

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.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2022-CP-10-4031
John Doe 305, Julie McDonald, and	)	
Richard McDonald,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
Lawrence E. Richter, Jr.,	)	
David K. Haller,	)	
Richter and Haller, LLC, and	)	
The Bishop of Charleston a corporation	)	
Sole,	)	
	)	
Defendants.	)	
	)	

Motion to Alter or Amend

This motion relates to the court’s order of December 5, 2025. 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. 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 order 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.”)

2. Assuming the Court is later found to have properly retained jurisdiction, and in addition to the grounds stated in the Rule 59 motion filed November 17, which are incorporated into this motion.

3. The court's order does not address the contention made in the hearing that the state court had jurisdiction after remand because the federal court had jurisdiction before remand. Fed. R. Civ. P. 4(e)(1) permits service "following state law," which explicitly incorporates the voluntary appearance standard of SCRCP 4(d). E.g., *Maybin v. Northside Corr. Ctr.*, 891 F.2d 72, 74 (4th Cir. 1989) (the federal rules incorporate the voluntary appearance in SCRCP 4(d)).

4. In recounting the public filings made by class counsel in the federal court, the order omits many of the filings, including filings which sought a ruling on the merits, a filing which demanded remand to the state court, a filing which contended that the complaint failed to state a claim, and a filing that *res judicata* required dismissal on the merits. Each of those alone constitutes a voluntary appearance. A complete copy of each of the public federal filings by class counsel is attached. The entire list is:

- a. ECF 7 – joint motion to remand, with ECF 7-1, memorandum in support, filed 9-16-2022. The pleading asks that the case be remanded to the Court of Common Pleas for Charleston County.
- b. ECF 8 – joint motion to stay deadlines "until the Lawyer Defendants' motion to remand this matter to state court is decided," filed 9-21-2022.
- c. ECF 15 – Consent Motion for Substitution of Counsel as to David K. Haller, filed 10-4-2022.
- d. ECF 16 – Reply of Lawyer Defendants to Responses of Plaintiffs and the Bishop of Charleston to Motion to Remand, the conclusion of which states,

“This case belongs in state court with the others challenging the decisions of the state court class action judge,” and requests the case be remanded “back to the Court of Common Pleas for Charleston County.” Also attached was ECF 16-1, a 2009 order from the state court class action judge.

- e. ECF 21 – Motion to Dismiss “for failure to state facts sufficient to constitute a cause of action against the Lawyer Defendants” pursuant to Fed. R. Civ. P. 12(b)(6), invoking relief on the merits from the federal court. The motion attached ECF 21-1, a 2017 order from state court proceedings; ECF 21-2, the Petition in the Original Jurisdiction of the Supreme Court made by these plaintiffs, which the Lawyer Defendants had opposed before the case was re-filed in the Charleston County Court of Common Pleas; and ECF 21-3, the 2021 order by which the South Carolina Supreme declined to hear the court in its original jurisdiction and assigned a state judge to preside over the action in the trial court.
- f. ECF 28 – a Reply of the Lawyer Defendants in Support of Their Motion to Dismiss, filed 11-08-22, with ECF 28-1 (the expert affidavit of Michael Virzi), in which the Lawyer Defendants contended that the state complaint which had been removed to federal court should be dismissed for failure to state a claim and for *res judicata*. And
- g. ECF 31 – a Consent Motion for Substitution of Counsel as to David K. Haller, filed 11-23-2022.

The order omits any reference to most of those filings. The substance of all seven of those filings must be considered in the “case by case” assessment of whether class counsel made a voluntary

appearance in the federal court. *Stearns Bank Nat. Ass'n v. Glenwood Falls, LP*, 373 S.C. 331, 340, 644 S.E.2d 793, 797–98 (Ct. App. 2007) (finding a letter to counsel constituted a voluntary appearance), and cases cited therein.

Particularly, the court should assess why *Connell v. Connell*, 249 S.C. 162, 167, 153 S.E.2d 396, 399 (1967) does not control, as *Connell* held that raising the defense of *res judicata* constituted a voluntary appearance—the same argument made by class counsel in ECF 28. Similarly, the Court order should consider why *Smalls v. Weed*, 291 S.C. 258, 353 S.E.2d 154 (Ct.App.1987), does not control, as in that case the South Carolina Court of Appeals held that a defendant had made a voluntary appearance by joining with his jurisdictional objection two claims which went to the merits, just as was done by the lawyer defendants in federal court, then again on remand in the state court.

5. The order does not address class counsel having fully participated in the state proceedings which occurred before the state court filing the Diocese removed to federal court, meaning class counsel's participation in opposing the petition in the original jurisdiction of the South Carolina Supreme Court, where they argued the merits of the proceeding.

6. The court's order should explicitly accept 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 John Doe 305. As a result, the court's order inherently conflicts with (a) the court's Form 4 order in the companion cases (which adopted Judge Nicholson's 2017 rationale of no duty as a matter of law to out of state class members, based on one part of the 2006 class complaints (not the classes as proposed or approved), (b) that the complaints in these actions allege duties voluntary assumed as well as those imposed by law, unlike the plaintiffs' complaints ruled upon by Judge Nicholson, and (c)

that the McDonalds are alleged to have been actual class members, hence actual clients of class counsel, and (d) most significantly, that the law of the case in the class action now includes that the approved class settlement included in each class persons who resided out of state.¹

7. As to John Doe 305, the court should explicitly accept the allegations of duties owed to John Doe 305 and rule on the various breaches of duty set out in Mr. Virzi's affidavit, 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,

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

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

- e. Class counsel having resolved the claims for class representatives independent of, and before, the process that applied to class members, and
- f. Class counsel concealing from the court the payments made by the Diocese to class counsel, submitting plainly fraudulent time records in both hours of time declared (many days exceeding 24 hours) as well as submitting time for which class counsel had already been paid by the Diocese.

8. The McDonalds share with John Doe 305 these issues from the paragraph above: (as to conflicts, as to no post-award review and as to fee payments to class counsel disclosed to neither clients nor the court). Independent of those issues, the court should also rule as to the McDonalds on the following issues:

- a. Class counsel's breach of duty to the McDonalds in charging the McDonalds a 20% fee, and costs, when (1) no order of the class action authorized such charges, and (2) class counsel had no contingency fee agreement with either of the McDonalds,
- b. Class counsel's breach of duty in failing to disclose to the McDonalds the fee already awarded to class counsel by the class action court,

The court confined its ruling to the service issue, so did not rule on the merits of the 12(b)(6) issues. To reach those 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. The court should determine if class counsel owed any duties to John Doe 305 in light of the law of the case in the class action that he was within the class pertinent to him.

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 (at least six) ways detailed in the complaint;
- that in the mediation to reach the 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 SCRCF 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 and the Diocese did not disclose to the class action court certain payments made by the Diocese to class counsel;
- 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;
- That the colluding parties to the class action ignored the 2016 motion filed by one of the class representatives, which sought review of alleged misconduct by class counsel.

The court should address how these facts bear on:

- the request for declaratory relief in the first cause of action as to how class actions are conducted;
- the second cause of action, as to the constructive trust issues imposed as a matter of law on class counsel and the class representatives; as well as the fiduciary obligations owed to class members by class counsel and class representatives as described in ¶¶ 87 to 92 of the complaint; and
- The fourth cause of action, for civil conspiracy, accounting and disgorgement.³

³ As noted above, causes of action as to the Diocese are not addressed as they are held in abeyance by order of the Supreme Court.

The court implicitly denied, without ruling, the plaintiff's motion to submit additional interrogatories, filed December 7, 2023. As noted in the November 17 filing, defense counsel represented at the hearing that the interrogatories had never been served. However, defense counsel's representation is false, no doubt unintentionally. As reflected by the court's own file, the 57 interrogatories were served on defense counsel as attachments to the motion to approve them, filed December 7, 2023 (having been previously served on defense counsel, as the motion itself reflects). The court should address this motion explicitly.

Finally, the court should address the defense contention that Mr. Virzi's affidavit, which is attached to the complaint, should not be recognized in any way because it bears the caption of the same case when it was submitted to the Supreme Court in the petition for original jurisdiction. Which contention should be rejected.

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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Attorney for the Plaintiffs

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

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

Plaintiffs,)

v.)

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

Defendants.)

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

**JOINT MOTION TO REMAND
OF LAWYER DEFENDANTS**

**TO: RICHARD S. DUKES, JR., ESQ., AND CARMELO B. SAMMATARO, ESQ.,
ATTORNEYS FOR THE BISHOP OF CHARLESTON**

YOU WILL PLEASE TAKE NOTICE that Defendants Lawrence E. Richter, Jr., David K. Haller, and Richter & Haller, LLC (collectively, "Lawyer Defendants") will jointly move this Court for an order remand this suit to the South Carolina Court of Common Pleas for Charleston County pursuant to 28 U.S.C. § 1447. Removal of this case violates the Forum Defendant Rule and the *Rooker-Feldman* Doctrine. This motion shall be supported by an attached memorandum of law, pursuant to Local Civ. Rules 7.04 and 7.05 (D.S.C.).

[signature page to follow]

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September 16, 2022

Columbia, South Carolina

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September 16, 2022

Charleston, South Carolina

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

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

Plaintiffs,)

v.)

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

Defendants.)

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

**MEMORANDUM IN SUPPORT OF
LAWYER DEFENDANTS' JOINT
MOTION TO REMAND**

Defendants Lawrence E. Richter, Jr. ("Richter"), David K. Haller ("Haller"), and Richter & Haller, LLC (collectively, "Lawyer Defendants") submit this memorandum in support of their joint motion to remand this case to the Charleston County Court of Common Pleas.

PROCEDURAL BACKGROUND

This case is one in a long series of lawsuits brought by clients of attorney Gregg Meyers against class action counsel who obtained a landmark settlement for victims of sexual abuse allegedly committed by persons under the ambit of the Bishop of Charleston ("Bishop" or "Diocese"). In the first eight such cases, the Lawyer Defendants were granted summary judgment, which the South Carolina Court of Appeals affirmed *per curiam*.¹ During that appeal, Mr. Meyers filed two more cases against class counsel. In one of those cases, brought in 2019 by Mr. Meyers on behalf of Jane Doe 304, counsel for the Bishop filed a notice of removal with this Court.² The bases for removal in that case were very similar to the one currently before this Court. On January

¹ See *John Doe 2, et al. v. The Bishop of Charleston, a Corporation Sole, et al.*, Case No. 2017-001996 (unpublished opinion filed March 3, 2021 S.C. Ct. App.).

² See *Jane Doe 304 v. Lawrence E. Richter, Jr., et al.*, Case No. 2:19-cv-3409-RMG, ECF No. 1 (filed December 6, 2019 D.S.C.) (hereinafter, "Doe 304").

6, 2020, the Lawyer Defendants filed a joint motion for remand in the Doe 304 case. (Doe 304, ECF No. 5.) The Diocese consented to the remand, and the Court entered a text order granting remand on February 20, 2020. (Doe 304, ECF Nos. 10 & 11.) The Doe 304 case is now proceeding through the Court of Common Pleas for Charleston County, along with yet another, similar malpractice suit brought by attorney Meyers on behalf of Plaintiff Robert Chimento. Both cases have pending motions to dismiss filed by the Lawyer Defendants. Those two remaining malpractice cases have been assigned by the South Carolina Supreme Court to The Honorable J. Derham Cole for adjudication.

The instant case was initially filed in the Court of Common Pleas for Charleston County, like the other two pending there now, after the Plaintiffs' prior attempts to obtain relief were unsuccessful. Plaintiffs first filed a petition for original jurisdiction in the South Carolina Supreme Court. The Supreme Court denied that petition.³ On August 29, 2022, two of the instant Plaintiffs, Julie McDonald and Richard McDonald, filed a purported motion to intervene in the closed underlying class action from 2006.⁴ The next day, on August 30, 2022, Plaintiffs filed this suit in the Court of Common Pleas for Charleston County. All of the claims asserted in this case are governed by state law and do not implicate any federal questions. (See ECF No. 1-1, pp. 29–34 (asserting declaratory judgment; professional negligence and breach of fiduciary duty; aiding and abetting breach of fiduciary duty; civil conspiracy, conversion, accounting, and disgorgement; and breach of contract).) Two days after this action was filed, on September 1, 2022, the Bishop filed a notice of removal. (ECF No. 1.) At the time the notice was filed, none of the four defendants

³ See *John Doe 305, Julie McDonald, and Richard McDonald v. The Bishop of Charleston, a Corporation Solo, et al.*, Case No. 2020-001415 (order filed April 19, 2021 S.C. Sup. Ct.).

⁴ See *John Doe 53, et al. v. The Bishop of Charleston a corporation Sole, et al.*, Case No. 2006-CP-18-01310 (purported motion filed Aug. 29, 2022 S.C. Ct. of Common Pleas).

had been served. All of the defendants in this case are citizens of South Carolina. (*See* ECF No. 1-1, ¶¶ 11, 17–19.) Despite this total lack of diversity among the defendants, the notice of removal asserts diversity jurisdiction. (ECF No. 1, ¶ 5.) The Bishop asserts that because no defendants have been served, there is diversity. This assertion defies common sense and is contrary to the law.

STANDARD OF REVIEW

The process for removal of a suit from state to federal court on the basis of diversity jurisdiction is described in 28 U.S.C. § 1446. Diversity jurisdiction is generally conferred by 28 U.S.C. § 1332, which provides for original jurisdiction of the District Court where an action is between “citizens of different States.” *See* 28 U.S.C. § 1332(a)(1). A civil action may not be removed under Section 1332 jurisdiction “if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.” 28 U.S.C. § 1441(b)(2). A party may file a motion to remand the case back to state court for a defect in the removal pursuant to 28 U.S.C. § 1447(c).

“The burden of establishing federal jurisdiction is placed upon the party seeking removal.” *Mulcahey v. Columbia Organic Chemicals Co.*, 29 F.3d 148, 151 (4th Cir. 1994) (citing *Wilson v. Republic Iron & Steel Co.*, 257 U.S. 92, 97, 42 S.Ct. 35, 37 (1921)). The Fourth Circuit has found that Congress expressed a “clear intention to restrict removal and to resolve all doubts about the propriety of removal in favor of retained state court jurisdiction.” *Marshall v. Manville Sales Corp.*, 6 F.3d 229, 232 (4th Cir. 1993). Federal courts are obliged to construe removal jurisdiction strictly and remand to state court if there is any doubt because of the significant federalism concerns implicated. *See Dixon v. Coburg Dairy, Inc.*, 369 F.3d 811, 816 (4th Cir. 2004) (quoting *Mulcahey*, at 151). Here, the burden of proof is on the Bishop of Charleston as the removing party

and any doubt as to the efficacy of the removal of a case on a diversity basis where all parties are from South Carolina must be construed in favor of remand.

ARGUMENT

In this case, the Bishop of Charleston is seeking to remove a state court case pleaded against only in-state defendants and containing only state law claims about an underlying state court case. Such a removal belies the law and common sense. In the first instance, the Bishop must show that there would be original diversity jurisdiction in this Court had the case been filed here. However, where all parties are citizens of this state, there cannot be diversity jurisdiction.

1. The Forum Defendant Rule prevents removal on diversity jurisdiction grounds.

Diversity jurisdiction arises from Section 1332 of Title 28, which allows for federal courts to hear cases between citizens of different States. *See* 28 U.S.C. § 1332(a)(1). This statutory section bears in mind that federal court obtain authority for their diversity jurisdiction from the United States Constitution, Article III, § 2. Courts construing Section 1332(a)(1) jurisdiction must, therefore, bear in mind the constitutional implications of the diversity requirement, along with the corollary policy that seeks to provide diverse citizens with an impartial federal forum. *See AmGuard Ins. Co. v. SG Patel & Sons II LLC*, 999 F.3d 238, 246 (4th Cir. 2021). The goals of diversity jurisdiction have led Congress to codify limitations on the exercise of jurisdiction at the behest of defendants through removal. Because of these limitations, defendants generally cannot remove a case where any of the defendant is a citizen of the State in which the action is brought. *See* 28 U.S.C. ¶ 1441(b)(2). This provision is known as the Forum Defendant Rule.

“‘[T]he forum defendant rule disallows federal removal premised on diversity in cases where the primary rationale for diversity jurisdiction—to protect defendants against presumed bias of local courts—is not a concern because at least one defendant is a citizen of the forum state.’”

See Finch v. U.S. Fid. & Guar. Co., Case No. 3:19-cv-01827, 2020 WL 2988944, at *2 (D.S.C. June 4, 2020) (Hendricks, J.) (quoting *Morris v. Nuzzo*, 718 F.3d 660, 665 (7th Cir. 2013)). The Rule provides that, a “civil action otherwise removable solely on the basis of the 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 such action is brought.” 28 U.S.C. § 1441(b)(2). “Separate and apart from the statute conferring diversity jurisdiction, . . . the forum-defendant rule confines removal based on diversity jurisdiction to instances where no defendant is a citizen of the forum state.” *Turtle Factory Bldg. Corp. v. McGrath Real Est. Holdings, LLC*, Case No. 2:20-cv-03099-RMG, 2021 WL 688697, at *2 (D.S.C. Jan. 28, 2021) (Gergel, J.) (citing *Phillips Constr. LLC v. Daniels Law Firm, PLLC*, 93 F. Supp. 3d 544, 548 (S.D. W. Va. 2015)).

In order for the Bishop’s “removal to not offend the forum defendant rule, it must demonstrate that no Defendant is a resident of South Carolina.” *See Finch* at *3 (citing 28 U.S.C. § 1441(b)(2)). There is no contention in this case that any defendant is a citizen of another state. In the *Finch* case, cited *supra*, only one in-state Defendant was sufficient to defeat diversity jurisdiction when the Forum Defendant Rule was applied. In this case, the Diocese’ location is inherent in its name, and the lawyer defendants all live and practice in South Carolina. There is no defendant who is not a citizen of this state. By definition, this case runs afoul of the Forum Defendant Rule at every turn. If every South Carolinian defendant were dismissed, there would be no defendants. Therefore, this case should be remanded to state court.

2. “Snap removal” is an improper attempt to shoehorn this case into federal court.

In this case, the Bishop is attempting a phenomenon known as “snap removal,” much as was attempted in the Jane Doe 304 case. That is, the Bishop filed the notice of removal prior to receiving service of process for purposes of avoiding normal procedural requirements. However,

a procedural ploy to avoid consideration of one or more in-state defendants cannot be of any utility where there is not a single diverse defendant in the whole case upon which to hang diversity jurisdiction. This conclusion is supported by case law, public policy, legislative intent, and common sense.

It is undisputed that none of the lawyer defendants in this case had been served when the Diocese removed this case two days after it was filed. In the notice of removal, the Diocese asserts that the Forum Defendant Rule “does not apply because no defendant has been served with the Complaint in this action.” (ECF No. 1, ¶ 8.) This argument is based upon an interpretation of the language of the Forum Defendant Rule, which provides, “A civil action otherwise removable solely on the basis of the 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 such action is brought.” 28 U.S.C. § 1441(b)(2). That is, it is the Bishop’s contention that because no parties had been served, the “properly joined and served” portion of the sentence prevents the Forum Defendant Rule from applying.

Although some federal courts have found that even though there is an odd result, the literal text of the phrase in the statute supports allowing snap removal,⁵ other courts have more logically determined that snap removal is an inherently absurd phenomenon. That is, the “joined and served” language—introduced to prevent diversity-busting fraudulent joinder by a plaintiff—

⁵ The Diocese has cited some out-of-circuit authority supporting the allowance of snap removal techniques. (See ECF No. 1, ¶ 8.) It must be noted that none of the authority cited by the Bishop appears to address a situation where all of the defendants are in-state. See, e.g., *Blankenship v. Napolitano*, Case No. 2:19-cv-00236, 2019 WL 3226909, at *1 (S.D.W. Va. July 17, 2019) (“plaintiff filed a motion to remand, not disputing that the parties are totally diverse nor that the requisite amount in controversy is exceeded, but rather contending that removal is improper under the forum defendant rule”); *Teamsters Loc. 677 Health Servs. & Ins. Plan v. Friedman*, Case No. cv CCB-18-3868, 2019 WL 5423727, at *1 (D. Md. Oct. 23, 2019) (listing a number of other diverse defendants).

should not be interpreted to provide the absurd result of letting home-state defendants remove to federal court where they otherwise would have no basis for removal. *See Turtle Factory*, at *2; *In re Lipitor (Atorvastatin Calcium) Mktg., Sales Pracs. & Prod. Liab. Litig.*, Case No. 2:14-mn-02502-RMG, 2016 WL 7338594, at *2 (D.S.C. Nov. 21, 2016) (both providing Judge Gergel’s survey of authority on this issue).

While the Fourth Circuit Court of Appeals has yet to expressly rule on snap removal, several District Courts in the Fourth Circuit have addressed it. Courts in Maryland and South Carolina have ruled that snap removal results from an absurd interpretation of the Forum Defendant Rule. *See e.g., Turtle Factory, supra; In re Lipitor, supra; Kirst on Behalf of Nominal Defendant Novavax, Inc. v. Erck*, Case No. CV TDC-22-0024, 2022 WL 2869742 (D. Md. July 21, 2022); *Teamsters Loc. 677 Health Servs. & Ins. Plan v. Friedman*, No. CV CCB-18-3868, 2019 WL 5423727 (D. Md. Oct. 23, 2019). On the other hand, some courts have allowed snap removal, including one in West Virginia. *See, e.g., Spigner v. Apple Hosp. REIT, Inc.*, Case No. 3:21CV758 (DJN), 2022 WL 1451397 (E.D. Va. Mar. 1, 2022); *Blankenship v. Napolitano*, Case No. 2:19-cv-00236, 2019 WL 3226909 (S.D.W. Va. July 17, 2019) (Copenhaver, J.).

Interestingly, although one judge in West Virginia has allowed snap removal where there was diversity among the parties, *see Blankenship, supra*, two other West Virginia district judges have rejected snap removal where—as here—there is a complete lack of diversity among the defendants. *See Active Res., Inc. v. Hagewood*, Case No. 2:22-cv-00172, 2022 WL 2346398, at *3 (S.D.W. Va. June 29, 2022) (Berger, J.) (snap removal “is clearly an absurdity where the only defendants are forum defendants”); *Phillips Constr., LLC v. Daniels L. Firm, PLLC*, 93 F. Supp. 3d 544, 556 (S.D.W. Va. 2015) (Johnston, J.) (“in cases involving only resident defendants, the forum-defendant rule bars resident defendants from removing an action pursuant to diversity

jurisdiction before effectuation of service”). The public policy and legislative history considered by the district courts illustrate the absurdity that results from allowing defendants like the Diocese to effectuate snap removal.

“One of the principal purposes of diversity jurisdiction was to give a citizen of one state access to an unbiased court to protect him from parochialism if he was forced into litigation in another state in which he was a stranger and of which his opponent was a citizen.” *Teamsters* at *2 (quoting *Ziady v. Curley*, 396 F.2d 873, 875 (4th Cir. 1968)) (internal punctuation omitted). There is some irony to be found in the local Catholic Diocese seeking to avoid parochialism, but that nonetheless appears to be the goal with its notice of removal. The original statutory allowance for removal based upon diversity jurisdiction was enacted in 1789. Judiciary Act of 1789 § 12, 1 Stat. 73, 79. It very clearly described a suit brought “against a citizen of another state.”

Sec. 12. *And be it further enacted*, That if a suit be commenced in any state court against an alien, or by a citizen of the state in which the suit is brought against a citizen of another state, and the matter in dispute exceeds the aforesaid sum or value of five hundred dollars . . . the defendant shall, at the time of entering his appearance in such state court, file a petition for the removal of the cause for trial into the next circuit court, to be held in the district where the suit is pending

Judiciary Act of 1789 § 12, 1 Stat. 73, 79. As of 1911, the law provided that “when in any suit mentioned in this section there shall be a controversy which is wholly between citizens of different States, and which can be fully determined as between them, then either one or more of the defendants actually interested in such controversy may remove said suit into the district court of the United States” Judiciary Act of 1911 § 28, 36 Stat. 1087, 1094. This language allowed a savvy plaintiff to attempt to destroy the required full diversity by naming a resident defendant to destroy diversity.

This tactic led to the question of whether a resident defendant, not yet served, could prevent removal by a non-resident defendant. The United States Supreme Court confronted this scenario

in 1939 and construed the language of the 1911 Act. *See Pullman Co. v. Jenkins*, 305 U.S. 534, 538, 59 S. Ct. 347, 349 (1939) (quoting 28 U.S.C. § 71) (“The question then is whether the original complaint set forth a separable controversy between the plaintiffs and the Pullman Company, that is, a controversy ‘which is wholly between citizens of different States, and which can be fully determined as between them.’”). In the *Pullman* case, the Court was considering whether a removal by the non-resident defendant was justified when it occurred before a named resident defendant had been served.

In considering the issue of service of process as related to removal, the Court first applied joinder rules to determine whether the claims were separable, such that the District Court could retain jurisdiction. The Court determined that in cases where the claims against the resident defendants are non-separable, the fact that service of process upon the resident defendants had not yet occurred did not justify removal by the non-resident defendants. *Id.*, at 541, 59 S. Ct. at 350 (citing *Patchin v. Hunter*, C.C., 38 F. 51, 53; *Armstrong v. Kansas City Southern R. Co.*, 8 Cir., 192 F. 608, 615; *Hunt v. Pearce*, D.C., 271 F. page 502; *Del Fungo Giera v. Rockland Light & Power Co.*, D.C., 46 F.2d 552, 554; and *Hane v. Mid-Continent Corporation*, D.C., 47 F.2d 244, 246, 247). Specifically, the Supreme Court stated that “the non-resident defendant should not be permitted to seize an opportunity to remove the cause before service upon the resident co-defendant is effected.” *Id.*

The Court made this ruling despite the possibility that any given defendant “might never be served.” *See id.* at 540, 59 S. Ct. at 350. The ruling created a potential loophole for plaintiffs seeking to avoid diversity—naming a resident defendant but not bothering to serve them or prosecute the case against them. This allowed plaintiffs to keep out-of-state defendants in state court—so long as a case for fraudulent joinder could not be made. In an apparent effort to foreclose

this gamesmanship tactic by plaintiffs, Congress amended the statute to add the words “properly joined and served” in 1948. After this amendment the Forum Defendant Rule began to appear very much as it does today, “Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.” Judiciary Act of 1948 § 1441(b), 62 Stat. 869, 938.

In a detailed review of the history of the removal statute, Section 1441, a district court in Georgia ascertained the following points.

[T]he legislative history does reveal three crucial points. First, from the inception of the removal statute, a forum defendant has never been allowed to remove a diversity action. Secondly, there is no indication that Congress intended to change this long-standing rule with the addition of the “joined and served” language in 1948. Lastly, there is no suggestion anywhere in the legislative history that Congress intended service upon a forum defendant to affect a forum defendant’s ability to remove an action.

Hawkins v. Cottrell, Inc., 785 F. Supp. 2d 1361, 1377 (N.D. Ga. 2011). The question presented by the addition of the “joined and served” language ends a gamesmanship tactic for plaintiffs only to provide a new gamesmanship tactic for defendants. To demonstrate the tactics at play, an article in “DRI For the Defense” states under the heading “Tips and Tricks for a Successful Snap Removal” that, “snap removals also are available for forum defendants just as much as non-forum defendants.” 63 NO. 6 DRI For Def. 54, 58. No one giving any credence to the context of the Forum Defendant Rule could reasonably reach that conclusion.

When considering this issue, Judge Richard Gergel quoted an Ohio district court order for the principle that snap removal ““tactics employed by defendants such as in the instant case turn Congressional intent on its head by allowing defendants to employ gamesmanship, specifically by rushing to remove a newly filed state court case before the plaintiff can perfect service on

anyone.”” *In re Lipitor* at *2 (quoting *Ethington v. Gen. Elec. Co.*, 575 F. Supp. 2d 855, 862 (N.D. Ohio 2008)).

Similarly Judge Berger in the Southern District of West Virginia outlined the absurdity that comes from focusing too closely on only the word “served” while ignoring its context.

Although the plain, unambiguous language of the forum defendant rule requires “properly joined and served defendants” its strict application to a scenario where the only potential defendants are residents of the forum state, but not “properly joined and served”, would create an untenable, illogical, and absurd result. In other words, ‘properly joined and served’ defendants, who are residents of the forum state, are precluded from invoking federal jurisdiction under the rule. A strict reading of the rule would, however, imply that forum defendants, who are not “properly joined and served” could defeat the application of the rule and invoke the court’s jurisdiction. This is clearly an absurdity where the only defendants are forum defendants.

Active Res. at *3. In reaching a similar conclusion, the Eleventh Circuit rejected the removing defendant’s arguments, stating that “Defendants’ purported right to be in federal court was based on a technicality; it was not at the core of what the removal statute protects.” *Goodwin v. Reynolds*, 757 F.3d 1216, 1222 (11th Cir. 2014). The Eleventh Circuit would not allow language that was introduced to stop procedural tricks of plaintiffs be used to establish procedural tricks of defendants. *Id.* at 1221.

When Judge Gergel again confronted this issue in 2021, he considered and found persuasive the reasoning that has been applied to disavow snap removal, ultimately returning to the guiding principle that any doubt should be resolved in favor of remand. He wrote, “Removal statutes are to be strictly construed and the removing party bears the burden of establishing the right to removal. Courts are clearly split as to this issue and the propriety of removal in this case is doubtful. As such, the Court weighs in favor of remanding to state court.” *Turtle Factory* at *3. While the Lawyer Defendants contend snap removal is improper here because all defendants

are residents of the forum state, the simple fact that courts disagree on this issue lends itself to remand. For these reasons, this case should be remanded.

3. The *Rooker-Feldman* Doctrine prevents review of the underlying state cases.

The series of lawsuits of which this case is part all seek to review and relitigate an underlying class action suit in the Court of Common Pleas for Dorchester County that was filed in 2006. (*See, e.g.*, ECF No. 1-1, ¶ 4, 6–10, 34, 36, 42, 46, 50, 53, and 59.) While the Lawyer Defendants, and indeed the Charleston County Court of Common Pleas, South Carolina Court of Appeals, and South Carolina Supreme Court, have all at some point considered and rejected the allegations made by Plaintiffs’ counsel, those allegations nonetheless illustrate that the goal of this suit is to collaterally attack the underlying class action suit. Plaintiffs accuse The Honorable Diane Schafer Goodstein of being “shopped-for” because she allegedly allowed collusion between class counsel and the Diocese counsel. (*See, e.g.*, ECF No. 1-1, ¶ 57.) These allegations are specious, but they are matters the South Carolina Supreme Court, and the courts under its purview, should address because they are all aimed at overturning or attacking the underlying class action settlement—all of which Judge Goodstein properly and capably oversaw fifteen years ago. With the Plaintiffs’ agenda in mind, the *Rooker-Feldman* doctrine acts to preclude review by the District Court of the underlying matters in this suit.

“The *Rooker-Feldman* doctrine provides that ‘a United States District Court has no authority to review final judgments of a state court in judicial proceedings.’” *Brown & Root, Inc. v. Breckenridge*, 211 F.3d 194, 198 (4th Cir. 2000) (citing *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923)). “*Rooker-Feldman* bars not only direct review of issues actually decided by the state court, but also consideration of those claims which

are ‘inextricably intertwined’ with state court decisions.” *Id.* (citing *Feldman* at 486–87; *Plyler v. Moore*, 129 F.2d 728, 731 (4th Cir. 1997)).

The doctrine recognizes that the United States Supreme Court is the only federal court with the ability to review state court decisions and that the original jurisdiction of the district courts does not include the review of state court cases. *See id.* at 198–99 (multiple citations omitted). The doctrine has been recognized by the Fourth Circuit not merely as a preference, but as jurisdictional. *Smalley v. Shapiro & Burson, LLP*, 526 F. App’x 231, 235 (4th Cir. 2013) (multiple citations omitted). “‘The controlling question in the *Rooker–Feldman* analysis is whether a party seeks the federal district court to review a state court decision and pass upon the merits of that state court decision, not whether the state court judgment is presently subject to reversal or modification.’” *Id.* at 235–35 (quoting *Jordahl v. Democratic Party of Va.*, 122 F.3d 192, 202 (4th Cir.1997)).

The Supreme Court has described the doctrine as applying to “cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.” *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284, 125 S. Ct. 1517, 1521–22, 161 L. Ed. 2d 454 (2005). Those are the very circumstances this case presents. Plaintiffs consider themselves to have been parties to the underlying class action who were allegedly harmed by the settlement and administration of that case. They seek a declaration adjudging the acts of the underlying class action judge, adjudging her approval of the notice plan, adjudging her approval of the settlement generally, adjudging the fees approved to be paid to class counsel, and indeed, they seek disgorgement of the disbursements made at that judge’s direction. (*See* ECF No. 1-1, ¶¶ 144–150.) Moreover, to make the findings and conclusions sought by Plaintiffs, the Court would

have to consider and reject the holding of the South Carolina Court of Appeals in its order of March 3, 2021. *See John Doe 2, et al. v. The Bishop of Charleston, a Corporation Sole, et al.*, Case No. 2017-001996 at *2 (unpublished opinion filed March 3, 2021 S.C. Ct. App.) (“We find the circuit court did not err in granting summary judgment to Counsel on Victims’ claims for professional negligence and breach of fiduciary duty.”).

In one Fifth Circuit case, the court determined that a collateral constitutional attack on a class action and settlement—which would require attacking the state court’s findings—violated *Rooker-Feldman*. *See Richard v. Hoechst Celanese Chem. Grp., Inc.*, 355 F.3d 345, 352 (5th Cir. 2003) (“findings that allow for certification are ‘inextricably intertwined’ with [the] constitutional challenge to the state’s compliance with due process requirements” and a “federal court cannot examine the due process deficiencies . . . without disturbing the underlying judgment”). In a Seventh Circuit case, the Court was faced with former class action plaintiffs who sued class counsel, much the same as in this case. Even though the Seventh Circuit found the underlying events questionable, and even though the Court was urged by amici to carve out an exception to the doctrine, the Court steadfastly applied *Rooker-Feldman*.

Even were we to accept the argument, it does not change the fact that lower federal courts cannot review decisions of the state court. Here, the state court approved the settlement, including the fees. The Supreme Court of Alabama or the United States Supreme Court could reverse the decision were either so inclined. The federal district court, on the other hand, cannot review the Alabama decision.

Kamilewicz v. Bank of Bos. Corp., 92 F.3d 506, 512 (7th Cir. 1996).

The Eighth Circuit reached a similar conclusion. Timeshare owners sought to attack a condemnation case wherein the state court certified a class and decided the rights of the parties. The Eighth Circuit found no jurisdiction pursuant to the *Rooker-Feldman* doctrine, noting that even a finding that the underlying judgment was void or that certain plaintiffs were not part of the

class would, in and of themselves, require the federal court to review the state court's decision. *See Snider v. City of Excelsior Springs, Mo.*, 154 F.3d 809, 812 (8th Cir. 1998).

Perhaps more persuasive than those cases is the order of Judge Weston Houck in this district involving similarly situated parties. In 2015, Judge Houck dismissed similar claims by Plaintiffs' counsel against the Lawyer Defendants, the Diocese, and the Diocese' attorney in the class action on the basis of the *Rooker-Feldman* doctrine. *See Doe I v. Diocese of Charleston*, Case No. CV 2:09-0955-CWH, 2015 WL 13762980 (D.S.C. Sept. 30, 2015). Judge Houck wrote, "Turning to the present case, the Court has closely reviewed the plaintiffs' amended complaint to determine the source of the plaintiffs' injuries, and has determined that all of the plaintiffs' alleged injuries flow from the State Court Class Action." *Doe I* at *7. Judge Houck found that it was an inexorable conclusion that the plaintiffs' action was barred by *Rooker-Feldman* because the claims of the plaintiffs were inextricably intertwined with the state court's certification and would require the district court to find that decisions made by the state court were erroneous. *Id.* at *8–9.

In this case, Plaintiffs' counsel is the same, the claims are very similar, and the claims are made about the same underlying case against the same defendants, with the exception of the Bishop's then-attorney, Mr. Shahid. The very same class action is at issue and then as now the *Rooker-Feldman* doctrine precludes this Court's review of the state suit and plaintiffs' claims about a "tentacular conspiracy." Indeed, the Diocese took the position in the *Doe I* case that the District Court was constrained by the *Rooker-Feldman* Doctrine and arguably cannot now disavow that position and assert that the Court does have jurisdiction after all. *See id.* at *4 (citing Diocese Defs.' Mem, in Supp. of Mot. to Dismiss 25, ECF No. 57-1) ("All of the defendants argue that this action should be dismissed . . . because the *Rooker-Feldman* doctrine deprives this Court of subject matter jurisdiction."); *see also Lowery v. Stovall*, 92 F.3d 219, 223 (4th Cir. 1996) (multiple

citations omitted) (“Judicial estoppel precludes a party from adopting a position that is inconsistent with a stance taken in prior litigation. The purpose of the doctrine is to prevent a party from playing fast and loose with the courts, and to protect the essential integrity of the judicial process.”).

4. An award of attorney’s fees and costs is appropriate in this case.

The removal statute allows a remand order to “require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal.” 28 U.S.C. § 1447(c). Various factions have applied different standards of review to such an award, but the United States Supreme Court addressed the question in 2005 and determined that an abuse of discretion standard was most appropriate. *See Martin v. Franklin Cap. Corp.*, 546 U.S. 132, 139, 126 S. Ct. 704, 710 (2005). However, the most stringent standard suggested to the Court required that the attempted removal be “frivolous, unreasonable, or without foundation.” *Id.* at 138–39, 126 S. Ct. at 710 (considering and rejecting standard suggested by Solicitor General); *see also Beaufort Cnty. Sch. Dist. v. United Nat. Ins. Co.*, 519 F. Supp. 2d 609, 617–18 (D.S.C. 2007) (Judge Duffy awarding fees against a removing insurance company under a “objectively reasonable” standard per *Martin*).

The Lawyer Defendants would submit that this case meets even the most stringent standard. The Diocese attempted this same “snap removal” procedure in the Jane Doe 304 case and when confronted with a motion for remand, did not even oppose it. (Doe 304 ECF No. 11 (text order of Judge Lydon stating, “Neither Defendants Bishop of Charleston, a Corporation Sole and Robert E. Guglielmone, Bishop of Charleston, nor Plaintiff responded in opposition to the motion to remand.”)). The Diocese cannot now argue that the lack of opposition was after being persuaded of the Lawyer Defendants’ position in the Doe 304 case because the Bishop has now replicated the same removal technique in this case. The gamesmanship removal in this case was done despite strong case law pointing out the absolute absurdity of trying to abuse the Forum

Defendant Rule to put a case with all in-state defendants in the federal courts. Moreover, the Diocese has previously argued that this Court lacks subject-matter jurisdiction under the *Rooker-Feldman* Doctrine and the Diocese won that motion. There is no factor that makes this case different from *Doe I* for purposes of the Doctrine. This leads to the conclusion that the Diocese is abusing this Court's good graces by taking whichever position is convenient at the time.

In this case, as the Diocese is likely to point out, if they respond, that the Lawyer Defendants had not even been served in this case and, for that reason, they were forced to appear solely for purpose of obtaining remand of this suit to state court where it was and is supposed to be. Given these facts, an award of fees and costs is appropriate, and the Lawyer Defendants request that the Court grant the same and request leave to file and serve Affidavits and supporting records supporting such an award following the Court's decision.

CONCLUSION

This case is a purely state matter. It has purely in-state defendants who cannot invoke federal jurisdiction under federal statutes and case law. This case properly belongs in the Charleston County Court of Common Pleas, where it will join the ten other nearly identical suits filed by Plaintiffs' counsel against the Lawyer Defendants. The South Carolina Supreme Court has assigned The Honorable J. Derham Cole to preside over the malpractice claims against the Lawyer Defendants not already decided by the South Carolina Court of Appeals and not taken up by the South Carolina Supreme Court. The Diocese' attempt to remove this case is futile and unreasonable. The Diocese' position that this Court has jurisdiction when is has argued exactly the opposite in the past is equally unreasonable. For these, reasons, the Lawyer Defendants jointly request an order remanding this suit to state court and awarding fees and costs to them for the resources expended in entering this motion.

Respectfully submitted,

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s/ Chelsea J. Clark

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September 16, 2022
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September 16, 2022
Charleston, South Carolina

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

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

Plaintiffs,)

v.)

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

Defendants.)

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

**JOINT MOTION OF LAWYER
DEFENDANTS TO STAY ALL
DEADLINES**

Defendants Lawrence E. Richter, Jr. (“Richter”), David K. Haller (“Haller”), and Richter & Haller, LLC (collectively, “Lawyer Defendants”) move this Court for an order staying all deadlines, including responsive pleadings and discovery, until the Lawyer Defendants’ motion to remand this matter to state court is decided. This would prevent answers or motions to dismiss from being filed in both state and federal court in the event the case is remanded and would prevent further administration of discovery until the Court determines jurisdiction. This motion is made pursuant to Rule 6(b)(1), Fed. R. Civ. P. (allowing extension of deadlines); Rule 16(b)(1), Fed. R. Civ. P. (allowing local rules to create exception to scheduling order); Local Rule 12.01, D.S.C. (allowing motions for extensions of time to respond to a pleading); and Local Rule 16.00(C), D.S.C. (allowing the stay of deadlines and suspension of scheduling orders when there is a pending motion to remand). At this time no deadlines are pending other than the time for Defendants to answer or respond to the state court complaint. The Lawyer Defendants request that the Court extend that deadline until twenty-one (21) days after the Court rules on the motion to remand and enter a scheduling order thereafter. Counsel for the Lawyer Defendants consulted counsel for the Bishop and Plaintiffs regarding this motion but has not received consent.

Respectfully submitted,

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September 21, 2022
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

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

Plaintiffs,)

v.)

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

Defendants.)

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

**CONSENT MOTION FOR
SUBSTITUTION OF COUNSEL
AS TO DAVID K. HALLER**

Defendant David K. Haller (“Defendant”) moves for an order substituting his counsel. Defendant’s current counsel, Susan Taylor Wall of Gordon & Rees, LLP, is withdrawing and Defendant has engaged Benjamin C. Bruner and Chelsea J. Clark of Bruner, Powell, Wall & Mullins, LLC to substitute for Ms. Wall. Mr. Haller consents to the substitution and Mr. Bruner and Ms. Clark have entered an appearance in accordance with Local Rule 83.I.07(A) (D.S.C.)

Defendant Haller therefore requests that Susan Taylor Wall, Esquire, and her law firm, Gordon & Rees, LLP, be relieved as counsel of record for Defendant David K. Haller and that Benjamin C. Bruner., Esquire, and Chelsea J. Clark, Esquire, and their law firm, Bruner, Powell, Wall & Mullins, LLC, be substituted as counsel of record for Defendant. All future pleadings and notices should be directed to and served upon Benjamin C. Bruner, and Chelsea J. Clark as counsel of record for Defendant. Mr. Bruner and Ms. Clark will remain counsel of record for Defendants Lawrence E. Richter, Jr. and Richter & Haller, LLC. A proposed order will be filed concurrently herewith.

[Signature Page to Follow]

WE JOINTLY MOVE AND CONSENT.

s/ Chelsea J. Clark

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October 4, 2022

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October 4, 2022

Charleston, South Carolina

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

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

Plaintiffs,)

v.)

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

Defendants.)

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

**CONSENT ORDER FOR
SUBSTITUTION OF COUNSEL
AS TO DAVID K. HALLER**

THIS MATTER comes before the Court upon the motion of Defendant David K. Haller (“Defendant”) to substitute his counsel. Defendant’s current counsel, Susan Taylor Wall of Gordon & Rees, LLP, is withdrawing and Defendant has engaged Benjamin C. Bruner and Chelsea J. Clark of Bruner, Powell, Wall & Mullins, LLC to substitute for Ms. Wall. Upon substitution, Attorney Bruner and Attorney Clark will represent Defendants Lawrence E. Richter, Jr., Richter & Haller, LLC, and David K. Haller.

IT IS THEREFORE ORDERED that Susan Taylor Wall, Esquire, and her law firm, Gordon & Rees, LLP, be relieved as counsel of record for Defendant David K. Haller and that Benjamin C. Bruner, Esquire, and Chelsea J. Clark, Esquire, and their law firm, Bruner, Powell, Wall & Mullins, LLC, be substituted as counsel of record for Defendant. All future pleadings and notices should be directed to and served upon Benjamin C. Bruner, and Chelsea J. Clark as counsel of record for Defendant.

[Signature Page to Follow]

WE JOINTLY MOVE AND CONSENT TO THIS ORDER.s/ Chelsea J. Clark

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October 4, 2022

Charleston, South Carolina

IT IS SO ORDERED./s/

United States District Judge

October ____, 2022

Charleston, South Carolina

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

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

Plaintiffs,)

v.)

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

Defendants.)

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

**REPLY OF LAWYER DEFENDANTS
TO RESPONSES OF PLAINTIFFS AND
THE BISHOP OF CHARLESTON TO
MOTION TO REMAND**

Defendants Lawrence E. Richter, Jr. (“Richter”), David K. Haller (“Haller”), and Richter & Haller, LLC (collectively, “Lawyer Defendants”) submit this reply memorandum in support of their joint motion to remand this case to the Charleston County Court of Common Pleas.

REPLY ARGUMENT

In response to the Lawyer Defendant’s motion to remand, Plaintiffs have averred some contextual facts. Namely, Plaintiffs acknowledge that The Bishop of Charleston (“Bishop” or “Diocese”) removed this case to federal court before Plaintiffs even had a file-stamped copy of their complaint. (*See* ECF No. 13, p. 1.) Additionally, Plaintiffs aver that there is diversity in this case. (*Id.*) The diversity exists because Plaintiffs are foreign while all the defendants are domestic. That is, every single defendant in this case is a Forum Defendant. To allow removal in this case is to turn the Forum Defendant Rule upon its head.

1. The Diocese’s interpretation of the Forum Defendant Rule embraces textual literalism at the expense of context, history, and common sense.

The Diocese urges a reading of 28 USC § 1441(b)(2) that is hyper-literalistic. That is, the Diocese urges a reading of the Forum Defendant Rule that focuses on the literal meaning of “joined

and served” to the exclusion of the rest of the sentence, the rest of the statute, the legislative history, the constitutional and jurisdictional history, and the general statutory framework of removal. The rules of statutory construction never compel courts to isolate provisions and construe them out of context to the detriment of logic and common sense.

Writing for the Court in 2015, Chief Justice John Roberts opined about the true meaning of the plain language framework.

If the statutory language is plain, we must enforce it according to its terms. But oftentimes the meaning—or ambiguity—of certain words or phrases may only become evident when placed in context. So when deciding whether the language is plain, we must read the words in their context and with a view to their place in the overall statutory scheme. **Our duty, after all, is to construe statutes, not isolated provisions.**

King v. Burwell, 576 U.S. 473, 486, 135 S. Ct. 2480, 2489 (2015) (multiple citations and internal punctuation omitted) (emphasis added). The interpretation of the phrase “joined and served” encouraged by the Bishop focuses in on the literal meaning of the text of, at most, three words. The interpretation does not put those words into the context of the sentence and ignores the remainder of the statute and its history completely. Using a phrase intended to prevent gamesmanship by plaintiffs to allow gamesmanship by defendants who use a docket monitoring system to find out they have been sued before the plaintiffs even have a file-stamped copy of the complaint creates an absurd result out of step with the obvious meaning of the complete Forum Defendant Rule.

In an article discussing the snap removal phenomenon, three law professors opine that the federal opinions that have thus far supported snap removal “depend[] upon an excessively literal textualist approach to application of civil litigation statutes and rules that downplays or even ignores legislative intent, statutory purpose, and the structure of federal litigation underlying two centuries of law regarding subject matter jurisdiction and removal.” Jeffrey W. Stempel, Thomas

O. Main, & David McClure, *Snap Removal: Concept; Cause; Cacophony; and Cure*, 72:3 Baylor Law Review 423, 429 (2020). The illogicality of snap removal—a loophole that defeats of the policy of the sentence it is in—causes law students to “squint a bit in disbelief” that the purpose of the statute can be so circumvented. *Id.* at 427.

The illogicality has not offended all the federal courts presented with this issue when the sticking point is a forum defendant yet to be served. After all, without that defendant, the other parties would be entitled to removal under the theory of avoiding the home state advantage of the plaintiff. However, the patent absurdity of allowing a case to be removed where there are **only** forum defendants must be considered in this case. There is not a single shred of judicial or legislative history that can provide any logical explanation, rational basis, or even plausible reason for the disparate treatment of defendant based solely on whether they can beat the process server to the courthouse.

The interpretation of the Diocese skips from hyper-literal textualism to the absence of legislative corrective action, but leaps over the statutory framework and centuries-old history of the removal statute. Judge Richard Gergel considered the meaning of the language and legislative intent of the Forum Defendant Rule, and not just three words within it, when he ruled in 2021 that snap removal was contrary to purpose of the Forum Defendant Rule. *See Turtle Factory Bldg. Corp. v. McGrath Real Est. Holdings, LLC*, No. 2:20-CV-03099-RMG, 2021 WL 688697, at *3 (D.S.C. Jan. 28, 2021). Judge Gergel reasoned that reading snap removal into the language of the Forum Defendant Rule created an absurd result because it is contrary to Congressional intent. *Id.* The Bishop may argue that legislative history cannot be reached because of the plain language rule, but the plain language rule still requires that the whole Forum Defendant Rule be read and not just the “joined and served” fragment. The intent of the rule is quite apparent when read as a

whole. *See* 28 U.S.C. § 1441(b)(2). Quite simply, forum defendants are not supposed to be able to invoke diversity jurisdiction upon removal. The Diocese is reading three words as allowing it to defeat the entire point of the whole sentence by removing a case that has **only forum defendants**. This is an absurdity.

The Fourth Circuit has previously noted that the “most fundamental guide to statutory construction” is “common sense.” *First United Methodist Church of Hyattsville v. U.S. Gypsum Co.*, 882 F.2d 862, 869 (4th Cir. 1989). In this case, the Bishop is asking the Court to abandon common sense and reason and take so close and literal a view of “joined and served” that the whole rest of the sentence and its meaning are lost. The Bishop is asking this Court to endorse a scenario that is literally the opposite of that envisioned by the Forum Defendant Rule. Rather than an outside defendant removing a case brought against them by a home-state plaintiff, this is a case with foreign plaintiffs and completely domestic defendants. Allowing removal pursuant to the Forum Defendant Rule, which excludes forum defendants, when there are only forum defendants in the case is simply an untenable result. *See Active Res., Inc. v. Hagewood*, No. 2:22-CV-00172, 2022 WL 2346398, at *4 (S.D.W. Va. June 29, 2022).

2. The *Rooker-Feldman* Doctrine applies to the state class action case which forms the basis for this case.

Plaintiffs’ claims in this case are predicated entirely on their dissatisfaction with the administration of the underlying class action suit from 2006 in the Court of Common Pleas for Dorchester County, South Carolina. The claims are predicated on supposed misconduct of class counsel, church counsel, and state court judges. The basis for Plaintiffs’ claims is the class action judge allowed collusion and malpractice to occur under her watch as the “shopped-for” judge who supervised the class action settlement. These are, of course, unsupported allegations that have, after years of litigation, gained no traction before circuit court judges, court of appeals judges, or

the justices of the state supreme court. Nonetheless, were Plaintiffs successful in prosecuting their claims, this Court would have to find that the class action court's actions were negligent, wrong, or even collusive. Review of a state court judge's decisions are precisely the scenario that the *Rooker-Feldman* Doctrine was crafted to prevent.

Plaintiffs seek declaratory judgment on the “conditions under which South Carolina Supreme Court orders may be ignored, with impunity, by both litigants and the circuit court bench[.]” (ECF No. 1-1, ¶ 3.a & ¶ 112.a.) Such declaratory judgment requires, on its face, that this Court rule on the meaning of South Carolina Supreme Court orders and whether South Carolina state trial judges are complying with them. Plaintiffs allege the class action judge “was willing to be shopped-for and would facilitate the judge-shopping method for moving the class settlement” (ECF No. 1-1, ¶ 49.) Plaintiffs allege that a ruling about their allegations will “benefit” the “South Carolina bench and bar,” thus inherently asserting that a ruling in this case will provide guidance to South Carolina state judges about their duties in the administration of class action cases. (See ECF No. 1-1, ¶¶ 50, 65, ¶ 112.i.)

Plaintiffs appear to be seeking a “post-award fairness hearing” because, *inter alia*, class counsel received a fees award “without any review of collusive conduct, or failures by class counsel” (ECF No. 1-1, ¶¶ 59–61.) That allegation inherently seeks review of the class action judge's rulings, notwithstanding Plaintiffs' protests to the contrary in their response to the motion to remand. Indeed, Plaintiffs specifically request that class counsel disgorge attorney's fees awarded by the class action judge. (ECF No. 1-1, ¶ 144.i.) There is no doubt that Plaintiffs' claims would require this Court to review the orders and rulings of the class action judge. There is also

no doubt that such a review is the purview of the state court appellate system.¹ These issues are precisely the reason Judge Weston Houck applied the *Rooker-Feldman* Doctrine when he rejected an earlier attempt to bring one of the cases challenging the state court class action before the District Court. *See Doe I v. Diocese of Charleston*, Case No. CV 2:09-0955-CWH, 2015 WL 13762980 (D.S.C. Sept. 30, 2015).

The Bishop argues that the *Rooker-Feldman* Doctrine has been hemmed in over the years by further precedent. The Bishop cites to a recent Fourth Circuit opinion which addresses that precedent. *See Jonathan R. by Dixon v. Just.*, 41 F.4th 316, 339–41 (4th Cir. 2022). However, even in acknowledging that the Doctrine has its limitations, the court still enunciated a standard that would apply in this case. The Fourth Circuit no longer looks to limit jurisdiction when there are issues that were or could have been litigated before the state court, but jurisdiction is still limited when a plaintiff seeks redress for **an injury caused by a state court decision**. *Id.* (citing *Davani v. Va. Dep't of Transp.*, 434 F.3d 712, 718–19 (4th Cir. 2006)). That is, a plaintiff's claim is inextricably intertwined with the underlying state case when a plaintiff seeks review and rejection of the underlying state court order. *Id.* (citing *Thana v. Bd. of License Comm'rs for Charles Cnty.*, 827 F.3d 314, 320 (4th Cir. 2016)).

In this case, Plaintiffs not only seek review of the state court class action judge's decisions about the settlement and not only accuse her of being shopped-for and duped by class counsel, Plaintiffs also assert that she erred in awarding attorney's fees to class action counsel. Plaintiffs

¹ The state appellate court system has already considered many, if not all, of the claims made in this case in the context of eight other suits filed by clients of Mr. Meyers. Summary judgment was granted and then affirmed by the Court of Appeals. *See John Doe 2, et al. v. The Bishop of Charleston, a Corporation Sole, et al.*, Case No. 2017-001996 at *2 (unpublished opinion filed March 3, 2021 S.C. Ct. App.). This Court would need to construe and determine whether to apply those earlier orders in this case, which creates another layer of review of state court rulings.

wish this Court to disgorge **those fees** even though the class action judge not only awarded them, she confirmed the award over Mr. Meyers' express objections at the time of the class action settlement. (Order attached as **Exhibit A** at p. 5.) It cannot reasonably be argued that this case is not inextricably intertwined with the underlying class action and all the various cases Mr. Meyers has filed for his clients ever since. For this reason, the Court should hold that there is no jurisdiction over this case.

3. An award of fees is appropriate in this case.

In 2020, the Honorable Sherri A. Lydon remanded the Jane Doe 304 case after the Bishop removed the case and then did not oppose the Lawyer Defendant's motion to remand. *See Doe 304 v. Richter, et al.*, Case No. 2:19-cv-03409-SAL, ECF No. 11 (text order filed Feb. 20, 2020 D.S.C.). Judge Lydon relied in part on the orders of Judge Gergel, who has squarely rejected snap removal on two different occasions. The circumstances upon which the Bishop attempted removal in that case were substantially the same as this case—the same plaintiff's counsel, the same defendants, and the same snap removal gamesmanship of removing before service. In that case, the Bishop unquestionably wasted the time of counsel and this Court by removing on an objectively unreasonable basis and then consenting to remand.

In 2015, Judge Houck dismissed a very similar case to this one for lack of subject-matter jurisdiction under *Rooker-Feldman*. Key in that order, was that the Bishop filed a memorandum in support of dismissal under *Rooker-Feldman*. *Doe 1 v. Diocese of Charleston*, Case No. CV 2:09-0955-CWH, 2015 WL 13762980 at *4 (D.S.C. Sept. 30, 2015) (citing Diocese Defs.' Mem, in Supp. of Mot. to Dismiss 25, ECF No. 57-1) ("All of the defendants argue that this action should be dismissed . . . because the *Rooker-Feldman* doctrine deprives this Court of subject matter

jurisdiction.”). In this case, the Bishop is taking exactly the opposite position on materially similar facts with nearly identical parties and issues.

Furthermore, there is no precedent in this jurisdiction for the removal of a case with entirely forum defendants. The Diocese can argue that snap removal has been accepted in other parts of the country. But, to counsel’s knowledge, no judge in the Fourth Circuit has allowed snap removal where there are only home-state defendants. As discussed above, such a scenario is absurd and turns the Forum Defendant Rule upon its head.

The standard of review for a fees award under 28 U.S.C. § 1447(c) is abuse of discretion. *See Common Cause v. Lewis*, 956 F.3d 246, 252 (4th Cir. 2020) (citing *In re Lowe*, 102 F.3d 731, 733 n.2 (4th Cir. 1996)). While the statutory language is discretionary, courts have ruled that fees should only be awarded where the removing party “lacked an objectively reasonable basis for seeking removal.” *Id.* at 256 (quoting *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 141, 126 S.Ct. 704 (2005)). However, there is also an exception to that general principle for “unusual circumstances.” *Id.*

In this case, the Lawyer Defendants contend that there is no objectively reasonable basis for removal under a diversity jurisdiction theory where all the defendants are forum defendants. Such a removal clearly violates the meaning of the Forum Defendant Rule and cuts against the principle that any doubt whatsoever must be decided in favor of remand. *See Mulcahey v. Columbia Organic Chemicals Co.*, 29 F.3d 148, 151 (4th Cir. 1994) (citations omitted). However, there are also patently unusual circumstances in this case. This is the third time this plaintiff’s attorney and these defendants have been before the District of South Carolina on specific allegations pertaining to the underlying 2006 class action in state court. Each time, the Bishop has taken a different position—presumably based on what most benefits the Diocese at the given time.

First, the Bishop asserted there was no subject-matter jurisdiction under *Rooker-Feldman*. Then, the Bishop asserted there was snap removal diversity jurisdiction, but, when confronted by a motion to remand, apparently changed his mind and consented to remand. Now, the Bishop asserts that there is jurisdiction despite *Rooker-Feldman* and has flipped back to asserting snap removal diversity jurisdiction for entirely forum defendants, which remains an objectively unreasonable position. For these reasons, the Lawyer Defendants request that the Court award fees and costs.

CONCLUSION

This case belongs in state court with the others challenging the decisions of the state court class action judge. This case concerns South Carolina state court actions and South Carolina defendants. Removal under these circumstances is unreasonable and contrary to the meaning and history of our federal jurisdictional statutes and case law. For these reasons, the Lawyer Defendants request that the Court remand this case back to the Court of Common Pleas for Charleston County.

Respectfully submitted,

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October 4, 2022

Columbia, South Carolina

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

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

Plaintiffs,)

v.)

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

Defendants.)

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

MOTION TO DISMISS ON BEHALF OF LAWYER DEFENDANTS

NOW COME Defendants Lawrence E. Richter, Jr. (“Richter”), David K. Haller (“Haller”), and Richter & Haller, LLC (collectively, “Lawyer Defendants”), who by and through their undersigned counsel move this Court for an Order dismissing the Complaint in this matter for failure to state facts sufficient to constitute a cause of action against the Lawyer Defendants pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, S.C. Code Ann. § 15-36-100, and upon the facts set forth below. The Lawyer Defendants submit this filing in an abundance of caution and subject to their Motion to Remand [Docket Entry No. 7] or the Motion to Stay All Deadlines [Docket Entry No. 8], which have not been decided. The Lawyer Defendants would show that to the extent this Court denies the Motion to Remand and retain jurisdiction, the claims against the Lawyer Defendants should be denied.

NATURE OF THE CASE

This action is the latest in a series of lawsuits that have been filed since 2009 against the Lawyer Defendants by attorney Gregg Meyers leveling baseless accusations of lying, stealing, and other misconduct by the Lawyer Defendants, the Diocese, and the presiding class action trial judge

in connection with a landmark \$12 Million settlement the Lawyer Defendants secured on behalf of victims of sexual abuse against The Bishop of Charleston, a Corporation Sole (the “Diocese”). After nearly a decade of litigation, the Honorable J.C. Nicholson, Jr. granted the Lawyer Defendants summary judgment on August 11, 2017 in the then-pending actions. (Order Granting Lawyer Defendants Summary Judgment, August 11, 2017, Exhibit A.) Judge Nicholson’s order was affirmed on appeal *per curiam*. During that appeal, Mr. Meyers filed two more identical actions against the Lawyer Defendants and the Diocese recycling the same allegations and causes of action. (See *Robert Chimento v. Lawrence E. Richter, Jr., et al.*, C/A No. 2018-CP-10-05802, and *Jane Doe 304 v. Lawrence E. Richter, Jr., et al.*, C/A No. 2019-CP-10-05892.) Mr. Meyers also filed a petition in the original jurisdiction of the Supreme Court of South Carolina on behalf of the Plaintiffs in this action, John Doe 305, Julie McDonald, and Richard McDonald. (Petition and supporting documents, Appellate Case 2020-001415, Exhibit B.) The supreme court denied that petition and appointed the Honorable J. Derham Cole to preside over the remaining two cases pending, *Chimento* and *Jane Doe 304*. (Order, April 19, 2021, Appellate Case 2020-001415, Exhibit C.) Currently, the Lawyer Defendants have motions to dismiss in those two cases pending before the Court of Common Pleas for Charleston County.

After the Plaintiffs’ petition was denied, Mr. Meyers subsequently filed this action in the Court of Common Pleas for Charleston County against the same parties, alleging the same causes of action and same breaches on behalf of the Plaintiffs, and seeking the same relief. Before the Lawyer Defendants were served and had an opportunity to move to dismiss the Plaintiffs’ complaint, the Diocese removed the case. Because the Court has not yet ruled on their Motion to Remand [Docket Entry No. 7] or their Motion to Stay All Deadlines [Docket Entry No. 8], and to avoid default, the Lawyer Defendants submit this motion.

FACTS

Plaintiffs alleges they are all residents and citizens of “a state other than South Carolina.” (ECF 1-1, ¶ 6.) They filed this case in Charleston County Court of Common Pleas against the Diocese Defendants and the Lawyer Defendants, all of whom are South Carolina citizens. (ECF 1-1, ¶¶ 11, 13, 17-19.) Plaintiffs alleges they were class members in the underlying 2007 South Carolina state court class action settlement that resolved sexual abuse claims against the Diocese (the “State Court Class Action”). (ECF 1-1, ¶¶ 7-9.) In the State Court Class Action, the Lawyer Defendants represented two classes of plaintiffs, abuse victims and family members. The parties in the State Court Class Action reached a pre-trial settlement. Pursuant to Rule 23, SCRCF, the Court of Common Pleas for the First Judicial Circuit reviewed the settlement and approved the settlement on a preliminary basis on January 19, 2007. The Court directed notice to the class, held multiple fairness hearings, and ultimately gave the settlement final approval on July 30, 2007.¹ Plaintiff John Doe 305, in the instant suit, alleges he did not participate in the settlement or make a claim against the Diocese for sexual abuse under the class action matrix. Plaintiffs Julie McDonald, and Richard McDonald allege they participated in the settlement, received an award from the settlement, but were wrongfully charged a fee by class counsel. Plaintiffs asserted the same allegations in their petition to the Supreme Court of South Carolina, which was denied. In this action, Plaintiff assert causes of action for (i) declaratory judgment, (ii) professional negligence against the Lawyer Defendants, (iii) aiding and abetting breach of fiduciary duty as to

¹ *John Doe #53, et al. v. The Bishop of Charleston, a Corporation Sole, et al.*, Case Nos. 06-CP-18-1310, 06-CP-18-1311, and 06-CP-18-1636, filed in the Court of Common Pleas for the First Judicial Circuit, Dorchester County, South Carolina. The Orders Approving Settlement in the State Court Class Action are in the record as Docket Entry Nos. 10-3 & 10-4.

the Diocese, (iv) civil conspiracy, conversion, accounting, and disgorgement against all defendants, and (v) breach of contract by John Doe 305 against the Diocese.

The Lawyer Defendants seek an order similar to the various orders other South Carolina courts have entered rejecting the allegations of a “collusive class action” and “judge-shopping” and dismissing the Plaintiffs’ complaint.

ARGUMENT

I. Plaintiffs Have Failed to State a Claim Upon Which Relief Can Be Granted

Plaintiffs’ claims against the Lawyer Defendants should be dismissed pursuant to Fed. R. Civ. P. 12(b) because the claims are based upon the same alleged duties and same theories that South Carolina trial and appellate courts have already rejected in approximately one dozen prior cases that Mr. Meyers has filed against the Lawyer Defendants since 2007. The order granting the Lawyer Defendants summary judgment, which was affirmed on appeal *per curiam*, demonstrates that South Carolina courts have squarely rejected the Plaintiffs’ position that the Defendants engaged in any wrongful conduct with the class action settlement; that the Lawyer Defendants owed, undertook, or breached some duty relating to the notice plan for the class settlement; that the Lawyer Defendants stole money from the class; or that the Lawyer Defendants, Diocese, and/or class action court “failed” to conduct a final review of the class action settlement. (Order Granting Lawyer Defendants Summary Judgment, August 11, 2017.) The Lawyer Defendants and Diocese submitted the settlement to the circuit court for review, approval, and administration pursuant to Rule 23, SCRCP.

The class action court conducted multiple fairness hearings before entering the final order approving the settlement. During those fairness hearings, Mr. Meyers appeared and raised

objections to the settlement. He alleged the court mistreated his clients² and the various other wrongful acts he continues to advance in this action, including that class counsel's fees were excessive and based on "fraudulent billings."³ The class action court heard those arguments, considered them, and rejected them.⁴ Since that time, Mr. Meyers has continued to advance the same arguments and theories on behalf of these Plaintiffs and at least ten others to the circuit court, court of appeals, and supreme court. All those courts have rejected the contrived theories of judge-shopping, collusive class action, and misconduct during the class action settlement.

The class action court approved the class settlement only after spending a considerable amount of time and resources to the matter, and only after conducting hours of hearings. Following that approval, the Defendants followed the class action court's orders. The Diocese funded the settlement, and validated claims were submitted to arbitration for valuation and award. Following the administration of all claims and payment of all awards pursuant to the arbitrator's determinations, class counsel provided the class action court with a "final accounting of disbursements" from a well-qualified and well-respected certified public accountant. (*See* Docket Entry Nos. 10-6.) There was no misconduct during the class action, on the part of the Lawyer Defendants or anyone else, and there certainly was no collusion, fraud, or malpractice. There was, however, a disgruntled attorney representing some objectors to the settlement. That attorney has embarked on a campaign against the Lawyer Defendants ever since. Now fifteen years and a dozen lawsuits later, his motive is clear.

The Plaintiffs' claims against the Lawyer Defendants are not grounded in the law or equity or any legal authority. Instead, they spring from malevolence and a personal vendetta. The causes

² Order, March 23, 2009, at 3-8 [Docket Entry No. 16-1].

³ *Ibid.*

⁴ *Ibid.*

of action the Plaintiffs allege have no more merit than those in the dozen or more prior proceedings on behalf of similarly-situated plaintiffs. This court should reject those claims for the same reasons every other court has rejected them. The Lawyer Defendants breached no duty owed to John Doe 305, in connection with the notice plan for the class action settlement or otherwise, nor did they charge unlawful fees from the class or from Julie McDonald and Richard McDonald.

In the event the Court denies the motion to remand and retains jurisdiction of this case, it should dismiss the complaint.

II. The Plaintiffs have Failed to Allege Facts Entitling Them to Declaratory Relief

Based upon the allegations in the complaint, the cause of action for a declaratory judgment should be dismissed because it seeks advisory opinions and fails to conform to the federal requirements.

Plaintiffs assert a claim for declaratory relief “pursuant to SCRCP 57 and the South Carolina Declaratory Judgment Act, S.C. Code § 15-53-10 et seq. (“SCJDA”), to determine, among other things, under SCRCP 23 the propriety of [various] actions of the defendants. . . .” (Compl. ¶ 3, Docket Entry No. 1-1.) Among the actions about which Plaintiffs seek a ruling are:

- a. the conditions under which South Carolina Supreme Court orders may be ignored, with impunity, by both litigants and the circuit court bench,
- b. the extent to which class action settlements are permitted to be collusive,
- c. the extent to which colluding parties to a class action are permitted to judge-shop so as to move class settlement oversight and approval to a particular judge they desire,
- d. the extent to which class counsel is permitted to manipulate SCRCP 23 to serve the financial interests of class counsel at the expense of the class members class counsel purports to represent,
- e. the extent to which class counsel is permitted to manipulate SCRCP 23 to serve the financial interests of his colluding “adversary” at the expense of the class members class counsel purports to represent,

- f. the extent to which colluding litigants may misrepresent information provided to the court in the conduct of a class action,
- g. the extent to which colluding litigants may withhold material information from the court in the conduct of a class action,
- h. the extent to which class counsel may charge class members an unauthorized fee, and
- i. the extent to which applicable legal standards may vary according to the persons involved.

Id.

“Under the SCDJA, ‘the existence of an actual controversy is essential to jurisdiction to render a declaratory judgment.’” *Clowney for Owens v. Hunt Valley Holdings, LLC*, No. 6:15-CV-03524-TMC, 2016 WL 11643616, at *3 (D.S.C. Apr. 13, 2016) (citing *Power v. McNair*, 177 S.E.2d 551, 552 (S.C. 1970)). The SCDJA “does not require the court to give a purely advisory opinion which the parties might, so to speak, put on ice to be used if and when occasion might arise’, (citations omitted) or ‘license litigants to fish in judicial ponds for legal advice.” *West v. West*, 263 S.C. 146, 149, 208 S.E.2d 530, 532 (1974) (quoting *City of Columbia v. Sanders*, 231 S.C. 61, 97 S.E.2d 210 (1957)).

Here, Plaintiffs fail to show they are entitled to declaratory relief. The facts they plead show they are merely asking for an advisory opinion from this Court about various aspects of administering class action cases in state court. *Id.* This cause of action in particular underscores the need to remand this case to the Court of Common Pleas for Charleston County. In the event the case is not remanded, the Court should dismiss the cause of action for declaratory relief.

III. The Plaintiffs Failed to File the Required Expert Affidavit with the Complaint.

The claims against the Lawyer Defendants also should be dismissed based upon the Plaintiffs’ failure to satisfy the filing requirements in the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10, et seq. “South Carolina Code § 15-36-

100(B) requires that plaintiffs in various malpractice suits, including legal malpractice actions, ‘file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit.’” *First Reliance Bank v. Romig*, No. 4:14-CV-00084-BHH, 2014 WL 5644602, at *7 (D.S.C. Nov. 4, 2014). “If a plaintiff fails to file the required affidavit, the defendant may seek dismissal of the complaint in a ‘motion to dismiss filed contemporaneously with its initial responsive pleading.’” *Id.* (quoting S.C. Code Ann. § 15–36–100(C)(1)). The complaint may also be dismissed if the defendant “alleges, with specificity, by motion to dismiss filed contemporaneously with its initial responsive pleading, that the affidavit is defective.” *Id.* (quoting S.C. Code Ann. § 15–36–100(E)).

The Plaintiffs did not engage and expert an obtain an affidavit for this complaint. Instead, they attached an affidavit of Michael Virzi dated September 9, 2020 that was prepared and signed in support of the Plaintiffs’ petition to the Supreme Court of South Carolina. The Plaintiffs’ failure to obtain an expert affidavit to support this complaint is fatal to their professional negligence claim.

IV. The Plaintiffs’ Claims are barred by Res Judicata.

“Under the doctrine of res judicata, or claim preclusion, ‘[a] final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action.’ ” *Providence Hall Assocs. Ltd. P’ship v. Wells Fargo Bank, N.A.*, 816 F.3d 273, 276 (4th Cir. 2016) (quoting *Pueschel v. United States*, 369 F.3d 345, 354 (4th Cir.2004)) “Three elements must be satisfied for res judicata to apply. ‘[T]here must be: (1) a final judgment on the merits in a prior suit; (2) an identity of the cause of action in both the earlier and the later suit; and (3) an identity of parties or their privies in the two suits.’” *Id.* See also *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999) (“Res judicata bars subsequent

actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties.”)

Two years ago, Plaintiffs filed a petition in the original jurisdiction of the Supreme Court of South Carolina with a proposed complaint in which they alleged various acts of misconduct on behalf of the Lawyer Defendants, the Diocese, and the class action court in connection with the settlement of the underlying class action cases. The filings totaled one hundred one pages. In that petition and complaint, the Plaintiffs sought the same relief they seek here. After considering the petition for six months, the supreme court denied it. (Order Denying Petition, April 19, 2021.) Therefore, the Plaintiffs opted to present their claim to the supreme court, and the court denied it. The Plaintiffs are barred as a matter of law from now bringing the same claims for the same relief against the same defendants here.

CONCLUSION

For the reasons state above, the Lawyer Defendants would show if the Court denies the Motion to Remand and retains jurisdiction of this case, the Court should dismiss the complaint.

Respectfully submitted,

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October 7, 2022

Columbia, South Carolina

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-10-5520; 2010-CP-10-7233; 2012-CP-10-5559; 2013-CP-10-3733; 2013-CP-10-4175; 2013-CP-10-4176; 2015-CP-10-5486; 2016-CP-10-1632

John Doe, et al.
PLAINTIFF(S)

The Bishop of Charleston, a Corporation Sole, et al.
DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

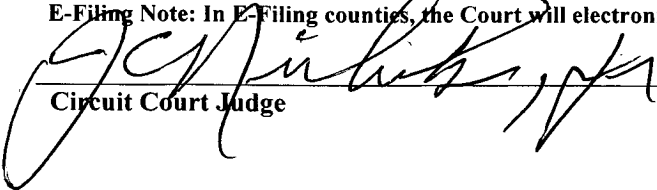
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

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

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

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

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


Circuit Court Judge

2117
Judge Code

8/8/17
Date

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

John Doe 2 and Jane Doe 4,

CASE NO.: 2010-CP-10-5520

Plaintiffs,

v.

The Bishop of Charleston, et. al.

Defendants.

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

John Doe 10,

CASE NO.: 2010-CP-10-7233

Plaintiff,

v.

The Bishop of Charleston, et. al.

Defendants.

JULIE J. ARMSTRONG
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.

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.)

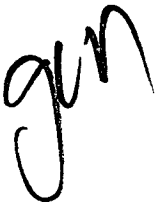
John Doe 297,) CASE NO.: 2016-CP-10-1632
)
 Plaintiff,)
)
 v.)
)
 The Bishop of Charleston, et. al.)
)
 Defendants.)

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.

The Lawyer Defendants represented alleged victims of sexual abuse in class action lawsuits against the Diocese Defendants that were settled in 2007 (Case Nos. 2006-CP-18-13109, 1311 and 1636; “the Underlying Case”).² Seven of the Plaintiffs claim that they were members of the Primary Class³ and that the Lawyer Defendants committed legal malpractice while representing

¹ The Lawyer Defendants also filed an omnibus motion for summary judgment as to the civil conspiracy claims in each case. They are now moot because the Plaintiffs abandoned their claims for civil conspiracy at the hearing held on July 20, 2017.

² While the record reflects the negotiation of a Settlement and Arbitration Agreement between the Lawyer Defendants and the Diocese Defendants in 2006, the settlement was not formalized and approved by the court until 2007.

³ The Primary Class of abuse victims was defined as “All individuals born on or before August 30, 1980, who, as minors, were sexually abused at any time by the agents or employees of the Dioceses

them. Three of the Plaintiffs claim that they were members of the “Consortium Class” of spousal and parental victims who allege that the Lawyer Defendants committed legal malpractice while representing them as well.⁴ All of the claims against the Lawyer Defendants arise out of their activities in the Underlying Case.

The crux of all but one of the Plaintiffs’ claims is that the Lawyer Defendants defined the Primary and Consortium Classes without geographical limitation but geographically limited the notice that would be given of the settlement by publication to class members in South Carolina.⁵ The non-resident Plaintiffs allege that, as a result, they were bound by the class action settlement but were never given notice of that settlement.

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If they were bound by the settlement in the Underlying Case, then the doctrine of *res judicata* would deprive them of the opportunity to sue the Diocese Defendants without giving them notice of the settlement that satisfied their due process rights. The allegations in the Complaint filed by John Doe 2 and Jane Doe 4 are typical of each plaintiffs’ complaint:

23. If the Diocese agrees, or the court finds, that the plaintiffs are not precluded by the class action from bringing claims against the Diocese, either because the state court's ruling left room for persons not receiving notice or because the deliberate restrictions on notice clearly failed to comply with plaintiffs' due process rights, **then the causes of action against the Richter defendants** who, for a fee, abandoned their clients, and those who conspired against them through the class action, **are irrelevant because plaintiffs can make their claims against the Diocese.** If the court finds that the plaintiffs are precluded for any reasons, including the *res judicata* effect of the class action, charitable immunity, or by the statute of

of Charleston who have not previously had any similar claim adjudicated, resolved, or released” (hereinafter “the Primary Class”).

⁴ The Consortium Class was defined as “The spouses and parents, of all individuals qualified pursuant the Primary Class and who suffered a loss of the abused individual’s consortium, and who as spouses or parents have not previously had any similar claim adjudicated, resolved, or released” (hereinafter “the Consortium Class”).

⁵ The notice plan approved by the class action court was for publication in ten South Carolina daily newspapers and *The Augusta Chronicle*, and *The Catholic Miscellany*.

limitations, then the causes of action alleged against the Diocese defendants for sexual abuse are irrelevant, and those claims are properly made against those who conspired against them as well as against the Richter defendants who failed to properly represent them. (Emphasis added).

See John Doe 2 and Jane Doe 4 v. The Diocese of Charleston, et. al., Case No. 2010-CP-10-5520, Complaint, ¶ 23 (emphasis added).

The claims alleged by John Doe 193 are slightly different.⁶ John Doe 193 alleges that he repressed the memory of his sexual abuse until 2010. As a result, even though he lived in South Carolina, he claims he did not receive notice of the class action settlement until 2010 (when he recovered his memory) and alleges the Lawyer Defendants failed to make a provision for repressed memory victims like him in the settlement.⁷

The Plaintiffs allege causes of action for professional negligence, breach of fiduciary duty, and unfair trade practices against the Lawyer Defendants.



I. Summary Judgment Standard

Summary judgment is appropriate where there are no genuine issues of material fact and it is clear the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCPP. In determining whether any triable issues of fact exist, the evidence and all inferences that reasonably can be drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions*, 388 S.C. 394, 697 S.E. 2d 551 (2010); *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 355, 650 S.E. 2d 68, 70 (2007).

⁶ Case No. 2013-CP-10-3733.

⁷ John Doe 193's claim for professional negligence was dismissed by Order of the Honorable Kristi Lea Harrington dated January 16, 2014. His claim for civil conspiracy was abandoned by Plaintiff's counsel at the hearing on July 2017. Thus, only the claim for breach of fiduciary duty remains for John Doe 193.

Under Rule 56(c), SCRCP, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. *Baughman v. AT&T*, 306 S.C. 101, 410 S.E. 2d 537 (1991). With respect to an issue upon which the nonmoving party has the burden of proof, this initial responsibility may be discharged by pointing out to the trial court that there is an absence of evidence to support the nonmoving party's case. *Id.* (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)). Once the moving party carries its initial burden, the "opposing party must, under Rule 56(e), do more than simply show that there is some metaphysical doubt as to the material facts' but 'must come forward with specific facts showing that there is a ***genuine issue for trial***.'" *Id.* (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538 (1986)) (emphasis in original). The party opposing summary judgment cannot simply rest on mere allegations or denials contained in the pleadings. *Id.*; *George v. Empire Fire & Marine Ins. Co.*, 344 S.C. 582, 545 S.E. 2d 500 (2001).



II. The Lawyer Defendants' Motions

The Lawyer Defendants contend that they are entitled to summary judgment because:

- A. the Court has determined that the Plaintiffs can sue the Diocese Defendants making their respective claims against the Lawyer Defendants "irrelevant";
- B. the Plaintiffs have no damages proximately caused by the Lawyer Defendants;
- C. no attorney-client relationship existed between the Lawyer Defendants and the Plaintiffs, who were unnamed class members; and
- D. the Lawyer Defendants did not breach a fiduciary duty to the Plaintiffs.

A. Plaintiffs' Claims Against the Lawyer Defendants are Irrelevant

As noted above, the Plaintiffs' Complaints explicitly allege that if they are not precluded by the class action settlement from bringing claims against the Diocese Defendants, then the causes

of action against the Lawyer Defendants are “irrelevant”. The keystone of their argument revolves around the concept of notice. The Plaintiffs allege that since they were included in the definition of the Primary Class, they should have been given notice of the settlement in accordance with their due process rights. Thus, if the Court were to find that they are precluded from maintaining their claims against the Diocese Defendants as a result of the class settlement, only then can Plaintiffs assert their claims against the Lawyer Defendants for not giving them notice of the settlement. In other words, when viewed in the light most favorable to the Plaintiffs, the complaints make a finding of preclusion by the Court a predicate upon which the Plaintiffs’ claims against the Lawyer Defendants rise or fall.

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In this Court’s Amended Order on Limited Collateral Review dated May 3, 2017, I found that the Plaintiffs’ Complaints, by their own terms, presented a threshold question: Are the Plaintiffs precluded from pursuing claims against the Diocese Defendants? I then answered the question in the negative, finding that the Plaintiffs were not precluded from bringing their claims against the Diocese Defendants because the notice plan approved in the Underlying Case “did not incorporate safeguards to provide sufficient notice because notice by publication was not provided by the court substantially outside of the geographic territory of South Carolina.”

I concluded that “the notice plan directed by the class action court did not satisfy due process as to putative class members who (1) did not receive actual notice and (2) lived outside of the areas in which notice was published”.⁸ I further found that it would be inconsistent with due process to bind John Doe 193 to the class action settlement if he could prove a repressed memory

⁸ This finding was consistent with the finding by Judge Roger Young in his Order dated June 17, 2011 in Case No. 2010-CP-10-5520 denying in part and granting in part the Diocese Defendants Motion to Dismiss.

by the preponderance of the evidence. In light of that ruling, even when this Court views the allegations in the complaints in the light most favorable to Plaintiffs, the only reasonable conclusion is the Plaintiffs have no claims against the Lawyer Defendants because the class settlement did not preclude their claims against the Diocese Defendants.

B. Plaintiffs Have No Damages Proximately Caused by the Lawyer Defendants

After the Amended Order on Limited Collateral Review was entered, this Court scheduled several of the cases against the Diocese Defendants for trial in May 2017. Soon thereafter, five (5) Plaintiffs and the Diocese Defendants voluntarily settled four (4) of the cases.⁹ Since all Plaintiffs were allowed to present their claims against the Diocese Defendants and five (5) Plaintiffs in four (4) of the cases voluntarily settled their claims with the Diocese Defendants, the allegations against the Lawyer Defendants are not pertinent and are, in the Plaintiffs' own words, "irrelevant". Those Plaintiffs who have settled with the Diocese Defendants have had "their day in court" and their opportunity to hold the Diocese Defendants financially responsible for their abuse. In so doing, those Plaintiffs stood exactly where they would have stood had the underlying class actions never existed.

The Plaintiffs who did not settle with Diocese Defendants¹⁰ were subject to a motion for summary judgment filed by the Diocese Defendants and scheduled to be heard by the Court on

⁹ The Diocese settled with the Plaintiffs in 2010-CP-10-7233 (filed by John Doe 10), 2013-CP-10-4175 (filed by Father Doe 194), 2013-CP-10-4176 (filed by John Doe 194) and 2015-CP-10-5486 (filed by John Doe 245 and Father Doe 245).

¹⁰ The non-settling Plaintiffs were John Doe 2 and Jane Doe 4, Case No. 2010-CP-10-5520; Jane Doe 11, Case No. 2012-CP-10-5559; John Doe 193, Case No. 2013-CP-10-3733; and John Doe 297, Case No. 2016-CP-10-1632.

June 28, 2017. In that motion, the Diocese Defendants contended that the remaining Plaintiffs' claims were absolutely barred by the defense of charitable immunity. At the outset of the hearing on those motions, Plaintiffs' counsel voluntarily surrendered his clients' claims to the Diocese Defendants' charitable immunity defense and agreed that the Court should grant summary judgment to the Diocese Defendants on all claims in those four cases *except* civil conspiracy (which, as noted above, was later abandoned) and aiding and abetting breach of fiduciary duty.¹¹

Thus, the Plaintiffs have either voluntarily settled with the Diocese Defendants or voluntarily conceded to the defense of charitable immunity. In either event, the Plaintiffs have been allowed to maintain their claims against the Diocese Defendants, have had their day in court and have no damages to assert against the Lawyer Defendants. Nothing the Lawyer Defendants did or failed to do in the Underlying Case caused harmed to the Plaintiffs. Plaintiffs have the same rights, and are subject to the same defenses, that existed prior to the class action settlement.

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Damages are an essential element any plaintiff must prove to prevail on a legal malpractice claim. None of the Plaintiffs' have testified to any damages they believe they have suffered due to the alleged legal malpractice, nor have they offered any competent evidence proving damages as to the Lawyer Defendants. Absent damages, Plaintiffs have no claim for legal malpractice. *RFT Mgmt. Co. v. Tinsley & Adams, L.L.P.*, 399 S.C. 322, 732 S.E. 2d 166 (2012) ("plaintiff in a legal malpractice action must establish four elements: (1) the existence of an attorney-client relationship, (2) a breach of duty by the attorney, (3) damage to the client, and (4) proximate causation of the client's damages by the breach.")

¹¹ As previously noted, Plaintiffs' counsel abandoned his clients' claims for civil conspiracy at the hearing on July 20, 2017.

Plaintiffs' counsel argues that the four (4) cases that were settled fall under S.C. Code Ann. §15-38-50 (1976, as amended) and thus do not affect the liability of the Lawyer Defendants. That statute provides:

When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

- 
- (1) it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and
 - (2) it discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

The Court has carefully considered this argument and concludes §15-38-50 does not apply here. The release given to the Diocese Defendants in those settlements was not given to a joint tortfeasor, notwithstanding what the settlement agreements may say. The Plaintiffs' claims are based upon one loss – the abuse at the hands of the Diocese defendants. They assert claims against the Diocese Defendants and, in the alternative, against the Lawyer Defendants. Nonetheless, they may obtain but one recovery. Civil conspiracy was the only cause of action in the complaints as to which joint and several liability could apply. As previously noted, Plaintiffs' counsel voluntarily conceded at the hearing on July 20, 2017 that summary judgment in favor of all defendants on the cause of action for civil conspiracy was appropriate. That concession resulted from a) the Plaintiffs' having pled civil conspiracy as presuming that “the class action order is interpreted to bind the Plaintiff to its *res judicata* effect...”, and b) the Court having determined in its Amended Order on Limited Collateral Review that the Plaintiffs who did not receive actual notice and lived outside of the published notice area were not bound by the *res judicata* effect of the class action settlement.

Consequently, since there is but one recovery for a single wrong, the Plaintiffs who settled with the Diocese Defendants have made their recovery and have no further damages.

C. There was No Attorney-Client Relationship

1. The Majority Rule.

The Lawyer Defendants also contend Plaintiffs' claims are barred because there was no attorney-client relationship with the Plaintiffs. A plaintiff in a legal malpractice action must establish four elements: (1) the existence of an attorney-client relationship, (2) a breach of duty by the attorney, (3) damage to the client, and (4) proximate causation of the client's damages by the breach. *RFT Mgmt. Co., supra*.

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In response, the Plaintiffs, relying on *Premium Investment Corp. v. Green*, 283 S.C. 464, 324 S.E. 2d 72 (Ct. App. 1984), contend that an attorney-client relationship arose between the Lawyer Defendants and the Plaintiffs at the time the lawyers filed the class action complaints in the Underlying Case.

The majority rule in the United States appears to be that class counsel does not represent unnamed, absent class members unless and until the class is certified. *Bobryk v. Durand Glass Mfg. Co.*, No. 12-cv-5360 (NLH/JS), 2013 U.S. Dist. LEXIS 145758, at *29-31 (D.N.J. Oct. 9, 2013) (noting "the majority of case law that holds that the attorney-client relationship with putative class members 'does not begin until the class has been certified and the time for opting out by a potential member of the class has expired'."); *Palumbo v. Tele-Communications, Inc.*, 157 F.R.D. 129, 133 (D.D.C. 1994) (stating class certification confers status of litigant on absent class members and creates attorney-client relationship with class counsel); *Garret v. Metro Life Ins. Co.*, No. 95-CIV-2406, 1996 WL 325725, at *6 (S.D.N.Y. June 12, 1996) ("before class certification, the putative class members are not 'represented' by the class counsel."); *Formento v. Joyce*, 168

Ill. App. 3d 429, 522 N.E.2d 312 (Ill. App. Ct. 1988) (finding that defendant attorneys owed no duty to plaintiffs, the unnamed members of an uncertified class action); *Restatement (Third) of the Law Governing Lawyers* § 99 cmt. 1 (“prior to certification, only those class members with whom the lawyer maintains a personal client-lawyer relationship are clients”); *Resnick v. Am. Dental Ass’n*, 95 F.R.D. 372, 376 (N.D. Ill. 1982) (“Without question the unnamed class members, once the class has been certified, are ‘represented by’ the class counsel.”); *Gillespie v. Scherr*, 987 S.W. 2d 129, 1998 Tex. App. LEXIS 8089 (Tex. App. 1998) (“[W]e have found no case finding an implied attorney-client relationship to exist before class certification between an attorney who files the class action and any unnamed class members”).

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The majority rule is persuasive to this Court for several reasons. The identity of the absent plaintiffs and the exact nature of their interests in the action is not known until class certification. 3 H. Newberg, *Class Actions* § 5050 (1977); *United States Parole Comm’n v. Geraghty*, 445 U.S. 388, 415, 100 S.Ct. 1202, 1218, 63 L Ed.2d 479, 502, 1980 U.S. LEXIS 12, *49, 29 Fed. R. Serv. 2d (Callaghan) 20 (U.S. Mar. 19, 1980). Similarly, in federal court, class counsel is appointed by the class action court when the class is certified. Fed. R. Civ. P. 23(c)(1)(B) (“An order that certifies a class action must define the class and the class claims, issues, or defenses, and must appoint class counsel under Rule 23(g)”). Furthermore, under Rule 23(a), SCRPC, 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, SCRPC, 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.

 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, SCRCF. Moreover, the Underlying Case before me is an actual certification case under Rule 23.

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

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

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

Id. at 470.

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

Premium Investment Corp. stands for the proposition that where there is a class that has not been formally certified (as under Rule 23, SCRPC), a lawyer’s and a class representative’s duties to absent class members arise with the constructive certification of the class. *Premium Investment Corp.* is in line with the majority rule that an attorney-client relationship does not arise between absent class members and class counsel until class certification. Since its adoption in 1985, Rule 23(a) has required specific prerequisites to certification and pursuit of a class action, while *Premium Investment Corp.*, which predates Rule 23, allows for constructive certification. It is undisputed in the case before me that Rule 23, SCRPC, was referenced and observed by Judge Goodstein in her orders in the Underlying Case and that constructive certification is not at issue before me.

3. The Plaintiffs’ Testimony.

As noted above, none of the Plaintiffs have offered any sworn statement or other evidence from which any reasonable fact-finder could conclude they had an attorney-client relationship with the Lawyer Defendants. To the contrary, when examined, none of the Plaintiffs knew who the Lawyer Defendants were or why they had sued them. Instead, as noted above, the Plaintiffs claim, in essence, that the Lawyer Defendants breached duties owed prior to class certification. For the reasons discussed above, the Court finds the Lawyer Defendants owed no duties to the absent class members prior to class certification.

Having found the duties allegedly breached did not exist, I find the Plaintiffs cannot prevail on their claims against the Lawyer Defendants.

D. No Breach of Fiduciary Duty.

The Lawyer Defendants assert the Plaintiffs' claims are also barred because they owed no fiduciary duties to the Plaintiffs before class certification. Plaintiffs, in response, argue a fiduciary duty was owed upon filing the class complaints. That fiduciary duty arose by operation of law, Plaintiffs contend, upon filing the pleading, pursuant to *Premium Investment Corp.*

As discussed above, the Court disagrees with Plaintiffs' argument that *Premium Investment Corp.* stands for the proposition that the filing of a class action complaint gives rise to fiduciary duties to unnamed and unidentified class members. Furthermore, the Court notes that while the Plaintiffs argue a fiduciary duty existed upon filing, they have yet to articulate what that duty was, nor have they explained the scope of it. Rather, they rely on the following excerpt from *Premium Investment Corp.*:

It is now generally conceded that a plaintiff who sues on behalf of a class and the attorney representing the class assume a fiduciary obligation to absent members of the class, including the obligation to inform them of proposed compromises of the group action. *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 69 S. Ct. 1221, 93 L. Ed. 1528 (1949); *La Sala v. American Savings & Loan Association*, 5 Cal. (3d) 864, 97 Cal. Rptr. 849, 852, 489, P. (2d) 1113 (1971).

Id. at 470.

The Lawyer Defendants contend such statements refer to obligations that arise after class certification, whether certification pursuant to Rule 23, as here, or by constructive certification, as in *Premium Investment Corp.* The line of cases holding that an implied fiduciary duty arises when a lawyer files a complaint alleging a class action was discussed in *Gillespie v. Scherr*, 987 S.W.2d 129, 1998 Tex. App. LEXIS 8089 (Tex. App. 1998), where the court observed:

Appellants have cited and we have found no case finding an implied attorney-client relationship to exist before class certification between an attorney who files the class action and any unnamed class members. Appellants urge us to follow federal decisions which, in the context of class certification, recognize the *general* existence of a fiduciary duty to unnamed class members once a class action suit is filed. *See, e.g., In re General Motors Corp. Pick-up Truck Fuel Tank*, 55 F. 3d 768, 801 (3rd Cir. 1995) (stating that class attorneys owe the entire class a fiduciary duty once the class complaint is filed), *cert. denied*, 516 U.S. 824, 116 S. Ct. 88, 133 L. Ed. 2d 45 (1995). However, appellants have cited and we have found no decision which has defined the scope of such a duty or addressed it with regard to an actual claim for recovery against an attorney for its breach. **Although not cited by either side, the only case we have found in which the issue was addressed held that lawyers for named plaintiffs in an uncertified class action owe no duty to unnamed class members.** *See Formento v. Joyce*, 168 Ill. App. 3d 429, 522 N.E. 2d 312, 317, 118 Ill. Dec. 857 (Ill. App. Ct. 1988).

Id. (emphasis added).

Similarly, here the Plaintiffs have not defined the scope of the fiduciary duty they claim was violated by the Lawyer Defendants. One District Court examining the question found:



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].”).

gun
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.

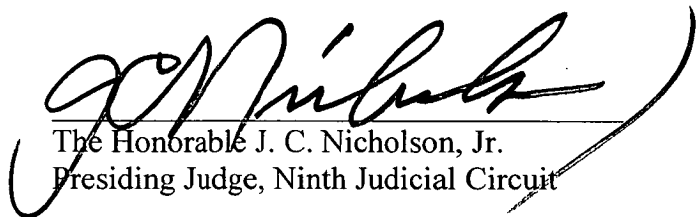
CONCLUSION

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

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

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,



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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

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 SCRCF 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 SCRPC 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
217 Lucas Street Unit F-1
Mt. Pleasant SC 29464
843-324-1589
attygm@gmail.com

Attorney for the Plaintiffs

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

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

42983

67-448/539 SC 2961

DATE 11-20-06

Bank of America 

FOR [Redacted] [Redacted] [Redacted]

John L. Banta
Margaret L. Banta

1104298311

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

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

PAY TO THE ORDER OF Richder & Haller, LLC \$ 145,000.-

DATE 11-20-06

67-448/539 SC 2961

Bank of America 

DIOCESE OF CHARLESTON
145,000.00 DOLLARS

FOR [Redacted]

John L. Barker
Mrs. Martha L. Barker

1104298211

42982

RP

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

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

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

August 30, 2007

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

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

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

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

Dear Larry and Gregg:

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

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

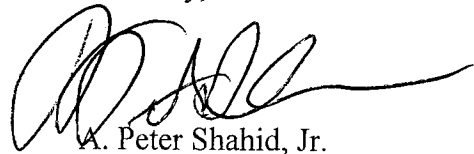
rights to the pending class action settlement by any of Mr. Meyer's clients be withdrawn, and waived with prejudice.. Mr. Meyers has certified he is unaware of any other potential or actual objectors, and does not represent any other person who has an objection to the January 12, 2007 Settlement Agreement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

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

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

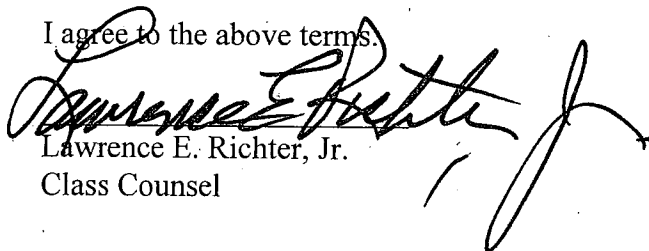
The \$1.375 million will be paid from the surplus funds, if any, after the claims process has been completed. In the event there are insufficient or no funds remaining from the \$12 million pool of funds, the Diocese is still obligated to pay the \$1.375 million as stated above. Payment is expected sometime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

Sincerely,



A. Peter Shahid, Jr.

I agree to the above terms.



Lawrence E. Richter, Jr.
Class Counsel

I agree to the above terms.



Gregg Meyers

RICHTER & HALLER, LLC
TRUST ACCOUNT
P.O. DRAWER 1089
MOUNT PLEASANT, SC 29465

FIRST CITIZENS BANK AND TRUST COMPANY
MOUNT PLEASANT, SC 29464

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

RICHTER & HALLER, LLC - TRUST ACCOUNT
MOUNT PLEASANT, SC 29465

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

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

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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");

MIV

- 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.

- 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;

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

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.

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

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

The Supreme Court of South Carolina

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

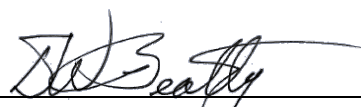
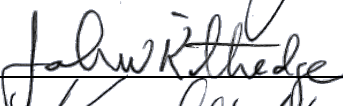
v.

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

Appellate Case No. 2020-001415

ORDER

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

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

Columbia, South Carolina
April 19, 2021

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

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

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

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

Plaintiffs,)

v.)

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

Defendants.)

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

**REPLY OF THE LAWYER
DEFENDANTS IN SUPPORT OF
THEIR MOTION TO DISMISS**

Defendants Lawrence E. Richter, Jr. (“Richter”), David K. Haller (“Haller”), and Richter & Haller, LLC (collectively, “Lawyer Defendants”) enter this reply to the response of Plaintiffs, ECF No. 27, to their motion to dismiss, ECF No. 21.¹ In their response, Plaintiffs merely reiterate the same baseless allegations that have been proffered and rejected many times before. The complaint in this case fails to state a plausible cause of action and is barred by *res judicata*. Therefore, the Lawyer Defendants seek dismissal of the complaint.

REPLY ARGUMENT

I. Plaintiffs’ claims cannot survive even under a Rule 12(b)(6) standard.

In the current era, courts no longer require strict code pleading, but rather compliance with Rule 8, Fed. R. Civ. P. *See Ashcroft v. Iqbal*, 556 U.S. 662, 677–78, 129 S. Ct. 1937, 1949 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 1965 (2007)). Nonetheless, a plaintiff’s complaint can still not survive on the mere possibility of liability but must provide allegations and conclusions specific enough to create a plausible claim for relief. *Id.* at 678, 129

¹ This motion to dismiss was filed in an abundance of caution while the Lawyer Defendants’ motion to remand and motion to stay remain pending.

S. Ct. at 1949. Because this plausibility standard is specific to each case, it requires the district court to “draw on its judicial experience and common sense.” *Id.* at 679, 129 S. Ct. at 1950 (citation omitted).

The allegations in this complaint bely common sense. In order for the complaint to state a claim, the Court must be willing to entertain the baseless idea that the Lawyer Defendants colluded with the Catholic Church with the willing participation of a sitting South Carolina Court of Common Pleas judge.² The Court must be willing to believe that, despite repeated, vociferous, and contemporaneous objections from Plaintiffs’ counsel and national press coverage of the case, the judge in question blatantly continued in a pattern of corruption. Further, the Court must be willing to entertain the idea that the conspiracy of Judge Goodstein, class counsel, and the Catholic Church was further ignored by every single state court with jurisdiction, including the Charleston County Court of Common Pleas, the South Carolina Court of Appeals, and the South Carolina Supreme Court, all of which have had multiple occasions over a period of more than a decade to review the allegations made by counsel for plaintiffs.

The complete lack of plausible claims is illustrated by Plaintiffs in footnote 4, wherein it states, the “S.C. Supreme Court has been informed (on multiple occasions) that its 2009 order was ignored [but] . . . [t]o date the Supreme Court has taken no action in response” (ECF No. 27, p. 7 n. 4.) The South Carolina Supreme Court has been given multiple opportunities to act upon the allegations of Plaintiffs’ counsel, including Plaintiffs’ recent petition for review in the original

² Indeed, the literal judicial experience of this Court in the past year shows that Attorney Richter sues the Catholic Church quite often and is therefore not likely conspiring with the Bishop or the Pope. *See, e.g., Mary Roe 1818 v. Bishop of Charleston . . .*, Case No. 2:21-cv-00020-RMG (D.S.C.); *Gary Nestler, et al. v. Bishop of Charleston . . .*, Case No. 2:21-cv-00613-RMG (D.S.C.); *John Doe 197 v. Bishop of Charleston . . .*, Case No. 2:22-cv-00816-DCN (D.S.C.).

jurisdiction of that court, but has rejected those opportunities at every turn. Plaintiffs' claims lack plausibility or merit and every court in the state appears to agree.

Plaintiffs attempt to recycle arguments about the duties of class counsel under state case law that predates the introduction of Rule 23, SCRCP, governing class actions.³ Arguments based on the two primary cases cited by Plaintiffs were considered by Judge J.C. Nicholson, who granted summary judgment to the Lawyer Defendants, and the South Carolina Court of Appeals, who affirmed Judge Nicholson's orders. *See Doe 2, et al. v. Bishop of Charleston, et al.*, Case No. 2017-001996, 2021 WL 815940 (S.C. Ct. App. filed Mar. 3, 2021).⁴ The opinion rejecting Plaintiffs' arguments was unpublished and is therefore not binding state law precedent. *See* Rule 268(d)(2), SCACR. Nonetheless, since nearly all factors are identical, the opinion is certainly eligible for application to this case under the doctrine of non-mutual collateral estoppel. *See Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554–55, 684 S.E.2d 779, 782 (Ct. App. 2009). This case involves the same defendants, same plaintiff's counsel, same underlying matter, and the same allegations and arguments. The specific argument on class counsel duties now raised by Plaintiffs was explicitly addressed and rejected in Judge Nicholson's summary judgment order, filed as ECF No. 21-1, beginning around page 12.⁵

³ Specifically, Plaintiffs' counsel relies upon *In re Green*, 291 S.C. 523, 354 S.E.2d 557 (1987) and *Premium Investment Corp. v. Green*, 283 S.C. 484, 324 S.E.2d 72 (Ct. App. 1984).

⁴ Plaintiffs attempted to petition for a writ of certiorari, but the improperly submitted petition was not accepted for filing after both the Supreme Court and Court of Appeals refused to withdraw the remittitur.

⁵ To the extent that Plaintiffs object to the consideration of public court filings from matters recited in their complaint, the Lawyer Defendants note that there is an exception to principle that only the complaint is considered in a motion to dismiss. *See Anand v. Ocwen Loan Servicing, LLC*, 754 F.3d 195, 198 (4th Cir. 2014) (quoting *Philips v. Pitt Cty. Mem. Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009)) ("we may properly consider documents attached to a complaint or motion to dismiss 'so long as they are integral to the complaint and authentic'").

Plaintiffs' allegations in this case have been rejected many times before. There are many true things underlying this case—there was a groundbreaking class action settlement that disbursed \$12 million to alleged victims of sexual abuse and that settlement was approved by the class action court. All these matters of public record do not create plausible allegations supporting causes of action against the Lawyer Defendants. Merely calling something collusive or “shopped-for” does not provide a fact to support a claim. Plaintiffs ask this Court to ignore common sense and rational experience and believe that perfectly normal court filings amount to a cabal between the Pope, class counsel, and Judge Goodstein. All the civil courts of this state have had an opportunity to consider these allegations and all the civil courts of this state have rejected those claims. The Lawyer Defendants ask that this Court do the same.

II. Declaratory relief is not appropriate in this case.

Plaintiffs' counsel has long sought a judicial opinion on his claims about the proper administration of a class action case in South Carolina state court. Each and every time our state appellate courts have been given the opportunity to opine on these issues, no published opinion has been issued. By entering an unpublished opinion affirming Judge Nicholson on the eight consolidated cases brought by Plaintiffs' Counsel, the Court of Appeals made it clear that they felt no guidance to the bench and bar on the issue of Rule 23, SCRCP, is needed. Nonetheless, Plaintiffs are seeking an advisory opinion on the enforcement of state court orders, state judge appointments for class actions, the management of disbursements in state court, and the “applicable legal standards.” (*See* ECF No. 1-1, pp. 29–30, ¶ 112.)

Together, this amounts to a request for a law review article on class action administration in South Carolina state court. In the first instance, declaratory judgment cannot be obtained for advisory reasons, but must concern a real case or controversy, like any other matter before an

Article III court. *See Genesis Healthcare, Inc. v. Becerra*, 39 F.4th 253, 259 (4th Cir. 2022) (applying standing requirements to a question of advice upon an area of federal healthcare law); *see also West v. West*, 263 S.C. 146, 148, 208 S.E.2d 530, 532 (1974) (“The existence of an actual controversy is necessary in order to invoke the jurisdiction of the court for a declaratory judgment.”).

Plaintiffs have sought to alter the character of the relief sought by adding in another issue for judgment—whether the settlement in the class action complied with Rule 43(k), SCRCF. Once again, Plaintiffs seek legal advice and interpretation. Not only is such a request not in compliance with the jurisdictional requirements of declaratory judgment, it also asks this Court to opine on, or even create, state procedural law. This is a textbook reason for the District Court to decline to exercise any discretion in favor of undertaking a declaratory judgment. *See United Capitol Ins. Co. v. Kapiloff*, 155 F.3d 488, 493–94 (4th Cir. 1998) (addressing abstention facts such as overlapping issue of law that might create unnecessary entanglement between state and federal court).

Indeed, there are two pending state court cases brought by Plaintiffs’ counsel, now before Judge Cole, which contain very similar claims to those in this case. Any ruling on the merits of those cases would implicate the same legal issues Plaintiffs seek guidance on in this case. Under such circumstances, federal courts may abstain from exercising jurisdiction. *See Med. Mut. Ins. Co. of N. Carolina v. Littaua*, 35 F.4th 205, 208 (4th Cir. 2022) (quoting *VonRosenberg v. Lawrence*, 781 F.3d 731, 734 (4th Cir. 2015), as amended (Apr. 17, 2015)). Under these circumstances, the claim for declaratory judgment should be dismissed for failure to state cognizable claim or because it seeks guidance on state court procedure.

III. Plaintiffs have not complied with the “contemporaneous filing” requirement for an expert affidavit.

A claim for legal malpractice under South Carolina state law requires compliance with S.C. Code Ann. § 15-36-100(B), which requires the filing of an expert affidavit with a professional malpractice claim. This is referred to as the “contemporaneous filing requirement.” *See* S.C. Code Ann § 15-36-100(C)(1). Specifically, the statute requires the plaintiff to “file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit.” *Id.* at § 15-36-100(B).

The instant suit was filed on August 30, 2022. The affidavit attached to the complaint was purportedly signed on September 9, 2020, nearly two years earlier. It appears that Plaintiffs are recycling the same affidavit presented to the South Carolina Supreme Court in their petition for original jurisdiction. The affidavit recycles much the same allegations oft-repeated by Michael Virzi, going back to at least to the affidavit he executed on December 10, 2008. (*See* Affidavit from Complaint in 2010-CP-10-05520 attached as **Exhibit A**.) Not only was the affidavit attached to the current complaint not drafted in conjunction with the instant suit, it simply repeats the same allegations that have been rejected by the South Carolina Court of Common Pleas, Court of Appeals, and Supreme Court. Plaintiffs failed to comply with the statutory filing requirements and fail to state a cause of action for legal malpractice.

IV. Plaintiffs’ claims are precluded by earlier litigation.

In this case Plaintiffs are bringing the same claims against Defendants that they presented in their petition for original jurisdiction of the South Carolina Supreme Court. Indeed, they are even using the same expert affidavit. Plaintiffs could have chosen to bring their claims in circuit court like other plaintiffs typically do. However, Plaintiffs believed their case to be of such

monumental importance that it should skip the typical procedure and go straight to the Supreme Court. Plaintiffs laid out all their grievances and the import of those grievances. After extensive briefing, the Supreme Court denied their petition. The choice to seek an extraordinary venue was Plaintiffs'. Now Plaintiffs want a second bite of the apple.

The application of *res judicata* to prior litigation requires three factors. “‘To establish *res judicata*, the defendant must prove the following three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit.’” *RIM Assocs. v. Blackwell*, 359 S.C. 170, 182, 597 S.E.2d 152, 159 (Ct. App. 2004) (quoting *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999)). The denial of Plaintiffs’ petition was on the merits, not on an issue of procedure, which might engender a dismissal without prejudice. Nonetheless, Plaintiffs argue that a case regarding an inmate’s attempts to address irregularities with his sentence administration demonstrates that their petition is not preclusive. See *Carpenter v. S.C. Dep’t of Corr.*, 431 S.C. 512, 517, 848 S.E.2d 346, 349 (Ct. App. 2020). These cases are distinguishable in a number of ways.

Most critically, the argument for application of *res judicata* in the *Carpenter* case concerned the state’s argument to dismiss Carpenter’s appeal following a state court trial. During the pendency of the case, the inmate sought and was denied a writ of *habeas corpus* in the state Supreme Court. *Carpenter*, at 519, 848 S.E.2d at 349–50 (“Carpenter filed the present appeal. At the same time, he filed his petition for a writ of *habeas corpus* and a request to certify this appeal with the South Carolina Supreme Court.”) Carpenter was seeking relief in all possible avenues due to his active and ostensibly improper incarceration. The Court of Appeals reviewed his trial court case on the merits and sent it back to trial court for treatment as a post-conviction-relief case

without finding that a concurrent attempt to gain the Supreme Court's jurisdiction was preclusive. *See id.* at 526, 848 S.E.2d at 353.

Conversely, in a case where parties sought a writ of mandamus, the Supreme Court found that the writ case had a preclusive effect on a later damages case. The court found that the parties and the issues were the same with the only difference being the "remedy sought." *Plum Creek*, at 35, 512 S.E.2d at 109. "Where those underlying facts or subject matter of the mandamus proceeding and a subsequent proceeding are identical, and the other two elements exist, *res judicata* applies." *Id.* at 36, 512 S.E.2d at 109 (citing 50 C.J.S. *Judgment* § 749 (1997)). The reasons for this might be found in the public policy supporting *res judicata*—the need to bring litigation to an end, the prevention of vexatious litigation, the stability of court decisions, and the promotion of judicial economy. *See* 50 C.J.S. *Judgments* § 912. This case is nothing if not the continuation of vexatious litigation. Mr. Meyers' and his various clients have been filing suits against the Lawyer Defendants for twelve years now and show no signs of stopping despite summary judgment being granted and affirmed in eight of the cases. Plaintiffs have already had their day in court and their complaint should be dismissed.

[signature page to follow]

Respectfully submitted,

BRUNER POWELL WALL & MULLINS, LLC

s/ Chelsea J. Clark

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Haller and Richter & Haller, LLC

November 8, 2022

Columbia, South Carolina

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Pending substitution as attorney for

David K. Haller

November 8, 2022

Charleston, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA)

COUNTY OF COUNTY OF RICHLAND)

AFFIDAVIT

NOW COMES Michael J. Virzi, and states, under oath, the following:

1. I am offering this affidavit as an expert witness on behalf of the plaintiffs, John Doe et al., to support their Complaint against the defendants, Lawrence E. Richter, Jr., Esquire, David K. Haller, Esquire, and Richter & Haller, LLC, (hereinafter "Defendants") for professional negligence pursuant to S.C. Code Ann. § 15-36-100(b).

2. My qualifications to give expert testimony include the following:

- A. I am a lawyer licensed to practice law in South Carolina;
- B. I am a former Assistant Disciplinary Counsel to the South Carolina Supreme Court and current Chairman of the South Carolina Bar Ethics Advisory Committee;
- C. I am a frequent CLE speaker and law school guest lecturer on the topic of lawyer ethics and have been selected as one of five instructors for the South Carolina Supreme Court's Ethics School; and
- D. Since leaving the Office of Disciplinary Counsel in 2006, my practice has focused almost exclusively on matters of lawyer ethics.

3. My opinion is based on the facts provided to me by Plaintiff's counsel and review of various documents. Included in my document review are the following:

- A. Complaint in the Original Jurisdiction of the Supreme Court, John Doe et al. v. Lawrence E. Richter, Jr., et al.;
- B. Affidavit of Gregg Meyers, dated June 18, 2008, and filed June 18, 2008, in John Doe C, et al. v. The Diocese of Charleston, et al., Case No. 08-CP-10-1274, and attachments including:
 - i. 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;

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- ii. 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;
 - iii. 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;
 - iv. 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;
 - v. 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;
 - vi. 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; and
 - vii. 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;
- C. 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;
- D. 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);
- E. 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;
- F. 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; and

- G. 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.

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 and my discussions with Plaintiffs' counsel, it is my opinion that, Lawrence E. Richter, Jr., Esquire, David K. Haller, Esquire, and Richter & Haller, LLC, (hereinafter "Defendants") engaged in negligent acts and omissions in their representation of Plaintiffs including the following:

- A. failure to provide competent representation;
- B. failure to act with reasonable diligence and promptness;
- C. failure to promptly inform clients of decisions and circumstances with respect to which the clients' informed consent is required;

- D. failure to reasonably consult with clients about the means by which the clients' objectives are to be accomplished;
- E. failure to keep clients reasonably informed about the status of matters;
- F. failure to explain matters to the extent reasonably necessary to permit clients to make informed decisions regarding the representation;
- G. attempting to charge and charging an unreasonable fee;
- H. representing clients when the representation involved a concurrent conflict of interest, without obtaining the informed consent of each client, confirmed in writing;
- I. failure to exercise independent professional judgment and render candid advice in representing clients;
- J. failure to expedite litigation consistent with the interests of clients;
- K. lack of candor toward a tribunal; and
- L. conduct prejudicial to the administration of justice.

6. In particular, it appears from the above-referenced documents that Defendants failed to inform clients of Richter's extensive personal relationship with an adverse party, the Diocese of Charleston, and Richter's continuing work on behalf of the Diocese during litigation in which Defendants' clients were adverse to the Diocese. It is apparent from Richter's own affidavit (identified in paragraph 3.F.ii above) that he has a lifelong, extensive personal relationship with the Diocese and many of its current and former constituents, in addition to being a constituent himself and continuing to perform official functions during the pendency of the client matter. This presents a conflict of interests, requiring 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. Defendants apparently did not do so.

7. It further appears that Defendants engaged in acts and omissions that would be potentially disadvantageous to their own clients and advantageous to the Diocese, including:

- A. failing to promptly seek class certification in the Charleston County class action;
- B. executing Consent Orders of Dismissal in the Charleston County cases;
- C. reducing the extent of notice to class members contained in Defendants' Motion to Certify Classes;
- D. agreeing to reduce their clients' recovery but not Defendants' fees, if the claims exceeded the pool;
- E. failing to object to the Diocese having sole, unsupervised, unfettered discretion to discover potential class members from its own files;
- F. failing to seek a post-claims fairness hearing or to provide any procedure in the settlement agreement for post-claim review;
- G. expressly 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 claimants, by participating in the claims process, expressly waive the right to appeal;
- H. participating in negotiations of the claims of several opted-out class members, resulting in an agreement that payment of such claims may come from the settlement pool available to class members;

- I. agreeing to contribute \$100,000 from either Defendants' fee or the settlement pool, toward a settlement between the Diocese and several opted-out class members.

It appears that Defendants engaged in these acts and omissions without first consulting or otherwise communicating with clients. Thus Defendants failed to adequately communicate with clients, failed to remain diligent and loyal to clients, and failed to obtain informed consent to a conflict of interests.

8. It further appears that Defendants engaged in acts and omissions that would be potentially disadvantageous to their own clients and advantageous to Defendants, including simultaneously seeking a common fund recovery for class members and a fixed fee amount for Defendants. It appears that Defendants engaged in this conduct without first consulting with clients. Thus Defendants failed to adequately communicate with clients, failed to remain diligent and loyal to clients, and failed to obtain informed consent to a conflict of interests.

9. It further appears that Defendants engaged in acts and omissions that would be potentially advantageous to the class representative clients and disadvantageous to the non-class-representative clients, 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. Thus Defendants failed to adequately communicate with clients, failed to remain diligent and loyal to clients, and failed to obtain informed consent to a conflict of interests.

10. It further appears that Defendants sought an improper and unreasonable fee from the settlement pool and a payment structure that favored Defendants' own interest above those of their clients. Defendants' fee petition, affidavits and billing records overstate work performed and misrepresent the nature of the case. Defendants describe 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 Defendants' collection of their fee. Defendants' billing records show 3385.5 total hours spent by lawyers and staff at Richter & Haller; however many of the time entries are clearly false in that they are nonsensical and/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;
- 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”

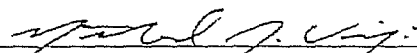
had already billed 51.5 hours one day and 20 the next, totaling 201.5 hours in 8 days (including weekends) for an *average* of more than 25 hours per day.

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 Defendants appear to have made false statements to a tribunal in support of a fixed fee that was unreasonable and put Defendants in a position potentially adverse to their own clients without taking appropriate steps to deal with the conflict of interests created thereby.

11. As a result, it is my opinion that Defendants' conduct fell below the standard of care, competence, diligence, and loyalty expected of lawyers.

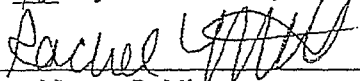
12. The opinions in this affidavit are given to a reasonable degree of certainty and are specifically based on the documents listed above. I reserve the right to alter, amend, modify, reduce, or expand these opinions if and when additional information is presented.

FURTHER AFFIANT SAYETH NOT.


Michael J. Virzi, Esq.

State of South Carolina
County of Richland

Sworn and subscribed before me
This 10th day of December, 2008


Notary Public My Commission Expires July 25, 2013
My Commission Expires : _____

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Attachment B

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Record on Appeal - 2056

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

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

Plaintiffs,)

v.)

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

Defendants.)

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

**CONSENT MOTION FOR
SUBSTITUTION OF COUNSEL
AS TO DAVID K. HALLER**

Defendant David K. Haller (“Defendant”) moves for an order substituting his counsel. Defendant’s current counsel, Benjamin C. Bruner and Chelsea J. Clark of Bruner, Powell, Wall & Mullins, LLC, are withdrawing and Defendant has engaged John E. Cuttino of Gallivan, White & Boyd, PA to substitute for Mr. Bruner and Ms. Clark. Mr. Haller consents to the substitution and Mr. Cuttino has entered an appearance in accordance with Local Rule 83.I.07(A) (D.S.C.)

Defendant Haller therefore requests that Benjamin C. Bruner and Chelsea J. Clark and their law firm, Bruner, Powell, Wall & Mullins, LLC, be relieved as counsel of record for Defendant David K. Haller and that John E. Cuttino, and his law firm, Gallivan, White & Boyd, PA, be substituted as counsel of record for Defendant. All future pleadings and notices should be directed to and served upon John E. Cuttino as counsel of record for Defendant. Mr. Bruner and Ms. Clark will remain counsel of record for Defendants Lawrence E. Richter, Jr. and Richter & Haller, LLC. A proposed order will be filed concurrently herewith.

[Signature Page to Follow]

WE JOINTLY MOVE AND CONSENT.s/ John E. Cuttino

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November 23, 2022
Columbia, South Carolina

s/ Chelsea J. Clark

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November 23, 2022
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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

John Doe #66

Plaintiff,

vs.

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

Defendants.

COMPLAINT
Jury Trial Requested

Outrage, Negligence/Gross Negligence,
Breach of Fiduciary Duty, Intentional
Infliction of Emotional Distress, Fraudulent
Concealment, Civil Conspiracy, Negligent
Retention or Supervision

TO: THE DEFENDANTS ABOVE NAMED

Plaintiff, complaining of the Defendants, alleges and says:

PARTIES AND JURISDICTION

1. John Doe #66 is a pseudonym for a former Charleston County resident who, while living in the Charleston area, attended schools operated by the Diocese of Charleston and attended and participated in mass, confession, religious training, and various religious and non-religious functions sponsored and operated by the Diocese of Charleston. He is identified in this complaint by a pseudonym because this is a case about childhood sexual abuse upon the plaintiff, and his identity has been withheld due to the sensitivity and private nature of these allegations. His identity has been disclosed to the defendants.
2. Defendant The Bishop of Charleston, a Corporation Sole (hereinafter referred to as "Diocese"), and/or its predecessors, is and was at all times material hereto a corporation organized under the laws of the State of South Carolina, having its principal place of

BY

JULIE J. ARMSTRONG
CLERK OF COURT

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business at 117 Broad Street, Charleston, South Carolina. Diocese is and was the corporate entity through which the religious and other affairs of the Roman Catholic Church in South Carolina are and were conducted. The Diocese and its agents and employees were and continue to be responsible for the selection and assignment of clergy, supervision of clergy activities, the exercise of authority over various members of its denomination, and the maintenance of the well being of its members.

3. The Bishop of the Diocese of Charleston (hereinafter referred to as "Bishop") is sued in his official capacity. The Bishop is ultimately responsible for the priests in his Diocese. Bishop is the successor in interest to his predecessors in his official position.

FACTUAL SUMMARY

4. Defendant Diocese operates churches and parochial schools in Charleston County and throughout South Carolina offering primary, elementary, and secondary educations. It holds certain assets including schools, rectories, churches, and other properties real and personal in Charleston County and throughout South Carolina and possibly elsewhere. One such property is Nativity Catholic Church and School (hereinafter "Nativity") located in Charleston County.
5. Diocese, as part of its general mission, encouraged its parishioners, such as the plaintiff, to enter, use, and attend its many activities on its premises, including school, worship, social, and religious based functions. As such, the Diocese undertook a duty to ensure its premises were safe from all dangers which were reasonably foreseeable. In particular, the defendants owed minors, including the minor plaintiff, a greater degree of care because of their lack of

capacity to appreciate risks and avoid danger. Diocese and Bishop represented to its parishioners, including the plaintiff and/or his parents, that its facilities were places of safety and that it could and would protect its parishioners, including the plaintiff, from harm.

6. At all times material to the incidents alleged in this complaint, Father James Nyhan was a clergyman assigned to Nativity. Nyhan was assigned to Nativity by the Diocese and Bishop and, at all times, was under the direct supervision, employ and control of the Diocese and its then Bishop.
7. Nyhan was employed by Diocese and Bishop as a priest, youth leader, confessor, counselor, and in a position of authority over plaintiff at Nativity Catholic Church and School. In this role, Nyhan came to have access to and to know the most personal and confidential information of his parishioners including the plaintiff. Diocese and Bishop encouraged their parishioners to share and trust Nyhan as a priest, youth leader, confessor, counselor, and in a position of authority over plaintiff. Among other things, Diocese and Bishop encouraged plaintiff and other parishioners to share with and trust Nyhan and other of its employees with deeply personal information and with their personal safety and salvation. As part of his employment, Nyhan reached out to parishioners of the Diocese and assisted the defendants in cultivating relationships of trust and confidence.
8. Plaintiff, a devout member of the Roman Catholic Church, attended and actively participated in activities designed for young boys at Nativity. Among other things, plaintiff was an altar boy and participated in the youth programs with which Nyhan worked.
9. Plaintiff came to know the priest Nyhan through these various church and school related programs and activities. Based on this relationship, as cultivated by Nyhan and encouraged

by the Diocese and the Bishop, plaintiff admired, trusted, revered and respected Nyhan as a holy man, authority figure, confessor, clergyman, counselor and spiritual advisor. In school and church, he was taught and instructed to do so. As a result, plaintiff entrusted in Nyhan his personal safety and shared with Nyhan his most confidential information.

10. Because of plaintiff's position as a minor, together with Nyhan's position in the Roman Catholic Church as a priest, youth leader, holy man, confessor, counselor, and authority figure, Nyhan was able to have control and influence over plaintiff. By his words and actions, Nyhan represented to plaintiff that their relationship was one in which Nyhan was to provide counseling, comfort and advice to plaintiff, and to look out for plaintiff's well being and best interests. These representations were untrue and intended to deceive plaintiff. Nyhan used these representations and his various positions to gain plaintiff's trust and confidence and to obtain control over him.
11. Between 1978 and 1980, plaintiff, then a minor child, was sexually assaulted by Father Nyhan.
12. These incidents occurred while Nyhan was an employee and youth leader of Nativity Catholic Church and School. These assaults upon plaintiff occurred on the premises of Nativity Catholic Church, a property owned and controlled by the defendants, as well as other locations. For example, Nyhan preyed on young boys, including the plaintiff, in the Church Rectory of Nativity Catholic Church or took them elsewhere, such as to local beaches, for the purposes of molestation.
13. Based on the relationship of trust and confidence cultivated by Nyhan and encouraged by Diocese and Bishop, plaintiff justifiably believed and relied on Nyhan and gave Nyhan his

trust and confidence. By his words and actions, Nyhan assured plaintiff that this conduct was legal and proper. Nyhan and defendants actively concealed the wrongfulness of his exploitation and misconduct involving children, plaintiff included. As a result, and because plaintiff was a minor, plaintiff was unable to understand the wrongfulness and illegality of Nyhan's sexual abuse of him and the related injury. Nyhan also threatened plaintiff with recrimination if plaintiff revealed Nyhan's actions.

14. Plaintiff is informed and believes that the defendants knew, or should have known that Nyhan had deviant sexual propensities. Furthermore, the defendants knew or should have known that Nyhan was molesting minor boys on Nativity Catholic Church's premises and at other locations as well. Nevertheless, the defendants failed to warn the plaintiff and other minor children similarly situated of the danger posed by Nyhan, failed to protect the plaintiff on its premises, and failed in the exercise of the many other duties it undertook. Moreover, it hid the conduct of Nyhan and others. In fact, concealment of the conduct of the priests and other Diocese employees was the official policy of the Diocese and the Catholic Church.
15. 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.
16. 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).
17. 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.

18. 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."
19. 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.)
20. 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.)
21. Under standard Catholic doctrine, "good" Catholics are required to follow the mandates of the Holy See such as dictates of the INSTRUCTION or face a potential after life of damnation. Diocese, Bishop and their agents and employees such as Nyhan using the relationships of priest, youth leader, confessor, counselor, and in a position of authority over

plaintiff which they cultivated, reinforced this belief.

22. As a result, plaintiff, a good Catholic, was taught that he must obey the rules, teachings, doctrines, and instructions of the Roman Catholic church and was, therefore, instructed and led to believe, by the Diocese, Bishop and their agents and employees such as Nyhan that he must conceal that Nyhan had committed upon him a horrible sin or risk an afterlife of damnation.
23. As a result of the actions and/or inactions of the defendants, Nyhan was allowed, and did, prey upon plaintiff by engaging in its own defined "worst sin." Plaintiff has suffered from Nyhan's conduct and the conduct of the defendants, by, among other things, years of psychological damage with physical manifestations.

FOR A FIRST CAUSE OF ACTION

NEGLIGENCE/GROSS NEGLIGENCE/RECKLESSNESS

24. The allegations of paragraphs 1 through 22 above are incorporated into this cause of action as if fully stated herein.
25. As alleged above, plaintiff was sexually assaulted on multiple occasions between 1978 and 1980 by Father James Nyhan who was a priest, youth leader, confessors, counselor, and in a position of authority over plaintiff. Nyhan's duties to the plaintiff arose from his employment with Diocese and Bishop.
26. As a result of the relationship between plaintiff and Nyhan, plaintiff and the defendants, and/or Nyhan and the defendants, defendants owed duties of due care toward the plaintiff. defendants breached those duties and were negligent, grossly negligent, careless, reckless,

wilful, or wanton in relation to the plaintiff, in that they failed to:

- a. Monitor Nyhan's behavior while on premises of the defendants including, but not limited to, Nativity Catholic Church, and/or while engaged in activities with school, church, youth;
- b. Properly investigate Nyhan's background through a proper background check, to determine his proclivities toward deviant sexual conduct perpetrated upon individuals such as the plaintiff;
- c. Address Nyhan's past conduct either at the time he first became involved with the defendants or subsequently thereafter;
- d. Ignoring Nyhan's known predilections toward sexually assaulting young boys when it was known or the defendants should have known of those predilections;
- e. Allowing Nyhan to work with young boys, including the plaintiff, alone and unsupervised;
- f. Maintain and keep their property and premises where Nyhan worked in a reasonably safe condition;
- g. Shield the plaintiff from dangerous conditions, situations and individuals including child predators such as Nyhan;
- h. Warn the plaintiff and/or his family of Nyhan's deviant sexual proclivities;
- i. Fulfill their duties *in loco parentis* to the plaintiff;
- j. Educate the plaintiff and/or his family about the dangers of sexual abuse of minors in youth programs such as those conducted by the defendants through Nyhan;
- k. Warn them of a priest known to have a sexual interest in children and known to act

inappropriately on that interest;

- l. Supervise Nyhan in a manner so as to eliminate his chances to sexually abuse children;
 - m. Take steps to report to civil and criminal authorities a priest who sexually abused children so those who consider employing him for jobs having contact with children can make an informed decision about whether or not to do so, or the conditions on which to employ him, and so that parents and children can protect against his predatory actions;
 - n. Notify parents of those children who have been exposed to Nyhan;
 - o. Exercise due care for the safety and well-being of plaintiff.
27. 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 SECOND CAUSE OF ACTION

BREACH OF FIDUCIARY DUTY

28. The allegations of paragraphs 1 through 22 above are incorporated into this cause of action as if fully stated herein.
29. By and through the relationships described herein, defendants entered into a fiduciary relationship with the plaintiff. Additionally, by accepting physical custody of the minor

plaintiff, as student at Nativity School and a parishioner of Nativity Church, defendants assumed the duty to act in *loco parentis* with respect to the plaintiff. The defendants undertook a duty to provide a safe environment for plaintiff, as well as for all children at Nativity Catholic Church and School. A relationship of trust and confidence, and therefore a fiduciary relationship, was formed.

30. By entering into a fiduciary relationship with plaintiff, defendants were obligated to act only in the best interests of plaintiff. This duty extended to defendants' agents and employees, Nyhan included.
31. Plaintiff reposed trust and confidence in Nyhan, his priest, teacher, confessor, and counselor, and in the defendants. As a result of Nyhan's predatory acts described above and the Diocese and Bishop's failure to act on Nyhan's conduct, the defendants breached the duties owed to the plaintiff.
32. As a proximate result of the negligent actions, inactions and breaches of fiduciary duties by the defendants and through agents, plaintiff was harmed and is entitled to actual, compensatory damages in an amount to be determined by the jury, and punitive damages in an amount sufficient to deter similar conduct by these defendants and others.

FOR A THIRD CAUSE OF ACTION

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

33. The allegations of paragraphs 1 through 22 above are incorporated into this cause of action as if fully stated herein.
34. The emotional distress and its attendant physical manifestations including nervousness, poor

sleep, headaches, nausea, among others, suffered by plaintiff as a result of the defendants' actions and inactions was so severe that no reasonable person could be expected to endure it. Those effects have continued to cause problems for plaintiff and harm him severely, emotionally and physically.

35. As a direct and proximate result of the outrageous conduct of the defendants, plaintiff has been injured and suffered damages. Plaintiff is entitled to judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants or others.

FOR A FOURTH CAUSE OF ACTION

FRAUDULENT CONCEALMENT

36. The allegations of paragraphs 1 through 22 above are incorporated into this cause of action as if fully stated herein.
37. Defendants had knowledge of Nyhan's sexually deviant propensities with minors prior to the sexual molestation of plaintiff. Plaintiff could not have known, nor did he reasonably have the opportunity to know, that the defendant had specific knowledge about Nyhan's deviant and sexual propensities prior to the abuse perpetrated on him. Further, plaintiff could not have discovered the truth through reasonable inquiry or inspections. By acts and conduct described herein, defendants concealed material facts from plaintiff, inducing plaintiff and his family into a false belief that Nyhan was safe around children, a false belief that no other children were sexually abused by Nyhan, and that the defendants did not possess knowledge that Nyhan engaged in predatory sexual practices and abused other children, among other

things.

38. The defendants' failure to report, along with their active concealment of Nyhan's above mentioned propensities, as mandated by the INSTRUCTION attached at Exhibit A, constitutes fraudulent concealment of the information about Nyhan from his potential prey. This fraudulent concealment lasted until the present.
39. 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 FIFTH CAUSE OF ACTION:

CIVIL CONSPIRACY

40. The allegations of paragraphs 1 through 22 above are incorporated into this cause of action as if fully stated herein.
41. Prior to the abuse of the plaintiff, plaintiff is informed and believes two or more agents of the defendants were aware of Nyhan's sexually deviant propensities with minors. The failure of these agents of the defendants to report Nyhan to the proper authorities, the active concealment of their knowledge about Nyhan's deviant activities, and their agreement to do nothing to stop, or at least report, his activities constitutes a conspiracy of silence. The purpose behind this conspiracy was to protect Nyhan at the plaintiff's expense, proximately resulting in injury to the plaintiff. The conspiracy of silence constitutes a failure to protect minors who were the potential prey of Nyhan and his sexually deviant propensities, this

plaintiff included.

42. As a direct and proximate result of the conspiratorial conduct of the defendants, plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants or others.

FOR A SIXTH CAUSE OF ACTION

NEGLIGENT RETENTION OR SUPERVISION

43. The allegations of paragraphs 1 through 22 above are incorporated into this cause of action as if fully stated herein.
44. Nyhan was hired by agents for the defendants, or the defendants themselves, prior to the abuse upon the plaintiff.
45. The agents for the defendants knew or should have known about Nyhan's sexually deviant propensities. Despite such knowledge, the agents for defendants failed to take steps to protect the minors at Nativity Church and School, including the minor plaintiff.
46. Despite having knowledge of Nyhan's sexually deviant propensities with minors, the defendants directly or through agents continued to retain him as a priest, youth leader, confessor, counselor, and teacher without warning the parents of children, or the children at Nativity Church and School, who were his potential prey. Several of these children, plaintiff included, became Nyhan's actual prey.
47. Despite having knowledge of Nyhan's sexually deviant propensities with minor students, the agents of the defendants did not properly supervise him. Consequently, he was able to

continue to perpetrate his sexually deviant attacks on minors.

48. Plaintiff was a minor child attending Nativity Catholic Church and School, where Nyhan was assigned. Therefore if not for Nyhan's continued employment by defendants, plaintiff would not have been injured.

49. Plaintiff was one of those minor students who was injured because the agents of the defendants failed to supervise Nyhan even though they knew or should have known of his sexually deviant propensities with minors.

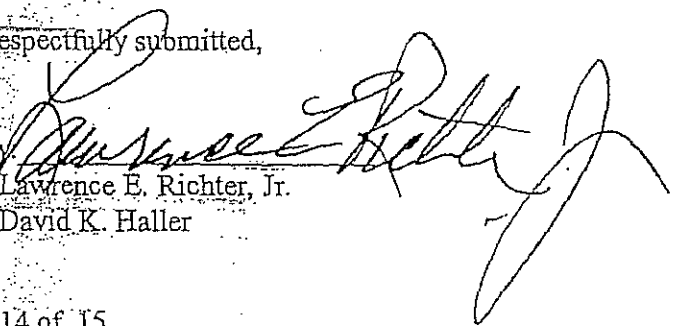
50. As a direct and proximate result of the defendants' negligent conduct, plaintiff sustained and continues to sustain injuries and damages described herein and therefore is entitled to receive actual, compensatory damages in an amount to be determined by a jury, and punitive damages in a sufficient amount to deter similar conduct by these defendants or others.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury.

WHEREFORE, plaintiff requests actual, compensatory and punitive damages against the defendants in amounts to be determined by the finder of fact for the various causes of action set forth above, that the costs of this action be taxed against the defendants, and such other and further relief as the Court shall deem just and proper.

Respectfully submitted,

By 
Lawrence E. Richter, Jr.
David K. Haller

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

John Doe #66A

Plaintiff,

vs.

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

Defendants.

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

COMPLAINT
Jury Trial Requested

Outrage, Negligence/Gross Negligence,
Breach of Fiduciary Duty, Intentional
Infliction of Emotional Distress, Fraudulent
Concealment, Civil Conspiracy, Negligent
Retention or Supervision

BY

JULIE A. ARMSTRONG
CLERK OF COURT

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TO: THE DEFENDANTS ABOVE NAMED

Plaintiff, complaining of the Defendants, alleges and says:

PARTIES AND JURISDICTION

1. John Doe #66A is a pseudonym for a former Charleston County resident who, while living in the Charleston area, attended schools operated by the Diocese of Charleston and attended and participated in mass, confession, religious training, and various religious and non-religious functions sponsored and operated by the Diocese of Charleston. He is identified in this complaint by a pseudonym because this is a case about childhood sexual abuse upon the plaintiff, and his identity has been withheld due to the sensitivity and private nature of these allegations. His identity has been disclosed to the defendants.
2. Defendant The Bishop of Charleston, a Corporation Sole (hereinafter referred to as "Diocese"), and/or its predecessors, is and was at all times material hereto a corporation organized under the laws of the State of South Carolina, having its principal place of

business at 117 Broad Street, Charleston, South Carolina. Diocese is and was the corporate entity through which the religious and other affairs of the Roman Catholic Church in South Carolina are and were conducted. The Diocese and its agents and employees were and continue to be responsible for the selection and assignment of clergy, supervision of clergy activities, the exercise of authority over various members of its denomination, and the maintenance of the well being of its members.

3. The Bishop of the Diocese of Charleston (hereinafter referred to as "Bishop") is sued in his official capacity. The Bishop is ultimately responsible for the priests in his Diocese. Bishop is the successor in interest to his predecessors in his official position.

FACTUAL SUMMARY

4. Defendant Diocese operates churches and parochial schools in Charleston County and throughout South Carolina offering primary, elementary, and secondary educations. It holds certain assets including schools, rectories, churches, and other properties real and personal in Charleston County and throughout South Carolina and possibly elsewhere. One such property is Nativity Catholic Church and School (hereinafter "Nativity") located in Charleston County.
5. Diocese, as part of its general mission, encouraged its parishioners, such as the plaintiff, to enter, use, and attend its many activities on its premises, including school, worship, social, and religious based functions. As such, the Diocese undertook a duty to ensure its premises were safe from all dangers which were reasonably foreseeable. In particular, the defendants owed minors, including the minor plaintiff, a greater degree of care because of their lack of

capacity to appreciate risks and avoid danger. Diocese and Bishop represented to its parishioners, including the plaintiff and/or his parents, that its facilities were places of safety and that it could and would protect its parishioners, including the plaintiff, from harm.

6. At all times material to the incidents alleged in this complaint, Father James Nyhan was a clergyman assigned to Nativity. Nyhan was assigned to Nativity by the Diocese and Bishop and, at all times, was under the direct supervision, employ and control of the Diocese and its then Bishop.
7. Nyhan was employed by Diocese and Bishop as a priest, youth leader, confessor, counselor, and in a position of authority over plaintiff at Nativity Catholic Church and School. In this role, Nyhan came to have access to and to know the most personal and confidential information of his parishioners including the plaintiff. Diocese and Bishop encouraged their parishioners to share and trust Nyhan as a priest, youth leader, confessor, counselor, and in a position of authority over plaintiff. Among other things, Diocese and Bishop encouraged plaintiff and other parishioners to share with and trust Nyhan and other of its employees with deeply personal information and with their personal safety and salvation. As part of his employment, Nyhan reached out to parishioners of the Diocese and assisted the defendants in cultivating relationships of trust and confidence.
8. Plaintiff, a devout member of the Roman Catholic Church, attended and actively participated in activities designed for young boys at Nativity. Among other things, plaintiff was an altar boy and participated in the youth programs with which Nyhan worked.
9. Plaintiff came to know the priest Nyhan through these various church and school related programs and activities. Based on this relationship, as cultivated by Nyhan and encouraged

by the Diocese and the Bishop, plaintiff admired, trusted, revered and respected Nyhan as a holy man, authority figure, confessor, clergyman, counselor and spiritual advisor. In school and church, he was taught and instructed to do so. As a result, plaintiff entrusted in Nyhan his personal safety and shared with Nyhan his most confidential information.

10. Because of plaintiff's position as a minor, together with Nyhan's position in the Roman Catholic Church as a priest, youth leader, holy man, confessor, counselor, and authority figure, Nyhan was able to have control and influence over plaintiff. By his words and actions, Nyhan represented to plaintiff that their relationship was one in which Nyhan was to provide counseling, comfort and advice to plaintiff, and to look out for plaintiff's well being and best interests. These representations were untrue and intended to deceive plaintiff. Nyhan used these representations and his various positions to gain plaintiff's trust and confidence and to obtain control over him.
11. Between 1978 and 1980, plaintiff, then a minor child, was sexually assaulted by Father Nyhan.
12. These incidents occurred while Nyhan was an employee and youth leader of Nativity Catholic Church and School. These assaults upon plaintiff occurred on the premises of Nativity Catholic Church, a property owned and controlled by the defendants, as well as other locations. For example, Nyhan preyed on young boys, including the plaintiff, in the Church Rectory of Nativity Catholic Church or took them elsewhere, such as to local beaches, for the purposes of molestation.
13. Based on the relationship of trust and confidence cultivated by Nyhan and encouraged by Diocese and Bishop, plaintiff justifiably believed and relied on Nyhan and gave Nyhan his

trust and confidence. By his words and actions, Nyhan assured plaintiff that this conduct was legal and proper. Nyhan and defendants actively concealed the wrongfulness of his exploitation and misconduct involving children, plaintiff included. As a result, and because plaintiff was a minor, plaintiff was unable to understand the wrongfulness and illegality of Nyhan's sexual abuse of him and the related injury. Nyhan also threatened plaintiff with recrimination if plaintiff revealed Nyhan's actions.

14. Plaintiff is informed and believes that the defendants knew, or should have known that Nyhan had deviant sexual propensities. Furthermore, the defendants knew or should have known that Nyhan was molesting minor boys on Nativity Catholic Church's premises and at other locations as well. Nevertheless, the defendants failed to warn the plaintiff and other minor children similarly situated of the danger posed by Nyhan, failed to protect the plaintiff on its premises, and failed in the exercise of the many other duties it undertook. Moreover, it hid the conduct of Nyhan and others. In fact, concealment of the conduct of the priests and other Diocese employees was the official policy of the Diocese and the Catholic Church.
15. Plaintiff has only learned within the past two years of the defendants' knowledge of Nyhan's history, proclivities, and actions, and has similarly only then learned of defendants' concealment and effort to maintain secrecy concerning same. Other litigation, news reports, and other occurrences have led to plaintiff now becoming so aware, and plaintiff could not have so known or learned previously.
16. 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.

17. 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).
18. 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.
19. 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."
20. 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.)
21. 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.)

22. Under standard Catholic doctrine, "good" Catholics are required to follow the mandates of the Holy See such as dictates of the INSTRUCTION or face a potential after life of damnation. Diocese, Bishop and their agents and employees such as Nyhan using the relationships of priest, youth leader, confessor, counselor, and in a position of authority over plaintiff which they cultivated, reinforced this belief.
23. As a result, plaintiff, a good Catholic, was taught that he must obey the rules, teachings, doctrines, and instructions of the Roman Catholic church and was, therefore, instructed and led to believe, by the Diocese, Bishop and their agents and employees such as Nyhan that he must conceal that Nyhan had committed upon him a horrible sin or risk an afterlife of damnation.
24. As a result of the actions and/or inactions of the defendants, Nyhan was allowed, and did, prey upon plaintiff by engaging in its own defined "worst sin." Plaintiff has suffered from Nyhan's conduct and the conduct of the defendants, by, among other things, years of psychological damage with physical manifestations.
25. Plaintiff's severe psychological damage, the equivalent of a misshapen mind, was proximately caused by the actions and/or inactions of the defendants; and said damage prevented plaintiff from recognizing, understanding, and asserting his legal claims relative to the childhood sexual abuse he suffered at the hands of Nyhan and the other defendants.

FOR A FIRST CAUSE OF ACTION:

OUTRAGE

26. The allegations of paragraphs 1 through 25 above are incorporated into this cause of action as if fully stated herein.
27. 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.
28. 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

29. The allegations of paragraphs 1 through 25 above are incorporated into this cause of action as if fully stated herein.
30. As alleged above, plaintiff was sexually assaulted on multiple occasions between 1978 and

1980 by Father James Nyhan who was a priest, youth leader, confessors, counselor, and in a position of authority over plaintiff. Nyhan's duties to the plaintiff arose from his employment with Diocese and Bishop.

31. As a result of the relationship between plaintiff and Nyhan, plaintiff and the defendants, and/or Nyhan and the defendants, defendants owed duties of due care toward the plaintiff. defendants breached those duties and were negligent, grossly negligent, careless, reckless, wilful, or wanton in relation to the plaintiff, in that they failed to:

- a. Monitor Nyhan's behavior while on premises of the defendants including, but not limited to, Nativity Catholic Church, and/or while engaged in activities with school, church, youth;
- b. Properly investigate Nyhan's background through a proper background check, to determine his proclivities toward deviant sexual conduct perpetrated upon individuals such as the plaintiff;
- c. Address Nyhan's past conduct either at the time he first became involved with the defendants or subsequently thereafter;
- d. Ignoring Nyhan's known predilections toward sexually assaulting young boys when it was known or the defendants should have known of those predilections;
- e. Allowing Nyhan to work with young boys, including the plaintiff, alone and unsupervised;
- f. Maintain and keep their property and premises where Nyhan worked in a reasonably safe condition;
- g. Shield the plaintiff from dangerous conditions, situations and individuals including

child predators such as Nyhan;

- h. Warn the plaintiff and/or his family of Nyhan's deviant sexual proclivities;
- i. Fulfill their duties *in loco parentis* to the plaintiff;
- j. Educate the plaintiff and/or his family about the dangers of sexual abuse of minors in youth programs such as those conducted by the defendants through Nyhan;
- k. Warn them of a priest known to have a sexual interest in children and known to act inappropriately on that interest;
- l. Supervise Nyhan in a manner so as to eliminate his chances to sexually abuse children;
- m. Take steps to report to civil and criminal authorities a priest who sexually abused children so those who consider employing him for jobs having contact with children can make an informed decision about whether or not to do so, or the conditions on which to employ him, and so that parents and children can protect against his predatory actions;
- n. Notify parents of those children who have been exposed to Nyhan;
- o. Exercise due care for the safety and well-being of plaintiff.

32. 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

33. The allegations of paragraphs 1 through 25 above are incorporated into this cause of action as if fully stated herein.
34. By and through the relationships described herein, defendants entered into a fiduciary relationship with the plaintiff. Additionally, by accepting physical custody of the minor plaintiff, as student at Nativity School and a parishioner of Nativity Church, defendants assumed the duty to act in *loco parentis* with respect to the plaintiff. The defendants undertook a duty to provide a safe environment for plaintiff, as well as for all children at Nativity Catholic Church and School. A relationship of trust and confidence, and therefore a fiduciary relationship, was formed.
35. By entering into a fiduciary relationship with plaintiff, defendants were obligated to act only in the best interests of plaintiff. This duty extended to defendants' agents and employees, Nyhan included.
36. Plaintiff reposed trust and confidence in Nyhan, his priest, teacher, confessor, and counselor, and in the defendants. As a result of Nyhan's predatory acts described above and the Diocese and Bishop's failure to act on Nyhan's conduct, the defendants breached the duties owed to the plaintiff.
37. As a proximate result of the negligent actions, inactions and breaches of fiduciary duties by the defendants and through agents, plaintiff was harmed and is entitled to actual, compensatory damages in an amount to be determined by the jury, and punitive damages in an amount sufficient to deter similar conduct by these defendants and others.

FOR A FOURTH CAUSE OF ACTION:

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

38. The allegations of paragraphs 1 through 25 above are incorporated into this cause of action as if fully stated herein.
39. The emotional distress and its attendant physical manifestations including nervousness, poor sleep, headaches, nausea, among others, suffered by plaintiff as a result of the defendants' actions and inactions was so severe that no reasonable person could be expected to endure it. Those effects have continued to cause problems for plaintiff and harm him severely, emotionally and physically.
40. As a direct and proximate result of the outrageous conduct of the defendants, plaintiff has been injured and suffered damages. Plaintiff is entitled to judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants or others.

FOR A FIFTH CAUSE OF ACTION:

FRAUDULENT CONCEALMENT

41. The allegations of paragraphs 1 through 25 above are incorporated into this cause of action as if fully stated herein.
42. Defendants had knowledge of Nyhan's sexually deviant propensities with minors prior to the sexual molestation of plaintiff. Plaintiff could not have known, nor did he reasonably have the opportunity to know, that the defendant had specific knowledge about Nyhan's deviant

and sexual propensities prior to the abuse perpetrated on him. Further, plaintiff could not have discovered the truth through reasonable inquiry or inspections. By acts and conduct described herein, defendants concealed material facts from plaintiff, inducing plaintiff and his family into a false belief that Nyhan was safe around children, a false belief that no other children were sexually abused by Nyhan, and a false belief that the defendants did not possess knowledge that Nyhan engaged in predatory sexual practices and abused other children, among other things.

43. The defendants' failure to report, along with their active concealment of Nyhan's above mentioned propensities, as mandated by the INSTRUCTION attached at Exhibit A, constitutes fraudulent concealment of the information about Nyhan from his potential prey. This fraudulent concealment lasted until the present.
44. 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

45. The allegations of paragraphs 1 through 25 above are incorporated into this cause of action as if fully stated herein.
46. Prior to the abuse of the plaintiff, plaintiff is informed and believes two or more agents of the defendants were aware of Nyhan's sexually deviant propensities with minors. The failure

of these agents of the defendants to report Nyhan to the proper authorities, the active concealment of their knowledge about Nyhan's deviant activities, and their agreement to do nothing to stop, or at least report, his activities constitutes a conspiracy of silence. The purpose behind this conspiracy was to protect Nyhan at the plaintiff's expense, proximately resulting in injury to the plaintiff. The conspiracy of silence constitutes a failure to protect minors who were the potential prey of Nyhan and his sexually deviant propensities, this plaintiff included.

47. As a direct and proximate result of the conspiratorial conduct of the defendants, plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants or others.

FOR A SEVENTH CAUSE OF ACTION:

NEGLIGENT RETENTION OR SUPERVISION

48. The allegations of paragraphs 1 through 25 above are incorporated into this cause of action as if fully stated herein.
49. Nyhan was hired by agents for the defendants, or the defendants themselves, prior to the abuse upon the plaintiff.
50. The agents for the defendants knew or should have known about Nyhan's sexually deviant propensities. Despite such knowledge, the agents for defendants failed to take steps to protect the minors at Nativity Church and School, including the minor plaintiff.
51. Despite having knowledge of Nyhan's sexually deviant propensities with minors, the

defendants directly or through agents continued to retain him as a priest, youth leader, confessor, counselor, and teacher without warning the parents of children, or the children at Nativity Church and School, who were his potential prey. Several of these children, plaintiff included, became Nyhan's actual prey.

52. Despite having knowledge of Nyhan's sexually deviant propensities with minor students, the agents of the defendants did not properly supervise him. Consequently, he was able to continue to perpetrate his sexually deviant attacks on minors.

53. Plaintiff was a minor child attending Nativity Catholic Church and School, where Nyhan was assigned. Therefore if not for Nyhan's continued employment by defendants, plaintiff would not have been injured.

54. Plaintiff was one of those minor students who was injured because the agents of the defendants failed to supervise Nyhan even though they knew or should have known of his sexually deviant propensities with minors.

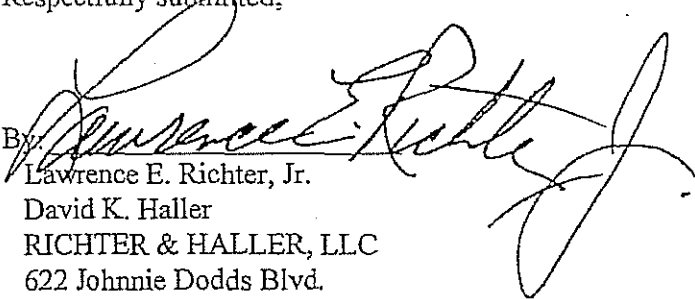
55. As a direct and proximate result of the defendants' negligent conduct, plaintiff sustained and continues to sustain injuries and damages described herein and therefore is entitled to receive actual, compensatory damages in an amount to be determined by a jury, and punitive damages in a sufficient amount to deter similar conduct by these defendants or others.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury.

WHEREFORE, plaintiff requests actual, compensatory and punitive damages against the defendants in amounts to be determined by the finder of fact for the various causes of action set forth above, that the costs of this action be taxed against the defendants, and such other and further relief as the Court shall deem just and proper.

Respectfully submitted,

By 

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ATTORNEYS FOR PLAINTIFF

10th day of August, 2005

Mt. Pleasant, South Carolina

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

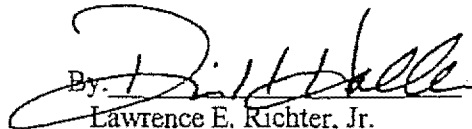
57. The allegations of paragraphs 1 through 41 above are incorporated into this cause of action as if fully stated herein.
58. Defendants joined with others for the purpose of injuring the plaintiff, including, but not limited to, agents of the Diocese of Atlanta. The civil conspiracy of which these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

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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)
)
COUNTY OF DORCHESTER)

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

Jane Doe 1 and Jane Doe 2 and Rachel
Roe individually and as representatives of
a class of people similarly situated,)
)
)

Plaintiffs,)
)
)

vs.)
)
)

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

Defendants.)
)
)

COMPLAINT
Action for Loss of Consortium

FILED - RECORDED
2006 AUG 15 AM 11:43
GENEVL G. GRIFFIN
CLERK OF COURT
DORCHESTER COUNTY

TO THE DEFENDANTS ABOVE NAMED:

Plaintiffs, individually and as representatives of a class of people similarly situated, allege and complain of the defendants as follows:

1. Jane Doe 1 is a resident and citizen of Richland County, South Carolina. She is the wife of John Doe #53, an individual who, in his youth, was assaulted and abused by a priest under the control of the defendants. Hereinafter, the abused individual shall be referred to as John Doe #53. The identity of Jane Doe 2 has been provided to the defendants.
2. Defendant Jane Doe 2 is a resident and citizen of Greenville County, South Carolina. She is the wife of John Doe #66 an individual who, in his youth, was assaulted and abused by a priest under the control of the defendants. Hereinafter, the abused individual shall be referred to as John Doe #66. The identity of Jane Doe 1 has been provided to the defendants.
3. Defendant Rachel Roe is a resident and citizen of Dorchester County, South Carolina. She

is the mother of John Doe #53. The identity of Jane Doe 3 has been provided to the defendants.

4. Defendant The Bishop of Charleston, a Corporation Sole (hereinafter referred to as "Diocese"), and/or its predecessors at all times material are and were hereto a corporation organized under the laws of the State of South Carolina, which owns property and does business in Dorchester County, South Carolina. Diocese is and was the corporate entity through which the affairs of the Roman Catholic Church in South Carolina are and were conducted. The Diocese and its agents and employees were and continue to be responsible for the selection and assignment, supervision, and the exercise of authority over its various agents and the members of its denomination, and the maintenance of the well being of its members.
5. Defendant Diocese holds certain assets including schools, rectories, churches, and other properties real and personal throughout South Carolina, including Dorchester County, and possibly elsewhere. The Diocese operates the various components and other assets through a businesslike operation. Often, it charges for its services and sometimes charges its non-practitioners a higher amount for its services in order to garner a profit. In fact, in order manage its business operations, the Diocese employs an individual to serve as its "Chief Financial Officer." The Diocese has a history of using gambling functions as a means of raising revenue for its operations.
6. The Bishop of the Diocese of Charleston (hereinafter referred to as "Bishop") is sued in his official capacity. The Bishop is ultimately responsible for the priests in his Diocese. Bishop is the successor in interest to his predecessors in his official position.

7. The defendant owns property and does business in Dorchester County. Venue is properly laid in this county and this court has jurisdiction over the parties hereto and the subject matter hereof.

ABUSE OF JOHN DOE #53

8. Under the authority of the Diocese, Monsignor Thomas Duffy and other agents of Diocese took John Doe #53 from his childhood home in Charleston and placed him under the care of the Atlanta Diocese in Georgia, where he was housed at a facility operated by it. Upon being returned to Charleston by Charleston Diocese agents, he was placed in the Catholic orphanage in Charleston. He resided at the orphanage for two years and attended school at Blessed Sacrament in Charleston.
9. At all times material to the incidents alleged in this complaint, Father Lawrence Sheedy was an authority figure, moral leader, confessor, and counselor employed and/or controlled by the defendants and, at all times, was under the direct supervision, employ and control of the Diocese and its then Bishop. Because of John Doe #53's position as a minor under the care of the Diocese, together with Sheedy's position in the Roman Catholic Church as an authority figure, moral leader, confessor, and counselor, Sheedy was able to have control and influence over John Doe #53. By his words and actions, Sheedy represented to John Doe #53 that their relationship was one in which Sheedy was to provide counseling, comfort and advice to John Doe #53, and to look out for John Doe #53's well being and best interests. These representations were untrue and intended to deceive John Doe #53. Sheedy used these representations and his various positions to gain John Doe #53's trust and confidence and to obtain control over him.

10. Between 1966 and 1967, John Doe #53, then a minor child, was sexually assaulted repeatedly by Father Sheedy.
11. On several occasions during the time when the abuse occurred, Father Sheedy provided alcohol to John Doe #53, then a minor, before sexually abusing him on Diocese property and while exercising the authorities provided to him by the defendants.
12. These incidents occurred while Sheedy was an employee and youth leader of the defendants. These assaults upon John Doe #53 occurred on the premises owned and controlled by the defendants.
13. Based on the relationship of trust and confidence cultivated by Sheedy and encouraged by Diocese and Bishop, John Doe #53 justifiably believed and relied on Sheedy and gave Sheedy his trust and confidence. By his words and actions, Sheedy assured John Doe #53 that the abusive conduct was legal and proper. Sheedy and defendants actively concealed the wrongfulness of Sheedy's exploitation and misconduct involving children, John Doe #53 included.
14. Sheedy also threatened John Doe #53 with recrimination if John Doe #53 revealed Sheedy's actions, often telling John Doe #53 that the instances of sexual abuse on the Diocese property were "our little secret" that should never be revealed to anyone, including his mother, plaintiff Rachel Roe.
15. John Doe #53 is informed and believes that Sheedy was known to the defendants to be unstable, unreliable, a hedonist and an abuser of alcohol. His assignment within the Diocese was as a result of his improper actions— but neither John Doe #53 nor Rachel Roe were warned.

16. As a result of the abuse of John Doe #53, has suffered deep psychological damage with accompanied physical manifestations, alcohol and drug abuse, and strain in his relationships, among other things, and they have impact his ability to function normally in life. In fact, as late as two years ago, John Doe #53 was being told by his priests that it was he who had sinned and that it was he who required absolution for the events with Sheedy. These acts by the defendants only exacerbated the injuries suffered by John Doe #53.
17. Because of the abuse of her son by the defendants' agent/employee, the priest Sheedy, Rachel Roe has been injured by, among other things, incurring expenses in the care of the child, John Doe #53 and the loss of his companionship, aid, and society.
18. Jane Doe 1 is the spouse of John Doe #53. She has assisted him in his care as he has struggled to cope with the abuse and the lifelong damage he has suffered. She has been with him during the times, recent and otherwise, when the defendants and its agents have tried to place the blame on the John Doe #53 for the events which occurred. As a result of the defendants conduct, Jane Doe 1 has suffered from the loss of the right to the companionship, aid, society and services of John Doe #53.

ABUSE OF JOHN DOE #66

19. John Doe #66 came to know Priest James Nyhan through various church and school related programs and activities while he attended Nativity Catholic School. Based on this relationship, as cultivated by Nyhan and encouraged by the Diocese and the Bishop, John Doe #66 admired, trusted, revered and respected Nyhan as a holy man, authority figure, confessor, clergyman, counselor and spiritual advisor. In school and church, he was taught

and instructed to do so. As a result, John Doe #66 entrusted in Nyhan his personal safety and shared with Nyhan his most confidential information.

20. Using this relationship, Nyhan gained access to John Doe #66. Between 1978 and 1980, John Doe #66, then a minor child, was sexually assaulted by Father Nyhan.
21. These incidents occurred while Nyhan was an employee and youth leader of Nativity Catholic Church and School. These assaults upon John Doe #66 occurred on the premises of Nativity Catholic Church, a property owned and controlled by the defendants, as well as other locations. For example, Nyhan preyed on young boys, including the John Doe #66, in the Church Rectory of Nativity Catholic Church or took them elsewhere, such as to local beaches, for the purposes of molestation
22. In the spring of 2006, Nyhan pled guilty to Assault and Battery of a High and Aggravated Nature upon John Doe #66.
23. As a result of the defendants conduct vis-a-vis Nyhan, John Doe #66 has suffered deep psychological damage with accompanied physical manifestations, strain in his relationships, and loss of his religious background, among other things, and they have impact his ability to function normally in life.
24. Jane Doe 2 is the wife of John Doe #66. As a result of the defendants conduct, she has lost of the right to the companionship, aid, society and services of John Doe #66.

CLASS ALLEGATIONS

25. Plaintiffs brings this action pursuant to Rule 23 of the South Carolina Rules of Civil Procedure on behalf of themselves and as representatives of classes of other persons similarly

situated defined as follows:

The spouses, parents, and/or legal guardians of all individuals who were sexually abused and/or otherwise molested by agents or employees of the Catholic Church under the supervision and/or control of the defendants in South Carolina between January 1, 1950 and December 31, 2000 and who suffered a loss of the abused individual's consortium.

26. The defendants have jurisdiction over the operations of the Roman Catholic Church within the territorial boundaries of the State of South Carolina.
27. Plaintiffs are informed and believes that the number of other individuals in South Carolina who fall within the definition of the class defined above may exceed the hundreds and that the joinder of all such individuals in the instant suit is impracticable.
28. There are questions of law and fact which are common to the class.
29. The claims of the class are typical of the plaintiffs and plaintiffs are informed and believes that the defenses of the defendant will be identical as to each of the class members.
30. Plaintiffs will fairly and adequately protect the interests of the class.
31. The amount in controversy for each of the members of the class exceeds \$100.00.
32. Plaintiffs are entitled to the certification of a class of plaintiffs against the defendants are defined above.
33. Throughout this complaint, references to plaintiffs are intended to reference the plaintiffs and the members of the class who they represent as factual circumstances similar to those suffered by the class members and of the legal or equitable claims against the defendants

which each member of the class is entitled to assert.

FOR A FIRST CAUSE OF ACTION

LOSS OF CONSORTIUM

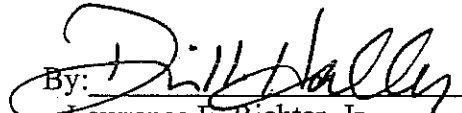
34. Plaintiffs reallege paragraphs 1 through 33 above as if restated hereinafter verbatim.
35. The defendants have intentionally or tortiously violated the right to the companionship, aid, society and services of Jane Doe 1 and Rachel Roe to John Doe #53 and they have been injured as a direct and proximate result of the defendants' interference with said right. Plaintiff Rachel Roe has incurred expenses on behalf of John Doe #53 as a result of the defendants' conduct.
36. The defendants have intentionally or tortiously violated the right to the companionship, aid, society and services of Jane Doe 2 to John Doe #66 and she has been injured as a direct and proximate result of the defendants' interference with said right.
37. As a direct and proximate result of the acts of the defendants, the plaintiffs and the members of their class have been injured and suffered damages. Plaintiffs are entitled to a judgment against the defendants for both actual damages, in an amount to be determined by the trier of fact, and punitive damages to impress upon the defendants the seriousness of its conduct and to deter such similar conduct by other tortfeasors in the future.

JURY TRIAL DEMANDED

38. Plaintiffs demand a jury trial.

WHEREFORE plaintiffs pray for the certification of a class of individuals as defined herein,
for judgment in their favor for both actual and punitive damages, and for other relief as the court may
deem just, prudent, and proper.

Respectfully submitted,

By: 
Lawrence E. Richter, Jr.
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RICHTER & HALLER, LLC
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(843) 722-6319

John Sinclair, III
Glenn P. Churchill
Post Office Box 370
Charleston, SC 29402-0370
(843) 853-9300

ATTORNEYS FOR PLAINTIFFS

14th day of August, 2006
Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

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

John Doe #67, individually and a)
representative of a class of people similarly)
situated,)

Plaintiff,)

vs.)

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

Defendants.)

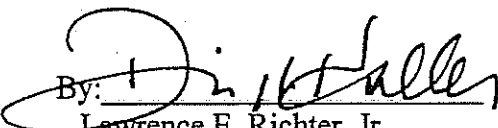
SUMMONS

FILED-RECORDED
2006 AUG 15 AM 11:44
DAVEY L. KAHAM
CLERK OF COURT
DORCHESTER COUNTY

TO: THE DEFENDANTS ABOVE NAMED

YOU ARE HEREBY SUMMONED and required to answer the complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the complaint upon the subscribers at their offices at 622 Johnnie Dodds Boulevard, P.O. Drawer 1089, Mt. Pleasant, South Carolina, 29465, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint within the time aforesaid, the Plaintiff in this action will apply to the court for the relief demanded in the complaint and judgment by default will be rendered against you.

RICHTER & HALLER, LLC

By: 

Lawrence E. Richter, Jr.

David K. Haller

622 Johnnie Dodds Blvd.

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Mt. Pleasant, SC 29465

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John Sinclair, III
Glenn P. Churchill
Post Office Box 370
Charleston, SC 29402-0370

ATTORNEYS FOR PLAINTIFF

14th day of August, 2006

Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE NO. 06-CP-18-_____

John Doe #67, individually and a)
representative of a class of people similarly)
situated,)

Plaintiff,)

vs.)

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

Defendants.)

COMPLAINT
Jury Trial Requested

Outrage, Negligence/Gross Negligence
Breach of Fiduciary Duty, Intentional
Infliction of Emotional Distress, Fraudulent
Concealment, Civil Conspiracy, Negligent
Retention or Supervision

FILED-RECORDED
2006 AUG 1
11:44
DORCHESTER COUNTY
CLERK OF COURT
JAMES H. HAM

TO: THE DEFENDANTS ABOVE NAMED

Plaintiff, complaining of the Defendants, alleges and says:

PARTIES AND JURISDICTION

1. John Doe #67 is a pseudonym for a former Charleston County resident who, while living in the Charleston area, attended schools operated by the Diocese of Charleston and attended and participated in mass, confession, religious training, and various religious and nonreligious functions sponsored and operated by the Diocese of Charleston. He is identified in this complaint by a pseudonym because this is a case about childhood sexual abuse upon the plaintiff, and his identity has been withheld due to the sensitivity and private nature of these allegations. His identity has been disclosed to the defendants.
2. Defendant The Bishop of Charleston, a Corporation Sole (hereinafter referred to as "Diocese"), and/or its predecessors, is and was at all times material hereto a corporation

organized under the laws of the State of South Carolina, which owns property and does business in Dorchester County, South Carolina. Diocese is and was the corporate entity through which the religious and other affairs of the Roman Catholic Church in South Carolina are and were conducted. The Diocese and its agents and employees were and continue to be responsible for the selection and assignment of clergy, supervision of clergy activities, the exercise of authority over various members of its denomination, and the maintenance of the well being of its members.

3. The Bishop of the Diocese of Charleston (hereinafter referred to as "Bishop") is sued in his official capacity. The Bishop is ultimately responsible for the priests in his Diocese. Bishop is the successor in interest to his predecessors in his official position.

FACTUAL SUMMARY

4. Defendant Diocese operates churches and parochial schools in Charleston County and throughout South Carolina offering primary, elementary, and secondary educations. It holds certain assets including schools, rectories, churches, and other properties real and personal in Charleston County and throughout South Carolina and possibly elsewhere. One such property is Nativity Catholic Church and School (hereinafter "Nativity") located in Charleston County.
5. Diocese, as part of its general mission, encouraged its parishioners, such as the plaintiff, to enter, use, and attend its many activities on its premises, including school, worship, social, and religious based functions. As such, the Diocese undertook a duty to ensure its premises were safe from all dangers which were reasonably foreseeable. In particular, the defendants

owed minors, including the minor plaintiff, a greater degree of care because of their lack of capacity to appreciate risks and avoid danger. Diocese and Bishop represented to its parishioners, including the plaintiff and/or his parents, that its facilities were places of safety and that it could and would protect its parishioners, including the plaintiff, from harm.

6. The Diocese operates the various components stated in paragraph 5 above, and other assets through a businesslike operation. Often, it charges for its services and sometimes charges its non-practitioners a higher amount for its services in order to garner a profit. In fact, in order manage its business operations, the Diocese employs an individual to serve as its "Chief Financial Officer." The Diocese has a history of using gambling function as a means of raising revenue for its operations.
7. At all times material to the incidents alleged in this complaint, Father James Nyhan was a clergyman assigned to Nativity. Nyhan was assigned to Nativity by the Diocese and Bishop and, at all times, was under the direct supervision, employ and control of the Diocese and its then Bishop.
8. Nyhan was employed by Diocese and Bishop as a priest, youth leader, confessor, counselor, and in a position of authority over plaintiff at Nativity Catholic Church and School. In this role, Nyhan came to have access to and to know the most personal and confidential information of his parishioners including the plaintiff. Diocese and Bishop encouraged their parishioners to share and trust Nyhan as a priest, youth leader, confessor, counselor, and in a position of authority over plaintiff. Among other things, Diocese and Bishop encouraged plaintiff and other parishioners to share with and trust Nyhan and other of its employees with deeply personal information and with their personal safety and salvation. As part of his

employment, Nyhan reached out to parishioners of the Diocese and assisted the defendants in cultivating relationships of trust and confidence.

9. Plaintiff, a devout member of the Roman Catholic Church, attended and actively participated in activities designed for young boys at Nativity. Among other things, plaintiff was an altar boy and participated in the youth programs with which Nyhan worked.
10. Plaintiff came to know the priest Nyhan through these various church and school related programs and activities. Based on this relationship, as cultivated by Nyhan and encouraged by the Diocese and the Bishop, plaintiff admired, trusted, revered and respected Nyhan as a holy man, authority figure, confessor, clergyman, counselor and spiritual advisor. In school and church, he was taught and instructed to do so. As a result, plaintiff entrusted in Nyhan his personal safety and shared with Nyhan his most confidential information.
11. Because of plaintiff's position as a minor, together with Nyhan's position in the Roman Catholic Church as a priest, youth leader, holy man, confessor, counselor, and authority figure, Nyhan was able to have control and influence over plaintiff. By his words and actions, Nyhan represented to plaintiff that their relationship was one in which Nyhan was to provide counseling, comfort and advice to plaintiff, and to look out for plaintiff's well being and best interests. These representations were untrue and intended to deceive plaintiff. Nyhan used these representations and his various positions to gain plaintiff's trust and confidence and to obtain control over him.
12. Between 1978 and 1980, plaintiff, then a minor child, was sexually assaulted by Father Nyhan.
13. These incidents occurred while Nyhan was an employee and youth leader of Nativity

Catholic Church and School. These assaults upon plaintiff occurred on the premises of Nativity Catholic Church, a property owned and controlled by the defendants, as well as other locations. For example, Nyhan preyed on young boys, including the plaintiff, in the Church Rectory of Nativity Catholic Church or took them elsewhere, such as to local beaches, for the purposes of molestation

14. Based on the relationship of trust and confidence cultivated by Nyhan and encouraged by Diocese and Bishop, plaintiff justifiably believed and relied on Nyhan and gave Nyhan his trust and confidence. By his words and actions, Nyhan assured plaintiff that this conduct was legal and proper. Nyhan and defendants actively concealed the wrongfulness of his exploitation and misconduct involving children, plaintiff included. As a result, and because plaintiff was a minor, plaintiff was unable to understand the wrongfulness and illegality of Nyhan's sexual abuse of him and the related injury. Nyhan also threatened plaintiff with recrimination if plaintiff revealed Nyhan's actions.
15. Plaintiff is informed and believes that the defendants knew, or should have known that Nyhan had deviant sexual propensities. Furthermore, the defendants knew or should have known that Nyhan was molesting minor boys on Nativity Catholic Church's premises and at other locations as well. Nevertheless, the defendants failed to warn the plaintiff and other minor children similarly situated of the danger posed by Nyhan, failed to protect the plaintiff on its premises, and failed in the exercise of the many other duties it undertook. Moreover, it hid the conduct of Nyhan and others. In fact, concealment of the conduct of the priests and other Diocese employees was the official policy of the Diocese and the Catholic Church.
16. Plaintiff has only learned within the past two years of the defendants' knowledge of Nyhan's

history, proclivities, and actions, and has similarly only then learned of defendants' concealment and effort to maintain secrecy concerning same. Other litigation, news reports, and other occurrences have led to plaintiff now becoming so aware, and plaintiff could not have so known or learned previously.

17. At least since approximately 1960 through the present, defendant Diocese and the Holy See of the Catholic Church had knowledge that Roman Catholic clergy were sexually abusing children.
18. In 1962, the Holy See, which dictates policy and procedure for the Diocese and the Bishop, issued an INSTRUCTION entitled "On the Manner of Proceeding in Cases of Solicitation." (Attached as Exhibit A).
19. The INSTRUCTION identifies as the worst crime as any obscene, external act, gravely sinful, perpetrated in any way by a priest with youths of either sex or sex with brute animals (bestiality). (Ex. A, ¶ 73.) The Vatican INSTRUCTION encourages bishops and church leaders to avoid "scandal." (Ex. A, ¶¶ 35, 36, 64.) Yet, the INSTRUCTION required the victim to keep his or her victimization secret.
20. This INSTRUCTION was intended to reach all patriarchs, archbishops, superiors and diocesan ordinaries (bishops). At the top of this INSTRUCTION, it states that the document is "to be diligently stored in the secret archives of the Curia as strictly confidential. Nor is it to be published nor added to with any commentaries."
21. The INSTRUCTION contains explicit instructions as to how bishops and church leaders are to proceed in cases where a priest entices a penitent to engage in sexual conduct. The INSTRUCTION specifically mentions that these cases encompass situations where children

are sexually abused. (Ex. A, ¶¶ 62, 73) It mentions that church officials could transfer offending priests to different assignments. (Ex. A, ¶ 4.)

22. Pursuant to the dictates of the INSTRUCTION, all points in the process of handling sex abuse cases dealing with a penitent, the matters are to be kept secret and concealed. In particular, if church leaders find, in their own investigation, that the allegations lack foundation, they are mandated to destroy all of the documents. If, however, the allegations are found to have foundation the bishop and church leaders were required to keep the pertinent documents in secret archives. (Ex. A, ¶ 42.)
23. Under standard Catholic doctrine, "good" Catholics are required to follow the mandates of the Holy See such as dictates of the INSTRUCTION or face a potential after life of damnation. Diocese, Bishop and their agents and employees such as Nyhan using the relationships of priest, youth leader, confessor, counselor, and in a position of authority over plaintiff which they cultivated, reinforced this belief.
24. As a result, plaintiff, a good Catholic, was taught that he must obey the rules, teachings, doctrines, and instructions of the Roman Catholic church and was, therefore, instructed and led to believe, by the Diocese, Bishop and their agents and employees such as Nyhan that he must conceal that Nyhan had committed upon him a horrible sin or risk an afterlife of damnation.
25. As a result of the actions and/or inactions of the defendants, Nyhan was allowed, and did, prey upon plaintiff by engaging in its own defined "worst sin." Plaintiff has suffered from Nyhan's conduct and the conduct of the defendants, by, among other things, years of psychological damage with physical manifestations.

26. **CLASS ALLEGATIONS**

27. Plaintiff brings this action on behalf of himself and as a representative of a class of other persons similarly situated as victims of priest sex abuse in South Carolina pursuant to Rule 23 of the South Carolina Rules of Civil Procedure.
28. The defendants have jurisdiction over the operations of the Roman Catholic Church within the territorial boundaries of the State of South Carolina.
29. Plaintiff is informed and believes that the number of other individuals in South Carolina have been the victims of childhood priest sexual abuse may exceed the hundreds and that the joinder of all such individuals in the instant suit is impracticable.
30. There are questions of law and fact which are common to the class, including, but no limited to, whether the Diocese and/or Bishop knew or should have known of the pervasive childhood sexual abuse throughout the state and whether the INSTRUCTION or other techniques were used to dissuade victims of the defendants' conduct from seeking civil damages against it as a form of fraudulent concealment.
31. The claims of the class are typical of John Doe #53 and plaintiff is informed and believes that the defenses of the defendant will be identical as to each of the victims of the abuse. In fact, in all of the other individual cases brought against these defendants for similar acts alleged by this plaintiff, the defendants have asserted identical defenses. These actions are within the jurisdiction of this court and it may easily take judicial notice of the same.
32. Plaintiff, the representative party will fairly and adequately protect the interests of the class.
33. The amount in controversy for each of the members of the class exceeds \$100.00.
34. Plaintiff is entitled to the certification of a class of plaintiffs against the defendant

representing all individuals, save for those barred by law from asserting an action against the defendants, in South Carolina who were sexually abused and/or otherwise molested by agents or employees of the Catholic Church under the supervision and/or control of the defendants.

35. Throughout this complaint, references to plaintiff are intended to reference the plaintiff and the members of the class who he represents as factual circumstances similar to those suffered by the class members and of the legal or equitable claims against the defendants which each member of the class is entitled to assert.

FOR A FIRST CAUSE OF ACTION

OUTRAGE

36. The allegations of paragraphs 1 through 35 above are incorporated into this cause of action as if fully stated herein.
37. The defendants intentionally inflicted severe emotional distress on plaintiff or were certain or substantially certain that such distress would result from their conduct. Defendants' conduct as alleged above was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community. The actions of defendants caused plaintiff emotional distress and the emotional distress suffered was severe such that no reasonable man could be expected to endure it and it had physical manifestations of pain, loss of sleep, nervousness, stress, and other manifestations.
38. As a direct and proximate result of the outrageous conduct of the defendants, plaintiff has

been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants or others.

FOR A SECOND CAUSE OF ACTION:

NEGLIGENCE/GROSS NEGLIGENCE/RECKLESSNESS

39. The allegations of paragraphs 1 through 35 above are incorporated into this cause of action as if fully stated herein.
40. As alleged above, plaintiff was sexually assaulted on multiple occasions between 1978 and 1980 by Father James Nyhan who was a priest, youth leader, confessors, counselor, and in a position of authority over plaintiff. Nyhan's duties to the plaintiff arose from his employment with Diocese and Bishop.
41. As a result of the relationship between plaintiff and Nyhan, plaintiff and the defendants, and/or Nyhan and the defendants, defendants owed duties of due care toward the plaintiff. defendants breached those duties and were negligent, grossly negligent, careless, reckless, wilful, or wanton in relation to the plaintiff, in that they failed to:
 - a. Monitor Nyhan's behavior while on premises of the defendants including, but not limited to, Nativity Catholic Church, and/or while engaged in activities with school, church, youth;
 - b. Properly investigate Nyhan's background through a proper background check, to determine his proclivities toward deviant sexual conduct perpetrated upon individuals such as the plaintiff;

- c. Address Nyhan's past conduct either at the time he first became involved with the defendants or subsequently thereafter;
- d. Ignoring Nyhan's known predilections toward sexually assaulting young boys when it was known or the defendants should have known of those predilections;
- e. Allowing Nyhan to work with young boys, including the plaintiff, alone and unsupervised;
- f. Maintain and keep their property and premises where Nyhan worked in a reasonably safe condition;
- g. Shield the plaintiff from dangerous conditions, situations and individuals including child predators such as Nyhan;
- h. Warn the plaintiff and/or his family of Nyhan's deviant sexual proclivities;
- i. Fulfill their duties *in loco parentis* to the plaintiff;
- j. Educate the plaintiff and/or his family about the dangers of sexual abuse of minors in youth programs such as those conducted by the defendants through Nyhan;
- k. Warn them of a priest known to have a sexual interest in children and known to act inappropriately on that interest;
- l. Supervise Nyhan in a manner so as to eliminate his chances to sexually abuse children;
- m. Take steps to report to civil and criminal authorities a priest who sexually abused children so those who consider employing him for jobs having contact with children can make an informed decision about whether or not to do so, or the conditions on which to employ him, and so that parents and children can protect against his

predatory actions;

n. Notify parents of those children who have been exposed to Nyhan;

o. Exercise due care for the safety and well-being of plaintiff.

42. As a direct and proximate result of the negligent, grossly negligent, reckless, careless, wilful, and wanton behavior of the defendants and/or their employees/agents, plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants or others.

FOR A THIRD CAUSE OF ACTION:

BREACH OF FIDUCIARY DUTY

43. The allegations of paragraphs 1 through 35 above are incorporated into this cause of action as if fully stated herein.
44. By and through the relationships described herein, defendants entered into a fiduciary relationship with the plaintiff. Additionally, by accepting physical custody of the minor plaintiff, as student at Nativity School and a parishioner of Nativity Church, defendants assumed the duty to act in *loco parentis* with respect to the plaintiff. The defendants undertook a duty to provide a safe environment for plaintiff, as well as for all children at Nativity Catholic Church and School. A relationship of trust and confidence, and therefore a fiduciary relationship, was formed.
45. By entering into a fiduciary relationship with plaintiff, defendants were obligated to act only in the best interests of plaintiff. This duty extended to defendants' agents and employees,

Nyhan included.

46. Plaintiff reposed trust and confidence in Nyhan, his priest, teacher, confessor, and counselor, and in the defendants. As a result of Nyhan's predatory acts described above and the Diocese and Bishop's failure to act on Nyhan's conduct, the defendants breached the duties owed to the plaintiff.
47. As a proximate result of the negligent actions, inactions and breaches of fiduciary duties by the defendants and through agents, plaintiff was harmed and is entitled to actual, compensatory damages in an amount to be determined by the jury, and punitive damages in an amount sufficient to deter similar conduct by these defendants and others.

FOR A FOURTH CAUSE OF ACTION:

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

48. The allegations of paragraphs 1 through 35 above are incorporated into this cause of action as if fully stated herein.
49. The emotional distress and its attendant physical manifestations including nervousness, poor sleep, headaches, nausea, among others, suffered by plaintiff as a result of the defendants' actions and inactions was so severe that no reasonable person could be expected to endure it. Those effects have continued to cause problems for plaintiff and harm him severely, emotionally and physically.
50. As a direct and proximate result of the outrageous conduct of the defendants, plaintiff has been injured and suffered damages. Plaintiff is entitled to judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient

amount to deter such similar conduct by these defendants or others.

FOR A FIFTH CAUSE OF ACTION:

FRAUDULENT CONCEALMENT

51. The allegations of paragraphs 1 through 35 above are incorporated into this cause of action as if fully stated herein.
52. Defendants had knowledge of Nyhan's sexually deviant propensities with minors prior to the sexual molestation of plaintiff. Plaintiff could not have known, nor did he reasonably have the opportunity to know, that the defendant had specific knowledge about Nyhan's deviant and sexual propensities prior to the abuse perpetrated on him. Further, plaintiff could not have discovered the truth through reasonable inquiry or inspections. By acts and conduct described herein, defendants concealed material facts from plaintiff, inducing plaintiff and his family into a false belief that Nyhan was safe around children, a false belief that no other children were sexually abused by Nyhan, and that the defendants did not possess knowledge that Nyhan engaged in predatory sexual practices and abused other children, among other things.
53. The defendants' failure to report, along with their active concealment of Nyhan's above mentioned propensities, as mandated by the INSTRUCTION attached at Exhibit A, constitutes fraudulent concealment of the information about Nyhan from his potential prey. This fraudulent concealment lasted until the present.
54. As a direct and proximate result of the outrageous conduct of the defendants, plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants

for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants and others.

FOR A SIXTH CAUSE OF ACTION:

CIVIL CONSPIRACY

55. The allegations of paragraphs 1 through 35 above are incorporated into this cause of action as if fully stated herein.
56. Prior to the abuse of the plaintiff, plaintiff is informed and believes two or more agents of the defendants were aware of Nyhan's sexually deviant propensities with minors. The failure of these agents of the defendants to report Nyhan to the proper authorities, the active concealment of their knowledge about Nyhan's deviant activities, and their agreement to do nothing to stop, or at least report, his activities constitutes a conspiracy of silence. The purpose behind this conspiracy was to protect Nyhan at the plaintiff's expense, proximately resulting in injury to the plaintiff. The conspiracy of silence constitutes a failure to protect minors who were the potential prey of Nyhan and his sexually deviant propensities, this plaintiff included.
57. As a direct and proximate result of the conspiratorial conduct of the defendants, plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants or others.

FOR A SEVENTH CAUSE OF ACTION:

NEGLIGENT RETENTION OR SUPERVISION

58. The allegations of paragraphs 1 through 35 above are incorporated into this cause of action as if fully stated herein.
59. Nyhan was hired by agents for the defendants, or the defendants themselves, prior to the abuse upon the plaintiff.
60. The agents for the defendants knew or should have known about Nyhan's sexually deviant propensities. Despite such knowledge, the agents for defendants failed to take steps to protect the minors at Nativity Church and School, including the minor plaintiff.
61. Despite having knowledge of Nyhan's sexually deviant propensities with minors, the defendants directly or through agents continued to retain him as a priest, youth leader, confessor, counselor, and teacher without warning the parents of children, or the children at Nativity Church and School, who were his potential prey. Several of these children, plaintiff included, became Nyhan's actual prey.
62. Despite having knowledge of Nyhan's sexually deviant propensities with minor students, the agents of the defendants did not properly supervise him. Consequently, he was able to continue to perpetrate his sexually deviant attacks on minors.
63. Plaintiff was a minor child attending Nativity Catholic Church and School, where Nyhan was assigned. Therefore if not for Nyhan's continued employment by defendants, plaintiff would not have been injured.
64. Plaintiff was one of those minor students who was injured because the agents of the defendants failed to supervise Nyhan even though they knew or should have known of his sexually deviant propensities with minors.

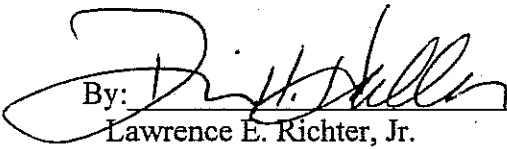
65. As a direct and proximate result of the defendants' negligent conduct, plaintiff sustained and continues to sustain injuries and damages described herein and therefore is entitled to receive actual, compensatory damages in an amount to be determined by a jury, and punitive damages in a sufficient amount to deter similar conduct by these defendants or others.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury.

WHEREFORE, plaintiff requests actual, compensatory and punitive damages against the defendants in amounts to be determined by the finder of fact for the various causes of action set forth above, that the costs of this action be taxed against the defendants, and such other and further relief as the Court shall deem just and proper.

Respectfully submitted,

By: 

Lawrence E. Richter, Jr.

David K. Haller

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ATTORNEYS FOR PLAINTIFF

14th day of August, 2006
Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

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

Plaintiff,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CA No. 06-CP-18-1636

**COMPLAINT
Jury Trial Demanded**

Outrage, Negligence/Gross Negligence,
Breach of Fiduciary Duty, Fraudulent
Concealment, Civil Conspiracy

FILED-RECORDED
2006 OCT -6 AM 11:59
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

TO: THE DEFENDANTS ABOVE NAMED

Plaintiff, complaining of the Defendants, alleges and says:

PARTIES AND JURISDICTION

1. John Doe #53 is a former Charleston County resident who, while living in the Charleston area, lived in an orphanage operated by the Diocese of Charleston and attended and participated in mass, confession, religious training, and various functions sponsored and operated by the Diocese of Charleston.
2. Defendant The Bishop of Charleston, a Corporation Sole (hereinafter referred to as "Diocese"), and/or its predecessors at all times material are and were hereto a corporation organized under the laws of the State of South Carolina, having its principal place of business at 117 Broad Street, Charleston, South Carolina. Diocese is and was the corporate entity through which the affairs of the Roman Catholic Church in South Carolina are and were conducted. The Diocese and its agents and employees were and continue to be

responsible for the selection and assignment, supervision, and the exercise of authority over its various agents and the members of its denomination, and the maintenance of the well being of its members.

3. The Bishop of the Diocese of Charleston (hereinafter referred to as "Bishop") is sued in his official capacity. The Bishop is ultimately responsible for the priests in his Diocese. Bishop is the successor in interest to his predecessors in his official position.
4. This court has jurisdiction over the parties hereto and the subject matter hereof.

FACTUAL SUMMARY

5. Defendant Diocese operates churches, orphanages, and parochial schools in Charleston County and throughout South Carolina offering primary, elementary, and secondary educations. It holds certain assets including schools, rectories, churches, and other properties real and personal in Charleston County and throughout South Carolina and possibly elsewhere.
- 6.
7. Under the authority of the Diocese, Monsignor Thomas Duffy and other agents of Diocese took plaintiff from his childhood home in Charleston and placed him under the care of the Atlanta Diocese in Georgia, where he was housed at a facility operated by it.
8. While in Georgia, having been placed there by the defendants and/or its agents, Plaintiff was sexually assaulted by at least three Catholic Church agents.
9. Upon being returned to Charleston by Charleston Diocese agents, Plaintiff was placed in the Catholic orphanage in Charleston. He resided at the orphanage for two years and attended school at Blessed Sacrament in Charleston.

10. Diocese encouraged people, including the Plaintiff, to enter, use, and attend its many activities on its premises. As such, the Diocese undertook a duty to ensure its premises were safe from all dangers which were reasonably foreseeable. In particular, the defendants owed minors, including the minor plaintiff, a greater degree of care because of their lack of capacity to appreciate risks and avoid danger. Diocese and Bishop represented to its invitees or their legal guardians, including the Plaintiff and/or his parents, that its facilities were places of safety and that it could and would protect its invitees, including the Plaintiff, from harm.
11. At all times material to the incidents alleged in this complaint, Father Lawrence Sheedy was an authority figure, moral leader, confessor, and counselor employed and/or controlled by the defendants and, at all times, was under the direct supervision, employ and control of the Diocese and its then Bishop.
12. In his roles within the Diocese, Sheedy came to have access to and to know the most personal and confidential information of the Plaintiff. Diocese and Bishop encouraged the plaintiff and others to share and trust Sheedy as an authority figure, moral leader, confessor, and counselor. Among other things, Diocese and Bishop encouraged Plaintiff and others to share with and trust Sheedy and other of its employees with deeply personal information and with their personal safety and salvation. As part of his employment, Sheedy reached out to plaintiff and others within the jurisdiction of the Diocese and assisted the defendants in cultivating relationships of trust and confidence.
13. Plaintiff, a devout member of the Roman Catholic Church from childhood to the present, attended and actively participated in activities designed for young boys at Diocese-sponsored events.

14. The Diocese operates the various components stated in paragraph 5 above, and other assets through a businesslike operation. Often, it charges for its services and sometimes charges its non-practitioners a higher amount for its services in order to garner a profit. In fact, in order manage its business operations, the Diocese employs an individual to serve as its "Chief Financial Officer." The Diocese has a history of using gambling function as a means of raising revenue for its operations.
15. Plaintiff came to know the priest Sheedy through these various Diocese-sponsored programs and activities. Among other things, Plaintiff was an altar boy with Sheedy and participated in the youth programs with which Sheedy worked. Based on this relationship, as cultivated by Sheedy and enforced by the Diocese and the Bishop, Plaintiff admired, trusted, followed, revered and respected Sheedy as an authority figure, moral leader, confessor, and counselor. The defendants taught and instructed the plaintiff to do so. As a result, Plaintiff entrusted in Sheedy his personal safety and shared with Sheedy his most confidential information.
16. Because of plaintiff's position as a minor under the care of the Diocese, together with Sheedy's position in the Roman Catholic Church as an authority figure, moral leader, confessor, and counselor, Sheedy was able to have control and influence over Plaintiff. By his words and actions, Sheedy represented to Plaintiff that their relationship was one in which Sheedy was to provide counseling, comfort and advice to Plaintiff, and to look out for Plaintiff's well being and best interests. These representations were untrue and intended to deceive Plaintiff. Sheedy used these representations and his various positions to gain Plaintiff's trust and confidence and to obtain control over him.
17. Between 1966 and 1967, Plaintiff, then a minor child, was sexually assaulted repeatedly by Father Sheedy.

18. On several occasions during the time when the abuse occurred, Father Sheedy provided alcohol to Plaintiff, then a minor, before sexually abusing him on Diocese property and while exercising the authorities provided to him by the defendants.
19. These incidents occurred while Sheedy was an employee and youth leader of the defendants. These assaults upon Plaintiff occurred on the premises owned and controlled by the defendants.
20. Based on the relationship of trust and confidence cultivated by Sheedy and encouraged by Diocese and Bishop, Plaintiff justifiably believed and relied on Sheedy and gave Sheedy his trust and confidence. By his words and actions, Sheedy assured Plaintiff that the abusive conduct was legal and proper. Sheedy and defendants actively concealed the wrongfulness of Sheedy's exploitation and misconduct involving children, Plaintiff included.
21. Sheedy also threatened Plaintiff with recrimination if Plaintiff revealed Sheedy's actions, often telling Plaintiff that the instances of sexual abuse on the Diocese property were "our little secret" that should never be revealed to anyone.
22. Plaintiff is informed and believes that Sheedy was known to the defendants to be unstable, unreliable, a hedonist and an abuser of alcohol. His assignment within the Diocese was as a result of his improper actions— but neither plaintiff nor his legal guardians were warned.
23. Plaintiff is informed and believes that the defendants knew, or should have known that Sheedy had deviant sexual propensities. Furthermore, the defendants knew or should have known that Sheedy was molesting minor boys on Diocese property. Nevertheless, the defendants took no action to protect the plaintiff and others from this conduct. Moreover, it hid the conduct of Sheedy and others. In fact, concealment of the conduct of the priests and other Diocese employees was the official policy of the defendants.

24. After Plaintiff informed agents of the defendants that he had been sexually abused by Father Sheedy, church agents in their fiduciary capacity described herein directed Plaintiff to conceal Sheedy's abuse, informing Plaintiff that church officials would remedy the situation created by Sheedy's abuse. Plaintiff was told by Sheedy and other agents of the defendants that the sexual abuse was a form of "love" and that any thought the conduct was abuse was misplaced. The acts of the defendants and its agents to fraudulently conceal the tortuous and illegal acts of it and its employees has continued until the present.
25. At least since approximately 1960 through the present, defendant Diocese and the Holy See of the Catholic Church had knowledge that Roman Catholic clergy were sexually abusing children.
26. In 1962, the Holy See, which dictates policy and procedure for the Diocese and the Bishop, issued an INSTRUCTION entitled "On the Manner of Proceeding in Cases of Solicitation." (Attached as Exhibit A).
27. The INSTRUCTION identifies as the worst crime as any obscene, external act, gravely sinful, perpetrated in any way by a priest with youths of either sex or sex with brute animals (bestiality). (Ex. A, ¶ 73.) The Vatican INSTRUCTION encourages bishops and church leaders to avoid "scandal." (Ex. A, ¶¶ 35, 36, 64.) Yet, the INSTRUCTION required the victim to keep his or her victimization secret.
28. This INSTRUCTION was intended to reach all patriarchs, archbishops, superiors and diocesan ordinaries (bishops). At the top of this INSTRUCTION, it states that the document is "to be diligently stored in the secret archives of the Curia as strictly confidential. Nor is it to be published nor added to with any commentaries."
29. The INSTRUCTION contains explicit instructions as to how bishops and church leaders are

to proceed in cases where a priest entices a penitent to engage in sexual conduct. The INSTRUCTION specifically mentions that these cases encompass situations where children are sexually abused. (Ex. A, ¶¶ 62, 73) It mentions that church officials could transfer offending priests to different assignments. (Ex. A, ¶ 4.)

30. Pursuant to the dictates of the INSTRUCTION, all points in the process of handling sex abuse cases dealing with a penitent, the matters are to be kept secret and concealed. In particular, if church leaders find, in their own investigation, that the allegations lack foundation, they are mandated to destroy all of the documents. If, however, the allegations are found to have foundation the bishop and church leaders were required to keep the pertinent documents in secret archives. (Ex. A, ¶ 42.)
31. Under standard Catholic doctrine, "good" Catholics are required to follow the mandates of the Holy See such as dictates of the INSTRUCTION or face a potential afterlife of damnation. Diocese, Bishop and their agents and employees such as Sheedy and the agents who dissuaded plaintiff from taking action reinforced this belief.
32. As a result, Plaintiff, a good Catholic, was taught that he must obey the rules, teachings, doctrines, and instructions of the Roman Catholic Church and was, therefore, instructed and led to believe, by the Diocese, Bishop and their agents and employees such as Sheedy that he must conceal that Sheedy had committed upon him a horrible sin or risk an afterlife of damnation.
33. As a result of the actions and/or inactions of the defendants, Catholic agents were allowed, and did, prey upon Plaintiff by engaging in its own defined "worst sin." Plaintiff has suffered from Sheedy's conduct and the conduct of the defendants, by, among other things, years of severe psychological damage with physical manifestations.

CLASS ALLEGATIONS

34. Plaintiff brings this action on behalf of himself and as a representative of a class of other persons similarly situated as victims of priest sex abuse in South Carolina pursuant to Rule 23 of the South Carolina Rules of Civil Procedure.
35. The defendants have jurisdiction over the operations of the Roman Catholic Church within the territorial boundaries of the State of South Carolina.
36. Plaintiff is informed and believes that the number of other individuals in South Carolina have been the victims of childhood priest sexual abuse may exceed the hundreds and that the joinder of all such individuals in the instant suit is impracticable.
37. There are questions of law and fact which are common to the class, including, but no limited to, whether the Diocese and/or Bishop knew or should have known of the pervasive childhood sexual abuse throughout the state and whether the INSTRUCTION or other techniques were used to dissuade victims of the defendants' conduct from seeking civil damages against it as a form of fraudulent concealment.
38. The claims of the class are typical of John Doe #53 and plaintiff is informed and believes that the defenses of the defendant will be identical as to each of the victims of the abuse. In fact, in all of the other individual cases brought against these defendants for similar acts alleged by this plaintiff, the defendants have asserted identical defenses. These actions are within the jurisdiction of this court and it may easily take judicial notice of the same.
39. Plaintiff, the representative party will fairly and adequately protect the interests of the class.
40. The amount in controversy for each of the members of the class exceeds \$100.00.
41. Plaintiff is entitled to the certification of a class of plaintiffs against the defendant

representing all individuals, save for those barred by law from asserting an action against the defendants, in South Carolina who were sexually abused and/or otherwise molested by agents or employees of the Catholic Church under the supervision and/or control of the defendants.

42. Throughout this complaint, references to plaintiff are intended to reference the plaintiff and the members of the class who he represents as factual circumstances similar to those suffered by the class members and of the legal or equitable claims against the defendants which each member of the class is entitled to assert.

FOR A FIRST CAUSE OF ACTION

OUTRAGE

43. The allegations of paragraphs 1 through 41 above are incorporated into this cause of action as if fully stated herein.
44. The defendants intentionally inflicted severe emotional distress on Plaintiff or were certain or substantially certain that such distress would result from their conduct. Defendants' conduct as alleged above was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community. The actions of defendants caused Plaintiff emotional distress and the emotional distress suffered was severe such that no reasonable man could be expected to endure it and it had physical manifestations of pain, loss of sleep, nervousness, stress, and other manifestations.
45. As a direct and proximate result of the outrageous conduct of the defendants, Plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants

for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants or others.

FOR A SECOND CAUSE OF ACTION

NEGLIGENCE/GROSS NEGLIGENCE/RECKLESSNESS

46. The allegations of paragraphs 1 through 41 above are incorporated into this cause of action as if fully stated herein.
47. As alleged above, Plaintiff was sexually assaulted on multiple occasions by Father Laurence Sheedy who was an authority figure, moral leader, confessor, and counselor of the Plaintiff. Sheedy's duties to the Plaintiff arose from his employment with Diocese and Bishop.
48. Defendants owed duties of due care toward the Plaintiff. Defendants breached those duties and were negligent, grossly negligent, careless, reckless, wilful, or wanton in relation to the Plaintiff, in that they failed to:
 - a. Monitor Sheedy's behavior while on premises of the defendants and/or while engaged in activities with school, church, youth;
 - b. Properly investigate Sheedy's background through a proper background check, to determine his proclivities toward deviant sexual conduct perpetrated upon individuals such as the Plaintiff;
 - c. Address Sheedy's past conduct either at the time he first became involved with the defendants or subsequently thereafter;
 - d. Ignoring Sheedy's known predilections toward sexually assaulting young boys when it was known or the defendants should have known of those predilections;
 - e. Allowing Sheedy to work with young boys, including the Plaintiff, alone and

- unsupervised;
- f. Maintain and keep their property and premises where Sheedy worked in a reasonably safe condition;
 - g. Shield the Plaintiff from dangerous conditions, situations and individuals including child predators such as Sheedy ;
 - h. Warn the Plaintiff and/or his family of Sheedy's deviant sexual proclivities;
 - i. Placing the plaintiff in an unsafe environment in Georgia without fully investigating those facilities and/or knowing that the environment posed a risk to the plaintiff's well-being;
 - j. Fulfill their duties *in loco parentis* to the Plaintiff;
 - k. Educate the Plaintiff and/or his family about the dangers of sexual abuse of minors in youth programs such as those conducted by the defendants through Sheedy;
 - l. Warn them of a priest known to have a sexual interest in children and known to act inappropriately on that interest;
 - m. Supervise Sheedy in a manner so as to eliminate his chances to sexually abuse children;
 - n. Retaining Father Sheedy when it they defendants knew or should have known that he posed a risk to invitees of the defendant, especially the plaintiff, plaintiff class, and other invitees;
 - o. Take steps to report to civil and criminal authorities a priest who sexually abused children so those who consider employing him for jobs having contact with children can make an informed decision about whether or not to do so, or the conditions on which to employ him, and so that parents and children can protect against his

predatory actions;

p. Notify parents of those children who have been exposed to Sheedy;

q. Exercise due care for the safety and well-being of Plaintiff.

49. As a direct and proximate result of the negligent, grossly negligent, reckless, careless, wilful, and wanton behavior of the defendants and/or their employees/agents, Plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants or others.

FOR A THIRD CAUSE OF ACTION

BREACH OF FIDUCIARY DUTY

50. The allegations of paragraphs 1 through 41 above are incorporated into this cause of action as if fully stated herein.
51. By and through the relationships described herein, defendants entered into a fiduciary relationship with the Plaintiff. Additionally, by accepting physical custody of the minor Plaintiff, defendants assumed the duty to act in *loco parentis* with respect to the Plaintiff and were obligated to ensure that the plaintiff was safely cared for while he was in their custody, whether that be in Georgia, South Carolina, or elsewhere. By and through the conduct of the defendants, a relationship of trust and confidence, and therefore a fiduciary relationship, was formed.
52. As a result the acts and/or omissions of the defendants described herein, the defendants breached the duties owed to the Plaintiff.
53. As a proximate result of the breaches of fiduciary duties by the defendants, Plaintiff was

injured and suffered damages. Plaintiff is entitled to actual, compensatory damages in an amount to be determined by the jury, and punitive damages in an amount sufficient to deter similar conduct by these defendants and others.

FOR A FOURTH CAUSE OF ACTION

FRAUDULENT CONCEALMENT

54. The allegations of paragraphs 1 through 41 above are incorporated into this cause of action as if fully stated herein.
55. Defendants actively worked to fraudulently conceal their conduct. Among other things, Defendants undertook deliberate acts to conceal from the plaintiff that he had a cause of action thereby inducing him to postpone suit and/or dissuade the plaintiff from bringing suit by acts indicating affirmatively that the defendants would resolve the matter and/or that the plaintiff would suffer great and irreparable harm to himself by instituting suit, including, but not limited to, damnation. This fraudulent concealment lasted until the present.
56. As a direct and proximate result of the outrageous conduct of the defendants, Plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants and others.

FOR A SIXTH CAUSE OF ACTION

CIVIL CONSPIRACY

57. The allegations of paragraphs 1 through 41 above are incorporated into this cause of action as if fully stated herein.

58. Defendants joined with others for the purpose of injuring the plaintiff, including, but not limited to, agents of the Diocese of Atlanta. The civil conspiracy of which these defendants were a party injured the plaintiff.

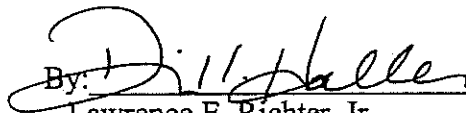
59. As a direct and proximate result of the conspiratorial conduct of the defendants, Plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants or others.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury.

WHEREFORE, Plaintiff requests actual, compensatory and punitive damages against the defendants in amounts to be determined by the finder of fact for the various causes of action set forth above, that the costs of this action be taxed against the defendants, and such other and further relief as the Court shall deem just and proper.

Respectfully submitted,

By: 
Lawrence E. Richter, Jr.
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RICHTER & HALLER, LLC
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ATTORNEYS FOR PLAINTIFF

6th day of October, 2006

Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

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

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

Plaintiffs,)

vs.)

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

Defendants.)

**MOTION TO CERTIFY CLASSES
AND FOR PRELIMINARY APPROVAL
OF CLASS SETTLEMENT**

FILED - RECORDED
2006 OCT - 6 PM 2:03
CHERYL G. HAM
CLERK OF COURT
DORCHESTER COUNTY

TO: A. PETER SHAHID, ESQUIRE AND JIM GEOLY, ESQUIRE, ATTORNEYS FOR
THE DEFENDANT

YOU WILL PLEASE TAKE NOTICE that the plaintiffs will move at the Dorchester County Courthouse on the tenth (10) day after service hereof, or at such other time and place as the court deems proper, for an order certifying plaintiffs classes of individuals with potential claims against the defendants, giving initial approval of a settlement between the classes and the defendants, and directing the procedure for notice, objection, and final approval of the settlement reached herein.

A more specific statement of the relief requested is stated below.

1. Class Certification

On June 30, 2006,¹ plaintiffs John Doe 67, Jane Doe 1 and Jane Doe 2 and Rachel Roe individually and as representatives of a class of people similarly situated, filed actionS against the defendants seeking damages arising from sexual abuse suffered at the hands of a priest under the control of the defendants while on the defendants' property. Plaintiffs John Doe #53, John Doe 66 and John Doe 66A were subsequently added to the case, also as class representatives.

This motion seeks to certify two classes of individuals. John Doe #53, John Doe, 66, John Doe 66A, and John Doe 67 request the court certify a class as follows:

All individuals born on or before August 30, 1980 who, as minors, were sexually abused at any time by agents or employees of the Diocese of Charleston who have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter the "Primary Class")

Jane Doe 1, Jane Doe 2, and Rachel Roe request the court certify a class of individuals as follows:

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

Plaintiffs will provide the court such legal argument to support this motion as necessary.

2. Approval of Settlements reached on behalf of the classes

The Class Representatives with class counsel and representatives of the defendants and their counsel held a mediation June 13 and 14, 2006 with Marvin Infinger, Esquire. The principals of the Settlement have executed a Settlement and Arbitration Agreement which will be presented to the court prior to the hearing on this matter. In sum, the defendants agree to make available a fund in set out in the Settlement and Arbitration Agreement by which individuals who are members of the

¹Other actions involving the same acts have been of record since at least May of 2005.

the Settlement and Arbitration Agreement and final approval of the settlement after notice to the class as set forth below.

3. Notice to Class Members

Plaintiffs pray for an order pursuant to SCRCF 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

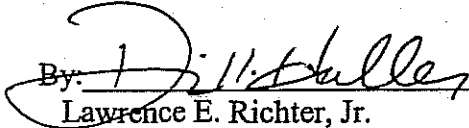
of an order providing conditional approval of this settlement. Any objection to the approval of this settlement must be sent to class counsel and to the clerk of court for Dorchester County for filing with the required filing fee no later than fifteen (15) days prior to the Fairness Hearing on this matter.

- 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

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(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

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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.

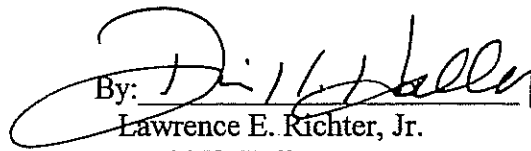
- b. **Time.** All publications shall be completed no later than 30 days following the entry of an order providing conditional approval of this settlement. Any objection to the approval of this settlement must be sent to class counsel and to the clerk of court for Dorchester County for filing with the 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

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

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE No. 06-CP-18-1310
CASE No. 06-CP-18-1311
CASE No. 06-CP-18-1636

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

Plaintiffs,)

vs.)

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

Defendants.)

**SETTLEMENT AND ARBITRATION
AGREEMENT**

FILED - RECORDED
2007 JAN 17 PM 3:25
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

This Settlement and Arbitration Agreement (hereinafter "the Agreement") is made this 12^{*} 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



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 SCRCR Rule 23. Should the court deny approval of the certification of the classes substantially defined in paragraph 1 above, the court will be separately asked to approve the conditions of paragraph 4, below. Plaintiffs reserve their right of appeal of any denial of class certification. Approval of the settlement shall be on such terms and conditions as the court may fix. All participation is subject to any term and condition of the approval of the classes set out in the court's order. Provided, however, that this is voluntary settlement agreement and that either the Diocese or the Representatives may interpose an objection to any of the court's rulings on the settlement agreement or claims process and may withdraw from this settlement if its terms are materially altered by the court.

3. **SETTLEMENT FUND AND DISTRIBUTION METHOD.** The parties agree to jointly ask the court to approve the terms of the Settlement Agreement, as mediated June 13 and 14, 2006, as follows:

- a. The Diocese shall fund the settlement with two irrevocable letters of credit or other guaranteed pool of funds in the amounts of \$5 million and \$7 million, respectively. Upon disbursement from the initial letter of credit or from an aggregate amount equaling or

exceeding \$4 million, then in that event, the Diocese shall take such action necessary to have the secondary \$7 million dollars immediately available for disbursement. Both letters of credit (or other pools of funds) shall be guaranteed by the issuing bank to be available as of the date of the approval of this Agreement. In the event the Diocese is unable to obtain letters of credit, it will nevertheless be obligated to pay all sums awarded by the court or the Arbitrator and to deposit funds for this purpose as set forth above. This Agreement supersedes any prior agreement of the parties.

- b. With regard to the claim of any Claimant, the Diocese will pay the Claimant to settle such claim an amount of money to be determined through the arbitration process set forth herein. The arbitration shall be conducted by Marvin Infinger, Esq. (hereinafter "the Arbitrator"). If for any reason Mr. Infinger is unable to continue to serve as arbitrator, the parties shall agree to a successor arbitrator. If the parties are unable to agree to a successor arbitrator one shall be appointed by the court.
- c. Awards shall be based on the criteria set forth herein and the Arbitrator will make awards as follows:

<u>Type of Alleged Abuse</u>	<u>Minimum Payment / Maximum Payment</u>	
Limited inappropriate touching on the victim	\$10,000.00	\$18,500.00
Improper touching by the perpetrator upon the victim or by the victim upon the perpetrator, such as fondling of genitalia, limited masturbation, and other types of sexual contacts.	\$20,000.00	\$55,000.00
Aggravated touching of the genital area by the perpetrator on the victim or by the victim upon the perpetrator. These types of abuse include, but are not limited to, oral sex, (either on the victim or by the victim on the perpetrator) or other aggravated circumstances.	\$60,000.00	\$125,000.00
Egregious acts, such as sodomy, any act		

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accomplished by force or coercion, or repeated acts involving any type of sexual activities over extended period of time causing serious damage.

\$150,000.00

\$200,000.00

Loss of consortium (Parent or Spouse)

\$20,000.00

The criteria for the Arbitrator to determine the amount of the award for a sexual abuse claim shall include, among other things, the type of abuse, its duration and the extent of injuries suffered by the Claimant. In cases in which the claim is for loss of consortium, the award shall be \$20,000.00 for each parent of the Claimant, and \$20,000.00 for the spouse of the Claimant. The Arbitrator shall not consider any liability issues, including, but not limited to, defenses such as lack of negligence or notice, statute of limitations, and charitable immunity. The award issued by the Arbitrator shall be left to the sole discretion of the Arbitrator and shall not be subject to objection, review, appeal or suit brought by any Claimant or the Diocese.

- d. For every claim presented, the arbitrator shall make an express written determination as to (1) whether the Claimant is, in fact, a member of one of the plaintiff classes, (2) whether the claim is *bona fide*, and (3) the amount of the award, if any. In the event that the Arbitrator determines that a Claimant is not a member of one of the plaintiff classes and/or that the claim is not *bona fide*, the claim shall be denied and the Claimant shall receive no award. By participating in the claims process, the Claimants and the Diocese expressly waive any and all rights of appeal of any and all decisions of the Arbitrator, including decisions made on whether the individual is a member of the class, whether the claim is *bona fide*, and the amount of any damages which were suffered.
- e. Any individual, including his/her parents and spouse, whose claim has been otherwise adjudicated, settled or resolved, is barred from filing a claim or collecting from any funds of this class.

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- f. The identity of all Claimants shall be kept strictly confidential except that the Diocese's counsel and those associated with the Diocese necessary for the performance of the terms of this agreement, the Arbitrator, Class Counsel and their staffs may have such access necessary to effectuate this Agreement and the court's orders on the same. Counsel before the court should take appropriate steps to ensure that access is provided to staff on an "as needed" basis. Any individual who has access to the actual name of any Claimant shall sign a court approved confidentiality and restraining agreement prohibiting the disclosure of the name of any Claimant. The name of the Claimant, his or her social security number, and the amount of his or her award will be provided to the escrow agent for purposes of distributing the award at the conclusion of the claims process.
- g. Subject to approval of the court, any person wishing to make a claim must do so within 120 days of the initial notice of final approval of the settlement in a form approved by the court. The form may be obtained from Class Counsel by contacting it as provided in the court approved notice and should include at least the following information:
1. The name, date of birth, social security number, preferred address, telephone number, and email address of contact for the Claimant and, if the claim is made in a representative capacity, the name of the representative and the ward and the nature of the relationship;
 2. Name of the abuser, location at which the abuse occurred, the time period during which the abuse occurred, and relation of the victim to the abuser; [i.e. priest/altar boy; coach/ basketball player]
 3. A brief statement sufficient to advise the parties of the nature of the claim and the acts complained of;

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4. A brief summary of any claimed injury or damages;
 5. Name of parents, whether they are living or deceased;
 6. Name of spouse (if any);
 7. The form must be signed and dated; and
 8. Any other information or documents Claimant deems necessary for a determination of his or her claim. Documentary evidence may be supplemented as provided for herein.
- h. Class Counsel shall assign an anonymous name and/or numbering system to each claim made. Thereafter, the claim must be referred to by its claim number. The name of the claimant and the claim number will be provided to the Diocese lawyers and to the Arbitrator pursuant to the confidentiality provisions established herein.
- i. Class Counsel will transmit the Claim Form only to counsel for the Diocese for its review pursuant to paragraphs 3(l), (m) and (n). At the conclusion of the claim review by the Diocese, Class Counsel shall transmit the Diocese's response to the Claimant. The Claimant will have fifteen (15) days to make any response or take any action Claimant deems necessary and provide the same to Class Counsel who will transmit it to the Diocese. If the Claimant has elected to obtain psychological testing and use it in support of his or her claim, Claimant should provide it to Class Counsel promptly upon receipt. Thereafter, Class Counsel will submit the entire claim package to the Arbitrator and request a hearing.
- j. The Arbitrator shall schedule the Claimant's Arbitration within 90 days of submission of the claim to him. The arbitration shall be conducted pursuant to the South Carolina Uniform Arbitration Act, S.C. Code Ann. § 15-48-10, et seq., unless the Act conflicts with this Agreement or the court's order(s) in this matter, in which case the Agreement and order(s)

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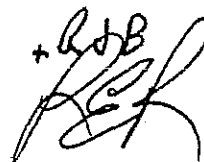

shall control. In any event, as to all issues, the orders of the court shall control.

- k. While the class has Class Counsel, the parties acknowledge that the Claimant may have an attorney of his or her own choice for any part of the claims process. If an attorney is selected by the Claimant, all information concerning the claim or claims process shall be sent to the attorney for the Claimant.
- l. Upon receipt of any Claim Form from any Claimant, Class Counsel shall forward the claim form to Counsel for the Diocese. Counsel for the Diocese shall have thirty (30) days from receipt of the claim to review the claim to verify the accuracy of the information presented and to determine the Diocese's position on whether the Claimant is a member of one of the plaintiff classes and whether the claim is *bona fide*. If the Diocese acknowledges that the Claimant is a member of a plaintiff class and that the claim is *bona fide*, the proceedings before the Arbitrator shall be to determine the damages suffered by the Claimant within the parameters of paragraph 3(d).
- m. If the Diocese objects to the claim, the Diocese shall submit an original and a copy of a written objection to Class Counsel stating why the Claimant is not properly a member of one of the plaintiff classes and/or why the claim is not *bona fide*, and attaching (to the original and the copy) any documents or other supporting evidence which the Diocese wishes to tender (such as a death certificate showing that the alleged perpetrator could not have committed the acts complained of at the time and place alleged). Class Counsel shall transmit a copy of the Diocese's objection and exhibits to the Claimant or the Claimant's attorney.
- n. If the Diocese makes a timely objection to the claim, the Arbitrator shall rule on the Diocese's objection after a hearing at which Counsel for the Diocese and Claimant (and/or Claimant's counsel if the Claimant elects to be represented) and/or Class Counsel shall be

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permitted to make argument. The Arbitrator may, in his sole discretion, schedule such hearing on the same day as, and immediately prior to, the Arbitration of the Claimant's claim for damages, or at some other time in advance of such Arbitration. The Arbitrator shall be the sole determiner of the Claimant's membership in one of the plaintiff classes and of the *bona fides* of the claim, and his decision shall be final and not subject to appeal. If at any time prior to the Arbitration of the claim for damages the Arbitrator determines that the Claimant is not a member of one of the plaintiff classes and/or that the claim is not *bona fides*, the Arbitrator shall notify the parties of such determination and shall not proceed with the Arbitration on the claim for damages. By participating in the claims process, the Claimants and the Diocese expressly waive any and all rights of appeal of any and all decisions of the Arbitrator, including decisions made on whether the individual is a member of the class, whether the claim is *bona fides*, and any damages which were suffered.

- o. Upon submission of the claim, Class Counsel will notify the Claimant that he or she has the opportunity to have a psychological assessment and counseling by Dr. L. Randolph Waid. The Claimant may make this election at the time of his or her claim being filed. The Diocese agrees to pay Dr. Waid, on behalf of the Claimant, for no more than three (3) sessions. Any assessment of any Claimant by Dr. Waid will be provided to the Claimant who may submit it to the Arbitrator as part of the Claimant's damages proof; however, this assessment shall be kept confidential and will not be shared with the Diocese. The payments of counseling fees to Dr. Waid shall be over and above any award made by the Arbitrator and shall not be charged to the Claimant, but shall be paid from the fund.
- p. At the Claimant's hearing, a presentation shall be made by or on behalf of the Claimant concerning his or her damages suffered as a result of the alleged abuse. Each arbitration

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hearing shall be no longer than two (2) hours. At Claimant's arbitration hearing, the Claimant must appear unless he or she is a minor, incompetent, serving in the military (or merchant marine), deceased or otherwise unavailable for medical, psychological, or other substantial reasons. The Claimant and/or his or her attorney may present other evidence relating to the abuse and injury, including without limitation, affidavits under oath or under the pains and penalties of perjury, from persons with relevant information, medical records, and/or forensic evaluation. Claimant may submit any information, records or testimony bearing upon damages for consideration by the Arbitrator, including videotape and audiotape testimony. Counsel for the Claimant may make comment upon the damages sustained by the Claimant. Before the close of the Claimant's arbitration hearing, Counsel for the Claimant may notify the Arbitrator that the Claimant intends to supplement the information, records or testimony submitted at Claimant's arbitration hearing with written records or information which is to be received by the Arbitrator no later than 21 days after the close of the arbitration hearing. The Arbitrator shall consider no information, records or testimony unless submitted by the Claimant or Claimant's Counsel with the exception of the Diocese's written statement as described in paragraph (q), below. In the event that the Claimant does not appear in person, the Claimant must appear by telephone or video conference. The Claimant may submit a forensic evaluation or a statement from a health care professional, but shall not be required to do so. The Claimant may have any person or persons of his or her choosing speak at the hearing.

- q. Counsel for the Diocese shall not be present at said arbitration hearing regarding damages; however, the Diocese shall be entitled to provide a written submission concerning the Claimant's damages. No person other than the arbitrator shall be present at the hearing.

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without the consent of the Claimant. If the Claimant requests, a representative of the Diocese, who is not an attorney, may be present at Claimant's arbitration hearing for purposes of pastoral support. The Claimant shall be entitled to have present at said hearing any of his/her family, friends, health providers, or other individuals requested by the Claimant.

- r. After the Arbitrator has rendered his decision, but not before, the Claimant may be invited to meet one on one with the Bishop of Charleston or his designee for religious, spiritual, and pastoral support. No Claimant is obligated to meet with the Bishop or his designee.
- s. Any materials of whatever nature submitted by Claimant or on his behalf to the Arbitrator, in connection with the arbitration process which is in any way related to the arbitration awards issued by the Arbitrator shall be returned to the Claimant or his or her counsel by the Arbitrator with the award. The Arbitrator shall not reveal the evidence or written arguments presented during the course of the arbitration hearing to anyone other than those present in the Arbitration or Class Counsel.
- t. The Arbitrator shall issue a written award in conformance with the requirements of paragraph 3(d) no later than twenty (20) days after the close of the Arbitration hearing to and deliver same to Class Counsel, counsel for the Diocese, and Claimant and/or Claimant's counsel. Anyone connected with the claims process in any fashion is bound to maintain the confidentiality of each individual Claimant.
- u. All costs associated with the management of the class shall be paid from the settlement fund. The fees and costs described herein include those incurred by the Arbitrator, Class Counsel, the escrow agent, Dr. Waid and any other fees and costs approved by the court.

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v. The court approving this Agreement has the authority to enforce any Arbitration award. The Diocese consents to judgment being entered against it in any federal and/or state Court having jurisdiction. The parties release the Arbitrator from any liability arising from any act or omission in connection with the arbitration hearing conducted herein. By participating in the claims process, each Claimant and the Diocese expressly waive any and all rights of appeal of any and all decisions of the Arbitrator, including decisions made on whether the individual is a member of the class, whether the claim is *bona fides*, and any damages which were suffered.

4. **SETTLEMENT OF REPRESENTATIVE'S AND POINT CLAIMANT'S CLAIMS.** In consideration of the work, effort, time, stress, psychological pain, damages, liability proof, embarrassment, family turmoil and other issues relevant, the class representatives and/or point plaintiffs shall receive settlement funds as follows:

John Doe #53	\$160,000.00
John Doe 66	\$100,000.00
John Doe 66 A	\$100,000.00
John Doe 67	\$100,000.00
Jane Doe A	\$30,000.00
Jane Doe B	\$30,000.00
Rachel Roe	\$30,000.00

It is understood and agreed that the claims of these claimants are released and these settlement funds will be paid by the Diocese regardless of whether the class certification and settlement are approved by the court.

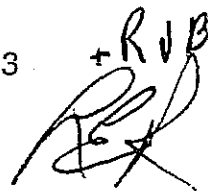
5. **ATTORNEYS FEES.** In consideration of the substantial efforts of plaintiffs' counsel (past

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[Signature]

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.

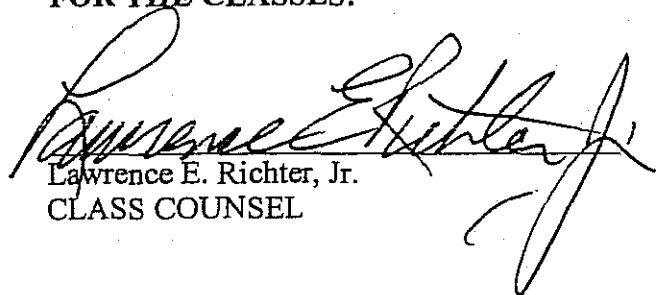
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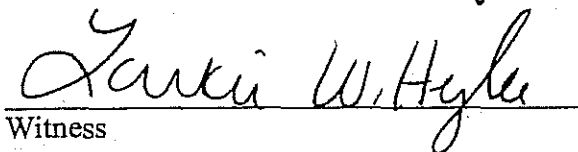
8. **RELEASE.** When the Claimant submits his claim form, he or she shall execute the Release attached as Exhibit 1 and deliver that Release to Class Counsel. Class Counsel shall hold the Release in escrow until the award is delivered and payment is made, as provided herein. If payment is not made by 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

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

Executed this 12th day of January, 2007.

FOR THE CLASSES:


Lawrence E. Richter, Jr.
CLASS COUNSEL


Witness

FOR THE DEFENDANTS:


The Most Rev. Robert J. Baker
THE BISHOP OF CHARLESTON, IN HIS
OFFICIAL CAPACITY AND FOR THE
BISHOP OF CHARLESTON, A
CORPORATION SOLE

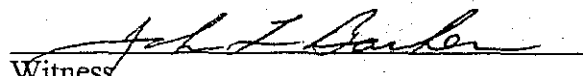

Witness

EXHIBIT 1

CLAIMANT'S GENERAL RELEASE

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

+ 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

FILED - RECORDED
2007 JAN 17 PM 3:29

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


The Bishop of Charleston, a Corporation Sole

Its: _____

Date: _____ Witnessed by: _____

* 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

FILED-RECORDED

2007 JAN 17 PM 3:29

CLERK OF COURT
DORCHESTER COUNTY

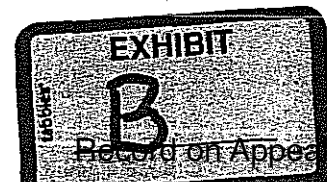
YOU ARE HEREBY NOTIFIED OF A PROPOSED SETTLEMENT OF THIS CLASS ACTION, OF HEARINGS TO BE HELD BY THE COURT TO DETERMINE WHETHER IT SHOULD BE APPROVED AND TO DETERMINE THE REASONABLENESS OF CLASS COUNSEL'S FEES.

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:

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

diocesessettlement@richterfirm.com

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF DORCHESTER

FOR THE FIRST JUDICIAL CIRCUIT

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,

CASE NOS.

☐ Plaintiffs,

2006-CP-18-1310

2006-CP-18-1311

2006-CP-18-1636

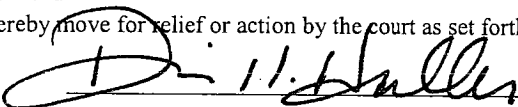
v.

MOTION AND ORDER INFORMATION

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

FORM AND COVER SHEET

☐ Defendants.

Plaintiffs' Attorney: David K. Haller, Bar No. 13411 Address: Post Office Drawer 1089 Mt. Pleasant, SC 29465 phone: 843-849-6000 fax: 843-881-1400 e-mail: davidkhaller@richterfirm.com other:	Defendants' Attorney: A. Peter Shahid, Bar No. Address: P.O. Box 591 Charleston, SC 29402 phone: 843-853-4500 fax: 843-853-4500 e-mail: other:
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: <u>Plaintiffs' Petition for an Award of Attorneys Fees and Litigation Costs</u> Estimated Time Needed: <u>1 hr.</u> Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion/Order Type ☐ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☒ Plaintiffs / ☐ Defendants <u>Feb. 14, 2007</u> Date submitted	
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ Sexually Violent Predator Act ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ State Agency v. Indigent Party ☐ Post-Conviction Relief ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE: _____ Date: _____
CLERK'S VERIFICATION Collected by: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____ Date Filed: _____	

 CERTIFIED COPY
 2007 FEB 14 PM 4:45
 CLERK OF COURT
 DORCHESTER COUNTY

DIOCESE CASES TIMELINE

8/12/05 John Doe #66A complaint filed

8/30/05 Shahid writes to LER to request that depositions be postponed until after addressing pending motions and states he will file an order of protection

8/31/05 Monsignor Roth's deposition noticed for 9/21/05
Bishop Thompson's deposition noticed for 9/22/05
Dennis Atwood's deposition noticed for 9/23/05

9/8/05 DKH writes to Shahid to state entitlement to depose any witnesses defendants' intend to use in support of its pending motion for summary judgment

9/8/05 Defendants' filed motion for protective order (rule 26(b), 26(c), and 45(c))

9/9/05 LER writes to Shahid to inquire what questions defendants feel would harass or embarrass noticed deponents so that they can be reviewed and omitted if agreed upon

9/16/05 Shahid writes and does not answer LER's question posed 9/9/05 and claims that case should be barred due to charitable immunity; reiterates that he has filed motion for protective order and states that depositions for the following week are postponed

9/21/05 We served 1st interrogatories and 1st request for production

9/22/05 DKH writes to Shahid to apologize for serving roggs and rfp; mentions conversation LER had w/ Shahid agreeing to hold off on "doing anything" while resolution is attempted

9/30/05 Shahid writes to LER/DKH stating he received discovery requests and states that he and LER reached an agreement in prior phone convo to "suspend action by either party until we have an opportunity for Larry to meet with Bishop Baker"; states he will be in touch to arrange meeting

10/17/05 LER writes to Shahid re: discussion with Shahid, Baker, and others; discusses consideration of class resolution and presents a list of areas which will need attention

11/14/05 Shahid writes to LER saying Baker is still concerned w/ agreeing to class and mentions engaging Geoly's; says will not be able to provide a definitive response on the class issue until conferring with him

11/28/05 DKH writes to Shahid saying we are moving forward and requests discovery responses prior to SJ hearing

12/29/05 Defendants' memorandum in support of their motion for judgment on pleadings pursuant to rule 12(c) or in alternative for SJ pursuant to rule 56

12/29/05 Defendants' memorandum in support of their motion for protective order pursuant to rules 26(b), (c), and 45(c)

01/05/06 Plaintiff's motion to compel

01/06/06 Plaintiff's record in opposition to defendants' pending motions (DKH submits his affidavit)

1/9/06 Plaintiff's memorandum in opposition to defendants' motion to strike

1/9/06 Plaintiff's memorandum in opposition to defendants' SJ motion

1/9/06 LER meets with Shahid and Geoly

1/10/06 Shahid writes to Judge Young to say that he and LER conferenced and agreed to continue all motions; states that consent order will be submitted in "immediate future"

1/10/06 LER writes to Judge Young further explaining his and Shahid's agreement; speaks of pursuit of class status, progress in efforts toward resolution, Geoly's involvement, either side has right on ten days notice to be heard

1/17/06 LER writes to Shahid that DKH told him Shahid was able to meet with Baker and gain consent to move forward with figuring out class concept; LER requests that Shahid discuss w/ his clients that we are seeking "substantial financial resolution"; requests a list of all priests who have served in the Diocese since 7/17/1933 and records relating to named priests w/o issuance of formal discovery

1/31/06 LER writes to Judge Young that he has submitted proposed consent order to Shahid and will submit it once received

2/10/06 LWH writes to Shahid following up on her prior calls requesting Shahid's response to the consent order

2/13/06 Defendants' response to plaintiff's motion to compel

2/13/06 Shahid returns proposed consent order (received in our office 2/15/06 and submitted directly to Judge Young)

2/28/06 Shahid files motion for Geoly's admission *pro hac vice*

2/28/06 LER writes to Clerk of Court sending order signed by Judge Young and requesting that motions set for 3/7/06 be heard at that time

3/3/06 Consent order signed by Judge Young continuing motions hearings filed

4/6/06 LER writes to Shahid saying that a conference call was to be held the prior week to discuss possibility of mediation; Geoly's office who informed LWH that there were no plans for a call at this time; informs Shahid of intent to write Clerk of Court to set motions to be heard during next available term of court after 4/16/06

4/6/06 DKH writes to Clerk of Court requesting all outstanding motions be heard at next available time after 4/16/06

4/6/06 Shahid writes to LER/DKH saying he believes case can be set for mediation and has put a call in to Geoly; requests that we wait a week before writing Clerk of Court

4/7/06 DKH writes to Shahid explaining that we feel it best to move forward w/ getting motions set and argued along w/ getting mediation set if terms can be agreed upon

4/18/06 LER writes to Shahid saying motions are set to be heard 5/16/06 giving one month to get together for mediation and work toward resolution; copies Infinger and gives parties' names to Infinger to ensure no conflict; requests that Infinger provide dates of availability

4/20/06 LER writes to Shahid saying Infinger has no conflict; no word yet on his availability

4/21/06 DKH writes to Shahid saying Infinger is available for mediation anytime between 5/2 and 5/12

4/25/06 LER writes to Shahid saying only thing lacking for scheduling mediation is Geoly's availability; requests Shahid provide the number of potential claimants who may fall into potential class

4/26/06 DKH writes to Shahid confirming agreement to mediate 5/8/06

5/4/06 Shahid writes to LER/DKH requesting that mediation be postponed; Geoly's wife experienced some complications w/ her pregnancy and

emergency decision was made to induce labor; states “cannot imagine any possibility with rescheduling the mediation before May 16”; explains that Geoly may not be available for 5/16 hearing, discusses charitable immunity defense and shares feelings that “whatever progress we have achieved may be lost” if motions are heard; requests consent to postponing motions hearing and entering into limited discovery re: charity issue; suggests setting up a timeline for responses, fast tracking depositions, and any disagreements being brought b/4 Judge Young by phone or in chambers conference to “avoid the needless delays of scheduling a motion(s) to compel”; suggests entering “scheduling order, addressing motions, discovery, mediation, etc.” to “keep it moving”

- 5/8/06 DKH writes to Shahid saying we will not consent to further continuance of pending motions and motions were filed prior to Geoly’s involvement so no reason his situation would prevent hearing going forward; in alternative, suggests w/drawing pending motions and proceed w/ discovery w/o limitation and no prejudice to renew defendants’ SJ motion at conclusion of discovery
- 5/9/06 Shahid sends Motion for Continuance for filing
- 5/10/06 Defendants’ motion for continuance filed
- 5/9/06 LER writes to Shahid objecting to motion being heard by phone or continued; reiterates motions were entered prior to Geoly’s involvement
- 5/10/06 Shahid writes to LER claiming attempts to resolve continuance since the prior week; received DKH’s letter rejecting his proposal to continue hearing and enter scheduling order; expresses Geoly’s vital role in the research and preparation of memorandums in support of motions
- 5/16/06 DKH writes Shahid and Infinger confirming mediation set for 6/13/06
- 5/18/06 Shahid writes LER confirming mediation scheduled for 6/13/06 and 6/14/06
- 5/19/06 Consent Scheduling Order filed
- 6/6/06 Defendants’ motion to sequence discovery filed
- 6/9/06 Plaintiff’s motion to compel filed
- 7/3/06 DKH emails Shahid and Geoly requesting confirmation that the Diocese was able to obtain letter of credit; information was to be submitted 3 wks prior; LER’s calls to Geoly have not been returned; DKH’s email to Geoly the prior week received no response; mentions that during mediation it

was agreed that settlement would be toward court approval w/in 30 days of the mediation; first term was diocese's approval of funding

- 7/5/06 Geoly responds to DKH's email saying he only received one phone message from LER and it was as he was leaving town; believes Diocese has been able to confirm letter of credit and will provide more information later in the day
- 7/5/06 emails between DKH and Geoly discussing setting up a conference call for the next day; Geoly finishes by saying that he and Shahid "are supposed to have formal confirmation this afternoon"
- 8/7/06 LER writes Shahid expressing concern that Diocese hasn't been able to fund settlements and suggests contacting Carl Zerbst w/ First Reliance Bank, who has expressed interest in speaking w/ Shahid about a funding package
- 8/10/06 LER writes Shahid and Geoly mentioning a conference call to begin shortly and suggests another bank contact w/ ability and interest in assisting the Diocese with funding
- 9/11/06 DKH writes Judge Goodstein to request a status conference for actions pending in Dorchester Co.
- 9/20/06 LER writes Judge Goodstein requesting a status conference for actions pending in Dorchester Co.
- 9/22/06 Shahid writes Judge Goodstein to say he and Geoly will not be available for 9/26/06 status conference
- 9/25/06 LWH writes Judge Goodstein and Shahid confirming teleconference set for 9/26/06
- 10/5/06 LER writes Shahid to confirm meeting b/4 Judge Goodstein on 10/6/06
- 10/6/06 Dorchester Co. complaint for Does #66, #66A and #67 filed (#53 and consortium complaints previously filed)
Motion to Consolidate cases filed
- 10/18/06 DKH writes Judge Goodstein proposing a revised Settlement Agreement, proposed order and proposed notice of settlement for publication; mentions failed attempts to contact opposing counsel since sending them the materials; notice for publication must be published prior to the weekend in order to give 60 days notice of hearing
- 10/26/06 We file motion to enforce settlement and for sanctions

LER writes Judge Goodstein requesting hearing ASAP

10/26/06 Al Stiles deposition noticed for 11/21/06
 Bishop Baker's deposition noticed for 11/9/06
 Reverent Laughlin's deposition noticed for 11/20/06
 Monsignor McInerny's deposition noticed for 11/16/06
 Monsignor Carter's deposition noticed for 11/14/06
 John Barker's deposition noticed for 11/14/06
 Reverend Condon's deposition noticed for 11/13/06
 Reverend Roth's deposition noticed for 11/15/06

10/31/06 Very Reverend Hanley's deposition noticed for 11/22/06

11/2/06 Reverend Willey's deposition noticed for 11/27/06

11/6/06 LER writes Shahid and suggests "a possible method of meeting everyone's needs"; outline release of a portion of funds to current claimants, release of a portion of attorneys fees, parties agree that all responses to discovery, depositions and subpoenas be extended to three weeks from 11/6/06
 New schedule:
 Monsignor McInerny document production due 11/27/06
 Monsignor Carter document production due 11/27/06
 Very Rev. Hanley document production due 12/01/06
 Rev. Willey document production due 12/8/06
 Bishop Baker deposition noticed for 11/30/06
 Rev. Condon deposition noticed for 12/4/06
 Monsignor Carter deposition noticed for 12/5/06
 Monsignor McInerny deposition noticed for 12/7/06
 John Barker deposition noticed for 12/8/06
 Rev. Laughlin deposition noticed for 12/11/06
 Al Stiles deposition noticed for 12/12/06
 Very Rev. Hanley deposition noticed for 12/13/06
 Rev. Willey deposition noticed for 12/18/06

11/6/06 LER writes Shahid to notify him that Judge Goodstein's clerk has told him that she would like to have a conference call with all counsel at 4:00

11/7/06 Shahid writes LER in response to his 11/6 letter suggesting "possible method of meeting everyone's needs"; agree to extension of responses to pleadings, depositions and subpoenas and suggest modifications to LER's initial suggestions; states diocese will forward documents to Holy See's approval of the agreement by 11/10/06; mentions that depositions may need to be extended depending on availability of witnesses and attys

- 11/10/06 LER writes Shahid in response to 11/7 letter with suggestions for modifications to Shahid's suggestions on "possible method of meeting everyone's needs"; re: depositions, LER states he does not agree that any witness has the right to control either the document production or specified time when subpoenaed but will work to accommodate schedules
- 11/13/06 Baker writes Apostolic Nuncio in D.C. requesting he forward "enclosed request" to the Congregation for the Clergy
LWH forwards to Shahid our W-9
- 11/17/06 DKH writes Shahid wanting to know when we can expect the 75% of settlement funds for current plaintiffs
- 11/20/06 LER and DKH meet with Shahid (he showed up unannounced)
- 11/21/06 motions hearing scheduled for this day is marked as "cancelled" on our calendar
- 11/20/06 LER writes Shahid and Geoly to notify them of word from Judge Goodstein's law clerk that plaintiffs' pending motion will be heard 11/21/06 in Dorchester Co.
- 11/20/06 we received initial settlement disbursement
- 11/27/06 Shahid writes LER/DKH saying he still has not received verification of approval from Rome re: Settlement Agreement; requests 3 week extension of discovery for document subpoenas (refers to request as "another")
- 11/27/06 10 day extension granted for subpoenaed discovery
Monsignor McInerney document production due 12/7/06
Monsignor Carter document production due 12/7/06
Very Rev. Hanley document production due 12/11/06
Rev. Willey document production due 12/18/06
Bishop Baker deposition noticed for 12/11/06
Rev. Condon deposition noticed for 12/14/06
Monsignor Carter deposition noticed for 12/15/06
John Barker deposition noticed for 12/20/06
Rev. Laughlin deposition noticed for 12/21/06
Al Stiles deposition noticed for 12/22/06
Very Rev. Hanley deposition noticed for 12/27/06
Rev. Willey deposition noticed for 12/28/06
- 11/30/06 Shahid writes LER/DKH to say that he has still not received response from Rome and to request another 3 week extension for subpoenaed discovery; he mentions that they received confirmation that the Apostolic Nuncio forwarded the package to the appropriate authorities at the Vatican

12/11/06 DKH writes Judge Goodstein explaining that we have filed and served on opposing counsel a motion to enforce settlement and/or to compel discovery and requests a hearing for the motion be scheduled for 12/20/06

12/13/06 Shahid files motion and proposed order for Geoly's admission *pro hac vice* in Dorchester Co.

12/18/06 Shahid writes Judge Goodstein saying he has not yet received any notice of hearing for 12/20/06 and objects to hearing being scheduled on such late notice; mentions it would be impossible for co-counsel Geoly to appear on such late notice; suggests pre-trial conference call

12/18/06 DKH writes Judge Goodstein's assistant in efforts to confirm a time for 12/20 motion hearing

12/19/06 LER writes Shahid commenting on a comments given by Judge Goodstein earlier that day; expresses that it may be beneficial for Bishop Baker to attend 12/20 status conference

12/20/06 Hearing/Status conference b/4 Judge Goodstein

12/19/06 Shahid writes LER expressing that he sees no need for testimony from Bishop Baker or any other witness as it is just a pre-trial conference; mentions that he did contact Bishop Baker's office and he was not available to appear 12/20

1/8/07 DKH emails Shahid and Geoly asking if they agree that case is settled and proposes a discovery schedule beginning 1/16/07; proposes dates in late Jan. for Baker's, Laughlin's, and Roth's depositions and in late Feb. for Barker's deposition, ...proposed discovery completion by 3/15 and dispositive motions filed by 4/15 and trial after 5/1

1/9/07 LER writes Judge Goodstein confirming receipt of email from her clerk in response to our request for a date for fairness hearing; requests that hearing be scheduled in March or April

1/15/07 We file motion to certify classes and for preliminary approval of class settlement and memorandum in support of motion

1/22/07 Shahid writes Judge Goodstein that he received word 1/19 of her signature on the proposed order providing preliminary approval of the class action settlement agreement; mentions speaking with Baker and proposes some revisions to the order

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

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

Plaintiffs,)

vs.)

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

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

CASE No. 06-CP-18-1310

CASE No. 06-CP-18-1311

CASE No. 06-CP-18-1636

CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

2007 FEB 14 PM 4:23

FILED-RECORDED

PLAINTIFFS' PETITION FOR
AN AWARD OF ATTORNEYS FEES
AND LITIGATION COSTS

TO: THE DEFENDANTS AND THEIR COUNSEL

PURSUANT TO SCRCF Rule 23, this court's January 17, 2007 order, and Paragraph 5 of the Settlement and Arbitration Agreement between the parties, the plaintiffs' petition the court for an award of attorneys fees in the amount of \$2.5 million. Further, the plaintiffs pray for reimbursement of costs and litigation expenses incurred to date in the total amount of \$85,259.50.

Paragraph 5 of the Settlement and Arbitration Agreement provides as follows:

In consideration of the substantial efforts of plaintiffs' counsel (past 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 attorneys fees which shall be paid to the plaintiffs' class counsel by the Diocese. However, it is specifically agreed that in no event shall counsel receive fees of neither less than \$950,000.00 nor more than \$2.5million 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.

"In determining a reasonable attorney's fee, the court should consider the following six

Under Seal

0002

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 compensation; 5) the beneficial results obtained; and 6) the customary legal fees for similar services. Consideration should be given to all six factors; none of the factors is controlling.” *Taylor v. Medenica*, 331 S.C. 575, 503 S.E.2d 458 (1998).

In support of this petition, cost statements for litigation costs to date, and the affidavit of Professor John Freeman regarding the reasonableness of the fee.

In applying the above factors, plaintiffs’ request the court consider the following:

1. This case was almost four years in the making from the initial contact with the client and the preliminary approval of the settlement of the matter. As set forth in the accompanying affidavits, the case contained numerous factual, legal, personal, and practical difficulties. The settlement negotiations took more than 15 months to complete. Counsel requests the court to take judicial notice and consider the court filings in case numbers 2005-CP-10-2053, 2005-CP-10-3293, and 2005-CP-10-4913 and the entire record in this matter.
2. Plaintiffs’ counsel estimate in good faith that the time expended over this four year period exceeds 3,720. All counsel state to the court that these hour statements are conservative estimates of the time necessarily devoted to the matter.
3. Plaintiffs’ counsel have each provided affidavits stating their educational background and legal experience and pray that the court find their professional standing to be acceptable.
4. Each of the class representatives in this matter have executed contingent fee agreements of forty (40%) percent of all sums recovered.
5. The results obtained by counsel are far reaching. In addition to obtaining a satisfactory result on behalf of the representatives, counsel has also overcome strong affirmative defenses held by the defendants which other lawyers in prior cases have failed to overcome. In doing so,

they have secured a settlement pool of \$12 million in which victims of sexual abuse by the defendants' agents or employees and their spouses and parents can come forward in a confidential manner and be made whole again. Plaintiffs' respectfully submit that the settlement reached here has not only a positive impact on the members of the classes, but also of great import to the public as a whole.

6. Plaintiffs' counsel are informed and believe that in similar actions such as this, counsel is compensated on a percentage of the fund obtained. Specifically, counsel calls the court's attention to *Ex Parte Condon, In Re: Littlejohn v. State of South Carolina*, 354 S.C. 634, 583 S.E.2d 430 (2003), in which the Supreme Court held that the "fees customarily charged in similar cases" was "particularly persuasive" in setting the fee. In *Ex Parte Condon*, the court approved a fee of \$2.1 million from a gross settlement fund for the plaintiffs' class \$7.5 million, or twenty-eight (28%) percent of the fund. Plaintiffs' prayer for \$2.5 million is only 20.8% of the gross fund. Further, given the many legal complexities and hurdles in the matter, counsel took great risk that they might receive no compensation whatsoever.

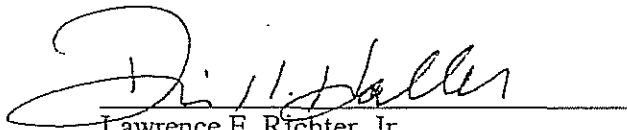
In addition to plaintiffs' prayer for fees, Paragraph 3(u) of the Settlement and Arbitration Agreement provides that litigation costs will be reimbursed to Class Counsel. Plaintiffs' pray for an order awarding them \$85,259.50 in costs to date.

Plaintiffs' rely on the record attached hereto, such additional record which may be made prior to or at the hearing on this matter, and such legal argument required by the court.

Prayer and Signature Block Follow Next Page

WHEREFORE the plaintiffs' pray for the relief requested herein and such other relief as the court deems just prudent and proper.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "D. K. Haller", written over a horizontal line.

Lawrence E. Richter, Jr.

David K. Haller

RICHTER & HALLER, LLC

622 Johnnie Dodds Boulevard

Post Office Box 1089

Mt. Pleasant, South Carolina 29465

(843) 849-6000

This 14th day of February, 2007

At Mount Pleasant, South Carolina

**INDEX OF RECORD IN SUPPORT OF
PLAINTIFFS' PETITION FOR AN AWARD OF
ATTORNEYS FEES AND LITIGATION COSTS**

Exhibit 1 Affidavit of Lawrence E. Richter, Jr.

Exhibit A: Timesheets of Richter & Haller, LLC

Exhibit B: Litigation costs of Richter & Haller, LLC

Exhibit 2 Affidavit of David K. Haller

Exhibit 3 Affidavit of Angela Pittard

Exhibit A: Timesheets of Lofton & Lofton, P.C.

Exhibit 4 Affidavits of Glenn Churchill and Jack Sinclair

Exhibit A: Timesheets of Churchill and Sinclair

**Exhibit 5 Affidavit of John P. Freeman in Support of Class Action Settlement
Approval and Class Counsel's Fee Petition**

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

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

Plaintiffs,)

vs.)

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

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE No. 06-CP-18-1310
CASE No. 06-CP-18-1311
CASE No. 06-CP-18-1636

AFFIDAVIT OF LAWRENCE E.
RICHTER, JR. IN SUPPORT OF
PLAINTIFFS' PETITION FOR
ATTORNEYS FEES AND COSTS

FILED-RECORDED
2007 FEB 14 PM 4:28
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

PERSONALLY APPEARED BEFORE, Lawrence E. Richter, Jr., who being duly
sworn, deposes and says that if he were called as a witness in the above-entitled action he
would truthfully and accurately testify as follows:

QUALIFICATIONS OF COUNSEL

AS TO MR. RICHTER AND THE LAW FIRM OF RICHTER & HALLER, LLC:

1. My name is Lawrence E. Richter, Jr. I am one of the attorneys representing the Plaintiffs in connection with this matter.
2. I am a principal in the law firm of Richter & Haller, LLC of Mt. Pleasant, South Carolina.

3. I am a 1968 graduate of the University of North Carolina at Chapel Hill with a B.A. in English. In 1971 I graduated from the University of South Carolina School of Law with a J.D.

4. I was admitted to the practice of law in South Carolina in November 1971 and I have continuously been a member in good standing of the South Carolina Bar since that date. I presently enjoy that same status.

5. I have served in a number of capacities including Municipal Judge for five years, Family Court Judge for two years, and Circuit Court Judge for six years. In addition, I sat on the South Carolina Supreme Court as Acting Associate Justice. I believe I have a broad based litigation background in domestic, complex civil, and criminal matters both in state and federal courts.

6. I have been a frequent lecturer at various continuing legal education, university, and law school classes and conferences. I am certified a mediator in South Carolina.

7. Also significantly involved in the representation of plaintiffs and plaintiffs' class is David K. Haller, the other principal in our firm. His credentials are set forth more fully in an accompanying affidavit.

LEGAL AUTHORITIES

8. I incorporate Rule 407 of the South Carolina Appellate Court Rules, Rule 1.5 of the Rules of Professional Conduct, and further call the attention of the Court to the case law concerning the awards of attorneys fees in class action matters both here in South Carolina and in jurisdictions with comparable standards.

9. I rely upon the discretion of this Court in determination of the amount of fees based, among other things, upon the Court's file, the Court's knowledge of the litigation between these parties, which reflects the nature, extent and difficulty of the services rendered, the time necessarily devoted to the case, the beneficial results accomplished for the class representatives, the members of the class, and the public as a whole, the professional standing of counsel, and fees customarily charged in this area for similar legal services.

10. The undersigned is informed and believes that this court is authorized to order payment of fees and costs in this matter; indeed, the parties have so agreed.

Paragraph 5 of the Settlement and Arbitration agreement provides as follows:

"In consideration of the substantial efforts of plaintiffs' counsel (past 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 attorneys' fees which shall be paid to the plaintiffs' class counsel by the Diocese. However, it is specifically agreed that in no event shall counsel receive fees of neither less than \$950,000.00 nor more than \$2.5million 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 agreement further provides for the cost of the litigation and of other costs associated with the management of the class.

CASE DIFFICULTIES

11. Co-counsel was originally contacted by one of our clients in 2003 and our firm became involved in the case soon thereafter. Substantial work, strategizing, and research began right away in 2003. In 2005, we brought the first of four individual suits, each

alleging sexual abuse on our client by an agent of the Diocese. Eventually, we sought class treatment of the matter. The settlement was put before the court for preliminary approval in January of 2007. As is clear, these actions present significant and complex legal, factual, personal and practical hurdles which I believe the court should consider in determining its award. As a result of the many difficulties in this case, there was great risk in undertaking it and not receiving any fee whatsoever. Also, much other potentially lucrative work could not be undertaken because of the very significant burden this case placed on our firm.

12. Several other lawyers have attempted to bring individual claims against the Diocese of Charleston. Based on our search of the public records and other information we have obtained, I am informed and believe that all other such actions have failed at the summary judgment stage. The Diocese had powerful affirmative defenses in the statute of limitations and the doctrine of charitable immunity. These defenses had been raised by the Diocese in each of the cases and had been successfully asserted previously. Accordingly, we set our sites on finding genuine issues of material fact as to these defenses in order to get the case to a jury. We believe the nature and terms of the settlement illustrate that, had the case gone that far, we would have been able to accomplish this on behalf of our clients.

13. Moreover, the acts which were the source of these cases occurred more than 20 years ago. Accordingly, it was very difficult to locate several witnesses. One perpetrator was under indictment and another was dead.

14. I believe it is fair that the court consider my personal background in determining the relative unpopularity of the cause. My relationship with the Diocese of Charleston is

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

15. Accordingly, I have not only faced the personal disappointment in my church that the facts surrounding this matter have shown, but I also knew how significant an adversary the Diocese of Charleston would be. And, of course, it retained competent and first tier counsel nationally to represent the interest of the defendants and do so aggressively, which they did. It also had the resources to wage a substantial defense, and it did.

16. In the face of all of the above, we were able to secure on behalf of the classes certified by this court a settlement pool of \$12 million, in which the defenses previously relied on by the Diocese with great success were waived, thereby assuring claimants some substantial recovery. In addition, we were able to secure psychological counseling for any class member who seeks it with a number of sessions paid for by the Diocese. We have also accomplished enhanced lay representation and input on various diocesan boards and policies, including hiring practices. Clearly, the members of the class and the public as a whole have benefited greatly from the resolution of this matter in the manner presented to the court.

17. Because of the complexity of the matter, settlement negotiations alone in the case took more than a year. In October of 2005, we met with the Bishop of Charleston, and other church authorities, at his offices on Broad Street in Charleston. This was the first of many settlement discussions which occurred over the next 15 months, including a two day mediation held in June of 2006 and review of the settlement by the Vatican. The settlement was finally ready for submission to the Court in January of 2007, 15 months after the first conversation with the Bishop.

TIME AND COSTS

18. The undersigned is informed and believes that during this case the time that has been spent, as set forth more fully hereafter, was necessary to the protection of the clients' interests and in order to prove the elements of law to support our claims and defeat the affirmative defenses raised by the defendants. Further, I am informed and believe that the estimates of fees and costs contained herein are good faith estimates based upon the information currently available and are necessary to the protection of the clients' interests.

19. My normal and customary hourly rates range from \$400.00 to \$500.00 per hour. The firm will bill \$75.00 to \$125.00 per hour for paralegal time. The undersigned believes that \$500.00 per hour for affiant's attorney time and \$125.00 per hour for paralegal time is appropriate to this case in light of the issues involved, the complexity of proof, and the magnitude of the case.

20. Attached hereto as Exhibit A is a good faith summary of estimated time incurred by Richter & Haller, LLC in connection with the matters now before the Court through February 13, 2007. The time sheets attached hereto contain a listing of some of our work and activities on behalf of our clients found in our computer and files. These sheets list

the specific service rendered and an estimate of time spent on each activity. These records are intended to show the court the type and breadth of services expended by my firm in this matter. However, these are estimates of time which are, by far, conservative statements of the overall time expended in this matter in the four years since we began the representation of the first of our clients. I would estimate that, in total among all lawyers involved, we have spent well in excess of 3500 hours on this case. This does not include time spent by paralegals, law clerks, and other staff in assisting us. I estimate their time to exceed 500 hours. The time sheets do not show the substantial amount of time which went into framing of the issues and developing the factual record necessary to raise issues of fact concerning the defendant's affirmative defenses and our merits claims.

21. The primary focus of our firm's work is complex civil litigation. Generally, when we represent plaintiffs, we do so on a contingency fee basis with a fee of between thirty-three and one third (33.33%) percent and forty (40%) percent of all sums recovered. I understand the fees customarily charged in similar matters are assessed on the contingency of recovery. Each of our clients have retained us on a contingency basis of forty (40%) percent of all sums recovered. However, under the terms of the settlement, we will be restricted to a fee of no more than twenty and eighty three-one hundreds (20.83%) percent of the \$12 million settlement fund, or \$2.5 million dollars. As stated, we were retained on the fee basis of forty (40%) percent of all sums recovered plus costs.

22. Substantial amounts of attorney time, paralegal time and costs have been necessary to conceive the approach to this litigation to execute the strategy chosen; all of which efforts have resulted in the extraordinary result reached, being of great benefit to

class participants as well as to the public. Defendants have ultimately agreed to fund this class, but only after vigorously resisting and defending against liability.

23. This case has been handled by myself, the other principal of our firm, David Haller, and our co-counsel Lionel Lofton, Jack Sinclair, and Glenn Churchill. Given our various roles in the litigation, we have agreed that each of us will receive a pro rata share of the recovery with my firm receiving an additional ten (10%) percent for serving as class counsel during the settlement negotiations, notice period, and claims period.

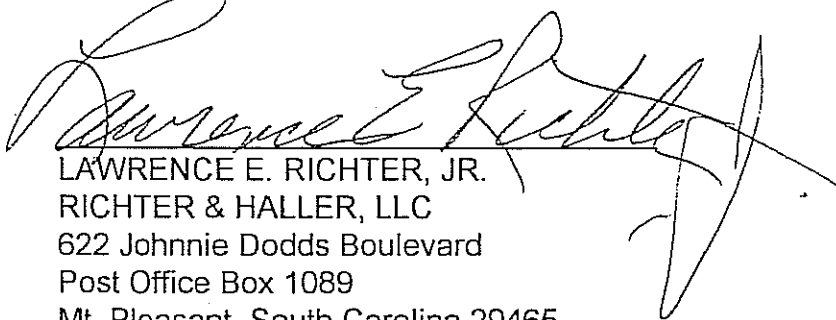
24. Attached hereto as Exhibit B is a statement of the costs incurred in this matter to date. Thus far costs totaling \$84,685.50 have been incurred for fax charges, postage, photocopies, advertising, service of process, and the like associated with the matters now before the Court. The vast majority of these costs, more than \$50,000.00, are from the cost of publishing notice of the settlement. Based on these rates, I anticipate that the public notice of the claims process will cost in excess of \$30,000.00. We have also incurred substantial costs for expert witness fees specifically.

REQUEST FOR AWARD AND CONCLUSION

25. Based on the work expended in this case, its high profile nature, the beneficial results for our clients and for the class as a whole, and the personal nature of this case given my background, I respectfully request the court award class counsel an attorney fee of \$2.5 million.

Signature of Affidavit continues next page

Respectfully Submitted,



LAWRENCE E. RICHTER, JR.
RICHTER & HALLER, LLC
622 Johnnie Dodds Boulevard
Post Office Box 1089
Mt. Pleasant, South Carolina 29465
(843) 849-6000

SWORN to and subscribed before me
this 14th day of February, 2007


NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 11-17-2016

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Jane Doe.wpd	07/02/04 02:18:08 PM	F:\WPFILES\03civ037\ Letters\	0.5	Staff	
John Doe.wpd	07/02/04 02:21:08 PM	F:\WPFILES\03civ037\ Letters\	0.5	Staff	
Bookkeeping	07/30/04 12:00:00 AM	Diocese (all)	2	LWH	
Legal Research	07/30/04 12:00:00 AM	F:\WPFILES\03civ037\	5	DKH	
Legal Research	07/30/04 12:00:00 AM	F:\WPFILES\03civ037\	5	LER	
Legal Research	07/30/04 12:00:00 AM	F:\WPFILES\03civ037\	5	Clerk	
Oversight and Review	07/30/04 12:00:00 AM	Diocese (all)	10	LER	
Photocopying / Monthly Bookkeeping	08/01/04 12:00:00 AM	F:\WPFILES\03civ037\	3	Staff	
	08/30/04 12:00:00 AM	Diocese (all)	2	LWH	

Legal Research	08/30/04 12:00:00 AM	F:\WPFILES\03civ037\	5	DKH	
Legal Research	08/30/04 12:00:00 AM	F:\WPFILES\03civ037\	5	LER	
Legal Research	08/30/04 12:00:00 AM	F:\WPFILES\03civ037\	5	Clerk	
Oversight and Review	08/30/04 12:00:00 AM	Diocese (all)	10	LER	
Bookkeeping	09/30/04 12:00:00 AM	Diocese (all)	2	LWH	
Legal Research	09/30/04 12:00:00 AM	F:\WPFILES\03civ037\	5	DKH	
Legal Research	09/30/04 12:00:00 AM	F:\WPFILES\03civ037\	5	LER	
Legal Research	09/30/04 12:00:00 AM	F:\WPFILES\03civ037\	5	Clerk	
Oversight and Review	09/30/04 12:00:00 AM	Diocese (all)	10	LER	
Photocopying / Monthly	10/01/04 12:00:00 AM	F:\WPFILES\03civ037\	3	Staff	
file.memo.5.wpd	10/08/04 01:43:59 PM	F:\WPFILES\03civ037\	0.5	Staff	
Counsel.wpd	10/08/04 02:02:12 PM	F:\WPFILES\03civ037\ Letters\	0.5	Staff	
Correspondence	10/12/04 12:00:00 AM	F:\WPFILES\03civ037\ Letters\	0.5	Staff	
Bookkeeping	10/30/04 12:00:00 AM	Diocese (all)	2	LWH	
Legal Research	10/30/04 12:00:00 AM	F:\WPFILES\03civ037\	5	DKH	
Legal Research	10/30/04 12:00:00 AM	F:\WPFILES\03civ037\	5	LER	
Legal Research	10/30/04 12:00:00 AM	F:\WPFILES\03civ037\	5	Clerk	
Oversight and Review	10/30/04 12:00:00 AM	Diocese (all)	10	LER	
Bookkeeping	11/30/04 12:00:00 AM	Diocese (all)	2	LWH	
Legal Research	11/30/04 12:00:00 AM	F:\WPFILES\03civ037\	5	DKH	
Legal Research	11/30/04 12:00:00 AM	F:\WPFILES\03civ037\	5	LER	
Legal Research	11/30/04 12:00:00 AM	F:\WPFILES\03civ037\	5	Clerk	

Oversight and Review Bookkeeping	11/30/04 12:00:00 AM	Diocese (all)	10	LER	
	12/30/04 12:00:00 AM	Diocese (all)	2	LWH	
Legal Research	12/30/04 12:00:00 AM	F:\WPFILES\03civ037\	5	DKH	
Legal Research	12/30/04 12:00:00 AM	F:\WPFILES\03civ037\	5	LER	
Legal Research	12/30/04 12:00:00 AM	F:\WPFILES\03civ037\	5	Clerk	
Oversight and Review	12/30/04 12:00:00 AM	Diocese (all)	10	LER	
Meeting / Shahid	01/09/05 02:30:30 PM		2	DKH	
Meeting / Shahid	01/09/05 02:30:30 PM		2	LER	
Motion Hearing Prep / Judge Young	01/10/05 02:30:30 PM		20	LER	
Motion Hearing / Judge Young	01/10/05 04:30:30 PM		4	LER	
Bookkeeping	01/30/05 12:00:00 AM	Diocese (all)	2	LWH	
Legal Research	01/30/05 12:00:00 AM	F:\WPFILES\03civ037\	5	DKH	
Legal Research	01/30/05 12:00:00 AM	F:\WPFILES\03civ037\	5	LER	
Legal Research	01/30/05 12:00:00 AM	F:\WPFILES\03civ037\	5	Clerk	
Oversight and Review	01/30/05 12:00:00 AM	Diocese (all)	10	LER	
Photocopying / Monthly Meeting / Lofton, Sinclair, Morris	02/16/05 12:00:00 AM	F:\WPFILES\03civ037\	3	Staff	
Bookkeeping	03/23/05 01:30:30 PM		3	LER	
	03/30/05 12:00:00 AM	Diocese (all)	2	LWH	
Legal Research	03/30/05 12:00:00 AM	F:\WPFILES\03civ037\	5	DKH	
Legal Research	03/30/05 12:00:00 AM	F:\WPFILES\03civ037\	5	LER	
Legal Research	03/30/05 12:00:00 AM	F:\WPFILES\03civ037\	5	Clerk	
Oversight and Review	03/30/05 12:00:00 AM	Diocese (all)	10	LER	
Meeting / Lofton Sinclair,	03/31/05 01:30:30 PM		3	LER	

Discovery Thoughts, LER.wpd	04/12/05 01:18:52 PM	F:\WPFILES\03civ037\	15	LER (File Review and Dictating)	
Negligence.wpd (draft for [REDACTED] complaint)	04/19/05 04:34:12 PM	F:\WPFILES\03civ037\ Pleadings\	5	LER	
Bookkeeping	04/30/05 12:00:00 AM	Diocese (all)	2	LWH	
Legal Research	04/30/05 12:00:00 AM	F:\WPFILES\03civ037\	5	DKH	
Legal Research	04/30/05 12:00:00 AM	F:\WPFILES\03civ037\	5	LER	
Legal Research	04/30/05 12:00:00 AM	F:\WPFILES\03civ037\	5	Clerk	
Oversight and Review	04/30/05 12:00:00 AM	Diocese (all)	10	LER	
Photocopying / Monthly	05/01/05 12:00:00 AM	F:\WPFILES\03civ037\	3	Staff	
Photocopying / Monthly	05/01/05 12:00:00 AM	F:\WPFILES\03civ037\	3	Staff	
Mallon Cover Sheet, FORM UPDATE.wpd	05/10/05 02:57:04 PM	F:\WPFILES\03civ037\	0.5	Staff	
Shahid, Peter.3.wpd	05/10/05 03:23:30 PM	F:\WPFILES\03civ037\ Letters\	0.5	Staff	
fax.co.counsel.4.wpd	05/10/05 03:36:26 PM	F:\WPFILES\03civ037\	0.5	Staff	
fax.loflon.2.wpd	05/10/05 03:43:08 PM	F:\WPFILES\03civ037\	0.5	Staff	
fax.Geoly.2.wpd	05/10/05 03:55:08 PM	F:\WPFILES\03civ037\	0.5	Staff	
fax.Shahid.2.wpd	05/10/05 03:55:08 PM	F:\WPFILES\03civ037\	0.5	Staff	
Shahid, Peter.wpd	05/11/05 01:44:06 PM	F:\WPFILES\03civ037\ Letters\	0.5	Staff	
co.counsel.wpd	05/11/05 01:51:54 PM	F:\WPFILES\03civ037\ Letters\	0.5	Staff	
cert serv by hand.wpd	05/12/05 08:56:40 AM	F:\WPFILES\03civ037\ Pleadings\	0.5	Staff	
co.counsel.2.wpd	05/12/05 04:16:32 PM	F:\WPFILES\03civ037\ Letters\	0.5	Staff	
Shahid, Peter.5.wpd	05/16/05 03:30:26 PM	F:\WPFILES\03civ037\ Letters\	0.5	Staff	

fax.co.counsel.5.wpd	05/16/05 03:32:56 PM	F:\WPFILES\03civ037\	0.5	Staff	
fax.ShahId.2.wpd	05/16/05 03:45:08 PM	F:\WPFILES\03civ037\	0.5	Staff	
fax.Geoly.2.wpd	05/16/05 03:55:08 PM	F:\WPFILES\03civ037\	0.5	Staff	
John_Doe_AND Crooks[1].wpd	05/27/05 10:45:36 AM	F:\WPFILES\03civ037\	3	DKH (Research)	
Bookkeeping	05/30/05 12:00:00 AM	Diocese (all)	2	LWH	
Legal Research	05/30/05 12:00:00 AM	F:\WPFILES\03civ037\	5	DKH	
Legal Research	05/30/05 12:00:00 AM	F:\WPFILES\03civ037\	5	LER	
Legal Research	05/30/05 12:00:00 AM	F:\WPFILES\03civ037\	5	Clerk	
Oversight and Review	05/30/05 12:00:00 AM	Diocese (all)	10	LER	
Meeting LER / DKH	06/01/05 12:00:00 AM	F:\WPFILES\05civ032\	2	DKH	
Meeting LER / DKH	06/01/05 12:00:00 AM	F:\WPFILES\05civ032\	2	LER	
Photocopying / Monthly	06/01/05 12:00:00 AM	F:\WPFILES\03civ037\	3	Staff	
ShahId.Peter.6.wpd	06/01/05 04:50:12 PM	F:\WPFILES\03civ037\ Letters\	0.5	Staff	
fax.Crookscase.wpd	06/08/05 02:23:38 PM	F:\WPFILES\05civ033\	0.5	Staff	
[REDACTED].wpd	06/09/05 02:22:22 PM	F:\WPFILES\05civ033\ Medical Records Requests\	0.5	Staff	
[REDACTED].wpd	06/09/05 02:24:48 PM	F:\WPFILES\05civ033\ Medical Records Requests\	0.5	Staff	
RichlandSpringsHospital.wpd	06/09/05 02:25:45 PM	F:\WPFILES\05civ033\ Medical Records Requests\	0.5	Staff	
Palmello lowcountry behavioral.wpd	06/09/05 02:27:27 PM	F:\WPFILES\05civ033\ Medical Records Requests\	0.5	Staff	

████████.wpd	06/09/05 02:28:21 PM	F:\WPFILES\05civ033\ Medical Records Requests\	0.5	Staff	
████████.wpd	06/10/05 02:29:51 PM	F:\WPFILES\05civ033\ Medical Records Requests\	0.5	Staff	
SCDepartmentof Mental-Health.wpd	06/14/05 08:19:14 AM	F:\WPFILES\05civ033\ Medical Records Requests\	0.5	Staff	
fax.Shahid.wpd	06/21/05 04:19:48 PM	F:\WPFILES\05civ032\ Letters\	0.5	Staff	
Shahid.wpd	06/21/05 04:40:12 PM	F:\WPFILES\05civ032\ PLEADINGS\	2	DKH	
Default.motion2.wpd	06/23/05 04:25:14 PM	F:\WPFILES\05civ032\ PLEADINGS\	0.5	Staff	
Fax	06/24/05 12:00:00 AM	F:\WPFILES\05civ032\ PLEADINGS\	2	DKH	
Default.motion.wpd	06/24/05 01:30:06 PM	F:\WPFILES\05civ032\ PLEADINGS\	2	DKH	
Judgment by default.wpd	06/24/05 02:06:48 PM	F:\WPFILES\05civ032\ Letters\	0.5	Staff	
Shahid.2.wpd	06/24/05 02:06:44 PM	F:\WPFILES\05civ032\ Diocese (all)	2	LWH	
Bookkeeping	06/30/05 12:00:00 AM	F:\WPFILES\05civ032\ Diocese (all)	5	DKH	
Legal Research	06/30/05 12:00:00 AM	F:\WPFILES\06civ023\ Diocese (all)	1	Staff	
Photocopying / Monthly	06/30/05 12:00:00 AM	F:\WPFILES\05civ032\ PLEADINGS\	0.5	Staff	
Photocopying / Monthly	06/30/05 12:00:00 AM	F:\WPFILES\05civ032\ PLEADINGS\	5	LER	
Legal Research	06/30/05 12:00:00 AM	F:\WPFILES\05civ032\ PLEADINGS\	5	Clerk	
Legal Research	06/30/05 12:00:00 AM	F:\WPFILES\05civ032\ PLEADINGS\	10	LER	
Oversight and Review	06/30/05 12:00:00 AM	F:\WPFILES\05civ032\ PLEADINGS\	0.5	Staff	
motion coversheet.wpd	06/30/05 03:30:36 PM	F:\WPFILES\05civ032\ PLEADINGS\	0.5	Staff	

Photocopying / Monthly	07/01/05 12:00:00 AM	F:\WPFILES\03civ037\	3	Staff	
John Doe Medical Records Status.wpd	07/01/05 12:35:02 PM	F:\WPFILES\05civ033\ Medical Records Requests\	0.5	Staff	
Fax	07/15/05 12:00:00 AM	F:\WPFILES\05civ033\	0.5	Staff	
CommunityMentalHealthCenter.wpd	07/15/05 08:56:28 AM	F:\WPFILES\05civ033\ Medical Records Requests\	0.5	Staff	
Fax	07/18/05 12:00:00 AM	F:\WPFILES\05civ033\	0.5	Staff	
Bookkeeping	07/30/05 12:00:00 AM	Diocese (all)	2	LWH	
Legal Research	07/30/05 12:00:00 AM	F:\WPFILES\06civ023\	5	DKH	\$244.91
Photocopying / Monthly	07/30/05 12:00:00 AM	F:\WPFILES\06civ023\	1	Staff	
Legal Research	07/30/05 12:00:00 AM	F:\WPFILES\06civ023\	5	LER	\$244.91
Legal Research	07/30/05 12:00:00 AM	F:\WPFILES\06civ023\	5	Clerk	\$244.91
Oversight and Review	07/30/05 12:00:00 AM	Diocese (all)	10	LER	
Photocopying / Monthly	08/01/05 12:00:00 AM	F:\WPFILES\03civ037\	3	Staff	
Meeting / Lofton	08/01/05 01:15:30 PM		1	LER	
Meeting / Lofton, Sinclair, Churchill	08/08/05 04:30:30 PM		2	DKH	
Meeting / Lofton, Sinclair, Churchill	08/08/05 04:30:30 PM		2	LER	
Fax	08/09/05 12:00:00 AM	F:\WPFILES\05civ032\	0.5	Staff	
	08/09/05 01:45:20 PM	F:\WPFILES\03civ037\ Pleadings\	2	LER	
	08/09/05 01:45:20 PM	F:\WPFILES\03civ037\ Pleadings\	30	DKH	
molton coversheet.wpd	08/09/05 02:06:12 PM	F:\WPFILES\03civ037\	0.5	Staff	

Shahid, Peter.2.wpd	08/09/05 02:25:10 PM	F:\WPFILES\03civ037\ Letters\	0.5	Staff	
SUMMONS.wpd	08/09/05 02:35:42 PM	F:\WPFILES\03civ037\ Pleadings\	0.5	Staff	
Civil Cover Sheet, UPDATE.wpd	08/09/05 02:35:48 PM	F:\WPFILES\03civ037\	0.5	Staff	
Shahid, Peter.7.wpd	08/12/05 09:19:14 AM	F:\WPFILES\03civ037\ Letters\	0.5	Staff	
Acceptance of Service.wpd	08/12/05 01:39:26 PM	F:\WPFILES\03civ037\ Pleadings\	0.5	Staff	
Co-counsel, Ilir.wpd	08/15/05 10:14:12 AM	F:\WPFILES\03civ037\ Letters\	0.5	Staff	
fax.co.counsel.6.wpd	08/15/05 10:30:30 AM	F:\WPFILES\03civ037\	0.5	Staff	
Pl, Req. For. Admiss.wpd	08/22/05 11:27:42 AM	F:\WPFILES\05civ032\ DISCOVERY\	20	DKH	
fax, Geoly.2.wpd	08/22/05 12:57:30 PM	F:\WPFILES\03civ037\	0.5	Staff	
Shahid.wpd	08/22/05 04:20:46 PM	F:\WPFILES\03civ037\ Letters\	0.5	Staff	
fax.co.counsel.6.wpd	08/22/05 04:26:20 PM	F:\WPFILES\03civ037\	0.5	Staff	
fax, Geoly.2.wpd	08/22/05 04:26:20 PM	F:\WPFILES\03civ037\	0.5	Staff	
fax, Shahid.2.wpd	08/22/05 04:26:20 PM	F:\WPFILES\03civ037\	0.5	Staff	
Pl, Req. For. Prod.wpd	08/24/05 11:25:58 AM	F:\WPFILES\05civ032\ DISCOVERY\	20	DKH	
Pl, Interrogatories.wpd	08/24/05 12:43:32 PM	F:\WPFILES\05civ032\ DISCOVERY\	20	DKH	
Bookkeeping	08/30/05 12:00:00 AM	Diocese (all)	2	LWH	
Fax	08/30/05 12:00:00 AM	F:\WPFILES\05civ032\	0.5	Staff	
Fax	08/30/05 12:00:00 AM	F:\WPFILES\05civ032\	0.5	Staff	
Fax	08/30/05 12:00:00 AM	F:\WPFILES\05civ032\	0.5	Staff	

Fax	08/30/05 12:00:00 AM	F:\WPFILES\05civ032\	0.5	Staff	
Fax	08/30/05 12:00:00 AM	F:\WPFILES\05civ032\	0.5	Staff	
Legal Research	08/30/05 12:00:00 AM	F:\WPFILES\03civ037\	5	DKH	\$10.40
Photocopying / Monthly	08/30/05 12:00:00 AM	F:\WPFILES\06civ023\	5	Staff	
Photocopying / Monthly	08/30/05 12:00:00 AM	F:\WPFILES\05civ032\	2	Staff	
Legal Research	08/30/05 12:00:00 AM	F:\WPFILES\03civ037\	5	LER	\$10.40
Legal Research	08/30/05 12:00:00 AM	F:\WPFILES\03civ037\	5	Clerk	\$10.40
Oversight and Review	08/30/05 12:00:00 AM	Diocese (all)	10	LER	
cert.serv.wpd	08/30/05 09:17:44 AM	F:\WPFILES\03civ037\	0.5	Staff	
fax.Shahid.2.wpd	08/30/05 10:23:48 AM	F:\WPFILES\05civ032\	0.5	Staff	
Shahid.3.wpd	08/30/05 10:49:30 AM	F:\WPFILES\05civ032\ Letters\	0.5	Staff	
cert.service	08/31/05 12:00:00 AM	F:\WPFILES\03civ037\	0.5	Staff	
cert.service	08/31/05 12:00:00 AM	F:\WPFILES\03civ037\	0.5	Staff	
cert.service	08/31/05 12:00:00 AM	F:\WPFILES\03civ037\	0.5	Staff	
Molton.Expeditedtrial.wpd	08/31/05 11:35:34 AM	F:\WPFILES\03civ037\ Pleadings\	2	DKH	
Molton.Expeditedtrial/ Review	08/31/05 11:35:34 AM	F:\WPFILES\03civ037\ Pleadings\	2	LER	
notice.of.depo. [REDACTED].wpd	08/31/05 11:36:26 AM	F:\WPFILES\03civ037\ Discovery\	1	DKH	
notice.of.depo. [REDACTED].wpd	08/31/05 11:37:38 AM	F:\WPFILES\03civ037\ Discovery\	1	DKH	
Subpoena. [REDACTED].wpd	08/31/05 11:43:02 AM	F:\WPFILES\03civ037\ Discovery\	1	DKH	

Shahid, Peter.8.wpd	08/31/05 02:24:26 PM	F:\WPFILES\03civ037\ Letters\	0.5	Staff	
Subpoena.8.wpd	08/31/05 02:27:08 PM	F:\WPFILES\03civ037\ Discovery\	1	DKH	
Acceptance of Service.9.wpd	08/31/05 02:34:58 PM	F:\WPFILES\03civ037\ Discovery\	0.5	Staff	
Acceptance of Service.10.wpd	08/31/05 02:35:30 PM	F:\WPFILES\03civ037\ Discovery\	0.5	Staff	
Acceptance of Service.11.wpd	08/31/05 02:35:38 PM	F:\WPFILES\03civ037\ Discovery\	0.5	Staff	
Photocopying / Monthly	09/01/05 12:00:00 AM	F:\WPFILES\03civ037\ Letters\	3	Staff	
Shahid, Peter.9.wpd	09/08/05 04:17:14 PM	F:\WPFILES\03civ037\ Letters\	0.5	Staff	
Shahid, Peter.10.wpd	09/09/05 12:51:56 PM	F:\WPFILES\03civ037\ Letters\	0.5	Staff	
fax.co.counsel.7.wpd	09/09/05 12:53:16 PM	F:\WPFILES\03civ037\ Letters\	0.5	Staff	
cert.serv.2.wpd	09/21/05 08:35:50 AM	F:\WPFILES\03civ037\ Letters\	0.5	Staff	
cert.serv.3.wpd	09/21/05 08:43:26 AM	F:\WPFILES\03civ037\ Letters\	0.5	Staff	
Shahid, Peter.11.wpd	09/21/05 11:34:04 AM	F:\WPFILES\03civ037\ Letters\	0.5	Staff	
INDEX.DEF.DISC.wpd	09/22/05 09:02:54 AM	F:\WPFILES\03civ037\ Letters\	0.5	Staff	
Shahid, Peter.12.wpd	09/22/05 11:16:22 AM	F:\WPFILES\03civ037\ Letters\	0.5	Staff	
fax.co.counsel.8.wpd	09/22/05 11:18:50 AM	F:\WPFILES\03civ037\ Letters\	0.5	Staff	
fax, Geoly.2.wpd	09/22/05 11:18:50 AM	F:\WPFILES\03civ037\ Letters\	0.5	Staff	
Shahid, Peter.10.wpd	09/22/05 11:18:50 AM	F:\WPFILES\03civ037\ Letters\	0.5	Staff	
Proposed Discovery in the John Doe matters.wpd	09/26/05 04:04:07 PM	F:\WPFILES\03civ037\ DISCOVERY\	5	LER	
Proposed Discovery in the John Doe matters.wpd	09/26/05 04:07:30 PM	F:\WPFILES\05civ032\ DISCOVERY\	5	LER	

Sinclair, Churchill, Lofton.wpd	09/27/05 03:15:34 PM	F:\WPFILES\03civ037\ Memos\	0.5	Staff	
fax.co.counsel.9.wpd	09/27/05 04:53:52 PM	F:\WPFILES\03civ037\	0.5	Staff	
fax.co.counsel.wpd	09/27/05 04:54:16 PM	F:\WPFILES\05civ032\	0.5	Staff	
fax.co.counsel.wpd	09/27/05 04:54:30 PM	F:\WPFILES\05civ033\	0.5	Staff	
Sinclair, Churchill, Lofton.wpd	09/27/05 04:55:08 PM	F:\WPFILES\05civ032\ Memos\	0.5	Staff	
Sinclair, Churchill, Lofton.wpd	09/27/05 04:55:28 PM	F:\WPFILES\05civ033\	0.5	Staff	
Bookkeeping	09/30/05 12:00:00 AM	Diocese (all)	2	LWH	
Legal Research	09/30/05 12:00:00 AM	F:\WPFILES\03civ037\	5	DKH	\$7.25
Photocopying / Monthly	09/30/05 12:00:00 AM	F:\WPFILES\06civ023\	0.5	Staff	
Photocopying / Monthly	09/30/05 12:00:00 AM	F:\WPFILES\05civ032\	0.5	Staff	
Legal Research	09/30/05 12:00:00 AM	F:\WPFILES\03civ037\	5	LER	\$7.25
Legal Research	09/30/05 12:00:00 AM	F:\WPFILES\03civ037\	5	Clerk	\$7.25
Oversight and Review	09/30/05 12:00:00 AM	Diocese (all)	10	LER	
Photocopying / Monthly	10/01/05 12:00:00 AM	F:\WPFILES\03civ037\	3	Staff	
	10/10/05 12:00:00 AM	e-mail	0.5	LER	
Meeting /	10/14/05 12:00:00 AM	F:\WPFILES\03civ037\	2	LER	
Shahid, Peter.5.wpd	10/17/05 02:44:50 PM	F:\WPFILES\05civ032\ Letters\	0.5	Staff	
Shahid, Peter.wpd	10/17/05 02:45:10 PM	F:\WPFILES\05civ033\ Letters\	0.5	Staff	
Shahid, Peter.13.wpd	10/17/05 04:53:48 PM	F:\WPFILES\03civ037\ Letters\	0.5	Staff	
Shahid, Peter.14.wpd	10/18/05 03:34:44 PM	F:\WPFILES\03civ037\ Letters\	0.5	Staff	

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Oversight and Review	03/30/06 12:00:00 AM	Diocese (all)	10	LER	

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Telephone Conference	07/05/06 03:30:30 PM		1	DKH	
Telephone Conference	07/05/06 03:30:30 PM		1	LER	
Settlement and Arbitration Agreement.wpd	07/07/06 01:54:52 PM	F:\WPFILES\05civ037\ Pleadings\	5	DKH	
Infinger, Marvin	07/11/06 12:00:00 AM	e-mail	0.5	DKH	
James Geoly	07/11/06 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	07/13/06 12:00:00 AM	e-mail	0.5	LER	
A Peter Shahid, Jr.	07/17/06 12:00:00 AM	e-mail	0.5	DKH	
A Peter Shahid, Jr.	07/17/06 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	07/18/06 12:00:00 AM	e-mail	0.5	LER	
Meeting/ Lofton	07/18/06 12:00:00 PM		1	LER	
David K. Haller	07/19/06 12:00:00 AM	e-mail	0.5	LER	
David K. Haller	07/21/06 12:00:00 AM	e-mail	0.5	LER	
David K. Haller	07/21/06 12:00:00 AM	e-mail	0.5	LER	
A Peter Shahid, Jr.	07/22/06 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	07/24/06 12:00:00 AM	e-mail	0.5	LER	
Bookkeeping	07/30/06 12:00:00 AM	Diocese (all)	2	LWH	
Legal Research	07/30/06 12:00:00 AM	F:\WPFILES\03civ037\	5	DKH	
Legal Research	07/30/06 12:00:00 AM	F:\WPFILES\03civ037\	5	LER	
Legal Research	07/30/06 12:00:00 AM	F:\WPFILES\03civ037\	5	Clerk	
Oversight and Review	07/30/06 12:00:00 AM	Diocese (all)	10	LER	
Photocopying / Monthly	08/01/06 12:00:00 AM	F:\WPFILES\03civ037\	3	Staff	
Fax	08/07/06 12:00:00 AM	F:\WPFILES\03civ037\	0.5	Staff	
Fax	08/07/06 12:00:00 AM	F:\WPFILES\03civ037\	0.5	Staff	
Fax	08/07/06 12:00:00 AM	F:\WPFILES\03civ037\	0.5	Staff	
Fax	08/07/06 12:00:00 AM	F:\WPFILES\03civ037\	0.5	Staff	

fax. [REDACTED].wpd (funding)	08/07/06 04:02:33 PM	F:\WPFILES\03civ037\	0.5	Staff	
fax.co.counsel.27.wpd	08/07/06 04:03:12 PM	F:\WPFILES\03civ037\	0.5	Staff	
Fax	08/10/06 12:00:00 AM	F:\WPFILES\03civ037\	0.5	Staff	
Fax	08/10/06 12:00:00 AM	F:\WPFILES\03civ037\	0.5	Staff	
Fax	08/10/06 12:00:00 AM	F:\WPFILES\03civ037\	0.5	Staff	
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Fax	08/10/06 12:00:00 AM	F:\WPFILES\03civ037\	0.5	Staff	
Fax	08/10/06 12:00:00 AM	F:\WPFILES\03civ037\	0.5	Staff	
Fax	08/10/06 12:00:00 AM	F:\WPFILES\03civ037\	0.5	Staff	
Fax	08/10/06 12:00:00 AM	F:\WPFILES\03civ037\	0.5	Staff	
Fax	08/10/06 12:00:00 AM	F:\WPFILES\03civ037\	0.5	Staff	
James Geoly	08/10/06 12:00:00 AM	F:\WPFILES\03civ037\ e-mail	0.5	LER	
co.counsel.4.wpd	08/10/06 11:50:06 AM	F:\WPFILES\03civ037\ Letters\	0.5	Staff	
fax.Shahid.10.wpd	08/10/06 12:01:21 PM	F:\WPFILES\03civ037\	0.5	Staff	
Geoly long distance phone calls.wpd	08/10/06 01:01:04 PM	F:\WPFILES\03civ037\	1	Staff	
Shahid.Geoly.2.wpd	08/10/06 03:24:18 PM	F:\WPFILES\03civ037\ Letters\	0.5	Staff	
fax.co.counsel.28.wpd	08/10/06 03:27:40 PM	F:\WPFILES\03civ037\	0.5	Staff	
Joint Statement.wpd	08/10/06 04:12:30 PM	F:\WPFILES\03civ037\	3	DKH	
fax.Shahid.Geoly.3.wpd	08/10/06 04:13:08 PM	F:\WPFILES\03civ037\	0.5	Staff	
Telephone Conference	08/10/06 04:30:30 PM		1	DKH	
Telephone Conference	08/10/06 04:30:30 PM		1	LER	

Consent Order Changing Venue.wpd	08/12/06 09:50:50 AM	F:\WPFILES\06civ033\ Pleadings\	2		
Diocese complaint.wpd	08/12/06 11:18:20 AM	F:\WPFILES\06civ010\	30	DKH	
mollon coversheet.wpd	08/14/06 10:11:12 AM	F:\WPFILES\05civ033\ Pleadings\	0.5	Staff	
Consent Order Changing Venue.a.wpd	08/14/06 10:14:22 AM	F:\WPFILES\05civ033\ Pleadings\	2	DKH	
Civil Cover Sheet.UPDATE.wpd	08/14/06 10:14:58 AM	F:\WPFILES\06civ010\	0.5	Staff	
SUMMONS.wpd	08/14/06 10:15:16 AM	F:\WPFILES\06civ010\	0.5	Staff	
Consortium Complaint.wpd	08/14/06 02:47:46 PM	F:\WPFILES\05civ033\ Class Claims in Dorchester\	20	DKH	
Acceptance of Service.wpd	08/14/06 03:11:52 PM	F:\WPFILES\06civ010\	0.5	Staff	
Acceptance of Service.wpd	08/14/06 03:20:56 PM	F:\WPFILES\06civ023\	0.5	Staff	
SUMMONS.a.wpd	08/14/06 03:21:10 PM	F:\WPFILES\06civ023\	0.5	Staff	
Consortium Complaint.wpd	08/14/06 03:21:36 PM	F:\WPFILES\06civ023\	15	DKH	
Shahid.wpd	08/14/06 04:12:24 PM	F:\WPFILES\06civ010\	0.5	Staff	
Shahid.wpd	08/14/06 04:12:34 PM	F:\WPFILES\06civ023\	0.5	Staff	
David K. Haller	08/15/06 12:00:00 AM	e-mail	0.5	LER	
Shahid.2.wpd	08/15/06 07:45:28 AM	F:\WPFILES\06civ010\	0.5	Staff	
Shahid, Peter. 11.wpd	08/15/06 07:45:48 AM	F:\WPFILES\05civ033\ Letters\	0.5	Staff	
Shahid.2.wpd	08/15/06 07:46:40 AM	F:\WPFILES\06civ023\	0.5	Staff	
New File Form.wpd	08/15/06 10:11:02 AM	F:\WPFILES\06civ023\	0.5	Staff	
address.#.wpd	08/15/06 03:55:40 PM	F:\WPFILES\06civ023\	0.5	Staff	

Judge Goodstein.wpd	08/21/06 09:43:52 AM	F:\WPFILES\05civ0331\ Letters\	0.5	Staff	
fax.counsel.wpd	08/21/06 09:45:49 AM	F:\WPFILES\05civ0331\	0.5	Staff	
cert.service	08/25/06 12:00:00 AM	F:\WPFILES\03civ0371\	0.5	Staff	
cert.service	08/28/06 12:00:00 AM	F:\WPFILES\03civ0371\ e-mail	0.5	Staff	
David K. Haller	08/28/06 12:00:00 AM		0.5	LER	
Telephone Conference/ Geoly. Shahid	08/29/06 10:30:30 AM		1	DKH	
Telephone Conference/ Geoly. Shahid	08/29/06 10:30:30 AM		1	LER	
Bookkeeping	08/30/06 12:00:00 AM	Diocese (all)	2	LWH	
Fax	08/30/06 12:00:00 AM	F:\WPFILES\03civ0371\	0.5	Staff	
Fax	08/30/06 12:00:00 AM	F:\WPFILES\03civ0371\	0.5	Staff	
Legal Research	08/30/06 12:00:00 AM	F:\WPFILES\03civ0371\	5	DKH	\$24.52
Photocopying / Monthly	08/30/06 12:00:00 AM	F:\WPFILES\06civ010\	0.5	Staff	
Legal Research	08/30/06 12:00:00 AM	F:\WPFILES\03civ0371\	5	LER	\$24.52
Legal Research	08/30/06 12:00:00 AM	F:\WPFILES\03civ0371\	5	Clerk	\$24.52
Oversight and Review	08/30/06 12:00:00 AM	Diocese (all)	10	LER	
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cert.srv.wpd	09/05/06 03:49:30 PM	F:\WPFILES\06civ023\	0.5	Staff	

David K. Haller	09/08/06 12:00:00 AM	e-mail	0.5	LER	
James Geoly	09/08/06 12:00:00 AM	e-mail	0.5	DKH	
James Geoly	09/08/06 12:00:00 AM	e-mail	0.5	DKH	
James Geoly	09/08/06 12:00:00 AM	e-mail	0.5	DKH	
James Geoly	09/11/06 12:00:00 AM	e-mail	0.5	DKH	
James Geoly	09/11/06 12:00:00 AM	e-mail	0.5	DKH	
Judge Goodstein.wpd	09/11/06 01:42:52 PM	F:\WPFILES\03civ037\ Letters\	0.5	Staff	
Judge Goodstein.2.wpd	09/11/06 04:12:27 PM	F:\WPFILES\03civ037\ Letters\	0.5	Staff	
David K. Haller	09/12/06 12:00:00 AM	e-mail	0.5	LER	
David K. Haller	09/13/06 12:00:00 AM	e-mail	0.5	LER	
Geoly, James C.	09/13/06 12:00:00 AM	e-mail	0.5	DKH	
James Geoly	09/18/06 12:00:00 AM	e-mail	0.5	DKH	
A Peter Shahid, Jr.	09/19/06 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	09/19/06 12:00:00 AM	e-mail	0.5	LER	
A Peter Shahid, Jr.	09/20/06 12:00:00 AM	e-mail	0.5	DKH	
Fax	09/20/06 12:00:00 AM	F:\WPFILES\03civ037\	0.5	Staff	
Fax	09/20/06 12:00:00 AM	F:\WPFILES\03civ037\	0.5	Staff	
Fax	09/20/06 12:00:00 AM	F:\WPFILES\03civ037\	0.5	Staff	
Fax	09/20/06 12:00:00 AM	F:\WPFILES\03civ037\	0.5	Staff	
Fax	09/20/06 12:00:00 AM	F:\WPFILES\03civ037\	0.5	Staff	
James Geoly	09/20/06 12:00:00 AM	e-mail	0.5	DKH	
Judge Goodstein.3.wpd	09/20/06 11:03:56 AM	F:\WPFILES\03civ037\ Letters\	0.5	Staff	
A Peter Shahid, Jr.	09/21/06 12:00:00 AM	e-mail	0.5	DKH	
Fax	09/22/06 12:00:00 AM	F:\WPFILES\03civ037\	0.5	Staff	
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Fax	09/22/06 12:00:00 AM	F:\WPFILES\03civ037\	0.5	Staff	

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Memo to Counsel of Record.wpd	09/22/06 03:29:05 PM	F:\WPFILES\03civ037\	0.5	Staff	
A Peter Shahid, Jr.	09/25/06 12:00:00 AM	Memos\	0.5	DKH	
David K. Haller	09/25/06 12:00:00 AM	e-mail	0.5	LER	
Fax	09/25/06 12:00:00 AM	F:\WPFILES\03civ037\	0.5	Staff	
Fax	09/25/06 12:00:00 AM	F:\WPFILES\03civ037\	0.5	Staff	
Fax	09/25/06 12:00:00 AM	F:\WPFILES\03civ037\	0.5	Staff	
Fax	09/25/06 12:00:00 AM	F:\WPFILES\03civ037\	0.5	Staff	
Fax	09/25/06 12:00:00 AM	F:\WPFILES\03civ037\	0.5	Staff	
Meeting / LER & DKH	09/26/06 12:00:00 AM	F:\WPFILES\03civ037\	2	DKH	
Meeting / LER & DKH	09/26/06 12:00:00 AM	F:\WPFILES\03civ037\	2	LER	
Telephone Conference/ Goodstein, Geoly	09/26/06 01:30:30 PM	F:\WPFILES\03civ037\	1	DKH	
Telephone Conference/ Goodstein, Geoly	09/26/06 01:30:30 PM	F:\WPFILES\03civ037\	1	LER	
Telephone Conference/ Goodstein, Shahid, Geoly	09/26/06 01:30:30 PM	F:\WPFILES\03civ037\	1	DKH	
Telephone Conference/ Goodstein, Shahid, Geoly	09/26/06 01:30:30 PM		1	LER	
David K. Haller	09/27/06 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	09/27/06 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	09/27/06 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	09/27/06 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	09/27/06 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	09/27/06 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	09/27/06 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	09/27/06 12:00:00 AM	e-mail	0.5	DKH	

[illegible]

David K. Haller	09/27/06 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	09/27/06 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	09/27/06 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	09/27/06 12:00:00 AM	e-mail	0.5	DKH	
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David K. Haller	09/27/06 12:00:00 AM	e-mail	0.5	DKH	
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David K. Haller	09/27/06 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	09/27/06 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	09/27/06 12:00:00 AM	e-mail	0.5	DKH	
Bookkeeping	09/30/06 12:00:00 AM	Diocese (all)	2	LWH	
Legal Research	09/30/06 12:00:00 AM	F:\WPFILES\03civ037\	5	DKH	
Photocopying / Monthly	09/30/06 12:00:00 AM	F:\WPFILES\03civ037\	3	Staff	
Legal Research	09/30/06 12:00:00 AM	F:\WPFILES\03civ037\	5	LER	
Legal Research	09/30/06 12:00:00 AM	F:\WPFILES\03civ037\	5	Clerk	
Oversight and Review	09/30/06 12:00:00 AM	Diocese (all)	10	LER	
Photocopying / Monthly	10/01/06 12:00:00 AM	F:\WPFILES\03civ037\	3	Staff	
David K. Haller	10/05/06 12:00:00 AM	e-mail	0.5	DKH	
Fax	10/05/06 12:00:00 AM	F:\WPFILES\03civ037\	0.5	Staff	
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Fax	10/05/06 12:00:00 AM	F:\WPFILES\03civ037\	0.5	Staff	
fax: Counsel.wpd	10/05/06 01:45:07 PM	F:\WPFILES\03civ037\	0.5	Staff	
Summons.wpd	10/05/06 02:37:50 PM	F:\WPFILES\05civ033\ Pleadings\	0.5	Staff	
fax: Counsel of Record.wpd	10/05/06 02:40:11 PM	F:\WPFILES\03civ037\	0.5	Staff	
Shahid.Peter.35.wpd	10/05/06 02:40:24 PM	F:\WPFILES\03civ037\ Letters\	0.5	Staff	
2dorchester.wpd	10/05/06 03:28:33 PM	F:\WPFILES\03civ037\ Pleadings\			

Amended Diocese complaint.wpd	10/05/06 03:29:39 PM	F:\WPFILES\05civ032\ PLEADINGS\	10	LER	
Amended Diocese complaint.a.wpd	10/05/06 04:36:18 PM	F:\WPFILES\05civ010\	20	DKH	
DORCHESTER.wpd	10/05/06 04:36:23 PM	F:\WPFILES\05civ033\ Pleadings\	30	DKH	
Order to Dismiss w/out Prejudice	10/05/06 04:39:13 PM	F:\WPFILES\05civ033\ Pleadings\	1	DKH	
Dismiss w.o Prejudice.Consent Order.wpd	10/06/06 08:11:30 AM	F:\WPFILES\03civ037\ Pleadings\	2	DKH	
Civil Cover Sheet.UPDATE.doc	10/06/06 08:31:29 AM	F:\WPFILES\05civ033\ Pleadings\	0.5	Staff	
Dismiss w.o Prejudice.Consent Order.doc	10/06/06 08:44:26 AM	F:\WPFILES\05civ032\ PLEADINGS\	2	DKH	
Dismiss w.o Prejudice.Consent Order.doc	10/06/06 08:50:40 AM	F:\WPFILES\05civ033\ Pleadings\	2	DKH	
Motion Coversheet.wpd	10/06/06 08:53:23 AM	F:\WPFILES\03civ037\ Consolidate Cases\	0.5	Staff	
Motion Coversheet.3.wpd	10/06/06 08:55:54 AM	F:\WPFILES\03civ037\ Consolidate Cases\	0.5	Staff	
motion coversheet.5.doc	10/06/06 08:58:34 AM	F:\WPFILES\03civ037\ Consolidate Cases\	0.5	Staff	
Consent Order Consolidating Class.wpd	10/06/06 09:06:48 AM	F:\WPFILES\05civ032\ PLEADINGS\	2	DKH	
Consent Order Consolidating Cases.wpd	10/06/06 09:07:08 AM	F:\WPFILES\03civ037\ Consolidate Cases\	2	DKH	
Motion Coversheet.2.wpd	10/06/06 09:07:51 AM	F:\WPFILES\03civ037\ Consolidate Cases\	0.5	Staff	
motion coversheet.5.doc	10/06/06 09:08:05 AM	F:\WPFILES\05civ033\ Pleadings\	0.5	Staff	
Motion Coversheet.4.wpd	10/06/06 09:09:39 AM	F:\WPFILES\03civ037\ Consolidate Cases\	0.5	Staff	
Class_Motion.wpd	10/06/06 09:17:23 AM	F:\WPFILES\03civ037\ Consolidate Cases\	2	DKH	
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Order Designating Complex Case.wpd	10/06/06 09:27:54 AM	F:\WPFILES\03civ037\ Consolidate Cases\	2	DKH	

Motion Coversheet.6.wpd	10/06/06 09:29:02 AM	F:\WPFILES\03civ037\ Consolidate Cases\	0.5	Staff	
motion coversheet.5.doc	10/06/06 09:30:13 AM	F:\WPFILES\05civ032\ PLEADINGS\	0.5	Staff	
Motion Hearing / Judge Goodstein	10/06/06 11:30:30 AM		6	DKH	
Motion Hearing / Judge Goodstein	10/06/06 11:30:30 AM		6	LER	
Larkin Hegler	10/10/06 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	10/11/06 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	10/11/06 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	10/11/06 12:00:00 AM	e-mail	0.5	DKH	
Larkin Hegler	10/11/06 12:00:00 AM	e-mail	0.5	DKH	
Larkin Hegler	10/11/06 12:00:00 AM	e-mail	0.5	DKH	
Meeting / LER & DKH	10/11/06 12:00:00 AM	F:\WPFILES\03civ037\	2	DKH	
Meeting / LER & DKH	10/11/06 12:00:00 AM	F:\WPFILES\03civ037\	2	LER	
[REDACTED]	10/11/06 12:00:00 AM	e-mail	0.5	DKH	
sunny@richterfirm.com	10/11/06 12:00:00 AM	e-mail	0.5	DKH	
Larkin Hegler	10/13/06 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	10/16/06 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	10/17/06 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	10/17/06 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	10/17/06 12:00:00 AM	e-mail	0.5	LER	
David K. Haller	10/17/06 12:00:00 AM	e-mail	0.5	LER	
Geoly, James C.	10/17/06 12:00:00 AM	e-mail	0.5	DKH	
[REDACTED].com	10/17/06 12:00:00 AM	e-mail	0.5	LER	
sunny@richterfirm.com	10/17/06 12:00:00 AM	e-mail	0.5	DKH	
sunny@richterfirm.com	10/17/06 12:00:00 AM	e-mail	0.5	DKH	
Shahid.Peter.36.doc	10/17/06 11:03:25 AM	F:\WPFILES\03civ037\ Letters\	0.5	Staff	
Judge Jefferson.doc	10/17/06 11:53:51 AM	F:\WPFILES\03civ037\ Letters\	0.5	Staff	
David K. Haller	10/18/06 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	10/18/06 12:00:00 AM	e-mail	0.5	DKH	
Fax	10/18/06 12:00:00 AM	F:\WPFILES\03civ037\	0.5	Staff	

Fax	10/18/06 12:00:00 AM	F:\WPFILES\03civ037\	0.5	Staff	
Fax	10/18/06 12:00:00 AM	F:\WPFILES\03civ037\	0.5	Staff	
Fax	10/18/06 12:00:00 AM	F:\WPFILES\03civ037\	0.5	Staff	
sunny@richterfirm.com	10/18/06 12:00:00 AM	e-mail	0.5	DKH	
sunny@richterfirm.com	10/18/06 12:00:00 AM	e-mail	0.5	DKH	
sunny@richterfirm.com	10/18/06 12:00:00 AM	e-mail	0.5	DKH	
Judge Goodstein, 4.wpd	10/18/06 02:24:22 PM	F:\WPFILES\03civ037\	0.5	Staff	
David K. Haller	10/19/06 12:00:00 AM	Letters\	0.5	DKH	
fax.Judge Goodstein and counsel.wpd	10/19/06 11:04:18 AM	e-mail	0.5	Staff	
fax.Judge Goodstein and counsel.2.wpd	10/19/06 11:04:39 AM	F:\WPFILES\03civ037\	0.5	Staff	
fax.Judge Goodstein and counsel.3.wpd	10/19/06 11:04:55 AM	F:\WPFILES\03civ037\	0.5	Staff	
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desk@wclv.com	12/20/06 12:00:00 AM	e-mail	0.5	DKH	
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davidkhaller@richterfirm.com	01/31/07 12:00:00 AM	e-mail	0.5	LER	
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Larkin Hegler	02/01/07 12:00:00 AM	e-mail	0.5	DKH	
	02/01/07 12:00:00 AM	e-mail	0.5	DKH	
	02/01/07 12:00:00 AM	e-mail	0.5	LER	
	02/01/07 12:00:00 AM	e-mail	0.5	DKH	
	02/01/07 12:00:00 AM	e-mail	0.5	DKH	
@abdata.com	02/01/07 12:00:00 AM	e-mail	0.5	LER	
@abdata.com	02/01/07 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	02/02/07 12:00:00 AM	e-mail	0.5	DKH	
	02/02/07 12:00:00 AM	e-mail	0.5	DKH	
	02/02/07 12:00:00 AM	e-mail	0.5	LER	
Bookkeeping	02/30/04 12:00:00 AM	Diocese (all)	2	LWH	
Legal Research	02/30/04 12:00:00 AM	F:\WPFILES\03civ037\	5	DKH	
Legal Research	02/30/04 12:00:00 AM	F:\WPFILES\03civ037\	5	LER	
Legal Research	02/30/04 12:00:00 AM	F:\WPFILES\03civ037\	5	Clerk	
Oversight and Review	02/30/04 12:00:00 AM	Diocese (all)	10	LER	
Bookkeeping	02/30/05 12:00:00 AM	Diocese (all)	2	LWH	
Bookkeeping	02/30/05 12:00:00 AM	Diocese (all)	2	LWH	
Legal Research	02/30/05 12:00:00 AM	F:\WPFILES\03civ037\	5	DKH	
Legal Research	02/30/05 12:00:00 AM	F:\WPFILES\03civ037\	5	DKH	
Photocopying / Monthly	02/30/05 12:00:00 AM	F:\WPFILES\06civ023\	0.5	Staff	
Photocopying / Monthly	02/30/05 12:00:00 AM	F:\WPFILES\05civ032\	2	Staff	
Legal Research	02/30/05 12:00:00 AM	F:\WPFILES\03civ037\	5	LER	

Legal Research	02/30/05 12:00:00 AM	F:\WPFILES\03civ037\	5	LER	
Legal Research	02/30/05 12:00:00 AM	F:\WPFILES\03civ037\	5	Clerk	
Oversight and Review	02/30/05 12:00:00 AM	Diocese (all)	10	LER	
Diocese Final Settlement Agreement	06/16/06 - 06/30/06	F:\WPFILES\03civ037\ Settlement\	130	DKH	
Diocese Final Settlement Agreement// review and revision	06/30/06-07/01/06	F:\WPFILES\03civ037\ Settlement\	10	LER	
Mediation Preparation	06/6/06 - 06/13/06		130	DKH	
Mediation Preparation	06/6/06 - 06/13/06		60	LER	
Diocese Settlement_Agreemen L_FINAL.doc	08/25/06 - 08/30/06	F:\WPFILES\03civ037\ Settlement\	20	DKH	
Diocese Settlement_Agreemen L_FINAL.doc	08/30/06-09/1/06	F:\WPFILES\03civ037\ Settlement\	10	LER	
Draft Proposed Order, Class Motion, Notice, Affidavit, Research for Final Settlement	10/04/06 - 10/11/06	F:\WPFILES\03civ037\ Settlement\	130	DKH	
Diocese Settlement_Agreemen L_FINAL.with 1.12.07 revisions.doc/ review and revision10	10/11/06-10/13/06	F:\WPFILES\03civ037\ Settlement\	10	LER	
		TOTAL HOURS	3385.5		

Under Seal
0083

Richter & Haller, LLC
Post Office Drawer 1089
622 Johnnie Dodds Boulevard
Mt. Pleasant, SC 29465
(843) 849-6000 office
(843) 881-1400 fax

Invoice submitted to:
[REDACTED]

February 14, 2007

In Reference To: John Doe #66 et al. vs. Diocese of Charleston et al.
Our File No.: 03CIV037

Invoice # 16453

Additional Charges :

	<u>Amount</u>
7/21/2003 Postage	2.96
Postage	1.29
7/23/2003 Postage	1.48
8/1/2003 Postage	1.20
8/1/2003-Photocopies	10.78
8/11/2003	
8/5/2003 Postage	1.11
8/7/2003 Payment to Dr. Dyana Lowndes-Rosen for copies of medical records (ck#2227)	15.00
8/11/2003 Telefacsimiles	6.00
Telefacsimiles	6.00
8/11/2003-Photocopies	5.50
8/25/2003	
8/12/2003 Postage	1.11
8/25/2003-Photocopies	4.40
8/31/2003	
8/26/2003 Telefacsimiles	4.00
Telefacsimiles	4.00
Telefacsimiles	4.00
Postage	1.85
9/22/2003 Payment to CopyMed, Inc. for copy of [REDACTED] medical records from MUSC Institute of Psychiatry (ck#2350)	48.09
10/2/2003 Payment to Chartone, Inc. for medical records from Bellevue Hospital in New York (ck#2395)	144.98
10/14/2003 Payment to Lofton & Lofton, PC for our share, 1/3, of Chuck Pittard's bill for his investigative services (ck#2414)	311.00
11/1/2003-Photocopies	179.08
11/30/2003	

	<u>Amount</u>
12/1/2003- Photocopies	7.48
12/10/2003	
3/11/2004- Photocopies	6.82
3/31/2004	
5/1/2004- Photocopies	0.44
5/25/2004	
5/21/2004 Telefacsimiles	4.00
Telefacsimiles	2.00
6/21/2004- Photocopies	0.66
6/30/2004	
7/2/2004 Postage	0.60
7/15/2004 Postage	0.74
8/1/2004- Photocopies	0.22
8/31/2004	
8/24/2004 Long distance phone charges (NuVox ck#3301)	0.97
10/1/2004- Photocopies	148.06
10/29/2004	
10/12/2004 Postage	1.11
10/25/2004 Long distance phone charges (NuVox ck#3455)	0.05
11/30/2004 Long distance phone charges (NuVox ck#3554)	1.92
2/16/2005- Photocopies	0.88
2/28/2005	
5/1/2005- Photocopies	115.94
5/13/2005	
5/1/2005- Photocopies	18.70
5/31/2005	
5/10/2005 Telefacsimiles	1.00
Telefacsimiles	3.00
Telefacsimiles	3.00
Telefacsimiles	20.00
Filing fee paid to Clerk of Court to file Summons and Complaint for John Doe #66 (ck#3889)	150.00
Filing fee paid to Clerk of Court to file motion for expedited trial in John Doe #66 case (ck#3888)	25.00
5/11/2005 Postage	0.60
Postage	0.83
5/16/2005 Telefacsimiles	1.00
Telefacsimiles	2.00
Telefacsimiles	2.00
6/1/2005- Photocopies	18.70
6/30/2005	
6/24/2005 Filing fee paid to Clerk of Court to file Doe #66 motion for default (ck#3971)	25.00
7/1/2005- Photocopies	18.70
7/31/2005	
8/1/2005- Photocopies	49.28
8/31/2005	

	<u>Amount</u>
8/12/2005 Filing fee paid to Clerk of Court (ck#4088)	150.00
Filing fee paid to Clerk of Court to file motion (ck#4089)	25.00
8/15/2005 Telefacsimiles	3.87
8/22/2005 Telefacsimiles	2.00
Telefacsimiles	16.00
Telefacsimiles	16.00
8/31/2005 Postage	1.06
Postage	3.32
9/1/2005- Photocopies	54.78
9/30/2005	
9/9/2005 Telefacsimiles	1.00
Telefacsimiles	2.00
Telefacsimiles	2.00
Postage	1.29
9/21/2005 Postage	4.24
9/22/2005 Telefacsimiles	1.00
Telefacsimiles	2.00
Telefacsimiles	2.00
Postage	0.37
9/30/2005 Legal research Aug. 2005 (ck#4177)	10.40
10/1/2005- Photocopies	16.50
11/30/2005	
10/18/2005 Postage	28.75
Postage	3.13
10/25/2005 Legal research September 2005 in the Diocese matters (Lexis Nexis ck#4232)	7.25
11/18/2005 Legal research October 2005 (ck#4289)	115.81
11/28/2005 Postage	1.48
11/29/2005 Telefacsimiles	1.00
Telefacsimiles	2.00
Telefacsimiles	2.00
Telefacsimiles	2.00
Postage	0.37
12/1/2005- Photocopies	0.66
12/8/2005	
12/8/2005 LER meeting with Tiller regarding Doe cases 10/14/05 (visa)	51.38
Legal research November 2005 (Lexis Nexis)	16.89
1/1/2006- Photocopies	283.58
1/31/2006	
1/3/2006 Filing fee paid to Clerk of Court to file motion (ck#4410)	25.00
1/5/2006 Postage	0.83
Postage	1.20
Postage	1.11
1/6/2006 Telefacsimiles	2.00
Telefacsimiles	3.00
Telefacsimiles	2.00
Postage	10.68

	<u>Amount</u>
1/9/2006 Postage	1.52
Postage	3.42
1/10/2006 Telefacsimiles	2.00
Telefacsimiles	3.00
Telefacsimiles	3.00
Telefacsimiles	3.00
Postage	0.39
1/17/2006 Telefacsimiles	3.00
Telefacsimiles	3.00
Telefacsimiles	3.00
Telefacsimiles	3.00
1/18/2006 Telefacsimiles	1.00
Telefacsimiles	2.00
Postage	0.39
1/31/2006 Postage	4.05
Postage	0.39
Telefacsimiles	5.00
Telefacsimiles	5.00
Telefacsimiles	5.00
Telefacsimiles	5.00
Telefacsimiles	2.00
Telefacsimiles	3.00
Telefacsimiles	3.00
Telefacsimiles	3.00
2/1/2006-Photocopies	18.92
2/28/2006	
2/10/2006 Telefacsimiles	6.00
Telefacsimiles	6.00
Telefacsimiles	6.00
Telefacsimiles	6.00
Postage	0.39
Postage	0.63
2/13/2006 Telefacsimiles	2.00
Telefacsimiles	2.00
2/14/2006 Legal research January 2006 (Lexis Nexis ck#4489)	46.03
2/15/2006 Postage	2.34
Postage	0.63
Telefacsimiles	2.00
Telefacsimiles	3.00
Telefacsimiles	3.00
2/23/2006 Telefacsimiles	2.00
Telefacsimiles	2.00
2/27/2006 Filing fee paid to Clerk of Court in John Doe #66A, #66, & #53 matters (ck#4502)	25.00
2/28/2006 Postage	1.59

	<u>Amount</u>
2/28/2006 Postage	1.11
3/1/2006 Postage	3.78
3/1/2006-Photocopies	0.88
3/31/2006	
3/9/2006 Telefacsimiles	2.00
Telefacsimiles	2.00
4/1/2006-Photocopies	12.76
4/30/2006	
4/6/2006 Telefacsimiles	2.00
Telefacsimiles	3.00
Telefacsimiles	3.00
Telefacsimiles	3.00
Telefacsimiles	5.00
Telefacsimiles	5.00
Telefacsimiles	5.00
Telefacsimiles	5.00
Postage	0.39
Postage	0.24
Postage	0.39
4/7/2006 Telefacsimiles	2.00
Telefacsimiles	2.00
Telefacsimiles	2.00
Telefacsimiles	2.00
Telefacsimiles	2.00
Telefacsimiles	2.00
Telefacsimiles	1.00
4/10/2006 Telefacsimiles	2.00
Telefacsimiles	3.00
Telefacsimiles	3.00
Telefacsimiles	3.00
Telefacsimiles	3.00
4/18/2006 Postage	0.39
Telefacsimiles	3.00
Telefacsimiles	3.00
Telefacsimiles	3.00
Telefacsimiles	3.00
Telefacsimiles	3.00
4/20/2006 Postage	0.39
Telefacsimiles	2.00
Telefacsimiles	2.00
Telefacsimiles	2.00
Telefacsimiles	2.00
Telefacsimiles	2.00
4/25/2006 Postage	0.39
Telefacsimiles	3.00
Telefacsimiles	3.00

	<u>Amount</u>
4/25/2006 Telefacsimiles	3.00
Telefacsimiles	3.00
4/26/2006 Telefacsimiles	2.00
Telefacsimiles	2.00
Telefacsimiles	2.00
Telefacsimiles	2.00
Telefacsimiles	2.00
Postage	0.39
Postage	0.39
5/1/2006-Photocopies	239.80
5/31/2006	
5/2/2006 Payment to Deborah Garrison, court reporter, for copy of the Nyhan transcripts (ck#4627)	474.00
Telefacsimiles	3.00
Telefacsimiles	4.00
Telefacsimiles	4.00
Telefacsimiles	4.00
5/4/2006 Telefacsimiles	1.00
Telefacsimiles	2.00
Telefacsimiles	2.00
Telefacsimiles	2.00
5/8/2006 Telefacsimiles	3.00
Telefacsimiles	3.00
Telefacsimiles	3.00
5/9/2006 Telefacsimiles	2.00
Telefacsimiles	3.00
Telefacsimiles	3.00
Telefacsimiles	3.00
5/15/2006 Payment to ProCopy, Inc. for copies of documents from Solicitor's office pursuant to subpoena (ck#4649)	92.45
5/16/2006 Telefacsimiles	2.00
Telefacsimiles	2.00
Telefacsimiles	2.00
Telefacsimiles	3.00
Telefacsimiles	3.00
5/31/2006 Postage	0.39
Postage	4.20
Postage	0.39
6/1/2006 Telefacsimiles	6.00
Telefacsimiles	2.00
Telefacsimiles	2.00
Telefacsimiles	2.00
Telefacsimiles	2.00
6/1/2006-Photocopies	123.64
6/15/2006	
6/2/2006 Federal Express to T. Doyle 5/12/06 (ck#4694)	29.17

	<u>Amount</u>
6/8/2006 Payment to Clerk of Court for copies made of Motion to Compel while at courthouse to deliver to Shahid and co-counsel (ck#4698)	5.00
6/9/2006 Filing fee paid to Clerk of Court to file Motion to Compel (ck#4700)	25.00
6/12/2006 Payment to Kinko's for blow ups for mediation (ck#4701)	9.59
ProCopy, Inc. charge for oversize copies and foam board for mediation	120.35
Payment to Staples for preparing for mediation (visa)	79.83
6/13/2006 Attorney meeting following first day of mediation 6/13/06 (visa)	68.11
6/15/2006 Legal research May 2006 (Lexis Nexis)	21.88
L. Randolph Waid, PhD's charge for evaluation/consultation, review of medical records, and reveiw/report 5/12/06	750.00
6/16/2006 Telefacsimiles	4.00
Postage	0.78
6/16/2006-Photocopies	1.54
6/30/2006	
6/19/2006 Telefacsimiles	12.00
7/5/2006 Payment to Haynsworth Sinkler & Boyd for 1/2 mediation costs (ck#4764)	3,371.50
7/31/2006 Legal research June 2006 (Lexis Nexis ck#4844)	194.92
Legal research June 2006 (Lexis Nexis ck#4844)	94.17
8/1/2006-Photocopies	4.40
9/30/2006	
Photocopies	126.72
8/7/2006 Telefacsimiles	1.00
Telefacsimiles	2.00
Telefacsimiles	3.00
Telefacsimiles	3.00
Telefacsimiles	1.00
8/10/2006 Telefacsimiles	1.00
Telefacsimiles	1.00
Telefacsimiles	3.00
Telefacsimiles	2.00
Telefacsimiles	2.00
Telefacsimiles	4.00
Telefacsimiles	4.00
Telefacsimiles	2.00
Telefacsimiles	2.00
8/15/2006 Postage	8.10
8/30/2006 Telefacsimiles	17.00
Telefacsimiles	17.00
9/5/2006 Postage	3.15
Postage	0.87
9/11/2006 AT&T charge for LER and DKH conference call with J. Geoly and P. Shahid 8/29/06 (visa)	147.53
Postage	2.34
9/20/2006 Telefacsimiles	3.00
Telefacsimiles	3.00
Telefacsimiles	3.00

Amount

9/20/2006	Telefacsimiles	3.00
	Telefacsimiles	3.00
9/22/2006	Telefacsimiles	2.00
	Telefacsimiles	2.00
	Telefacsimiles	2.00
	Telefacsimiles	2.00
	Telefacsimiles	2.00
9/25/2006	Telefacsimiles	2.00
	Telefacsimiles	2.00
	Telefacsimiles	2.00
	Telefacsimiles	2.00
	Telefacsimiles	2.00
9/26/2006	AT&T charge for conference call between LER, DKH, Judge Goodstein, and Peter Shahid on 9/26/06 (visa)	112.74
9/28/2006	Legal research August 2006 (ck#4983)	24.52
10/1/2006	Photocopies	274.12
10/31/2006		
	Photocopies	1.32
10/5/2006	Telefacsimiles	1.00
	Telefacsimiles	2.00
	Telefacsimiles	2.00
	Telefacsimiles	2.00
	Telefacsimiles	1.00
10/6/2006	Filing fee paid to Clerk of Court for Order Designating Complex Case (ck#5016)	25.00
	Filing fee paid to Clerk of Court to file motion (ck#5015)	25.00
	Filing fee paid to Clerk of Court to file new [REDACTED] matter (ck#5014)	150.00
	Filing fee paid to Clerk of Court to file motion (ck#5013)	25.00
	Filing fee paid to Clerk of Court to file motion (ck#5012)	25.00
	Filing fee paid to Clerk of Court (ck#5011)	25.00
	Filing fee paid to Clerk of Court (ck#5010)	25.00
	Filing fee paid to Clerk of Court (ck#5009)	25.00
10/17/2006	Postage	0.63
	Postage	0.87
	Postage	21.20
10/18/2006	Telefacsimiles	5.00
	Telefacsimiles	5.00
	Telefacsimiles	5.00
	Telefacsimiles	5.00
	Telefacsimiles	5.00
10/25/2006	Postage	0.39
	Telefacsimiles	1.00
	Telefacsimiles	2.00
	Telefacsimiles	2.00
	Telefacsimiles	2.00
10/26/2006	Postage	4.77
	Postage	1.35

	<u>Amount</u>
10/26/2006 Postage	1.26
Postage	0.87
Telefacsimiles	5.00
Filing fee paid to Clerk of Court for motion to enforce settlement (ck#5074)	25.00
Witness fee and mileage paid to Eugene Condon (ck#5073)	36.13
Witness fee and mileage paid to John Barker (ck#5072)	36.13
Witness fee and mileage paid to Joseph R. Roth (ck#5071)	33.90
Witness fee and mileage paid to Martin T. Laughlin (ck#5069)	33.90
Witness fee and mileage paid to Robert J. Baker (ck#5068)	33.90
10/30/2006 Telefacsimiles	7.00
11/1/2006 Witness fee and mileage paid to Joseph F. Hanley, Jr. (ck#5089)	31.94
Witness fee and mileage paid to Dennis B. Willey (ck#5090)	34.70
Postage	3.48
11/3/2006 Telefacsimiles	1.00
11/6/2006 Telefacsimiles	3.00
Telefacsimiles	4.00
Telefacsimiles	4.00
Telefacsimiles	5.00
Telefacsimiles	5.00
Telefacsimiles	1.00
Telefacsimiles	1.00
Telefacsimiles	2.00
11/8/2006 LER and DKH lunch to discuss case 9/26/06 (visa)	23.22
11/10/2006 Payment to Process Service, Inc. for service of Msgr. James A. Carter, Rev. Eugene Condon, Rev. Joseph R. Roth, Msgr. Lawrence McInerney, Rev. Martin T. Laughlin, and John Barker (ck#5114)	370.00
Telefacsimiles	2.00
Telefacsimiles	3.00
11/13/2006 Telefacsimiles	5.00
Telefacsimiles	6.00
Telefacsimiles	7.00
Telefacsimiles	7.00
Postage	0.39
Postage	1.56
11/17/2006 Postage	0.78
11/20/2006 Telefacsimiles	1.00
Telefacsimiles	1.00
Telefacsimiles	1.00
Postage	0.39
11/21/2006 Postage	2.52
Postage	0.87
11/22/2006 Telefacsimiles	12.00
Telefacsimiles	12.00
11/27/2006 Payment to Process Service, Inc. for service of process of Rev. Dennis B. Willey (ck#5149)	55.00
Payment to Process Service, Inc. for service of process of the Very Rev. Joseph F. Hanley, Jr. (ck#5149)	70.00

	<u>Amount</u>
11/27/2006 Long distance phone charges for conference call between LER, DKH, J. Geoly, and Judge Goodstein on 11/6/06 (visa)	47.15
LER lunch meeting with DKH to discuss case 10/11/06 (visa)	15.99
Charge from Spartanburg Herald 10/17/06 (visa-THIS IS TO BE REFUNDED)	1,145.66
Charge 10/18/06 from Aiken Standard to run ad (visa-THIS IS TO BE REFUNDED)	1,822.28
Charge 10/18/06 from Herald Online for ad (visa-THIS IS TO BE REFUNDED)	1,491.75
Legal research October 2006 (Lexis Nexis ck#5142)	28.14
Telefacsimiles	1.00
Telefacsimiles	1.00
Telefacsimiles	2.00
Telefacsimiles	1.00
Telefacsimiles	1.00
Telefacsimiles	2.00
11/29/2006 Postage	0.39
12/1/2006 Telefacsimiles	1.00
Telefacsimiles	1.00
12/1/2006-Photocopies	247.06
12/31/2006	
12/4/2006 Telefacsimiles	2.00
Postage	0.39
12/5/2006 Telefacsimiles	2.00
12/11/2006 Filing fee paid to Clerk of Court to file motion to compel settlement (ck#5202)	25.00
Telefacsimiles	73.00
Telefacsimiles	73.00
Telefacsimiles	73.00
Postage	7.55
Postage	3.27
12/12/2006 Postage	3.27
12/18/2006 Telefacsimiles	2.00
12/19/2006 Telefacsimiles	1.00
Telefacsimiles	1.00
1/1/2007-Photocopies	289.52
1/31/2007	
1/2/2007 Postage	0.78
1/9/2007 Telefacsimiles	3.00
Telefacsimiles	3.00
Telefacsimiles	3.00
Telefacsimiles	3.00
1/15/2007 Filing fee paid to Clerk of Court (ck#5280)	25.00
Telefacsimiles	46.00
Postage	4.68
Postage	3.12
1/19/2007 Postage	3.51
Postage	1.56
1/22/2007 Postage	0.78

Page 11

Amount

1/22/2007	Cost of running notice ad in The Aiken Standard newspaper (visa)	2,646.00
1/23/2007	Telefacsimiles	2.00
	Telefacsimiles	3.00
1/24/2007	Postage	1.17
	Telefacsimiles	1.00
	Telefacsimiles	1.00
	Telefacsimiles	1.00
1/25/2007	Total cost of running 6 weeks worth of ads in the Greenville News (\$11,907.00), The Sun (\$5,411.70), Rock Hill Herald (\$3,545.64), Orangeburg Times-Democrat (\$1,795.50), Florence Morning News (\$2,715.86), Augusta Chronicle (\$3,907.26), Beaufort Gazette (\$3,231.90), Spartanburg Herald Journal (\$2,391.98), Post & Courier (\$8,609.58), The State (\$10,978.38)	54,494.80
	Thomas P. Doyle, O.P., J.C.D.'s retainer and invoice for expert services, conferences, affidavit preparation	10,000.00
	Postage	2.34
	Telefacsimiles	2.00
	Telefacsimiles	13.00
	Telefacsimiles	13.00
1/26/2007	Telefacsimiles	9.00
1/29/2007	Postage	0.39
1/30/2007	Telefacsimiles	32.00
1/31/2007	Telefacsimiles	2.00
	Telefacsimiles	2.00
	Telefacsimiles	1.00
	Telefacsimiles	1.00
	Telefacsimiles	1.00
	Telefacsimiles	31.00
	Postage	1.17
2/1/2007	Fee from Post & Courier to view archives to review Diocese news articles (visa)	21.25
2/5/2007	Telefacsimiles	52.00
2/6/2007	Postage	3.18
	Postage	4.00
	Total costs	<u>\$83,285.49</u>
12/27/2006	Credit from Herald Classifieds on visa bill for incorrectly billing us for ad that didn't run	(\$1,491.75)
12/29/2006	Credit from Aiken Standard on visa bill 11/15/06 for incorrectly billing us for ad we didn't run	(\$1,822.28)
12/29/2006	Credit from Spartanburg Herald on visa bill 11/15/06 for incorrectly billing us for ad we didn't run	(\$1,145.66)
	Total payments and adjustments	<u>(\$4,459.69)</u>
	Balance due	<u><u>\$78,825.80</u></u>

Richter & Haller, LLC
Post Office Drawer 1089
622 Johnnie Dodds Boulevard
Mt. Pleasant, SC 29465
(843) 849-6000 office
(843) 881-1400 fax

Invoice submitted to:
[REDACTED]

February 14, 2007

In Reference To: John Doe #66 et al. vs. Diocese of Charleston et al.

Invoice # 16453

Additional Charges :

	<u>Amount</u>
6/1/2005 Photocopies	37.40
6/10/2005 Postage	2.22
6/16/2005 Postage	0.37
6/20/2005 Postage	0.37
6/30/2005 Payment to Carolina Copyright, Inc. for medical records request (ck#3980)	46.23
7/1/2005 Photocopies	44.00
7/15/2005 Telefacsimiles	12.00
7/18/2005 Telefacsimiles	2.00
7/20/2005 Legal research June 2005 (Lexis Nexis ck#4034)	122.18
Legal research June 2005 (Lexis Nexis ck#4034)	2.00
Legal research June 2005 (Lexis Nexis ck#4034)	109.73
Payment to Copymed, Inc. for copies of medicals from Palmetto (ck#4032)	85.70
8/1/2005 Photocopies	10.12
8/22/2005 Payment to ChartONE, Inc. for copies of client's medicals (ck#4107)	24.13
Payment to Columbia Behavioral Health Services for copies of client's medicals (ck#4108)	5.80
8/30/2005 Payment to ChartOne, Inc. for copies of records from Palmetto Richland (ck#4120)	22.08
Postage	0.37
9/1/2005 Photocopies	0.66
10/1/2005 Photocopies	27.28
11/29/2005 Postage	0.37
12/1/2005 Filing fee paid to Clerk of Court to file suit (ck#4330)	150.00
Telefacsimiles	2.00
Postage	4.24
Photocopies	93.72
Photocopies	20.24

	<u>Amount</u>
12/20/2005 Telefacsimiles	1.00
Telefacsimiles	2.00
Telefacsimiles	2.00
12/27/2005 Postage	1.85
1/1/2006 Photocopies	0.88
1/31/2006 Postage	0.39
2/1/2006 Photocopies	1.76
4/1/2006 Photocopies	31.24
4/6/2006 Postage	0.39
4/18/2006 Postage	0.39
4/20/2006 Postage	0.39
4/25/2006 Postage	0.39
4/26/2006 Postage	0.39
Postage	0.39
5/1/2006 Photocopies	8.80
6/1/2006 Photocopies	42.46
6/15/2006 L. Randolph Waid, PhD's chard for psychological evaluation, consultaton and review of records/report 5/9/06	750.00
6/16/2006 Photocopies	6.38
8/15/2006 Postage	0.39
Postage	8.10
10/1/2006 Photocopies	209.44
12/1/2006 Postage	0.39
12/29/2006 Federal Express to [REDACTED] 12/4/06 (ck#5244)	19.48
Total costs	<u>\$1,914.11</u>
Balance due	<u><u>\$1,914.11</u></u>

Richter & Haller, LLC
Post Office Drawer 1089
622 Johnnie Dodds Boulevard
Mt. Pleasant, SC 29465
(843) 849-6000 office
(843) 881-1400 fax

Invoice submitted to:

[REDACTED]

February 14, 2007

In Reference To: John Doe #66 et al. vs. Diocese of Charleston et al.
Our File No.: 06CIV010

Invoice # 16453

Additional Charges :

	<u>Amount</u>
4/25/2006 Cost advance to client (ck#4611)	150.00
Telefacsimiles	5.00
4/26/2006 Postage	0.39
Postage	0.39
4/29/2006 Cost of hotel room in Mt. Pleasant 4/29/06 for [REDACTED] (visa)	160.55
5/1/2006 Photocopies	0.88
5/2/2006 Cost advance to client (ck#4628)	150.00
Telefacsimiles	5.00
5/4/2006 Reimbursement to client for gas and meals while in Charleston 4/28/06 (ck#4632)	86.11
Postage	0.39
5/15/2006 Federal Express to [REDACTED] 4/25/06 (ck#4647)	19.91
5/22/2006 Federal Express to [REDACTED] 5/2/06 (ck#4664)	20.15
6/2/2006 Payment to L. Randolph Waid, PhD for psychological evaluation and report (ck#4695)	750.00
6/9/2006 Payment to [REDACTED] for travel expenses for mediation 6/13 and 6/14/06 (ck#4699)	250.00
6/13/2006 Cost of hotel room 06/13/06 for mediation (visa)	122.64
6/14/2006 Cost of hotel room for client 6/14/06 for mediation (visa)	122.64
6/15/2006 L. Randolph Waid, PhD's charge for psychological evaluation and review/report 5/10/06	750.00
Photocopies	1.76
7/5/2006 Federal Express to [REDACTED] 6/9/06 (ck#4760)	20.54
8/1/2006 Photocopies	23.98
8/14/2006 Filing fee paid to Clerk of Court to file complaint (Ck#4873)	150.00
8/15/2006 Postage	3.03
10/24/2006 Telefacsimiles	3.00

Page 2

	<u>Amount</u>
12/1/2006 Photocopies	5.06
12/8/2006 Postage	0.39
12/29/2006 Federal Express 12/5/06 to The Law Funder on [REDACTED] behalf (ck#5244)	<u>20.57</u>
Total costs	\$2,822.38
Balance due	<u><u>\$2,822.38</u></u>

Richter & Haller, LLC
Post Office Drawer 1089
622 Johnnie Dodds Boulevard
Mt. Pleasant, SC 29465
(843) 849-6000 office
(843) 881-1400 fax

Invoice submitted to:

February 14, 2007

In Reference To: John Doe #66 et al. vs. Diocese of Charleston et al.

Invoice # 16453

Additional Charges :

	<u>Amount</u>
6/1/2005 Photocopies	4.18
LER and DKH lunch meeting 6/1/05 to discuss case (visa)	28.77
6/21/2005 Postage	0.37
6/24/2005 Telefacsimiles	2.00
7/1/2005 Photocopies	16.50
7/20/2005 Legal research June 2005 (Lexis Nexis ck#4034)	10.10
8/1/2005 Photocopies	0.44
8/9/2005 Telefacsimiles	2.00
8/12/2005 Postage	0.37
8/30/2005 Postage	0.37
Telefacsimiles	2.00
Telefacsimiles	2.00
Telefacsimiles	2.00
Telefacsimiles	2.00
Telefacsimiles	2.00
9/1/2005 Photocopies	1.10
10/1/2005 Photocopies	39.38
11/29/2005 Postage	0.37
12/1/2005 Photocopies	0.22
1/1/2006 Photocopies	124.08
1/3/2006 Postage	0.37
1/31/2006 Postage	0.39
2/1/2006 Photocopies	1.32
3/1/2006 Photocopies	9.46
4/1/2006 Photocopies	2.42
5/1/2006 Photocopies	8.80
6/15/2006 L. Randolph Waid, PhD's charge fore psychological evaluation, review of records/report 5/12/06	825.00

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)
)
)
)
)
John Doe #53, John Doe 66, John Doe 66A,)
John Doe 67, Jane Doe 1 and Jane Doe 2)
and Rachel Roe individually and)
as representatives of a class of people)
similarly situated,)
)
Plaintiffs,)
)
vs.)
)
)
The Bishop of Charleston, a Corporation)
Sole, and The Bishop of the Diocese of)
Charleston, in his official capacity,)
)
Defendants.)
)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE No. 06-CP-18-1310
CASE No. 06-CP-18-1311
CASE No. 06-CP-18-1636

FILED-RECORDED
2007 FEB 14 PM 4:24
SHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

AFFIDAVIT OF DAVID K. HALLER
IN SUPPORT OF PLAINTIFFS'
CLAIM FOR ATTORNEYS FEES
AND COSTS

PERSONALLY appeared before me, the undersigned who does hereby state:

1. I am an adult and am competent to make the statements contained in this affidavit. I am one of the attorneys for the plaintiffs' in the above matter.
2. I graduated from the University of South Carolina in 1994 with a bachelor of arts in political science. I am the 1994 receiptient of the Algernon Sydney Sullivan Award from USC which is presented to students who exemplify high character, scholarship, community service, and leadership. I received my law degree from USC in 1997. I am admitted to practice law and am in good standing with the South Carolina Bar, the United States District Court for the District of South Carolina, and the Fourth Circuit Court of Appeals.
3. I served as law clerk for the Honorable Howard P. King, Resident Judge for the South

Carolina Third Judicial Circuit (retired) until 1998. Thereafter, I began practicing law in Charleston County with The Richter Firm, P.A. In 2000, I became a principal in that firm, which is now known as Richter & Haller, LLC.

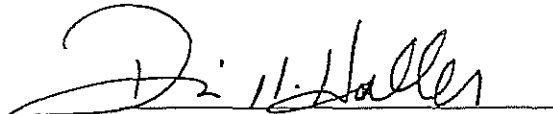
4. I focus my practice on complex litigation. Our firm was counsel for the plaintiffs in the case of Johnson v. Collins Entertainment, which ended video poker in South Carolina, and we have successfully pursued a variety of legal and medical malpractice, personal injury, wrongful death, class action, anti-trust and business tort claims in state and federal courts throughout the southeast United States. I have also been involved in complex domestic actions during my entire practice. I have served on a number of boards and in volunteer positions in the greater Charleston area.
5. I have reported cases at Johnson v. Collins Entertainment Co., 88 F. Supp. 2d 499; 1999 U.S. Dist. LEXIS 21373 (DCSC 1999) and 199 F.3d 710 (4th Cir. 1999) and 349 S.C. 613; 564 S.E.2d 653; 2002 S.C. LEXIS 93 (2002); JES Props., Inc. v. USA Equestrian, Inc., 2003 U.S. Dist. LEXIS 20633; 2003-2 Trade Cas. (CCH) P74,185 (MDFL 2003) and 253 F. Supp. 2d 1273; 2003 U.S. Dist. LEXIS 10239; 2003-2 Trade Cas. (CCH) P74,072; 16 Fla. L. Weekly Fed. D 285, (MDFL 2003); Deutsche Bank Nat'l Trust Co. v. Tyner, 2006 U.S. Dist. LEXIS 2879 (DCSC 2006); United States v. Thomas, 67 Fed. Appx. 819; 2003 U.S. App. LEXIS 12850 (2003) and 2000 U.S. App. LEXIS 9534 (2000).
6. I submit this affidavit in support of plaintiffs' petition for an award of attorneys fees and litigation costs.
7. I would call to the attention of the court the holdings in Taylor v. Medenica, 331 S.C. 575, 503 S.E.2d 458 (1998) and Ex Parte Condon, In Re: Littlejohn v. State of South Carolina.

354 S.C. 634, 583 S.E.2d 430 (2003), concerning the factors and criteria which the courts consider in setting reasonable attorneys fees in matters of this kind. I request that the court consider all documents in the file, and the court's knowledge of the action between the parties, which will show difficulty of services rendered, the time expended in preparation of this matter and to be expended in carrying out the claims process, the complexity of the issues, the result accomplished, the magnitude of the financial stakes, the professional standing of counsel, and the reasonableness of the fee request in relation to those fees customarily charged in this area for similar legal services.

6. Part of my role in the firm and prosecution of this matter entailed research and drafting of key pleadings and documents in the case. Among other things, I drafted all of the complaints and memorandum and was the principal scrivener of the Settlement and Arbitration Agreement and the documents accompanying that and necessary for that Agreement. Drafting each one of these document took a great deal of time due to the complexities of the issues involved. The Settlement Agreement underwent many revisions over a three and a half month period. I also prepared discovery and correspondence between counsel and participated in almost all settlement negotiations. My good faith estimate of the total time I have spent in this matter to exceed 1600 hours, some of which are shown on Exhibit A to the Affidavit of Lawrence E. Richter, Jr. I emphasis that these are good faith, conservative estimates and do not contain much of the work product which went into this case.
7. My hourly rate in a matter of this complexity is \$300 an hour. However, I am informed that similar matters to these are handled on a contingency fee basis and that the standard in the legal community is 40 forty (40%) percent. Each of our clients have retained us in these terms and for this amount.

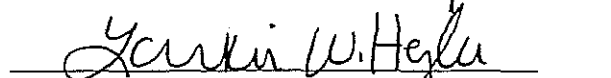
8. I refer to the affidavits of Lawrence E. Richter, Jr. and John P. Freeman in support of the complexity of this matter, the beneficial result obtained by counsel, and the risk in undertaking this case to further support our request for a fee.

FURTHER THE AFFIANT SAYETH NOT!


David K. Haller

SWORN TO AND SUBSCRIBED BEFORE ME

This 14th day of February, 2007


Notary Public for South Carolina
My Commission Expires April 27, 2010

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

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

Plaintiffs,)

vs.)

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

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE No. 06-CP-18-1310
CASE No. 06-CP-18-1311
CASE No. 06-CP-18-1636

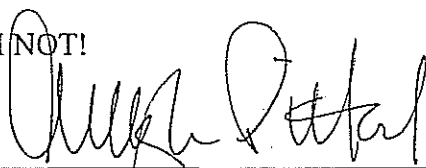
AFFIDAVIT OF ANGELA PITTARD

FILED-RECORDED
2007 FEB 14 PM 4:24
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

The affiant being duly sworn, deposes and states as follows:

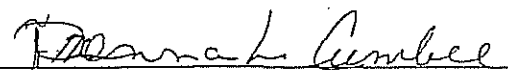
1. I am an adult and am competent to make the statements contained herein. The statements I make are true and correct to the best of my knowledge.
2. I am an employee of Lofton & Lofton, P.C. law firm. Attached hereto as Exhibit A is a listing of the estimated time spent by Lionel Lofton and me in the above matter. In the course of my duties, it is within my responsibilities to prepare and maintain these sheets. The times stated are made in good faith based on the records found in our offices.

FURTHER THE AFFIANT SAYETH NOT!


Angela Pittard

SWORN to and subscribed before me

this 14 day of Feb., 2007


NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 4-24-2013

Record on Appeal - 2292

FILED-RECORDED

2007 FEB 14 PM 4:24

DOUGLAS B. GRAHAM
CLERK OF COURT
WESTER COUNTY

John Doe #53, John Doe 7, Jane Doe 1 and Jane Doe 2 and Rachel Roe, individually and as representatives of a class of people similarly situated v.
The Bishop of Charleston, a Corporation Sole, and the Bishop of the Diocese of Charleston, in his official Capacity

Case Nos.: 06-CP-18-1310 and 1311

Lofton and Lofton, P.C.
Co-Counsel for Plaintiffs

Case Activity and Case Expenses

Date	Activity	By	Time
2003 - 2007	Various office meetings, lunch meetings, telephone conferences and email correspondence with Lawrence E. Richter, Jr., Esquire, David Haller, Esquire, Jack Sinclair, Esquire and Glenn Churchill, Esquire, and clients	LSL	75.0
7/10/03	Office conference with clients, Jack Sinclair, Esquire and Glenn Churchill, Esquire	LSL	1.5
7/11/03	Office conference with co-counsel and Paul W. Pittard, Jr.	LSL	1.0
7/16/03	Telephone conference with Paul W. Pittard, Jr.	LSL	.5
7/25/03	Telephone conference with Paul W. Pittard, Jr.	LSL	.5
7/31/03	Letter to co-counsel	LSL	.3
8/4/03	Reviewed correspondence from Wilson D. Rogers, III, Esquire	LSL	.5
8/8/03	Office conference with Paul W. Pittard, Jr.	LSL	.5
8/12/03	Reviewed letter and statements from co-counsel	LSL	.5

Under Seal
0105

8/13/03	Reviewed correspondence from co-counsel	ALP	.3
8/22/03	Office conference with Jack Sinclair, Esquire, Glenn Churchill, Esquire and Lawrence E. Richter, Jr., Esquire	LSL	1.5
8/26/03	Reviewed memorandum and media article from co-counsel	LSL	.5
8/27/03	Reviewed correspondence from co-counsel	LSL	.5
9/15/03	Office conference with Paul W. Pittard, Jr.	LSL	.5
9/16/03	Office conference with Paul W. Pittard, Jr.	LSL	.5
1/7/04	Letter to Lawrence E. Richter, Jr., Esquire	LSL	.3
1/7/04	Telephone conference with Lawrence E. Richter, Jr., Esquire	LSL	.5
2/18/04	Office conference with Lawrence E. Richter, Jr., Esquire	LSL	1.5
4/21/04	Office conference with Lawrence E. Richter, Jr., Esquire	LSL	1.0
5/26/04	Office conference with Lawrence E. Richter, Jr., Esquire	LSL	1.0
8/5/04	Office conference with Jack Sinclair, Esquire and Lawrence E. Richter, Jr., Esquire	LSL	1.0
10/8/04	Reviewed memorandum from Lawrence E. Richter, Jr., Esquire	LSL	.5
10/13/04	Reviewed letter and documents from Lawrence E. Richter, Jr., Esquire	LSL	.5
10/6/05	Reviewed victim impact statement from client	LSL	.5
10/9/05	Reviewed correspondence and documents from co-counsel	LSL	1.0
9/11/05	Reviewed correspondence from co-counsel	LSL	.5

Under Seal
0106

1/25/05	Reviewed correspondence and documents from Andrew J. Savage, III, Esquire	LSL	1.0
1/26/05	Telephone conversation with and faxed documents to Lawrence E. Richter, Jr., Esquire	LSL	.5
1/29/05	Reviewed correspondence and Motion from Peter Shahid, Esquire	LSL	.5
1/30/05	Reviewed correspondence from Peter Shahid, Esquire	LSL	.5
2/9/05	Office conference with client and Jack Sinclair, Esquire	LSL	1.5
2/22/05	Reviewed documents provided to Jack Sinclair, Esquire by client	LSL	1.0
3/31/05	Office conferences with clients and Lawrence E. Richter, Jr., Esquire	LSL	3.0
5/10/05	Reviewed correspondence from co-counsel	LSL	.5
5/12/05	Reviewed correspondence from co-counsel	LSL	.5
5/13/05	Reviewed correspondence and pleadings from co-counsel	LSL	1.0
5/13/05	Office conference with Lawrence E. Richter, Jr., Esquire	LSL	1.5
5/16/05	Reviewed correspondence from co-counsel	LSL	.5
5/26/05	Reviewed Research regarding statute of limitations issues	LSL	1.0
5/31/05	Reviewed email from Lawrence E. Richter, Jr., Esquire	LSL	.3
6/18/05	Reviewed correspondence and documents from Peter Shahid, Jr., Esquire	LSL	.5
6/23/05	Reviewed correspondence and documents from Peter Shahid, Jr., Esquire	LSL	.5
7/12/05	Reviewed correspondence and documents from Peter Shahid, Jr., Esquire	LSL	.5
8/16/05	Reviewed correspondence and pleadings from co-counsel	LSL	1.0

12/21/05	Reviewed correspondence from co-counsel	LSL	.5
12/22/05	Reviewed correspondence and documents from Peter Shabid, Jr., Esquire	LSL	.5
12/22/05	Letter to Lawrence E. Richter, Jr., Esquire	ALP	.3
12/22/05	Office conference with [REDACTED]	ALP	.3
12/28/05	Reviewed correspondence from co-counsel	LSL	.5
12/28/05	Reviewed correspondence and documents from Peter Shabid, Jr., Esquire	LSL	.5
1/3/06	Reviewed correspondence and documents from Peter Shabid, Jr., Esquire	LSL	.5
1/3/06	Reviewed correspondence from co-counsel	LSL	.5
1/5/06	Reviewed correspondence from co-counsel	ALP	.3
1/5/06	Office conference with Andrew J. Savage, III, Esquire	LSL	1.0
1/6/06	Letter to Andrew J. Savage, III, Esquire	LSL	.3
1/9/06	Reviewed correspondence from co-counsel	ALP	.3
1/10/06	Reviewed correspondence from Peter Shabid, Jr., Esquire	LSL	.5
1/18/06	Reviewed correspondence from co-counsel	LSL	.5
1/31/06	Reviewed correspondence from co-counsel	LSL	.5
2/10/06	Reviewed correspondence from co-counsel	ALP	.3
2/14/06	Reviewed correspondence and Motions from Peter Shabid, Jr., Esquire	LSL	1.0
2/16/06	Reviewed correspondence from co-counsel	ALP	.3
2/23/06	Reviewed correspondence from co-counsel	ALP	.3

Under Seal
0108

3/1/06	Reviewed correspondence from co-counsel	LSL	.5
4/7/06	Reviewed correspondence from co-counsel and Peter Shahid, Jr., Esquire	LSL	1.0
4/10/06	Reviewed correspondence from co-counsel	LSL	.5
4/14/06	Office conference with Lawrence E. Richter, Jr., Esquire	LSL	1.5
4/21/06	Reviewed correspondence from co-counsel	LSL	.5
4/25/06	Reviewed correspondence from co-counsel	LSL	.5
5/2/06	Reviewed documents from Andrew J. Savage, III, Esquire	LSL	2.0
5/4/06	Reviewed correspondence from co-counsel	LSL	.5
5/5/06	Reviewed correspondence from Peter Shahid, Jr., Esquire	LSL	.5
5/9/06	Reviewed correspondence from co-counsel	LSL	.5
5/10/06	Reviewed correspondence and Motion from Peter Shahid, Jr., Esquire	LSL	.5
5/11/06	Reviewed correspondence and documents from Peter Shahid, Jr., Esquire	LSL	1.0
5/17/06	Reviewed correspondence from co-counsel	LSL	.5
5/19/06	Reviewed correspondence from co-counsel	LSL	.5
5/26/06	Reviewed correspondence and documents from Peter Shahid, Jr., Esquire	LSL	.5
6/3/06	Reviewed correspondence and documents from Peter Shahid, Jr., Esquire	LSL	.5
6/6/06	Reviewed correspondence and pleadings from Peter Shahid, Jr., Esquire	LSL	1.0
6/7/06	Reviewed correspondence and pleadings from Peter Shahid, Jr., Esquire	LSL	1.0
7/10/06	Reviewed reports of Randolph Waid, Ph.D.	LSL	3.0

Under Seal
0109

6/13/06 - 615/06	Attended portions of Mediation	LSL	4.0
8/7/06	Reviewed correspondence from co-counsel	LSL	.5
8/8/06	Office conference with Jack Sinclair, Esquire and Glenn Churchill, Esquire	LSL	1.0
8/8/06	Office conference with Lawrence E. Richter, Jr., Esquire	LSL	1.5
8/10/06	Reviewed correspondence from co-counsel	LSL	.5
8/10/06	Reviewed correspondence from co-counsel	ALP	.5
8/10/06	Reviewed correspondence from co-counsel	LSL	.5
9/6/06	Reviewed correspondence from co-counsel	ALP	.3
9/12/06	Reviewed correspondence from co-counsel	LSL	.5
9/21/06	Reviewed correspondence from co-counsel	LSL	.5
9/22/06	Reviewed memorandum from co-counsel	LSL	.5
9/25/06	Reviewed correspondence from Peter Shahid, Jr., Esquire	LSL	.5
9/25/06	Reviewed correspondence from co-counsel	LSL	.5
10/6/06	Reviewed correspondence from co-counsel	LSL	.5
10/19/06	Reviewed correspondence and Legal Notice from co-counsel	LSL	.5
10/26/06	Reviewed correspondence and Deposition Notice from co-counsel	ALP	.5
10/26/06	Reviewed correspondence from co-counsel	LSL	.5

Under Seal
0110

10/27/06	Reviewed correspondence and Depositions Notices and Subpoenas from co-counsel	ALP	.5
11/1/06	Reviewed correspondence from co-counsel	ALP	.3
11/7/06	Reviewed correspondence from Peter Shahid, Jr., Esquire	LSL	.5
11/13/06	Reviewed correspondence from co-counsel	ALP	.3
11/18/06	Reviewed correspondence, Motions and Class Action documents from co-counsel	LSL	1.0
11/21/06	Reviewed correspondence from Peter Shahid, Jr., Esquire	LSL	.5
11/27/06	Reviewed correspondence and Subpoena from co-counsel	LSL	.5
11/27/06	Reviewed correspondence and Motion from co-counsel	LSL	.5
11/28/06	Reviewed correspondence from Peter Shahid, Jr., Esquire	LSL	.5
11/30/06	Office conference with Lawrence E. Richter, Jr., Esquire	LSL	1.0
12/1/06	Office conference with Lawrence E. Richter, Jr., Esquire	LSL	1.0
12/4/06	Reviewed correspondence from Peter Shahid, Jr., Esquire	LSL	.5
12/5/06	Reviewed correspondence and pleadings from co-counsel	LSL	1.0
12/8/06	Picked Up Letter from Richter & Haller	ALP	.8
12/14/06	Reviewed correspondence and Motion from Peter Shahid, Jr., Esquire	LSL	.5
2/2/06	Reviewed correspondence from Peter Shahid, Jr., Esquire	LSL	.5
2/30/06	Reviewed correspondence from Bank of South Carolina	ALP	.5
1/4/07	Office conference with Jack Sinclair, Esquire	LSL	1.0

Under Seal
0111

1/11/07	Office conference with Lawrence E. Richter, Jr., Esquire	LSL	1.0
1/17/07	Reviewed correspondence from Peter Shahid, Jr., Esquire	LSL	.5
1/24/07	Reviewed correspondence from co-counsel	LSL	.5
1/24/07	Reviewed correspondence from Peter Shahid, Jr., Esquire	LSL	.5
1/26/07	Reviewed media article regarding proposed settlement	LSL	.5
1/27/07	Letter to co-counsel	LSL	.5
1/31/07	Reviewed media article regarding proposed settlement	LSL	.5
2/1/07	Reviewed correspondence from co-counsel	LSL	.5
	TOTAL HOURS		171.9

Case Costs

Date	Vendor	Purpose	Cost
10/3/03	C. Thomas Whitesides, M.D.	Medical Records	\$ 25.00
10/28/03	Paul W. Pittard, Jr.	Private Investigation	\$311.00
5/18/04	Paul W. Pittard, Jr.	Private Investigation	\$238.00
			\$574.00

Under Seal
0112

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
CASE NOS.: 2006-CP-18-1210
2006-CP-19-1311
2006-CP-18-1636

John Doe #53, John Doe #66, et al,)
Individually and as a Representative)
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,)

Respondents.)

AFFIDAVIT OF ATTORNEY'S FEE

CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

2007 FEB 14 PM 4:25

FILED - RECORDED

PERSONALLY appeared before me, Glenn P. Churchill, Esquire, who, being duly sworn, deposes, and says:

That he is a member of the South Carolina Bar, having been admitted in 1984; that he has practiced continuously since then in South Carolina; and that his normal fee for matters triable in the Court of Common Pleas is \$300.00 per hour.

That he began work on this case in June 2003.

That because this case was accepted on a contingency basis, he did not keep a daily timesheet, but he is able to estimate time spent on client telephone conferences, meetings and correspondence; attorney telephone conferences, meetings, electronic communications and correspondence; research, review of discovery and other court documents; and time spent in preparation for and participation in mediation. A timesheet is available for hours spent in the review of documents, compilation of data and creation of memoranda and is attached hereto. The timesheet details some, but not all of the work he performed in representation of the Plaintiffs.

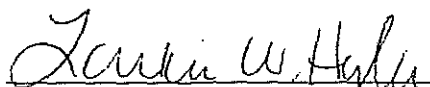
That he has spent a total of approximately 280 hours for his representation of the Plaintiffs in the above entitled actions, and that this represents a true and accurate reflection of the time, effort, and work in the representation of the Plaintiffs.



GLENN P. CHURCHILL
Attorney for Plaintiffs
174 East Bay Street, Suite 300
Charleston, South Carolina 29401
(843) 853-9300
South Carolina Bar # 1236

SWORN to before me this

13th day of February, 2007

 (SEAL)

Notary Public for South Carolina

My commission expires: April 27, 2010

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
CASE NOS.: 2006-CP-18-1210
2006-CP-19-1311
2006-CP-18-1636

John Doe #53, John Doe #66, et al,)
Individually and as a Representative)
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,)

Respondents.)

AFFIDAVIT OF ATTORNEY'S FEES

PERSONALLY appeared before me, John Sinclair, III, Esquire, who, being duly sworn, deposes,
and says:

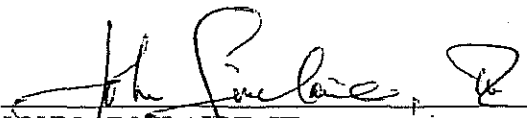
That he is a member of the South Carolina Bar, having been admitted in 1984; that he has
practiced continuously since then in South Carolina; and that his normal fee for matters triable in the
Court of Common Pleas is \$300.00 per hour.

That he began work on this case in June 2003.

That because this case was accepted on a contingency basis, he did not keep a daily timesheet, but
he is able to estimate time spent on client telephone conferences, meetings and correspondence; attorney
telephone conferences, meetings, electronic communications and correspondence; research, review of
discovery and other court documents; and time spent in preparation for and participation in mediation. A
timesheet is available for hours spent in the review of documents, compilation of data and creation of

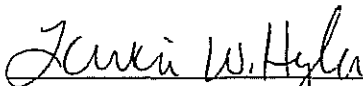
memoranda and is attached hereto.

That in his twenty-three (23) years of service to the Bar, he has never been involved in a more time-consuming or emotionally demanding case, and that no other legal matter has better suited our designation as "Counselors at Law." That he has spent a total of approximately 587 hours in his representation of the Plaintiffs in the above entitled actions, and that this represents a true and accurate reflection of the time, effort and work in the representation of the Plaintiffs.


JOHN SINCLAIRE, III
Attorney for Plaintiffs
174 East Bay Street, Suite 300
Charleston, South Carolina 29401
(843) 853-9300
South Carolina Bar # 5128

SWORN to before me this

14th day of February, 2007

 (SEAL)
Notary Public for South Carolina
My commission expires: April 27, 2010

Date	ACTIVITY	Hours
01/04/2007 -	Office conference with Jack Sinclair	1.00
01/04/2007 -	T/c with Nowak --new phone number and status of conference	0.75
01/16/2007 -	Review correspondence from Shahid regarding the scheduling of the fairness hearing	0.25
01/23/2007 -	Review correspondence regarding the Diocese signed off on settlement as well as Judge Goodstein	0.25
11/04/2007 -	T/C with [REDACTED] - update info. status conference	0.50
Date	ACTIVITY	Hours
01/03/2006 -	Review correspondence from Haller acknowledging receipt of motion to admit James Geoly <i>pro hac vice</i>	0.25
01/05/2006 -	Filing Motion to Compel on Case No. 05-CP-10-3293 (Doe #66A)	0.50
01/06/2006 -	Review correspondence regarding filed copies of the Record in Opposition to Defendants pending motions	0.25
01/08/2006 -	Fax to Lofton from Glenn P. Churchill and Jack Sinclair	0.50
01/09/2006 -	T/C with [REDACTED] regarding additional victims	1.00
01/10/2006 -	Office meeting with Jack Sinclair, Glenn P. Churchill, and [REDACTED]	0.50
01/17/2006 -	Review correspondence regarding meeting between Geoly and Shahid	0.25
01/18/2006 -	Review correspondence regarding meeting between Larry Richter and Coming Gibbs concerning Ms. [REDACTED] Affidavit	0.25
01/30/2006 -	Rescheduling of an emergency hearing, Motion for Preliminary Injunction and Temporary Restraining Order, Ex Parte Order for Emergency Hearing, Summons and Complaint, and Affidavit of [REDACTED] with Attachments	0.50
02/10/2006 -	Fax regarding release of medical information on [REDACTED]	0.25
02/10/2006 -	T/C regarding new address for [REDACTED]	1.00
02/10/2006 -	Follow up phone calls with clients	1.50
02/13/2006 -	E-mail notification of [REDACTED] new contact information	0.25
02/13/2006 -	Review correspondence regarding 2005-CP-10-4913 (John Doe #53)	0.50
02/13/2006 -	Review correspondence regarding 2005-CP-10-3293 (John Doe # 66A)	0.50
02/13/2006 -	Receipt and reply to e-mail regarding [REDACTED] digs	0.25
02/15/2006 -	Review correspondence requesting original order signed	0.25
02/23/2006 -	Review correspondence regarding notice of hearing for Doe #66	0.25
02/21/2006 -	Phone call with [REDACTED] regarding new cell number and discuss status of case	0.50
02/28/2006 -	Review correspondence regarding order from Judge Roger Young	0.25
03/01/2006 -	Office meeting with Jack Sinclair, Esquire, Glenn P. Churchill, Esquire, and [REDACTED]	1.00
03/09/2006 -	Received and replied through e-mail regarding [REDACTED] new address	0.25
03/10/2006 -	T/C with [REDACTED]	0.50
03/20/2006 -	Review correspondence from [REDACTED] regarding him moving out of town until	0.50
03/20/2006 -	Letter from [REDACTED] regarding [REDACTED] and how	0.25
04/06/2006 -	Review correspondence from Shahid regarding mediation date with Jim Geoly	0.25
04/06/2006 -	Review correspondence regarding subpoena to Peter Shahid	0.25
04/06/2006 -	Faxed copy of Order and request for mediation	0.50
04/07/2006 -	Fax from Haller regarding civil actions against Nyhan	0.50
04/10/2006 -	Review correspondence regarding conference call from Haller	0.50
04/18/2006 -	Review correspondence regarding when motions will be held and mediations for John Doe #66, #66A, and #53	0.25
04/18/2006 -	T/C with [REDACTED]	0.75
04/19/2006 -	Review correspondence from Shahid regarding Motion and Order of Protection	0.25
04/20/2006 -	Phone conference with Peter Shahid and Monsignor Carter	0.25
04/20/2006 -	Review correspondence from Infinger regarding possible conflict of interest	0.25
04/25/2006 -	Correspondence regarding scheduling dates for mediation with Geoly	0.25
04/26/2006 -	Correspondence regarding mediation	0.25
05/02/2006 -	Fax from Richter and Haller regarding subpoena	0.25
05/04/2006 -	Review correspondence regarding rescheduling mediation for #66 & #66A	0.25
05/08/2006 -	Review Fax from Shahid regarding John Doe #66 & #66A	0.25
05/08/2006 -	Meeting with GPC	0.50
05/09/2006 -	Review correspondence from Shahid; Motion Information Form and Cover Sheet	0.50
05/10/2006 -	Review correspondence from Shahid regarding scheduling matters	0.50
05/10/2006 -	Review correspondence regarding a conference call with Richter and Haller from Shahid	0.25
05/15/2006 -	Review correspondence regarding the Consent Scheduling Order for John Doe #66 and #66A	0.50

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DORCHESTER COUNTY

05/18/2006 -	Confirmation for mediation scheduled with Marvin Infinger	0.50
05/19/2006 -	Review correspondence from Coming Gibbs regarding Guardian ad Litem and hearing date scheduled for 05/30/2006	0.50
05/19/2006 -	Subpoena regarding [REDACTED]	0.50
05/24/2006 -	Review Photocopy of the filed Consent Scheduling Order signed by Judge Jefferson	0.25
06/01/2006 -	Review correspondence regarding the mediation for John Doe #66, John Doe #66A, and John Doe # 53	0.50
06/01/2006 -	Review correspondence regarding Case No. 2005-CP-10-2053 has been transferred to the jury trial roster	0.25
06/06/2006 -	Defendants' Answer to the Complaint and Amended Complaint for Case Nos. 2005-CP-10-2053 and 2005-CP-10-3293	0.50
06/06/2006 -	Mediation Preparation	10.00
06/09/2006 -	Mediation of John Does #66, #66A, and #55 v. Bishop of Charleston; settlement discussion documents, psychological evaluations of plaintiffs and [REDACTED]	24.00
06/13/2006 -	Mediation	8.00
06/14/2006 -	Mediation	8.00
06/15/2006 -	Settlement offer discussing with clients	4.50
06/16/2006 -	Review Settlement Agreement signed by [REDACTED] forwarded by Mr. Haller to Glenn Churchill	0.75
06/16/2006 -	Review correspondence regarding Bridge Loan Assignment and Promissory Note for \$5K	1.00
06/16/2006 -	Meeting with [REDACTED]	1.00
06/16/2006 -	Fax to Lofton from Glenn P. Churchill, Esquire	0.50
06/17/2006 -	T/C with Bridge Loan offices	1.25
06/19/2006 -	Westlaw legal research	1.00
06/29/2006 -	Assignment Verification between Bridge Loan, [REDACTED] and Churchill - \$9K	2.75
07/05/2006 -	Application for Bridge Loan and client release for [REDACTED]	1.25
07/06/2006 -	Assignment and Promissory note for [REDACTED] to Glenn Churchill - \$9k	0.50
07/10/2006 -	Assignment Verification for [REDACTED] - \$2K	0.75
07/13/2006 -	Review Bridge Loan correspondence regarding Assignment and Promissory Note for [REDACTED] - \$2K	0.50
07/22/2006 -	E-mail from Shahid regarding Diocese settlement and Bank of America	0.25
07/22/2006 -	Review Bridge Loan correspondence regarding Assignment and Promissory Note for [REDACTED]	0.50
07/25/2006 -	Assignment Verification for [REDACTED] - \$3K	0.50
07/28/2006 -	Review Bridge Loan correspondence regarding Assignment and Promissory Note for [REDACTED] - \$3K	0.50
07/29/2006 -	Partial Assignment of Proceeds by and between [REDACTED] and Bridge Loan, Inc.	0.75
07/29/2006 -	Review correspondence from Bridge Loans and the status on clients	0.75
08/01/2006 -	Review correspondence from Debra Stokes regarding Fee Agreement for [REDACTED]	0.50
08/07/2006 -	Correspondence regarding how to fund the settlements	0.25
08/08/2006 -	Office conference with Jack Sinclair, Esquire and Glenn Churchill, Esquire	1.00
08/08/2006 -	Office meeting with Lionel Lofton, Esquire, Jack Sinclair, Esquire, and Glenn Churchill, Esquire	2.00
08/10/2006 -	Correspondence from Larkin Hegler (paralegal to Richter) regarding news video available at www.wistv.com about Diocese cases and settlements	0.25
08/10/2006 -	Reviewed [REDACTED] press release	0.50
08/15/2006 -	Copies of Summons, Complaint, and Civil Cover Sheet in the matter of Jane Doe #1, John Doe #67, and John Doe #53	0.75
08/18/2006 -	Assignment Verification for [REDACTED] - \$2K	0.50
08/23/2006 -	Assignment Verification for Glenn Churchill and Jack Sinclair - \$5K	0.50
08/28/2006 -	Assignment and Promissory note for [REDACTED] to Glenn Churchill - \$5k	0.50
08/28/2006 -	Bridge Loan correspondence regarding Assignment and Promissory Note for Nowak - \$2K	0.50
08/28/2006 -	Acceptance of Service - Case No. 06-CP-18-1311	0.25
08/28/2006 -	Acceptance of Service - Case No. 06-CP-18-1310	0.25
09/05/2006 -	Review correspondence from Richter and Haller regarding copies/originals of the Acceptance of Service	0.25
09/11/2006 -	Review correspondence from Haller to Judge Goodstein regarding assistance to bring the settlement to a full conclusion	0.25
09/12/2006 -	Review and reply e-mail from Haller regarding settlement agreement	0.50
09/12/2006 -	Meeting with Glenn Churchill	0.50
09/13/2006 -	Review calculation summary report for Nowak	0.50
09/20/2006 -	Faxed correspondence from Richter requesting a status conference	0.25

Diocese Cases

Law Offices of Jack Sinclair, III and Glenn P. Churchill

09/20/2006 -	E-mail to Glenn P. Churchill, Esquire and Jack Sinclair, Esquire from David Haller, Esquire regarding funding and [REDACTED]	0.50
09/20/2006 -	Receipt and reply to e-mails regarding [REDACTED]	0.25
09/22/2006 -	Fax from Richter and Haller confirming status conference for 9/26/2006	0.50
09/22/2006 -	Review correspondence to Judge Goodstein from Mr. Shahid regarding the status conference b/c Shahid can not be there due to prior meeting	0.25
09/25/2006 -	Correspondence from Haller regarding conference call with Judge Goodstein and Mr. Shahid	0.25
09/26/2006 -	Receive and reply to e-mail from Haller regarding conference call with Judge Goodstein	0.25
09/26/2006 -	Status conference with Richter and Haller	3.00
10/02/2006 -	Phone call with Father Francis and T/C/ with [REDACTED]	0.75
10/05/2006 -	Confirmation of meeting with Judge Goodstein in St. George	0.25
10/06/2006 -	Fax from Sinclair to [REDACTED] regarding [REDACTED]	0.25
10/13/2006 -	Correspondence from UCLF and Marco Polo Litigation Funding	0.50
10/17/2006 -	Certified copies of Summons & Complaint and proposed consent orders	1.00
10/17/2006 -	T/C with [REDACTED] - discuss new phone number and status of case	0.75
10/18/2006 -	Review correspondence regarding revised Settlement Agreement, proposed order of Class Action and fairness hearing	0.50
10/24/2006 -	Fax from Sinclair to [REDACTED] regarding the application for UC Legal Funding on [REDACTED]	0.50
10/24/2006 -	Review correspondence regarding [REDACTED] settlement	0.50
10/25/2006 -	Faxed copy of demand for responsive pleadings	0.25
10/26/2006 -	Review correspondence regarding the Deposition for Bishop Robert J. Baker	0.50
10/26/2006 -	Review Notices of Taking Depositions and copies of document production subpoenas for Monsignor James Carter and Monsignor Lawrence McNerny	0.50
10/30/2006 -	Subpoena issued for deposition; Notice of Taking Deposition	0.50
10/31/2006 -	Document Production Subpoena to Reverend Joseph F. Hanley, Jr.	0.25
10/31/2006 -	T/C with David Haller	0.25
11/01/2006 -	Review correspondence regarding depositions on Rev. Hanley, Jr.	0.25
11/01/2006 -	Fax from Sinclair to Matthew Sheldon, Esq. regarding Legal Funding for Nowak	0.50
11/01/2006 -	T/C with Matthew Sheldon, Esquire	0.50
11/02/2006 -	Fax from Sinclair to [REDACTED] regarding [REDACTED] and the Sale of Contingent Proceeds Agreement	0.50
11/06/2006 -	Status Conferences	1.75
11/06/2006 -	Review Diocese Subpoenas revised schedule	0.25
11/07/2006 -	Review correspondence confirming deadline extensions and responsive pleadings, etc. from Shahid	0.50
11/13/2006 -	Review correspondence regarding Form W-9 from Mr. Haller	0.50
11/21/2006 -	Review correspondence to Reverend Carter regarding Document Production Subpoena	0.25
11/27/2006 -	Review correspondence from Peter Shahid, Jr. regarding an extension, the Bishop's deposition, and waiting approval from Rome on settlement agreement	0.25
11/29/2006 -	Review correspondence regarding pay off to Law Funder regarding Nowak	0.50
11/29/2006 -	Assignment papers for [REDACTED]	0.25
11/30/2006 -	Review correspondence regarding acknowledgment of two checks paid to Richter & Haller	0.25
11/30/2006 -	Review correspondence from P. Shahid regarding approval from Rome, request to the Apostolic Nuncio, and asking for a ten day extension	0.50
12/01/2006 -	E-mail Angela regarding clients addresses	0.75
12/04/2006 -	T/C with Nowak regarding new phone number and status of case	0.50
12/13/2006 -	Review Forms, Motions, Orders for Case No. 2006-CP-18-1310, 1311, & 1636	0.50
12/15/2006 -	T/C with Nowak regarding new address and status conference	0.50
12/18/2006 -	Review correspondence from Shahid to Judge Goodstein objecting to Hearing scheduled date	0.25
Date	ACTIVITY	Hours
01/04/2005 -	Review correspondence from OPSO discussing new process for mental coverage	0.50
01/04/2005 -	Review statement from [REDACTED] regarding molestation charges against James Nyhan	0.50
01/04/2005 -	Review statement to Debbie Herring-Lash from [REDACTED]	0.50
01/10/2005 -	Review correspondence to Judge Young regarding meeting with the officials of the Diocese of Charleston	0.25
01/13/2005 -	T/C between Jack Sinclair, Glenn Churchill, and [REDACTED]	1.00
01/19/2005 -	T/C with [REDACTED] regarding status of case	0.50
01/19/2005 -	T/C with [REDACTED]'s sister regarding [REDACTED] and status of case	0.25
01/19/2005 -	T/C with [REDACTED] regarding [REDACTED]	0.25
01/31/2005 -	Review draft order faxed by Lawrence Richter	0.25
01/31/2005 -	Review fax from Richter regarding proposed consent order	0.50

02/01/2005 -	T/C with [REDACTED] regarding probation for DWI	0.50
02/02/2005 -	Receipt and reply to e-mails regarding [REDACTED] letter; review letter	0.50
02/03/2005 -	Phone call with [REDACTED] regarding [REDACTED], psychiatrist and future payments	1.00
02/09/2005 -	Office conference with client and Jack Sinclair, Esquire	1.50
02/09/2005 -	Office conference with Jack Sinclair, Esquire, Glenn P. Churchill, Esquire, Lionel Lofton, Esquire and [REDACTED]	1.00
02/14/2005 -	T/C with Walter Nowak regarding new address and contact information	0.25
02/14/2005 -	T/C with [REDACTED]	1.00
02/15/2005 -	Attorney-Client contract signed with [REDACTED]	0.25
02/22/2005 -	Receipt and reply to e-mail from Lofton to Sinclair regarding [REDACTED] and [REDACTED]	0.25
02/23/2005 -	Review correspondence with [REDACTED] regarding therapy and "false allegations"	0.50
03/02/2005 -	Receipt and reply to e-mails from Solicitor regarding [REDACTED] civil case and first draft of complaint	0.50
03/02/2005 -	Fax statements that [REDACTED] gave to Solicitor's Office	0.50
03/03/2005 -	Review letter to Reverend Sean Connor from [REDACTED] regarding compensation	0.50
03/09/2005 -	Review newspaper clipping regarding Nyhan indicted on charges of sexual abuse	0.50
03/10/2005 -	T/C with Debbie Herring-Lash regarding [REDACTED] and [REDACTED]	0.50
03/16/2005 -	Receipt and reply to e-mail to Lofton regarding [REDACTED] office meeting	0.25
03/18/2005 -	Receipt and reply to e-mails from Lofton to Sinclair regarding [REDACTED] and the filed complaints	0.25
03/18/2005 -	Receipt and reply to e-mails from Sinclair to Lofton regarding [REDACTED]	0.25
03/21/2005 -	Receipt and reply to e-mails regarding [REDACTED] and scheduled conference	0.25
03/22/2005 -	Receipt and reply to e-mails from Jack Sinclair, Esquire regarding scheduled meet dates for clients	0.50
03/23/2005 -	Office meeting with Lionel Lofton, Esquire, Jack Sinclair, Esquire, and [REDACTED]	1.00
03/23/2005 -	T/C with [REDACTED]	0.75
03/28/2005 -	T/C with Dan Bolchez	0.25
03/31/2005 -	Office meeting with Lionel Lofton, Esquire, Jack Sinclair, Esquire, and [REDACTED]	1.00
03/31/2005 -	Office meeting with Lionel Lofton, Esquire, Jack Sinclair, Esquire, Glenn P. Churchill, Esquire, and [REDACTED]	1.50
04/11/2005 -	Research Mobile Home search	0.25
04/14/2005 -	T/C with Randy Cooper	1.00
05/2/2005 -	E-mail solicitor from Sinclair regarding [REDACTED]	0.25
05/02/2005 -	Phone conference with [REDACTED] and [REDACTED]	0.75
05/03/2005 -	Receipt and reply to e-mails to Debbie Herring-Lash regarding [REDACTED] testing for treatability and the status of cases	0.50
05/04/2005 -	T/C with [REDACTED] regarding status of case	0.50
05/09/2005 -	Returning phone call with [REDACTED]	0.50
05/10/2005 -	Review correspondence from Richter to Shahid regarding representation of the Catholic Diocese of Charleston	0.25
05/11/2005 -	Review correspondence concerning the proper name of John Doe #66	1.00
05/13/2005 -	Filed stamped copies of the Summons, Complaint, and Motion for Expedited Trial	0.25
5/31/2005 -	Receipt and reply to e-mails to Lofton and Debbie Herring-Lash regarding trial dates	0.50
06/15/2006 -	Fax settlement agreement for cases numbered: 2005-CP-10-2053, 2005-CP-10-3293, and 2005-CP-10-4913	0.75
06/22/2005 -	Review correspondence regarding copies of the Defendants Motions for Summary Judgment	0.50
07/08/2005 -	Review correspondence regarding copies of Defendant's Memorandum in Opposition to Plaintiff's Motion for Judgment by Default and Damages Hearing	0.50
07/08/2005 -	T/C [REDACTED] regarding status of case	0.75
08/12/2005 -	Review Authorization for Psychiatrist, payments, and prescriptions from Office of Pastoral Support and Outreach	0.75
08/12/2005 -	Review Summons, Complaint, and Motion for Expedited Trial	0.50
08/15/2005 -	Review correspondence regarding copies of Summons, Complaint, and Motion for Expedited Trial	0.25
08/19/2005 -	Review correspondence regarding Doe #66A and Motions filed through court	0.25
08/22/2005 -	Review faxed correspondence from Richter in receipt of copies of Motion to Strike and Motion for Summary Judgment	0.50
08/30/2005 -	Review correspondence from Shahid regarding the seal of confession	0.25
08/30/2005 -	Review correspondence regarding schedule of depositions	0.25
08/31/2005 -	Review correspondence regarding Notice of Depositions	0.25
09/06/2005 -	Review correspondence regarding Acceptance of Service of the Notices of Deposition and Subpoenas of Bishop David Thomson, Joseph Roth, and Dennis Atwood	0.50

09/08/2005 -	Review correspondence regarding documents filed with Clerk of Court	0.25
09/09/2005 -	Review correspondence of receipt of letter from Richter to Shahid	0.25
09/13/2005 -	Review correspondence regarding Summons and Complaint and the instruction from the Vatican	0.50
09/16/2005 -	Receipt and Review of letter from Peter Shahid, Jr. regarding John Doe #66A (Allen Sires) and Statute of Limitations	0.50
09/21/2005 -	Review Plaintiff's first request for production to defendants	0.25
09/21/2005 -	Review Plaintiff's first set of interrogatories to defendants	0.25
09/22/2005 -	Review correspondence from David Haller regarding discovery	1.25
09/24/2005 -	Meeting with Debbie regarding [REDACTED]	1.00
09/27/2005 -	Memo from Richter and Haller requesting Churchill, Sinclair, Loflon to catalog medical records for all clients; Meeting with Glenn Churchill	0.50
09/30/2005 -	Review correspondence from Peter Shahid, Jr. regarding interview with Bishop Baker	0.75
10/06/2005 -	T/C with [REDACTED] regarding his move	1.25
10/10/2005 -	Receipt and reply to e-mail regarding [REDACTED] contact information and medical information	0.25
10/12/2005 -	Perform research on LexisNexis regarding case precedent: Citation 334 S.C. 156 and Citation 2000 S.C. LEXIS 149	0.50
10/17/2005 -	Review correspondence from Lawrence Richter with a list of suggestions that need to put in place	0.25
10/28/2005 -	Review correspondence from Shahid to Richter regarding suggestions list	0.50
11/08/2005 -	T/C with [REDACTED] regarding new phone numbers and status of case	0.50
11/14/2005 -	Review correspondence from Shahid regarding letter dated 10/17/05 as well as using the services of James Geoly, atty in Chicago, for the possibility of a class action lawsuit	0.25
11/15/2005 -	Review correspondence to Julie Armstrong regarding a Motion Hearing on Civil Action Nos. 2005-CP-10-2053 and 2005-CP-10-3293	0.25
11/28/2005 -	Review correspondence from Haller regarding the responses to the discovery	0.25
11/29/2005 -	Review fax from David Haller requesting a continuance for Diocese cases	0.25
12/01/2005 -	Review correspondence from Office of Pastoral Support & Outreach regarding filling prescriptions for [REDACTED] Meeting with [REDACTED]	1.25
12/02/2005 -	Review file stamped copy of the Summons and Complaint for John Doe #53	0.75
12/15/2006 -	T/C with [REDACTED] regarding new address and status of case	0.50
12/16/2005 -	Served Summons and Complaint for John Doe #53	0.25
12/20/2005 -	Office meeting with Jack Sinclair, Glenn Churchill, and [REDACTED]	1.50
12/20/2005 -	Review correspondence regarding John Doe #53	0.25
12/21/2005 -	Review correspondence of Summons and Complaint filed on John Doe #53	0.25
12/22/2005 -	Review correspondence from [REDACTED] regarding assets and guardianship upon his death; T/C with [REDACTED] to discuss same	1.25
12/27/2005 -	Review correspondence regarding Acceptance of Service for John Doe #53	0.25
12/28/2005 -	Correspondence from Shahid regarding Motion for Admission for James C. Geoly, attorney in Chicago for John Doe #66A and #66	0.25
12/28/2005 -	Correspondence regarding a request for Geoly to be an additional counsel in Chicago	0.25
12/29/2005 -	Documents pertaining to John Doe #66	0.50
Date	ACTIVITY	Hours
01/07/2004 -	Meeting with [REDACTED] at Richter & Haller	2.50
01/07/2004 -	Attorney-client Contract signed by [REDACTED]	0.50
01/09/2004 -	Phone conference with [REDACTED] regarding psychological evaluation	0.50
01/16/2004 -	Office meeting with Jack Sinclair, Esquire, Glenn P. Churchill, Esquire, and [REDACTED]	1.00
01/16/2004 -	Faxed correspondence regarding James Nyhan and allegations against him	0.25
01/16/2004 -	Jack Sinclair, Esquire and Glenn P. Churchill, Esquire meeting/interview at Solicitor's Office regarding [REDACTED]	2.00
01/21/2004 -	Phone conference with Walter Bilbro regarding [REDACTED]	0.75
02/17/2004 -	Receipt and reply to e-mails to Sinclair and Churchill regarding meetings with [REDACTED] and [REDACTED]	0.50
02/17/2004 -	Meet with [REDACTED] to discuss Victim/Witness Form	1.00
03/18/2004 -	Review financial history on [REDACTED] with Behavioral Associates	0.75
04/06/2004 -	T/C with [REDACTED]	0.25
04/06/2004 -	Fax to [REDACTED] regarding two victim's statements	0.50
05/21/2004 -	Review fax from David Haller concerning Statute of Limitations for [REDACTED]	1.50
05/21/2004 -	Legal research - Westlaw regarding statute of limitations on sexual abuse	0.75
07/12/2004 -	T/C with [REDACTED] regarding [REDACTED]	1.75
07/13/2004 -	Meeting with [REDACTED]	0.50

07/15/2004 -	Meeting with Ritcher and Sinclair regarding [REDACTED]	1.00
07/16/2004 -	Attorney-Client contract signed between [REDACTED] and Jack Sinclair	0.50
07/20/2004 -	T/C with [REDACTED]	1.00
07/22/2004 -	T/C with [REDACTED] regarding Post & Courier article	0.50
07/27/2004 -	T/C with [REDACTED]	0.50
08/04/2004 -	E-mail correspondence regarding meeting with [REDACTED] and Larry Ritcher	0.25
08/04/2004 -	Receipt and reply to email regarding meeting with [REDACTED] and Ritcher and Lofton	0.25
08/05/2004 -	T/C with [REDACTED]	0.50
08/05/2004 -	Office conference with Jack Sinclair, Esquire, and Lawrence E. Ritcher, Jr. Esquire	1.00
08/05/2004 -	Office meeting with Sinclair, Churchill, Ritcher, and [REDACTED]	1.50
08/07/2004 -	T/C with [REDACTED]	0.75
08/10/2004 -	T/C with [REDACTED]	0.50
08/10/2004 -	T/C between [REDACTED] and [REDACTED]	1.00
08/11/2004 -	T/C with [REDACTED] regarding damages and therapy	0.25
08/11/2004 -	T/C with Peter Shahid regarding Statute of Limitations	0.25
08/12/2004 -	T/C with Debbie Herring-Lash	0.50
08/15/2004 -	T/C with [REDACTED]	0.50
08/26/2004 -	Review letter to Dr. McGuire regarding [REDACTED]	0.50
08/30/2004 -	T/C with [REDACTED] discussing treatment	0.50
09/01/2004 -	Receipt and reply to e-mails from Sinclair to Lofton regarding case	0.25
09/09/2004 -	Review letter regarding [REDACTED] and Dr. McGuire	0.50
09/24/2004 -	Receipt and review letter from [REDACTED] while in Durham County Detention Center	0.75
10/01/2004 -	T/C with [REDACTED]	0.50
10/08/2004 -	Review letter from Lawrence Richter regarding remarks made by Sam Miglarese in North Carolina; possible witness for [REDACTED]	0.75
10/08/2004 -	T/C with [REDACTED]	0.25
11/10/2004 -	T/C with Peter Shahid	0.25
11/10/2004 -	T/C with Debbie Herring-Lash	0.25
11/23/2004 -	T/C with [REDACTED]	0.50
12/14/2004 -	Receipt and reply to e-mail regarding Lofton and [REDACTED]	0.25
12/15/2004 -	T/C with Gregg Meyers	0.25
12/16/2004 -	T/C with [REDACTED]	0.75
12/16/2004 -	Review correspondence to [REDACTED] from Sinclair regarding phone conference and contract	1.25
12/17/2004 -	T/C with [REDACTED]	0.50
12/29/2004 -	T/C with Gregg Meyers	0.25
Date	ACTIVITY	Hours
06/03/2003 -	Meeting with [REDACTED] - Attorney Client Contract	2.00
06/03/2003 -	Review report of psychological evaluation on [REDACTED] from L. Randolph Waid	0.50
06/21/2003 -	Review letter from Rev. Sean Conner, Delegate for Investigations, of the Archdiocese of Boston discussing the complaint process to [REDACTED]	0.25
06/27/2003 -	Phone conference with [REDACTED] regarding payment responsibility of treatment	0.75
06/30/2003 -	Review letter from [REDACTED] regarding the emotional turmoil and his statements against Father Nyhan	0.50
07/01/2003 -	Review Social Security Statement for [REDACTED]	0.50
07/03/2003 -	Conference with [REDACTED] regarding other victims, some accounts of what happened in Church Rectory, costs accrued in therapy over last 15 years	2.50
07/09/2003 -	Sent letter requesting medical information	0.75
07/09/2003 -	Review correspondence to [REDACTED] to meet with all attorneys Sinclair requested	0.50
07/10/2003 -	Office conference with clients, Jack Sinclair, Esquire and Glenn Churchill, Esquire	1.50
07/11/2003 -	Office conference with co-counsel and Pual W. Pittard, Jr.	1.00
07/17/2003 -	Returned phone call to [REDACTED], conference with [REDACTED] regarding treatment centers, list of doctors seen in April of 1993-1994	1.00
07/17/2003 -	Review correspondence and fax to Larry and Lionel regarding meeting with [REDACTED] and comments about [REDACTED] contacting [REDACTED]	0.50
07/21/2003 -	Review correspondence from [REDACTED] to Sinclair requesting not to be contacted again by the Catholic Church, clergy, or its members	0.50
07/21/2003 -	Review correspondence from Haller requesting medical records on [REDACTED] from Bellevue Mental Hygiene	0.50
07/22/2003 -	Receipt and reply of e-mail from James Scott w/ Post & Courier to [REDACTED] regarding Salmon's practices	0.50

07/22/2006 -	Review correspondence to Haller regarding articles researched from the <i>Boston Globe</i> and other internet sites concerning Boston Archdiocese	1.00
07/23/2003 -	Review correspondence from Richter regarding Reverend Conner not to contact [REDACTED]	0.75
07/29/2003 -	Research on-line documents and articles: 'Vatican document instructed secrecy in abuse cases'	2.50
07/30/2003 -	Research Boston Globe article regarding the removal of Nyhan from the Church for the molestation allegations at hand	1.00
07/31/2003 -	Review Breakdown of church investigators bill in the [REDACTED] case	0.50
07/31/2003 -	Review correspondence from Lofton & Lofton regarding Dr. Whiteside's records on [REDACTED]	0.50
07/31/2003 -	Review correspondence regarding Dr. Carole and [REDACTED] mental disorders	0.50
08/01/2003 -	Review correspondence regarding [REDACTED] medical records from Bellevue	0.50
08/01/2003 -	Review correspondence regarding telephone interview with [REDACTED], witness	0.75
08/01/2003 -	Review correspondence from Richter & Haller	0.50
08/04/2003 -	Review correspondence from Wilson Rogers (represents the Roman Catholic Archbishop of Boston) to [REDACTED] regarding the Complaint form	0.50
08/05/2003 -	Review correspondence from Catherine Caron Center requesting medical records on [REDACTED]	0.50
08/11/2003 -	Review correspondence from Haller requesting medical records for [REDACTED] at Bellevue Mental Hygiene	0.50
08/11/2003 -	Meeting with [REDACTED] regarding medical authorizations	1.00
08/12/2003 -	Faxed to Richter and Lofton the statements from [REDACTED] friend, brother, and wife explaining the changes they saw in him, past and present	0.75
08/15/2003 -	Review statement of sexual molestation from [REDACTED]	1.75
08/22/2003 -	Post office - 2 certified mailing to [REDACTED]	1.25
08/22/2003 -	Office conference with Jack Sinclair, Esquire, Glenn Churchill, Esquire and Lawrence E. Richter, Jr. Esquire	1.50
08/25/2003 -	Review correspondence from Lawrence Richter regarding the questions and concerns of [REDACTED]	0.75
08/26/2003 -	Research articles from The Catholic Miscellany regarding the Diocese of Charleston	0.75
09/23/2003 -	T/C with [REDACTED]	0.75
09/23/2003 -	E-mail correspondence regarding conversation with [REDACTED]	0.25
09/23/2003 -	E-mails between Sinclair and Churchill discussing [REDACTED] being a witness	0.25
10/20/2003 -	T/C with Debbie Lash	0.50
10/24/2003 -	Fax to Debbie Herring-Lash regarding statement [REDACTED] prepared for Nyhan's bond hearing	0.50
11/05/2003 -	Office meeting with Glenn Churchill, Jack Sinclair, [REDACTED]	1.50
11/05/2003 -	Review Post & Courier articles on James Nyhan	0.25
11/06/2003 -	Receipt and reply to e-mails regarding discovery	0.25
11/07/2003 -	Review Post & Courier articles on James Nyhan	0.25
11/10/2003 -	T/C with Peter Shahid RE: Discuss treatment	0.25
11/10/2003 -	T/C with [REDACTED] regarding Corroborating witnesses	0.50
12/02/2003 -	T/C with [REDACTED] Re: [REDACTED], another victim, [REDACTED], and sister [REDACTED]	0.50
12/30/2003 -	T/C with [REDACTED] ([REDACTED]'s mom)	0.50
12/30/2003 -	Review and Research article from Boston Globe and Abuse in the Catholic Church	3.75
	Review statement from Bellevue Hospital - outpatient daily report	
	Review report from Bellevue Hospital Ambulatory Services on [REDACTED]	
	Review correspondence from New York's Bellevue Hospital Center regarding [REDACTED] treatment since 02/04/1997	
	Review correspondence from Michael Kollar (Licensed Psychologist) regarding visitation with [REDACTED] and his daughter [REDACTED]	
	Review correspondence from Stoney & Gouldon to [REDACTED] regarding help on his domestic matters	
	Review discharge summary of [REDACTED] at Fenwick Hall Hospital	
	Review Incident Report from North Charleston Police Department regarding attempted suicide on [REDACTED]	
	Review Pictures of [REDACTED] as a child and his reports cards from Bishop England High School	
	Review Coroner's Report on [REDACTED] - Skull fracture, cerebral injury	
	Review Medical Examiner complete autopsy report on [REDACTED]	
	Review correspondence to [REDACTED] and [REDACTED] regarding the Coroner's Inquest into death of [REDACTED]	
	Review Coroners Inquest	
TOTAL HOURS		249.00

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

JOHN DOE #53, et al.,)
)
Plaintiffs,)

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

vs.)

AFFIDAVIT OF JOHN P. FREEMAN
IN SUPPORT OF CLASS ACTION
SETTLEMENT APPROVAL AND
CLASS COUNSEL'S FEE PETITION

THE BISHOP OF CHARLESTON,)
A CORPORATION SOLE, et al.,)
)
Defendants.)

FILED - RECORDED
2007 FEB 14 PM 4:25
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

QUALIFICATIONS AND FACTUAL BACKGROUND

1. I am the Campbell Professor of Business and Legal Ethics at the University of South Carolina Law School. I am a member of the Ohio and South Carolina Bars.

2. Following my graduation from the University of Notre Dame Law School in 1970, I worked at the Jones, Day, Reavis and Pogue law firm (then known as Jones, Day, Cockley and Reavis). I left Jones Day in 1972 to take a Fellowship at the University of Pennsylvania Law School's Center for Study of Financial Institutions. I subsequently received my LL.M. from Penn Law School. In 1973 I joined the faculty of the University of South Carolina Law School. Besides teaching at USC, I have taught at the University of Texas Law School and Loyola Law School in Chicago. I have also worked for the Securities and Exchange Commission as a special counsel. As a law school professor I have specialized in business courses and legal ethics. I am familiar with lawyer disciplinary proceedings, having participated in the litigation of discipline cases as a lawyer and as an expert witness on various occasions. I have served as a member of the South Carolina Bar's Ethics Advisory Committee and have written various ethics opinions published by the Bar.

I have taught legal ethics for 34 years at USC Law School, at numerous CLE programs, and at several JCLE programs. I have lectured on the standards applicable to legal fees many times, and have written about the topic. I have served as an expert witness on such issues as legal fees, co-counsel dealings, class action settlements, and the behavior of class counsel. A copy of my resume is attached as Exhibit 1.

3. As an attorney, I have brought and prosecuted complex cases, including class actions. I have also opposed class actions as counsel for defendants. I have settled class action lawsuits, and I have tried class actions and handled appeals of same. I have testified in various class actions as an expert witness. From 1970 to the present I estimate that I have spent over 10,000 hours in dealing with class actions, either as legal counsel for the class, as counsel for a class action defendant, or as an expert witness in connection with settlement, ethical or fee issues.

NATURE OF EXPERT'S ASSIGNMENT

4. I have been asked to express an opinion as to the reasonableness of the settlement's substantive terms, and the reasonableness of the fee award sought by class counsel.

5. In preparing to express my opinion, I have consulted with class counsel, have researched legal issues raised in the case, and have been given access to a wealth of background information illustrating the work done by counsel in this matter, including voluminous correspondence files, pleadings files, discovery files, transcripts of Court proceedings, witness statements, and copies of motions and briefs. As is normal in case reviews of this sort, I asked for and received class counsel's file in this case, consisting of five bankers boxes of documents, a total volume of documents stacked six feet high, which were delivered to me in Columbia. Counsel's

file is substantial, as one would expect of a case this size, complexity, and importance. I have also reviewed the Court's Order dated January 19, 2007, Certifying Classes and Giving Preliminary Approval to Settlement, as well as the Settlement and Arbitration Agreement.

EXPERT OPINION

6. Under paragraph 3a of the Settlement Agreement, the Diocese agrees to fund the settlement with as much as \$12 million in guaranteed funds. For their work in making the liability case, structuring the class action resolution, and implementing the class action, class counsel seek a court awarded fee, to be paid separately by the Diocese, of \$2.5 million. None of these fee payments will go to reduce any recovery by the class. This fee, if awarded, would amount to approximately 17 percent of the potential recovery earmarked for the class. Although class counsel would be eligible to receive additional compensation for future work done in processing claims, such fees, if any, would be subject to a reasonableness review by the arbitrator under the claims resolution mechanism. The arbitrator would be expected review the reasonableness of any future claims for legal fees, taking into account all relevant factors, including those spelled out in SCACR 407, Rule 1.5. The arbitrator would also be expected to take into account the reasonableness of future fees in light of payments already received by class counsel. Class counsel seek reimbursement of advanced costs of approximately \$100,000, plus the costs of providing notice to the class, which will be another \$50,000 or so. In my opinion, on the unique facts of this case, a fee award to counsel for the class in an amount equal to 17 percent of the maximum recovery by the class would be reasonable in this case. I judge the settlement fair, reasonable and adequate, and I find the fee petition is meritorious in light of all relevant factors. In summary, I recommend that the Court approve the settlement and grant the fee petition in its entirety.

REASONS FOR OPINION

7. First and foremost, this is a very difficult case. Certain underlying facts extend back in time nearly 30 years. It is rife with issues pertaining to statutes of limitations (*see, e.g., Doe v. Crooks*, 364 S.C. 349, 352, 613 S.E.2d 536, 538 (2005) (strictly interpreting statute of limitations in molestation case brought against physician where plaintiff was a minor at the time of the act) and charitable immunity, lack of notice/negligence. The lawsuit was filed in June of 2005, and has been hotly contested throughout. When it preliminarily approved the settlement, the Court noted that in addition to substantive barriers to recovery, the plaintiffs faced difficulty in proving large damage numbers for injuries that are mostly psychological. The Court's appraisal of the difficulties faced by the plaintiffs in this class action is amply supported by the record. Truly, the effort of class counsel was very substantial. But this is only half the story. Class counsel's diligent work was met and resisted by strong and aggressive lawyering from defense counsel functioning on behalf of an esteemed and important entity charged with serious wrongdoing. This case held the potential for being a harrowing, profoundly unpleasant experience for many people on both sides.

8. In my opinion, this case is ideal for class disposition. It offers an opportunity for the defendants to close the door on a very disturbing chapter in the Diocese's history. Closure is in the best interest of the parties and the community. This case is also ideal for a generous fee award. This difficult case was staffed by excellent, experienced, tenacious lawyers on both sides. When you have lawyers of this quality with tough facts and legal questions, you see the legal profession function at its best. That is what happened in this matter.

9. The conduct that caused this case to be brought was conduct on the part of the

Diocese's agents. That conduct deserves the full measure of opprobrium it has received. There is in the Diocese's settlement an implicit apology for the wrongs and errors that have been injured the plaintiff class. The result in this case should and will send a message forward in time to others who might be tempted to engage in similar abusive behavior. This is a laudable result in itself. In finding the settlement fair, reasonable and adequate, I have considered the terms, and compared them with terms reached in similar cases. For a report on various settlements, including a table analyzing the financial terms of various settlements reached in cases of clergy abuse, see <http://www.bishop-accountability.org/ma-bos/settlements/SettlementTable.html> (Attached hereto as Exhibit B).

10. Even though the terms of this settlement compare favorably with settlements in other parts of the country, I recognize there is still some likelihood that this settlement may be opposed by counsel for putative class members. Any such attacks will fail, I predict. Cases against the Diocese are not easy in light of the defenses available which have been used successfully in the past. Any parent with an consortium claim will have a far easier time recovering under the settlement than outside it. The same is true, I believe, for spouses. As for victims, the Diocese is barred from using its biggest defensive weapons, particularly the statute of limitations defense. This enhances substantially chances for recovery. In my judgment, weighing the totality of the unique facts presented by this case, I believe the settlement terms are fair, reasonable, and adequate to the class claimants. I next turn to factors deemed relevant in setting a fee award under South Carolina law.

FEE AWARD FACTORS

11. Under South Carolina law, a fee award calls for "the court [to] consider the following six factors when determining a reasonable attorney's fee: (1) the nature, extent, and difficulty of the

case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services.” *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997). An award for attorney's fees will be affirmed so long as sufficient evidence in the record supports each factor. *Id.* Consideration of all six factors is necessary but none controls.

12. There is no requirement that a fee award be limited to no more than a specific percentage of the plaintiffs' damages. Indeed, in *Baron Data Systems*, the court awarded a fee of \$26,000 in a case where the prevailing plaintiff recovered a \$16,161 verdict. I testified via affidavit for the petitioning lawyer in *Baron*. In *Taylor v. Medenica*, 331 S.C. 575, 503 S.E.2d 458 (1998), the Supreme Court affirmed an attorney's fee award of \$500,000 after the plaintiff therein recovered a treble-damages verdict under the UTPA in the amount of \$108,726. The Supreme Court in *Global Protection Corp. v. Halbersberg*, 332 S.C. 149, 503 S.E.2d 483 (1998), approved a fee of one-third of the plaintiff's recovery, finding that contingent fee arrangements were common in complex cases, and that the typical range of such contingency fees was one-third to one-half of the recovery. 332 S.C. at 161, 503 S.E.2d at 489. After considering each of the six factors, the court decided that a fee of one-third of the recovery was reasonable. In *Bazzle v. Green Tree Financial Corp.*, 351 S.C. 244, 569 S.E.2d 349 (2002), the South Carolina Supreme Court affirmed an award to the class of \$10,935,000, accompanied by an additional \$3,645,500 in attorney's fees and \$18,242 in costs. More recently, in *Condon v. State*, 354 S.C. 634, 583 S.E.2d 430 (2003), the Supreme Court upheld a fee award of 28% of the \$7.5 million common fund, noting that class counsel “were awarded a very substantial sum (\$2.1 million) for their work on this case that took 10 months to settle, [and] Respondents achieved a good result for the class.” In another case, *Fairey v. Exxon Corp.*, Civil

Action No. 94-CP-38-118 (C.P. Orangeburg County), a fee award of 40 percent of the \$30 million common fund accumulated for the class was approved by the Circuit Court.

13. As stated above, class counsel here seek an award of 2.5 million, which equates to around 17 percent of the maximum gross recovery that would be paid by the defendants, depending on the number of class members who choose to step forward. I agree with class counsel that the amount sought would be a fair and reasonable fee when the totality of the six factors is considered. I now turn my attention to each facet of the South Carolina Supreme Court's six-factor test.

The Nature, Extent, and Difficulty of the Case

14. This has been a tough case, unpleasant case from Day 1. Class actions by their nature increase the complexity of a case, as well as class counsel's potential malpractice exposure in the event something misfires. Assembling proof of facts concerning events many years after the fact, where witnesses have scattered posed a huge challenge to plaintiffs' counsel.

15. Based on my knowledge, training, background and experience, I have no hesitation in saying that class counsel's industry, ingenuity, and determination in prosecuting this case has been exemplary. In my opinion, the team of class counsel has consistently fought well against a very powerful and resourceful adversary. I believe that few, if any, other counsel in South Carolina or anywhere else would have had the combination of drive, expertise, resources, and creativity to achieve the result they did under the uniquely difficult circumstances presented by this case. I believe that the first South Carolina Supreme Court fee award factor strongly supports a very substantial fee award.

16. The fee sought here is substantial, but by no means unprecedented. By way of comparison, in the *Broin/Ramos* class action case in Florida, a case in which I was involved as an

expert, the court approved a fee award of \$46 million for two lawyers from a single firm. The settlement in *Broin/Ramos* was affirmed on appeal. See *Ramos v. Philip Morris Cos., Inc.*, 743 So.2d 24 (Fla. 3d DCA 1999). Here the fee sought is far less.

The Time Necessarily Devoted to the Case

17. Plaintiffs' counsel have devoted in excess of 3,500 hours to the handling of this case and processing settlements will require substantial additional time. All counsel involved are extremely busy professionals, and my review shows no padding of time or unnecessary duplication. The case settled because class counsel invested all of the many hours need to move this case down the path toward trial.

18. There is a reason why so many hours have been spent on this case. The Diocese chose to require class counsel to fight for every inch of turf, which it had a perfect right to do. By dogged persistence and dedication, class counsel demonstrated the ability to protect class members and secure a substantial award.

The Professional Standing of Counsel

19. This factor counts strongly in class counsel's favor. Plaintiffs' lead counsel are personally known to me. They are excellent lawyers, sporting enviable reputations, and they jelled into an outstanding litigation team. I have known lawyers on both sides of the case for years; in some cases, many years. I have worked with them on various legal projects in the past. They are top quality lawyers. Lead class counsel Larry Richter, David Haller and Lionel Lofton are universally recognized as excellent advocates. The same is true of Mr. Churchill and Mr. Sinclair. I have previously served as an expert for Messrs. Richter, Haller and Lofton. For years their firms have been in the forefront of efforts to vindicate clients' rights in court, and the Richter-Haller firm

has specialized in complex litigation. Larry Richter led the successful fight to rid South Carolina of the scourge of video poker. I can say that all of these lawyers I mention are outstanding advocates based on my own experience and observation. Each is a highly respected, highly effective, well-respected lawyer. The result in this case speaks for itself. To sum up, the class has had the benefit of truly outstanding advocacy.

20. There was no need for on-the-job training of class counsel. They have meshed into an excellent team, one accomplished enough to bring a very formidable and well-represented adversary to heel. Class counsel's deep and wide experience means there was little risk of wasted time, and hence no need for substantially discounting their time. Their outstanding reputation for integrity and professionalism means their records, including their billing records, are entitled to be credited.

Contingency of Compensation

21. This was a contingent fee case from its inception. Class counsel have advanced all costs in this litigation without any expectation of reimbursement except in the event of recovery on behalf of the Plaintiff Class. They have placed at risk substantial advanced costs. Indeed, very, very few law firms in South Carolina have the ability to front costs running into the millions for years on end as class counsel have. This action attests to their commitment to their clients, and to their professional diligence.

Beneficial Results Obtained

22. The gross pecuniary benefit achieved by class counsel, assuming that there is maximum payout of funds, will exceed \$12 million. This is one of the largest common fund recoveries in South Carolina history. This result was achieved in the face of intransigence on the

part of the opposition, represented locally by lawyers known by me to be very excellent attorneys. Plaintiffs' case was prepared with all the care needed for class counsel to do a first rate job. This case has been marked from the start by careful, determined, dogged preparation--and, obviously, a very good final result. I find that the net result is a significant recovery for the class. This victory is a tribute to aggressive, heady, creative lawyering by class counsel. They have given their clients an outstanding result. In truth, the class will net what for many will be a substantial financial benefit. The result achieved by class counsel has exceeded any expectations. I reiterate that I consider the settlement fund in the maximum amount of \$12 million to be fair, reasonable and adequate.

Customary Legal Fees for Similar Services

23. It is true that fees for like work are "to be calculated according to the prevailing market rates in the relevant community." *Blum v. Stensen*, 465 U.S. 886, 104 S.Ct. 1541, 1547 (1984). The South Carolina Supreme Court determined in *Global Protection Corp. v. Halbersberg*, 332 S.C. 149, 503 S.E.2d 483 (1998), the customary fee in South Carolina for complex cases accepted on a contingent-fee basis ranges from one-third to one-half of the gross recovery. I personally have participated in very difficult cases where contingent fees of as much as 50 percent were collected. *See also Miller v. Botwin*, 258 Kan. 108, 899 P.2d 1004 (1995) (court allowed 50 percent contingent fee for amounts the attorney saved the client in property taxes). I note that a web site tracking results in clergy sex-abuse cases assumes a fee rate of 40 percent applies to the various recoveries. *See* <http://www.bishop-accountability.org/ma-bos/settlements/SettlementTable.html>. The requested fee here is less than one-half of that.

24. The court should use the prevailing market rate in the community for similar services of lawyers "of reasonably comparable skill, experience, and reputation." *Chalmers v. City of Los*

Angeles, 796 F.2d 1205, 1210-11 (9th Cir. 1986). With complex class action cases of this sort, the community is really nationwide. In contingent fee cases, fees tend to range in the local community from 30-40 percent. The Supreme Court in *Condon* was correct in noting that in class actions generally, "fees ordinarily 'range from 20 percent to 30 percent of the common fund created.'" *Condon v. State*, 354 S.C. 634, 644, n.8 583 S.E.2d 430, 435 n.8 (2003) (citing and relying on *Paul, Johnson, Alston & Hunt v. Graulity*, 886 F.2d 268, 272 (9th Cir.1989)). In the *Fairey* case mentioned above, the fee awarded was 40 percent of the settlement fund. Every case turns on its own facts. Here, the fee sought is below the normal range in common fund cases, but the fee is reasonable in light of all relevant facts.

25. In the class action case of *Carolina Model Home Corp. v. Wise*, Civ. Action No. 95-CP-36-172 (C.P. Newberry County Nov. 8, 1996), Circuit Judge Hughston found that an award of fees and costs amounting to 30 percent of the settlement fund would be reasonable. *Carolina Model Home Corp.* was an easy case compared to this one.

26. The same is true of *Maddox v. First American Companies*, Case No.: 96-CP-07-599 (C.P. Beaufort County). In *Maddox*, I participated as counsel in a complex securities class action that was settled as to most defendants. The court awarded class counsel a fee based on one-third of the amount recovered through settlement.

27. In other easier class action cases, 1/3 fee awards have been approved. *Malanka v. Castro*, Fed. Sec. L. Rep. (CCH) ¶ 95,657 (D. Mass. 1990), featured a payout to class counsel of approximately 1/3 of the settlement fund. So did *In re Fiddler's Woods Bondholders' Litigation*, Fed. Sec. L. Rep. (CCH) ¶ 93,537 (E.D. Pa. 1987), also a securities case. This case was far more difficult than either *Malanka* or *In re Fiddler's Woods Bondholders' Litigation*.

SUMMARY

28. As I have explained above in detail, this has been a difficult and unusual case against a resourceful and well-represented adversary.

29. The issue is how to treat fairly those who have done a large job supremely well. I believe that excellent legal work deserves to be recognized as such, and rewarded as such, and excellence on the part of class counsel's team is what I find evidenced by the records chronicling this important and hard-fought lawsuit.

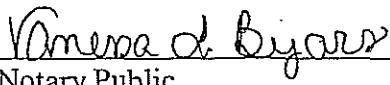
30. In summary, I recommend that proposed settlement be approved and that class counsel's fee petition be granted.

31. Further affiant sayeth not.


John P. Freeman

SWORN TO AND SUBSCRIBED BEFORE ME

this 13 day of February 2007


Notary Public
My Commission Expires: July 15, 2016

RESUME

Professor John P. Freeman

Address and phone numbers: 2329 Wilmot Avenue
Columbia, South Carolina 29205
803-254-4667 (home)
803-777-7224 (Law School)

Education history: LL.M., 1976, University of Pennsylvania Law School, D.
1970, University of Notre Dame Law School, LL.M.
1967, University of Notre Dame (Accounting)

Employment history: 1970-72, Attorney, Jones, Day Law Firm, Cleveland, Ohio

1972-73, Fellow, University of Pennsylvania Law School
Center for the Study of Financial Institutions

1973-75, Assistant Professor of Law, University of South
Carolina

1974 and 1975 (Summers), Special Counsel, Division of
Investment Management, SEC, Washington, D.C.

1975-78, Associate Professor of Law, University of South
Carolina; Visiting Associate Professor of Law at Loyola
Law School (Chicago) Spring 1977

1978-Present, Professor of Law, University of South
Carolina; Visiting Professor of Law at University of Texas
Law School, Summer 1978

Honors and Awards: Undergraduate: Member Beta Alpha Psi (Honorary
Accounting Fraternity)
Law School: Executive Editor, Notre Dame Lawyer;
Distinguished Military Graduate

Professional: At University of South Carolina Law School: Senior Class
Annual Outstanding Faculty Award of 1975, 1976,
1977, 1984; Winston Churchill Award, South Carolina Jury
Trial Foundation 1995; Distinguished Service Award,
South Carolina Trial Lawyers Association 2000; Appointed
Member, South Carolina Judicial Merit Selection
Commission (presently serving)

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2007 FEB 14 PM 4:26
CHERYL GRAY
CLERK OF COURT
DORCHESTER COUNTY

Admitted to Practice: Ohio; South Carolina

Teaching History

Courses Taught: Professional Responsibility, Legal Accounting, Business Associations, Corporations, Agency-Partnership, Securities Regulation, Corporate Finance, Business Planning, Legal Research and Writing, Business Crime, Legal Malpractice Component of Advanced Legal Profession Seminar

Scholarly and Professional Publications

Author, Regular Legal Ethics Column for South Carolina Lawyer.

Article, The Mutual Fund Distribution Fee Mess, 32 J. Corporation Law ____ (2007) (accepted for publication).

Article, It's the Conflict of Interest, Stupid, Money Mgm't Exec., May 17, 2004, at 14.

Chapter on Legal Opinion Liability in Legal Opinion Letters A Comprehensive Guide to Opinion Letter Practice (M. John Sterba, Jr., ed. 2003) (plus annual updates).

Chapter in South Carolina Damages Treatise on Damages in Securities Cases (2004)

Article, The Ethics of Using Judges to Conceal Wrongdoing, 55 S.C.L. Rev. 829 (2004).

Article (with Stewart Brown), Mutual Fund Advisory Fees: The Cost of Conflicts of Interest, 26 J. Corporation Law 610 (2001).

Article, Liens, Fees and Taxes, South Carolina Trial Lawyer, Summer 2000, at 26.

Article, A Business Lawyer Looks at the Internet, 49 S.C.L. Rev. 903 (1998).

Article, Payments to Medical Care Providers: What Are the Lawyer's Obligations? South Carolina Lawyer, September-October 1994, at 39.

Article, Current Developments in Lawyer Liability: Coping with the Fraudulent Client, Delaware Lawyer, Winter 1993, at 27.

Article, Treble Damage Statutes Can Increase Trust Recoveries, 4 Probate Practice Reporter, June 1992, at 1.

Article (with Nathan Crystal), Scienier in Professional Liability Cases, 42 S.C.L. Rev. 783 (1991).

Article, How Computerized Databases Are Redefining Due Diligence, Carolina Lawyer (July-August 1991).

Article, When Are Lawyers' Gifts to Judges Improper? Carolina Lawyer (November-December 1990).

Article, Current Developments in Legal Opinion Liability, 1989 Col. J. Bus. L. 235.

Article, Understanding the Joint Client Exception to the Attorney-Client Privilege, Carolina Lawyer (July-August 1989).

Article, A RICO Primer, 1985 Small Business Counselor No. 4.

Article, The Use of Mutual Fund Assets to Pay Marketing Costs, 9 Loy. Chi. L.J. 553 (1978).

Article, Marketing Mutual Funds and Individual Life Insurance, 28 S.C.L. Rev. 1-124 (1976), reprinted in Nat'l Ins. L. Rev. Serv. (1977).

Article, Opinion Letters and Professionalism, 1973 Duke L.J. 371-439, reprinted in Securities Law Review 1974 (E. Folk, III, ed.).

Co-author, Multi-student Survey, The Mutual Fund Industry: A Legal Survey, 44 Notre Dame Lawyer 732-983 (1969).

Case Comment, Escott v. BarChris Constr. Corp., 44 Notre Dame Lawyer, 122-40 (1968).

Other Scholarly Activities

Speeches (with accompanying outlines) presented at numerous CLE courses sponsored by various entities including the South Carolina Bar, University of South Carolina Law School and the South Carolina Supreme Court.

CLE Presentations 2001-06: S.C. Association of Counties, Ethics Update, Dec. 8, 2006; Lexington County Bar Ass'n, Ethics Update, Dec. 6, 2006; Richland County Bar, Ethics Update, Nov. 3, 2006; S.C. State Government Lawyers, Ethics Update, Nov. 3, 2006; S.C. Judicial Merit Selection Commission, Overview of Judicial Ethics, Sept. 14, 2006 (½ hr.); Federal Bar Ass'n, SC Bar, Ethics and Professionalism, Sept. 8, 2006; Commercial Law League of America, Avoiding Grievances and Malpractice Worries in Your Practice, July 6, 2006, Asheville, N.C. (2 hours); National Structured Settlement Trade Ass'n, Ethics in Litigation, Westin Rio Mar, Puerto Rico, May 9, 2006; S.C. Chamber of Commerce, Legal Ethics for the Employment Lawyer, Hilton Head, S.C., May 6, 2006; American Ass'n Matrimonial Lawyers, Ethic Lecture, Los Cabos, Mexico, March 11, 2006; SC Bar, Legal Ethics for Health Care Providers, Jan. 28, 2006;

S.C. Association of Counties, Ethics Update, Dec. 9, 2005; SCTLA, Making Money Out of Discovery Abuse, Dec. 2, 2005, Atlanta; Ass'n of S.C. Claimants Attorneys for Workers Compensation, Ethics Seminar, Nov. 4, 2005, Asheville; S.C. Bar, Ethics in Masters Court, Oct. 14, 2005; N.C. Bar-S.C. Bar Construction Law Ethics Program, Asheville, Oct. 1, 2005; S. C. Bar, Unauthorized Practice Problems in Probate Court, Sept. 16, 2005; Greenville County Solicitor's Office, Prosecutorial Ethics, May 9, 2005; Mass Tort Seminar, NYC, Discovery Abuse Issues, March 18, 2005; S.C. Ass'n of Counties, Legal Ethics, Dec. 10, 2004; Federal Bar Ass'n, S.C., Ethics CLE, Dec. 10, 2004 ½ hr.; S.C. Bar Construction Law Section, Ethics CLE on the new Oath; Dec. 3, 2004; NASAA, Salt Lake City, Legal Ethics for Securities Enforcement Lawyers, Dec. 4, 2004; DSS Ethics Training, Dec. 3, 2004; (2-hr. lecture); PIABA, Ethics for Securities Lawyers, and Comments on the Mutual Fund Mess, Oct. 20, 2004 (2 hrs.); Commercial Law League of America, Southern Region Members' Ass'n, Ethical Issues in Commercial Law, Oct. 1, 2004; S.C. Bar, Annual Probate Bench/Bar, Ethics in Probate Court, Sept. 17, 2004; Charleston Bar Ass'n, Lawyer's Oath Seminar, August 27, 2004; S.C. Government Lawyers, Legal Ethics for Government Attorneys, August 20, 2004; S.C. Judiciary, Judicial Ethics Lecture, August 19, 2004; S.C. Bar, Accounting for Non-tax Lawyers, May 2, 2004; Palmetto Land Title Ass'n, Ethics for Closing Attorneys, April, 24, 2004; Richardson, Patrick Law Firm, CLE on Legal Issues Concerning the Mutual Fund Mess, March 26, 2004; S.C. Bar, An Update on Ethical Considerations for the Guardian, March 5, 2004; S.C. Prof. Society on the Abuse of Children, Ethics and Child Abuse, Feb. 26, 2004; National Ass'n of State Boards of Accountancy, Professionalism, Accountability and the Accounting Profession, Feb. 9, 2004; Fidelity Nat'l Title, Ethical Duties of Closing Attorneys, Feb. 5, 2004; S.C. Bar, Annual Convention, Ethical Issues in Handling the Appeal, Jan. 22, 2004 (co-presenter).

Member, ABA Section of Business Law Task Force on Legal Opinions

Participant in Conference on Legal Opinions at Silverado, California, May 31-June 3 (1989).

University and Community Service

Author, Report on Tax Sheltered Annuities to USC Faculty and Staff (1976).
Faculty Senate (1996-98)

University Committees

Promotion and Tenure
Faculty Welfare
Annuities and Insurance
Budget Committee

Law School Committees

Faculty Selection
Academic Standing (currently serving)
Minority Student Affairs
Executive Committee
Dean Evaluation Committee

Dean Search Committee

Chairman, Supreme Court Commission on Continuing Lawyer Competence (1980-83)

President, Leaphart Elementary School PTO (1983)

Chairman, Irmo Middle School-School Improvement Council (1985)

Member, Irmo Middle School-School Improvement Council (1985-89),

President, Irmo High School Parent, Teacher, Student Association (1988-89, 1992-93)

Member Executive Board (1988-93)

Member, Irmo High School-School Improvement Council (1988-93)

Founder and Past-president, University of Notre Dame Club of South Carolina

Lexington District Five and South Carolina State School Volunteer of the Year 1993

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Comparative Table of Selected Settlements

Settlement	Year	Priests	Settlement Amount (thousands)	Number of Victims	Estimated Legal Fees	Net Amount Per Victim (thousands)
LA CA (DiMaria)	2001	1 (Harris), no conviction	\$5,200	1	40%	\$3,120
Oklahoma City OK	2002	1 (Rapp), 40 years in prison	\$5,000	1	40%	\$3,000
Dallas TX [a]	1998	1 (Kos), life in jail	\$23,400	5	40%	\$2,808
Stockton CA [b]	1998	1 (O'Grady), 14 years in prison	\$7,650	2	40%	\$2,295
Los Gatos CA	2002	4 Jesuits	\$7,500	2	40%	\$2,250
San Bernardino CA	2003	1 (Ball)	\$4,200	2	40%	\$1,260
LA CA	2002	1 (Hagenbach)	\$1,500	1	40%	\$900
Tucson AZ	2002	4 priests	\$14,000	11	40%	\$764
Orange CA	2004	31 priests, 10 lay personnel, 2 nuns and 1 religious brother	\$100,000	91	40%	\$659
Boston MA (BC High)	2003	2 (Talbot, McManus)	\$5,800	15	40%	\$232
Providence RI [c]	2002	10 priests, 1 nun	\$13,500	36	40%	\$225
Davenport IA	2004	5 priests	\$9,000	37	40%	\$146
Boston MA - Lawyers' Top	2003	140 priests, 2 others	\$120,000	542	40%	\$133
Boston MA - Lawyers' Bottom	2003	140 priests, 2 others	\$90,000	542	40%	\$100
Boston MA - Final Offer	2003	140 priests, 2 others	\$85,000	552	40%	\$92
Boston MA - 2nd Offer	2003	140 priests, 2 others	\$65,000	542	40%	\$72
Boston MA	2002	1 (Geoghan), 9-10 years in prison	\$10,000	86	40%	\$70
Louisville KY [c]	2003	34 priests and 5 workers	\$27,000	243	40%	\$67
Boston MA - 1st Offer	2003	140 priests, 2 others	\$55,000	542	40%	\$61
Manchester NH [d]	2003	28 priests, 3 others	\$15,500	176	40%	\$53
Fall River MA [e]	1992	1 (Porter), 18-20 years in prison	\$8,000	101	40%	\$48

[a] original jury award on 7/23/97 was \$119.6 million

[b] original jury award on 7/16/98 was \$30 million

[c] 40% fees are actual

[d] priest count is for 11/26/02 settlement; amount and victim count are 5/22/03 aggregates

[e] original 12/3/92 settlement involved 68 victims, but others subsequently joined

Source: *Boston Globe*, August 9, 2003; other news sources.FILED-RECORDED
2007 FEB 14 PM 4:28
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

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

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

Plaintiffs,

vs.

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

Defendants.

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CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

Objections to Class Settlement, Motion for Modification and Notice of Opt-Out

Although we commend the Diocese for trying to take some responsibility for the many families that have been affected by the practices of sexual abuse by Diocese agents and employees, various individuals potentially affected by this class action hereby object to the proposed class settlement. These individuals move, pursuant to SCRCP 23(d)(1), that the order be modified to resolve the objections, and conditionally provide notice that certain of the individuals either are not included in the class settlement or, if included, intend to opt-out of the class to pursue their own individual actions outside of the class settlement.

The identities of the individuals are designated by pseudonyms to preserve the confidentiality for the directly affected abuse victims. They are:

1. Parent Jane Doe A, a parent of an minor sexually abused by two priests whose minor's claim has been resolved,
2. John Doe B, a former Catholic school student whose sexual abuse at school and other places was admitted by a teacher for the Diocese, but against whom the Diocese successfully asserted the statute of limitations to avoid taking any responsibility for his abuse,
3. John Doe C, a former Catholic orphanage student sexually abused by multiple agents and employees of the Diocese at the orphanage,
4. John Doe D, sexually abused as a child by a priest,
5. Parent John Doe E, the father of John Doe D,
6. Parent Jane Doe F, the mother of John Doe D,
7. Jane Doe G, a former Catholic school student sexually abused by a teacher,
8. Parent John Doe H, the father of Jane Doe G,
9. Parent Jane Doe I, the mother of Jane Doe G, and
10. John Doe J, sexually abused as a child by a priest,
11. Parent John Doe K, the father of a child sexually abused by a priest.
13. John Doe L, sexually abused as a child by a priest,
14. John Doe M, the father of John Doe L,
15. Jane Doe N, the mother of John Doe L.

In the interests of these individuals and others similarly situated, the proposed class settlement has the following weaknesses, which should be addressed by modifications by the Court.

Objections to the Preliminary Approval Order

1. **The order does not specify if the class is an opt-in class or an opt-out class, and no provision is made for opting out.** The order is objected to because it does not state if these purported two classes are opt-in or an opt-out classes, and the order contains no procedures for a person to opt out so as to exclude himself or herself from the class settlement. SCRCP 23(d)(2) would seem to require an opt-in class, to the extent it speaks of providing "notice to the absent persons that they *may* come in and present claims and defenses *if they so desire*."

The structure of the claims process described at page 16 of the settlement agreement in part 8 also suggests it is an opt-in class, where a claim is released through participating in the claims process. Any order should clarify that the class is an opt-in class.

Alternatively, if the order purports to create an opt-out class, due process requires that the order also provide a means by which any person otherwise included in the classes have available a method for opting out of either class.

2. **The class definitions.** The class definitions are objected to. On page 4 of the January 19, 2007 order appear what purport to be (on page 3 of the order) the definition of two classes. In fact, the class definitions are not independent, and they state a single, linked class, when two

independent classes are appropriate.

Class A are those students (a) born before a certain time, (b) sexually abused as minors, (c) whose claims have not been previously resolved. Class B is not, but should be, parents of minors who were sexually abused. But as it is presently defined, Class B is limited to those parents of minors who are included in Class A. So a parent of a minor whose claim was resolved, such as Jane Doe A, is not within the parent class. There is no legitimate basis to distinguish between such a parent and the parents who are within the definition of class B, particularly when the parent discovered only recently that her child was sexually abused by either priest..

Similarly, as to John Doe B, a former Catholic school student whose teacher admitted sexually abusing him, the Diocese successfully avoided taking responsibility for his abuse by asserting the statute of limitations. He is excluded from the settlement solely because he had the temerity to ask the Diocese to take responsibility for his abuse, and challenged their refusal to do so. In the purported class settlement the Diocese has agreed, as it should, to reach beyond the statute of limitations for redress. But at the same time the Diocese seeks to exclude anyone whose claim was defeated by the same statute of limitations defense. The definition for class A should be modified to include minors whose prior claims resulted in no recovery.

Likewise, John Doe D, Parent John Doe E, and Parent Jane Doe F 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. His claim, hence his parents' claims, would be excluded by the present definition of classes A and B. The same exclusive rationale applies both to Jane Doe G and her father, John Doe H, and her mother, Jane

Doe I, as well as to John Doe L and his parents John Doe M and Jane Doe N. They are presently all excluded from the definitions of classes A and B, whereas John Doe J and John Doe K are not excluded merely because no letter has been written about John Doe J's molestation by a priest.

The arbitrariness of the class definitions can be ameliorated by the definitions being changed by the court to:

- A. All individuals born on or before August 30, 1980, who, as minors, were sexually abused³ at any time by any agent or employee of the Diocese of Charleston who have not previously received compensation for any similar claim. (Hereinafter "the Primary Class").
- B. The spouses and parents, of all individuals qualified pursuant to the Primary Class, who have not previously had received compensation for any similar claim (Hereinafter the "Consortium Class").

These revised definitions do three things. (1) They eliminate the arbitrary distinction between those victims who have had the audacity to previously ask the Diocese to be accountable for sexual abuse by its agents. (2) They eliminate the arbitrary distinction between parents whose minor's claims were and were not resolved. And (3) they eliminate from the Consortium Class definition the qualifier "and who suffered a loss of the abused individual's consortium."

In light of the holding in *Manufacturer and Merchants Mutual Ins. Co. v. Harvey*, 330 S.C. 152, 158, 493 S.E.2d 222, 226 (Ct. App), that sexual abuse of a child is "inherently injurious," as a matter of law it is not possible for a child to be sexually abused and not suffer injury. Consequently, it is not possible for a parent to have avoided suffering the loss of the child's consortium. The order should not reflect otherwise, and should be changed as noted above.

³ The definition in the order would remain unchanged.

3. **The arbitrary distinctions in the compensation matrix for minor victims.** The settlement agreement includes, at pages 4 and 5, a compensation matrix for minor victims that is unduly arbitrary and is predicated on the false presumption that the harm of sexual abuse turns on the extent of the sexual battery. The ill conceived matrix is an astonishing concept for class counsel to propose. It would be just as coherent for the matrix to turn on how long the victim's hair was at the time of the abuse, or whether the perpetrator's hand were clean or needed washing at the time of the harmful or offensive touching. It is a meaningless and arbitrary rationale for the matrix.

Some harmful or offensive touching occurs in sexual abuse, of course, but using the extent of the touching as a distinction for different levels of compensation misses completely the nature of why sexual abuse is "inherently injurious," as *Harvey* concluded. It is *not* inherently injurious because the touch itself creates some lingering or lasting effect. What endures as the lasting problem from sexual abuse is not the physical intrusion on the victim but the psychological intrusion, which the order recognizes at 2 ("mostly psychological damages") that originates from a deeply personal touch coming from within an otherwise trusting relationship, such as a priest or a teacher. The compromises abuse creates for a child are psychological, not physical. The trauma for a child is to raise questions about what place is safe for the child if the church or school are not safe? What person should the child trust if the teacher or priest cannot be trusted? What authority figure should be respected if listening to the priest or teacher creates injury? The ongoing disruption that sexual abuse creates in a victim's life stems not from whether the touching was "limited" or "fondling" or "egregious," to use the terms from this

matrix, but stems from the psychological conflicts created by the compromised trusting relationship.

Note that under this matrix no female, such as Jane Doe G, could under any circumstances be "seriously" molested by a female agent or employee of the Diocese. The matrix does not contemplate at all a female agent creating a problem by sexually abusing a female minor. If the injury from sexual abuse is "inherently injurious," a finding which *Harvey* compels, the ill-conceived matrix cannot be recognized without doing undue harm to minor victims and without violating *Harvey*.

Nor does the ill-conceived matrix recognize in any way the reality that in some instances, such as a minor sexually abused by multiple agents or employees of the Diocese, the increased seriousness from repeated compromises by trusted Diocese agents. For example, the child of parent Jane Doe A, and the minor John Doe C, were each repeatedly sexually abused by different Diocese agents. The matrix makes no accommodation whatever for repeated breaches of trust and confidence by multiple agents and employees of the Diocese, and yet multiple molestations create deeper conflicts of betrayal and trust.

The betrayal of the trusting relationship occurs with the first inappropriate contact, and is not more completely betrayed by a "more" inappropriate contact. Using a physical act matrix to distinguish psychological betrayals reflects a complete misunderstanding of sexual abuse, conflicts with the holding of *Harvey*, and serves poorly the interests of class members.

The order should be modified to create a uniform compensation for minor victims using the most significant category of the proposed matrix. All minor victims shared the serious breach of a trusting relationship, regardless of the precise physical manner in which the minor's

trust and confidence was breached. Alternatively, a separate award category should be created which treats all victims comparably but can add-on additional relief if the physical intrusion presented additional complications from the “inherently injurious” injury of sexual abuse.

4. Compensation for parents is out of all proportion to jury treatment of such claims. The settlement agreement accepts for parents and spouses a compromise amount out of all proportion to the treatment by juries of parent claims, a compromise apparently grounded on the false assumption that a parent’s or spouse’s claim for consortium injury is derivative of the minor’s claim.

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

The only known jury to rule on a parent’s claim was the actual damage award of \$15 million in *Glover v. Porter-Gaud School*, No. 98-CP-10-613, Verdict of October 26, 2000. That was an award for a parent’s claim. Class counsel is aware of that award. For parent claims in

this settlement to be valued at \$20,000 is out of all proportion to the proper value of the claims as assessed by a jury, and the class settlement should be disapproved as to parent claims unless and until a more appropriate compensation award can be made. There is no objection to the parent and spouse class recovering less than the minor class, but for parents and spouses to recover a cost-of-litigation amount is contrary to the known value of parent claims, particularly when parent and spouse claims often have far less complicated statute of limitations issues.

5. **Opting out.** Each of the individuals noted above reserves the right to, and provides this notice of, their right to opt-out of the proposed settlement. The decision may be re-evaluated once a ruling is made on these objections.

Conclusion

The Court should make clear that this is an opt-in class (or should provide a means for opting out), should refuse to give final approval of the class until the objections above are accommodated, and should redefine the classes in ways consistent with these objections.

Respectfully submitted,



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STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF DORCHESTER)

FIRST JUDICIAL CIRCUIT

CASES NO. 06-CP-18-1310

06-CP-18-1311

06-CP-18-1636

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

Plaintiffs,)

vs.)

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

Defendants.)

FILED-RECORDED
 2007 AUG -1 AM 11:55
 CHERYL GRAHAM
 CLERK OF COURT
 DORCHESTER COUNTY

Objections to Proposed Order

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

Issues are raised in the order they are presented in what is represented to counsel to be a proposed order.

1. Solicitor's Investigation. A. Since the court elected to have the First Circuit, rather than the Ninth Circuit, Solicitor investigate matters related to the document titled "INSTRUCTION," the order should reflect, or the Court should order, more steps than are reflected in the proposed order. As presently cast, the proposed order suggests only that the Solicitor made inquiry of the Diocese. Since the concern is that the Diocese has concealed

information, and the Code of Canon Law, the governing rules of the Church, call for a “secret archive,” (See, e.g., Canons 489 --- “In the diocesan curia there is also to be a secret archive. . .”), and 490, and the Church has a doctrines of “mental reservation” and “committed secrets” which affect truth-telling in response to questions, to protect putative class members the order should reflect more than an informal request for information of the entity suspected of active concealment. We presume more steps were taken, and the requests were formal or mandatory (such as a subpoena, sworn testimony, or sworn statements), so the order should either reflect those steps or the court should order such steps.

B. Since the Solicitor’s investigation continues, provision should be made for final approval to be made only when it has been made to consist of meaningful investigative steps, and only when completed. Again, we assume the investigation has been meaningful, but those meaningful steps should be articulated in the order.

C. The proposed order includes a proposed finding that any concerns regarding the “INSTRUCTION” “have been satisfied as to the civil action.” The finding should be that no victims have been identified despite adversarial investigative steps, assuming there have been such adversarial investigative steps.

2. Notice by the Diocese. The Diocese apparently contends it has given notice to all persons who might qualify to receive notice, yet it appears not all known class members have been notified, if that was the criteria applied to the notice.

3. Withdrawn Objections. The proposed order states that two objectors have withdrawn their objections, but gives no reason why or what accommodations were made to cause that to happen. Since there is now confusion about whether ‘side deals’ or arrangements have been made regarding other putative class members and their counsel, or with the class representatives,

some of which contentions are now contested by class counsel, the proposed order should do more than just acknowledge that the objections have been withdrawn, the court should inquire about the circumstances of those withdrawals so that other putative class members might be fully informed as to what they are getting into or opting out of should the settlement ever be approved.

4. Objections not withdrawn. A. The proposed order discusses at some length objections filed on behalf of those consulting objecting counsel. As noted in the objections, the class as originally articulated failed to specify even the basic premise of whether it was an opt-in or an opt-out class. That was amended after the objections were filed, indicating it was an opt-out class. But there has been no opt-out period yet approved. Putative class members cannot have their objections discarded or their rights affected by procedures not applicable to the entire class. No class member can opt-out prior to their being an opt-out period. Since one has been specified since the objections were filed, and since the notice of opt-out was conditioned on the substantial confusion of the class being clarified, the proposed order errs in penalizing putative class members for asking the matter be clarified and for reserving their right to make that election, which was all the prior objection stated. It also specifically reserved the right to re-evaluate that issue once the court heard the objections. Whether those individuals plan to opt out in the future cannot properly affect their present status.

Also in spite of the Order's language referring to our objections as without merit, it is undeniable that the addendum altering the class definitions occurred after the objections.

B. Footnote 4 of the proposed Order discusses objector's counsel's case and indicates that certain class members are attempting to reverse consent to dismiss an earlier action. The proposed order is inaccurate. The class action was pending when the dismissal issue was raised, and the General Counsel of the Diocese made no disclosure of the action. Since that active

concealment affected putative class members, it concealed a material fact. The proposed order errs in permitting the Diocese to benefit from deception, and sheds light on the investigative steps needed with this Diocese, as discussed above. In any event, a motion remains pending in Charleston County about that active concealment, and the proposed order should at minimum permit that motion to be heard and ruled on disposition of that motion to occur prior to any order being entered.

5. Objections as to Matrix. The proposed order affirms the matrix that was objected to, but even though a small modification was made to the matrix, objection is still made as to the matrix as a means of separating out what should be specified as subclasses of victims. Victims should share equally, and a distribution should be made of all allocated settlement funds. The operation of the matrix, even as modified, benefits only the Diocese in minimizing the proceeds paid to victims, and in permitting settlement funds to revert to the Diocese. If the settlement is treated as a \$12 million settlement for purposes of calculating the class counsel's fee, then the court should order that all \$12 million be paid to the victims.

6. Compensation of Consortium Claims. The proposed order errs in determining that consortium claims of parents are worth zero, and those of spouses worth little. If the order remains as it is, then any member of the direct victim class will be able to object to their own settlement fund being depleted for compensating individuals for claims the court finds legally non-cognizable. And if the court determines that the parents of victims DO have legally cognizable claims (an issue with a three hundred year history of Common Law support and which the South Carolina Supreme Court currently has under consideration in a case argued this Spring), then the adequacy objection is ripe, and the proposed order's conclusion that a past verdict would "probably" not have survived appeal, thereby is to be discounted, engages the

court in speculation, without acknowledging that those cases were certified as a class, survived a series of motions for summary judgment, as well as survived directed verdict motions at trial. The three hundred year Common Law history in support of such claims, which the proposed order does not even address, bore heavily on those motions. The discussion makes the proposed order appear to reflect that class counsel has brought a claim which does not satisfy SCRCP 11, which these objectors do not believe is the case, and creates an appearance that the parties are colluding to minimize recovery for victims.

7. Notice. Notice should be posted in more than just South Carolina. Some national vehicle for notice should exist, to accommodate the reality that persons may move from the State. This is another aspect in which the proposed order appears to be designed to minimize the impact on the Diocese rather than to maximize the recovery for the victims. Publication in either the USA Today or The New York Times would seem appropriate if the parties truly were interested in giving notice to potential class members.

8. Attorneys Fees. A. As noted above, if class counsel has recovered \$12 million for abuse victims then we applaud the attorney's fee award. But that is not what has occurred in the settlement, yet the proposed order presumes, incorrectly, that it has. The final order should either modify the settlement fund to make it an actual \$12 million recovery for victims, or it should recast the discussion of the fee approval. Otherwise, the calculation that the fee is 20.8% of the recovery for all victims is simply incorrect.

B. Nor can counsel's fee be paid until the disbursement is known to class members. If the fund for the class is irrevocably \$12 million, and will be distributed either per capita or pro rata after the claims period, this objection will be satisfied. If the "gross settlement" turns out to be less than \$5 million, then the fee calculation would have to be revised substantially.

is only the maximum amount that the Diocese might have to pay. Basing a fee on a potential result rather than an actual result is error. The claims process should go forward and the fee calculated for approval after the benefit to the class is known, not hypothetical.

C. Hence, the ten day payment requirement is objected to, unless the \$12 million is revised to be disbursed to all class members either pro rata or per capita. Nor should the fees be paid before all class members have been paid, and the order should discuss whether the fee is awarded on a contingency or lodestart scheme, or a hybrid.

9. Paying class representatives first. The proposed order claims that class representatives have already been paid. To treat some class members outside of the class procedures raises issues about those persons being representative of the class, acting in the interest of the class, and acting so as to protect the class, and about whether claims of persons resolved prior to any claims process then satisfy the definition of a class member. It would seem those persons would become persons whose claims are resolved, and make them ineligible for class inclusion. It also suggests that the class representatives may have breached their duties to absent class members by being paid first, and through a different process (mediation) than applies to other class members (arbitration).

Class representatives are often permitted to obtain a premium for conducting the litigation, and there is no objection to that concept. But the proposed order does not disclose what the class representatives have already received beyond the general statement that they have collectively been already paid \$460,000. The proposed order should indicate to other class members what each class representative was paid. And, as noted above, the class representatives should not be paid outside of the very claims process that all other class members must participate in, or by different criteria.

10. Provided Psychological Assessment and Counseling. The proposed order and exhibits do not indicate who does these assessments and/or counseling. If it is with a therapist of the victim's or family member's choosing, it needs to state that. If it is a therapist selected by the Diocese, it needs to state that too.

11. Exhibit A. As written, the class would include those persons abused by parents or spouses, which is probably not an intended claimant.

12. Exhibit B. The definition of the consortium class includes the spouses and parents of victims *who are not eligible to participate in the victims' class*. If this is inadvertent, it can be cleared up. If not, it suggests the settlement is designed not to maximize recovery for victims but to minimize payment by the Diocese.

The definition of "sexual abuse" is obviously taken from a criminal statute. Many aspects of abuse do not neatly fit the legalistic definition, and many putative class members may not understand it. Notice to potential class members should be clear and readily understandable.

The proposed order states that if there is a dispute about whether a claim is *bona fide*, the claimant will have a chance to prove their claim, but does not set forth a procedure on how that will occur. In order for claimants to make an informed decision on whether to participate in the class, the notice should include that information.

Objections to the matrix are not restated here.

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

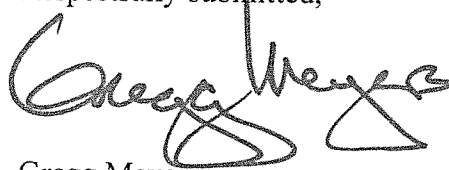
14. Exhibit D. Same concern as to Social Security Numbers.

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

15. Exhibit F. The proposed form includes a voluntary waiver of appeal rights prior to the victim knowing whether they are considered by the arbitrator to be a class member. It should preserve that right until that determination is made.

Objectors request notice of any order entered by the Court.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gregg Meyers", with a stylized, looping flourish at the end.

Gregg Meyers
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Attorney for putative class members