself and a variable recovery for the class, with the compensation for class members being subordinated to that fee,
- k. stating only the weakest and most vague arguments that the fee awarded should be the low end of the agreed fee range, omitting that a contingent fee had already been paid for the time spent on individual cases which formed the vast percentage of time claimed in the fee application; and making no disclosure that the class settlement was reached seven months after filing, without a single motion having been argued or decided, or a single witness having been deposed,
- l. agreeing to make no objection to the fee being awarded before any member

of the class member was even identified, had even submitted a claim, had been compensated, or was given any opportunity to object,

- m. Making no objection to class counsels' blatantly fraudulent billing records,
- n. Making no objection to class counsel collecting more fee from class members than any order approved, and failing to disclose to the court the fee class counsel intended to, and did, take,
- o. Cooperating to induce the McDonalds, as out of state residents, to submit what class counsel now claims were fraudulent claims,
- p. Making no objection to class counsel charging each of the McDonalds a fee, despite knowing that each of them was an out of state resident,
- q. Agreeing to ignore the South Carolina Supreme Court's March 2009 directive that the class action should be concluded in six months or an extension of time sought from that court,
- r. agreeing to seek no post-award fairness hearing under SCRCP 23 where the actual conduct of the class action, substantively and procedurally, would be assessed, even after a motion for a post-award fairness hearing was requested in 2016 by one of the class representatives who alleged class counsels' representation of him had terminated as he had been "abandoned" by class counsel.

138. The defendants caused John Doe 305 special harm in the form of precluding him from making any claim against the Diocese for his sexual abuse, specifically denying him all chance to enjoy the benefits of a waived defense of statute of limitations and a waived defense of charitable immunity. The professional representation of the plaintiff by class counsel was

inadequate and failed to meet the standard of care applicable to South Carolina attorneys.

139. The defendants caused the McDonald plaintiffs special harm in the form of inducing each of them to make a claim against the class funds the defendants now claim was fraudulent due to their out of state residence, and class counsel caused them special harm by charging a 20% fee for a claim the defendants knew to be fraudulent due to each of the McDonalds' state of residence, and exposing them to disgorgement claims.

140. Alternatively, if the McDonalds' claims against the class fund were proper, class counsel caused each of the McDonalds special harm in charging each of them a 20% fee not authorized by any order, and without disclosing to each of them either the contingency fee already received or the \$2.5 million fee class counsel already received or class counsels' conflicts.

141. The professional representation of each of the plaintiffs by class counsel was inadequate and failed to meet the standard of care applicable to South Carolina attorneys.

142. But for class counsel having breached the fiduciary duties owed to John Doe 305, 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.

143. But for class counsel having breached the fiduciary duties owed to the McDonald plaintiffs, a breach aided and abetted by the Diocese defendants, the McDonald plaintiffs would not have submitted fraudulent claims in the 2007 class action, or, if their claims were legitimate, they would not have paid an improper fee had proper disclosures been made to each of them.

144. The Diocese defendants aided and abetted class counsels' breaches of fiduciary duty.

145. No post-award fairness hearing has ever been held in the class action. No judicial review has ever independently examined, for example, the unauthorized fee taken by class counsel, the collusive conduct of the class action, including the judge-shopping and other manipulations of the class action, or that the Supreme Court's 2009 order was ignored. The shopped-for judge made no review of the payment by class counsel to the Diocese to facilitate the class action by funding better settlement terms for those who opted out as compared to class members, no review of the class settlement having occurred seven months after the class complaint was filed without a single motion argue or a single witness deposed. No review was made of the blatantly fraudulent billing records. No review was made of the time claimed for cases in which class counsel had already received a contingent fee payment.

146. The class action remains ongoing and appears at present to be assigned to no circuit judge.

147. Until 2019 John Doe 305 had no information about the class action or that the defendants had cooperated to make false promises to the class action court that an absent class member such as himself would be provided relief when that statement about relief was not secured in any order for was unenforceable; or that the plaintiff's interest had been compromised by the defendants' conduct.

148. Until 2019 the McDonald plaintiffs had no information that class counsel had begun contending that as residents outside the "area of publication," the McDonalds were not eligible members of the class that appeared on its face to include them. Nor did the McDonalds until 2019 have any information that class counsel had induced them to submit claims that class counsel now claim the McDonalds were not entitled to submit, or, whether or not the McDonalds were in a class, that class counsel had improperly charged them a fee and without

proper disclosures.

**For a First Cause of Action:
Declaratory Relief**

149. Allegations above are incorporated into this cause of action as if fully stated.

150. The plaintiffs are entitled to declaratory relief from the South Carolina Supreme pursuant to SCACR 245(a) and S.C. Code § 15-53-10 et seq., which authorizes relief based on a declaratory judgment, that:

- a. The class definitions approved from the 2007 class action apply without geographic limit;
- b. Each plaintiff was within one of the settlement classes without regard to being a resident of a state other than South Carolina; alternatively, if the plaintiffs were each not in a class due to state of residence, then the plaintiffs are entitled to a declaratory judgment that class counsel submitted knowingly fraudulent claims for persons not within the class, and that class counsel, not the out of state claimants, should reimburse the class fund for the full amount of any such funds distributed improperly due to the breach of duty associated with class counsels' conduct;
- c. The defendants improperly manipulated class action procedure by, among other things, colluding so as to:
 1. After reaching a class settlement:
 - a. Making no motion in the existing class action for class certification and settlement approval,
 - b. engaging in judge-shopping as set out in detail above;
 - c. duplicating in a different county and different judicial

circuit the existing (and settled) class action complaint for John Doe 53 so the same class complaint was pending for the same client in two counties;

- d. failing to disclose to the court in Charleston County that the pending class action the parties wanted dismissed without prejudice was a class action in which a class settlement had been reached.

2. Class counsel paid \$100,000 from their trust account to the Diocese to fund better settlement terms for objectors and to induce the Diocese to complete the class action without disclosing that payment to the clients or to the class and not including that payment in any accounting of the class funds;
3. Class counsel submitted patently fraudulent billing and expense records to support the claim for fees and costs, including charges for events which never took place, charges well in excess of 24 hours in a day, and repeated charges and claims of costs without support.
4. Class counsel received, but no parties disclosed, a contingent fee payment for individual cases of the class representatives, the time for which formed the largest part of the fee application in the class action.
5. Failing to disclose to the class:
 - a. that class counsel had life-long ties to the defendants in the

- class action, including serving as an official of the Diocese during the pendency of the class action;
- b. That class counsel paid \$100,000 from their trust account to induce the Diocese defendants to complete the class action, on better terms for objectors, as noted above;
 - c. That class representatives were compensated in 2006 on terms different than was the class, receiving known sums with no arbitration process and without having to surrender appeal rights before receiving their settlement, and were paid well before any class was certified;
 - d. That persons who objected to the class were compensated on better terms than any class member, receiving known sums, greater sums, with no arbitration process, without having to surrender appeal rights to receive their settlement, and without the limitations from the class “matrix” that minimized their sexual abuse. That better result for objectors was funded in part by class counsel or his clients, from class counsels’ trust account, with no disclosure to the class, no disclosure to the clients, and no accounting of the payment;
 - e. That class counsel was not authorized by any order to charge the additional fees charged to class members.
6. Ignoring the S.C. Supreme Court’s March 2009 order directing that

the class action be concluded within six months or that any extension should be sought from the Supreme Court;

7. Awarding attorney's fees to class counsel before any notice had been given to the class, before any class member was identified, before any class member had made a claim or any relief had been granted to the class, before disclosing that class counsels' time in individual cases had already been compensated with a contingency fee, and before any class member had received any compensation. No class member had an opportunity to object to the fee request.
8. Conducting no post-award review of, among other things, class compensation, fees charged by class counsel, the propriety of fees paid, the manipulations of the class action procedure, the judge-shopping, and the contingent fee paid in individual cases which formed the large part of the time records submitted in the class action fee application.

151. Class counsel breached duties owed to each plaintiff, and the court should declare whether each plaintiff is, or is not, within the pertinent class definition.

**For a Second Cause of Action:
Professional Negligence by Class Counsel
Breach of Fiduciary Duty, Imposed or Assumed**

152. Allegations above, other than the allegations of intentional conduct by class counsel, are incorporated into this cause of action as if fully stated.

153. Pursuant to S.C. Code § 15-36-100(b), Attachment D to this complaint, and incorporated herein pursuant to SCRCP 10(c), is an affidavit of Michael Virzi specifying

certain various negligent acts or omissions of class counsel, and the factual basis of the negligent acts or omissions of class counsel.

154. In December 2005 class counsel filed a class action complaint in Charleston County alleging one class.

155. In June 2006 a class settlement was reached. In that settlement two classes were agreed upon.

156. In the seven months between that filing and the June 2006 class settlement, no motion was argued, no motion was decided, and no deposition was taken in that class case.

157. In October 2006, class counsel filed with the court for the first time proposed class definitions for the two settlement classes. On its face, the definition of the “primary class” included John Doe 305 and the definition of the “consortium class” included each of the McDonalds. Neither settlement class was defined with a geographic limit.

158. If it was not imposed by law upon pleading the class action, or by settling the class action, as the plaintiffs contend it was, and which S.C. appellate cases have held it was, class counsel assumed a fiduciary duty to the plaintiffs in the conduct of the class action. As to John Doe 305 class counsel acknowledged on the record that they represented absent members of the class. As to the McDonalds, class counsel purported to represent them, communicated with them, advised them, were engaged by them, took action on their behalf, appeared on their behalf, made a claim on behalf of each, and charged each of them a fee for doing so, even though class counsel now contends that each of the McDonalds were not within a settlement class.

159. On the record before the shopped-for judge, class counsel 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. No distinction was made between victims by state of residence.

160. As to John Doe 305, class counsel 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. That breach of fiduciary duty damaged John Doe 305 by depriving him of the benefits of the class action after the notice program of the class action was changed to eliminate any opportunity he would receive notice of the class action even though he was within its definition.

161. As to each of the McDonald plaintiffs, class counsel were professionally negligent, and committed a fraud on the court, in submitting a claim for each of them as if they were clients, and as if they were members of the consortium class. Class counsel now claims that based on their respective out of state residence as outside the “area of publication,” neither of the McDonalds was in the settlement class and both were ineligible for class funds. Unknown to the McDonalds, fraudulent claims were submitted on their behalf by class counsel, an action aided and abetted by the Diocese defendants. Class counsel was motivated by their desire to charge as much fee as possible despite there being no order authorizing it, despite the McDonalds not being their clients, and despite the claim for each of the McDonalds, and every other out of state resident, being a fraud upon the court.

162. If the McDonalds, and every other out of state claimant, must disgorge their recovery then they should be indemnified by class counsel, who induced them to make a fraudulent claim. In any event, even if their claims were proper, the fee charged them should be refunded to them by class counsel, with interest.

163. Alternatively, if by class counsel having submitted claims for many out of state residents they are judicially estopped from asserting that out of state residents are not in either settlement class, or if the Court determines that the classes as proposed and as approved included the McDonald plaintiffs because the class definition included no limit based on state of residence, class counsel were professionally negligent in charging each of the McDonalds a fee which no order authorized, for work already compensated by the court's order as to their \$2.5 million fee. Class counsel was also negligent in failing to disclose to either of the McDonalds before charging them a fee that class counsel had already been paid a \$2.5 million fee plus a contingency fee of \$145,000, which included compensation for submitting claims for class members, and in failing to disclose to the McDonald plaintiffs that neither of the McDonalds was a class member, neither was eligible to receive for class funds, and neither was class counsels' client.

164. The defendants collaborating to make fraudulent claims on the class funds and in doing so also breached their collective obligation to the court and class counsels' obligation to the rightful class members.

165. On January 19, 2007, a proposed class definition that on its face included each of the plaintiffs was preliminarily approved without objection from the Diocese defendants.

166. Class counsel engaged in negligent acts and omissions in breaching assumed or imposed fiduciary duties owed to each of the plaintiffs, as set forth in this complaint and the affidavit of Michael Virzi, Attachment D to this complaint.

167. In the written orders of the class action no provision was made to secure relief for absent class members who received no notice, as was represented by all defendants in this action to the shopped-for judge had been secured by agreement. Nor do any of the written

orders distinguish between class members based on their state of residence, and a substantial number of out of state residents in fact participated in the class settlement and received a distribution of class funds.

168. Class counsel abandoned the interests of John Doe 305 and acted in a professionally negligent manner both by changing the notice program to preclude him from getting notice and by failing to protect his interest in the written orders. Doing so breached fiduciary duties to John Doe 305, which was aided and abetted by the Diocese defendants, and caused him damage.

169. The interests of John Doe 305 were abandoned by class counsel so that “too many” class members would not make claims and jeopardize either (a) class counsels’ fixed fee that the court had approved, or (b) the undisclosed, “extra” fees class counsel had decided to charge despite having no order which approved such fees.

170. At different times, class counsel has claimed different reasons for altering the notice program for the class action. In chronological order, those explanations for the change have been (a) to accommodate a request of the Diocese due to cost, (b) to purposely deprive absent class members who resided out of state from receiving Due Process, and (c) because persons otherwise eligible for either the primary class or the consortium class who resided out of “the area of publication” were not in either settlement class.

171. The class settlement arbitration process was designed and used to protect class counsels’ fee by allocating class member recoveries only after the fee had been paid and all claims had been submitted. No award was made until all awards were known and could be adjusted to use the funds available after the fee was deducted. Nationwide notice risked eliciting too many claimants from out of state residents for that safeguard to protect the fee in

any post-award fairness hearing. Not holding a post-award fairness hearing was another way to protect class counsels' fee and to prevent it from being reviewed by any independent court.

172. Class counsel solicited the McDonald plaintiffs to each submit a claim which class counsel now contends was a fraudulent claim against the class funds. Class counsel were aware that each of the McDondalds resided out of state. Neither of the McDonalds was aware that the claims class counsel solicited them to submit was a fraudulent claim.

173. Alternatively, if the court finds that class counsel are now judicially estopped from changing the class definitions, or if not estopped are simply incorrect and the class definitions apply as they are written and as they were approved, without regard to geographic limit, then class counsel fraudulently induced each of the McDonald plaintiffs to pay an unreasonable and unauthorized fee in the amount of 20% of each of their respective claims. The fee paid was improper because class counsel was not authorized by any order to charge that fee. Separately, the fee is improper because class counsel did not disclose to either of the McDonalds:

- a. that the court had already approved, and class counsel had already been paid, a \$2.5 million fee,
- b. that the order awarding the \$2.5 million fee included a scope of work that included submitting their claims and those of other class members,
- c. that the \$2.5 million already-paid fee was based on blatantly fraudulent billing records that falsely inflated class counsels' time,
- d. that the class settlement and \$2.5 million fee had been obtained without a single motion having been argued or decided, or a single witness having been deposed,

- e. that after the class settlement was reached, class counsel and the Diocese defendants had colluded through various improper manipulations to judge-shop for a pliable oversight of the class action in a different county and judicial circuit,
- f. that no court order authorized class counsel to charge any additional fee, and
- g. that in November 2006 class counsel was paid a contingent fee of \$145,000 for their work on individual claims of class representatives, then the time on those cases was fraudulently submitted for the class action fee as if that fee had not been paid. That time constituted the large majority of the time claimed to support the class action fee, and the contingency fee payment was not disclosed to the court or to the McDonalds.

174. Class counsel defrauded the McDonald plaintiffs, and every other class claimant that was charged a fee not authorized by any order, and class counsel breached fiduciary duties to each of the McDonalds. It appears that not less than \$900,000 was improperly charged claimants by class counsel which no order authorized, including the McDonald plaintiffs. Sums improperly charged those persons who resided out of state have yet to be discovered and calculated.

175. The acts and omissions of class counsel were aided and abetted by the Diocese through its cooperation and collaboration.

176. The defendants damaged the McDonald plaintiffs by their conduct.

177. Each of the plaintiffs is entitled to actual and punitive damages against class counsel as a result of the breaches of fiduciary duty and professionally negligent representation by class counsel.

**For a Third Cause of Action:
Aiding and Abetting Breach of Fiduciary Duty
Against the Diocese defendants**

178. Allegations above are incorporated into this cause of action as if fully stated.

179. The Diocese aided and abetted the breaches of fiduciary duty by class counsel towards each of the plaintiffs, as set forth above.

180. Through their counsel, the Diocese defendants joined with class counsel in making false representations on the record to the shopped-for judge, supposedly protecting the interest of absent class members such as John Doe 305 that he would be afforded relief once he learned of the class action. Each defendant then failed to secure those representations in any written order. That omission made unenforceable the representations on the record to the shopped-for judge, as if those representations had never been made.

181. If, as class counsel first maintained in 2017, that the classes were restricted to only South Carolina residents, then the Diocese aided and abetted the fraudulent claims submitted by each of the McDonald plaintiffs without the McDonalds being aware that their claims were fraudulent. The defendants were required by the class settlement agreement to permit claims only from persons within the class definitions, an obligation imposed on class counsel independent of the settlement agreement. The Diocese accommodated class counsels' desire for as much fee as possible as the price for obtaining what class counsel represented to be the lowest payment to abuse victims by any Diocese in the United States, and which the Diocese could attempt to use as a procedural bar to any and all other sexual abuse claims, other than their on the record commitment to provide relief to absent class members.

182. The Diocese defendants knowingly participated in the breach of the fiduciary duties owed by class counsel to each of the plaintiffs because it was the financial interest of the Diocese to do so. The Diocese took advantage of class counsels' willingness to prioritize their fee interest over the interests of abuse victims.

183. The plaintiffs have each been damaged by the Diocese defendants aiding and abetting class counsels' breaches, and each plaintiff is entitled to actual and punitive damages as a result. John Doe 305 was unable to have accessed any of the benefits of the class action, such as they were, including the defenses waived only in the class action. The McDonalds now realize they were duped by class counsel and used by the defendants to make false claims against the class fund for which an unauthorized fee was charged. Alternatively, if the McDonalds' claims were properly submitted, the fee charged them was charged to them without adequate disclosures and was improper. The McDonalds should recover actual and punitive damages. To the extent the McDonalds must disgorge any of their fraudulent class payment, they should be indemnified by the defendants for any disgorgement of those funds, as set forth below.

**For a Fourth Cause of Action:
Equitable Indemnification or Sanction
Against all defendants as to the McDonalds**

184. Allegations above are incorporated into this cause of action as if fully stated.

185. A right of indemnity, or sanction, exists when parties are related in such a way as to require that either in law or in equity there is an obligation on one party to indemnify the other. One such example is where persons such as each of the McDonalds is exposed to liability by the wrongful act of another in which he does not join. The McDonalds were unaware that the Diocese had collaborated with class counsel to submit fraudulent claims for each of them, knowing the McDonalds resided out of state when the defendants now maintain that out of state residents were

not in either settlement class.

186. Class counsel purported to represent the McDonalds, knowing the McDonalds each resided out of state, which the defendants now claim meant the McDonalds were not in either settlement class and were not even eligible to be clients of class counsel. Class counsel used the McDonalds at the expense of their class member clients to enrich themselves. The Diocese collaborated with class counsel to accept the McDonald claims as *bona fide* despite knowing the McDonalds were not, the defendants claim, in either settlement class.

187. The McDonalds are now aware that class counsel apparently used them to submit fraudulent claims. As they were induced by the defendants to participate in the class settlement, any disgorgement the McDonalds would otherwise be required to make as a result of those fraudulent claims should be paid by the defendants, not by the McDonalds, with the McDonalds indemnified along with interest, reasonable attorney's fees and costs incurred in this action.

188. The fee and costs charged the McDonalds by class counsel were improper whether or not their claim was fraudulent. Class counsel should be required to disgorge that fee back to the McDonalds, with interest, and class counsel should be ordered to account for the fee charged each out of state claimant and disgorge that fee back to each such claimant and to disgorge back to the class fund each improper claim.

189. Both the attorney's fees and costs charged the McDonalds and the fees and costs incurred in this action are each a natural and necessary consequence of the defendants' actions. A special relationship exists between the McDonalds and each defendant sufficient to impose a sanction, and an obligation to indemnify each of them, for damages, as well as reasonable attorney's fees and costs. Class counsel purported to represent the McDonalds, a purported but fraudulent contractual relationship. The Diocese collaborated with class counsel under the class

settlement agreement in submitting the McDonalds' fraudulent claims, contending now that each defendant knew the McDonalds' claims were fraudulent and would improperly deplete class funds. The McDonalds were each induced by the defendants' fraud to submit claims.

190. Each defendant damaged the McDonalds by breaching their obligation to the court as well as to the McDonalds in inducing them to submit a fraudulent claim to class funds as if it was a valid claim. The McDonalds each had no reason to believe that their claim was not valid. Through no fault of their own the McDonalds have incurred costs and fees for which they should be equitably indemnified.

191. Alternatively, if the claims submitted by the McDonalds were each a proper claim because they are in fact within a settlement class, then their claim for indemnification, attorneys fees and costs is properly against class counsel who charged them a fee without an order authorizing that fee and, even if there had been a proper order, without disclosing the sums class counsel had already been paid which included payment for submitting class claims and a contingent fee paid class counsel for work on individual cases for class representatives then also claimed as part of the class action fee request.

**For a Fifth Cause of Action: Breach of Contract
Against the Diocese Defendants for John Doe 305**

192. Allegations above are incorporated into this cause of action as if fully set forth.

193. Class counsel and counsel for the Diocese placed on the record an agreement between them to provide relief to absent class members who failed to get notice.

194. The essential terms of that agreement are reflected in the class settlement agreement, and the representation on the record that any absent class member who got no notice would, once they identified themselves, get the same terms of relief as class members who received notice.

195. As alleged above, class counsel was professionally negligent in failing to secure that relief for the class in the form of a written order, but the agreement was “made in open court and noted upon the record,” as required by SCRCP 43(k) to be enforceable.

196. John Doe 305 is an absent member of the class and is an intended third-party beneficiary of the agreement placed on the record by class counsel and counsel for the Diocese.

197. The Diocese has breached that agreement in not providing the agreed upon relief to John Doe 305 and other absent class members.

198. John Doe 305 is entitled to the relief provided by the agreement entered on the record in open court of which he is an intended third party beneficiary.

Demand for Jury Trial

199. Plaintiffs demand a trial by jury for the claims other than the claims for declaratory relief, that jury trial request being subject to the petition request that original jurisdiction be asserted in the South Carolina Supreme Court and that the Supreme Court resolve by declaratory relief the conflicting circuit court orders on matters as to the class action and otherwise declare the rights and obligations of the parties.

Relief Sought

The plaintiffs seek the following relief:

200. For the Supreme Court to accept this case in its original jurisdiction;

201. For the Supreme Court to resolve by declaratory relief the conflicting circuit court orders as to the geographic scope of the settlement classes;

202. For the Supreme Court to appoint a Special Referee to make recommendations to the court as required by the allegations of this complaint;

203. For there to be such findings of fact and conclusions of law as are warranted by a full and fair hearing of all matters contained herein, through means of a Special Referee and/or a jury trial for fact finding if considered necessary for the Court to assert its original jurisdiction. The Special referee should examine the issues presented in this case and the propriety of the past conduct of the defendants to make recommendations to the Court to resolve the conflicting circuit court orders as to the class, among others, and to organize the class action for its first independent judicial review.

204. As to prospective declaratory and injunctive relief the Court should

- a. Issue a rule to show cause for each defendant to account for why each of them ignored the Supreme Court's 2009 directive and no extension was requested of the Court, an inquiry that should include a sworn statement from the shopped-for judge as to why she cooperated with the judge-shopping, and why she ignored the Supreme Court's 2009 order to conclude the class action;
- b. issue a rule to show cause why class counsel should not be removed from any responsibility for the class action as, under Rule 1.7 of the Rules of Professional Responsibility, class counsel has, among other things, present conflicts with various class members as well as conflicting duties to those clients and their own interests;
- c. issue an order appointing as class counsel an attorney with class action experience and who is completely independent of present class counsel and the shopped-for judge.

205. As an administrative matter, the Court should issue an order assigning a circuit court judge to be responsible the class action once this action and the present appeal is resolved, with notice of the appointment given to all counsel and to counsel for any objectors to the class action.

206. To impose a trust on all fees and costs paid to class counsel to date;

207. To order an accounting of all fees and costs paid to class counsel, to include those fees and costs paid to class counsel which have not been previously disclosed;

208. To direct that at an appropriate time after new class counsel is appointed that a post-award fairness hearing be held to consider the matters raised in this petition and complaint, including the fees charged to and paid to class counsel, and any issues raised by the class representative's 2016 motion for a post-award fairness shearing which to date has been ignored;

209. For the court to declare the rights and obligations of the plaintiffs as to the class settlement, and the obligations owed to the plaintiffs by the defendants;

210. As to John Doe 305, to declare if he is, or is not, within one of the settlement classes approved in 2007 and is, or is not, an intended third party beneficiary of the agreement placed on the record in 2007;

211. As to the McDonalds, to declare if they were, or were not, properly included in one of the settlement classes approved in 2007;

212. For an order for class counsel to disgorge, with interest, all of the \$2.5 million fee received; the additional 20% fee taken without any authorizing order, all fees predicated on time spent on the individual cases for class representatives which class counsel had already received a contingent fee, and all fees charged persons not in either settlement class (to be placed into an escrow fund free of the control of the defendants or anyone else affiliated with

the defendants), until an independent analysis may be done and a more appropriate fee, if any, awarded after damages against class counsel are assessed and disbursed to the appropriate plaintiff and the class fund;

213. Disgorged funds should be returned to serve as a fund to compensate absent class members known to date who were given no notice of the 2007 class settlement but who are include din the agreement placed on the record to provide relief to absent members of the class who got no notice;

214. A full accounting should be ordered as to all the class funds, to include at minimum the \$100,000 payment made from class counsels' trust account for "Mr. Richter and/or his clients" to help fund superior settlement terms for those who opted out of the class action and the undisclosed November 2006 contingent fee payment made for individual cases claimed to be class representatives;

215. Actual and punitive damages in an amount to be determined by the finder of fact against the various defendants;

216. Costs and disbursements of this action;

217. Reasonable attorney fees; and for

218. Such other and further relief as the Court deems just and proper.

Respectfully submitted,



Gregg Meyers, SC Bar No. 9908
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attygm@gmail.com

Attorney for the Plaintiffs

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

42983

67-448/539 SC 2961

PAY TO THE ORDER OF Richley & Haller, LLC - Client Trust Accounts \$ 345,000.00

DATE 11-20-06

DIOCESE OF CHARLESTON 345,000.00 DOLLARS

Bank of America. 

FOR [Redacted] [Redacted] [Redacted] [Redacted]

John Z. Barber
Mrs. Martha Langfellow

MP

GUARDIAN • SAFETY

1104298311

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

42982

67-448/539 SC 2961

PAY TO THE ORDER OF Richley & Haller, LLC \$ 145,000.00

DATE 11-20-06

DIOCESE OF CHARLESTON 145,000.00 DOLLARS

Bank of America. 

FOR [Redacted] [Redacted] [Redacted] [Redacted]

John Z. Barber
Mrs. Martha Langfellow

MP

GUARDIAN • SAFETY

1104298211

A. PETER SHAHID, JR.
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August 30, 2007

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

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Attorney at Law
P.O. Box 1297
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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

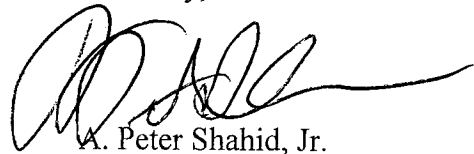
rights to the pending class action settlement by any of Mr. Meyer's clients be withdrawn, and waived with prejudice.. Mr. Meyers has certified he is unaware of any other potential or actual objectors, and does not represent any other person who has an objection to the January 12, 2007 Settlement Agreement 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.

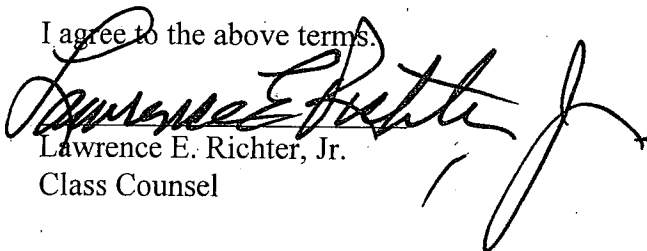
The \$1.375 million will be paid from the surplus funds, if any, after the claims process has been completed. In the event there are insufficient or no funds remaining from the \$12 million pool of funds, the Diocese is still obligated to pay the \$1.375 million as stated above. Payment is expected sometime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

RICHTER & HALLER, LLC
TRUST ACCOUNT
P.O. DRAWER 1089
MOUNT PLEASANT, SC 29465

FIRST CITIZENS BANK AND TRUST COMPANY
MOUNT PLEASANT, SC 29464

2087

67-148/532

NUMBER

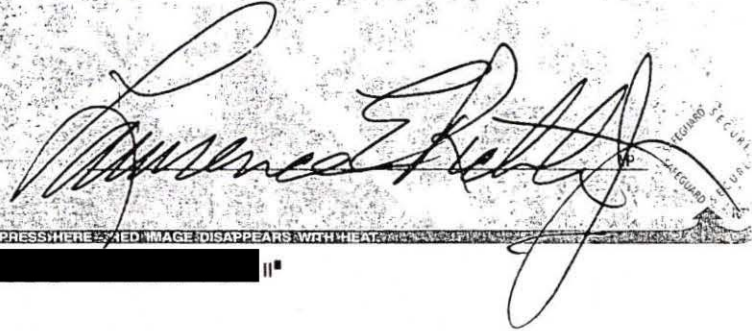
**** ONE HUNDRED THOUSAND & 0/100 DOLLARS

PAY
TO THE
ORDER OF

DATE
04/28/08

AMOUNT
\$ **100000.00

A. PETER SHAHID, JR., ESQUIRE
SHAHID LAW OFFICE, LLC
89 BROAD STREET
CHARLESTON, SC 29401



002087

RICHTER & HALLER, LLC - TRUST ACCOUNT
MOUNT PLEASANT, SC 29465

NUMBER

2087

Vendor ID:

Name: A. PETER SHAHID, JR., ESQUIRE
Check Date: 04/28/08
Check Amount: 100,000.00

MEMO:

RE: DIOCESE OF CHARLESTON CASE
03CIV037

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RE: DIOCESE OF CHARLESTON CASE
03CIV037

State of South Carolina

In The Original Jurisdiction Of The Supreme Court

Case No. 2020 _____

John Doe 305, Julie McDonald, and Richard McDonald,

Petitioners - Plaintiffs,

v.

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

Respondents - 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 Plaintiffs to support their Complaint against Defendants Lawrence E. Richter, Jr., David K. Haller, and Richter and Haller, LLC, (hereinafter "Class Counsel") 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 for the past seventeen years has focused 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, I served a three-year term as Chair of the former from 2007 to 2010 and a two-year term as chair of the latter

from 2018-2020, and I serve as Ethics Chair for the South Carolina Association for Justice;

- C. I have provided expert testimony on matters involving lawyer ethics and malpractice on more than 100 occasions either in court, in deposition, or by affidavit;
- D. I teach Professional Responsibility at the University of South Carolina School of Law and have taught 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; I am an instructor for the South Carolina Bar and Supreme Court's ongoing Legal Ethics and Practice Program; and I have authored five published articles, numerous adopted Ethics Advisory Opinions, and a book chapter on matters involving lawyer ethics and malpractice;
- E. I am a member of the South Carolina Association of Ethics Counsel, the Association of Professional Responsibility Lawyers, and the ABA Center for Professional Responsibility; and
- F. I am familiar with the standard of care applicable to lawyers in the circumstances involved in this matter.

3. My opinion is based on review of the following documents:

- A. Petition for Original Jurisdiction in the above-captioned case;
- B. Complaint in the above-captioned case;
- C. 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;
- D. 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;
- E. 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;
- F. 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;
- G. 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-18-1636 (collectively hereinafter "the Consolidated Class Actions");

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- H. 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;
- I. 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;
- J. 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;
- K. November 7, 2006, letter from A. Peter Shahid, Jr., to Lawrence E. Richter, Jr., regarding the Consolidated Class Actions;
- L. November 10, 2006, letter from Lawrence E. Richter, Jr., to Albert P. Shahid, Jr., regarding the Consolidated Class Actions;
- M. Settlement and Arbitration Agreement, dated January 12, 2007, and filed January 17, 2007 in the Consolidated Class Actions;
- N. Motion to Certify Classes and for Preliminary Approval of Class Settlement, dated January 15, 2007, and filed January 17, 2007, in the Consolidated Class Actions;
- O. Plaintiff's Petition for An Award of Attorneys Fees and Litigation Costs, dated February 14, 2007, and filed February 14, 2007, in the Consolidated Class Actions with exhibits, 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
 - v. Affidavit of Lionel S. Lofton in Support of Plaintiff's Petition for Attorneys Fees and Costs, with attached timesheets.

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- P. July 12, 2007, letter from Lawrence E. Richter, Jr., to The Honorable Diane S. Goodstein regarding the Consolidated Class Actions;
- Q. Transcript of July 13, 2007, hearing before The Honorable Diane S. Goodstein;
- R. Transcript of Record before The Honorable Diane S. Goodstein, dated August 9, 2007, in the Consolidated Class Actions;
- S. Order Approving Settlement, dated and filed July 30, 2007, in the Consolidated Class Actions;
- T. Order of the Court, dated and filed August 31, 2007, in the Consolidated Class Actions;
- U. February 19, 2008, letter from Lawrence E. Richter, Jr., to Richard McDonald regarding "John Doe 538 vs. The Diocese of Charleston, et al." and enclosing a Settlement Statement;
- V. Order of the Supreme Court of South Carolina, dated March 19, 2009, in John Doe v. Lawrence E. Richter, Jr., et al.;
- W. Order Denying in Part and Granting in Part Defendants' Motion to Dismiss, dated June 17, 2011, and filed June 27, 2011, in John Doe 2 and Jane Doe 4 vs. The Bishop of Charleston, et al., Case No. 10-CP-10-5520;
- X. Notice of Motion and Motion to Enforce Settlement, dated April 16, 2012, in the Consolidated Class Actions;
- Y. Transcript of Record before The Honorable Edgar W. Dickson, dated April 12, 2013, in the Consolidated Class Actions;
- Z. Order on Motion to Enforce Settlement, dated November 21, 2013, and filed on December 17, 2013, in the Consolidated Class Actions;
- AA. Transcript of Motions Hearing before The Honorable J.C. Nicholson, Jr., dated April 10, 2014, in Father Doe 194 vs. Bishop of Charleston, et al.;
- BB. Motion for Post-Award Fairness Hearing by Allen Sires, dated and filed on May 11, 2016, in 2006-CP-18-1310 and 2006-CP-18-1311;
- CC. Affidavit of Lawrence E. Richter, Jr., dated March 31, 2015, in John Doe 2 and Jane Doe 4, et al., vs. The Bishop of Charleston, et al., Case Nos. 2010-CP-10-5520, 2010-CP-10-7233, 2012-CP-10-5559, 2013-CP-10-3733, 2013-CP-10-4175, and 2013-CP-10-4176;

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DD. Order on Lawyer Defendants' Motion for Summary Judgment, dated August 8, 2017, and filed August 11, 2017, in John Doe 2 and Jane Doe 4, et al., vs. The Bishop of Charleston, et al., Case Nos. 2010-CP-10-5520, 2010-CP-10-7233, 2012-CP-10-5559, 2013-CP-10-3733, 2013-CP-10-4175, and 2013-CP-10-4176

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 Class Counsel engaged in negligent acts and omissions in their representation of Plaintiffs and that Class Counsel's conduct fell below the standard of care.

6. It appears from the above-referenced documents that Class Counsel represented classes of persons of which Plaintiffs were members in class action litigation beginning in 2005. The "primary class" included all individuals 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 included Plaintiff John Doe 305. The "consortium class" included spouses, parents, and guardians of individuals who met the primary class definition, a group that apparently included Plaintiffs Julie McDonald and Richard McDonald (hereinafter "the McDonald Plaintiffs"). Prior to class certification, Class Counsel had a duty to act in the best interest of the putative classes as a whole, which included Plaintiffs. It further appears that Class Counsel later undertook to individually represent Plaintiffs Julie McDonald and Richard McDonald as their counsel in pursuing their individual claims, thereby undertaking additional fiduciary duties of competence, diligence, loyalty, and communication.

7. It appears Class Counsel failed to protect the rights and interests of Plaintiffs in several ways, breaching duties owed to them. In particular, it appears that Class Counsel failed to

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inform the classes or Plaintiffs 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 classes were adverse to the Diocese. It is apparent from Richter's own affidavit (identified in paragraph 3.O.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 during the pendency of the cases in which he represented the classes that included Plaintiffs. This presented a conflict of interests, requiring Class Counsel to disclose the nature and extent of that relationship to the classes and to their individual clients, along with the risks of the representation and the reasonably available alternatives, and to obtain their consent to representing them under those circumstances. Class Counsel apparently did not do so.

8. It further appears that Class Counsel 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 class with no geographic boundaries and despite that Class Counsel undertook to represent several out-of-state clients as class participants, including the McDonald Plaintiffs. 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 proposed in the October 2006 motion. Thus Class Counsel appear to have taken affirmative steps to exclude from class notice nearly the entire country outside of South Carolina despite identifying and ultimately obtaining certification of a class defined without a geographical boundary, thereby excluding from notice those putative class members, like Plaintiffs, who lived elsewhere.

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9. Statements by Defendant Richter at the July 13, 2007, hearing indicated that any class members who did not receive notice (a group that included Plaintiffs) 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 were entitled to notice but did not receive it, such as Plaintiffs. In a 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 Plaintiffs, 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, Class Counsel failed to protect the interests of the broader group of putative class members outside the notice zone, of which Plaintiffs are members. Class Counsel did so either by not attempting to address their rights at the hearing or by addressing them at the hearing but making no effort to secure their rights in a final order, despite that they were within the putative classes as defined by Class Counsel in the pleadings and motions. Thus, as Class Counsel appears to have admitted in the April 12, 2013 hearing, they protected the interests of a few of the unnamed members of the putative classes but sacrificed the interests of others, including Plaintiffs, either by including them in the classes but failing to provide notice to them or by excluding them from the classes and thus from the substantial benefits provided to the

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classes through the Diocese's waiver of all defenses (such as charitable immunity and the Statute of Limitations).

10. It further appears that Class Counsel's conduct fell below the standard of care by failing to seek a post-claims fairness hearing or to provide any procedure in the settlement agreement for post-claim review, and further sacrificing the opportunity of clients and other class members to obtain a post-claim review. Class Counsel did so 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.

11. It further appears that Class Counsel engaged in an impermissible conflict of interests and breached their duty to the classes as a whole by settling the claims of the class representatives prior to, and regardless of, class certification and court approval of the class settlement, not subjecting the class representatives to the claim scrutiny and damages matrix that applied to all other class members such as Plaintiffs.

12. Finally, it appears that Class Counsel charged or attempted to charge the McDonald Plaintiffs and other class members a fee of 20% of their individual recoveries of class settlement funds without informing them that Class Counsel has already been paid a \$2,500,000.00 fee for their work and that the additional 20% fees were not approved by the court.

13. As a result, it is my opinion that Class Counsel's conduct as alleged in the above-captioned Complaint and shown in the above-listed documents 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 Plaintiffs.



14. 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.

Further affiant sayeth naught.


Michael J. Virzi

State of South Carolina
County of Richland

Sworn and subscribed before me
This 9th day of September, 2020


Notary Public

My Commission Expires : 10/18/2026